

SENATE BILL NO. 381

INTRODUCED BY S. MORIGEAU

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CANNABIDIOL PRODUCTS; PROHIBITING SALES OF CANNABIDIOL PRODUCTS TO MINORS; PROVIDING A PENALTY FOR SALES OF CANNABIDIOL PRODUCTS TO MINORS; PROVIDING FOR A TAX ON GROSS SALES OF CANNABIDIOL RETAILERS; REQUIRING TESTING OF CANNABIDIOL PRODUCTS; PROVIDING THAT TESTED CANNABIDIOL PRODUCTS BE LABELED; PROHIBITING THE SALE OF CANNABIDIOL PRODUCTS THAT DO NOT MEET TESTING STANDARDS; PROVIDING FOR LICENSING OF TESTING LABORATORIES TO TEST CANNABIDIOL PRODUCTS; PROVIDING FOR A CANNABIDIOL TESTING STATE SPECIAL REVENUE ACCOUNT; PROVIDING THAT REVENUE FROM THE GROSS SALES TAX, LICENSE FEES, AND PENALTIES FOR SALES TO MINORS BE DEPOSITED IN THE ACCOUNT; PROVIDING THAT EXCESS REVENUE BE USED TO FUND MONTANA PROMISE GRANTS AND K-12 EDUCATION; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 9], the following definitions apply:

(1) "Cannabidiol" means a nonpsychoactive cannabinoid found in the plant *Cannabis sativa* L. or *Cannabis indica* that is essentially free from plant material and has a tetrahydrocannabinol level of no more than 0.3%.

(2) "Cannabidiol product" means a product that contains cannabidiol and is intended for human use.

(3) "Cannabidiol retailer" means a person who sells cannabidiol products.

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

(5) "Person" means an individual, firm, partnership, corporation, association, company, committee, other group of persons, or other business entity, however formed.

(6) "Purchaser" means a person to whom a sale of a cannabidiol product is made.

(7) "Retail price" means the established price for which a cannabidiol retailer sells a cannabidiol product to a purchaser before any discount or reduction.

(8) "Sale" or "sell" means any transfer of cannabidiol products for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means.

NEW SECTION. Section 2. Tax on cannabidiol retailer. (1) There is a 4% tax on the gross sales of a cannabidiol retailer. The tax is payable four times a year.

(2) A cannabidiol retailer shall submit a quarterly report to the department listing the total dollar amount of sales of cannabidiol products in the state. The report must:

(a) be made on forms prescribed by the department; and

(b) be submitted within 15 days following the end of each calendar quarter.

(3) At the time the report is filed, the cannabidiol retailer shall submit a quarterly payment equal to 4% of the total dollar amount of sales.

(4) The department shall deposit the taxes paid under this section in the cannabidiol testing state special revenue account provided for in [section 16].

(5) The tax imposed by [sections 1 through 9] and related interest and penalties are a personal debt of the person required to file a return from the time that the liability arises, regardless of when the time for payment of the liability occurs.

(6) For the purpose of determining liability for the filing of statements and the payment of taxes, penalties, and interest owed under [sections 1 through 9]:

(a) the officer of a corporation whose responsibility it is to truthfully account for and pay to the state taxes provided for in [sections 1 through 9] and who fails to pay the taxes is liable to the state for the taxes and the penalty and interest due on the amounts;

(b) each officer of the corporation, to the extent that the officer has access to the requisite records, is individually liable along with the corporation for filing statements and for unpaid taxes, penalties, and interest upon a determination that the officer:

(i) possessed the responsibility to file statements and pay taxes on behalf of the corporation; and

(ii) possessed the responsibility on behalf of the corporation for directing the filing of statements or the payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to file statements required by [sections 1 through 9] or pay taxes due as required by [sections 1 through 9];

(c) each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;

(d) each member of a limited liability company that is treated as a partnership or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member;

(e) the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and

(f) each manager of a manager-managed limited liability company is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

(7) In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection (6)(a) to establish individual liability and may consider any other available information.

(8) In the case of a bankruptcy, the liability of the individual remains unaffected by the discharge of penalty and interest against the corporation. The individual remains liable for any statements and the amount of taxes, penalties, and interest unpaid by the entity.

