

**First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 11-0072.01 Michael Dohr

HOUSE BILL 11-1043

HOUSE SPONSORSHIP

Massey,

SENATE SPONSORSHIP

Steadman,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MEDICAL MARIJUANA, AND MAKING AN APPROPRIATION**
102 **THEREFOR.**

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>.)

The bill clarifies a number of provisions in the "Colorado Medical Marijuana Code". Under current law, any person applying for or who has been issued a medical marijuana license is subject to certain residency requirements. The bill narrows the application of the residency requirements to owners only, as defined by rule of the department of

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.

revenue.

A medical marijuana infused-products manufacturer is limited to having no more than 500 marijuana plants on site unless the manufacturer is granted a waiver.

A primary caregiver who cultivates medical marijuana for his or her patients must register the cultivation site and all patient identification numbers with the medical marijuana state licensing authority and comply with all zoning and building codes.

Under current law, a medical marijuana center is subject to prohibitions on unfair business practices that may include selling products below cost. The bill allows a center to sell at a reduced cost or donate medical marijuana to indigent patients. A medical marijuana center is authorized to sell clones in addition to medical marijuana and medical marijuana infused-products. A medical marijuana center is permitted to trade medical marijuana with another center in exact equal amounts and can sell that medical marijuana, but the medical marijuana may not be traded again.

Under current law, a medical marijuana license may not be issued to a person who has been convicted of a felony within the last 5 years or who has ever been convicted of a felony drug offense. The bill changes the requirement so that only those persons who have been convicted of felony drug offense in the last 5 years may not be issued a license.

Current law imposes a 2-year residency requirement on all license applicants. The bill changes the residency requirement so that it applies only to those applicants who are going to be owners of a medical marijuana business.

Currently, a licensed medical marijuana center may not be located within 1,000 feet of a school, drug or alcohol treatment facility, higher education facility, or residential child care facility. The bill grandfathered in those centers that were located at their present sites on or before December 15, 2009. The bill repeals the provisions that made the location of optional premises cultivation operations confidential.

The bill creates 2 new classes of medical marijuana licenses:

- ! A **primary caregiver cultivation license**, which gives a primary caregiver who has received a waiver to serve more than 5 patients or who grows more than 30 plants at a time the authority to grow medical marijuana only for his or her patients or for the patients of another primary caregiver, if the licensee has been delegated authority over the patients.
- ! An **infused-products manufacturing facility license**, which allows a facility to be licensed for exclusive use by multiple infused-products manufacturers.

The bill clarifies that if a patient has applied for, but has not yet received, a registry identification card, the patient may present the application and a photo identification at the time of purchase in lieu of the

registration card.

The bill states that the labeling of medical marijuana-infused products is a matter of statewide concern.

The bill creates a process by which a physician who has a restricted license to practice medicine may apply for clarification of whether the restriction prohibits the physician from making a medical marijuana recommendation.

A primary caregiver may delegate his or her authority to another primary caregiver with whom the primary caregiver has an existing business relationship if he or she maintains a professional relationship with a patient.

The bill states that land that is used for the cultivation of medical marijuana cannot be classified as agricultural land for tax purposes.

The bill clarifies that medical marijuana medical records are medical records for the purposes of the theft of medical records statute. An owner, officer, or employee of a licensed medical marijuana business who releases the medical record of a patient commits a class 1 misdemeanor. The state licensing authority may adopt rules regarding licensing action against a licensed business that releases patient information.

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

2 **SECTION 1.** 12-43.3-103 (2) (c), Colorado Revised Statutes, is
3 amended, and the said 12-43.3-103 (2) is further amended BY THE
4 ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

5 **12-43.3-103. Applicability.** (2) (c) On and after July 1, 2011,
6 all businesses for the purpose of cultivation, manufacture, or sale of
7 medical marijuana or medical marijuana-infused products, as defined in
8 this article, shall be subject to the terms and conditions of this article and
9 any rules promulgated pursuant to this article; EXCEPT THAT A PERSON
10 THAT HAS MET THE DEADLINES SET FORTH IN PARAGRAPHS (a) AND (b) OF
11 SUBSECTION (1) OF THIS SECTION THAT HAS NOT HAD ITS APPLICATION
12 ACTED UPON BY THE STATE LICENSING AUTHORITY MAY CONTINUE TO
13 OPERATE UNTIL ACTION IS TAKEN ON THE APPLICATION. WHILE
14 CONTINUING TO OPERATE PRIOR TO THE LICENSING AUTHORITY ACTING ON

1 THE APPLICATION, THE PERSON SHALL OTHERWISE BE SUBJECT TO THE
2 TERMS AND CONDITIONS OF THIS ARTICLE AND ALL RULES PROMULGATED
3 PURSUANT TO THIS ARTICLE.

4 (d) (I) ON AND AFTER JULY 1, 2012, PERSONS WHO DID NOT MEET
5 ALL REQUIREMENTS OF PARAGRAPH (a) OF SUBSECTION (1) OF THIS
6 SECTION AS OF JULY 1, 2010, MAY BEGIN TO APPLY FOR A LICENSE
7 PURSUANT TO THIS ARTICLE. A BUSINESS OR OPERATION THAT APPLIES
8 AND IS APPROVED FOR ITS LICENSE AFTER JULY 1, 2012, SHALL CERTIFY TO
9 THE STATE LICENSING AUTHORITY THAT IT IS CULTIVATING AT LEAST
10 SEVENTY PERCENT OF THE MEDICAL MARIJUANA NECESSARY FOR ITS
11 OPERATION WITHIN NINETY DAYS AFTER BEING LICENSED.

12 (II) FOR THOSE PERSONS THAT ARE LICENSED PRIOR TO JULY 1,
13 2012, THE PERSON MAY APPLY TO THE LOCAL AND STATE LICENSING
14 AUTHORITIES REGARDING CHANGES TO ITS LICENSE AND MAY APPLY FOR
15 A NEW LICENSE IF THE LICENSE IS FOR A BUSINESS THAT HAS BEEN
16 LICENSED AND THE PERSON IS PURCHASING THAT BUSINESS.

