

**Amendment - 1st Reading/2nd House-blue - Requested by: Kerri Seekins-Crowe - (S)
Business, Labor, and Economic Affairs**

- 2023

68th Legislature 2023

Drafter: Jameson Walker, 406-444-3722

HB0351.002.001

1 HOUSE BILL NO. 351
2 INTRODUCED BY K. SEEKINS-CROWE, B. MITCHELL, A. REGIER, J. ELLSWORTH, B. BEARD, T. SMITH
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO MARIJUANA ADVERTISING;
5 PROVIDING GUIDELINES FOR MARIJUANA LICENSING; PROVIDING PROHIBITIONS IN MARIJUANA
6 LICENSING; PROVIDING RULEMAKING AUTHORITY; PROHIBITING A MARIJUANA LICENSEE FROM
7 ADVERTISING A BRAND ASSOCIATED WITH A LICENSE THROUGH CERTAIN MEDIUMS; CLARIFYING
8 PROVISIONS FOR ELECTRONIC ADVERTISING FOR A MARIJUANA LICENSEE; CLARIFYING
9 PROVISIONS FOR SPONSORSHIPS FOR A MARIJUANA LICENSEE; AND AMENDING SECTION 16-12-
10 244 16-12-112, MCA; AND REPEALING SECTION 16-12-211, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 (Refer to Introduced Bill)

15 Strike everything after the enacting clause and insert:

- 16
17 **NEW SECTION. Section 1. Limitations on advertising -- rulemaking.** (1) A-Except as provided in
18 subsection (7), a licensee may promote its business and market its brand only through electronic advertising.
19 (2) A licensee may use the phrase "marijuana" or "cannabis" in its signage or in its electronic
20 advertising.
21 (3) A licensee's outdoor signage may not use colloquial terms for marijuana or marijuana products
22 and may not use an image or visual representation of usable marijuana, marijuana-infused products, marijuana
23 concentrates, marijuana paraphernalia, or an image that indicates the presence of a product, including but not
24 limited to smoke or edibles.
25 (4) A licensee's outdoor signage must comply with any applicable local jurisdiction sign ordinances
26 and regulations.
27 (5) A marijuana business that maintains a website must utilize appropriate measures to verify that

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1 individuals visiting the website are 21 years of age or older.

2 (6) Marijuana business social media accounts that advertise marijuana or marijuana products must
3 be private and must contain a clearly visible notice on the main page stating that only persons 21 years of age
4 or older may follow the account.

5 (7) A marijuana business may:

6 (a) donate to a charitable cause and have only its business name listed as a charitable contributor;

7 (b) sell merchandise on which a licensee's business name or logo appears.

8 ~~(7)~~(8) A marijuana business may not:

9 (a) engage in advertising or brand marketing directed towards location-based devices, including
10 but not limited to cellular phones, unless users affirmatively opt in to receiving push notifications related to
11 marijuana or marijuana-related products;

12 (b) utilize unsolicited pop-up or push-to advertising on the internet;

13 (c) advertise or promote its business or brand on television, radio, or in print, such as newspapers,
14 magazines, flyers, and mailers;

15 (d) engage in advertising or utilize signage that asserts its products are safe;

16 (e) utilize a billboard;

17 (f) use objects such as toys or inflatables, movie or cartoon characters, or any other depiction or
18 image likely to be appealing to youth, when the objects, images, or depictions indicate an intent to cause youth
19 to become interested in the purchase or consumption of marijuana products; or

20 (g) use or employ a commercial mascot outside of and in proximity to a licensed marijuana
21 business. A "commercial mascot" means a live human being, animal, or mechanical device used for attracting
22 the attention of motorists and passersby so as to make them aware of marijuana products or the presence of a
23 marijuana business. Commercial mascots include but are not limited to inflatable tube displays, persons in
24 costume or wearing, holding, or spinning a sign with a marijuana-related commercial message or image when
25 the intent is to draw attention to a marijuana business or its products.

26 ~~(8)~~(9) The prohibition in subsection ~~(7)(e)~~(8)(c) does not prohibit the use of informational pamphlets
27 for dissemination at marijuana trade conferences or the use or distribution of business cards.

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1 ~~(9)(10)~~ The prohibition in subsection ~~(7)(d)(8)(d)~~ does not prohibit a marijuana business from asserting
2 that its products have been tested by a licensed marijuana testing laboratory.

