

SENATE BILL NO. 461

INTRODUCED BY S. NOVAK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO INTOXICATING PRODUCTS INTENDED FOR HUMAN CONSUMPTION; PROHIBITING CONSUMPTION OF INTOXICATING PRODUCTS THAT ARE NOT REGULATED IN THE STATE; ~~REVISING THE DEFINITION OF "HEMP"; PUTTING HEMP PRODUCTS UNDER THE REGULATION OF THE DEPARTMENT OF REVENUE; AND PROVIDING CRIMINAL PENALTIES ; AND AMENDING SECTIONS 16-12-102, 16-12-117, AND 80-18-101,~~ MCA."

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

NEW SECTION. **Section 1. Intoxicating beverages or products prohibited unless regulated.** (1)

A beverage or product that is made for human consumption that has an intoxicating effect on the consumer is prohibited unless it is specifically authorized and regulated in this state. A person who consumes a beverage or product not regulated in this state is guilty of a misdemeanor punishable as provided in 45-9-121.

(2) (A) For the purposes of this section, the term "intoxicating effect" includes but is not limited to beverages or products that have the purpose of altering the person's mental or physical state or cause intoxication.

(B) ~~THE TERM DOES NOT INCLUDE CAFFEINATED BEVERAGES OR HERBAL TEA.~~

Section 2. ~~Section 16-12-102, MCA, is amended to read:~~

~~"16-12-102. Definitions.~~ As used in this chapter, the following definitions apply:

(1) ~~"Adult-use dispensary" means a licensed premises from which a person licensed by the department may:~~

(a) ~~obtain marijuana or marijuana products from a licensed cultivator, manufacturer, dispensary, or~~

other licensee approved under this chapter; and

(b) ~~sell marijuana or marijuana products to registered cardholders, adults that are 21 years of age or older, or both.~~

(2) ~~"Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another person.~~

(3) ~~"Beneficial owner of", "beneficial ownership of", or "beneficially owns an" is determined in accordance with section 13(d) of the federal Securities and Exchange Act of 1934, as amended.~~

(4) ~~"Canopy" means the total amount of square footage dedicated to live plant production at a licensed premises consisting of the area of the floor, platform, or means of support or suspension of the plant.~~

(5) ~~"Consumer" means a person 21 years of age or older who obtains or possesses marijuana or marijuana products for personal use from a licensed dispensary but not for resale.~~

(6) ~~"Control", "controls", "controlled", "controlling", "controlled by", and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting owner's interests, by contract, or otherwise.~~

(7) ~~"Controlling beneficial owner" means a person that satisfies one or more of the following:~~

(a) ~~is a natural person, an entity that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia, or a publicly traded corporation, and:~~

(i) ~~acting alone or acting in concert, owns or acquires beneficial ownership of 5% or more of the owner's interest of a marijuana business;~~

(ii) ~~is an affiliate that controls a marijuana business and includes, without limitation, any manager;~~
or

(iii) ~~is otherwise in a position to control the marijuana business; or~~

(b) ~~is a qualified institutional investor acting alone or acting in concert that owns or acquires beneficial ownership of more than 15% of the owner's interest of a marijuana business.~~

(8) ~~"Correctional facility or program" means a facility or program that is described in 53-1-202 (2) or (3) and to which an individual may be ordered by any court of competent jurisdiction.~~

(9) — "Cultivator" means a person licensed by the department to:

(a) — plant, cultivate, grow, harvest, and dry marijuana; and

(b) — package and relabel marijuana produced at the location in a natural or naturally dried form that has not been converted, concentrated, or compounded for sale through a licensed dispensary.

(10) — "Debilitating medical condition" means:

(a) — cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the patient's health status;

(b) — cachexia or wasting syndrome;

(c) — severe chronic pain that is a persistent pain of severe intensity that significantly interferes with daily activities as documented by the patient's treating physician;

(d) — intractable nausea or vomiting;

(e) — epilepsy or an intractable seizure disorder;

(f) — multiple sclerosis;

(g) — Crohn's disease;

(h) — painful peripheral neuropathy;

(i) — a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;

(j) — admittance into hospice care in accordance with rules adopted by the department; or

(k) — posttraumatic stress disorder.

(11) — "Department" means the department of revenue provided for in 2-15-1301 ~~...~~.

(12) — (a) "Employee" means an individual employed to do something for the benefit of an employer.

(b) — The term includes a manager, agent, or director of a partnership, association, company, corporation, limited liability company, or organization.

