



**Colorado  
Legislative  
Council  
Staff**

**HB16-1261**

**REVISED  
FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 16-0428

**Date:** April 26, 2016

**Prime Sponsor(s):** Rep. Pabon

**Bill Status:** Senate Business, Labor and  
Technology

Sen. Jahn; Baumgardner

**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**BILL TOPIC:** RETAIL MARIJUANA SUNSET

<b>Fiscal Impact Summary</b>	<b>FY 2016-2017</b>	<b>FY 2017-2018</b>	
This bill changes and continues a program that would otherwise end July 1, 2016, so the fiscal note shows the new and continuing fiscal impacts.	New	New	Continuation
<b>State Revenue</b>	<u><b>&lt;\$182,600</b></u>	<u><b>&lt;\$6,386,700</b></u>	
Cash Funds	<182,600	<60,200	6,326,500
<b>State Expenditures</b>	<u><b>\$167,388</b></u>	<u><b>\$4,323,726</b></u>	
Cash Funds	132,251	108,607	4,179,590
Centrally Appropriated Costs	35,137	35,529	
<b>TABOR Impact</b>		<b>\$6,386,700</b>	
<b>FTE Position Change</b>	2.0 FTE	2.0 FTE	36.9 FTE
<b>Appropriation Required:</b> \$132,251 - Department of Revenue (FY 2016-17).			
<b>Future Year Impacts:</b> Ongoing state revenue and expenditure increase through FY 2019-20.			

**Summary of Legislation**

The **reengrossed** bill continues the Colorado Retail Marijuana Code until September 1, 2019, and makes changes regarding licensing, rulemaking, industry operations, county-initiated ballot measures, and criminal provisions, as outlined below.

**Licensing:**

- the bill creates licenses for retail marijuana transporters and retail marijuana establishment operators; and
- repeals the requirement that a license application be denied based on a previous denial at the same location.

**Rulemaking:**

- the bill clarifies that standards pertaining to packaging and labeling of retail marijuana is a matter of statewide concern and regulated by the Marijuana Enforcement Division (MED) in the Department of Revenue's (DOR);

- repeals the requirement that marijuana-themed magazines only be sold in retail marijuana stores or behind the counter in stores where people under 21 are present; and
- repeals the DOR's authority to promulgate rules prohibiting misrepresentation and unfair practices.

***Industry operations:***

- harmonizes the mandatory testing provisions for retail marijuana with those in the Colorado Medical Marijuana Code;
- allows a licensee the opportunity to remediate a product that has tested positive for a microbial;
- allows for performance-based incentives for employees of cultivation facilities and products manufacturers;
- exempts non-edible, non-psychoactive retail marijuana products from the one ounce per transaction limit;
- repeals the one-quarter ounce limitation on the amount of retail marijuana that can be sold to a non-resident;
- requires that a display case containing marijuana concentrate include the potency of the concentrate next to the name of the product; and
- allows trade craftspeople to be reasonably monitored rather than accompanied on a full-time basis while working in a limited access area.

***County-initiated ballot measures:***

- the bill requires that not less than 15 percent of the registered electors in a county sign a petition for a county-initiated measure related to retail marijuana in order for it to be placed on the ballot.

***Criminal provisions:***

- the bill creates a new level 1 drug misdemeanor for the transfer of marijuana or marijuana concentrate at no cost if the transfer is related to remuneration for any other service or product.

## **Background**

In response to the passage of Amendment 64 during the 2013 legislative session, the General Assembly created the Retail Marijuana Code which expanded the authority of the DOR to include regulation of retail marijuana. Under the retail code, businesses that grow, process, test, and sell retail marijuana are licensed by the MED. As of March 1, 2016, the following number and type of businesses are licensed:

- 424 retail marijuana stores;
- 503 retail marijuana cultivation centers;
- 173 retail marijuana product manufacturers; and
- 15 retail marijuana testing facilities

Any adult aged 21 and over may purchase marijuana from a licensed retail store; however, out-of-state visitors are limited to purchasing no more than one-quarter ounce of marijuana at a time. During the first nine months of legal sales, retail marijuana stores had to grow marijuana at a commonly owned cultivation facility (i.e., vertical integration, as in the medical marijuana market). Beginning October 1, 2014, retail stores were able to obtain marijuana on the wholesale market from any cultivator or to continue to cultivate plants themselves.

