

HOUSE BILL NO. 331

INTRODUCED BY K. SEEKINS-CROWE, T. SHARP, A. REGIER, F. NAVE, B. USHER, N. DURAM, T.

MCGILLVRAY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO MARIJUANA ADVERTISING; PROVIDING DEFINITIONS; AMENDING SECTIONS 16-12-102, 16-12-112, AND 16-12-211, MCA; AND REPEALING SECTION 16-12-211, MCA."

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

Section 1. Section 16-12-102, MCA, is amended to read:**"16-12-102. Definitions.** As used in this chapter, the following definitions apply:

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

(a) obtain marijuana or marijuana products from a licensed cultivator, manufacturer, dispensary, or other licensee approved under this chapter; and

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

(2) (a) "Advertise" or "advertising" means the publication, dissemination, solicitation, or circulation of visual, oral, or written communication to directly induce a person to purchase or consume marijuana or marijuana products.

(b) The term does not include branding on packaging and labeling of marijuana and marijuana products for sale to registered cardholders or consumers.

~~(2)(3)~~ "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, another person.

~~(3)(4)~~ "Beneficial owner of", "beneficial ownership of", or "beneficially owns an" is determined in accordance with section 13(d) of the federal Securities and Exchange Act of 1934, as amended.

(5) "Billboard" means a sign that directs attention to a business, commodity, service,

1 entertainment, or attraction that is sold, offered, or existing elsewhere than on the same premises where the
2 sign is displayed.

3 ~~(4)(6)~~ "Canopy" means the total amount of square footage dedicated to live plant production at a
4 licensed premises consisting of the area of the floor, platform, or means of support or suspension of the plant.

5 ~~(7)~~ "Commercial mascot" means a live human being, animal, or mechanical device used for
6 attracting the attention of motorists and passersby so as to make them aware of marijuana products or the
7 presence of a marijuana business. Commercial mascots include but are not limited to inflatable tube displays, a
8 person in costume, and a person wearing, holding, or spinning a sign with a marijuana-related commercial
9 message or image when the intent is to draw attention to a marijuana business or its products.

10 ~~(5)(8)~~ "Consumer" means a person 21 years of age or older who obtains or possesses marijuana or
11 marijuana products for personal use from a licensed dispensary but not for resale.

12 ~~(6)(9)~~ "Control", "controls", "controlled", "controlling", "controlled by", and "under common control
13 with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management or
14 policies of a person, whether through the ownership of voting owner's interests, by contract, or otherwise.

15 ~~(7)(10)~~ "Controlling beneficial owner" means a person that satisfies one or more of the following:

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

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

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

22 or

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

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

26 ~~(8)(11)~~ "Correctional facility or program" means a facility or program that is described in 53-1-202(2) or
27 (3) and to which an individual may be ordered by any court of competent jurisdiction.

28 ~~(9)(12)~~ "Cultivator" means a person licensed by the department to:

- 1 (a) plant, cultivate, grow, harvest, and dry marijuana; and
- 2 (b) package and relabel marijuana produced at the location in a natural or naturally dried form that
- 3 has not been converted, concentrated, or compounded for sale through a licensed dispensary.

4 ~~(40)(13)~~"Debilitating medical condition" means:

- 5 (a) cancer, glaucoma, positive status for human immunodeficiency virus, or acquired immune
- 6 deficiency syndrome when the condition or disease results in symptoms that seriously and adversely affect the
- 7 patient's health status;
- 8 (b) cachexia or wasting syndrome;
- 9 (c) severe chronic pain that is a persistent pain of severe intensity that significantly interferes with
- 10 daily activities as documented by the patient's treating physician;
- 11 (d) intractable nausea or vomiting;
- 12 (e) epilepsy or an intractable seizure disorder;
- 13 (f) multiple sclerosis;
- 14 (g) Crohn's disease;
- 15 (h) painful peripheral neuropathy;
- 16 (i) a central nervous system disorder resulting in chronic, painful spasticity or muscle spasms;
- 17 (j) admittance into hospice care in accordance with rules adopted by the department; or
- 18 (k) posttraumatic stress disorder.

19 ~~(41)(14)~~"Department" means the department of revenue provided for in 2-15-1301.

20 ~~(42)(15)~~(a) "Employee" means an individual employed to do something for the benefit of an employer.