NEW SECTION. Section 3. Returns -- payment -- recordkeeping -- authority of department. (1)

Each cannabidiol retailer shall file a return, on a form provided by the department, and pay the tax due as provided in [section 2].

(2) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

(3) (a) A person required to pay to the department the taxes imposed by [sections 1 through 9] shall keep for 5 years:

(i) all receipts issued; and

(ii) an accurate record of all sales of cannabidiol products, showing the name and address of each purchaser, the date of sale, and the quantity, kind, and retail price of each cannabidiol product sold.

(b) For the purpose of determining compliance with the provisions of [sections 1 through 9], the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

- (i) require the attendance of a person having knowledge or information relevant to a return;
- (ii) compel the production of books, papers, records, or memoranda by the person required to attend;
- (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;
- (iv) take testimony on matters material to the determination; and
- (v) administer oaths or affirmations.

(4) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.

NEW SECTION. Section 4. Deficiency assessment -- penalty and interest -- statute of limitations. (1) If the department determines that the amount of the tax due is greater than the amount disclosed by a return, it shall mail to the cannabidiol retailer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The cannabidiol retailer may seek review of the determination pursuant to 15-1-211.

(2) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216. The department may waive any penalty pursuant to 15-1-206.

(3) The amount of tax due under any return may be determined by the department within 5 years after the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For the purposes of this section, a return due under [sections 1 through 9] and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing.

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2 **NEW SECTION. Section 5. Procedure to compute tax in absence of statement -- estimation of**
3 **tax -- failure to file -- penalty and interest.** (1) If the cannabidiol retailer fails to file any return required by
4 [section 3] within the time required, the department may, at any time, audit the cannabidiol retailer or estimate
5 the taxes due from any information in its possession and, based on the audit or estimate, assess the
6 cannabidiol retailer for the taxes, penalties, and interest due the state.

7 (2) The department shall impose penalty and interest as provided in 15-1-216. The department shall
8 mail to the cannabidiol retailer a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be
9 assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed.
10 The cannabidiol retailer may seek review of the determination pursuant to 15-1-211. The department may
11 waive any penalty pursuant to 15-1-206.

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13 **NEW SECTION. Section 6. Authority to collect delinquent taxes.** (1) (a) The department shall
14 collect taxes that are delinquent as determined under [sections 1 through 9].

15 (b) If a tax imposed by [sections 1 through 9] or any portion of the tax is not paid when due, the
16 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

17 (2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has
18 expired, the department may direct the offset of tax refunds or other funds due the cannabidiol retailer from the
19 state, except wages subject to the provisions of 25-13-614 and retirement benefits.

20 (3) As provided in 15-1-705, the cannabidiol retailer has the right to a review of the tax liability prior to
21 any offset by the department.

22 (4) The department may file a claim for state funds on behalf of the cannabidiol retailer if a claim is
23 required before funds are available for offset.

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25 **NEW SECTION. Section 7. Refunds -- interest -- limitations.** (1) A claim for a refund or credit as a
26 result of overpayment of taxes collected under [sections 1 through 9] must be filed within 5 years after the date
27 that the return was due, without regard to any extension of time for filing.

28 (2) (a) Interest paid by the department on an overpayment must be paid or credited at the same rate

1 as the rate charged on delinquent taxes under 15-1-216.

2 (b) Except as provided in subsection (2)(c), interest must be paid from the date that the return was
3 due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the
4 processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary
5 information.

6 (c) The department is not required to pay interest if:

7 (i) the overpayment is refunded or credited within 6 months after the date that a claim was filed; or

8 (ii) the amount of overpayment and interest does not exceed \$1.
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10 **NEW SECTION. Section 8. Information -- confidentiality -- agreements with another state.** (1) (a)

11 Except as provided in subsections (2) through (5), in accordance with 15-30-2618 and 15-31-511, it is unlawful
12 for an employee of the department or any other public official or public employee to disclose or otherwise make
13 known information that is disclosed in a return or report required to be filed under [sections 1 through 9] or
14 information that concerns the affairs of the person making the return and that is acquired from the person's
15 records, officers, or employees in an examination or audit.

16 (b) This section may not be construed to prohibit the department from publishing statistics if they are
17 classified in a way that does not disclose the identity of a person making a return or the content of any
18 particular report or return. A person violating the provisions of this section is subject to the penalty provided in
19 15-30-2618 or 15-31-511 for violating the confidentiality of individual income tax or corporate income tax
20 information.

