A BILL FOR AN ACT

CONCERNING MEDICAL MARIJUANA, AND MAKING AN APPROPRIATION

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
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 grandfathers 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.

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

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

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

(d) (I) On and after July 1, 2012, persons who did not meet
all requirements of paragraph (a) of subsection (1) of this
section as of July 1, 2010, may begin to apply for a license
pursuant to this article. A business or operation that applies
and is approved for its license after July 1, 2012, shall certify to
the state licensing authority that it is cultivating at least
seventy percent of the medical marijuana necessary for its
operation within ninety days after being licensed.

(II) For those persons that are licensed prior to July 1, 2012, the person may apply to the local and state licensing
authorities regarding changes to its license and may apply for
a new license if the license is for a business that has been
licensed and the person is purchasing that business.

(e) This article sets forth the exclusive means by which
manufacture, sale, distribution, and dispensing of medical
marijuana may occur in the state of Colorado. Licensees shall
not be subject to the terms of section 14 of article XVIII of the
state constitution, except where specifically referenced in this
article.

SECTION 2. 12-43.3-104 (5), Colorado Revised Statutes, is
amended to read:

12-43.3-104. Definitions. As used in this article, unless the
context otherwise requires;

(5) "Local licensing authority" means an authority designated by
municipal or county charter, municipal ordinance, or county resolution, or the governing body of a municipality, city and county, or the board of county commissioners of a county if no such authority is designated.

SECTION 3. 12-43.3-202 (1) (b) (I), (1) (c), (1) (d), and (2) (a) (IV), Colorado Revised Statutes, are amended to read:

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

(b)(I) Promulgate such rules and such special rulings and findings as necessary for the proper regulation and control of the cultivation, manufacture, distribution, and sale of medical marijuana and for the enforcement of this article. A county, municipality, or city and county that has adopted a temporary moratorium regarding the subject matter of this article shall be specifically authorized to extend the moratorium until the effective date of the rules adopted by the department of revenue in accordance with this article JUNE 30, 2012.

(c) Hear and determine at a public hearing any appeals of a contested state license denial and any complaints against a licensee and administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing so held, all in accordance with article 4 of title 24, C.R.S. The state licensing authority may, at its discretion, delegate to the department of revenue hearing officers the authority to conduct licensing, disciplinary, and rule-making hearings under section 24-4-105, C.R.S. When conducting such hearings, the hearing officers shall be employees of the state licensing authority under the direction and supervision of the executive director and the state licensing authority.
(d) Maintain the confidentiality of reports or other information obtained from a licensee showing the sales volume or quantity of medical marijuana sold, or revealing any patient information, or any other records that are exempt from public inspection pursuant to state law. Such reports or other information may be used only for a purpose authorized by this article or for any other state or local law enforcement purpose. Any information released related to patients may be used only for a purpose authorized by this article or to verify that a person who presented a registry identification card to a state or local law enforcement official is lawfully in possession of such card.

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

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

SECTION 4. 12-43.3-301 (2) (a), Colorado Revised Statutes, is amended to read:

12-43.3-301. Local licensing authority - applications - licenses.

(2) (a) A local licensing authority shall not issue a local license within a municipality, city and county, or the unincorporated portion of a county unless the governing body of the municipality or city and county has adopted an ordinance, or the governing body of the county has adopted a resolution, containing specific standards for license issuance, or if no such ordinance or resolution is adopted prior to July 1, 2012, then a local licensing authority shall consider the minimum licensing
requirements of this part 3 when issuing a license.

SECTION 5. 12-43.3-302 (1) and (4), Colorado Revised Statutes,
are amended to read:

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

(1) Upon receipt of an application for a local license, except an
application for renewal or for transfer of ownership, a local licensing
authority may schedule a public hearing upon the application to be held
not less than thirty days after the date of the application. If the local
licensing authority schedules a hearing for a medical marijuana center
LICENSE application, it shall post and publish public notice thereof not
less than ten days prior to the hearing. The local licensing authority shall
give public notice by the posting of a sign in a conspicuous place on the
medical marijuana center LICENSE APPLICANT’s premises for which
LICENSE application has been made and by publication in a newspaper of
general circulation in the county in which the medical marijuana center
APPLICANT’s premises are located.

