

## SENATE BILL NO. 401

INTRODUCED BY D. HOWARD

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A REFERENDUM TO REPEAL LAWS LEGALIZING, REGULATING, AND TAXING THE SALE AND USE OF RECREATIONAL MARIJUANA FOR ADULTS IN ORDER TO REDUCE TAXES, STOP THE FORMATION OF A NEW GOVERNMENT DIVISION, ELIMINATE STATE REGULATION, AND REDUCE DRUG ADDICTION; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 7-1-111, 23-1-105, 23-2-108, 41-5-206, 45-9-101, 45-9-102, 45-9-103, 45-9-110, 45-9-127, 45-10-103, 45-10-107, 46-18-231, 50-40-103, 53-6-1201, 80-1-104, 87-1-242, AND 87-5-121, MCA; AND REPEALING SECTIONS 16-12-101, 16-12-102, 16-12-103, 16-12-104, 16-12-105, 16-12-106, 16-12-107, 16-12-108, 16-12-109, 16-12-110, 16-12-111, 16-12-112, 16-12-113, 16-12-201, 16-12-202, 16-12-203, 16-12-204, 16-12-205, 16-12-206, 16-12-207, 16-12-208, 16-12-209, 16-12-210, 16-12-211, 16-12-301, 16-12-302, 16-12-303, 16-12-304, 16-12-401, 16-12-402, 16-12-403, 16-12-404, 16-12-405, 16-12-406, 16-12-407, AND 16-12-408, MCA."

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

**Section 1.** Section 7-1-111, MCA, is amended to read:

**"7-1-111. (Subsection (21) effective October 1, 2021) Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of public

1 convenience and necessity pursuant to Title 69, chapter 12;

2 (5) any power that establishes a rate or price otherwise determined by a state agency;

3 (6) any power that applies to or affects any determination of the department of environmental quality  
4 with regard to any mining plan, permit, or contract;

5 (7) any power that applies to or affects any determination by the department of environmental quality  
6 with regard to a certificate of compliance;

7 (8) any power that defines as an offense conduct made criminal by state statute, that defines an  
8 offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6  
9 months' imprisonment, or both, except as specifically authorized by statute;

10 (9) any power that applies to or affects the right to keep or bear arms;

11 (10) any power that applies to or affects a public employee's pension or retirement rights as  
12 established by state law, except that a local government may establish additional pension or retirement  
13 systems;

14 (11) any power that applies to or affects the standards of professional or occupational competence  
15 established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

16 (12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title  
17 75, chapter 7, part 1, or Title 87;

18 (13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is  
19 intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title  
20 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require  
21 landlords to comply with ordinances or provisions that are applicable to all other businesses or residences  
22 within the local government's jurisdiction.

23 (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

24 (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage,  
25 distribution, use, or application of commercial fertilizers or soil amendments, except that a local government  
26 may enter into a cooperative agreement with the department of agriculture concerning the use and application  
27 of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local  
28 government from adopting or implementing zoning regulations or fire codes governing the physical location or

1 siting of fertilizer manufacturing, storage, and sales facilities.

2 (16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production, processing,  
3 sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or vegetable  
4 seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local government from  
5 adopting or implementing zoning regulations or building codes governing the physical location or siting of  
6 agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or distribution  
7 facilities.

8 (17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle,  
9 including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired  
10 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal  
11 communications commission of the United States;

12 (18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio  
13 antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a  
14 person who holds an unrevoked and unexpired official amateur radio station license and operator's license,  
15 "technician" or higher class, issued by the federal communications commission of the United States;

16 (19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles,  
17 load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a  
18 highway that is under the jurisdiction of an entity other than the local government unit;

19 (20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in  
20 relation to a wildfire;

21 ~~(21) any power to prohibit completely adult use providers, adult use marijuana infused products~~  
22 ~~providers, and adult use dispensaries from being located within the jurisdiction of the local government except~~  
23 ~~as allowed in Title 16, chapter 12."~~

24  
25 **Section 2.** Section 23-1-105, MCA, is amended to read:

26 **"23-1-105. (Temporary) Fees and charges -- use of motor vehicle registration fee.** (1) The  
27 department may levy and collect reasonable fees or other charges for the use of privileges and conveniences  
28 that may be provided and to grant concessions that it considers advisable, except as provided in subsections

(2) and (6). All money derived from the activities of the department, except as provided in subsection (5), must be deposited in the state treasury in a state special revenue fund to the credit of the department.