21 (2) (a) This section may not be construed to prohibit the department from providing information
22 obtained under [sections 1 through 9] to the department of justice or to law enforcement to be used for the
23 purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under [sections 1
24 through 9].

25 (b) The department may enter into an agreement with the taxing officials of another state for the
26 interpretation and administration of the laws of their state that provide for the collection of a sales tax or use tax
27 in order to promote fair and equitable administration of the laws and to eliminate double taxation.

28 (c) In order to implement the provisions of [sections 1 through 9], the department may furnish

information on a reciprocal basis to the taxing officials of another state if the information remains confidential under statutes within the state receiving the information that are similar to this section.

(3) In order to facilitate processing of returns and payment of taxes required by [sections 1 through 9], the department may contract with vendors and may disclose data to the vendors. The data disclosed must be administered by the vendor in a manner consistent with this section.

(4) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

(i) to which the department is a party under the provisions of [sections 1 through 9] or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of [sections 1 through 9] or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(5) This section may not be construed to limit the investigative authority of the legislative branch, as provided in 5-11-106, 5-12-303, or 5-13-309.

NEW SECTION. Section 9. Department to make rules. The department shall prescribe rules necessary to carry out the purposes of imposing and collecting the tax on gross sales of cannabidiol retailers.

NEW SECTION. Section 10. Definitions. For the purposes of [sections 10 through 16], the following definitions apply:

(1) "Cannabidiol" means a nonpsychoactive cannabinoid found in the plant *Cannabis sativa* L. or *Cannabis indica* that is essentially free from plant material and has a tetrahydrocannabinol level of no more than 0.3%.

(2) "Cannabidiol manufacturer" means a person who processes cannabidiol or cannabidiol products for human use.

(3) "Cannabidiol product" means a product that contains cannabidiol and is intended for human use.

(4) "Cannabidiol retailer" means a person who sells cannabidiol products.

(5) "Department" means the department of public health and human services provided for in 2-15-2201.

(6) "Distribute" means:

(a) to give, deliver, sample, or sell;

(b) to offer to give, deliver, sample, or sell; or

(c) to cause or hire another person to give, deliver, sample, or sell or offer to give, deliver, sample, or sell.

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

(8) "State laboratory" means the laboratory operated by the department of public health and human services to conduct environmental analyses.

(9) "Testing laboratory" means a qualified person, licensed by the department of public health and human services, who meets the requirements of [section 13] and:

(a) provides testing of representative samples of cannabidiol and cannabidiol products; and

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

NEW SECTION. Section 11. Sale or distribution of cannabidiol products to persons under 18 years of age prohibited -- penalty. (1) A person may not sell or distribute a cannabidiol product to an individual under 18 years of age, whether over the counter, by vending machine, or otherwise.

(2) If there is a reasonable doubt as to the individual's age, the seller shall require presentation of a driver's license or other generally accepted identification that includes a picture of the individual.

(3) A person who violates subsection (1) at any one location within a 3-year period must be punished as follows:

(a) for a first through third offense, by a verbal notification of violation;

(b) for a fourth offense, by a written notice of violation to be sent by the department to the owner of the establishment; and

(c) for a fifth or subsequent offense, by assessment of a penalty of \$500 against the owner of the establishment.

NEW SECTION. Section 12. Testing of cannabidiol and cannabidiol products. (1) A cannabidiol manufacturer or cannabidiol retailer shall, prior to selling cannabidiol or cannabidiol products in the state, submit samples to a testing laboratory pursuant to [sections 12 through 15] and related administrative rules.

(2) The cannabidiol product must be collected in accordance with a sampling protocol established by the state laboratory by rule. The protocol must address the division of cannabidiol products into batch sizes for testing.

(3) A testing laboratory may reject or fail a sample if the testing laboratory has reason to believe the sample was adulterated in any way, contaminated with known or unknown solvents, or manipulated in a manner that violates the sampling protocols, limit tests, or action levels.