17 (e) THIS ARTICLE SETS FORTH THE EXCLUSIVE MEANS BY WHICH
18 MANUFACTURE, SALE, DISTRIBUTION, AND DISPENSING OF MEDICAL
19 MARIJUANA MAY OCCUR IN THE STATE OF COLORADO. LICENSEES SHALL
20 NOT BE SUBJECT TO THE TERMS OF SECTION 14 OF ARTICLE XVIII OF THE
21 STATE CONSTITUTION, EXCEPT WHERE SPECIFICALLY REFERENCED IN THIS
22 ARTICLE.

23 **SECTION 2.** 12-43.3-202 (1) (c), (1) (d), and (2) (a) (IV),
24 Colorado Revised Statutes, are amended to read:

25 **12-43.3-202. Powers and duties of state licensing authority -**
26 **repeal.** (1) The state licensing authority shall:

27 (c) Hear and determine at a public hearing any ~~appeals of a~~

1 CONTESTED state license denial and any complaints against a licensee and
2 administer oaths and issue subpoenas to require the presence of persons
3 and the production of papers, books, and records necessary to the
4 determination of any hearing so held, all in accordance with article 4 of
5 title 24, C.R.S. The state licensing authority may, at its discretion,
6 delegate to the department of revenue hearing officers the authority to
7 conduct licensing, disciplinary, and rule-making hearings under section
8 24-4-105, C.R.S. When conducting such hearings, the hearing officers
9 shall be employees of the state licensing authority under the direction and
10 supervision of the executive director and the state licensing authority.

11 (d) Maintain the confidentiality of reports OR OTHER INFORMATION
12 obtained from a licensee showing the sales volume or quantity of medical
13 marijuana sold, OR REVEALING ANY PATIENT INFORMATION, or any other
14 records that are exempt from public inspection pursuant to state law.
15 SUCH REPORTS OR OTHER INFORMATION MAY BE USED ONLY FOR A
16 PURPOSE AUTHORIZED BY THIS ARTICLE OR FOR ANY OTHER STATE OR
17 LOCAL LAW ENFORCEMENT PURPOSE.

18 (2) (a) Rules promulgated pursuant to paragraph (b) of subsection
19 (1) of this section may include, but need not be limited to, the following
20 subjects:

21 (IV) Requirements for inspections, investigations, searches,
22 seizures, FORFEITURES, and such additional activities as may become
23 necessary from time to time;

24 **SECTION 3.** 12-43.3-302 (1) and (4), Colorado Revised Statutes,
25 are amended to read:

26 **12-43.3-302. Public hearing notice - posting and publication.**

27 (1) Upon receipt of an application for a local license, except an

1 application for renewal or for transfer of ownership, a local licensing
2 authority may schedule a public hearing upon the application to be held
3 not less than thirty days after the date of the application. If the local
4 licensing authority schedules a hearing for a ~~medical marijuana center~~
5 LICENSE application, it shall post and publish public notice thereof not
6 less than ten days prior to the hearing. The local licensing authority shall
7 give public notice by the posting of a sign in a conspicuous place on the
8 ~~medical marijuana center~~ LICENSE APPLICANT'S premises for which
9 LICENSE application has been made and by publication in a newspaper of
10 general circulation in the county in which the ~~medical marijuana center~~
11 APPLICANT'S premises are located.

12 (4) If the building in which medical marijuana is to be sold
13 CULTIVATED, MANUFACTURED, OR DISTRIBUTED is in existence at the time
14 of the application, a sign posted as required in subsections (1) and (2) of
15 this section shall be placed so as to be conspicuous and plainly visible to
16 the general public. If the building is not constructed at the time of the
17 application, the applicant shall post a sign at the premises upon which the
18 building is to be constructed in such a manner that the notice shall be
19 conspicuous and plainly visible to the general public.

20 **SECTION 4.** 12-43.3-303 (2), Colorado Revised Statutes, is
21 amended to read:

22 **12-43.3-303. Results of investigation - decision of authorities.**

23 (2) Before entering a decision approving or denying the application for
24 a local license, the local licensing authority may consider, except where
25 this article specifically provides otherwise, the facts and evidence
26 adduced as a result of its investigation, as well as any other facts pertinent
27 to the type of license for which application has been made, including the

1 number, type, and availability of medical marijuana ~~outlets~~ CENTERS,
2 OPTIONAL PREMISES CULTIVATION OPERATIONS, OR MEDICAL
3 MARIJUANA-INFUSED PRODUCTS MANUFACTURERS located in or near the
4 premises under consideration, and any other pertinent matters affecting
5 the qualifications of the applicant for the conduct of the type of business
6 proposed.

7 **SECTION 5.** 12-43.3-306, Colorado Revised Statutes, is
8 amended to read:

9 **12-43.3-306. Denial of application.** (1) The state licensing
10 authority shall deny a state license if the premises on which the applicant
11 proposes to conduct its business do not meet the requirements of this
12 article or for reasons set forth in section 12-43.3-104 (1) (c) or
13 12-43.3-305, AND THE STATE LICENSING AUTHORITY MAY DENY A LICENSE
14 FOR GOOD CAUSE AS DEFINED BY SECTION 12-43.3-104 (1.5) (a) OR (1.5)
15 (b).

16 (2) If the state licensing authority denies a state license pursuant
17 to subsection (1) of this section, the applicant shall be entitled to a
18 hearing pursuant to ~~article 4 of title 24, C.R.S.~~ SECTION 24-4-104 (9),
19 C.R.S., AND PURSUANT TO SECTION 24-4-106, C.R.S. The state licensing
20 authority shall provide written notice of the grounds for denial of the state
21 license to the applicant and to the local licensing authority at least fifteen
22 days prior to the hearing.