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

SECTION 6. 12-43.3-303 (2), Colorado Revised Statutes, is
amended to read:

12-43.3-303. Results of investigation - decision of authorities.
(2) Before entering a decision approving or denying the application for a local license, the local licensing authority may consider, except where this article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the type of license for which application has been made, including the number, type, and availability of medical marijuana outlets, CENTERS, OPTIONAL PREMISES CULTIVATION OPERATIONS, OR MEDICAL MARIJUANA-INFUSED PRODUCTS MANUFACTURERS located in or near the premises under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

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

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

(2) If the state licensing authority denies a state license pursuant to subsection (1) of this section, the applicant shall be entitled to a hearing pursuant to article 4 of title 24, C.R.S. SECTION 24-4-104 (9), C.R.S., AND PURSUANT TO SECTION 24-4-106, C.R.S. The state licensing authority shall provide written notice of the grounds for denial of the state license to the applicant and to the local licensing authority at least fifteen days prior to the hearing.
SECTION 8. 12-43.3-307 (1) (h), (1) (m), (2) (a), and (2) (c), Colorado Revised Statutes, are amended to read:

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

(h) A person who has discharged a sentence in the five years immediately preceding the application date for a conviction of a felony or a person who at any time has been convicted of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance;

(m) A person an owner, as defined by rule of the state licensing authority, who has not been a resident of Colorado for at least two years prior to the date of the person's owner's application; except that:

(I) (A) For a person an owner who submits an application for licensure pursuant to this article by December 15, 2010, this requirement shall not apply to that person owner if the person he or she was a resident of the state of Colorado on December 15, 2009.

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

(2) (a) In investigating the qualifications of an applicant or a licensee, the state and local licensing authority authorities may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the state or local licensing authority considers the applicant's criminal history record, the state or local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements,
especially those items pertaining to the period of time between the
applicant's last criminal conviction and the consideration of the
application for a state license.

(c) At the time of filing an application for issuance or renewal of
a state medical marijuana center license, medical marijuana-infused
product manufacturer license, or optional premises cultivation license, an
applicant shall submit a set of his or her fingerprints and file personal
history information concerning the applicant's qualifications for a state
license on forms prepared by the state licensing authority. The state OR
local licensing authority shall submit the fingerprints to the Colorado
bureau of investigation for the purpose of conducting fingerprint-based
criminal history record checks. The Colorado bureau of investigation
shall forward the fingerprints to the federal bureau of investigation for the
purpose of conducting fingerprint-based criminal history record checks.
The state or local licensing authority may acquire a name-based
criminal history record check for an applicant or a license holder who has
twice submitted to a fingerprint-based criminal history record check and
whose fingerprints are unclassifiable. An applicant who has previously
submitted fingerprints for state licensing purposes may request that the
fingerprints on file be used. The state or local licensing authority shall
use the information resulting from the fingerprint-based criminal history
record check to investigate and determine whether an applicant is
qualified to hold a state license pursuant to this article. The state or
local licensing authority may verify any of the information an applicant
is required to submit.

SECTION 9. 12-43.3-310 (6), Colorado Revised Statutes, is
amended to read:
12-43.3-310. Licensing in general.  (6) All owners, officers, managers, and employees of a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer shall be residents of Colorado upon the date of their license application. An owner shall meet the residency requirements in section 12-43.3-307 (1) (m). A local licensing authority shall not issue a license provided for in this article until that share of the license application fee due to the state has been received by the department of revenue. All licenses granted pursuant to this article shall be valid for a period not to exceed two years from the date of issuance unless revoked or suspended pursuant to this article or the rules promulgated pursuant to this article.

