


Colorado Legislative Council Staff Fiscal Note
STATE and LOCAL
FISCAL IMPACT

Note: This fiscal note is provided pursuant to Joint Rule 22 (b) (2) and reflects strike-below Amendment L.001.

Drafting Number: LLS 11-0072	Date: February 9, 2011
Prime Sponsor(s): Rep. Massey Sen. Steadman	Bill Status: House Judiciary
	Fiscal Analyst: Clare Pramuk (303-866-2677)

TITLE: CONCERNING MEDICAL MARIJUANA.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue		
Cash Funds		
Division of Registrations Cash Fund		\$411,290
Medical Marijuana License Cash Fund	\$24,000	
Fines Collection Cash Fund	<5,000	<5,000
State Expenditures		
Cash Funds		
Division of Registrations Cash Fund	\$267,617	\$121,776
Medical Marijuana License Cash Fund	19,020	
FTE Position Change	2.4	1.1
Effective Date: July 1, 2011.		
Appropriation Summary for FY 2011-2012: See State Appropriations section.		
Local Government Impact: See Local Government Impact.		

Summary of Legislation

The bill amends the Colorado Medical Marijuana Code for licensure, licensee operations, access to records, and physicians and caregivers as follows.

Licensure. HB11-1043 extends the moratorium on the issuance of new medical marijuana licenses to July 1, 2012, and allows a person whose application was submitted prior to August 1, 2010, but not acted upon by the state licensing board, to continue operating. It allow persons licensed prior to July 1, 2012, to apply for changes to a license or to apply for a new license if the business is being purchased. The bill also clarifies the definition of "good cause" for purposes of refusing or denying a new or renewal license or reinstatement, and entitles an applicant to appeal a state license denial to district court.

The bill clarifies the treatment of felonies committed by owners and employees by prohibiting licensure of an owner who has discharged a felony sentence in the past 5 years. Both owners and employees are prohibited from licensure if convicted of a felony for cultivation of a controlled substance. Residency requirements of 2 years are maintained for owners but are relaxed for employees. The bill adds violations of rules authorized and adopted under the Colorado Medical Marijuana Code to the list of unlawful acts.

Licensee operations. HB11-1043 adds several provisions related to licensee operations. It defines "clones" and allows medical marijuana centers to sell them. It allows for a temporary waiver to purchase more than 30 percent of its on-hand inventory from another center if a center or an applicant suffers a catastrophic event related to its inventory. It allows a center to sell below cost or donate medical marijuana, clones, or medical marijuana-infused products to state-designated indigent patients. The bill allows an optional premises cultivation license to be used to provide medical marijuana to more than 1 center or manufacturer if all licenses are held by the same person.

The bill restricts a medical marijuana-infused products licensee to 500 plants unless the licensee is granted a waiver based on specific considerations. It specifies that property used solely for the cultivation of medical marijuana not be classified as agricultural land.

Access to records. Under current law, the location of an optional premises cultivation operation is confidential and exempt from the Colorado Open Records Act. This bill makes this information public. It also provides local authorities access to criminal history records for applicants and licensees.

HB11-1143 clarifies that medical marijuana patient records are medical records; unauthorized release is a class 1 misdemeanor and theft is a class 6 felony. It authorizes the state licensing authority to adopt rules regarding licensing actions against a business that releases patient information.

Physicians and caregivers. The bill creates a process for a physician who has a restricted medical license to appeal for clarification as to whether the restriction prohibits the physician from making a medical marijuana recommendation. Appeals must be made by July 1, 2012. Beginning July 1, 2012, physicians must hold a valid medical license that does not restrict them from recommending medical marijuana.

Primary caregivers are required to register the location of their cultivation operation with the state licensing authority, and provide the registration identification number of each of their patients. In addition, it requires the location of these cultivation operations to comply with all zoning and building codes.

State Revenue

This bill is expected to increase fee revenue by \$24,000 in FY 2011-12 to the Medical Marijuana License Cash Fund and \$411,290 in FY 2012-13 to the Division of Registrations Cash Fund. In addition, the bill may increase state revenue from fines for violations of the bill, although less than \$5,000 in new state revenue is expected per year.

Fee Impact on Individuals, Families or Business. Section 2-2-322, C.R.S., requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 1 identifies the fee impact of this bill.

The Department of Revenue (DOR) will charge caregivers a fee of \$20 in FY 2011-12 for registering their cultivation locations and providing the identification of their patients. This will be a 2-year renewal process.

The Colorado Medical Board (CMB) within the Division of Registrations in the Department of Regulatory Agencies (DORA) will increase fees to physicians to cover the cost of implementing HB11-1043. This is expected to be \$22 per license and included in the next 2-year renewal cycle in May 2013. The actual fee will be set by the CMB.

