

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 17-0135.01 Michael Dohr x4347

SENATE BILL 17-017

SENATE SPONSORSHIP

Aguilar,

HOUSE SPONSORSHIP

Singer,

Senate Committees

State, Veterans, & Military Affairs

House Committees

State, Veterans, & Military Affairs

A BILL FOR AN ACT

101 **CONCERNING ADDING STRESS DISORDERS TO THE LIST OF**
102 **DEBILITATING MEDICAL CONDITIONS FOR THE PURPOSES OF THE**
103 **USE OF MEDICAL MARIJUANA.**

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://leg.colorado.gov/>.)

Committee on Cost-benefit Analysis of Legalized Marijuana in Colorado. The bill adds acute stress disorder and post-traumatic stress disorder to the list of debilitating medical conditions for the purposes of the use of medical marijuana.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
February 3, 2017

SENATE
Amended 2nd Reading
February 2, 2017

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

2 **SECTION 1.** In Colorado Revised Statutes, 25-1.5-106, amend
3 (2)(a.5), (2)(d.5) introductory portion, (3)(a)(VI), (5) introductory portion,
4 (5)(b), (5)(d)(III), (5)(d)(IV), (9)(a), (9)(b), (12)(b)(VII), (14), and
5 (16)(a); and add (2)(a.7), (2)(d.3), and (2.5) as follows:

6 **25-1.5-106. Medical marijuana program - powers and duties**
7 **of state health agency - rules - medical review board - medical**
8 **marijuana program cash fund - subaccount - created - repeal.**

9 **(2) Definitions.** In addition to the definitions set forth in section 14 (1)
10 of article XVIII of the state constitution, as used in this section, unless the
11 context otherwise requires:

12 (a.5) "Bona fide physician-patient relationship", for purposes of
13 the medical marijuana program, means:

14 (I) A physician and a patient have a treatment or counseling
15 relationship, in the course of which the physician has completed a full
16 assessment of the patient's medical history, INCLUDING REVIEWING A
17 PREVIOUS DIAGNOSIS FOR A DEBILITATING OR DISABLING MEDICAL
18 CONDITION, and current medical condition, including an appropriate
19 personal physical examination;

20 (II) The physician has consulted with the patient with respect to
21 the patient's debilitating medical condition OR DISABLING MEDICAL
22 CONDITION before the patient applies for a registry identification card; and

23 (III) The physician is available to or offers to provide follow-up
24 care and treatment to the patient, including patient examinations, to
25 determine the efficacy of the use of medical marijuana as a treatment of
26 the patient's debilitating medical condition OR DISABLING MEDICAL

1 CONDITION.

2 (a.7) "DISABLING MEDICAL CONDITION" MEANS POST-TRAUMATIC
3 STRESS DISORDER AS DIAGNOSED BY A LICENSED MENTAL HEALTH
4 PROVIDER OR PHYSICIAN.

5 (d.3) "PATIENT" MEANS A PERSON WHO HAS A DEBILITATING
6 MEDICAL CONDITION OR DISABLING MEDICAL CONDITION.

7 (d.5) "Primary caregiver" means a natural person, other than the
8 patient or the patient's physician, who is eighteen years of age or older
9 and has significant responsibility for managing the well-being of a patient
10 who has a debilitating medical condition OR DISABLING MEDICAL
11 CONDITION. A primary caregiver may have one or more of the following
12 relationships:

13 (2.5) (a) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTIONS
14 (2.5)(h) AND (2.5)(i) OF THIS SECTION AND SECTION 18-18-406.3, A
15 PATIENT WITH A DISABLING MEDICAL CONDITION OR HIS OR HER PRIMARY
16 CAREGIVER CHARGED WITH A VIOLATION OF THE STATE'S CRIMINAL LAWS
17 RELATED TO THE PATIENT'S MEDICAL USE OF MARIJUANA WILL BE DEEMED
18 TO HAVE ESTABLISHED AN AFFIRMATIVE DEFENSE TO SUCH ALLEGATION
19 WHERE:

