

HOUSE BILL NO. 420

INTRODUCED BY M. HOPKINS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO MEDICAL MARIJUANA; ELIMINATING THE STATE TAX ON MEDICAL MARIJUANA; ELIMINATING THE LOCAL- OPTION TAX ON MEDICAL MARIJUANA; AMENDING SECTIONS 15-64-101, 15-64-102, 16-12-201, 16-12-310, 16-12-311, 16-12-312, AND 16-12-501, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 15-64-101, MCA, is amended to read:

"15-64-101. Definitions. As used in this part, the following definitions apply:

(1) "Adult-use dispensary" has the meaning provided in 16-12-102.

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

(3) "Dispensary" means an adult-use dispensary or a medical marijuana dispensary.

(4) "Licensee" means a licensee operating an adult-use dispensary or a medical marijuana dispensary.

(5) "Marijuana" has the meaning provided in 16-12-102.

(6) "Marijuana product" has the meaning provided in 16-12-102.

~~(7) "Medical marijuana dispensary" has the meaning provided in 16-12-102.~~

~~(8)~~(7) "Person" means an individual, firm, partnership, corporation, association, company, committee, other group of persons, or other business entity, however formed.

~~(9)~~(8) "Purchaser" means a person to whom a sale of marijuana or a marijuana product is made.

~~(10)~~(9) "Retail price" means the established price for which an adult-use dispensary or medical marijuana dispensary sells marijuana or a marijuana product to a purchaser before any discount or reduction.

~~(11)~~(10) "Sale" or "sell" means any transfer of marijuana or marijuana products for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means."

Section 2. Section 15-64-102, MCA, is amended to read:

"15-64-102. Tax on marijuana sales. ~~(1) For a medical marijuana dispensary, there is a 4% tax on the retail price of marijuana, marijuana products, and live marijuana plants for use by individuals with debilitating medical conditions.~~

~~(2)(1)~~ For an adult use-dispensary, there is a 20% tax on the retail price of marijuana, marijuana products, and live marijuana plants.

~~(3)(2)~~ The ~~taxes tax~~ set forth in ~~subsections (1) and (2) are~~ subsection (1) is imposed on the purchaser and must be collected at the time of the sale and paid by the seller to the department for deposit in the marijuana state special revenue account provided for in 16-12-111.

~~(4)(3)~~ A dispensary licensed under Title 16, chapter 12, shall submit a quarterly report to the department listing the total dollar amount of sales. The report must be:

- (a) made on forms prescribed by the department; and
- (b) submitted within 15 days of the end of each calendar quarter.

~~(5)(4)~~ At the time the report is filed, the dispensary shall submit a payment equal to the percentage provided in subsection (1) ~~or (2)~~ of the total dollar amount of sales.

~~(6)(5)~~ The department shall deposit the taxes paid under this section in the state special revenue account provided for in 16-12-111 within the state special revenue fund established in 17-2-102.

~~(7)(6)~~ The tax imposed by this part 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.

~~(8)(7)~~ For the purpose of determining liability for the filing of statements and the payment of taxes, penalties, and interest owed under 15-64-103 through 15-64-106:

- (a) the officer of a corporation whose responsibility it is to truthfully account for and pay to the state taxes provided for in 15-64-103 through 15-64-106 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 this part or pay taxes due as required by this part;

(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.

~~(9)(8)~~ In determining which corporate officer is liable, the department is not limited to considering the elements set forth in subsection ~~(8)(a)~~ (7)(a) to establish individual liability and may consider any other available information.

~~(10)(9)~~ 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.

~~(11)(10)~~ The tax levied pursuant to this section is separate from and in addition to any general state and local sales and use taxes that apply to retail sales, which must continue to be collected and distributed as provided by law.

~~(12)(11)~~ The tax levied under this section must be used as designated in 16-12-111."