SECTION 10. Repeal. 12-43.3-310 (14), Colorado Revised Statutes, is repealed as follows:

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

SECTION 11. 12-43.3-402 (3), (4), (5), and (6), Colorado Revised Statutes, are amended, and the said 12-43.3-402 is further amended by the addition of a new subsection, to read:
Medical marijuana center license. (3) Every person selling medical marijuana as provided for in this article shall sell only medical marijuana grown in its medical marijuana optional premises licensed pursuant to this article. In addition to medical marijuana, a medical marijuana center may sell no more than six nonflowering marijuana plants to a patient within three months of a prior sale of nonflowering plants. The provisions of this subsection (3) shall not apply to medical marijuana-infused products.

(4) Notwithstanding the requirements of subsection (3) of this section to the contrary, a medical marijuana licensee may purchase not more than thirty percent of its total on-hand inventory of medical marijuana from another licensed medical marijuana center in Colorado.

A medical marijuana center may sell no more than thirty percent of its total on-hand inventory to another Colorado licensed medical marijuana licensee; except that the director of the division that regulates medical marijuana may grant a temporary waiver:

(a) To a medical marijuana center or applicant if the medical marijuana center or applicant suffers a catastrophic event related to its inventory; or

(b) To a new medical marijuana center licensee for a period not to exceed ninety days so the new licensee can cultivate the necessary medical marijuana to comply with this subsection (4).

(5) Prior to initiating a sale, the employee of the medical marijuana center making the sale shall verify that the purchaser has a valid registration card issued pursuant to section 25-1.5-106, C.R.S., or a copy of a current and complete application for the medical
MARIJUANA REGISTRY ADMINISTERED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT THAT IS DOCUMENTED BY A CERTIFIED MAIL RETURN RECEIPT AS HAVING BEEN SUBMITTED TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WITHIN THE PRECEDING THIRTY-FIVE DAYS AND CONTAINS A DIAGNOSIS FROM A PHYSICIAN OF END-STAGE CANCER OR END-STAGE ACQUIRED IMMUNE DEFICIENCY SYNDROME OR A STATEMENT FROM THE PHYSICIAN THAT THE PATIENT IS IN HOSPICE CARE OR RECEIVING CHEMOTHERAPY, and a valid picture identification card that matches the name on the registration card.

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

(9) NOTWITHSTANDING THE PROVISIONS OF SECTION 12-43.3-901
(4) (m), A MEDICAL MARIJUANA CENTER MAY SELL BELOW COST OR DONATE MEDICAL MARIJUANA, NO MORE THAN SIX NONFLOWERING MARIJUANA PLANTS TO A PATIENT WITHIN THREE MONTHS OF A PRIOR SALE OF NONFLOWERING PLANTS, OR MEDICAL MARIJUANA-INFUSED PRODUCTS TO PATIENTS WHO ARE DESIGNATED AS INDIGENT BY THE STATE HEALTH AGENCY OR WHO ARE IN HOSPICE CARE.

SECTION 12. 12-43.3-403, Colorado Revised Statutes, is amended to read:

12-43.3-403. Optional premises cultivation license. (1) An optional premises cultivation license may be issued only to a person licensed pursuant to section 12-43.3-402 (1) or 12-43.3-404 (1) who grows and cultivates medical marijuana at an additional Colorado licensed premises contiguous or not contiguous with the licensed premises of the person's medical marijuana center license or the person's medical marijuana-infused products manufacturing license.

(2) OPTIONAL PREMISES CULTIVATION LICENSES MAY BE COMBINED IN A COMMON AREA SOLELY FOR THE PURPOSES OF GROWING AND CULTIVATING MEDICAL MARIJUANA AND USED TO PROVIDE MEDICAL MARIJUANA TO MORE THAN ONE LICENSED MEDICAL MARIJUANA CENTER OR LICENSED MEDICAL MARIJUANA-INFUSED PRODUCT MANUFACTURER SO LONG AS THE HOLDER OF THE OPTIONAL PREMISE CULTIVATION LICENSE IS ALSO A COMMON OWNER OF EACH LICENSED MEDICAL MARIJUANA CENTER OR LICENSED MEDICAL MARIJUANA-INFUSED PRODUCT MANUFACTURER TO WHICH MEDICAL MARIJUANA IS PROVIDED. IN ACCORDANCE WITH PROMULGATED RULES RELATING TO PLANT AND PRODUCT TRACKING REQUIREMENTS, EACH OPTIONAL PREMISES CULTIVATION LICENSEE SHALL SUPPLY MEDICAL MARIJUANA ONLY TO ITS ASSOCIATED LICENSED MEDICAL
MARIJUANA CENTERS OR LICENSED MEDICAL MARIJUANA-INFUSED
PRODUCT MANUFACTURERS.