### **Fiscal Impact of Programs Set to Expire**

This bill continues the Retail Marijuana program in the MED in the Enforcement Business Group of the DOR that is set to repeal effective July 1, 2016. Under current law, state agencies may be appropriated funds to wind up the affairs of an expiring program for 12 months following the repeal date. To account for the wind-up period, the impact of extending the program beyond the current repeal date is shown as beginning in FY 2017-18, one year after the repeal date. There is no need for an appropriation of the retail marijuana enforcement base funding in FY 2016-17, since the program's authorization has not yet expired, and ongoing funding for the program is included in the DOR's base budget request for FY 2016-17. This bill does require an appropriation for FY 2016-17 for expenditures created by the bill.

The state revenue and state expenditures impact for FY 2017-18 reflects the program's anticipated fee revenue and base budget request beginning that year, plus increases to cover the implementation of this bill. Based on the DOR's budget request for FY 2017-18 for retail marijuana enforcement, costs are expected to be \$4,179,590 with 36.9 FTE in FY 2017-18. The anticipated base revenue is \$12,653,000 for two years of base expenditures, or \$6,326,500 per year.

### **Comparable Crime**

Pursuant to Section 2-2-322 (2.5), C.R.S., Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. This bill creates a new level 1 drug misdemeanor. The Judicial Department reported that between January 1, 2013, and December 31, 2015, there were 266 offenders convicted of a level 1 drug misdemeanor. Of these, 226 were men (3 Asian, 18 Black, 16 Hispanic, and 189 Caucasian) and 40 were women (1 Black, 2 Hispanic, and 37 Caucasian). Under current law the practice of providing marijuana at no cost with the purchase of another service or product is not explicitly prohibited. Because this bill criminalizes the practice and the people in positions to commit this offense are licensed by the MED, the fiscal note assumes a high rate of compliance.

### **State Revenue**

This bill will increase state revenue by less than \$182,600 in FY 2016-17 and less than \$6,386,700 in FY 2017-18. Of these amounts, fees account for \$173,600 in FY 2016-17 and \$6,381,700 in FY 2017-18 deposited to the Marijuana Cash Fund and beginning in FY 2016-17, state revenue from fines account for less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department.

**Assumptions.** There are approximately 2,600 licensees for medical marijuana businesses and retail marijuana establishments combined. The fiscal note assumes that the transporter license will apply to both retail and medical marijuana transportation services. The fiscal note assumes a ratio of one transporter to 100 licensees for a total of 26 licensed transporters by the end of FY 2017-18. This assumes that 24 individuals will apply for transporter licenses in FY 2016-17 and 2 individuals in FY 2017-18. Half of these individuals will also apply for off-premises storage permits in FY 2016-17, which will be renewed annually. The fiscal note assumes a ratio of one operator for every 50 licenses for a total of 22 licenses in FY 2016-17 and 24 in FY 2017-18. Finally, the fiscal note assumes that implementation of this bill will begin July 1, 2016.

**Fee impact on individuals and business.** State law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 1 below identifies an estimate of the fee impact of this bill. The actual operator and marijuana transporter license fees will be set by the MED but are expected to cost the same amount as cultivation facility and product manufacturer licenses, which are similar annual license types, and have a fee of \$2,200 for an original license plus a one-time \$1,000 application fee. Renewals are \$300 for transporter and operator licenses. The existing off premises storage permit fee is \$2,200 per year.

<b>Table 1. Fee Impact on Individuals and Business Under HB16-1261</b>					
		<b>FY 2016-17</b>		<b>FY 2017-18</b>	
<b>Type of Fee</b>	<b>Fee</b>	<b>Number</b>	<b>Fee Impact</b>	<b>Number</b>	<b>Fee Impact</b>
Transporter Application Fee	1,000	24	24,000	2	2,000
Transporter License Fee	2,200	24	52,800	2	4,400
Transporter Renewal Fee	300			24	7,200
Operator Application Fee	\$1,000	22	\$22,000	2	\$2,000
Operator License Fee	2,200	22	48,400	2	4,400
Operator Renewal Fee	300		0	22	6,600
Off Premises Storage Permit	2,200	12	26,400	13	28,600
Total New Revenue			173,600		55,200
Base Fee Revenue					6,326,500
<b>TOTAL</b>			<b>\$173,600</b>		<b>\$6,381,700</b>

**Criminal penalties.** Beginning in FY 2016-17, this bill is anticipated to increase state revenue by less than \$5,000 per year, credited to the Fines Collection Cash Fund in the Judicial Department. The fine penalty for a level 1 drug misdemeanor is between \$500 to \$5,000. Because the courts have the discretion of incarceration, imposing a fine, or both, the precise impact to state revenue cannot be determined. However, based on the low number of fines imposed in 2015, the fiscal note assumes that any revenue generated is likely to be less than \$5,000.