23 **SECTION 6.** 12-43.3-307 (1) (h), (1) (m), (2) (a), and (2) (c),
24 Colorado Revised Statutes, are amended to read:

25 **12-43.3-307. Persons prohibited as licensees - repeal.** (1) A
26 license provided by this article shall not be issued to or held by:

27 (h) A person who has discharged a sentence in the five years

1 immediately preceding the application date for a conviction of a felony
2 or a person who at any time has been convicted of a felony pursuant to
3 any state or federal law regarding the possession, distribution,
4 MANUFACTURING, CULTIVATION, or use of a controlled substance;

5 (m) ~~A person~~ AN OWNER, AS DEFINED BY RULE OF THE STATE
6 LICENSING AUTHORITY, who has not been a resident of Colorado for at
7 least two years prior to the date of the ~~person's~~ OWNER'S application;
8 except that:

9 (I) (A) For a ~~person~~ AN OWNER who submits an application for
10 licensure pursuant to this article by December 15, 2010, this requirement
11 shall not apply to that ~~person~~ OWNER if ~~the person~~ HE OR SHE was a
12 resident of the state of Colorado on December 15, 2009.

13 (B) THIS SUBPARAGRAPH (I) IS REPEALED, EFFECTIVE JULY 1, 2012.

14 (2) (a) In investigating the qualifications of an applicant or a
15 licensee, the state AND LOCAL licensing ~~authority~~ AUTHORITIES may have
16 access to criminal history record information furnished by a criminal
17 justice agency subject to any restrictions imposed by such agency. In the
18 event the state OR LOCAL licensing authority considers the applicant's
19 criminal history record, the state OR LOCAL licensing authority shall also
20 consider any information provided by the applicant regarding such
21 criminal history record, including but not limited to evidence of
22 rehabilitation, character references, and educational achievements,
23 especially those items pertaining to the period of time between the
24 applicant's last criminal conviction and the consideration of the
25 application for a state license.

26 (c) At the time of filing an application for issuance or renewal of
27 a state medical marijuana center license, medical marijuana-infused

1 product manufacturer license, or optional premises cultivation license, an
2 applicant shall submit a set of his or her fingerprints and file personal
3 history information concerning the applicant's qualifications for a state
4 license on forms prepared by the state licensing authority. The state OR
5 LOCAL licensing authority shall submit the fingerprints to the Colorado
6 bureau of investigation for the purpose of conducting fingerprint-based
7 criminal history record checks. The Colorado bureau of investigation
8 shall forward the fingerprints to the federal bureau of investigation for the
9 purpose of conducting fingerprint-based criminal history record checks.
10 The state OR LOCAL licensing authority may acquire a name-based
11 criminal history record check for an applicant or a license holder who has
12 twice submitted to a fingerprint-based criminal history record check and
13 whose fingerprints are unclassifiable. An applicant who has previously
14 submitted fingerprints for state licensing purposes may request that the
15 fingerprints on file be used. The state OR LOCAL licensing authority shall
16 use the information resulting from the fingerprint-based criminal history
17 record check to investigate and determine whether an applicant is
18 qualified to hold a state license pursuant to this article. The state OR
19 LOCAL licensing authority may verify any of the information an applicant
20 is required to submit.

21 **SECTION 7.** 12-43.3-310 (6), Colorado Revised Statutes, is
22 amended to read:

23 **12-43.3-310. Licensing in general.** (6) All ~~owners~~, officers,
24 managers, and employees of a medical marijuana center, optional
25 premises cultivation operation, or medical marijuana-infused products
26 manufacturer shall be residents of Colorado UPON THE DATE OF THEIR
27 LICENSE APPLICATION. AN OWNER SHALL MEET THE RESIDENCY

1 REQUIREMENTS IN SECTION 12-43.3-307 (1) (m). A local licensing
2 authority shall not issue a license provided for in this article until that
3 share of the license application fee due to the state has been received by
4 the department of revenue. All licenses granted pursuant to this article
5 shall be valid for a period not to exceed two years from the date of
6 issuance unless revoked or suspended pursuant to this article or the rules
7 promulgated pursuant to this article.

8 **SECTION 8. Repeal.** 12-43.3-310 (14), Colorado Revised
9 Statutes, is repealed as follows:

10 **12-43.3-310. Licensing in general.** (14) ~~The location of an~~
11 ~~optional premises cultivation operation as described in section~~
12 ~~12-43.3-403 shall be a confidential record and shall be exempt from the~~
13 ~~"Colorado Open Records Act". State and local licensing authorities shall~~
14 ~~keep the location of an optional premises cultivation operation~~
15 ~~confidential and shall redact the location from all public records.~~
16 ~~Notwithstanding any provision of law to the contrary, a state or local~~
17 ~~licensing agency may share information regarding the location of an~~
18 ~~optional premises cultivation operation with a peace officer or a law~~
19 ~~enforcement agency.~~

20 **SECTION 9.** 12-43.3-313 (2), Colorado Revised Statutes, is
21 amended to read:

22 **12-43.3-313. Unlawful financial assistance.** (2) A person shall
23 not have an unreported financial interest in a license pursuant to this
24 article unless that person has undergone a fingerprint-based criminal
25 history record check as provided for by the state licensing authority in its
26 rules; except that this subsection (2) shall not apply to PERSONS WHO ARE:

27 (a) Banks, savings and loan associations, or industrial banks

1 supervised and regulated by an agency of the state or federal government;

2 or to

3 (b) FHA-approved mortgagees; or ~~to stockholders, directors, or~~
4 ~~officers thereof.~~

5 (c) INVESTMENT FUNDS ORGANIZED UNDER THE LAWS OF THIS
6 STATE WHICH ARE MANAGED BY PERSONS WHO ARE LICENSED PURSUANT
7 TO THIS ARTICLE AND WHOSE INVESTORS DO NOT HAVE THE POWER TO
8 DIRECT OR CONTROL THE ACTIONS OF THE FUND OR ITS INVESTMENTS.

9 **SECTION 10.** 12-43.3-402 (3), (4), and (6), Colorado Revised
10 Statutes, are amended, and the said 12-43.3-402 is further amended BY
11 THE ADDITION OF A NEW SUBSECTION, to read:

12 **12-43.3-402. Medical marijuana center license.** (3) Every
13 person selling medical marijuana as provided for in this article shall sell
14 only medical marijuana grown in its medical marijuana optional premises
15 licensed pursuant to this article. IN ADDITION TO MEDICAL MARIJUANA, A
16 MEDICAL MARIJUANA CENTER MAY SELL NO MORE THAN SIX
17 NONFLOWERING MARIJUANA PLANTS TO A PATIENT WITHIN THREE MONTHS
18 OF A PRIOR SALE OF NONFLOWERING PLANTS. The provisions of this
19 subsection (3) shall not apply to medical marijuana-infused products.

