

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0353.03 Michael Dohr

SENATE BILL 10-109

SENATE SPONSORSHIP

Romer and Spence, Boyd, Bacon, Hodge, Hudak, Johnston, Tapia, Tochtrop

HOUSE SPONSORSHIP

Massey and McCann, Rice, Frangas, McFadyen

Senate Committees

Health and Human Services
Appropriations

House Committees

Judiciary
Appropriations

A BILL FOR AN ACT

101 **CONCERNING REGULATION OF THE PHYSICIAN-PATIENT RELATIONSHIP**
102 **FOR MEDICAL MARIJUANA PATIENTS, AND MAKING**
103 **APPROPRIATIONS IN CONNECTION THEREWITH.**

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>.)

Under the bill, the department of public health and environment (department) will promulgate new rules related to standards for issuing registry identification cards, documentation for physicians who prescribe medical marijuana, and sanctions for physicians who violate the bill.

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
3rd Reading Unamended
February 1, 2010

SENATE
Amended 2nd Reading
January 29, 2010

A physician who certifies that a patient can use medical marijuana shall certify certain information to the department and maintain a separate record-keeping system for his or her medical marijuana patients. A physician who certifies that a patient can use medical marijuana shall not receive remuneration from or offer it to a primary caregiver, distributor, or any other provider of medical marijuana.

The bill creates a medical marijuana review board (board) that will consider requests by nonveteran patients under 21 years of age who want to be registered medical marijuana patients. For a patient who is under 21 years of age to become a registered medical marijuana patient, a majority of the board must determine that the patient has a debilitating medical condition and could benefit from the use of medical marijuana.

The bill adds the medical marijuana program to the list of statutes that involve medical records.

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

2 **SECTION 1.** 25-1.5-106, Colorado Revised Statutes, is amended
3 to read:

4 **25-1.5-106. Medical marijuana program - powers and duties**
5 **of state health agency - medical review board - repeal.**

6 (1) **Definitions.** IN ADDITION TO THE DEFINITIONS SET FORTH IN SECTION
7 14 (1) OF ARTICLE XVIII OF THE STATE CONSTITUTION, AS USED IN THIS
8 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 (a) "BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP", FOR PURPOSES
10 OF THE MEDICAL MARIJUANA PROGRAM, MEANS:

11 (I) A PHYSICIAN AND A PATIENT HAVE A TREATMENT OR
12 COUNSELING RELATIONSHIP, IN THE COURSE OF WHICH THE PHYSICIAN HAS
13 COMPLETED A FULL ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY AND
14 CURRENT MEDICAL CONDITION, INCLUDING A PERSONAL PHYSICAL
15 EXAMINATION;

16 (II) THE PHYSICIAN HAS CONSULTED WITH THE PATIENT WITH
17 RESPECT TO THE PATIENT'S DEBILITATING MEDICAL CONDITION BEFORE

1 THE PATIENT APPLIES FOR A REGISTRY IDENTIFICATION CARD; AND

2 (III) THE PHYSICIAN IS AVAILABLE TO OR OFFERS TO PROVIDE
3 FOLLOW-UP CARE AND TREATMENT TO THE PATIENT, INCLUDING BUT NOT
4 LIMITED TO PATIENT EXAMINATIONS, TO DETERMINE THE EFFICACY OF THE
5 USE OF MEDICAL MARIJUANA AS A TREATMENT OF THE PATIENT'S
6 DEBILITATING MEDICAL CONDITION.

7 (b) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF
8 THE STATE HEALTH AGENCY.

9 (c) "IN GOOD STANDING", WITH RESPECT TO A PHYSICIAN'S
10 LICENSE, MEANS:

11 (I) THE PHYSICIAN HOLDS A DOCTOR OF MEDICINE OR DOCTOR OF
12 OSTEOPATHIC MEDICINE DEGREE FROM AN ACCREDITED MEDICAL SCHOOL;

13 (II) THE PHYSICIAN HOLDS A VALID, UNRESTRICTED LICENSE TO
14 PRACTICE MEDICINE IN COLORADO; AND

15 (III) THE PHYSICIAN HAS A VALID AND UNRESTRICTED UNITED
16 STATES DEPARTMENT OF JUSTICE FEDERAL DRUG ENFORCEMENT
17 ADMINISTRATION CONTROLLED SUBSTANCES REGISTRATION.

18 (d) "MEDICAL MARIJUANA PROGRAM" MEANS THE PROGRAM
19 ESTABLISHED BY SECTION 14 OF ARTICLE XVIII OF THE STATE
20 CONSTITUTION AND THIS SECTION.

