

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 16-0428.01 Michael Dohr x4347

HOUSE BILL 16-1261

HOUSE SPONSORSHIP

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SENATE SPONSORSHIP

Jahn and Baumgardner,

House Committees

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Appropriations

Senate Committees

Business, Labor, & Technology
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A BILL FOR AN ACT

101 CONCERNING CONTINUATION OF THE COLORADO RETAIL MARIJUANA
102 CODE, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE
103 RECOMMENDATIONS OF THE 2015 SUNSET REPORT ISSUED BY
104 THE DEPARTMENT OF REGULATORY AGENCIES AND MAKING AN
105 APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Sunset Process - House Finance Committee. The bill implements the following recommendations from the sunset report for the retail

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
2nd Reading Unamended
May 5, 2016

HOUSE
3rd Reading Unamended
April 18, 2016

HOUSE
Amended 2nd Reading
April 15, 2016

marijuana program:

- ! Extending the retail marijuana code until September 1, 2019;
- ! Stating that regulation of labeling, packaging, and testing is a matter of statewide concern; and
- ! Repealing the following provisions from the retail marijuana code:
 - ! The requirement that a licensee post a surety bond as condition of licensure;
 - ! The requirement that the executive director deny a license based on a previous denial at the same location;
 - ! The proscription on the placement and sale of marijuana-themed magazines; and
 - ! The authority to promulgate rules prohibiting misrepresentation and unfair practices.

The bill creates 2 new retail marijuana licenses--a retail marijuana transport license and a retail marijuana operator license--and gives the state licensing authority rulemaking authority over those licenses.

The bill conforms language in the retail marijuana code to language in the medical marijuana code related to mandatory testing, the confidentiality of licensee information, and limited access areas.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 12-43.4-103, **amend**
3 (1) and (14.5); and **add** (1.5), (17.5), and (21.5) as follows:

4 **12-43.4-103. Definitions.** As used in this article, unless the
5 context otherwise requires:

6 (1) ~~"Executive director" means the executive director of the~~
7 ~~department of revenue~~ "ESCORTED" MEANS APPROPRIATELY CHECKED
8 INTO THE LIMITED ACCESS AREA AND ACCOMPANIED BY A PERSON
9 LICENSED BY THE STATE LICENSING AUTHORITY; EXCEPT THAT TRADE
10 CRAFTSPEOPLE NOT NORMALLY ENGAGED IN THE BUSINESS OF
11 CULTIVATING, PROCESSING, OR SELLING RETAIL MARIJUANA NEED NOT BE
12 ACCOMPANIED ON A FULL-TIME BASIS, BUT ONLY REASONABLY
13 MONITORED.

1 (1.5) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF
2 THE DEPARTMENT OF REVENUE.

3 (14.5) "Resealable" means that the package continues to function
4 with WITHIN effectiveness specifications, which shall be established by
5 the state licensing authority similar to the federal "Poison Prevention
6 Packaging Act of 1970", 15 U.S.C. sec. 1471 et seq., for the number of
7 openings and closings customary for its size and contents, which shall be
8 determined by the state licensing authority.

9 (17.5) "RETAIL MARIJUANA ESTABLISHMENT OPERATOR" MEANS
10 AN ENTITY OR PERSON THAT IS NOT AN OWNER AND THAT IS LICENSED TO
11 PROVIDE PROFESSIONAL OPERATIONAL SERVICES TO A RETAIL MARIJUANA
12 ESTABLISHMENT FOR DIRECT REMUNERATION FROM THE RETAIL
13 MARIJUANA ESTABLISHMENT.

14 (21.5) "RETAIL MARIJUANA TRANSPORTER" MEANS AN ENTITY OR
15 PERSON THAT IS LICENSED TO TRANSPORT RETAIL MARIJUANA AND RETAIL
16 MARIJUANA PRODUCT FROM ONE RETAIL MARIJUANA ESTABLISHMENT TO
17 ANOTHER RETAIL MARIJUANA ESTABLISHMENT AND TO TEMPORARILY
18 STORE THE TRANSPORTED RETAIL MARIJUANA AND RETAIL MARIJUANA
19 PRODUCTS AT ITS LICENSED PREMISES, BUT IS NOT AUTHORIZED TO SELL
20 RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS UNDER ANY
21 CIRCUMSTANCES.