20 (4) Notwithstanding the requirements of subsection (3) of this
21 section to the contrary, a medical marijuana licensee may purchase not
22 more than thirty percent of its total on-hand inventory of medical
23 marijuana from another licensed medical marijuana center in Colorado.
24 A medical marijuana center may sell no more than thirty percent of its
25 total on-hand inventory to another Colorado licensed medical marijuana
26 licensee; EXCEPT THAT THE DIRECTOR OF THE DIVISION THAT REGULATES
27 MEDICAL MARIJUANA MAY GRANT A TEMPORARY WAIVER:

1 (a) TO A MEDICAL MARIJUANA CENTER OR APPLICANT IF THE
2 MEDICAL MARIJUANA CENTER OR APPLICANT SUFFERS A CATASTROPHIC
3 EVENT RELATED TO ITS INVENTORY; OR

4 (b) TO A NEW MEDICAL MARIJUANA CENTER LICENSEE FOR A
5 PERIOD NOT TO EXCEED NINETY DAYS SO THE NEW LICENSEE CAN
6 CULTIVATE THE NECESSARY MEDICAL MARIJUANA TO COMPLY WITH THIS
7 SUBSECTION (4).

8 (6) ~~A licensed medical marijuana center may provide a small~~
9 ~~amount of its medical marijuana for testing to a laboratory that is licensed~~
10 ~~pursuant to the occupational licensing rules promulgated pursuant to~~
11 ~~section 12-43.3-202 (2) (a) (IV)~~ A MEDICAL MARIJUANA CENTER MAY
12 PROVIDE A SAMPLE OF ITS PRODUCTS TO A LABORATORY THAT HAS A
13 OCCUPATIONAL LICENSE FROM THE STATE LICENSING AUTHORITY FOR
14 TESTING AND RESEARCH PURPOSES. THE LABORATORY MAY DEVELOP,
15 TEST, AND PRODUCE MEDICAL MARIJUANA-BASED PRODUCTS. THE
16 LABORATORY MAY CONTRACT METHOD OR PRODUCT DEVELOPMENT WITH
17 A LICENSED MEDICAL MARIJUANA CENTER OR LICENSED MEDICAL
18 MARIJUANA INFUSED-PRODUCT MANUFACTURER. THE STATE LICENSING
19 AUTHORITY SHALL PROMULGATE RULES PURSUANT TO ITS AUTHORITY IN
20 SECTION 12-43.3-202 (1) (b), C.R.S., RELATED TO ACCEPTABLE TESTING
21 AND RESEARCH PRACTICES; INCLUDING BUT NOT LIMITED TO TESTING,
22 STANDARDS, QUALITY CONTROL ANALYSIS, EQUIPMENT CERTIFICATION
23 AND CALIBRATION, AND CHEMICAL IDENTIFICATION AND OTHER
24 SUBSTANCES USED IN BONA-FIDE RESEARCH METHODS.

25 (9) NOTWITHSTANDING THE PROVISIONS OF SECTION 12-43.3-901
26 (4) (m), A MEDICAL MARIJUANA CENTER MAY SELL BELOW COST OR
27 DONATE MEDICAL MARIJUANA, NO MORE THAN SIX NONFLOWERING

1 MARIJUANA PLANTS TO A PATIENT WITHIN THREE MONTHS OF A PRIOR SALE
2 OF NONFLOWERING PLANTS, OR MEDICAL MARIJUANA-INFUSED PRODUCTS
3 TO PATIENTS WHO ARE DESIGNATED AS INDIGENT BY THE STATE HEALTH
4 AGENCY.

5 **SECTION 11.** 12-43.3-403, Colorado Revised Statutes, is
6 amended to read:

7 **12-43.3-403. Optional premises cultivation license.** An optional
8 premises cultivation license may be issued only to a person licensed
9 pursuant to section 12-43.3-402 (1) or 12-43.3-404 (1) who grows and
10 cultivates medical marijuana at an additional Colorado licensed premises
11 contiguous or not contiguous with the licensed premises of the person's
12 medical marijuana center license or the person's medical
13 marijuana-infused products manufacturing license. THE LICENSE MAY BE
14 USED TO PROVIDE MEDICAL MARIJUANA TO MORE THAN ONE LICENSED
15 MEDICAL MARIJUANA CENTER OR LICENSED MEDICAL MARIJUANA
16 INFUSED-PRODUCTS MANUFACTURER SO LONG AS THE HOLDER OF THE
17 OPTIONAL PREMISE CULTIVATION LICENSE IS ALSO A HOLDER OF EACH
18 LICENSED MEDICAL MARIJUANA CENTER OR LICENSED MEDICAL
19 MARIJUANA INFUSED-PRODUCTS MANUFACTURER TO WHICH MEDICAL
20 MARIJUANA IS PROVIDED.

21 **SECTION 12.** 12-43.3-404 (5) and (8), Colorado Revised
22 Statutes, are amended, and the said 12-43.3-404 is further amended BY
23 THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to
24 read:

25 **12-43.3-404. Medical marijuana-infused products**
26 **manufacturing license - repeal.** (5) The medical marijuana-infused
27 product shall be sealed and conspicuously labeled in compliance with this

1 article and any rules promulgated pursuant to this article. THE LABELING
2 OF MEDICAL MARIJUANA-INFUSED PRODUCTS IS A MATTER OF STATEWIDE
3 CONCERN.

4 (8) A medical marijuana-infused products licensee that has an
5 optional premises cultivation license shall not sell any of the medical
6 marijuana that it cultivates EXCEPT FOR THE MEDICAL MARIJUANA THAT
7 IS CONTAINED IN MEDICAL MARIJUANA-INFUSED PRODUCTS.