(4) The state laboratory shall adopt rules regarding the types of tests that must be performed to ensure product safety and consumer protection. Pursuant to this subsection (4), testing must include but is not limited to a potency analysis, microbiological screening, mycotoxin screening, residual solvent screening, pesticide screening, and heavy metal screening, as follows:

(a) (i) The potency analysis must test and report the following cannabinoids:

(A) tetrahydrocannabinolic acid (THCA);

(B) tetrahydrocannabinol (THC);

(C) total tetrahydrocannabinol (total THC) calculated pursuant to subsection (4)(a)(ii);

(D) cannabidiolic acid (CBDA);

(E) cannabidiol (CBD); and

(F) total cannabidiol (total CBD) calculated pursuant to subsection (4)(a)(ii).

(ii) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA: $M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA})$. Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA: $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA})$.

(iii) Regardless of analytical equipment or methodology, testing laboratories must accurately measure

1 and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

2 (b) The microbiological screening must test by quantitative polymerase chain reaction for salmonella,
3 *Escherichia coli*, and total yeast and mold.

4 (c) The mycotoxin screening must test for total aflatoxin (B1, B2, G1, G2) and ochratoxin A.

5 (d) The residual solvent screening must test for the following residual solvents: acetone, acetonitrile,
6 benzene, butanes, carbon tetrachloride, chloroform, cyclohexane, dichloromethane, ethanol, ethyl acetate,
7 heptane, hexanes, isopropyl alcohol, methanol, pentane, propane, tetrahydrofuran, toluene, and xylenes.

8 (e) The pesticide screening must test for the following pesticides: abamectin, acephate, acequinocyl,
9 acetamiprid, aldicarb, allethrin, azoxystrobin, bifenthrin, boscalid, buprofezin, carbaryl, carbofuran,
10 chlorantraniliprole, chlorfenapyr, chlorpyrifos, clofentezine, clothianidin, coumaphos, cyantraniliprole, cyfluthrin,
11 cypermethrin, cyprodinil, daminozide, deltamethrin, diazinon, dichlorvos, dimethoate, dinotefuran, dodemorph,
12 endosulfan sulfate, ethoprophos, etofenprox, etoxazole, fenoxycarb, fenpyroximate, fensulfothion, fenthion,
13 fenvalerate, fipronil, flonicamid, fludioxonil, fluopyram, hexythiazox, imazalil, imidacloprid, kresoxim-methyl,
14 malathion, metalaxyl, methiocarb, methomyl, methoprene, methyl parathion, mevinphos, MGK-264,
15 myclobutanil, naled, novaluron, oxamyl, paclobutrazol, permethrin, phenothrin, phosmet, piperonyl butoxide,
16 pirimicarb, prallethrin, propiconazole, propoxur, pyraclostrobin, pyrethrin, pyridaben, resmethrin, spinetoram,
17 spinosad, spirotetramat, spiromesifen, spirotetramat, spiroxamine, tebuconazole, tebufenozide, teflubenzuron,
18 tetrachlorvinphos, tetramethrin, thiacloprid, thiamethoxam, thiophanate-methyl, and trifloxystrobin.

19 (f) The heavy metal screening must test for the following heavy metals: mercury, cadmium, lead, and
20 arsenic.

21 (5) The state laboratory shall establish by rule the acceptable levels of the contaminants listed in
22 subsection (4).

23 (6) The testing laboratory shall issue a certificate of analysis certifying the test results.

24 (7) If a cannabidiol product fails to pass the test, a request may be made to retest the cannabidiol
25 product. The state laboratory shall adopt rules that provide for retesting parameters and requirements.

26 (8) A cannabidiol product must include a label indicating whether the product has been tested. A
27 cannabidiol product that fails to pass the tests provided for in this section may not be sold in the state.

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NEW SECTION. Section 13. Testing laboratories -- licensing inspections. (1) (a) The state

laboratory shall license testing laboratories that meet the requirements of [sections 10 through 16]. The state laboratory shall inspect a testing laboratory before issuing or renewing a license. The state laboratory may not issue a temporary license while an inspection is pending.

(b) A testing laboratory licensed under 50-46-311 may be licensed to test cannabidiol or cannabidiol products without paying an additional license fee.

(c) Inspections conducted for licensure or renewal of licensure must include a review of an applicant's or testing laboratory's:

(i) physical premises where testing will be conducted;

(ii) instrumentation;

(iii) protocols for sampling, handling, testing, and reporting; and

(iv) raw data on tests conducted by the laboratory, if the inspection is for renewal of a license.