20 (I) THE PATIENT WAS PREVIOUSLY DIAGNOSED BY A PHYSICIAN AS
21 HAVING A DISABLING MEDICAL CONDITION;

22 (II) THE PATIENT WAS ADVISED BY HIS OR HER PHYSICIAN, IN THE
23 CONTEXT OF A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP, THAT THE
24 PATIENT MIGHT BENEFIT FROM THE MEDICAL USE OF MARIJUANA IN
25 CONNECTION WITH A DISABLING MEDICAL CONDITION; AND

26 (III) THE PATIENT AND HIS OR HER PRIMARY CAREGIVER WERE
27 COLLECTIVELY IN POSSESSION OF AMOUNTS OF MARIJUANA ONLY AS

1 PERMITTED UNDER THIS SECTION.

2 (b) THE AFFIRMATIVE DEFENSE IN SUBSECTION (2.5)(a) OF THIS
3 SECTION DOES NOT EXCLUDE THE ASSERTION OF ANY OTHER DEFENSE
4 WHERE A PATIENT OR PRIMARY CAREGIVER IS CHARGED WITH A VIOLATION
5 OF STATE LAW RELATED TO THE PATIENT'S MEDICAL USE OF MARIJUANA.

6 (c) IT IS AN EXCEPTION FROM THE STATE'S CRIMINAL LAWS FOR
7 ANY PATIENT WITH A DISABLING MEDICAL CONDITION OR HIS OR HER
8 PRIMARY CAREGIVER IN LAWFUL POSSESSION OF A REGISTRY
9 IDENTIFICATION CARD TO ENGAGE OR ASSIST IN THE MEDICAL USE OF
10 MARIJUANA, EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (2.5)(h) OF
11 THIS SECTION OR SECTION 18-18-406.3.

12 (d) IT IS AN EXCEPTION FROM THE STATE'S CRIMINAL LAWS FOR
13 ANY PHYSICIAN TO:

14 (I) ADVISE A PATIENT WHOM THE PHYSICIAN HAS DIAGNOSED AS
15 HAVING A DISABLING MEDICAL CONDITION ABOUT THE RISKS AND
16 BENEFITS OF THE MEDICAL USE OF MARIJUANA OR THAT HE OR SHE MIGHT
17 BENEFIT FROM THE MEDICAL USE OF MARIJUANA, PROVIDED THAT SUCH
18 ADVICE IS BASED UPON THE PHYSICIAN'S CONTEMPORANEOUS ASSESSMENT
19 OF THE PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION
20 AND A BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP; OR

21 (II) PROVIDE A PATIENT WITH WRITTEN DOCUMENTATION, BASED
22 UPON THE PHYSICIAN'S CONTEMPORANEOUS ASSESSMENT OF THE
23 PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION AND A
24 BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP, STATING THAT THE PATIENT
25 HAS A DISABLING MEDICAL CONDITION AND MIGHT BENEFIT FROM THE
26 MEDICAL USE OF MARIJUANA. NO PHYSICIAN SHALL BE DENIED ANY RIGHTS
27 OR PRIVILEGES FOR THE ACTS AUTHORIZED BY THIS SECTION.

1 (e) NOTWITHSTANDING THE FOREGOING PROVISIONS, NO PERSON,
2 INCLUDING A PATIENT WITH A DISABLING MEDICAL CONDITION OR HIS OR
3 HER PRIMARY CAREGIVER, IS ENTITLED TO THE PROTECTION OF THIS
4 SECTION FOR HIS OR HER ACQUISITION, POSSESSION, MANUFACTURE,
5 PRODUCTION, USE, SALE, DISTRIBUTION, DISPENSING, OR TRANSPORTATION
6 OF MARIJUANA FOR ANY USE OTHER THAN MEDICAL USE.