21 (e) "REGISTRY IDENTIFICATION CARD" MEANS THE
22 NONTRANSFERABLE CONFIDENTIAL REGISTRY IDENTIFICATION CARD
23 ISSUED BY THE STATE HEALTH AGENCY TO PATIENTS AND PRIMARY
24 CAREGIVERS PURSUANT TO THIS SECTION.

25 (f) "STATE HEALTH AGENCY" MEANS THE PUBLIC HEALTH RELATED
26 ENTITY OF STATE GOVERNMENT DESIGNATED BY THE GOVERNOR BY
27 EXECUTIVE ORDER PURSUANT TO SECTION 14 OF ARTICLE XVIII OF THE

1 STATE CONSTITUTION.

2 (†) (2) **Rulemaking.** The department STATE HEALTH AGENCY
3 shall, pursuant to section 14 of article XVIII of the state constitution,
4 promulgate rules of administration concerning the implementation of the
5 medical marijuana program ~~established by such section and that~~
6 specifically govern the following:

7 (a) The establishment and maintenance of a confidential registry
8 of patients who have applied for and are entitled to receive a registry
9 identification card. == THE CONFIDENTIAL REGISTRY OF PATIENTS MAY
10 BE USED TO DETERMINE WHETHER A PHYSICIAN SHOULD BE REFERRED TO
11 THE COLORADO BOARD OF MEDICAL EXAMINERS FOR A SUSPECTED
12 VIOLATION OF SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION,
13 PARAGRAPH (a), (b), OR (c) OF SUBSECTION (3) OF THIS SECTION, OR THE
14 RULES PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO THIS
15 SUBSECTION (2). ==

16 (b) The development by the department STATE HEALTH AGENCY
17 of an application form and THE PROCESS FOR making ~~such~~ THE form
18 available to residents of this state seeking to be listed on the confidential
19 registry of patients who are entitled to receive a registry identification
20 card;

21 (c) The verification by the department STATE HEALTH AGENCY of
22 medical information concerning patients who have applied for a
23 ~~confidential~~ registry IDENTIFICATION card OR FOR RENEWAL OF A
24 REGISTRY IDENTIFICATION CARD;

25 (d) THE DEVELOPMENT BY THE STATE HEALTH AGENCY OF A FORM
26 THAT CONSTITUTES "WRITTEN DOCUMENTATION" AS DEFINED AND USED
27 IN SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, WHICH

1 FORM A PHYSICIAN SHALL USE WHEN MAKING A MEDICAL MARIJUANA
2 RECOMMENDATION FOR A PATIENT;

3 ~~(d)~~ (e) The CONDITIONS FOR issuance AND RENEWAL, and THE
4 form, of ~~confidential~~ THE registry identification cards ISSUED TO
5 PATIENTS, INCLUDING BUT NOT LIMITED TO STANDARDS FOR ENSURING
6 THAT THE STATE HEALTH AGENCY ISSUES A REGISTRY IDENTIFICATION
7 CARD TO A PATIENT ONLY IF HE OR SHE HAS A BONA FIDE
8 PHYSICIAN-PATIENT RELATIONSHIP WITH A PHYSICIAN IN GOOD STANDING
9 AND LICENSED TO PRACTICE MEDICINE IN THE STATE OF COLORADO;

10 ~~(e)~~ (f) Communications with law enforcement officials about
11 ~~confidential~~ registry identification cards that have been suspended ~~where~~
12 WHEN a patient is no longer diagnosed as having a debilitating medical
13 condition; ~~and~~

14 ~~(f)~~ (g) The manner in which the ~~department~~ STATE HEALTH
15 AGENCY may consider adding debilitating medical conditions to the list
16 of debilitating medical conditions contained in section 14 of article XVIII
17 of the state constitution.

18 (3) **Physicians.** A PHYSICIAN WHO CERTIFIES A DEBILITATING
19 MEDICAL CONDITION FOR AN APPLICANT TO THE MEDICAL MARIJUANA
20 PROGRAM SHALL COMPLY WITH ALL OF THE FOLLOWING REQUIREMENTS:

21 (a) THE PHYSICIAN SHALL HAVE A VALID, UNRESTRICTED
22 COLORADO LICENSE TO PRACTICE MEDICINE, WHICH LICENSE IS IN GOOD
23 STANDING.

