HOUSE BILL NO. 17

INTRODUCED BY S. KELLY

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE UNREGULATED INTOXICATING CONSUMER PRODUCTS CONTROL ACT; PROHIBITING THE PREPARATION, DISTRIBUTION, SALE, OR OFFER FOR SALE OF UNREGULATED PSYCHOACTIVE CONSUMER PRODUCTS; PROVIDING DEFINITIONS; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF REVENUE; PROVIDING PENALTIES; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING REPORTING REQUIREMENTS; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. **Section 1. Short title -- purpose.** (1) [Sections 1 through 6] may be cited as the "Unregulated Intoxicating Consumer Products Control Act".

(2) It is the purpose of [sections 1 through 6] to establish a regulatory safeguard prohibiting the preparation, distribution, sale, or offer for sale of an unregulated psychoactive consumer product in Montana unless the product is authorized under state law and subject to regulatory oversight.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

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

(2) "Person" has the same meaning as provided in 1-5-602.

(3) (a) "Psychoactive consumer product" means a substance intended for human consumption that:

(i) produces a psychoactive or intoxicating effect on the central nervous system, including effects associated with stimulating, sedating, euphoric, hallucinogenic, or opioid-like activity;

(ii) has a chemical structure or pharmacological effect substantially similar to a controlled

substance; or

(iii) contains a synthetic, semisynthetic, or chemically modified alkaloid or derivative designed to produce intoxicating or psychoactive effects.

(b) The term does not include:

(i) FDA-approved drugs;

(ii) prescription medications dispensed by licensed pharmacies;

(iii) dietary supplements compliant with federal law;

(iv) alcohol regulated under Title 16;

(v) marijuana products regulated under Title 16, chapter 12;

(vi) tobacco and nicotine products;

(vii) products consisting of or containing only pure caffeine; or

(viii) substances scheduled under Montana controlled substance law.

NEW SECTION. **Section 3. Psychoactive consumer products prohibited unless regulated.** A person may not prepare, distribute, sell, or offer for sale a psychoactive consumer product in this state unless the product is authorized under state law and subject to regulatory oversight.

NEW SECTION. **Section 4. Enforcement -- penalty for noncompliance.** (1) A person is prohibited from knowingly preparing, distributing, selling, or offering for sale a psychoactive consumer product that is not authorized under state law or not subject to regulatory oversight.

(2) A person that violates the provisions of [sections 1 through 6] is subject to the following penalties:

(a) for a first violation, the department shall order the person by certified letter to cease and desist committing the violation;

(b) for a second violation, the department shall impose on the person a civil penalty not to exceed $1,000; and

(c) for a third or subsequent violation, the department shall immediately notify the appropriate government entity to suspend the person's business license or licenses for 6 months, impose a civil penalty not

to exceed $5,000, or both.

(3) (a) The department shall enforce the provisions of [sections 1 through 6].

(b) Enforcement costs pursuant to [sections 1 through 6] may be offset through civil penalties when applicable.

NEW SECTION. **Section 5. General authority of department -- rulemaking -- reporting requirements.** (1) The department, in coordination with the department of public health and human services established in 2-15-2201, the board of pharmacy established in 2-15-1733, and the department of justice established in 2-15-2001, shall:

(a) determine whether a product meets the definition of a psychoactive consumer product through rule;

(b) adopt rules establishing intoxicating thresholds and testing standards;

(c) identify synthetic, modified, or substantially similar compounds designed to circumvent regulation; and

(d) issue cease-and-desist orders and impose civil penalties for unlawful preparation, distribution, sale, or offer for sale of a psychoactive consumer product.

(2) Nothing in this section alters the authority of the board of pharmacy established in 2-15-1733 to classify controlled substances.

(3) The department shall report to the children, families, health, and human services interim committee and the revenue interim committee biennially, in accordance with 5-11-210, any substances identified, enforcement actions taken, and regulatory recommendations made pursuant to this section.

NEW SECTION. **Section 6. Report to legislature.** (1) The department shall prepare and provide a report to the legislature, in accordance with 5-11-210, including the following information as it relates to the provisions of [sections 1 through 6]:

(a) substances identified for review;

(b) enforcement actions taken;

(c) cease-and-desist orders issued;

(d) civil penalties assessed; and

(e) market trends observed.

(2) The department shall publish the report required under subsection (1) on the department's website.

NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified as a new chapter in Title 16, and the provisions of Title 16 apply to [sections 1 through 6].

NEW SECTION. **Section 8. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 2027.

(2) [Sections 5 through 7] and this section are effective on passage and approval.

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