(2) Overnight camping fees established by the department under subsection (1) must be discounted 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and is:

(a) 62 years of age or older;

(b) certified as disabled in accordance with rules adopted by the department; or

(c) a veteran of the armed forces. While camping at a discounted rate, the veteran shall carry proof of the person's veteran status, such as a DD form 214, U.S. department of veterans affairs identification card, or a driver's license indicating the person's veteran status.

(3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the registered owner.

(4) Money received from the collection of fees and charges is subject to the deposit requirements of 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule pursuant to 17-6-105(8).

(5) There is a fund of the enterprise fund type, as defined in 17-2-102(2)(a), for the purpose of managing state park visitor services revenue. The fund is to be used by the department to serve the recreating public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of educational, commemorative, and interpretive merchandise and other related goods and services at department sites and facilities. The fund consists of money from the sale of educational, commemorative, and interpretive merchandise and other related goods and services and from donations. Gross revenue from the sale of educational, commemorative, and interpretive merchandise and other related goods and services must be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund for use as provided in this subsection.

(6) In recognition of the fact that individuals support state parks through the payment of certain motor vehicle registration fees, persons who pay the fee provided for in 61-3-321(19)(a) may not be required to pay a

1 day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as  
2 overnight camping fees, are still chargeable and may be collected by the department.

3 (7) Any increase in the motor vehicle registration fee collected pursuant to 61-3-321(19)(a) on or after  
4 January 1, 2012, that is dedicated to state parks must be used by the department for maintenance and  
5 operation of state parks.

6 **23-1-105. (Effective October 1, 2021) Fees and charges -- use of motor vehicle registration fee.**

7 (1) (a) The department may levy and collect reasonable fees or other charges for the use of privileges and  
8 conveniences that may be provided and to grant concessions that it considers advisable, except as provided in  
9 subsections (2) and (6).

10 (b) ~~There must be deposited into a state special revenue fund in the state treasury to the credit of the~~  
11 ~~department:~~

12 ~~(i) all~~ All money derived from the activities of the department, except as provided in subsection (5)  
13 must be deposited in the state treasury in a state special revenue fund to the credit of the department; and

14 ~~(ii) money from marijuana taxes deposited under 16-12-111.~~

15 (2) Overnight camping fees established by the department under subsection (1) must be discounted  
16 50% for a campsite rented by a person who is a resident of Montana, as defined in 87-2-102, and is:

17 (a) 62 years of age or older;

18 (b) certified as disabled in accordance with rules adopted by the department; or

19 (c) a veteran of the armed forces. While camping at a discounted rate, the veteran shall carry proof of  
20 the person's veteran status, such as a DD form 214, U.S. department of veterans affairs identification card, or a  
21 driver's license indicating the person's veteran status.

22 (3) For a violation of any fee collection rule involving a vehicle, the registered owner of the vehicle at  
23 the time of the violation is personally responsible if an adult is not in the vehicle at the time the violation is  
24 discovered by an authorized officer. A defense that the vehicle was driven into the fee area by another person  
25 is not allowable unless it is shown that at that time, the vehicle was being used without the consent of the  
26 registered owner.

27 (4) Money received from the collection of fees and charges is subject to the deposit requirements of  
28 17-6-105(6) unless the department has submitted and received approval for a modified deposit schedule

1 pursuant to 17-6-105(8).

2 (5) There is a fund of the enterprise fund type, as defined in 17-2-102(2)(a), for the purpose of  
3 managing state park visitor services revenue. The fund is to be used by the department to serve the recreating  
4 public by providing for the obtaining of inventory through purchase, production, or donation and for the sale of  
5 educational, commemorative, and interpretive merchandise and other related goods and services at  
6 department sites and facilities. The fund consists of money from the sale of educational, commemorative, and  
7 interpretive merchandise and other related goods and services and from donations. Gross revenue from the  
8 sale of educational, commemorative, and interpretive merchandise and other related goods and services must  
9 be deposited in the fund. All interest and earnings on money deposited in the fund must be credited to the fund  
10 for use as provided in this subsection.

