

1 HOUSE BILL NO. 698

2 INTRODUCED BY B. MERCER

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO LOCAL
5 GOVERNMENT AND MARIJUANA DISPENSARIES; REQUIRING CERTAIN LANGUAGE ON A BALLOT
6 FORM REGARDING PROHIBITION OF ADULT-USE BUSINESSES; AND AMENDING SECTION 16-12-301,
7 MCA."

8
9 WHEREAS, House Bill No. 701 (2021) created a mechanism to allow local governments to opt out of
10 recreational marijuana commercial activities otherwise allowed by law and this bill is designed to clarify how
11 that authority should work.

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 **Section 1.** Section 16-12-301, MCA, is amended to read:

16 **"16-12-301. Local government authority to regulate -- opt-in requirement in certain counties --**
17 **exemption for existing licensees.** (1) (a) Except as provided in subsection (1)(b), a marijuana business may
18 not operate in a county in which the majority of voters voted against approval of Initiative Measure No. 190 in
19 the November 3, 2020, general election until:

20 (i) the category or categories of license that the marijuana business seeks has or have been
21 approved by the local jurisdiction where the marijuana business intends to operate as provided in subsection
22 (3) or (4); and

23 (ii) the business is licensed by the department pursuant to this chapter.

24 (b) A former medical marijuana licensee that does not apply for licensure as an adult-use
25 dispensary may operate in its existing premises in compliance with rules adopted by the department pursuant
26 to 16-12-201(2) notwithstanding a local jurisdiction's failure to take action pursuant to subsections (3) through
27 (6).

28 (c) A former medical marijuana licensee that intends to apply for licensure as a cultivator,

1 manufacturer, adult-use dispensary, or testing laboratory may operate in compliance with rules adopted by the
2 department pursuant to 16-12-201(2) notwithstanding a local jurisdiction's failure to take action pursuant to
3 subsections (3) through (6), provided that the former marijuana licensee has remained in good standing with
4 the department.

5 (d) For the purpose of this section, the marijuana business categories that must be approved by a
6 local jurisdiction under subsections (3) through (6) in a county in which the majority of voters voted against
7 approval of Initiative Measure No. 190 in the November 3, 2020, general election before a business may
8 operate are:

9 (i) cultivator;

10 (ii) manufacturer;

11 (iii) medical marijuana dispensary, except as provided in subsection (1)(b);

12 (iv) adult-use dispensary;

13 (v) combined-use marijuana licensee;

14 (vi) testing laboratory; and

15 (vii) marijuana transporter facility.

16 (e) Marijuana businesses located in counties in which the majority of voters voted to approve
17 Initiative Measure No. 190 in the November 3, 2020, general election are not subject to the local government
18 approval process under subsections (3) through (6).

19 (2) (a) To protect the public health, safety, or welfare, a local government may by ordinance or
20 otherwise regulate a marijuana business that operates within the local government's jurisdictional area. The
21 regulations may include but are not limited to inspections of licensed premises, including but not limited to
22 indoor cultivation facilities, dispensaries, manufacturing facilities, and testing laboratories in order to ensure
23 compliance with any public health, safety, and welfare requirements established by the department or the local
24 government.

25 (b) A former medical marijuana licensee that does not apply for licensure as an adult-use
26 dispensary is exempt from complying with any local governmental regulations that are adopted under this
27 subsection after July 1, 2021, until its first license renewal date occurring after January 1, 2022, or the
28 expiration of any grace period granted by the locality, whichever is later.

1 (3) An election regarding whether to approve any or all of the marijuana business categories listed
2 in subsection (1)(d) to be located within a local jurisdiction may be requested by filing a petition in accordance
3 with 7-5-131 through 7-5-135 and 7-5-137 by:

4 (a) the qualified electors of a county; or

5 (b) the qualified electors of a municipality.

6 (4) (a) An election held pursuant to this section must be called, conducted, counted, and
7 canvassed in accordance with Title 13, chapter 1, part 4.

8 (b) An election pursuant to this section may be held in conjunction with a regular election of the
9 governing body, general election, or a regular local or special election.

10 (5) If the qualified electors of a county vote to approve a type of marijuana business to be located
11 in the jurisdiction, the governing body shall enter the approval into the records of the local government and
12 notify the department of the election results.

13 (6) (a) If an election is held pursuant to this section in a county that contains within its limits a
14 municipality of more than 5,000 persons according to the most recent federal decennial census:

15 (i) it is not necessary for the registered qualified electors in the municipality to file a separate
16 petition asking for a separate or different vote on the question of whether to prohibit a category of marijuana
17 business from being located in the municipality; and

18 (ii) the county shall conduct the election in a manner that separates the votes in the municipality
19 from those in the remaining parts of the county.

20 (b) If a majority of the qualified electors in the county, including the qualified electors in the
21 municipality, vote to approve a category of marijuana business to be located in the county, the county may
22 allow that category of marijuana business to operate in the county.

23 (c) (i) If a majority of the qualified electors in the municipality vote to approve a category of
24 marijuana business to be located in the municipality, the municipality may allow that type of marijuana business
25 to operate in the municipality.

26 (ii) If a majority of the qualified electors in the municipality vote to prohibit a category of marijuana
27 business from being located in the municipality, the municipality may not allow that type of marijuana business
28 to operate in the municipality.

1 (d) Nothing contained in this subsection (6) prevents any municipality from having a separate
2 election under the terms of this section.

3 (7) (a) A- Upon approval by a majority of the governing body of a county, consolidated city-county,
4 or an incorporated municipality, a county or municipality that has voted to approve a category of marijuana
5 business to be located in the jurisdiction or a county in which the majority of voters voted to approve Initiative
6 Measure No. 190 in the November 3, 2020, general election may vote to prohibit the previously approved or
7 allowed operations within the jurisdiction.

8 (b) The form of the ballot question regarding whether to prohibit a marijuana business as
9 described in subsection (1)(d)(iv) for an election pursuant to this subsection (7) must read in a form similar to
10 the following:

11 ☐ FOR banning recreational marijuana dispensaries in (name of county or municipality).

12 ☐ AGAINST banning recreational marijuana dispensaries in (name of county or municipality).

13 (c) A vote overturning the approval of a category of marijuana business or prohibiting the
14 previously permitted operation of marijuana businesses is effective on the 90th day after the local election is
15 held.

16 (8) A local government may not prohibit the transportation of marijuana within or through its
17 jurisdiction on public roads by any person licensed to do so by the department or as otherwise allowed by this
18 chapter."

19 - END -