SECTION 13. 12-43.3-404 (5) and (8), Colorado Revised
Statutes, are amended, and the said 12-43.3-404 is further amended BY
THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to
read:

12-43.3-404. Medical marijuana-infused products
manufacturing license - repeal. (5) The medical marijuana-infused
product shall be sealed and conspicuously labeled in compliance with this
article and any rules promulgated pursuant to this article. THE LABELING
OF MEDICAL MARIJUANA-INFUSED PRODUCTS IS A MATTER OF STATEWIDE
CONCERN.

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

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

(b) THE DIRECTOR OF THE DIVISION THAT REGULATES MEDICAL
MARIJUANA SHALL CONSIDER THE FOLLOWING FACTORS IN DETERMINING
WHETHER TO GRANT THE WAIVER DESCRIBED IN PARAGRAPH (a) OF THIS
SUBSECTION (9):
(I) The nature of the products manufactured;

(II) The business need;

(III) Existing business contracts with licensed medical marijuana centers for the production of medical marijuana-infused products; and

(IV) The ability to contract with licensed medical marijuana centers for the production of medical marijuana-infused products.

(c) This subsection (9) is repealed, effective July 1, 2012.

(10) A medical marijuana-infused products manufacturer may provide a sample of its products to a laboratory that has an occupational license from the State Licensing Authority for testing and research purposes. The State Licensing Authority shall promulgate rules pursuant to its authority in Section 12-43.3-202 (1) (b), C.R.S., related to acceptable testing and research practices.

SECTION 14. Part 6 of article 43.3 of title 12, Colorado Revised Statutes, is amended by the addition of a new section to read:

12-43.3-602. Disposition of unauthorized marijuana or marijuana-infused products and related materials. (1) The provisions of this section shall apply in addition to any criminal, civil, or administrative penalties and in addition to any other penalties prescribed by this article or any rules promulgated pursuant to this article. Any provisions in this article related to law enforcement shall be considered a cumulative right of the people in the enforcement of the criminal laws.
(2) Every licensee licensed under this article shall be deemed, by virtue of applying for, holding, or renewing such person’s license, to have expressly consented to the procedures set forth in this section.

(3) A state or local agency shall not be required to cultivate or care for any marijuana or marijuana-infused product belonging to or seized from a licensee. A state or local agency shall not be authorized to sell marijuana, medical or otherwise.

(4) If the state or local licensing authority issues a final agency order imposing a disciplinary action against a licensee pursuant to section 12-43.3-601, then, in addition to any other remedies, the licensing authority’s final agency order may specify that some or all of the licensee’s marijuana or marijuana-infused product is not medical marijuana or a medical marijuana-infused product and is an illegal controlled substance. The order may further specify that the licensee shall lose any interest in any the marijuana or marijuana-infused product even if the marijuana or marijuana-infused product previously qualified as medical marijuana or a medical marijuana-infused product. The final agency order may direct the destruction of any such marijuana and marijuana-infused products, except as provided in subsections (5) and (6) of this section. The authorized destruction may include the incidental destruction of any containers, equipment, supplies, and other property associated with the marijuana or marijuana-infused product.
(5) Following the issuance of a final agency order by the licensing authority imposing a disciplinary action against a licensee and ordering destruction authorized by subsection (4) of this section, a licensee shall have fifteen days within which to file a petition for stay of agency action with the district court. The action shall be filed in the city and county of Denver, which shall be deemed to be the residence of the state licensing authority for purposes of this section. The licensee shall serve the petition in accordance with the rules of civil procedure. The district court shall promptly rule upon the petition and shall determine whether the licensee has a substantial likelihood of success on judicial review so as to warrant delay of the destruction authorized by subsection (4) of this section or whether other circumstances, including but not limited to the need for preservation of evidence, warrant delay of such destruction. If destruction is so delayed pursuant to judicial order, the court shall issue an order setting forth terms and conditions pursuant to which the licensee may maintain the marijuana and marijuana-infused product pending judicial review, and prohibiting the licensee from using or distributing the marijuana or marijuana-infused product pending the review. The licensing authority shall not carry out the destruction authorized by subsection (4) of this section until fifteen days have passed without the filing of a petition for stay of agency action, or until the court has issued an order denying stay of agency action pursuant to this subsection (5).

