

# Montana Code Annotated 2021

## TITLE 16. ALCOHOL, TOBACCO, AND MARIJUANA

### CHAPTER 12. MARIJUANA REGULATION AND TAXATION

#### Part 3. Local Government and Law Enforcement Authority

## Local Government Authority To Regulate -- Opt-In Requirement In Certain Counties -- Exemption For Existing Licensees

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

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

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

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

(c) A former medical marijuana licensee that intends to apply for licensure as a cultivator, manufacturer, adult-use dispensary, or testing laboratory may operate in compliance with rules adopted by the department pursuant to **16-12-201(2)** notwithstanding a local jurisdiction's failure to take action pursuant to subsections (3) through (6), provided that the former marijuana licensee has remained in good standing with the department of public health and human services and the department.

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

(i) cultivator;

(ii) manufacturer;

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

(iv) adult-use dispensary;

(v) combined-use marijuana licensee;

(vi) testing laboratory; and

(vii) marijuana transporter facility.

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

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

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

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

- (a) the qualified electors of a county; or
- (b) the qualified electors of a municipality.

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

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

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

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

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

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

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

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

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

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

(7) (a) A county or municipality that has voted to approve a category of marijuana business to be located in the jurisdiction or a county in which the majority of voters voted to approve Initiative Measure No. 190 in the November 3, 2020, general election may vote to prohibit the previously approved or allowed operations within the jurisdiction.

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

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

**History:** En. Sec. 18, I.M. No. 190, approved Nov. 3, 2020; amd. Sec. 59, Ch. 576, L. 2021.

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## Fraudulent Representation -- Penalties

**16-12-302. (Effective January 1, 2022) Fraudulent representation -- penalties.** (1) In addition to any other penalties provided by law, an individual who fraudulently represents to a law enforcement official that the individual is a cultivator, manufacturer, adult-use dispensary, medical marijuana dispensary, testing laboratory, or marijuana transporter or has a marijuana worker permit is guilty of a civil fine not to exceed \$1,000.

(2) An individual convicted under this section may not be licensed under this chapter.

**History:** En. Sec. 21, I.M. No. 190, approved Nov. 3, 2020; amd. Sec. 60, Ch. 576, L. 2021.

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CHAPTER 12. MARIJUANA REGULATION AND TAXATION  
Part 5. Medical Marijuana

## Fraudulent Representation -- Penalties

**16-12-524. (Effective January 1, 2022) Fraudulent representation -- penalties.** (1) In addition to any other penalties provided by law, an individual who fraudulently represents to a law enforcement official that the individual is a registered cardholder is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine not to exceed \$1,000, or both.

(2) A physician who purposely and knowingly misrepresents any information required under **16-12-509** is guilty of a misdemeanor punishable by imprisonment in a county jail for a term not to exceed 1 year or a fine not to exceed \$1,000, or both.

**History:** En. Sec. 19, Ch. 576, L. 2021.

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## Local Government Taxing Authority -- Specific Delegation

**16-12-309. (Effective January 1, 2022) Local government taxing authority -- specific delegation.** As required by 7-1-112, 16-12-309 through 16-12-312, and 16-12-317 specifically delegate to the qualified electors of a county the power to authorize their county to impose a local-option marijuana excise tax within the corporate boundary of the county.

**History:** En. Sec. 94, Ch. 576, L. 2021.

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## TITLE 16. ALCOHOL, TOBACCO, AND MARIJUANA

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#### Part 3. Local Government and Law Enforcement Authority

## Limit On Local-Option Marijuana Excise Tax Rate -- Goods Subject To Tax

**16-12-310. (Effective January 1, 2022) 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.

**History:** En. Sec. 95, Ch. 576, L. 2021.

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## Local Government Excise Tax-- Election Required -- Procedure -- Notice

**16-12-311. (Effective January 1, 2022) 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 products sold at an adult-use dispensary or medical marijuana dispensary;

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

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

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

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

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

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

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

**History:** En. Sec. 96, Ch. 576, L. 2021.

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## Tax Administration

**16-12-312. (Effective January 1, 2022) Tax administration.** (1) Not less than 90 days prior to the date that the local-option marijuana excise tax becomes effective, the county shall notify the department of the results of the election and coordinate with the department to facilitate the administration and collection of the local-option marijuana excise taxes.

- (2) The department shall establish by rule:
  - (a) the times that taxes collected by businesses are to be remitted to the department;
  - (b) the office or employee of the department responsible for receiving and accounting for the local-option marijuana excise tax receipts;
  - (c) the office or employee of the department responsible for enforcing the collection of local-option marijuana excise taxes and the methods and procedures to be used in enforcing the collection of local-option marijuana excise taxes due; and
  - (d) the penalties for failure to report taxes due, failure to remit taxes due, and violations of the administrative ordinance. The penalties may include:
    - (i) criminal penalties not to exceed a fine of \$1,000 or 6 months' imprisonment, or both;
    - (ii) civil penalties if the department prevails in a suit for the collection of local-option marijuana excise taxes, not to exceed 50% of the local-option marijuana excise taxes found due plus the costs and attorney fees incurred by the department in the action;
    - (iii) revocation of an adult-use dispensary license or medical marijuana dispensary license held by the offender; and
    - (iv) any other penalties that may be applicable for violation of an ordinance.
- (3) The department's rules may also include:
  - (a) further clarification and specificity in the categories of goods that are subject to the local-option marijuana excise tax;
  - (b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to withhold up to 5% of the local-option marijuana excise taxes collected to defray their costs for the administration of the tax collection.
  - (c) other administrative details necessary for the efficient and effective administration of the tax.
- (4) A county and the department may exchange information collected under the provisions of this chapter that is necessary to implement and administer a local-option marijuana excise tax or the tax collected under Title 15, chapter 64, part 1.

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## Use Of Local-Option Marijuana Excise Tax Revenue

**16-12-317. (Effective January 1, 2022) Use of local-option marijuana excise tax revenue.** Unless otherwise restricted, a county or municipality may appropriate and expend revenue derived from a local-option marijuana excise tax for any activity, undertaking, or administrative service that the municipality is authorized by law to perform, including costs resulting from the imposition of the tax or due to administrative burdens imposed on the municipality as a result of licensing or regulatory requirements imposed in this chapter.

**History:** En. Sec. 98, Ch. 576, L. 2021.

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## Law Enforcement Authority

**16-12-526. (Effective January 1, 2022) Law enforcement authority.** Nothing in this chapter may be construed to limit a law enforcement agency's ability to investigate unlawful activity in relation to an individual with a registry identification card.

**History:** En. Sec. 21, Ch. 576, L. 2021.