



**Colorado  
Legislative  
Council  
Staff**

**HB16-1261**

**FISCAL NOTE**

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

**Drafting Number:** LLS 16-0428

**Date:** March 22, 2016

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

**Bill Status:** House Finance

Sen. Jahn; Baumgardner

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

**BILL TOPIC:** RETAIL MARIJUANA SUNSET

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018	
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>	<b>\$173,600</b>	<b>\$6,381,700</b>	
Cash Funds	173,600	55,200	6,326,500
<b>State Expenditures</b>	<b>\$167,388</b>	<b>\$4,323,726</b>	
Cash Funds	132,251	108,607	4,179,590
Centrally Appropriated Costs	35,137	35,529	
<b>TABOR Impact</b>	<b>\$173,600</b>	<b>\$55,200</b>	<b>\$0</b>
<b>FTE Position Change</b>	<b>2.0 FTE</b>	<b>2.0 FTE</b>	<b>36.9 FTE</b>
<b>Appropriation Required:</b> \$132,251 - Department of Revenue (FY 2016-17).			
<b>Future Year Impacts:</b> Ongoing state revenue and expenditure increase.			

**Summary of Legislation**

This bill continues the Colorado Retail Marijuana Code until September 1, 2019, and makes changes based on recommendations from the sunset review conducted by the Department of Regulatory Agencies. These changes include creating licenses for retail marijuana transporters and retail marijuana establishment operators. The bill also includes the following recommendations to repeal:

- the requirement that a licensee post a surety bond;
- the requirement that a license application be denied based on a previous denial at the same location;
- 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
- Department of Revenue's (DOR) authority to promulgate rules prohibiting misrepresentation and unfair practices.

In addition, the bill harmonizes the mandatory testing provisions for retail marijuana with those in the Colorado Medical Marijuana Code, and 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 DOR.

## **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.

## **State Revenue**

***This bill will increase state cash fund revenue from fees by \$173,600 in FY 2016-17 and by \$55,200 in FY 2017-18 to the Marijuana Cash Fund.***

**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
<b>TOTAL</b>			<b>\$173,600</b>		<b>\$55,200</b>

### **TABOR Impact**

This bill increases state revenue from fees, 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 \$144,136 and 2.1 FTE in FY 2017-18 from the Marijuana Cash Fund.*** These expenditures are shown in Table 2 and explained below.

Table 2. Expenditures Under HB16-1261		
Cost Components	FY 2016-17	FY 2017-18
Personal Services	\$97,206	\$97,206
FTE	2.0 FTE	2.1 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
<b>TOTAL</b>	<b>\$167,388</b>	<b>\$144,136</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.

**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.

Table 3. Centrally Appropriated Costs Under HB16-1261		
Cost Components	FY 2016-17	FY 2017-18
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>

### **Technical Notes**

House Bill 16-1041, signed by the Governor on March 11, 2016, repealed the surety bonding requirement for medical marijuana businesses, retail marijuana establishments, and retail marijuana cultivation facilities. As a result, the provision in this bill that repeals the surety bonding requirement for retail marijuana establishments and retail marijuana cultivation facilities is no longer necessary. However, funding for GenTax testing was not included in the appropriation for HB 16-1041, so is included as an expenditure for this bill.

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 Department of Revenue requires a cash funds appropriation of \$132,251 from the Marijuana Cash Fund and an allocation of 2.0 FTE. The Department of Law requires \$9,501 in reappropriated funds.

### **State and Local Government Contacts**

Counties	Governor's Marijuana Office
Information Technology	Law
Municipalities	Public Health and Environment
Public Safety	Revenue