24 (b) THE PHYSICIAN MAY CERTIFY TO THE STATE HEALTH AGENCY
25 THAT A PATIENT HAS A DEBILITATING MEDICAL CONDITION AND THAT THE
26 PATIENT MAY BENEFIT FROM THE USE OF MEDICAL MARIJUANA ONLY IF THE
27 PHYSICIAN HAS A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP WITH THE

1 PATIENT APPLYING FOR THE MEDICAL MARIJUANA PROGRAM.

2 (c) THE PHYSICIAN SHALL MAINTAIN A _____ RECORD-KEEPING
3 SYSTEM FOR ALL PATIENTS FOR WHOM THE PHYSICIAN HAS RECOMMENDED
4 THE MEDICAL USE OF MARIJUANA, AND, PURSUANT TO AN INVESTIGATION
5 INITIATED PURSUANT TO SECTION 12-36-118, C.R.S., THE PHYSICIAN
6 SHALL PRODUCE SUCH MEDICAL RECORDS TO THE COLORADO STATE
7 BOARD OF MEDICAL EXAMINERS AFTER REDACTING ANY PATIENT OR
8 PRIMARY CAREGIVER IDENTIFYING INFORMATION.

9 (d) A PHYSICIAN SHALL NOT:

10 (I) ACCEPT, SOLICIT, OR OFFER ANY FORM OF PECUNIARY
11 REMUNERATION FROM OR TO A PRIMARY CAREGIVER, DISTRIBUTOR, OR
12 ANY OTHER PROVIDER OF MEDICAL MARIJUANA;

13 (II) OFFER A DISCOUNT OR ANY OTHER THING OF VALUE TO A
14 PATIENT WHO USES OR AGREES TO USE A PARTICULAR PRIMARY
15 CAREGIVER, DISTRIBUTOR, OR OTHER PROVIDER OF MEDICAL MARIJUANA
16 TO PROCURE MEDICAL MARIJUANA;

17 (III) EXAMINE A PATIENT FOR PURPOSES OF DIAGNOSING A
18 DEBILITATING MEDICAL CONDITION AT A LOCATION WHERE MEDICAL
19 MARIJUANA IS SOLD OR DISTRIBUTED; OR

20 (IV) HOLD AN ECONOMIC INTEREST IN AN ENTERPRISE THAT
21 PROVIDES OR DISTRIBUTES MEDICAL MARIJUANA IF THE PHYSICIAN
22 CERTIFIES THE DEBILITATING MEDICAL CONDITION OF A PATIENT FOR
23 PARTICIPATION IN THE MEDICAL MARIJUANA PROGRAM.


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25 (4) **Enforcement.** (a) IF THE STATE HEALTH AGENCY HAS
26 REASONABLE CAUSE TO BELIEVE THAT A PHYSICIAN HAS VIOLATED
27 SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, PARAGRAPH

1 (a), (b), OR (c) OF SUBSECTION (3) OF THIS SECTION, OR THE RULES
2 PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO SUBSECTION
3 (2) OF THIS SECTION, THE STATE HEALTH AGENCY MAY REFER THE MATTER
4 TO THE STATE BOARD OF MEDICAL EXAMINERS CREATED IN SECTION
5 12-36-103, C.R.S., FOR AN INVESTIGATION AND DETERMINATION.

6 (b) IF THE STATE HEALTH AGENCY HAS REASONABLE CAUSE TO
7 BELIEVE THAT A PHYSICIAN HAS VIOLATED PARAGRAPH (d) OF SUBSECTION
8 (3) OF THIS SECTION, THE STATE HEALTH AGENCY SHALL CONDUCT A
9 HEARING PURSUANT TO SECTION 24-4-104, C.R.S., TO DETERMINE
10 WHETHER A VIOLATION HAS OCCURRED.

11 (c) UPON A FINDING OF UNPROFESSIONAL CONDUCT PURSUANT TO
12 SECTION 12-36-117 (1) (mm), C.R.S., BY THE STATE BOARD OF MEDICAL
13 EXAMINERS OR A FINDING OF A VIOLATION OF PARAGRAPH (d) OF
14 SUBSECTION (3) OF THIS SECTION BY THE STATE HEALTH AGENCY, THE
15 STATE HEALTH AGENCY SHALL RESTRICT A PHYSICIAN'S AUTHORITY TO
16 RECOMMEND THE USE OF MEDICAL MARIJUANA, WHICH RESTRICTIONS MAY
17 INCLUDE THE REVOCATION OR SUSPENSION OF A PHYSICIAN'S PRIVILEGE TO
18 RECOMMEND MEDICAL MARIJUANA. THE RESTRICTION SHALL BE IN
19 ADDITION TO ANY SANCTION IMPOSED BY THE STATE BOARD OF MEDICAL
20 EXAMINERS.