### **TABOR Impact**

This bill increases state revenue from fees and fines, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

### **State Expenditures**

This bill increases state cash fund expenditures for the MED by \$167,388 and 2.0 FTE in FY 2016-17 and \$4,323,726 and 2.0 FTE in FY 2017-18 from the Marijuana Cash Fund. These expenditures are shown in Table 2 and explained below.

<b>Table 2. Expenditures Under HB16-1261</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Personal Services	\$97,206	\$97,206
FTE	2.0 FTE	2.0 FTE
Operating Expenses and Capital Outlay Costs	11,306	1,900
Legal Services	9,501	9,501
Programming and Testing Costs	14,238	
Centrally Appropriated Costs*	35,137	35,529
Base funding		4,179,590
<b>TOTAL</b>	<b>\$167,388</b>	<b>\$4,323,726</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

**Staffing.** This bill expands the retail marijuana enforcement program by adding two new licenses and increasing demand for an existing license. The MED will add 2.0 FTE to input application information into the licensing software, process licenses, respond to licensing queries, assist Background Investigation Unit staff to investigate license applicants, conduct inspections and monitor compliance with license requirements.

**Legal services.** The MED will use 100 hours of legal services annually beginning in FY 2016-17 from the Department of Law for general counsel, rulemaking, and administrative actions at a rate of \$95.01 per hour.

**Programming and testing.** The DOR computer system GenTax will be updated in FY 2016-17 to add the new licenses and remove the bonding requirement. The changes in this bill are expected to increase expenditures by \$10,400, representing 52 hours of programming. Testing for this bill will require expenditures for contract personnel totaling \$3,838, representing 160 hours of testing at a rate of \$23.99 per hour.

**Judicial Department.** This bill is expected to minimally increase the workload for trial courts and the probation division in the Judicial Department as a result of any new level 1 drug misdemeanor offenses brought under this bill. The bill may also increase workload or costs for the Office of the State Public Defender and Office of Alternate Defense Counsel, to provide representation for any persons deemed to be indigent. The fiscal note assumes any such increases are minimal and will not require an increase in appropriations for any of these agencies.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. Leased space is included to show the incremental impact of the additional FTE, and calculated at DOR's rate of 200 square feet per FTE at a rate of \$27 per square foot. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 3.

<b>Table 3. Centrally Appropriated Costs Under HB16-1261</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$16,019	\$16,019
Supplemental Employee Retirement Payments	8,318	8,710
Leased Space	10,800	10,800
<b>TOTAL</b>	<b>\$35,137</b>	<b>\$35,529</b>

### **Local Government Impact**

This bill is expected to increase workload, revenue, and expenditures for local governments in two ways.

***Level 1 drug misdemeanor offenses in county courts.*** First, the bill may increase workload for district attorneys to prosecute any new offenses under the bill. Second, to the extent that this bill increases level 1 drug misdemeanor convictions and offenders are sentenced to jail, costs will increase. Under current law, a court may sentence an offender to jail for a level 1 drug misdemeanor for a period of between 6 and 18 months. Because the courts have the discretion of incarceration or imposing a fine, the precise impact at the local level cannot be determined. The cost to house an offender in county jails varies from about \$53 to \$114 per day. For the current fiscal year, the state reimburses county jails at a daily rate of \$52.74 to house state inmates. It is assumed that the impact of this bill will be minimal.

***Denver County Court.*** The bill may result in an increase in workload for the Denver County Court, managed and funded by the City and County of Denver. The court will try level 1 drug misdemeanor cases under the bill for the transfer of marijuana or marijuana concentrate at no cost if the transfer is related to remuneration for any other service or product. Probation services in the Denver County Courts may also experience a minimal increase in workload and revenue to supervise persons convicted within the City and County of Denver.

### **Technical Notes**

Similar to this bill, HB16-1211 creates a marijuana transporter license to be issued by the MED beginning January 1, 2017.

### **Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

### **State Appropriations**

For FY 2016-17, the bill requires and includes a cash funds appropriation of \$132,251 to the Department of Revenue from the Marijuana Cash Fund and an allocation of 2.0 FTE. Of this, the Department of Law is provided \$9,501 in reappropriated funds.

**State and Local Government Contacts**

Counties  
Judicial  
Law  
Public Health and Environment  
Revenue

Governor's Marijuana Office  
Information Technology  
Municipalities  
Public Safety