21 (b) The term includes a manager, agent, or director of a partnership, association, company,

22 corporation, limited liability company, or organization.

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

24 ~~(43)(16)~~(a) "Financial interest" means a legal or beneficial interest that entitles the holder, directly or

25 indirectly through a business, an investment, or a spouse, parent, or child relationship, to 5% or more of the net

26 profits or net worth of the entity in which the interest is held.

27 (b) The term does not include interest held by a bank or licensed lending institution or a security

28 interest, lien, or encumbrance but does include holders of private loans or convertible securities.

1 ~~(14)~~(17)"Former medical marijuana licensee" means a person that was licensed by or had an
2 application for licensure pending with the department of public health and human services to provide marijuana
3 to individuals with debilitating medical conditions on April 27, 2021.

4 ~~(15)~~(18)(a) "Indoor cultivation facility" means an enclosed area used to grow live plants that is within a
5 permanent structure using artificial light exclusively or to supplement natural sunlight.

6 (b) The term may include:

7 (i) a greenhouse; or

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

9 ~~(16)~~(19)"Licensed premises" means all locations related to, or associated with, a specific license that is
10 authorized under this chapter and includes all enclosed public and private areas at the location that are used in
11 the business operated pursuant to a license, including offices, kitchens, restrooms, and storerooms.

12 ~~(17)~~(20)"Licensee" means a person holding a state license issued pursuant to this chapter.

13 ~~(18)~~(21)"Local government" means a county, a consolidated government, or an incorporated city or
14 town.

15 ~~(19)~~(22)"Manufacturer" means a person licensed by the department to convert or compound marijuana
16 into marijuana products, marijuana concentrates, or marijuana extracts and package, repackage, label, or
17 relabel marijuana products as allowed under this chapter.

18 ~~(20)~~(23)(a) "Marijuana" means all plant material from the genus Cannabis containing
19 tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

20 (b) The term does not include hemp as provided in 80-18-101.

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

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

24 ~~(21)~~(24)"Marijuana business" means a cultivator, manufacturer, adult-use dispensary, medical
25 marijuana dispensary, combined-use marijuana licensee, testing laboratory, marijuana transporter, or any other
26 business or function that is licensed by the department under this chapter.

27 ~~(22)~~(25)"Marijuana concentrate" means any type of marijuana product consisting wholly or in part of the
28 resin extracted from any part of the marijuana plant.

1 ~~(23)~~(26)"Marijuana derivative" means any mixture or preparation of the dried leaves, flowers, resin, or
2 byproducts of the marijuana plant, including but not limited to marijuana concentrates and other marijuana
3 products.

4 ~~(24)~~(27)"Marijuana product" means a product that contains marijuana and is intended for use by a
5 consumer. The term includes but is not limited to edible products, ointments, tinctures, marijuana derivatives,
6 and marijuana concentrates, including concentrates intended for use by smoking or vaping.

7 ~~(25)~~(28)"Marijuana transporter" means a person that is licensed to transport marijuana and marijuana
8 products from one marijuana business to another marijuana business, or to and from a testing laboratory, and
9 to temporarily store the transported retail marijuana and retail marijuana products at its licensed premises, but
10 is not authorized to sell marijuana or marijuana products to consumers under any circumstances.

11 ~~(26)~~(29)"Mature marijuana plant" means a harvestable marijuana plant.

12 ~~(27)~~(30)"Medical marijuana" means marijuana or marijuana products that are for sale solely to a
13 cardholder who is registered under Title 16, chapter 12, part 5.

14 ~~(28)~~(31)"Medical marijuana dispensary" means the location from which a registered cardholder may
15 obtain marijuana or marijuana products.

16 ~~(29)~~(32)"Outdoor cultivation" means live plants growing in an area exposed to natural sunlight and
17 environmental conditions including variable temperature, precipitation, and wind.

18 ~~(30)~~(33)"Owner's interest" means the shares of stock in a corporation, a membership in a nonprofit
19 corporation, a membership interest in a limited liability company, the interest of a member in a cooperative or in
20 a limited cooperative association, a partnership interest in a limited partnership, a partnership interest in a
21 partnership, and the interest of a member in a limited partnership association.