11 (6) In recognition of the fact that individuals support state parks through the payment of certain motor  
12 vehicle registration fees, persons who pay the fee provided for in 61-3-321(19)(a) may not be required to pay a  
13 day-use fee for access to state parks. Other fees for the use of state parks and fishing access sites, such as  
14 overnight camping fees, are still chargeable and may be collected by the department.

15 (7) Any increase in the motor vehicle registration fee collected pursuant to 61-3-321(19)(a) on or after  
16 January 1, 2012, that is dedicated to state parks must be used by the department for maintenance and  
17 operation of state parks."

18

19 **Section 3.** Section 23-2-108, MCA, is amended to read:

20 **"23-2-108. (Temporary) Trails and recreational facilities account.** (1) There is a trails and  
21 recreational facilities account in the state special revenue fund established in 17-2-102.

22 (2) There must be paid into the account money collected pursuant to 61-3-321(19)(a)(iii).

23 (3) Money in the account may only be used by the department to provide trails and recreational  
24 facilities grants pursuant to 23-2-109.

25 (4) Interest and income earned on the account and any unspent or unencumbered money in the  
26 account at the end of a fiscal year must remain in the account.

27 **23-2-108. (Effective October 1, 2021) Trails and recreational facilities account.** (1) There is a  
28 trails and recreational facilities account in the state special revenue fund established in 17-2-102.

(2) There must be paid into the account:

~~(a) money collected pursuant to 61-3-321(19)(a)(iii); and~~

~~(b) money from marijuana taxes deposited under 16-12-111.~~

(3) Money in the account may only be used by the department to provide trails and recreational facilities grants pursuant to 23-2-109.

(4) Interest and income earned on the account and any unspent or unencumbered money in the account at the end of a fiscal year must remain in the account."

**Section 4.** Section 41-5-206, MCA, is amended to read:

**"41-5-206. Filing in district court prior to formal proceedings in youth court.** (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103;

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

(v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) sexual assault as provided in 45-5-502(3);

(v) assault with a weapon as defined in 45-5-213;

(vi) robbery as defined in 45-5-401;

(vii) burglary or aggravated burglary as defined in 45-6-204;  
(viii) aggravated kidnapping as defined in 45-5-303;  
(ix) possession of explosives as defined in 45-8-335;  
(x) criminal distribution of dangerous drugs as defined in 45-9-101;  
(xi) criminal possession of dangerous drugs as defined in 45-9-102~~(2)~~ (3);  
(xii) criminal possession with intent to distribute as defined in 45-9-103(1);  
(xiii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;  
(xiv) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership as defined in 45-8-403;  
(xv) escape as defined in 45-7-306;  
(xvi) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

- (a) a youth court proceeding and disposition will serve the interests of community protection;
- (b) the nature of the offense does not warrant prosecution in district court; and
- (c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the

1 district court as provided in this section. A case may be transferred to district court after prosecution as  
2 provided in 41-5-208 or 41-5-1605.

3 (5) An offense not enumerated in subsection (1) that arises during the commission of a crime  
4 enumerated in subsection (1) may be:

5 (a) tried in youth court;

6 (b) transferred to district court with an offense enumerated in subsection (1) upon motion of the  
7 county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

8 (6) If a youth is found guilty in district court of an offense enumerated in subsection (1) and any  
9 offense that arose during the commission of a crime enumerated in subsection (1), the court shall sentence the  
10 youth pursuant to 41-5-2503 and Titles 45 and 46. If a youth is acquitted in district court of all offenses  
11 enumerated in subsection (1), the district court shall sentence the youth pursuant to Title 41 for any remaining  
12 offense for which the youth is found guilty. A youth who is sentenced to the department or a state prison must  
13 be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The  
14 department shall confine the youth in an institution that it considers proper, including a state youth correctional  
15 facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a  
16 state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an  
17 education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C.  
18 1400, et seq.

19 (7) If a youth's case is filed in the district court and remains in the district court after the transfer  
20 hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the  
21 youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted  
22 of criminal offenses."

23  
24 **Section 5.** Section 45-9-101, MCA, is amended to read:

25 **"45-9-101. Criminal distribution of dangerous drugs.** (1) Except as provided in ~~Title 16, chapter~~  
26 ~~42, or~~ Title 50, chapter 46, a person commits the offense of criminal distribution of dangerous drugs if the  
27 person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous  
28 drug, as defined in 50-32-101.