(2) A testing laboratory shall test cannabidiol or cannabidiol products pursuant to [section 12].

(3) Each licensed testing laboratory shall employ a scientific director who is responsible for ensuring the achievement and maintenance of quality standards of practice. The scientific director must have the following minimum qualifications:

(a) a doctorate in chemical or biological sciences from a college or university accredited by a national or regional certifying authority and a minimum of 2 years of postdegree laboratory experience; or

(b) a master's degree in chemical or biological sciences from a college or university accredited by a national or regional certifying authority and a minimum of 4 years of postdegree laboratory experience.

(4) To qualify for licensure, a testing laboratory shall demonstrate that:

(a) staff members are proficient in operation of the laboratory equipment; and

(b) the laboratory:

(i) maintains the equipment and instrumentation required by rule;

(ii) has all equipment and instrumentation necessary to certify results that meet the quality assurance testing requirements established by rule, including the ability to certify results at the required level of sensitivity;

(iii) meets insurance and bonding requirements established by rule;

(iv) has the capacity and ability to serve rural areas of the state; and

(v) has passed a relevant proficiency program that demonstrates it is able to meet all testing requirements. The state laboratory shall establish by rule the proficiency programs considered relevant for the purposes of this section.

(5) A testing laboratory may conduct tests on samples of cannabidiol or cannabidiol products submitted by:

- (a) cannabidiol manufacturers;
- (b) cannabidiol retailers; or
- (c) consumers.

NEW SECTION. Section 14. Procedures and standards for testing laboratories. (1) The state laboratory shall establish and enforce standard operating procedures and testing standards for testing laboratories to ensure consistent and uniform information about the potency and quality of cannabidiol and cannabidiol products. The state laboratory shall:

(a) consult with independent national or international organizations that establish testing standards for cannabidiol and cannabidiol products;

(b) require testing laboratories to follow uniform standards and protocols for the samples accepted for testing and the processes used for testing the samples;

(c) track and analyze the raw data for the results of testing conducted by testing laboratories to ensure that the testing laboratories are providing consistent and uniform results; and

(d) conduct random inspections of cannabidiol retailers to ensure compliance with [sections 12 through 15].

(2) If the analysis of raw testing data indicates that licensees are providing test results that vary among testing laboratories by an amount determined by the state laboratory by rule, the department shall investigate the inconsistent results and determine within 60 days the steps the testing laboratories must take to ensure that each testing laboratory provides accurate and consistent results.

(3) The state laboratory shall revoke a testing laboratory's license upon a determination that the laboratory is:

- (a) providing test results that are fraudulent; or

(b) providing test results without having:

(i) the equipment needed to test cannabidiol and cannabidiol products; or

(ii) the equipment required under [sections 10 through 16] to conduct the tests for which the laboratory is providing results.

(4) A revocation under this section is subject to judicial review.

NEW SECTION. Section 15. Rulemaking. The state laboratory shall adopt administrative rules related to:

(1) cannabidiol product testing standards; and

(2) licensing and inspection of testing laboratories.

NEW SECTION. Section 16. Cannabidiol testing state special revenue account. (1) There is a cannabidiol testing state special revenue account in the state special revenue fund established in 17-2-102.

(2) The account consists of:

(a) the tax collected pursuant to [sections 1 through 9];

(b) license fees collected under [sections 12 through 15]; and

(c) penalties collected pursuant to [section 11].

(3) Except as provided in subsection (4), money in the account must be used by the department for the purpose of administering cannabidiol product testing.

(4) At the end of each fiscal year, the department shall transfer funds in excess of a \$150,000 operating reserve to the general fund to be used:

(a) to fully fund the Montana promise grant program provided for in 20-26-623; and

(b) if there is additional revenue, to fund K-12 education.

NEW SECTION. Section 17. Codification instruction. (1) [Sections 1 through 9] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 9].

(2) [Sections 10 through 16] are intended to be codified as an integral part of Title 16, and the provisions of Title 16 apply to [sections 10 through 16].

NEW SECTION. **Section 18. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective January 1, 2022.

(2) [Sections 11, 16, 17, and this section] are effective July 1, 2021.

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