Table 1. Fee Impact on Individuals, Families or Business					
Type of Fee	Current Fee	Proposed Fee	Fee Change	Number Affected	Total Fee Impact
Caregiver Cultivation Operation Registration - FY 2011-12	\$0	\$20	\$20	1,200	\$24,000
Physician (2-year) renewal - FY 2012-13	268	290	22	18,695	411,290
TOTAL					\$435,290

Fines. According to Section 18-1.3-501, C.R.S., the penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Per Section 18-1.3-401 (III) (A), C.R.S., the fine penalty for a class 6 felony is \$1,000 to \$100,000. Fine revenue that is not otherwise appropriated is deposited into the Fines Collection Cash Fund. Because the courts have the discretion of incarceration, imposing a fine, or both, the impact to state revenue cannot be determined but is assumed to be less than \$5,000 per year.

State Expenditures

Expenditures will increase under HB11-1043 by \$286,637 and 2.4 FTE in FY 2011-12 and \$121,776 and 1.1 FTE in FY 2012-13.

Department of Revenue. The DOR is the state licensing agency for medical marijuana. The bill requires caregivers to register their cultivation locations with the DOR and also provide the registration identification number of each of their patients. This will require database programming to accommodate the information at a cost of \$6,512. Registration of 1,200 caregivers is expected to be completed in FY 2011-12 and require minimal staffing as shown in Table 2. Sufficient FTE and funding was appropriated to the DOR under HB10-1284, so no additional appropriation is required.

Table 2. DOR Expenditures Under HB11-1043		
Cost Components	FY 2011-12	FY 2012-13
Personal Services	\$12,508	
FTE	0.3	
Computer Programming	6,512	
TOTAL	\$19,020	

Department of Regulatory Agencies. The CMB will have an increase in expenditures of \$267,617 in FY 2011-12 and \$121,776 in FY 2012-13. These costs are associated with developing and implementing an appeals process for physicians to clarify their ability to make medical marijuana recommendations. Process development will require the board to meet and adopt policies and rules. The board requires legal support for rulemaking, litigation of appeals and enforcement of determinations that prohibit a physician from recommending medical marijuana.

The fiscal note assumes that in FY 2011-12, all 26 of the physicians who currently have some type of license restriction and have been certifying individuals for medical marijuana, will appeal for clarification of the restriction from the CMB. The fiscal note assumes 13 physicians will appeal those determinations in FY 2012-13. The appeals process requires legal services, administrative law judge time and an expert consultant to review the facts of each case. These costs are detailed in Table 3.

Table 3. DORA Expenditures Under HB11-1043		
Cost Components	FY 2011-12	FY 2012-13
Personal Services	\$36,701	\$36,701
FTE	2.1	1.1
Operating Expenses and Capital Outlay	330	475
Legal Services	167,433	61,005
Board Travel and Per Diem	1,806	
Administrative Law Judge Time	41,847	16,095
Expert Witness	19,500	7,500
TOTAL	\$267,617	\$121,776

Expenditures Not Included

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. The centrally appropriated costs subject to this policy are summarized in Table 4.

Table 4. Expenditures Not Included Under HB11-1043*		
Cost Components	FY 2011-12	FY 2012-13
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$3,550	\$3,550
Supplemental Employee Retirement Payments	1,661	1,957
TOTAL	\$5,211	\$5,507

**More information is available at: <http://colorado.gov/fiscalnotes>*

Local Government Impact

By making the records of locations for optional premises cultivation operations public, local governments will have a slight reduction in workload as they will no longer have to create or redact confidential records. This is expected to be only a minimal savings.

This bill makes the unauthorized release of medical marijuana records a class 1 misdemeanor. The penalty for a class 1 misdemeanor is 6 to 18 months imprisonment in a county jail, a fine of \$500 to \$5,000, or both. Because the courts have the discretion of incarceration or imposing a fine, the impact at the local level cannot be determined. The cost to house an offender in county jails varies from \$45 to \$50 per day in smaller rural jails to \$62 to \$65 per day for larger Denver-metro area jails. For the current fiscal year, the state reimburses county jails a daily rate of \$50.44 to house state inmates. It is assumed that the impact of this new misdemeanor will be minimal and will not create the need for additional county jail space.

State Appropriations

For FY 2011-12, the Department of Regulatory Agencies requires \$267,617 from the Division of Registrations Cash Fund and 0.5 FTE. Of this amount, the Department of Law requires \$167,433 in reappropriated funds and the provision 0.6 FTE.

Departments Contacted

Revenue	Regulatory Agencies	Law
Judicial	Public Health and Environment	Corrections