1           (2) A person convicted of criminal distribution of marijuana or its derivatives in an amount in which the  
2 aggregate weight does not exceed 60 grams of marijuana or 1 gram of hashish shall be imprisoned in the state  
3 prison for a term not to exceed 5 years and may be fined not more than \$5,000.

4           ~~(2)~~(3) A person convicted of criminal distribution of dangerous drugs involving giving away or sharing  
5 any dangerous drug, as defined in 50-32-101, shall be sentenced as provided in 45-9-102.

6           ~~(3)~~(4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in  
7 subsection (1), (2), (3), or ~~(4)~~(5) shall be imprisoned in the state prison for a term not to exceed 25 years or be  
8 fined an amount of not more than \$50,000, or both.

9           ~~(4)~~(5) A person who was an adult at the time of distribution and who is convicted of criminal  
10 distribution of dangerous drugs to a minor shall be sentenced as follows:

11           (a) For a first offense, the person shall be imprisoned in the state prison for a term not to exceed 40  
12 years and may be fined not more than \$50,000.

13           (b) For a second or subsequent offense, the person shall be imprisoned in the state prison for a term  
14 not to exceed life and may be fined not more than \$50,000.

15           ~~(5)~~(6) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course  
16 of a professional practice are exempt from this section."  
17

18           **Section 6.** Section 45-9-102, MCA, is amended to read:

19           **"45-9-102. Criminal possession of dangerous drugs.** (1) Except as provided in ~~Title 16, chapter~~  
20 ~~42, 50-32-609, or Title 50, chapter 46,~~ a person commits the offense of criminal possession of dangerous drugs  
21 if the person possesses any dangerous drug, as defined in 50-32-101, ~~[in an amount] greater than permitted or~~  
22 ~~for which a penalty is not specified under Title 16, chapter 12.~~

23           (2) A person convicted of criminal possession of marijuana or its derivatives in an amount in which the  
24 aggregate weight does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of  
25 a misdemeanor and shall be punished by a fine not to exceed \$500.

26           (a) A person convicted of a second offense under this subsection (2) shall be fined an amount not to  
27 exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

28           (b) A person convicted of a third or subsequent offense under this subsection (2) shall be fined an

1 amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

2 (c) This subsection does not apply to the possession of synthetic cannabinoids listed as dangerous  
3 drugs in 50-32-222.

4 (2)(3) A person convicted of criminal possession of dangerous drugs not otherwise provided for in  
5 subsection (1) or (2) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an  
6 amount not to exceed \$5,000, or both.

7 (3)(4) A person convicted of a first violation under this section is presumed to be entitled to a deferred  
8 imposition of sentence of imprisonment.

9 (4)(5) Ultimate users and practitioners, as defined in 50-32-101, and agents under their supervision  
10 acting in the course of a professional practice are exempt from this section."

11  
12 **Section 7.** Section 45-9-103, MCA, is amended to read:

13 **"45-9-103. Criminal possession with intent to distribute.** (1) Except as provided in ~~Title 16,~~  
14 ~~chapter 12, or Title 50, chapter 46,~~ a person commits the offense of criminal possession with intent to distribute  
15 if the person possesses with intent to distribute any dangerous drug as defined in 50-32-101 ~~[in an amount]~~  
16 ~~greater than permitted or for which a penalty is not specified under Title 16, chapter 12.~~

17 (2) A person convicted of criminal possession of marijuana or its derivatives in which the aggregate  
18 weight does not exceed 60 grams of marijuana or 1 gram of hashish shall be imprisoned in the state prison for  
19 a term of not more than 5 years or be fined an amount not to exceed \$5,000, or both.

20 (2)(3) A person convicted of criminal possession with intent to distribute shall be imprisoned in the  
21 state prison for a term of not more than 20 years or be fined an amount not to exceed \$50,000, or both.

22 (3)(4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course  
23 of a professional practice are exempt from this section."

24  
25 **Section 8.** Section 45-9-110, MCA, is amended to read:

26 **"45-9-110. Criminal production or manufacture of dangerous drugs.** (1) Except as provided in  
27 ~~Title 16, chapter 12, or Title 50, chapter 46,~~ a person commits the offense of criminal production or manufacture  
28 of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates,

1 compounds, or processes a dangerous drug, as defined in 50-32-101.