22 ~~(31)~~(34)"Paraphernalia" has the meaning provided for "drug paraphernalia" in 45-10-101.

23 ~~(32)~~(35)"Passive beneficial owner" means any person acquiring an owner's interest in a marijuana
24 business that is not otherwise a controlling beneficial owner or in control.

25 ~~(33)~~(36)"Person" means an individual, partnership, association, company, corporation, limited liability
26 company, or organization.

27 ~~(34)~~(37)"Qualified institutional investor" means:

28 (a) a bank or banking institution including any bank, trust company, member bank of the federal

1 reserve system, bank and trust company, stock savings bank, or mutual savings bank that is organized and
2 doing business under the laws of this state, any other state, or the laws of the United States;

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

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

9 (d) an investment company registered under section 8 of the federal Investment Company Act of
10 1940, as amended;

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

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

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

16 ~~(35)~~(38)"Registered cardholder" or "cardholder" means a Montana resident with a debilitating medical
17 condition who has received and maintains a valid registry identification card.

18 ~~(36)~~(39)"Registry identification card" means a document issued by the department pursuant to 16-12-
19 503 that identifies an individual as a registered cardholder.

20 ~~(37)~~(40)(a) "Resident" means an individual who meets the requirements of 1-1-215.

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

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

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

24 ~~(38)~~(41)"Seedling" means a marijuana plant that has no flowers and is less than 12 inches in height
25 and 12 inches in diameter.

26 ~~(39)~~(42)"Synthetic cannabinoids" has the meaning provided in 50-32-222 and includes any
27 cannabinoids produced artificially, whether from chemical synthesis or biosynthesis using recombinant
28 biological agents, including but not limited to yeast and algae.

1 ~~(40)(43)~~"Synthetic marijuana product" means marijuana or marijuana products that contain synthetic
2 cannabinoids.

3 ~~(41)(44)~~"Testing laboratory" means a qualified person, licensed under this chapter that:

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

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

7 ~~(42)(45)~~(a) "Usable marijuana" means the dried leaves and flowers of the marijuana plant that are
8 appropriate for the use of marijuana by an individual.

9 (b) The term does not include the seeds, stalks, and roots of the plant."
10

11 NEW SECTION. **Section 2. Limitations on advertising.** (1) A licensee may not promote their
12 business or market their brand or products.

13 (2) A licensee may use the terms "marijuana" and "cannabis" in its signage and on its website.

14 (3) A licensee's outdoor signage may not use colloquial terms for marijuana or marijuana products
15 and may not use an image or visual representation of usable marijuana, marijuana-infused products, marijuana
16 concentrates, marijuana paraphernalia, or an image that indicates the presence of a product, including but not
17 limited to smoke or edibles.

18 (4) A licensee's outdoor signage must comply with any applicable local jurisdiction sign ordinances
19 and regulations.

20 (5) A marijuana business that maintains a website shall utilize appropriate measures to verify that
21 individuals visiting the website are 21 years of age or older, including the requirement to establish an account to
22 sign in and verify the visitor's age and Montana residency.

23 (6) Marijuana businesses may not create social media accounts, including but not limited to
24 platforms such as facebook, tiktok, or instagram.

25 (7) A marijuana business may not:

26 (a) engage in advertising or brand marketing directed toward location-based devices, including but
27 not limited to cellular phones;

28 (b) utilize targeted marketing, including unsolicited pop-up or push-to advertising on the internet;

- 1 (c) advertise or promote its business, brand, or products on television, radio, social media,
2 internet, or in print, such as newspapers, magazines, flyers, or mailers;
- 3 (d) engage in advertising or utilize signage that asserts its products are safe;
- 4 (e) utilize a billboard;
- 5 (f) make a statement or use images that imply health benefits, including but not limited to crosses
6 or medical symbology;
- 7 (g) use objects, names, images, or depictions, such as toys or inflatables, movie or cartoon
8 characters, animals, robots, fruits, references to foods, or other images or depictions likely to be appealing to
9 youth, when the objects, names, images, or depictions indicate an intent to cause youth to become interested in
10 the purchase or consumption of marijuana products;
- 11 (h) use or employ a commercial mascot outside of or in proximity to a licensed marijuana business;
- 12 (i) establish rewards or referral programs or other programs that could incentivize more use; or
- 13 (j) provide sponsorship for business or events.
- 14 (8) The prohibition in subsection (7)(c) does not prohibit the use of informational pamphlets for
15 dissemination at a marijuana trade conference or the use or distribution of business cards.
- 16 (9) The prohibition in subsection (7)(d) does not prohibit a marijuana business from asserting that
17 its products have been tested by a licensed marijuana laboratory.