21 

22 **(5) Renewal of patient identification card upon criminal**
23 **conviction. ANY PATIENT WHO IS CONVICTED OF A CRIMINAL OFFENSE**
24 **UNDER ARTICLE 18 OF TITLE 18, C.R.S., SENTENCED OR ORDERED BY A**
25 **COURT TO DRUG OR SUBSTANCE ABUSE TREATMENT, OR SENTENCED TO**
26 **THE DIVISION OF YOUTH CORRECTIONS, SHALL BE SUBJECT TO IMMEDIATE**
27 **RENEWAL OF HIS OR HER PATIENT REGISTRY IDENTIFICATION CARD, AND**

1 THE PATIENT SHALL APPLY FOR THE RENEWAL BASED UPON A
2 RECOMMENDATION FROM A PHYSICIAN WITH WHOM THE PATIENT HAS A
3 BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP.

4 (6) A PARENT WHO SUBMITS A MEDICAL MARIJUANA REGISTRY
5 APPLICATION FOR HIS OR HER CHILD SHALL HAVE HIS OR HER SIGNATURE
6 NOTARIZED ON THE APPLICATION.

7 (2) (7) **Fees.** The department STATE HEALTH AGENCY may
8 collect fees from patients who, pursuant to section 14 of article XVIII of
9 the state constitution, apply to the medical marijuana program established
10 by such section for a marijuana registry identification CARD for the
11 purpose of offsetting the department's STATE HEALTH AGENCY'S direct and
12 indirect costs of administering the program, AND THE STATE BOARD OF
13 MEDICAL EXAMINERS' DIRECT AND INDIRECT COSTS ASSOCIATED WITH
14 INVESTIGATING AND PROSECUTING REFERRALS OF PHYSICIANS FROM THE
15 STATE HEALTH AGENCY IN RELATION TO THE MEDICAL MARIJUANA
16 PROGRAM. The amount of ~~such~~ THE fees shall be set by rule of the state
17 board of health STATE HEALTH AGENCY. THE STATE HEALTH AGENCY
18 SHALL PROMULGATE RULES THAT ALLOW A PATIENT TO CLAIM INDIGENCE
19 AS IT RELATES TO PAYING THE FEE APPROVED PURSUANT TO THIS
20 SUBSECTION (7) AND THAT ESTABLISH THE STANDARD FOR INDIGENCE, THE
21 PROCESS THE STATE HEALTH AGENCY SHALL USE TO DETERMINE WHETHER
22 A PERSON WHO CLAIMS INDIGENCE MEETS THE STANDARD FOR INDIGENCE,
23 AND THE PROCESS TO WAIVE THE FEE APPROVED PURSUANT TO THIS
24 SUBSECTION (7) IF THE STATE HEALTH AGENCY DETERMINES THAT THE
25 PATIENT MEETS THE STANDARD FOR INDIGENCE. All fees collected by the
26 department STATE HEALTH AGENCY through the medical marijuana
27 program shall be transferred to the state treasurer who shall credit the

1 same to the medical marijuana program cash fund, which fund is hereby
2 created.

3 ~~(3)~~ **(8) Cash fund.** (a) The medical marijuana program cash
4 fund shall be subject to annual appropriation by the general assembly to
5 the ~~department~~ STATE HEALTH AGENCY for the purpose of establishing,
6 operating, and maintaining the medical marijuana program. ~~established~~
7 ~~by section 14 of article XVIII of the state constitution.~~ THE STATE
8 HEALTH AGENCY SHALL TRANSFER FROM THE MEDICAL MARIJUANA
9 PROGRAM CASH FUND TO THE DEPARTMENT OF REGULATORY AGENCIES
10 FOR THE BENEFIT OF THE STATE BOARD OF MEDICAL EXAMINERS MONEYS
11 TO PAY THE DIRECT AND INDIRECT COSTS ASSOCIATED WITH
12 INVESTIGATING AND PROSECUTING REFERRALS OF PHYSICIANS FROM THE
13 STATE HEALTH AGENCY IN RELATION TO THE MEDICAL MARIJUANA
14 PROGRAM. All moneys credited to the medical marijuana program cash
15 fund and all interest derived from the deposit of such moneys that are not
16 expended during the fiscal year shall be retained in the fund for future use
17 and shall not be credited or transferred to the general fund or any other
18 fund.

19 (b) Notwithstanding any provision of paragraph (a) of this
20 subsection ~~(3)~~ (8) to the contrary, on April 20, 2009, the state treasurer
21 shall deduct two hundred fifty-eight thousand seven hundred thirty-five
22 dollars from the medical marijuana program cash fund and transfer such
23 sum to the general fund.