22 **SECTION 2.** In Colorado Revised Statutes, 12-43.4-104, **amend**
23 **(3)** as follows:

24 **12-43.4-104. Applicability - retail marijuana.** (3) As provided
25 in section 16 (5) (f) of article XVIII of the state constitution, any local
26 jurisdiction may enact ordinances or regulations governing the time,
27 place, manner, and number of retail marijuana establishments, which may

1 include a local licensing requirement, or may prohibit the operation of
2 retail marijuana establishments through the enactment of an ordinance or
3 through a referred or initiated measure. IF A COUNTY ACTS THROUGH AN
4 INITIATED MEASURE, THE PROPONENTS SHALL SUBMIT A PETITION SIGNED
5 BY NOT LESS THAN FIFTEEN PERCENT OF THE REGISTERED ELECTORS IN THE
6 COUNTY.

7 **SECTION 3.** In Colorado Revised Statutes, **amend** 12-43.4-105
8 as follows:

9 **12-43.4-105. Limited access areas.** Subject to the provisions of
10 section 12-43.4-701, a limited access area shall be a building, room, or
11 other contiguous area upon the licensed premises where retail marijuana
12 and retail marijuana products are cultivated, stored, weighed, packaged,
13 or tested, under control of the licensee, with ACCESS limited access to
14 only those persons licensed by the state licensing authority AND THOSE
15 VISITORS ESCORTED BY A PERSON LICENSED BY THE STATE LICENSING
16 AUTHORITY. All areas of ingress or egress to limited access areas shall be
17 clearly identified as such by a sign as designated by the state licensing
18 authority.

19 **SECTION 4.** In Colorado Revised Statutes, 12-43.4-202, **amend**
20 (2) (d), (3) (a) (IV) (B), (3) (a) (IV) (C), (3) (a) (IV) (D), (3) (a) (IV) (E),
21 (3) (a) (IV) (F), (3) (a) (VII), and (3) (a) (XV); **add** (3) (a) (XVII), (3) (a)
22 (XVIII), (3)(a)(XIX), and (3) (f); and **repeal** (3) (b) (IV) and (3) (c) (II)
23 as follows:

24 **12-43.4-202. Powers and duties of state licensing authority -**
25 **rules.** (2) The state licensing authority has the authority to:

26 (d) Maintain the confidentiality of reports or other information
27 obtained from a licensee ~~showing the sales volume or quantity of retail~~

1 ~~marijuana or retail marijuana products sold~~ CONTAINING ANY
2 INDIVIDUALIZED DATA, INFORMATION, OR RECORDS RELATED TO THE
3 LICENSEE OR ITS OPERATION, INCLUDING SALES INFORMATION, FINANCIAL
4 RECORDS, TAX RETURNS, CREDIT REPORTS, CULTIVATION INFORMATION,
5 TESTING RESULTS, AND SECURITY INFORMATION AND PLANS, or revealing
6 any customer information, or any other records that are exempt from
7 public inspection pursuant to state law. Such reports or other information
8 may be used only for a purpose authorized by this article or for any other
9 state or local law enforcement purpose. Any customer information may
10 be used only for a purpose authorized by this article.

