



AN ACT ALLOWING FOR LIMITED ELECTRONIC ADVERTISING OF MARIJUANA AND MEDICAL MARIJUANA; PROVIDING RESTRICTIONS ON THE CONTENT OF ADVERTISING; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 16-12-112, 16-12-211, 50-46-341, AND 50-46-344, MCA.

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

Section 1. Section 16-12-112, MCA, is amended to read:

"16-12-112. (Effective October 1, 2021) Rulemaking authority -- fees. (1) The department may adopt rules to implement and administer this chapter, including:

- (a) the manner in which the department will consider applications for licenses and endorsements and renewal of licenses and endorsements;
- (b) the acceptable forms of proof of Montana residency;
- (c) the procedures for obtaining fingerprints for the fingerprint-based and name-based background checks required under 16-12-203;
- (d) the security and operating requirements for adult-use dispensaries;
- (e) the security and operating requirements for manufacturing, including but not limited to requirements for:
 - (i) safety equipment;
 - (ii) extraction methods, including solvent-based and solvent-free extraction; and
 - (iii) post-processing procedures;
- (f) notice and contested case hearing procedures for fines or license and endorsement revocations, suspensions, or modifications;
- (g) implementation of a system to allow the tracking of marijuana and marijuana-infused products as

required by 16-12-105;

(h) labeling standards that protect public health by requiring the listing of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD) and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, the number of servings per package, and quantity limits per sale to comply with the allowable possession amount;

(i) requirements that packaging and labels may not be made to be attractive to children, that they have required warning labels, and that marijuana and marijuana-infused products be sold in resealable, child-resistant packaging to protect public health as provided in 16-12-208;

(j) requirements and standards for the testing and retesting of marijuana and marijuana-infused products, including testing of samples collected during the department's inspections of registered premises;

(k) the amount of variance allowable in the results of raw testing data that would warrant a departmental investigation of inconsistent results as provided in 16-12-202;

(l) requirements and standards to prohibit or limit marijuana, marijuana-infused products, and marijuana accessories that are unsafe or contaminated;

(m) the activities that constitute advertising in violation of 16-12-211 and requirements and standards for electronic advertising as permitted under 16-12-211;

(n) requirements and incentives to promote renewable energy, reduce water usage, and reduce packaging waste to maintain a clean and healthy environment in Montana; and

(o) the fees for endorsements for manufacturing, testing laboratories, additional canopy licensure tiers created in accordance with 16-12-105, and the fingerprint-based and name-based background checks required under 16-12-203. The fees and other revenue collected through the taxes paid under 16-12-401, civil penalties imposed pursuant to this chapter, and the licensing fees established by rule and in 16-12-201 must be sufficient to offset the expenses of administering this chapter but may not exceed the amount necessary to cover the costs to the department of implementing and enforcing this chapter.

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

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

Section 2. Section 16-12-211, MCA, is amended to read:

"16-12-211. (Effective October 1, 2021) ~~Advertising prohibited~~ Limitations on advertising -- rulemaking. (1) ~~Persons~~ Except as provided in subsection (3), persons with licenses may not advertise marijuana or marijuana-related products ~~in any medium, including electronic media.~~

(2) A listing in a directory of businesses authorized under this chapter is not advertising for the purposes of this section.

~~(3) A licensee may have a website but may not:~~

~~(a) include prices on the website; or~~

~~(b) actively solicit consumers or out-of-state consumers through the website~~

(3) (a) A licensee may engage in electronic advertising such as maintaining a website and advertising on web applications, provided that no electronic advertisement produced by the licensee contains a statement or illustration that:

(i) is false or misleading;

(ii) promotes overconsumption of marijuana or marijuana-related products;

(iii) depicts the actual consumption of marijuana or marijuana-related products;

(iv) depicts a person under 21 years of age consuming marijuana;

(v) makes any health, therapeutic, or medicinal claims about marijuana or marijuana-related products;

or

(vi) is designed in a way that is likely to appeal to minors and includes cartoons, animals, children, or any other likeness to images, characters, or phrases that are designed in any manner to be appealing or to encourage consumption of marijuana by persons under 21 years of age.

(b) A licensee may not advertise marijuana or marijuana-related products using pop-up advertisements that display in a new internet browser window.

(c) A licensee may not direct advertising of marijuana or marijuana-related products toward mobile devices in the form of push notifications unless users affirmatively opt in to receiving push notifications related to marijuana or marijuana-related products.

(4) The department shall adopt rules to clearly identify the activities that constitute advertising that are

prohibited under this section."