(6) The licensing authority shall not carry out the
DESTRUCTION AUTHORIZED BY SUBSECTION (4) OF THIS SECTION UNTIL IT HAS NOTIFIED THE DISTRICT ATTORNEY FOR THE JUDICIAL DISTRICT IN WHICH THE MARIJUANA IS LOCATED TO DETERMINE WHETHER THE MARIJUANA OR PRODUCT CONSTITUTES EVIDENCE IN A CRIMINAL PROCEEDING SUCH THAT IT SHOULD NOT BE DESTROYED, AND UNTIL FIFTEEN DAYS HAVE PASSED FROM THE DATE OF THE ISSUANCE OF SUCH NOTICE.

(7) ON OR BEFORE JANUARY 1, 2012, THE STATE LICENSING AUTHORITY SHALL PROMULGATE RULES GOVERNING THE IMPLEMENTATION OF THIS SECTION.

SECTION 15. 12-43.3-901 (1) (c), (1) (d), (4) (d) (I), (4) (I), and (7), Colorado Revised Statutes, are amended, and the said 12-43.3-901 (4) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

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

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

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

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

(d) (I) To sell medical marijuana to a person not licensed pursuant
to this article or to a person not able to produce a valid patient registry identification card, UNLESS THE PERSON HAS A COPY OF A CURRENT AND COMPLETE APPLICATION FOR THE MEDICAL MARIJUANA REGISTRY ADMINISTERED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT THAT IS DOCUMENTED BY A CERTIFIED MAIL RETURN RECEIPT AS HAVING BEEN SUBMITTED TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT WITHIN THE PRECEDING THIRTY-FIVE DAYS AND CONTAINS A DIAGNOSIS FROM HIS OR HER PHYSICIAN OF END-STAGE CANCER OR END-STAGE ACQUIRED IMMUNE DEFICIENCY SYNDROME OR A STATEMENT FROM HIS OR HER PHYSICIAN THAT THE PATIENT IS IN HOSPICE CARE OR RECEIVING CHEMOTHERAPY. Notwithstanding any provision in this subparagraph (I) to the contrary, a person under twenty-one years of age shall not be employed to sell or dispense medical marijuana at a medical marijuana center or grow or cultivate medical marijuana at an optional premises cultivation operation.

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

(n) To burn or otherwise destroy marijuana or any substance containing marijuana for the purpose of evading an investigation or preventing seizure; or

(o) To abandon a licensed premises or otherwise cease operation without notifying the state and local licensing authorities at least forty-eight hours in advance and without accounting for and forfeiting to the state licensing authority for destruction all marijuana or products containing marijuana.

(7) A person who commits any acts that are unlawful pursuant to
commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., except for violations that would also constitute a violation of title 18, C.R.S., which violation shall be charged and prosecuted pursuant to title 18, C.R.S.

**SECTION 16.** 12-43.3-901, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-43.3-901. Unlawful acts - exceptions. (6.5) A PEACE OFFICER OR A LAW ENFORCEMENT AGENCY SHALL NOT USE ANY PATIENT INFORMATION TO MAKE TRAFFIC STOPS PURSUANT TO SECTION 42-4-1302, C.R.S.