8 (9) (a) A MEDICAL MARIJUANA-INFUSED PRODUCTS LICENSEE MAY
9 NOT HAVE MORE THAN FIVE HUNDRED MEDICAL MARIJUANA PLANTS ON ITS
10 PREMISES OR AT ITS OPTIONAL PREMISES CULTIVATION OPERATION;
11 EXCEPT THAT THE DIRECTOR OF THE DIVISION THAT REGULATES MEDICAL
12 MARIJUANA MAY GRANT A WAIVER IN EXCESS OF FIVE HUNDRED
13 MARIJUANA PLANTS BASED ON THE CONSIDERATION OF THE FACTORS IN
14 PARAGRAPH (b) OF THIS SUBSECTION (9).

15 (b) THE DIRECTOR OF THE DIVISION THAT REGULATES MEDICAL
16 MARIJUANA SHALL CONSIDER THE FOLLOWING FACTORS IN DETERMINING
17 WHETHER TO GRANT THE WAIVER DESCRIBED IN PARAGRAPH (a) OF THIS
18 SUBSECTION (9):

19 (I) THE NATURE OF THE PRODUCTS MANUFACTURED;

20 (II) THE BUSINESS NEED;

21 (III) EXISTING BUSINESS CONTRACTS WITH LICENSED MEDICAL
22 MARIJUANA CENTERS FOR THE PRODUCTION OF MEDICAL
23 MARIJUANA-INFUSED PRODUCTS; AND

24 (IV) THE ABILITY TO CONTRACT WITH LICENSED MEDICAL
25 MARIJUANA CENTERS FOR THE PRODUCTION OF MEDICAL
26 MARIJUANA-INFUSED PRODUCTS.

27 (c) THIS SUBSECTION (9) IS REPEALED, EFFECTIVE JULY 1, 2012.

1 (10) A MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURER
2 MAY PROVIDE A SAMPLE OF ITS PRODUCTS TO A LABORATORY THAT HAS A
3 OCCUPATIONAL LICENSE FROM THE STATE LICENSING AUTHORITY FOR
4 TESTING AND RESEARCH PURPOSES. THE STATE LICENSING AUTHORITY
5 SHALL PROMULGATE RULES PURSUANT TO ITS AUTHORITY IN SECTION
6 12-43.3-202 (1) (b), C.R.S., RELATED TO ACCEPTABLE TESTING AND
7 RESEARCH PRACTICES.

8 **SECTION 13.** Part 6 of article 43.3 of title 12, Colorado Revised
9 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
10 read:

11 **12-43.3-602. Disposition of unauthorized marijuana or**
12 **marijuana-infused products and related materials.** (1) THE
13 PROVISIONS OF THIS SECTION SHALL APPLY IN ADDITION TO ANY CRIMINAL,
14 CIVIL, OR ADMINISTRATIVE PENALTIES AND IN ADDITION TO ANY OTHER
15 PENALTIES PRESCRIBED BY THIS ARTICLE OR ANY RULES PROMULGATED
16 PURSUANT TO THIS ARTICLE. ANY PROVISIONS IN THIS ARTICLE RELATED
17 TO LAW ENFORCEMENT SHALL BE CONSIDERED A CUMULATIVE RIGHT OF
18 THE PEOPLE IN THE ENFORCEMENT OF THE CRIMINAL LAWS.

19 (2) EVERY LICENSEE LICENSED UNDER THIS ARTICLE SHALL BE
20 DEEMED, BY VIRTUE OF APPLYING FOR, HOLDING, OR RENEWING SUCH
21 PERSON'S LICENSE, TO HAVE EXPRESSLY CONSENTED TO THE PROCEDURES
22 SET FORTH IN THIS SECTION.

23 (3) A STATE OR LOCAL AGENCY SHALL NOT BE REQUIRED TO
24 CULTIVATE OR CARE FOR ANY MARIJUANA OR MARIJUANA-INFUSED
25 PRODUCT BELONGING TO OR SEIZED FROM A LICENSEE. A STATE OR LOCAL
26 AGENCY SHALL NOT BE AUTHORIZED TO SELL MARIJUANA, MEDICAL OR
27 OTHERWISE.

1 (4) IF THE STATE OR LOCAL LICENSING AUTHORITY ISSUES A FINAL
2 AGENCY ORDER IMPOSING A DISCIPLINARY ACTION AGAINST A LICENSEE
3 PURSUANT TO SECTION 12-43.3-601, THEN, IN ADDITION TO ANY OTHER
4 REMEDIES, THE LICENSING AUTHORITY'S FINAL AGENCY ORDER MAY
5 SPECIFY THAT SOME OR ALL OF THE LICENSEE'S MARIJUANA OR
6 MARIJUANA-INFUSED PRODUCT IS NOT MEDICAL MARIJUANA OR A MEDICAL
7 MARIJUANA-INFUSED PRODUCT AND IS AN ILLEGAL CONTROLLED
8 SUBSTANCE. THE ORDER MAY FURTHER SPECIFY THAT THE LICENSEE
9 SHALL LOSE ANY INTEREST IN ANY THE MARIJUANA OR
10 MARIJUANA-INFUSED PRODUCT EVEN IF THE MARIJUANA OR
11 MARIJUANA-INFUSED PRODUCT PREVIOUSLY QUALIFIED AS MEDICAL
12 MARIJUANA OR A MEDICAL MARIJUANA-INFUSED PRODUCT. THE FINAL
13 AGENCY ORDER MAY DIRECT THE DESTRUCTION OF ANY SUCH MARIJUANA
14 AND MARIJUANA-INFUSED PRODUCTS, EXCEPT AS PROVIDED IN
15 SUBSECTIONS (5) AND (6) OF THIS SECTION. THE AUTHORIZED
16 DESTRUCTION MAY INCLUDE THE INCIDENTAL DESTRUCTION OF ANY
17 CONTAINERS, EQUIPMENT, SUPPLIES, AND OTHER PROPERTY ASSOCIATED
18 WITH THE MARIJUANA OR MARIJUANA-INFUSED PRODUCT.