18
19 **Section 3.** Section 16-12-112, MCA, is amended to read:

20 **"16-12-112. Rulemaking authority -- fees.** (1) The department may adopt rules to implement and
21 administer this chapter, including:

- 22 (a) the manner in which the department will consider applications for licenses, permits, and
23 endorsements and renewal of licenses, permits, and endorsements;
- 24 (b) the acceptable forms of proof of Montana residency;
- 25 (c) the procedures for obtaining fingerprints for the fingerprint-based and name-based background
26 checks required under 16-12-129;
- 27 (d) the security and operating requirements for licensees;
- 28 (e) the security and operating requirements for manufacturing, including but not limited to

1 requirements for:

2 (i) safety equipment;

3 (ii) extraction methods, including solvent-based and solvent-free extraction; and

4 (iii) post-processing procedures;

5 (f) notice and contested case hearing procedures for fines or license and endorsement

6 revocations, suspensions, or modifications;

7 (g) implementation of a system to allow the tracking of marijuana and marijuana products as

8 required by 16-12-105;

9 (h) labeling and packaging standards that protect public health by requiring the listing of

10 pharmacologically active ingredients, including but not limited to THC, cannabidiol (CBD) and other cannabinoid

11 content, the THC and other cannabinoid amount in milligrams per serving, the number of servings per package,

12 and quantity limits per sale to comply with the allowable possession amount;

13 (i) investigating and making rules to limit, if necessary, the appropriate THC potency percentages

14 for marijuana and marijuana products;

15 (j) requirements that packaging and labels may not be made to be attractive to children, that they

16 have required warning labels as set forth in 16-12-215, and that marijuana and marijuana products be sold in

17 resealable, child-resistant exit packaging to protect public health as provided in 16-12-208;

18 (k) requirements and standards for the testing and retesting of marijuana and marijuana products,

19 including testing of samples collected during the department's inspections of licensed premises;

20 (l) the amount of variance allowable in the results of raw testing data that would warrant a

21 departmental investigation of inconsistent results as provided in 16-12-202;

22 (m) requirements and standards to prohibit or limit marijuana, marijuana products, and marijuana

23 accessories that are unsafe or contaminated;

24 (n) the activities that constitute advertising in violation of ~~16-12-214~~ section 1 and requirements

25 and standards for electronic advertising as permitted under ~~16-12-214~~ section 1;

26 (o) requirements and incentives to promote renewable energy, reduce water usage, and reduce

27 packaging waste to maintain a clean and healthy environment in Montana;

28 (p) procedures for collecting and destroying samples of marijuana and marijuana products that fail

1 to meet testing requirements pursuant to 16-12-209; and

2 (q) the fees for testing laboratories, the fingerprint-based and name-based background checks
3 required under 16-12-129, employee certification, the marijuana transporter license, marijuana worker permits,
4 and other fees necessary to administer and enforce the provisions of this chapter. The fees established by the
5 department, taxes collected pursuant to Title 15, chapter 64, part 1, civil penalties imposed pursuant to this
6 chapter, and the licensing fees established by rule and in part 2 of this chapter must be sufficient to offset the
7 expenses of administering this chapter but may not exceed the amount necessary to cover the costs to the
8 department of implementing and enforcing this chapter.

9 (2) The department may not adopt any rule or regulation that is unduly burdensome or undermines
10 the purposes of this chapter.

11 (3) The department may consult or contract with other public agencies in carrying out its duties
12 under this chapter."
13

14 NEW SECTION. Section 4. Repealer. The following section of the Montana Code Annotated is
15 repealed:

16 16-12-211. Limitations on advertising -- rulemaking.
17

18 NEW SECTION. Section 5. Codification instruction. [Section 2] is intended to be codified as an
19 integral part of Title 16, chapter 12, part 2, and the provisions of Title 16, chapter 12, part 2, apply to [section 2].
20

- END -