**SECTION 17.** 24-72-202 (6) (b) (XIII), Colorado Revised Statutes, is amended to read:

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

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

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

**SECTION 18.** 25-1.5-106 (2) (c) (II), Colorado Revised Statutes, is amended to read:

25-1.5-106. Medical marijuana program - powers and duties of the state health agency - medical review board - medical marijuana program cash fund - created - repeal. (2) Definitions. In addition to the definitions set forth in section 14 (1) of article XVIII of the state constitution, as used in this section, unless the context otherwise requires:
(c) "In good standing", with respect to a physician's license, means:

   (II) The physician holds a valid unrestricted and unconditioned 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, A VALID, UNRESTRICTED AND UNCONDITIONED LICENSE; and

SECTION 19. 25-1.5-106 (5) (a), Colorado Revised Statutes, is amended to read:

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

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

SECTION 20. 25-1.5-106 (7), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

25-1.5-106. Medical marijuana program - powers and duties of the state health agency - medical review board - medical marijuana program cash fund - created - repeal. (7) Primary caregivers. (e) A PRIMARY CAREGIVER WHO CULTIVATES MEDICAL MARIJUANA FOR HIS OR HER PATIENTS SHALL REGISTER THE LOCATION OF HIS OR HER CULTIVATION OPERATION WITH THE STATE MEDICAL MARIJUANA LICENSING AUTHORITY AND PROVIDE THE REGISTRATION
IDENTIFICATION NUMBER OF EACH PATIENT TO THE STATE LICENSING
AUTHORITY. THE STATE LICENSING AUTHORITY SHALL PROVIDE THE
LOCATION OF A PRIMARY CAREGIVER CULTIVATION OPERATION TO A
LOCAL GOVERNMENT OR LAW ENFORCEMENT AGENCY UPON REQUEST.
THE LOCATION OF THE CULTIVATION OPERATION SHALL COMPLY WITH ALL
APPLICABLE LOCAL LAWS, RULES, OR REGULATIONS.

SECTION 21. 25-1.5-106 (16) (a), Colorado Revised Statutes, is
amended to read:

25-1.5-106. Medical marijuana program - powers and duties
of the state health agency - medical review board - medical
marijuana program cash fund - created - repeal. (16) Fees - repeal.
(a) The state health agency may collect fees from patients who, pursuant
to section 14 of article XVIII of the state constitution, apply to the
medical marijuana program for a registry identification card for the
purpose of offsetting the state health agency's direct and indirect costs of
administering the program. The amount of the fees shall be set by rule of
the state health agency. The amount of the fees set pursuant to this
section shall reflect the actual direct and indirect costs of the state
licensing authority in the administration and enforcement of this article
so that the fees avoid exceeding the statutory limit on uncommitted
reserves in administrative agency cash funds as set forth in section
24-75-402 (3), C.R.S. The state health agency shall also promulgate rules
that allow a patient to claim indigence as it relates to paying the fee
approved pursuant to this subsection (16). The rules shall establish the
standard for indigence, the process the state health agency shall use to
determine whether a patient who claims indigence meets the standard for
indigence, and the process for granting a waiver if the state health agency
determines that the patient meets the standard for indigence. The state health agency shall not assess a medical marijuana registry application fee to an applicant who demonstrates, pursuant to a copy of the applicant's state tax return certified by the department of revenue, that the applicant's income does not exceed the federal poverty line, adjusted for family size. All fees collected by the state health agency through the medical marijuana program shall be transferred to the state treasurer who shall credit the same to the medical marijuana program cash fund, which fund is hereby created.

SECTION 22. 39-1-102 (1.6), Colorado Revised Statutes, is amended by the addition of a new paragraph to read:

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

(1.6) (d) Notwithstanding any other provision of law to the contrary, property that is used solely for the cultivation of medical marijuana shall not be classified as agricultural land.

SECTION 23. 39-26-123 (1) (a.5) (6) (a), and (6) (b) (l), Colorado Revised Statutes, are amended to read:

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

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

(6) (a) For any state fiscal year commencing on or after July 1,
2010, the general assembly shall annually appropriate the first two million dollars of sales taxes attributable to sales of medical marijuana or equally appropriate the sales taxes attributable to sales of medical marijuana if two million dollars is not generated, pursuant to Section 39-26-105, by persons or entities licensed pursuant to Article 43.3 of Title 12, C.R.S., or equally appropriate the sales taxes attributable to sales taxes remitted, pursuant to Section 39-26-105, by persons or entities licensed pursuant to Article 43.3 of Title 12, C.R.S., if less than two million dollars is generated.