Section 3. Section 16-12-201, MCA, is amended to read:

"16-12-201. Licensing of cultivators, manufacturers, and dispensaries. (1) (a) Between January 1, 2022, and June 30, 2023, the department may only accept applications from and issue licenses to former

1 medical marijuana licensees that were licensed by or had an application pending with the department of public
2 health and human services on November 3, 2020, and are in good standing with the department and in
3 compliance with this chapter, rules adopted by the department, and any applicable local regulations or
4 ordinances as of January 1, 2022.

5 (b) The department shall begin accepting applications for and issuing licenses to cultivate,
6 manufacture, or sell marijuana or marijuana products to applicants who are not former medical marijuana
7 licensees under subsection (1)(a) on or after July 1, 2023.

8 (2) (a) The department shall adopt rules to govern the operation of former medical marijuana
9 licensees and facilitate the process of transitioning former medical marijuana licensees to the appropriate
10 license under this chapter with a minimum of disruption to business operations.

11 (b) Beginning January 1, 2022, a former medical marijuana licensee may sell marijuana and
12 marijuana products to registered cardholders ~~at the medical tax rate set forth in 15-64-102~~ and to consumers at
13 the adult-use marijuana tax rate set forth in 15-64-102 under the licensee's existing license in a jurisdiction that
14 allows for the operation of marijuana businesses pursuant to 16-12-301 until the former medical marijuana
15 licensee's next license renewal date, by which time the former medical licensee must have applied for and
16 obtained the appropriate licensure under this chapter to continue operations, unless an extension of time is
17 granted by the department.

18 (c) (i) Except as provided in subsection (2)(c)(ii), for the purpose of this subsection (2),
19 "appropriate licensure" means a cultivator license, medical marijuana dispensary license, adult-use dispensary
20 license, and, if applicable, a manufacturer license.

21 (ii) A former medical marijuana licensee who sells marijuana and marijuana products exclusively to
22 registered cardholders is not required to obtain an adult-use dispensary license.

23 (3) The department may amend or issue licenses to provide for staggered expiration dates. The
24 department may provide for initial license terms of greater than 12 months but no more than 23 months in
25 adopting staggered expiration dates. Thereafter, licenses expire annually. License fees for the license term
26 implementing staggered license terms may be prorated by the department."

27
28 **Section 4.** Section 16-12-310, MCA, is amended to read:

"16-12-310. Limit on local-option marijuana excise tax rate -- goods subject to tax. (1) The rate of the local-option marijuana excise tax must be established by the election petition or resolution provided for in 16-12-311, and the rate may not exceed 3%.

(2) The local-option marijuana excise tax is a tax on the retail value of all marijuana and marijuana products sold at an adult-use dispensary ~~or medical marijuana dispensary~~ within a county.

(3) If a county imposes a local-option marijuana excise tax:

(a) 50% of the resulting tax revenue must be retained by the county;

(b) 45% of the resulting tax revenue must be apportioned to the municipalities on the basis of the ratio of the population of the city or town to the total county population; and

(c) the remaining 5% of the resulting tax revenue must be retained by the department to defray costs associated with administering 16-12-309 through 16-12-312 and 16-12-317. The funds retained by the department under this subsection (3)(c) must be deposited into the marijuana state special revenue account established under 16-12-111.

(4) For the purposes of this section, "tax revenue" means the combined taxes collected under any local-option marijuana excise tax collected on retail sales within the county."

Section 5. Section 16-12-311, MCA, is amended to read:

"16-12-311. Local government excise tax-- election required -- procedure -- notice. (1) A county that has permitted an adult-use dispensary ~~or medical marijuana dispensary~~ to operate within its borders pursuant to 16-12-301 or a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election, may not impose or, except as provided in this section, amend or repeal a local-option marijuana excise tax unless the local-option marijuana excise tax question has been approved by a majority of the qualified electors voting on the question.

(2) The local-option marijuana excise tax question may be presented to the qualified electors of a county by a petition of the electors as provided in 7-5-131, 7-5-132, 7-5-134, 7-5-135, and 7-5-137 or by a resolution of the governing body of the county.