11 (3) (a) Rules promulgated pursuant to paragraph (b) of subsection
12 (2) of this section must include, but need not be limited to, the following
13 subjects:

14 (IV) (B) ~~Testing shall include, but not be limited to, analysis for~~
15 ~~residual solvents, poisons, or toxins; harmful chemicals; dangerous molds~~
16 ~~or mildew; filth; and harmful microbials such as E. Coli or salmonella~~
17 ~~and pesticides~~ TESTING MAY INCLUDE ANALYSIS FOR MICROBIAL AND
18 RESIDUAL SOLVENTS AND CHEMICAL AND BIOLOGICAL CONTAMINANTS
19 DEEMED TO BE PUBLIC HEALTH HAZARDS BY THE COLORADO DEPARTMENT
20 OF PUBLIC HEALTH AND ENVIRONMENT BASED ON MEDICAL REPORTS AND
21 PUBLISHED SCIENTIFIC LITERATURE.

22 (C) In the event that test results indicate the presence of quantities
23 of any substance determined to be injurious to health, ~~such products shall~~
24 ~~be immediately quarantined and immediate notification to the marijuana~~
25 ~~enforcement division shall be made. The adulterated product shall be~~
26 ~~documented and properly destroyed~~ THE LICENSEE SHALL IMMEDIATELY
27 QUARANTINE THE PRODUCTS AND NOTIFY THE STATE LICENSING

1 AUTHORITY. THE STATE LICENSING AUTHORITY SHALL GIVE THE LICENSEE
2 AN OPPORTUNITY TO REMEDIATE THE PRODUCT IF THE TEST INDICATED THE
3 PRESENCE OF A MICROBIAL. IF THE LICENSEE IS UNABLE TO REMEDIATE THE
4 PRODUCT, THE LICENSEE SHALL DOCUMENT AND PROPERLY DESTROY THE
5 ADULTERATED PRODUCT.

6 (D) ~~Testing shall also verify THC potency representations for~~
7 ~~correct labeling and create process validation for edible marijuana~~
8 ~~products and other marijuana products in multi-serving packages for a ten~~
9 ~~milligram serving in a one hundred milligram package, including~~
10 ~~homogeneity, potency, solvents, and pesticides~~ TESTING SHALL ALSO
11 VERIFY THC POTENCY REPRESENTATIONS AND HOMOGENEITY FOR
12 CORRECT LABELING AND PROVIDE A CANNABINOID PROFILE FOR THE
13 MARIJUANA PRODUCT. An individual marijuana piece of ten milligrams or
14 less that has gone through process validation is exempt from continued
15 homogeneity testing. Homogeneity testing for one hundred milligram
16 servings may utilize validation measures.

17 (E) THE STATE LICENSING AUTHORITY SHALL DETERMINE AN
18 ACCEPTABLE VARIANCE FOR POTENCY REPRESENTATIONS AND
19 PROCEDURES TO ADDRESS POTENCY MISREPRESENTATIONS. The ~~agency~~
20 STATE LICENSING AUTHORITY shall determine an acceptable variance of
21 at least plus or minus fifteen percent for potency representations and
22 procedures to address potency misrepresentations.

23 (F) The ~~agency~~ STATE LICENSING AUTHORITY shall determine the
24 protocols and frequency of marijuana testing by licensees.

25 (VII) Labeling requirements for retail marijuana and retail
26 marijuana products sold by a retail marijuana establishment that are at
27 least as stringent as imposed by section 25-4-1614 (3) (a), C.R.S., and

- 1 include but are not limited to:
- 2 (A) The license number of the retail marijuana cultivation license;
 - 3 (B) The license number of the retail marijuana store;
 - 4 (C) An identity statement and standardized graphic symbol;
 - 5 (D) The batch number;
 - 6 (E) A net weight statement;
 - 7 (F) THC potency and the potency of such other cannabinoids or
 - 8 other chemicals, including but not limited to CBD, as determined relevant
 - 9 by the state licensing authority;
 - 10 (G) A list of the nonorganic pesticides, fungicides, herbicides, and
 - 11 solvents used during cultivation or production;
 - 12 (H) A statement to the effect of: "This product contains marijuana
 - 13 and was cultivated or produced without regulatory oversight for health,
 - 14 safety, or efficacy, and there may be health risks associated with the
 - 15 consumption of the product.";
 - 16 (I) Warning labels;
 - 17 (J) Solvents used in the extraction process;
 - 18 (K) Amount of THC per serving and the number of servings per
 - 19 package for marijuana products;
 - 20 (L) A list of ingredients and possible allergens for retail marijuana
 - 21 products;
 - 22 (M) A recommended use by or expiration date for retail marijuana
 - 23 products;
 - 24 (N) A nutritional fact panel for edible marijuana products; and
 - 25 (O) A universal symbol indicating the package contains
 - 26 marijuana; AND
 - 27 (P) THE POTENCY OF THE RETAIL MARIJUANA OR RETAIL