2 (2) A person convicted of criminal production or manufacture of dangerous drugs, as defined in 50-  
3 32-101, shall be imprisoned in the state prison for a term of not more than 25 years and may be fined an  
4 amount not to exceed \$50,000.

5 (3) A person convicted of criminal production or manufacture of marijuana or tetrahydrocannabinol ~~in~~  
6 ~~an amount greater than permitted or for which a penalty is not specified under Title 16, chapter 12, or Title 50,~~  
7 ~~chapter 46, or manufacture without the appropriate license and endorsement pursuant to Title 16, chapter 12,~~  
8 ~~or Title 50, chapter 46,~~ shall be imprisoned in the state prison for a term of not more than 5 years and may be  
9 fined an amount not to exceed \$5,000, except that if the total weight is more than a pound or the number of  
10 plants is more than 30, the person shall be imprisoned in the state prison for a term of not more than 25 years  
11 and may be fined an amount not to exceed \$50,000. "Weight" means the weight of the dry plant and includes  
12 the leaves and stem structure but does not include the root structure.

13 (4) Practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a  
14 professional practice are exempt from this section."

15  
16 **Section 9.** Section 45-9-127, MCA, is amended to read:

17 **"45-9-127. Carrying dangerous drugs on train -- penalty.** (1) Except as provided in ~~Title 16,~~  
18 ~~chapter 12, or Title 50, chapter 46,~~ a person commits the offense of carrying dangerous drugs on a train in this  
19 state if the person is knowingly or purposely in criminal possession of a dangerous drug and boards any train.

20 (2) A person convicted of carrying dangerous drugs on a train in this state is subject to the penalties  
21 provided in 45-9-102."

22  
23 **Section 10.** Section 45-10-103, MCA, is amended to read:

24 **"45-10-103. Criminal possession of drug paraphernalia.** Except as provided in ~~Title 16, chapter 12,~~  
25 ~~50-32-609, or Title 50, chapter 46,~~ it is unlawful for a person to use or to possess with intent to use drug  
26 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process,  
27 prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into  
28 the human body a dangerous drug. A person who violates this section is guilty of a misdemeanor and upon

conviction shall be imprisoned in the county jail for not more than 6 months, fined an amount of not more than \$500, or both. A person convicted of a first violation of this section is presumed to be entitled to a deferred imposition of sentence of imprisonment."

**Section 11.** Section 45-10-107, MCA, is amended to read:

**"45-10-107. Exemptions.** The provisions of this part do not apply to:

(1) practitioners, as defined in 50-32-101, and agents under their supervision acting in the course of a professional practice;

(2) persons acting in compliance with Title 50, chapter 46; or

~~(3) persons acting in compliance with Title 16, chapter 12; or~~

~~(4)~~(3) persons acting as employees or volunteers of an organization, including a nonprofit community-based organization, local health department, or tribal health department, that provides needle and syringe exchange services to prevent and reduce the transmission of communicable diseases."

**Section 12.** Section 46-18-231, MCA, is amended to read:

**"46-18-231. Fines in felony and misdemeanor cases.** (1) (a) Except as provided in subsection (1)(b), whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the sentencing judge may, in lieu of or in addition to a sentence of imprisonment, impose a fine only in accordance with subsection (3).

(b) For those crimes for which penalties are provided in the following sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202, aggravated assault;

(iii) 45-5-213, assault with a weapon;

(iv) 45-5-302(2), kidnapping;

(v) 45-5-303(2), aggravated kidnapping;

(vi) 45-5-401(2), robbery;