24 ==
25 ==

26 **SECTION 2.** 25-1-1202 (1), Colorado Revised Statutes, is
27 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

1 **25-1-1202. Index of statutory sections regarding medical**
2 **record confidentiality and health information.** (1) Statutory
3 provisions concerning policies, procedures, and references to the release,
4 sharing, and use of medical records and health information include the
5 following:

6 (vv.5) SECTION 25-1.5-106, CONCERNING THE MEDICAL
7 MARIJUANA PROGRAM;

8 **SECTION 3.** 12-36-117 (1), Colorado Revised Statutes, is
9 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

10 **12-36-117. Unprofessional conduct - repeal.**

11 (1) "Unprofessional conduct" as used in this article means:

12 (mm) FAILURE TO COMPLY WITH THE REQUIREMENTS OF SECTION
13 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, SECTION 25-1.5-106,
14 C.R.S., OR THE RULES PROMULGATED BY THE STATE HEALTH AGENCY
15 PURSUANT TO SECTION 25-1.5-106 (2), C.R.S.

16 **SECTION 4.** 12-36-118 (5) (g), Colorado Revised Statutes, is
17 amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

18 **12-36-118. Disciplinary action by board - immunity.**

19 (5) (g) (X) IN ALL CASES INVOLVING ALLEGED VIOLATIONS OF SECTION
20 12-36-117(1)(mm), THE BOARD SHALL PROMPTLY NOTIFY THE EXECUTIVE
21 DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OF
22 ITS FINDINGS, INCLUDING WHETHER IT FOUND THAT THE PHYSICIAN
23 VIOLATED SECTION 12-36-117(1)(mm) AND ANY RESTRICTIONS IT PLACED
24 ON THE PHYSICIAN WITH RESPECT TO RECOMMENDING THE USE OF
25 MEDICAL MARIJUANA.

26 **SECTION 5. Appropriation.** (1) In addition to any other
27 appropriation, there is hereby appropriated, out of any moneys in the

1 medical marijuana program cash fund created in section 25-1.5-106 (8),
2 Colorado Revised Statutes, not otherwise appropriated, to the department
3 of public health and environment, for the fiscal year beginning July 1,
4 2010, the sum of eight hundred fifteen thousand two hundred twenty-four
5 dollars (\$815,224) cash funds and 2.1 FTE, or so much thereof as may be
6 necessary, for the implementation of this act. Of said appropriation,
7 ninety-nine thousand eight hundred seventy-nine dollars (\$99,879) shall
8 be allocated to the administration and support division and seven hundred
9 fifteen thousand three hundred forty-five dollars (\$715,345) and 2.1 FTE
10 shall be allocated to the center for health and environmental information.

11 (2) In addition to any other appropriation, there is hereby
12 appropriated to the department of regulatory agencies, for the fiscal year
13 beginning July 1, 2010, the sum of five hundred ninety-three thousand
14 three hundred thirty-three dollars (\$593,333) and 1.2 FTE, for the
15 investigation and prosecution of physicians referred to the board of
16 medical examiners pursuant to section 25-1.5-106 (5), Colorado Revised
17 Statutes, or so much thereof as may be necessary for the implementation
18 of this act. Said appropriation shall be from reappropriated funds
19 received from the department of public health and environment out of the
20 appropriation made in subsection (1) of this section to the center for
21 health and environmental information. Of said appropriation, five
22 hundred twelve thousand five hundred eighty-four dollars (\$512,584)
23 shall be allocated to the executive director's office and eighty thousand
24 seven hundred forty-nine dollars (\$80,749) and 1.2 FTE shall be allocated
25 to the division of registrations.

26 (3) In addition to any other appropriation, there is hereby
27 appropriated to the department of law, for the fiscal year beginning July

1 1, 2010, the sum of six hundred twelve thousand four hundred sixty-three
2 dollars (\$612,463) and 5.2 FTE, or so much thereof as may be necessary,
3 for the provision of legal services to the department of public health and
4 environment and the department of regulatory agencies related to the
5 implementation of this act. Of said appropriation, ninety-nine thousand
6 eight hundred seventy-nine dollars (\$99,879) shall be from reappropriated
7 funds received from the department of public health and environment out
8 of the appropriation made in subsection (1) of this section to the
9 administration and support division and five hundred twelve thousand
10 five hundred eighty-four dollars (\$512,584) shall be from reappropriated
11 funds received from the department of regulatory agencies out of the
12 appropriation made in subsection (2) of this section to the executive
13 director's office.

14 **SECTION 6. Safety clause.** The general assembly hereby finds,
15 determines, and declares that this act is necessary for the immediate
16 preservation of the public peace, health, and safety.