(c) — The term does not include a third party with whom a licensee has a contractual relationship.

(13) — (a) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or indirectly through a business, an investment, or a spouse, parent, or child relationship, to 5% or more of the net profits or net worth of the entity in which the interest is held.

(b) — The term does not include interest held by a bank or licensed lending institution or a security interest, lien, or encumbrance but does include holders of private loans or convertible securities.

(14) — "Former medical marijuana licensee" means a person that was licensed by or had an application for licensure pending with the department of public health and human services to provide marijuana to individuals with debilitating medical conditions on April 27, 2021.

(15) — (a) "Indoor cultivation facility" means an enclosed area used to grow live plants that is within a permanent structure using artificial light exclusively or to supplement natural sunlight.

(b) — The term may include:

(i) — a greenhouse; or

(ii) — a similar structure that protects the plants from variable temperature, precipitation, and wind.

(16) — "Licensed premises" means all locations related to, or associated with, a specific license that is authorized under this chapter and includes all enclosed public and private areas at the location that are used in the business operated pursuant to a license, including offices, kitchens, restrooms, and storerooms.

(17) — "Licensee" means a person holding a state license issued pursuant to this chapter.

(18) — "Local government" means a county, a consolidated government, or an incorporated city or town.

(19) — "Manufacturer" means a person licensed by the department to convert or compound marijuana into marijuana products, marijuana concentrates, or marijuana extracts and package, repack, label, or relabel marijuana products as allowed under this chapter.

(20) — (a) "Marijuana" means all plant material from the genus *Cannabis* containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(b) — The term does not include hemp as provided in 80-18-101 UNLESS HEMP OR HEMP DERIVATIVES ARE USED IN A PRODUCT INTENDED FOR HUMAN CONSUMPTION AND PRODUCE AN INTOXICATING EFFECT.

(c) — The term does not include synthetic marijuana products.

(d) — The term does not include a drug approved by the United States food and drug administration pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301, et seq.

(21) — "Marijuana business" means a cultivator, manufacturer, adult-use dispensary, medical

~~marijuana dispensary, combined-use marijuana licensee, testing laboratory, marijuana transporter, or any other business or function that is licensed by the department under this chapter.~~

~~(22)—"Marijuana concentrate" means any type of marijuana product consisting wholly or in part of the resin extracted from any part of the marijuana plant.~~

~~(23)—"Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, or byproducts of the marijuana plant, including but not limited to marijuana concentrates and other marijuana products.~~

~~(24)—"Marijuana product" means a product that contains marijuana and is intended for use by a consumer. The term includes but is not limited to edible products, ointments, tinctures, marijuana derivatives, and marijuana concentrates, including concentrates intended for use by smoking or vaping.~~

~~(25)—"Marijuana transporter" means a person that is licensed to transport marijuana and marijuana products from one marijuana business to another marijuana business, or to and from a testing laboratory, and to temporarily store the transported retail marijuana and retail marijuana products at its licensed premises, but is not authorized to sell marijuana or marijuana products to consumers under any circumstances.~~

~~(26)—"Mature marijuana plant" means a harvestable marijuana plant.~~

~~(27)—"Medical marijuana" means marijuana or marijuana products that are for sale solely to a cardholder who is registered under Title 16, chapter 12, part 5.~~

~~(28)—"Medical marijuana dispensary" means the location from which a registered cardholder may obtain marijuana or marijuana products.~~

~~(29)—"Outdoor cultivation" means live plants growing in an area exposed to natural sunlight and environmental conditions including variable temperature, precipitation, and wind.~~

~~(30)—"Owner's interest" means the shares of stock in a corporation, a membership in a nonprofit corporation, a membership interest in a limited liability company, the interest of a member in a cooperative or in a limited cooperative association, a partnership interest in a limited partnership, a partnership interest in a partnership, and the interest of a member in a limited partnership association.~~

~~(31)—"Paraphernalia" has the meaning provided for "drug paraphernalia" in 45-10-101.~~

~~(32)—"Passive beneficial owner" means any person acquiring an owner's interest in a marijuana~~

business that is not otherwise a controlling beneficial owner or in control.

(33) — "Person" means an individual, partnership, association, company, corporation, limited liability company, or organization.