1 MARIJUANA PRODUCT HIGHLIGHTED ON THE LABEL.

2 (XV) Compliance with, enforcement of, or violation of any
3 provision of this article, section 18-18-406.3 (7), C.R.S., or any rule
4 issued pursuant to this article, including procedures and grounds for
5 denying, suspending, fining, restricting, or revoking a state license issued
6 pursuant to this article; ~~and~~

7 (XVII) RETAIL MARIJUANA TRANSPORTER LICENSED BUSINESSES,
8 INCLUDING REQUIREMENTS FOR DRIVERS, INCLUDING OBTAINING AND
9 MAINTAINING A VALID COLORADO DRIVER'S LICENSE; INSURANCE
10 REQUIREMENTS; ACCEPTABLE TIME FRAMES FOR TRANSPORT, STORAGE,
11 AND DELIVERY; REQUIREMENTS FOR TRANSPORT VEHICLES; AND
12 REQUIREMENTS FOR LICENSED PREMISES; ■

13 (XVIII) RETAIL MARIJUANA ESTABLISHMENT OPERATOR
14 LICENSEES, INCLUDING THE FORM AND STRUCTURE OF ALLOWABLE
15 AGREEMENTS BETWEEN OPERATORS AND OWNERS; AND

16 (XIX) NON-ESCORTED VISITORS IN LIMITED ACCESS AREAS.

17 (b) Rules promulgated pursuant to paragraph (b) of subsection (2)
18 of this section must also include the following subjects:

19 (IV) ~~Prohibition of misrepresentation and unfair practices;~~

20 (c) Rules promulgated pursuant to paragraph (b) of subsection (2)
21 of this section must also include the following subjects, and the state
22 licensing authority may seek the assistance of the department of public
23 health and environment when necessary before promulgating the rules:

24 (II) ~~Requiring that magazines whose primary focus is marijuana~~
25 ~~or marijuana businesses are only sold in retail marijuana stores or behind~~
26 ~~the counter in establishments where persons under twenty-one years of~~
27 ~~age are present;~~

1 (f) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT MATTERS
2 RELATED TO LABELING AS REGULATED PURSUANT TO SUBPARAGRAPH
3 (VII) OF PARAGRAPH (a) OF THIS SUBSECTION (3) AND SUBPARAGRAPHS
4 (V) AND (VI) OF PARAGRAPH (c) OF THIS SUBSECTION (3), PACKAGING AS
5 REGULATED PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (c) OF THIS
6 SUBSECTION (3), AND TESTING AS REGULATED PURSUANT TO
7 SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (3) ARE
8 MATTERS OF STATEWIDE CONCERN, AND THE SOLE REGULATORY
9 AUTHORITY FOR LABELING, PACKAGING, AND TESTING IS PURSUANT TO
10 THIS SECTION.

11

12 **SECTION 5.** In Colorado Revised Statutes, 12-43.4-306, **amend**
13 (1) (f) as follows:

14 **12-43.4-306. Persons prohibited as licensees - definitions.**

15 (1) A license provided by this article shall not be issued to or held by:

16 (f) A person licensed pursuant to this article who, during a period
17 of licensure, or who, at the time of application, has failed to:

18 (I) ~~Provide a surety bond or~~ File any tax return related to a
19 MEDICAL OR retail marijuana establishment; or

20 (II) Pay any taxes, interest, or penalties due ~~the department of~~
21 ~~revenue~~ relating to a MEDICAL OR retail marijuana establishment;

