

HOUSE BILL NO. 304

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO MARIJUANA CULTIVATORS
AND MARIJUANA MANUFACTURERS; REQUIRING A MARIJUANA CULTIVATOR AND A MARIJUANA
MANUFACTURER TO INSTALL AN AIR FILTRATION SYSTEM; PROVIDING FOR INSPECTION
REQUIREMENTS AND REMEDIES; PROVIDING RULEMAKING AUTHORITY; PROVIDING A DEFINITION;
AMENDING SECTIONS 16-12-210, 16-12-221, AND 16-12-223, MCA; AND PROVIDING A DELAYED
EFFECTIVE DATE."

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

Section 1. Section 16-12-210, MCA, is amended to read:

"16-12-210. Inspections -- procedures -- prohibition on inspector affiliation with licensees. (1)

~~(a)~~ The department shall conduct unannounced inspections of licensed premises.

~~(b) — The department may not conduct more than two unannounced inspections of a licensed
premises per year unless a citation has been issued to a licensee at the premises within the last 2 years or
there is other just and reasonable cause.~~

(2) (a) The department shall inspect annually each premises operated by a licensee.

(b) The department may collect samples during the inspection of a licensed premises and submit
the samples to a testing laboratory or the state laboratory for testing as provided by the department by rule.

(3) (a) Each licensee shall keep a complete set of records necessary to show all transactions with

consumers and registered cardholders. The records must be open for inspection by the department or state laboratory, as appropriate, and state or local law enforcement agencies.

(b) Each testing laboratory shall keep:

(i) a complete set of records necessary to show all transactions with a licensee; and

(ii) all data, including instrument raw data, pertaining to the testing of marijuana and marijuana products.

(c) The records and data required under this subsection (3) must be open for inspection by the department and state or local law enforcement agencies.

(d) The department may require a licensee to furnish information that the department considers necessary for the proper administration of this chapter.

(4) (a) Each licensed premises, including any places of storage, where marijuana is cultivated, manufactured, sold, stored, or tested are subject to entry by the department or state or local law enforcement agencies for the purpose of inspection or investigation.

(b) If any part of a licensed premises consists of a locked area, the licensee shall make the area available for inspection immediately upon request of the department or state or local law enforcement officials.

(5) (a) On REGULAR inspection and notice by the department, a licensee in violation of 16-12-221(3) or 16-12-223(1)(d) shall:

(i) provide a written plan of correction within 10 days to the department; and

(ii) comply with the written plan of correction within 6 3 months.

(B) THE DEPARTMENT MAY GRANT AN EXTENSION OF 3 MONTHS FOR THE PURPOSES OF INSTALLATION HARDSHIPS OF AN AIR FILTRATION SYSTEM OR OTHER ODOR NEUTRALIZATION SYSTEM THAT MEETS THE REQUIREMENTS OF 16-12-221(3).

(b)(C) Pursuant to 16-12-109, the department may revoke, suspend, or refuse to renew a licensee's license or issue a penalty to a licensee for noncompliance with the provisions of subsection (5)(a).

(5)(6) The department may not hire or contract with a person to be an inspector if the person, during the previous 4 years, was or worked for a Montana business or facility operating under this chapter or a former medical marijuana licensee.

(6)(7) In addition to any other penalties provided under this chapter, the department may revoke,

1 suspend for up to 1 year, or refuse to renew a license or endorsement issued under this chapter if, upon
2 inspection and subsequent notice to the licensee, the department finds that any of the following circumstances
3 exist:

4 (a) a cause for which issuance of the license or endorsement could have been rejected had it been
5 known to the department at the time of issuance;

6 (b) a violation of an administrative rule adopted to carry out the provisions of this chapter; or

7 (c) noncompliance with any provision of this chapter.

8 ~~(7)(8)~~ The department may suspend or modify a license or endorsement without advance notice upon
9 a finding that presents an immediate threat to the health, safety, or welfare of consumers, employees of the
10 licensee, or members of the public. The department may establish by rule the applicable procedures for
11 securing or disposing of the inventory in such circumstances.