(b) (I) One half of the moneys described in paragraph (a) of this subsection (6) shall be appropriated to the department of human services to be used to provide integrated behavioral health services for juveniles and adults with substance use disorders and mental health treatment needs who are involved with, or at risk of involvement with, the criminal justice system. The moneys described in paragraph (a) of this subsection (6) shall be appropriated to the department of human services to be used to provide integrated behavioral health services for juveniles and adults with substance use disorders or with substance use disorders and mental health treatment needs who are involved with, or at risk of involvement with, the criminal justice system. The department shall ensure that appropriations in this line item are distributed through the department's designated managed service organizations and community mental health centers. The appropriations shall be based on, including but not limited to, substance use and mental health prevalence data that is developed working collaboratively with the managed services organizations and community mental health centers. That provides intensive inpatient treatment for adults who
SUFFER FROM CO-OCcurring DISORDERS AT THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO.

SECTION 24. 12-36-118, Colorado Revised Statutes, is amended by the addition of a new subsection to read:

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

(19) If a physician has a restriction placed on his or her license, the restriction shall, if practicable, state whether the restriction prohibits the physician from making a medical marijuana recommendation.

SECTION 25. 12-43.3-202 (2) (a) (I), Colorado Revised Statutes, is amended to read:

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

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

SECTION 26. 18-4-412 (2) (a), Colorado Revised Statutes, is amended to read:

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

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

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

18-18-406.3. Medical use of marijuana by persons diagnosed
with debilitating medical conditions - unlawful acts - penalty -
medical marijuana program cash fund. (6) AN OWNER, OFFICER, OR
EMPLOYEE OF A BUSINESS LICENSED PURSUANT TO ARTICLE 43.3 OF TITLE
12, C.R.S., WHO RELEASES OR MAKES PUBLIC A PATIENT'S MEDICAL
RECORD OR ANY CONFIDENTIAL INFORMATION CONTAINED IN ANY SUCH
RECORD THAT IS PROVIDED TO OR BY THE BUSINESS LICENSED PURSUANT
TO ARTICLE 43.3 OF TITLE 12, C.R.S., WITHOUT THE WRITTEN
AUTHORIZATION OF THE PATIENT COMMITS A CLASS 1 MISDEMEANOR;
EXCEPT THAT THE OWNER, OFFICER, OR EMPLOYEE SHALL RELEASE THE
RECORDS OR INFORMATION UPON REQUEST BY THE STATE OR LOCAL
MEDICAL MARIJUANA LICENSING AUTHORITY. THE RECORDS OR
INFORMATION PRODUCED FOR REVIEW BY THE STATE OR LOCAL LICENSING
AUTHORITY SHALL NOT BECOME PUBLIC RECORDS BY VIRTUE OF THE
DISCLOSURE AND MAY BE USED ONLY FOR A PURPOSE AUTHORIZED BY
ARTICLE 43.3 OF TITLE 12, C.R.S., OR FOR ANOTHER STATE OR LOCAL LAW
ENFORCEMENT PURPOSE. The records or information shall
constitute medical data as defined by SECTION 24-72-204(3)(a)(I),
C.R.S. The state or local medical marijuana licensing authority
MAY DISCLOSE ANY RECORDS OR INFORMATION SO OBTAINED ONLY TO
THOSE PERSONS DIRECTLY INVOLVED WITH ANY INVESTIGATION OR
PROCEEDING AUTHORIZED BY ARTICLE 43.3 OF TITLE 12, C.R.S., OR FOR
ANY STATE OR LOCAL LAW ENFORCEMENT PURPOSE.

SECTION 28. 25-1-1202 (1), Colorado Revised Statutes, is
amended BY THE ADDITION OF A NEW PARAGRAPH to read:

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

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

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

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

(2) The general fund appropriation to the department of human
services, 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 decreased by one million dollars ($1,000,000).
 SECTION 30. **Effective date.** This act shall take effect July 1, 2011.

 SECTION 31. **Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.