

  
*Colorado Legislative Council Staff Fiscal Note*  
**FINAL**  
**FISCAL NOTE**

<b>Drafting Number:</b> LLS 11-0072	<b>Date:</b> June 24, 2011
<b>Prime Sponsor(s):</b> Rep. Massey	<b>Bill Status:</b> Signed into Law
Sen. Steadman; Spence	<b>Fiscal Analyst:</b> Clare Pramuk (303-866-2677)

**TITLE:** CONCERNING MEDICAL MARIJUANA, AND MAKING AN APPROPRIATION THEREFOR.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
<b>State Revenue</b>		
Cash Funds		
Medical Marijuana License Cash Fund	\$24,000	
Fines Collection Cash Fund	<5,000	<\$5,000
<b>State Expenditures</b>		
Cash Funds		
Medical Marijuana License Cash Fund	\$20,204	
<b>FTE Position Change</b>	14.5 FTE	14.5 FTE
<b>Effective Date:</b> The bill was signed into law by the Governor on June 2, 2011 and takes effect July 1, 2011.		
<b>Appropriation Summary for FY 2011-2012:</b> See State Appropriations section.		
<b>Local Government Impact:</b> See Local Government Impact.		

**Summary of Legislation**

The bill amends the Colorado Medical Marijuana Code for licensure, licensee operations, sales and use taxes, access to records, patients, physicians and caregivers, research and development, and disposition of marijuana as follows.

**Licensure.** House Bill 11-1043 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 allows 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 or if the business is changing license type. A person may also apply for a new license with a local licensing authority and transfer the location of its pending application with the state licensing authority if the city or county of the location has voted to ban such medical marijuana operations. Applicants can 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 five years. Both owners and employees are prohibited from licensure if convicted of a felony for manufacturing or

cultivation of a controlled substance. An exception is made for an employee who has a state felony conviction based on possession or use of a controlled substance that would not be a felony if the person were convicted of the offense on the date of his or her application for licensure. Residency requirements of two 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. Other new unlawful acts include burning or destroying marijuana to evade an investigation or to prevent seizure, and abandoning a licensed premises without notifying the state and local licensing authorities at least 48 hours in advance.

***Licensee operations.*** HB 11-1043 adds several provisions related to licensee operations. It allows centers to sell no more than six immature plants to a patient unless that patient has been recommended for an expanded plant count by a physician. A center may also sell immature plants to a primary caregiver, another center or a medical marijuana-infused products manufacturer subject to the rules of the state licensing authority.

It allows for a temporary waiver to a newly licensed center to purchase more than 30 percent of its on-hand inventory from another center. The waiver may also be granted to a center or an applicant that suffers a catastrophic event related to its inventory. It allows a center to sell below cost or donate medical marijuana, immature plants, or medical marijuana-infused products to state-designated indigent patients or patients in hospice care. The bill allows an optional premises cultivation license to be used to provide medical marijuana to more than one 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 for tax purposes.

The bill allows for the sale of medical marijuana or a medical marijuana-infused product by using an automated machine that complies with rules promulgated by the state licensing authority.

***Patients.*** The bill clarifies that if a patient has applied for a registry identification card in the preceding 35 days, but not yet received the card, the patient may present a copy of the new (not renewal) application, a certified mail return receipt, and a photo identification at the time of purchase in lieu of the registration card. The employee assisting the person is required to contact the Colorado Department of Public Health and Environment (CDPHE) to determine whether the person's application has been denied. Such calls may only be made from 8:00 a.m. to 5:00 p.m., Monday through Friday. If the purchaser's application has been denied, the employee is authorized to confiscate the copy of the application and turn it over to the CDPHE or local law enforcement within 72 hours.

The CDPHE is required to waive the fee for the registry identification card for any applicant whose income does not exceed 185 percent of the federal poverty level, adjusted for family size.

**Physicians.** The bill clarifies that a physician who holds a valid license to practice medicine in Colorado that does not contain a restriction or condition that prohibits the recommendation of medical marijuana or, for a license issued prior to July 1, 2011, holds a valid, unrestricted and unconditioned license, may provide medical marijuana recommendations.