(34) — "Qualified institutional investor" means:

(a) — a bank or banking institution including any bank, trust company, member bank of the federal reserve system, bank and trust company, stock savings bank, or mutual savings bank that is organized and doing business under the laws of this state, any other state, or the laws of the United States;

(b) — a bank holding company as defined in 32-1-109;

(c) — a company organized as an insurance company whose primary and predominant business activity is the writing of insurance or the reinsuring of risks underwritten by insurance companies, and that is subject to regulation or oversight by the insurance department of the office of the state auditor or a similar agency of another state, or any receiver or similar official or any liquidating agent for such a company, in their capacity as such an insurance company;

(d) — an investment company registered under section 8 of the federal Investment Company Act of 1940, as amended;

(e) — an employee benefit plan or pension fund subject to the federal Employee Retirement Income Security Act of 1974, excluding an employee benefit plan or pension fund sponsored by a licensee or an intermediary holding company licensee that directly or indirectly owns 10% or more of a licensee;

(f) — a state or federal government pension plan; or

(g) — any other entity identified by rule by the department.

(35) — "Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical condition who has received and maintains a valid registry identification card.

(36) — "Registry identification card" means a document issued by the department pursuant to 16-12-503 that identifies an individual as a registered cardholder.

(37) — (a) "Resident" means an individual who meets the requirements of 1-1-215.

(b) — An individual is not considered a resident for the purposes of this chapter if the individual:

(i) — ~~claims residence in another state or country for any purpose; or~~

(ii) — ~~is an absentee property owner paying property tax on property in Montana.~~

(38) — "Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height and 12 inches in diameter.

(39) — "Synthetic cannabinoids" has the meaning provided in 50-32-222 and includes any cannabinoids produced artificially, whether from chemical synthesis or biosynthesis using recombinant biological agents, including but not limited to yeast and algae.

(40) — "Synthetic marijuana product" means marijuana or marijuana products that contain synthetic cannabinoids.

(41) — "Testing laboratory" means a qualified person, licensed under this chapter that:

(a) — provides testing of representative samples of marijuana and marijuana products; and

(b) — provides information regarding the chemical composition and potency of a sample, as well as the presence of molds, pesticides, or other contaminants in a sample.

(42) — (a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant that are appropriate for the use of marijuana by an individual.

(b) — The term does not include the seeds, stalks, and roots of the plant."

Section 3. Section 16-12-117, MCA, is amended to read:

~~"16-12-117. Synthetic marijuana products prohibited --- restriction on sale of marijuana products.~~ (1) A person may not manufacture, process, or offer for sale a synthetic marijuana product.

(2) — Products containing or consisting of cannabinoids produced and processed for any type of consumption into a human body, whether marketed as containing or consisting of cannabinoids or not, that exceed a THC concentration of 0.3% may only be sold by a manufacturer licensed under 16-12-222 or a

dispensary licensed under 16-12-224 unless the products are authorized as a drug by the United States food and drug administration and those products produce no intoxicating effects when consumed . Products under this section may not exceed the potency levels established in 16-12-224 .

(3) — Products containing a THC concentration of 0.3% or less sold by any person other than a licensed manufacturer under 16-12-222 or a licensed dispensary under 16-12-224 may not exceed 0.5 milligrams of THC for each serving and may not exceed 2 milligrams per package.

(4) — This section does not apply to unadulterated hemp flower that is not further processed into extracts, infused products, or concentrates."

Section 3. Section 80-18-101, MCA, is amended to read:

"80-18-101. Definitions. As used in this part, the following definitions apply:

(1) — (a) "Hemp" means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 tetrahydrocannabinol concentration of not more than 0.3% on a dry weight basis.

(b) — The term does not include synthetic cannabinoids or a product that meets the definition of hemp but is intended for human consumption and has an intoxicating effect that is regulated under Title 16, chapter 12 .

(2) — "Hemp crude" means a hemp derivative in a temporary state of not complying with the legal definition of hemp, the amount of tetrahydrocannabinol, or the amount of tetrahydrocannabinolic acid that will be further processed in order to comply.

(3) — "Hemp derivatives" means all products that contain or are processed from, extracted from, or manufactured from hemp.

(4) — "Marijuana" means all plant material from the genus *Cannabis* containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

~~(5) "Synthetic cannabinoids" has the meaning provided in 50-32-222 and includes any cannabinoids produced artificially, whether from chemical synthesis or biosynthesis using recombinant biological agents, including but not limited to yeast and algae."~~

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6 NEW SECTION. **Section 2. Codification instruction.** [Section 1] is intended to be codified as an

7 integral part of Title 45, chapter 9, part 1, and the provisions of Title 45, chapter 9, part 1, apply to [section 1].

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