Section 3. Section 50-46-341, MCA, is amended to read:

"50-46-341. ~~Advertising prohibited~~Limitations on advertising -- rulemaking. (1) ~~Persons Except as provided in subsection (3), persons~~ with licenses and individuals with valid registry identification cards may not advertise marijuana or marijuana-related products ~~in any medium, including electronic media.~~

(2) A listing in a directory of businesses authorized under this part is not advertising for the purposes of this section.

~~(3) A licensee may have a website but may not:~~

~~(a) include prices on the website; or~~

~~(b) actively solicit customers or out-of-state consumers through the website~~

(3) (a) A licensee may engage in electronic advertising such as maintaining a website and advertising on web applications, provided that no electronic advertisement produced by the licensee contains a statement or illustration that:

(i) is false or misleading;

(ii) promotes overconsumption of marijuana or marijuana-related products;

(iii) depicts the actual consumption of marijuana or marijuana-related products;

(iv) depicts a person under 21 years of age consuming marijuana;

(v) makes any health, therapeutic, or medicinal claims about marijuana or marijuana-related products;

or

(vi) is designed in a way that is likely to appeal to minors and includes cartoons, animals, children, or any other likeness to images, characters, or phrases that are designed in any manner to be appealing or to encourage consumption of marijuana by persons under 21 years of age.

(b) A licensee may not advertise marijuana or marijuana-related products using pop-up advertisements that display in a new internet browser window.

(c) A licensee may not direct advertising of marijuana or marijuana-related products toward mobile devices in the form of push notifications unless users affirmatively opt in to receiving push notifications related to marijuana or marijuana-related products.

(4) The department shall adopt rules to clearly identify the activities that constitute advertising and are prohibited under this section."

Section 4. Section 50-46-344, MCA, is amended to read:

"50-46-344. Rulemaking authority -- fees. (1) The department may adopt rules only as authorized in this section to specify:

(a) the manner in which the department will consider applications for licenses and endorsements and applications for registry identification cards for individuals with debilitating medical conditions and renewal of licenses, endorsements, and registry identification cards;

(b) the acceptable forms of proof of Montana residency;

(c) the procedures for obtaining fingerprints for the fingerprint and background check required under 50-46-307 and 50-46-308;

(d) the security and operating requirements for dispensaries;

(e) the security and operating requirements for chemical manufacturing, including but not limited to requirements for:

(i) safety equipment;

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

(iii) postprocessing procedures;

(f) notice and contested case hearing procedures for fines or license and endorsement revocations, suspensions, or modifications;

(g) the amount of usable marijuana that a registered cardholder who has elected not to use the system of licensed providers and marijuana-infused products providers may possess;

(h) implementation of a system to allow the tracking of marijuana and marijuana-infused products as required by 50-46-304;

(i) requirements and standards for the testing and retesting of marijuana and marijuana-infused products, including testing of samples collected during the department's inspections of registered premises;

(j) the amount of variance allowable in the results of raw testing data that would warrant a departmental investigation of inconsistent results as provided in 50-46-304(7);

(k) the activities that constitute advertising in violation of 50-46-341 and requirements and standards for electronic advertising as permitted under 50-46-341; and

(l) the fees for cardholders, endorsements for chemical manufacturing, testing laboratories, additional canopy licensure tiers created in accordance with 50-46-305, and the fingerprint and background checks required under 50-46-308 and 50-46-311. The fees and other revenues collected through the taxes paid under 15-64-102, civil penalties imposed pursuant to this part, and the licensing fees established by rule and in 50-46-347 must be sufficient to offset the expenses of administering this part. The annual cardholder license fee may not be less than \$20.

(2) In establishing the canopy for a provider or marijuana-infused products provider, the department shall take into consideration:

- (a) safety and security issues;
- (b) the need to avoid overproduction of marijuana and marijuana-infused products;
- (c) the provision of adequate access to usable marijuana to accommodate the needs of registered cardholders; and
- (d) economies of scale and their effect on the ability of licensees to comply with regulatory requirements and undercut illegal market prices.

(3) The administrative rules promulgated under this part for testing laboratories must be developed and proposed by the state laboratory."

- END -

I hereby certify that the within bill,
HB 249, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2021.

President of the Senate

Signed this _____ day
of _____, 2021.

HOUSE BILL NO. 249

INTRODUCED BY M. REGIER, D. FERN, W. GALT, S. GIST, S. GUNDERSON, D. HARVEY, J. KEANE, B. LER, D. LOGE, M. NOLAND, V. RICCI, K. SEEKINS-CROWE, K. SULLIVAN, D. ANKNEY, M. BLASDEL, B. BROWN, J. ELLSWORTH, S. FITZPATRICK, T. GAUTHIER, D. KARY, W. SALES, J. SMALL

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