(vii) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more

1 years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;  
2 (viii) 45-5-503(2) through (5), sexual intercourse without consent;  
3 (ix) 45-5-507(5), incest when the victim is 12 years of age or younger and the offender is 18 years of  
4 age or older at the time of the offense;  
5 (x) 45-5-508, aggravated sexual intercourse without consent;  
6 (xi) 45-5-601(3) or (4), 45-5-602(3) or (4), or 45-5-603(2)(b) or (2)(c), prostitution, promotion of  
7 prostitution, or aggravated promotion of prostitution when the person patronized or engaging in prostitution was  
8 a child and the offender was 18 years of age or older at the time of the offense or when the person engaging in  
9 prostitution was a victim of human trafficking, as defined in 45-5-701, or was subjected to force, fraud, or  
10 coercion, either of which caused the person to be in the situation where the offense occurred, and the offender  
11 was 18 years of age or older at the time of the offense and the offender knew or reasonably should have known  
12 that the person was a victim of human trafficking or was subjected to force, fraud, or coercion;  
13 (xii) 45-5-625(4), sexual abuse of children;  
14 (xiii) 45-5-702, 45-5-703, 45-5-704, or 45-5-705, trafficking of persons, involuntary servitude, sexual  
15 servitude, or patronizing a victim of sexual servitude;  
16 (xiv) ~~45-9-101(3)~~ 45-9-101(4), criminal possession with intent to distribute a dangerous drug; and  
17 (xv) 45-9-109, criminal possession with intent to distribute dangerous drugs on or near school property.  
18 (2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, an offender has been  
19 found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the sentencing judge  
20 may impose a fine only in accordance with subsection (3).  
21 (3) The sentencing judge may not sentence an offender to pay a fine unless the offender is or will be  
22 able to pay the fine. In determining the amount and method of payment, the sentencing judge shall take into  
23 account the nature of the crime committed, the financial resources of the offender, and the nature of the burden  
24 that payment of the fine will impose.  
25 (4) Any fine levied under this section in a felony case ~~shall~~ must be in an amount fixed by the  
26 sentencing judge not to exceed \$50,000."  
27  
28

**Section 13.** Section 50-40-103, MCA, is amended to read:

1           **"50-40-103. Definitions.** As used in this part, the following definitions apply:

2           (1) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted  
3 to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving  
4 of food is only incidental to the service of alcoholic beverages or gambling operations. The term includes but is  
5 not limited to taverns, night clubs, cocktail lounges, and casinos.

6           (2) "Department" means the department of public health and human services provided for in 2-15-  
7 2201.

8           (3) "Enclosed public place" means an indoor area, room, or vehicle that the general public is allowed  
9 to enter or that serves as a place of work, including but not limited to the following:

10           (a) restaurants;

11           (b) stores;

12           (c) public and private office buildings and offices, including all office buildings and offices of political  
13 subdivisions, as provided for in 50-40-201, and state government;

14           (d) trains, buses, and other forms of public transportation;

15           (e) health care facilities;

16           (f) auditoriums, arenas, and assembly facilities;

17           (g) meeting rooms open to the public;

18           (h) bars;

19           (i) community college facilities;

20           (j) facilities of the Montana university system; and

21           (k) public schools, as provided for in 20-1-220 and 50-40-104.

22           (4) "Establishment" means an enterprise under one roof that serves the public and for which a single  
23 person, agency, corporation, or legal entity is responsible.

24           (5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60%  
25 of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or  
26 both.

27           (6) "Person" means an individual, partnership, corporation, association, political subdivision, or other  
28 entity.

(7) "Place of work" means an enclosed room where one or more individuals work.

(8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product and includes the use of marijuana for a debilitating medical condition as provided for in Title 50, chapter 46."

**Section 14.** Section 53-6-1201, MCA, is amended to read:

**"53-6-1201. (Subsection (2)(c) effective October 1, 2021) Special revenue fund -- health and medicaid initiatives.** (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119(2)(c);

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(4)(b);

~~(c) money from marijuana taxes deposited under 16-12-111; and~~

~~(d)(c)~~ any interest and income earned on the account.

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to administer the plan and maximize enrollment of eligible children under the healthy Montana kids plan, provided for under Title 53, chapter 4, part 11, and to provide outreach to the eligible children;

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits; and

(e) grants to schools for suicide prevention activities, for the biennium beginning July 1, 2017.

(4) (a) On or before July 1, the budget director shall calculate a balance required to sustain each

1 program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve  
 2 balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the  
 3 budget director determines that the reserve balance of the revenue will not support the level of appropriation,  
 4 the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the  
 5 operating budget for the program to reflect the available revenue as determined by the budget director.

6 (b) Until the programs or credits described in subsections (3)(b) and (3)(d) are established, the  
 7 funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

8 (5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the  
 9 appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility  
 10 standards, services authorized, and payment amount during the past five biennial budgets.