12 ~~(8)(9)~~ (a) Review of a department action imposing a suspension, revocation, or other modification
13 under this chapter must be conducted as a contested case hearing before the department's office of dispute
14 resolution under the provisions of the Montana Administrative Procedure Act.

15 (b) A person may appeal any decision of the department of revenue concerning the issuance,
16 rejection, suspension, or revocation of a license provided for by this chapter to the district court in the county in
17 which the person operates or proposes to operate. If a person operates or seeks to operate in more than one
18 county, the person may seek judicial review in the district court with jurisdiction over actions arising in any of the
19 counties where it operates or seeks to operate.

20 (c) An appeal pursuant to subsection ~~(8)(b)~~ (9)(b) must be made by filing a complaint setting forth
21 the grounds for relief and the nature of relief demanded with the district court within 30 days following receipt of
22 notice of the department's final decision.

23 ~~(9)(10)~~ The department shall establish a training protocol to ensure uniform application and
24 enforcement of the requirements of this chapter.

25 ~~(10)(11)~~ The department shall report biennially to the economic affairs interim committee concerning
26 the results of inspections conducted under this section. The report must include the information required under
27 16-12-110."
28

Section 2. Section 16-12-221, MCA, is amended to read:

"16-12-221. Manufacturer -- requirements -- limitations -- fees. (1) A person licensed as a manufacturer shall:

(a) prepare marijuana products at a licensed premises exclusively; and

(b) use equipment that is used exclusively for the manufacture and preparation of marijuana products.

(2) All licensed premises on which marijuana products are manufactured must meet any applicable standards set by a local board of health for a retail food establishment as defined in 50-50-102.

~~(3) (A) All INDOOR licensed premises on which marijuana products are manufactured must be ventilated so that the odor of marijuana cannot be detected by a person with a normal sense of smell at the exterior of the licensee location or at any adjoining use property.~~ HAVE A PROPERLY OPERATING AIR FILTRATION SYSTEM OR OTHER ODOR NEUTRALIZATION SYSTEM FOR THE REDUCTION OF MARIJUANA ODOR AT THE EXTERIOR OF THE BUILDING.

~~(B) FOR PURPOSES OF THIS SUBSECTION (3), THE DEPARTMENT MAY ADOPT RULES RELATING TO THE OBJECTIVE MEASUREMENT OF ODORS AT THE BOUNDARY OF THE LICENSEE'S PROPERTY, INCLUDING USING A STANDARD OF 1 VOLUME OF ODOROUS AIR TO BE DILUTED WITH 7 VOLUMES OF ODOR-FREE AIR TO CONSTITUTE A VIOLATION OF THIS SUBSECTION (3) FOR THE APPROVAL OF AIR FILTRATION SYSTEMS FOR THE PROPER FUNCTIONALITY OF THE SYSTEMS.~~

~~(C) THIS SUBSECTION (3) DOES NOT APPLY TO ANY LICENSED FACILITY THAT IS GREATER THAN 1 MILE FROM ANY OTHER BUSINESS OR RESIDENCE AT THE DATE OF LICENSURE. THIS EXEMPTION APPLIES REGARDLESS OF NEW CONSTRUCTION OCCURRING WITHIN 1 MILE OF THE LICENSED FACILITY AFTER THE DATE OF LICENSURE.~~

~~(3)(4)~~ An applicant for a manufacturer license shall demonstrate that the local government approval provisions contained in 16-12-301 have been satisfied in the jurisdiction where each proposed manufacturing facility is located if a proposed facility would be located in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in the November 3, 2020, general election.

~~(4)(5)~~ When evaluating an initial or renewal application, the department shall evaluate each proposed manufacturing facility for compliance with the provisions of 16-12-207 and 16-12-210.

~~(5)(6)~~ Marijuana products may not be considered a food or drug for the purposes of Title 50, chapter

1 31.

2 ~~(6)~~(7) (a) The department shall charge a manufacturer license fee for an initial application and at
3 each renewal. The license fee is based on the amount of concentrate produced at a manufacturing facility on a
4 monthly basis. The annual fees for licensees are:

5 (i) \$5,000 for each manufacturing facility that produces, on a monthly basis, less than 1 pound of
6 concentrate and up to 10 pounds of concentrate;

7 (ii) \$10,000 for each manufacturing facility that produces, on a monthly basis, between 10 pounds
8 of concentrate and 15 pounds of concentrate; and

9 (iii) \$20,000 for each manufacturing facility that produces, on a monthly basis, 15 pounds or more
10 of concentrate.