19 (5) FOLLOWING THE ISSUANCE OF A FINAL AGENCY ORDER BY THE
20 LICENSING AUTHORITY IMPOSING A DISCIPLINARY ACTION AGAINST A
21 LICENSEE AND ORDERING DESTRUCTION AUTHORIZED BY SUBSECTION (4)
22 OF THIS SECTION, A LICENSEE SHALL HAVE FIFTEEN DAYS WITHIN WHICH
23 TO FILE A PETITION FOR STAY OF AGENCY ACTION WITH THE DISTRICT
24 COURT. THE ACTION SHALL BE FILED IN THE CITY AND COUNTY OF
25 DENVER, WHICH SHALL BE DEEMED TO BE THE RESIDENCE OF THE STATE
26 LICENSING AUTHORITY FOR PURPOSES OF THIS SECTION. THE LICENSEE
27 SHALL SERVE THE PETITION IN ACCORDANCE WITH THE RULES OF CIVIL

1 PROCEDURE. THE DISTRICT COURT SHALL PROMPTLY RULE UPON THE
2 PETITION AND SHALL DETERMINE WHETHER THE LICENSEE HAS A
3 SUBSTANTIAL LIKELIHOOD OF SUCCESS ON JUDICIAL REVIEW SO AS TO
4 WARRANT DELAY OF THE DESTRUCTION AUTHORIZED BY SUBSECTION (4)
5 OF THIS SECTION OR WHETHER OTHER CIRCUMSTANCES, INCLUDING BUT
6 NOT LIMITED TO THE NEED FOR PRESERVATION OF EVIDENCE, WARRANT
7 DELAY OF SUCH DESTRUCTION. IF DESTRUCTION IS SO DELAYED PURSUANT
8 TO JUDICIAL ORDER, THE COURT SHALL ISSUE AN ORDER SETTING FORTH
9 TERMS AND CONDITIONS PURSUANT TO WHICH THE LICENSEE MAY
10 MAINTAIN THE MARIJUANA AND MARIJUANA-INFUSED PRODUCT PENDING
11 JUDICIAL REVIEW, AND PROHIBITING THE LICENSEE FROM USING OR
12 DISTRIBUTING THE MARIJUANA OR MARIJUANA-INFUSED PRODUCT PENDING
13 THE REVIEW. THE LICENSING AUTHORITY SHALL NOT CARRY OUT THE
14 DESTRUCTION AUTHORIZED BY SUBSECTION (4) OF THIS SECTION UNTIL
15 FIFTEEN DAYS HAVE PASSED WITHOUT THE FILING OF A PETITION FOR STAY
16 OF AGENCY ACTION, OR UNTIL THE COURT HAS ISSUED AN ORDER DENYING
17 STAY OF AGENCY ACTION PURSUANT TO THIS SUBSECTION (5).

18 (6) THE LICENSING AUTHORITY SHALL NOT CARRY OUT THE
19 DESTRUCTION AUTHORIZED BY SUBSECTION (4) OF THIS SECTION UNTIL IT
20 HAS NOTIFIED THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT IN
21 WHICH THE MARIJUANA IS LOCATED TO DETERMINE WHETHER THE
22 MARIJUANA OR PRODUCT CONSTITUTES EVIDENCE IN A CRIMINAL
23 PROCEEDING SUCH THAT IT SHOULD NOT BE DESTROYED, AND UNTIL
24 FIFTEEN DAYS HAVE PASSED FROM THE DATE OF THE ISSUANCE OF SUCH
25 NOTICE.

26 (7) ON OR BEFORE JANUARY 1, 2012, THE STATE LICENSING
27 AUTHORITY SHALL PROMULGATE RULES GOVERNING THE IMPLEMENTATION

1 OF THIS SECTION.

2 **SECTION 14.** 12-43.3-901 (1) (c), (1) (d), (4) (l), and (7),
3 Colorado Revised Statutes, are amended, and the said 12-43.3-901 (4) is
4 further amended BY THE ADDITION OF THE FOLLOWING NEW
5 PARAGRAPHS, to read:

6 **12-43.3-901. Unlawful acts - exceptions.** (1) Except as
7 otherwise provided in this article, it is unlawful for a person:

8 (c) ~~To continue operating a business for the purpose of~~
9 ~~cultivation, manufacture, or sale of medical marijuana or medical~~
10 ~~marijuana-infused products without filing the forms and paying the fee as~~
11 ~~described in section 12-43.3-103 (1) (b); or~~

12 (d) ~~To continue operating a business for the purpose of~~
13 ~~cultivation, manufacture, or sale of medical marijuana or medical~~
14 ~~marijuana-infused products without satisfying the conditions of section~~
15 ~~12-43.3-103 (2) (b).~~

16 (4) It is unlawful for any person licensed to sell medical marijuana
17 pursuant to this article:

18 (l) To sell, serve, or distribute medical marijuana at any time other
19 than between the hours of 8 a.m. and 7 p.m. Monday through Sunday; ~~or~~

20 (n) TO BURN OR OTHERWISE DESTROY MARIJUANA OR ANY
21 SUBSTANCE CONTAINING MARIJUANA FOR THE PURPOSE OF EVADING AN
22 INVESTIGATION OR PREVENTING SEIZURE; OR

23 (o) TO ABANDON A LICENSED PREMISES OR OTHERWISE CEASE
24 OPERATION WITHOUT NOTIFYING THE STATE AND LOCAL LICENSING
25 AUTHORITIES AT LEAST FORTY-EIGHT HOURS IN ADVANCE AND WITHOUT
26 ACCOUNTING FOR AND FORFEITING TO THE STATE LICENSING AUTHORITY
27 FOR DESTRUCTION ALL MARIJUANA OR PRODUCTS CONTAINING

1 MARIJUANA.

2 (7) A person who commits any acts that are unlawful pursuant to
3 this section ARTICLE OR THE RULES AUTHORIZED AND ADOPTED PURSUANT
4 TO THIS ARTICLE commits a class 2 misdemeanor and shall be punished
5 as provided in section 18-1.3-501, C.R.S., except for violations that
6 would also constitute a violation of title 18, C.R.S., which violation shall
7 be charged and prosecuted pursuant to title 18, C.R.S.