11 (6) The department of public health and human services may adopt rules to implement this section."  
 12

13 **Section 15.** Section 80-1-104, MCA, is amended to read:

14 **"80-1-104. (Bracketed language effective October 1, 2021) Analytical laboratory services --**  
 15 **rulemaking authority -- deposit of fees.** (1) The department is authorized to provide analytical laboratory  
 16 services for:

17 (a) programs it operates under this title;

18 (b) other state or federal agencies;

19 (c) providers and marijuana-infused products providers as those terms are defined in 50-46-302;

20 ~~[(d) adult-use marijuana providers and adult-use marijuana-infused products providers as those terms~~  
 21 ~~are defined in 16-12-102;]~~

22 ~~(e)(d)~~ the department of public health and human services for the purposes of ~~[Title 16, chapter 12,~~  
 23 ~~and] Title 50, chapter 46, part 3, as allowed by federal law; and~~

24 ~~(f)(e)~~ private parties.

25 (2) The department may enter into a contract or a memorandum of understanding for the space and  
 26 equipment necessary for operation of the analytical laboratory.

27 (3) (a) The department may adopt rules establishing fees for testing services required under this title  
 28 or provided to another state agency, a federal agency, or a private party.

(b) Money collected from the fees must be deposited in the appropriate related account in the state special revenue fund to the credit of the department to pay costs related to analytical laboratory services provided pursuant to this section."

**Section 16.** Section 87-1-242, MCA, is amended to read:

**"87-1-242. (Bracketed language in subsection (3) effective October 1, 2021) Funding for wildlife habitat.** (1) The amount of money specified in this subsection from the sale of each hunting license or permit listed must be used exclusively by the commission to secure, develop, and maintain wildlife habitat, subject to appropriation by the legislature:

(a) Class B-10, nonresident combination, \$77;

(b) Nonresident antelope, \$20;

(c) Nonresident moose, \$20;

(d) Nonresident mountain goat, \$20;

(e) Nonresident mountain sheep, \$20;

(f) Class D-1, nonresident mountain lion, \$20;

(g) Nonresident black bear, \$20;

(h) Nonresident wild turkey, \$10;

(i) Class AAA, combination sports, \$7;

(j) Class B-11 nonresident deer combination, \$200.

(2) Twenty percent of any increase in the fee for the Class B-7 license or any license or permit listed in subsection (1) must be allocated for use as provided in subsection (1).

(3) Eighty percent of the money allocated by this section, ~~[together with money from marijuana taxes deposited under 16-12-111 and]~~ together with the interest and income from the money, must be used to secure wildlife habitat pursuant to 87-1-209.

(4) Twenty percent of the money allocated by this section must be used as follows:

(a) up to 50% a year may be used for development and maintenance of real property used for wildlife habitat; and

(b) the remainder and any money not allocated for development and maintenance under subsection

(4)(a) by the end of each odd-numbered fiscal year must be credited to the account created by 87-1-601(5) for use in the manner prescribed for the development and maintenance of real property used for wildlife habitat."

**Section 17.** Section 87-5-121, MCA, is amended to read:

**"87-5-121. (Temporary) Nongame wildlife account.** (1) There is a nongame wildlife account in the state special revenue fund provided for in 17-2-102.

(2) All money collected under 15-30-2387 and all interest earned by the fund before being expended under this section must be deposited in the account.

(3) Money in the account must be used by the department, upon the approval of the commission as determined under 87-5-122, to provide adequate funding for:

(a) research and education programs on nongame wildlife in Montana, as provided for in 87-5-104; and

(b) any management programs for nongame wildlife approved by the legislature under 87-5-105 as species or subspecies in need of management.

(4) The money is available to the department in the same manner as provided in 87-1-601, except that money collected under 15-30-2387 may not be used:

(a) for the purchase of any real property; or

(b) in such a way as to interfere with the production on or management of private property.

**87-5-121. (Effective October 1, 2021) Nongame wildlife account.** (1) There is a nongame wildlife account in the state special revenue fund provided for in 17-2-102.

(2) ~~There must be deposited into the account:~~

~~(a) all~~ All money collected under 15-30-2387 and all interest earned by the fund before being expended under this section; and

~~(b) money from marijuana taxes deposited under 16-12-111~~ must be deposited into the account.