11 (b) The department may create additional fee levels as necessary.

12 (c) A manufacturer may apply to advance to the next licensing level in conjunction with a regular
13 renewal application by demonstrating that its proposed additional or expanded manufacturing facility or facilities
14 are located in a jurisdiction where the local government approval provisions contained in 16-12-301 have been
15 satisfied or that they are located in a county in which the majority of voters voted to approve Initiative Measure
16 No. 190 in the November 3, 2020, general election.

17 ~~(7)~~(8) The department may adopt rules:

18 (a) for the inspection of proposed manufacturing facilities;

19 (b) for investigating the amount of concentrate produced at a manufacturing facility; and

20 (c) for investigating owners or applicants for a determination of beneficial ownership or financial
21 interest."

22

23 **Section 3.** Section 16-12-223, MCA, is amended to read:

24 **"16-12-223. Licensing of cultivators.** (1) (a) The department shall license cultivators according to a
25 tiered canopy system. Except as provided in subsection (6), all cultivation that is licensed under this chapter
26 may only occur at an indoor cultivation facility.

27 (b) Except as provided in subsection (6), the system shall include, at a minimum, the following
28 license types:

- 1 (i) A micro tier canopy license allows for a canopy of up to 250 square feet at one indoor
2 cultivation facility.
- 3 (ii) A tier 1 canopy license allows for a canopy of up to 1,000 square feet at one indoor cultivation
4 facility.
- 5 (iii) A tier 2 canopy license allows for a canopy of up to 2,500 square feet at up to two indoor
6 cultivation facilities.
- 7 (iv) A tier 3 canopy license allows for a canopy of up to 5,000 square feet at up to three indoor
8 cultivation facilities.
- 9 (v) A tier 4 canopy license allows for a canopy of up to 7,500 square feet at up to four indoor
10 cultivation facilities.
- 11 (vi) A tier 5 canopy license allows for a canopy of up to 10,000 square feet at up to five indoor
12 cultivation facilities.
- 13 (vii) A tier 6 canopy license allows for a canopy of up to 13,000 square feet at up to five indoor
14 cultivation facilities.
- 15 (viii) A tier 7 canopy license allows for a canopy of up to 15,000 square feet at up to five indoor
16 cultivation facilities.
- 17 (ix) A tier 8 canopy license allows for a canopy of up to 17,500 square feet at up to five indoor
18 cultivation facilities.
- 19 (x) A tier 9 canopy license allows for a canopy of up to 20,000 square feet at up to six indoor
20 cultivation facilities.
- 21 (xi) A tier 10 canopy license allows for a canopy of up to 30,000 square feet at up to seven indoor
22 cultivation facilities.
- 23 (xii) A tier 11 canopy license allows for a canopy of up to 40,000 square feet at up to eight indoor
24 cultivation facilities.
- 25 (xiii) A tier 12 canopy license allows for a canopy of up to 50,000 square feet at up to nine indoor
26 cultivation facilities.
- 27 (c) A cultivator shall demonstrate that the local government approval provisions in 16-12-301 have
28 been satisfied for the jurisdiction where each proposed indoor cultivation facility or facilities is or will be located

1 if a proposed facility would be located in a county in which the majority of voters voted against approval of
2 Initiative Measure No. 190 in the November 3, 2020, general election.