(3) The petition or resolution referring the taxing question must state:

(a) the rate of the tax, which may not exceed 3% of the retail value of all marijuana and marijuana

1 products sold at an adult-use dispensary ~~or medical marijuana dispensary~~;

2 (b) the date when the tax becomes effective, which may not be earlier than 90 days after the
3 election; and

4 (c) the purposes that may be funded by the tax revenue.

5 (4) On receipt of an adequate petition, the county's governing body shall hold an election in
6 accordance with Title 13, chapter 1, part 5.

7 (5) (a) Before the local-option marijuana excise tax question is submitted to the electorate, the
8 county shall provide notice of the goods subject to the local-option marijuana excise tax by a method described
9 in 13-1-108.

10 (b) The notice must be given two times, with at least 6 days separating the notices. The first notice
11 must be given not more than 45 days prior to the election, and the last notice must be given not less than 30
12 days prior to the election.

13 (6) Notice of the election must be given as provided in 13-1-108 and include the information listed
14 in subsection (3) of this section.

15 (7) The question of the imposition of a local-option marijuana excise tax may not be placed before
16 the qualified electors more than once in any fiscal year."

17
18 **Section 6.** Section 16-12-312, MCA, is amended to read:

19 **"16-12-312. Tax administration.** (1) Not less than 90 days prior to the date that the local-option
20 marijuana excise tax becomes effective, the county shall notify the department of the results of the election and
21 coordinate with the department to facilitate the administration and collection of the local-option marijuana excise
22 taxes.

23 (2) The department shall establish by rule:

24 (a) the times that taxes collected by businesses are to be remitted to the department;

25 (b) the office or employee of the department responsible for receiving and accounting for the local-
26 option marijuana excise tax receipts;

27 (c) the office or employee of the department responsible for enforcing the collection of local-option
28 marijuana excise taxes and the methods and procedures to be used in enforcing the collection of local-option

1 marijuana excise taxes due; and

2 (d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the
3 administrative ordinance. The penalties may include:

4 (i) criminal penalties not to exceed a fine of \$1,000 or 6 months' imprisonment, or both;

5 (ii) civil penalties if the department prevails in a suit for the collection of local-option marijuana
6 excise taxes, not to exceed 50% of the local-option marijuana excise taxes found due plus the costs and
7 attorney fees incurred by the department in the action;

8 (iii) revocation of an adult-use dispensary license ~~or medical marijuana dispensary license~~ held by
9 the offender; and

10 (iv) any other penalties that may be applicable for violation of an ordinance.

11 (3) The department's rules may also include:

12 (a) further clarification and specificity in the categories of goods that are subject to the local-option
13 marijuana excise tax;

14 (b) authorization for business administration and prepayment discounts. The discount
15 authorization may allow each vendor and commercial establishment to withhold up to 5% of the local-option
16 marijuana excise taxes collected to defray their costs for the administration of the tax collection.

17 (c) other administrative details necessary for the efficient and effective administration of the tax.

18 (4) A county and the department may exchange information collected under the provisions of this
19 chapter that is necessary to implement and administer a local-option marijuana excise tax or the tax collected
20 under Title 15, chapter 64, part 1."

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22 **Section 7.** Section 16-12-501, MCA, is amended to read:

23 **"16-12-501. Purpose.** The purpose of this part is to:

24 (1) provide a regulatory system for providing marijuana for the use of individuals with debilitating
25 medical conditions, including posttraumatic stress disorder, in order to alleviate the symptoms of the debilitating
26 medical condition;

27 (2) allow for the limited cultivation, manufacture, delivery, and possession of marijuana as
28 permitted by this chapter;

1 (3) allow persons to assist registered cardholders with the cultivation of marijuana and
2 manufacture of marijuana products permitted by this chapter.

3 (4) provide for a registry of individuals with debilitating medical conditions entitled to purchase
4 marijuana and marijuana products ~~at the tax rate specified in 15-64-102;~~ and

5 (5) provide the process for obtaining a registry identification card."

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7 NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2023.

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