(3) Money in the account must be used by the department, upon the approval of the commission as determined under 87-5-122, to provide adequate funding for:

(a) research and education programs on nongame wildlife in Montana, as provided for in 87-5-104; and

(b) any management programs for nongame wildlife approved by the legislature under 87-5-105 as species or subspecies in need of management.

(4) The money is available to the department in the same manner as provided in 87-1-601, except that money collected under 15-30-2387 may not be used:

(a) for the purchase of any real property; or

(b) in such a way as to interfere with the production on or management of private property."

**NEW SECTION. Section 18. Repealer.** The following sections of the Montana Code Annotated are repealed:

16-12-101. (Effective October 1, 2021) Short title -- purpose.

16-12-102. (Effective October 1, 2021) Definitions.

16-12-103. (Effective October 1, 2021) Department authority.

16-12-104. (Effective October 1, 2021) Department responsibilities -- licensure.

16-12-105. (Effective October 1, 2021) Department responsibility to monitor and assess marijuana production, testing, sales, and license revocation.

16-12-106. Personal use and cultivation of marijuana -- penalties.

16-12-107. (Effective October 1, 2021) Legal protections -- allowable amounts.

16-12-108. Limitations of act.

16-12-109. (Effective October 1, 2021) Unlawful conduct by licensees -- penalties.

16-12-110. (Effective October 1, 2021) Legislative monitoring.

16-12-111. (Effective October 1, 2021) Marijuana compensation special revenue account.

16-12-112. (Effective October 1, 2021) Rulemaking authority -- fees.

16-12-113. Decriminalized acts -- petition for expungement or resentencing -- retroactive application.

16-12-201. (Effective October 1, 2021) Licensing of providers, marijuana-infused products providers, and dispensaries for adult use.

16-12-202. (Effective October 1, 2021) Testing laboratories -- licensing -- inspection -- dual licensure -- state laboratory responsibility.

16-12-203. (Effective October 1, 2021) Provider types -- requirements -- limitations -- activities.

- 1 16-12-204. (Effective October 1, 2021) Adult-use marijuana-infused products provider.
- 2 16-12-205. (Effective October 1, 2021) Contracted services.
- 3 16-12-206. (Effective October 1, 2021) Testing laboratories -- licensing inspections.
- 4 16-12-207. (Effective October 1, 2021) Licensing as privilege -- criteria.
- 5 16-12-208. (Effective October 1, 2021) Restrictions.
- 6 16-12-209. (Effective October 1, 2021) Testing of marijuana and marijuana-infused products.
- 7 16-12-210. (Effective October 1, 2021) Inspections -- procedures -- prohibition on inspector affiliation with
- 8 licensees.
- 9 16-12-211. (Effective October 1, 2021) Advertising prohibited.
- 10 16-12-301. (Effective October 1, 2021) Local government authority to regulate.
- 11 16-12-302. (Effective October 1, 2021) Fraudulent representation -- penalties.
- 12 16-12-303. (Effective October 1, 2021) Law enforcement authority.
- 13 16-12-304. Forfeiture.
- 14 16-12-401. (Effective October 1, 2021) Tax on marijuana sales.
- 15 16-12-402. (Effective October 1, 2021) Returns -- payment -- recordkeeping -- authority of department.
- 16 16-12-403. (Effective October 1, 2021) Deficient assessment -- penalty and interest -- statute of limitations.
- 17 16-12-404. (Effective October 1, 2021) Procedure to compute tax in absence of statement -- estimation of
- 18 tax -- failure to file -- penalty and interest.
- 19 16-12-405. (Effective October 1, 2021) Authority to collect delinquent taxes.
- 20 16-12-406. (Effective October 1, 2021) Refunds -- interest -- limitations.
- 21 16-12-407. (Effective October 1, 2021) Information -- confidentiality -- agreements with another state.
- 22 16-12-408. (Effective October 1, 2021) Department to make rules.

23

24 **NEW SECTION. Section 19. Submission to electorate.** [This act] shall be submitted to the

25 qualified electors of Montana at the general election to be held in November 2022 by printing on the ballot the

26 full title of [this act] and the following:

27 ☐ YES on Legislative Referendum \_\_\_\_.

28 ☐ NO on Legislative Referendum \_\_\_\_.

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- END -