**Sales and use taxes.** The bill eliminates funding for Behavioral Health Services for Juveniles and Adults at Risk or Involved in the Criminal Justice System and funds the Circle Program. These funds were earmarked in the General Fund by HB 10-1284 from sales and use taxes from medical marijuana to be used for substance abuse treatment. The bill specifies that medical marijuana is subject to taxation and is not considered a nonprescription or over-the-counter medication.

**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.

HB 11-1143 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.

**Caregivers.** 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. The information provided is confidential and not subject to public disclosure. The state licensing authority is required to verify a location with local government or local law enforcement upon receiving an address-specific request for verification. In addition, it requires the location of these cultivation operations to comply with applicable local laws, rules and regulations.

**Research and development.** The bill allows medical marijuana centers and medical marijuana-infused products manufacturers to submit samples to an approved laboratory for testing and product development. The state licensing authority is directed to promulgate rules for testing and research practices. A laboratory that has an occupational license from the state licensing authority for testing purposes, shall not have any interest in a medical marijuana center or medical marijuana-infused products manufacturer.

**Disposition of unauthorized marijuana.** Under HB 11-1043, state and local licensing authorities are not required to cultivate or care for any marijuana or marijuana-infused products belonging to or seized from a licensee. The bill lays out the process for destroying unauthorized marijuana or marijuana-infused products.

**Background**

The Circle Program is a 20 bed dual-diagnosis (mental health and substance abuse) 90-day inpatient treatment program for men and women ages 18-65 who have failed all other treatments. Approximately 75 percent of individuals are referred to the program as a condition of probation, parole or diversion. They can avoid prison sentences by successfully completing the program.

**State Revenue**

*This bill is expected to increase fee revenue by \$24,000 in FY 2011-12 to the Medical Marijuana License 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.

<b>Table 1. Fee Impact on Caregivers</b>					
<b>Type of Fee</b>	<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Fee Change</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
Caregiver Cultivation Operation Registration - FY 2011-12	\$0	\$20	\$20	1,200	\$24,000
<b>2 YEAR TOTAL</b>					<b>\$24,000</b>

*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 HB 11-1043 by \$20,204 in FY 2011-12 from the Medical Marijuana License Cash Fund.*

**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. The DOR will also need to track limits on immature plants. This will require database programming by the Governor's Office of Information Technology at a cost of \$7,696. 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 HB 10-1284, so no additional appropriation to the DOR is required.

<b>Cost Components</b>	<b>FY 2011-12</b>	<b>FY 2012-13</b>
Personal Services	\$12,508	
FTE	0.3	
Computer Programming	7,696	
<b>TOTAL</b>	<b>\$20,204</b>	

**Department of Human Services (DHS).** This bill eliminates funding of \$1 million from the General Fund for Behavioral Health Services for Juveniles and Adults at Risk or Involved in the Criminal Justice System. Instead, this funding is used to fund the Circle Program. Both programs are located within the DHS so the net impact on state expenditures is zero. However, the bill also appropriates 14.5 FTE to the Circle Program.

**Department of Public Health and Environment.** Because the bill requires a medical marijuana center to call the CDPHE if a patient presents at the time of purchase, a copy of his or her application, a certified mail return receipt, and a photo identification in lieu of the registration card, phone calls to the CDPHE may increase. The fiscal note assumes this can be covered by existing resources. Should additional staffing be required, this can be addressed through the annual budget process.

### **Local Government Impact**

Clarifying that local authorities are not responsible for the care of seized marijuana reduces costs for those authorities. The amount of savings depends on the amount of material seized. 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 generate 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 General Fund appropriation to the DHS, Division of Mental Health and Alcohol and Drug Abuse Services, for Co-occurring Behavioral Health Services, for Behavioral Health Services for Juveniles and Adults at Risk or Involved in the Criminal Justice System, is reduced by \$1,000,000.

The General Fund appropriation to the DHS, Division of Mental Health and Alcohol and Drug Abuse Services, for Mental Health Institutes, for Mental Health Institute - Pueblo, is increased by \$1,000,000 and 14.5 FTE, for the Circle Program.

The Office of Information Technology requires \$7,696 in reappropriated funds from the Medical Marijuana Licence Cash Fund.

**Departments Contacted**

Revenue  
Judicial

Regulatory Agencies  
Public Health and Environment

Law  
Corrections