3 ~~(10)(11)~~ The department may adopt rules to clearly identify the activities that constitute advertising that
4 are prohibited under this section.

5 ~~(11)(12)~~ For purposes of this section, the term:

6 (a) "Advertise" or "advertising" means the publication, dissemination, solicitation, or circulation of
7 visual, oral, or written communication to directly induce a person to purchase or consume marijuana or
8 marijuana products. Advertising does not include branding on packaging and labeling of marijuana and
9 marijuana products for sale to registered cardholders or consumers.

10 (b) "Billboard" means a sign that directs attention to a business, commodity, service,
11 entertainment, or attraction sold, offered, or existing elsewhere than on the same premises where the sign is
12 displayed.

13

14 **Section 2.** Section 16-12-112, MCA, is amended to read:

15 "**16-12-112. Rulemaking authority -- fees.** (1) The department may adopt rules to implement and
16 administer this chapter, including:

17 (a) the manner in which the department will consider applications for licenses, permits, and
18 endorsements and renewal of licenses, permits, and endorsements;

19 (b) the acceptable forms of proof of Montana residency;

20 (c) the procedures for obtaining fingerprints for the fingerprint-based and name-based background
21 checks required under 16-12-129;

22 (d) the security and operating requirements for licensees;

23 (e) the security and operating requirements for manufacturing, including but not limited to
24 requirements for:

25 (i) safety equipment;

26 (ii) extraction methods, including solvent-based and solvent-free extraction; and

27 (iii) post-processing procedures;

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- 1 (f) notice and contested case hearing procedures for fines or license and endorsement
2 revocations, suspensions, or modifications;
- 3 (g) implementation of a system to allow the tracking of marijuana and marijuana products as
4 required by 16-12-105;
- 5 (h) labeling and packaging standards that protect public health by requiring the listing of
6 pharmacologically active ingredients, including but not limited to THC, cannabidiol (CBD) and other cannabinoid
7 content, the THC and other cannabinoid amount in milligrams per serving, the number of servings per package,
8 and quantity limits per sale to comply with the allowable possession amount;
- 9 (i) investigating and making rules to limit, if necessary, the appropriate THC potency percentages
10 for marijuana and marijuana products;
- 11 (j) requirements that packaging and labels may not be made to be attractive to children, that they
12 have required warning labels as set forth in 16-12-215, and that marijuana and marijuana products be sold in
13 resealable, child-resistant exit packaging to protect public health as provided in 16-12-208;
- 14 (k) requirements and standards for the testing and retesting of marijuana and marijuana products,
15 including testing of samples collected during the department's inspections of licensed premises;
- 16 (l) the amount of variance allowable in the results of raw testing data that would warrant a
17 departmental investigation of inconsistent results as provided in 16-12-202;
- 18 (m) requirements and standards to prohibit or limit marijuana, marijuana products, and marijuana
19 accessories that are unsafe or contaminated;
- 20 (n) the activities that constitute advertising in violation of 16-12-214 [section 1] and requirements
21 and standards for electronic advertising as permitted under 16-12-214 [section 1];
- 22 (o) requirements and incentives to promote renewable energy, reduce water usage, and reduce
23 packaging waste to maintain a clean and healthy environment in Montana;
- 24 (p) procedures for collecting and destroying samples of marijuana and marijuana products that fail
25 to meet testing requirements pursuant to 16-12-209; and
- 26 (q) the fees for testing laboratories, the fingerprint-based and name-based background checks
27 required under 16-12-129, employee certification, the marijuana transporter license, marijuana worker permits,

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1 and other fees necessary to administer and enforce the provisions of this chapter. The fees established by the
2 department, taxes collected pursuant to Title 15, chapter 64, part 1, civil penalties imposed pursuant to this
3 chapter, and the licensing fees established by rule and in part 2 of this chapter must be sufficient to offset the
4 expenses of administering this chapter but may not exceed the amount necessary to cover the costs to the
5 department of implementing and enforcing this chapter.

6 (2) The department may not adopt any rule or regulation that is unduly burdensome or undermines
7 the purposes of this chapter.

8 (3) The department may consult or contract with other public agencies in carrying out its duties
9 under this chapter."

10

11 NEW SECTION. Section 3. Repealer. The following section of the Montana Code Annotated is
12 repealed:

13 16-12-211. Limitations on advertising -- rulemaking.

14

15 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
16 integral part of Title 16, chapter 12, part 2, and the provisions of Title 16, chapter 12, part 2, apply to [section 1].

17

- END -