8 **SECTION 15.** 24-72-202 (6) (b) (XIII), Colorado Revised
9 Statutes, is amended to read:

10 **24-72-202. Definitions.** As used in this part 2, unless the context
11 otherwise requires:

12 (6) (b) "Public records" does not include:

13 ~~(XIII) State and local applications and licenses for an optional~~
14 ~~premises cultivation operation as described in section 12-43.3-403,~~
15 ~~C.R.S.; and the location of the optional premises cultivation operation.~~

16 **SECTION 16.** 25-1.5-106 (2) (c) (II), Colorado Revised Statutes,
17 is amended to read:

18 **25-1.5-106. Medical marijuana program - powers and duties**
19 **of the state health agency - medical review board - medical**
20 **marijuana program cash fund - created - repeal. (2) Definitions.** In
21 addition to the definitions set forth in section 14 (1) of article XVIII of
22 the state constitution, as used in this section, unless the context otherwise
23 requires:

24 (c) "In good standing", with respect to a physician's license,
25 means:

26 (II) The physician holds a valid ~~unrestricted and unconditioned~~
27 license to practice medicine in Colorado THAT DOES NOT CONTAIN A

1 RESTRICTION OR CONDITION THAT PROHIBITS THE RECOMMENDATION OF
2 MEDICAL MARIJUANA OR FOR A LICENSE ISSUED PRIOR TO JULY 1, 2011, A
3 VALID, UNRESTRICTED AND UNCONDITIONED LICENSE; and

4 **SECTION 17.** 25-1.5-106 (5) (a), Colorado Revised Statutes, is
5 amended to read:

6 **25-1.5-106. Medical marijuana program - powers and duties**
7 **of the state health agency - medical review board - medical**
8 **marijuana program cash fund - created - repeal. (5) Physicians.** A
9 physician who certifies a debilitating medical condition for an applicant
10 to the medical marijuana program shall comply with all of the following
11 requirements:

12 (a) The physician shall have a valid ~~unrestricted~~ AND ACTIVE
13 license to practice medicine, which license is in good standing.

14

15 **SECTION 18.** 25-1.5-106 (7), Colorado Revised Statutes, is
16 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

17 **25-1.5-106. Medical marijuana program - powers and duties**
18 **of the state health agency - medical review board - medical**
19 **marijuana program cash fund - created - repeal. (7) Primary**
20 **caregivers.** (e) A PRIMARY CAREGIVER WHO CULTIVATES MEDICAL
21 MARIJUANA FOR HIS OR HER PATIENTS SHALL REGISTER THE LOCATION OF
22 HIS OR HER CULTIVATION OPERATION WITH THE STATE MEDICAL
23 MARIJUANA LICENSING AUTHORITY AND PROVIDE THE REGISTRATION
24 IDENTIFICATION NUMBER OF EACH PATIENT TO THE STATE LICENSING
25 AUTHORITY. THE STATE LICENSING AUTHORITY SHALL PROVIDE THE
26 LOCATION OF A PRIMARY CAREGIVER CULTIVATION OPERATION TO A
27 LOCAL GOVERNMENT OR LAW ENFORCEMENT AGENCY UPON REQUEST.

1 THE LOCATION OF THE CULTIVATION OPERATION SHALL COMPLY WITH ALL
2 APPLICABLE LOCAL LAWS, RULES, OR REGULATIONS.

3 **SECTION 19.** 39-1-102 (1.6), Colorado Revised Statutes, is
4 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

5 **39-1-102. Definitions.** As used in articles 1 to 13 of this title,
6 unless the context otherwise requires:

7 (1.6) (d) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO
8 THE CONTRARY, PROPERTY THAT IS USED SOLELY FOR THE CULTIVATION
9 OF MEDICAL MARIJUANA SHALL NOT BE CLASSIFIED AS AGRICULTURAL
10 LAND.

11 **SECTION 20.** 39-26-123 (1) (a.5) (6) (a), and (6) (b) (I),
12 Colorado Revised Statutes, are amended to read:

13 **39-26-123. Receipts - disposition - transfers of general fund
14 surplus - sales tax holding fund - creation - definitions.** (1) As used
15 in this section, unless the context otherwise requires:

16 (a.5) ~~"Sales taxes attributable to sales of medical marijuana"~~
17 ~~means the net revenue raised from the state sales taxes imposed pursuant~~
18 ~~to this article on the sales of medical marijuana.~~

19 (6) (a) For any state fiscal year commencing on or after July 1,
20 2010, the general assembly shall annually appropriate the first two million
21 dollars of sales taxes attributable to sales of medical marijuana or equally
22 appropriate the sales taxes attributable to sales of medical marijuana if
23 ~~two million dollars is not generated~~ TAXES REMITTED, PURSUANT TO
24 SECTION 39-26-105, BY PERSONS OR ENTITIES LICENSED PURSUANT TO
25 ARTICLE 43.3 OF TITLE 12, C.R.S., OR EQUALLY APPROPRIATE THE SALES
26 TAXES ATTRIBUTABLE TO SALES TAXES REMITTED, PURSUANT TO SECTION
27 39-26-105, BY PERSONS OR ENTITIES LICENSED PURSUANT TO ARTICLE 43.3

1 OF TITLE 12, C.R.S., IF LESS THAN TWO MILLION DOLLARS IS GENERATED.

2 (b) (I) One half of the moneys described in paragraph (a) of this
3 subsection (6) shall be appropriated to the department of human services
4 ~~to be used to provide integrated behavioral health services for juveniles~~
5 ~~and adults with substance use disorders and mental health treatment~~
6 ~~needs who are involved with, or at risk of involvement with, the criminal~~
7 ~~justice system. The moneys described in paragraph (a) of this subsection~~
8 ~~(6) shall be appropriated to the department of human services to be used~~
9 ~~to provide integrated behavioral health services for juveniles and adults~~
10 ~~with substance use disorders or with substance use disorders and mental~~
11 ~~health treatment needs who are involved with, or at risk of involvement~~
12 ~~with, the criminal justice system. The department shall ensure that~~
13 ~~appropriations in this line item are distributed through the department's~~
14 ~~designated managed service organizations and community mental health~~
15 ~~centers. The appropriations shall be based on, including but not limited~~
16 ~~to substance use and mental health prevalence data that is developed~~
17 ~~working collaboratively with the managed services organizations and~~
18 ~~community mental health centers~~ TO BE USED FOR THE CIRCLE PROGRAM
19 THAT PROVIDES INTENSIVE INPATIENT TREATMENT FOR ADULTS WHO
20 SUFFER FROM CO-OCCURRING DISORDERS AT THE COLORADO MENTAL
21 HEALTH INSTITUTE AT PUEBLO.