3 ~~(d) (A)(I) All licensed premises on which marijuana products are cultivated INDOORS must be~~
4 ~~ventilated so that the odor of marijuana cannot be detected by a person with a normal sense of smell at the~~
5 ~~exterior of the licensee location or at any adjoining use property. HAVE A PROPERLY OPERATING AIR FILTRATION~~
6 ~~SYSTEM THAT MEETS THE REQUIREMENTS OF 16-12-221(3).~~

7 ~~(II) THIS SUBSECTION (1)(D) DOES NOT APPLY TO A LICENSED PREMISES IN WHICH THE INDOOR~~
8 ~~CULTIVATION FACILITY IS A GREENHOUSE.~~

9 ~~(III) FOR THE PURPOSES OF THIS SUBSECTION (1)(D), "GREENHOUSE" MEANS A PERMANENT OR~~
10 ~~SEMIPERMANENT STRUCTURE CONSISTING OF TRANSPARENT MATERIAL WITH OPEN AIR ACCESS IN WHICH PLANTS ARE~~
11 ~~GROWN IN A CLIMATE-CONTROLLED ENVIRONMENT.~~

12 ~~(d)(e)~~ When evaluating an initial or renewal license application, the department shall evaluate each
13 proposed indoor cultivation facility for compliance with the provisions of 16-12-207 and 16-12-210.

14 ~~(e)(f)~~ (i) Except as provided in subsection (1)~~(e)(f)(iii)~~, a cultivator who has reached capacity under
15 the existing license may apply to advance to the next licensing tier in conjunction with a regular renewal
16 application by demonstrating that:

17 (A) the cultivator is using the full amount of canopy currently authorized;

18 (B) the tracking system shows the cultivator is selling at least 80% of the marijuana produced by
19 the square footage of the cultivator's existing license over the 2 previous quarters or the cultivator can
20 otherwise demonstrate to the department that there is a market for the marijuana it seeks to produce; and

21 (C) its proposed additional or expanded indoor cultivation facility or facilities are located in a
22 jurisdiction where the local government approval provisions contained in 16-12-301 have been satisfied or that
23 they are located in a county in which the majority of voters voted to approve Initiative Measure No. 190 in the
24 November 3, 2020, general election.

25 (ii) Except as provided in subsection (1)~~(e)(f)(iii)~~, the department may increase a licensure level by
26 only one tier at a time.

27 (iii) Between January 1, 2022, and June 30, 2023, a cultivator may increase its licensure level by
28 more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections

(1)(~~e~~)(f)(i)(A) and (1)(~~e~~)(f)(i)(B).

(iv) The department shall conduct an inspection of the cultivator's registered premises and proposed premises within 30 days of receiving the application and before approving the application.

(~~f~~)(g) A marijuana business that has not been issued a license before July 1, 2023, must be initially licensed at a tier 2 canopy license or lower.

(2) The department is authorized to create additional tiers as necessary.

(3) The department may adopt rules:

(a) for inspection of proposed indoor cultivation facilities under subsection (1);

(b) for investigating owners or applicants for a determination of financial interest; and

(c) in consultation with the department of agriculture and based on well-supported science, to require licensees to adopt practices consistent with the prevention, introduction, and spread of insects, diseases, and other plant pests into Montana.

(4) Initial licensure and annual fees for these licensees are:

(a) \$1,000 for a cultivator with a micro tier canopy license;

(b) \$2,500 for a cultivator with a tier 1 canopy license;

(c) \$5,000 for a cultivator with a tier 2 canopy license;

(d) \$7,500 for a cultivator with a tier 3 canopy license;

(e) \$10,000 for a cultivator with a tier 4 canopy license;

(f) \$13,000 for a cultivator with a tier 5 canopy license;

(g) \$15,000 for a cultivator with a tier 6 canopy license;

(h) \$17,500 for a cultivator with a tier 7 canopy license;

(i) \$20,000 for a cultivator with a tier 8 canopy license;

(j) \$23,000 for a cultivator with a tier 9 canopy license;

(k) \$27,000 for a cultivator with a tier 10 canopy license;

(l) \$32,000 for a cultivator with a tier 11 canopy license; and

(m) \$37,000 for a cultivator with a tier 12 canopy license.

(5) The fee required under this part may be imposed based only on the tier of licensure and may not be applied separately to each indoor cultivation facility used for cultivation under the licensure level.

1 (6) A former medical marijuana licensee who engaged in outdoor cultivation before November 3,
2 2020, may continue to engage in outdoor cultivation."

3

4 NEW SECTION. **Section 4.** **Effective date.** [This act] is effective January 1, 2024.

5 - END -