22 **SECTION 6.** In Colorado Revised Statutes, 12-43.4-307, **repeal**
23 (1) (a) as follows:

24 **12-43.4-307. Restrictions for applications for new licenses.**

25 (1) The state licensing authority shall not approve an application for the
26 issuance of a state license pursuant to this article:

27 (a) ~~If the application for the license concerns a particular location~~

1 ~~that is the same as or within one thousand feet of a location for which,~~
2 ~~within the two years immediately preceding the date of the application,~~
3 ~~the state licensing authority denied an application for the same class of~~
4 ~~license due to the nature of the use or other concern related to the~~
5 ~~location; or~~

6 **SECTION 7.** In Colorado Revised Statutes, 12-43.4-401, **amend**
7 (1) (d); and **add** (1) (f), (1) (g), and (4) as follows:

8 **12-43.4-401. Classes of licenses.** (1) For the purpose of
9 regulating the cultivation, manufacture, distribution, sale, and testing of
10 retail marijuana and retail marijuana products, the state licensing
11 authority in its discretion, upon receipt of an application in the prescribed
12 form, may issue and grant to the applicant a license from any of the
13 following classes, subject to the provisions and restrictions provided by
14 this article:

15 (d) Retail marijuana testing facility license; **and**

16 (f) RETAIL MARIJUANA TRANSPORT LICENSE; AND

17 (g) RETAIL MARIJUANA BUSINESS OPERATOR LICENSE.

18 (4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
19 CONTRARY, A LICENSED RETAIL CULTIVATION FACILITY OR A LICENSED
20 RETAIL MARIJUANA PRODUCTS MANUFACTURER MAY COMPENSATE ITS
21 EMPLOYEES USING PERFORMANCE-BASED INCENTIVES.

22 **SECTION 8.** In Colorado Revised Statutes, 12-43.4-402, **amend**
23 (3) (a) (I); **add** (11); and **repeal** (3) (a) (II) as follows:

24 **12-43.4-402. Retail marijuana store license - definitions.**

25 (3) (a) (I) A retail marijuana store may not sell more than one ounce of
26 retail marijuana or its equivalent in retail marijuana products, including
27 retail marijuana concentrate, EXCEPT FOR NON-EDIBLE,

1 NON-PSYCHOACTIVE RETAIL MARIJUANA PRODUCTS, INCLUDING
2 OINTMENTS, LOTIONS, BALMS, AND OTHER NON-TRANSDERMAL TOPICAL
3 PRODUCTS during a single transaction to a person. ~~who has a valid~~
4 ~~identification card showing that the person is a resident of the state of~~
5 ~~Colorado.~~

6 (II) ~~A retail marijuana store may not sell more than a quarter of an~~
7 ~~ounce of retail marijuana or its equivalent in retail marijuana products,~~
8 ~~including retail marijuana concentrate, during a single transaction to a~~
9 ~~person who does not have a valid identification card showing that the~~
10 ~~person is a resident of the state of Colorado.~~

11 (11) A DISPLAY CASE CONTAINING MARIJUANA CONCENTRATE
12 MUST INCLUDE THE POTENCY OF THE MARIJUANA CONCENTRATE NEXT TO
13 THE NAME OF THE PRODUCT.

14 **SECTION 9.** In Colorado Revised Statutes, **add** 12-43.4-406 and
15 12-43.4-407 as follows:

16 **12-43.4-406. Retail marijuana transport license.** (1) A RETAIL
17 MARIJUANA TRANSPORT LICENSE MAY BE ISSUED TO A PERSON WHO ONLY
18 TEMPORARILY STORES AND TRANSPORTS RETAIL MARIJUANA THROUGHOUT
19 THE STATE FOR OTHER ENTITIES LICENSED PURSUANT TO THIS PART 4.

20 (2) A RETAIL MARIJUANA TRANSPORT LICENSEE SHALL MAINTAIN
21 A LICENSED PREMISES FOR THE TEMPORARY STORAGE OF RETAIL
22 MARIJUANA.