22 **SECTION 21.** 12-36-118, Colorado Revised Statutes, is amended
23 BY THE ADDITION OF A NEW SUBSECTION to read:

24 **12-36-118. Disciplinary action by board - immunity - rules.**

25 (19) IF A PHYSICIAN HAS A RESTRICTION PLACED ON HIS OR HER
26 LICENSE, THE RESTRICTION SHALL, IF PRACTICABLE, STATE WHETHER THE
27 RESTRICTION PROHIBITS THE PHYSICIAN FROM MAKING A MEDICAL

1 MARIJUANA RECOMMENDATION.

2 **SECTION 22.** 12-43.3-202 (2) (a) (I), Colorado Revised Statutes,
3 is amended to read:

4 **12-43.3-202. Powers and duties of state licensing authority -**
5 **repeal.** (2) (a) Rules promulgated pursuant to paragraph (b) of
6 subsection (1) of this section may include, but need not be limited to, the
7 following subjects:

8 (I) Compliance with, enforcement of, or violation of any provision
9 of this article, SECTION 18-18-406.3 (6), C.R.S., or any rule issued
10 pursuant to this article, including procedures and grounds for denying,
11 suspending, fining, restricting, or revoking a state license issued pursuant
12 to this article;

13 **SECTION 23.** 18-4-412 (2) (a), Colorado Revised Statutes, is
14 amended to read:

15 **18-4-412. Theft of medical records or medical information -**
16 **penalty.** (2) As used in this section:

17 (a) "Medical record" means the written or graphic documentation,
18 sound recording, or computer record pertaining to medical, mental health,
19 and health care services, INCLUDING MEDICAL MARIJUANA SERVICES,
20 which are performed at the direction of a physician or other licensed
21 health care provider on behalf of a patient by physicians, dentists, nurses,
22 technicians, emergency medical technicians, mental health professionals,
23 prehospital providers, or other health care personnel. "Medical record"
24 includes such diagnostic documentation as X rays, electrocardiograms,
25 electroencephalograms, and other test results.

26 **SECTION 24.** 18-18-406.3, Colorado Revised Statutes, is
27 amended BY THE ADDITION OF A NEW SUBSECTION to read:

1 **18-18-406.3. Medical use of marijuana by persons diagnosed**
2 **with debilitating medical conditions - unlawful acts - penalty -**
3 **medical marijuana program cash fund.** (6) AN OWNER, OFFICER, OR
4 EMPLOYEE OF A BUSINESS LICENSED PURSUANT TO ARTICLE 43.3 OF TITLE
5 12, C.R.S., WHO RELEASES OR MAKES PUBLIC A PATIENT'S MEDICAL
6 RECORD OR ANY CONFIDENTIAL INFORMATION CONTAINED IN ANY SUCH
7 RECORD THAT IS PROVIDED TO OR BY THE BUSINESS LICENSED PURSUANT
8 TO ARTICLE 43.3 OF TITLE 12, C.R.S., WITHOUT THE WRITTEN
9 AUTHORIZATION OF THE PATIENT COMMITS A CLASS 1 MISDEMEANOR;
10 EXCEPT THAT THE OWNER, OFFICER, OR EMPLOYEE SHALL RELEASE THE
11 RECORDS OR INFORMATION UPON REQUEST BY THE STATE OR LOCAL
12 MEDICAL MARIJUANA LICENSING AUTHORITY. THE RECORDS OR
13 INFORMATION PRODUCED FOR REVIEW BY THE STATE OR LOCAL LICENSING
14 AUTHORITY SHALL NOT BECOME PUBLIC RECORDS BY VIRTUE OF THE
15 DISCLOSURE AND MAY BE USED ONLY FOR A PURPOSE AUTHORIZED BY
16 ARTICLE 43.3 OF TITLE 12, C.R.S., OR FOR ANOTHER STATE OR LOCAL LAW
17 ENFORCEMENT PURPOSE. THE RECORDS OR INFORMATION SHALL
18 CONSTITUTE MEDICAL DATA AS DEFINED BY SECTION 24-72-204 (3) (a) (I),
19 C.R.S. THE STATE OR LOCAL MEDICAL MARIJUANA LICENSING AUTHORITY
20 MAY DISCLOSE ANY RECORDS OR INFORMATION SO OBTAINED ONLY TO
21 THOSE PERSONS DIRECTLY INVOLVED WITH ANY INVESTIGATION OR
22 PROCEEDING AUTHORIZED BY ARTICLE 43.3 OF TITLE 12, C.R.S., OR FOR
23 ANY STATE OR LOCAL LAW ENFORCEMENT PURPOSE.

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

26 **25-1-1202. Index of statutory sections regarding medical**
27 **record confidentiality and health information.** (1) Statutory

1 provisions concerning policies, procedures, and references to the release,
2 sharing, and use of medical records and health information include the
3 following:

4 (ee.5) SECTION 18-18-406.3, C.R.S., CONCERNING MEDICAL
5 MARIJUANA PATIENT RECORDS;

6 **SECTION 26. Appropriation - adjustments in 2011 long bill.**

7 For the implementation of this act, appropriations made in the annual
8 general appropriation act for the fiscal year beginning July 1, 2011, shall
9 be adjusted as follows:

10 (1) The general fund appropriation to the department of human
11 services, division of mental health and alcohol and drug abuse services,
12 for mental health institutes, for mental health institute - Pueblo, is
13 increased by one million dollars (\$1,000,000) and 14.5 FTE, for the
14 Circle Program.

15 (2) The general fund appropriation to the department of human
16 services, division of mental health and alcohol and drug abuse services,
17 for co-occurring behavioral health services, for behavioral health services
18 for juveniles and adults at risk or involved in the criminal justice system,
19 is decreased by one million dollars (\$1,000,000).

20 **SECTION 27. Effective date.** This act shall take effect July 1,
21 2011.

22 **SECTION 28. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.