23 (3) A RETAIL MARIJUANA TRANSPORT LICENSEE SHALL HAVE
24 ACCESS TO AND SHALL USE THE SEED-TO-SALE TRACKING SYSTEM
25 DEVELOPED PURSUANT TO SECTION 12-43.4-202 (1) TO CREATE SHIPPING
26 MANIFESTS DOCUMENTING THE TRANSPORT OF RETAIL MARIJUANA
27 THROUGHOUT THE STATE.

1 (4) AN ENTITY LICENSED PURSUANT TO THIS PART 4 MAY
2 TRANSPORT ITS OWN RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS
3 WITHOUT POSSESSING A LICENSE PURSUANT TO THIS SECTION.

4 **12-43.4-407. Retail marijuana business operator license.** A
5 RETAIL MARIJUANA BUSINESS OPERATOR LICENSE MAY BE ISSUED TO A
6 PERSON WHO OPERATES A RETAIL MARIJUANA ESTABLISHMENT LICENSED
7 PURSUANT TO THIS ARTICLE, FOR AN OWNER LICENSED PURSUANT TO THIS
8 ARTICLE, AND WHO MAY RECEIVE A PORTION OF THE PROFITS AS
9 COMPENSATION.

10 **SECTION 10.** In Colorado Revised Statutes, 12-43.4-1001,
11 **amend** (1) as follows:

12 **12-43.4-1001. Sunset review - article repeal.** (1) This article is
13 repealed, effective ~~July 1, 2016~~ SEPTEMBER 1, 2019.

14 **SECTION 11.** In Colorado Revised Statutes, 18-18-406, **add**
15 **(5.5)** as follows:

16 **18-18-406. Offenses relating to marijuana and marijuana**
17 **concentrate.** (5.5) (a) IT IS UNLAWFUL FOR A PERSON TO TRANSFER
18 MARIJUANA OR MARIJUANA CONCENTRATE AT NO COST TO A PERSON IF
19 THE TRANSFER IS IN ANY WAY RELATED TO REMUNERATION FOR ANY
20 OTHER SERVICE OR PRODUCT.

21 (b) A VIOLATION OF THIS SUBSECTION (5.5) IS A LEVEL 1 DRUG
22 MISDEMEANOR.

23 **SECTION 12.** In Colorado Revised Statutes, 24-34-104, **repeal**
24 (47) (d); and **add** (50.5) (o) as follows:

25 **24-34-104. General assembly review of regulatory agencies**
26 **and functions for termination, continuation, or reestablishment.**

27 (47) The following agencies, functions, or both, shall terminate on July

1 1, 2016:

2 (d) ~~The regulation of persons licensed pursuant to article 43.4 of~~
3 ~~title 12, C.R.S.~~

4 (50.5) The following agencies, functions, or both, terminate on
5 September 1, 2019:

6 (o) THE REGULATION OF PERSONS LICENSED PURSUANT TO ARTICLE
7 43.4 OF TITLE 12, C.R.S.

8 **SECTION 13. Appropriation.** (1) For the 2016-17 state fiscal
9 year, \$132,251 is appropriated to the department of revenue. This
10 appropriation is from the marijuana cash fund created in section
11 12-43.3-501 (1) (a), C.R.S. To implement this act, the department may
12 use this appropriation as follows:

13 (a) \$108,512 for marijuana enforcement, which amount is based
14 on an assumption that the department will require an additional 2.0 FTE;

15 (b) \$14,238 for CITA annual maintenance and support; and

16 (c) \$9,501 for the purchase of legal services.

17 (2) For the 2016-17 state fiscal year, \$9,501 is appropriated to the
18 department of law. This appropriation is from reappropriated funds
19 received from the department of revenue under paragraph (c) of
20 subsection (1) of this section. To implement this act, the department of
21 law may use this appropriation to provide legal services for the
22 department of revenue.

23 **SECTION 14. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.