7 (f) ANY PROPERTY INTEREST THAT IS POSSESSED, OWNED, OR USED
8 BY A PATIENT WITH A DISABLING MEDICAL CONDITION OR HIS OR HER
9 PRIMARY CAREGIVER IN CONNECTION WITH THE MEDICAL USE OF
10 MARIJUANA OR ACTS INCIDENTAL TO SUCH USE SHALL NOT BE HARMED,
11 NEGLECTED, INJURED, OR DESTROYED WHILE IN THE POSSESSION OF STATE
12 OR LOCAL LAW ENFORCEMENT OFFICIALS WHERE SUCH PROPERTY HAS
13 BEEN SEIZED IN CONNECTION WITH THE CLAIMED MEDICAL USE OF
14 MARIJUANA. ANY SUCH PROPERTY INTEREST SHALL NOT BE FORFEITED
15 UNDER ANY PROVISION OF STATE LAW PROVIDING FOR THE FORFEITURE OF
16 PROPERTY OTHER THAN AS A SENTENCE IMPOSED AFTER CONVICTION OF A
17 CRIMINAL OFFENSE OR ENTRY OF A PLEA OF GUILTY TO SUCH OFFENSE.

18 (g) (I) A PATIENT WITH A DISABLING MEDICAL CONDITION MAY
19 ENGAGE IN THE MEDICAL USE OF MARIJUANA, WITH NO MORE MARIJUANA
20 THAN IS MEDICALLY NECESSARY TO ADDRESS A DISABLING MEDICAL
21 CONDITION. THE MEDICAL USE OF MARIJUANA BY A PATIENT WITH A
22 DISABLING MEDICAL CONDITION IS LAWFUL WITHIN THE FOLLOWING
23 LIMITS:

24 (A) NO MORE THAN TWO OUNCES OF A USABLE FORM OF
25 MARIJUANA; AND

26 (B) NO MORE THAN SIX MARIJUANA PLANTS, WITH THREE OR
27 FEWER BEING MATURE, FLOWERING PLANTS THAT ARE PRODUCING A

1 USABLE FORM OF MARIJUANA.

2 (II) FOR QUANTITIES OF MARIJUANA IN EXCESS OF THESE
3 AMOUNTS, A PATIENT OR HIS OR HER PRIMARY CAREGIVER MAY RAISE AS
4 AN AFFIRMATIVE DEFENSE TO CHARGES OF VIOLATION OF STATE LAW THAT
5 SUCH GREATER AMOUNTS WERE MEDICALLY NECESSARY TO ADDRESS THE
6 PATIENT'S DISABLING MEDICAL CONDITION.

7 (h) (I) NO PATIENT WITH A DISABLING MEDICAL CONDITION SHALL:

8 (A) ENGAGE IN THE MEDICAL USE OF MARIJUANA IN A WAY THAT
9 ENDANGERS THE HEALTH OR WELL-BEING OF ANY PERSON; OR

10 (B) ENGAGE IN THE MEDICAL USE OF MARIJUANA IN PLAIN VIEW OF,
11 OR IN A PLACE OPEN TO, THE GENERAL PUBLIC.

12 (II) IN ADDITION TO ANY OTHER PENALTIES PROVIDED BY LAW, THE
13 STATE HEALTH AGENCY SHALL REVOKE FOR A PERIOD OF ONE YEAR THE
14 REGISTRY IDENTIFICATION CARD OF ANY PATIENT FOUND TO HAVE
15 WILLFULLY VIOLATED THE PROVISIONS OF THIS SECTION.

16 (i) NOTWITHSTANDING THE PROVISIONS OF THIS SUBSECTION (2.5),
17 NO PATIENT WITH A DISABLING MEDICAL CONDITION UNDER EIGHTEEN
18 YEARS OF AGE SHALL ENGAGE IN THE MEDICAL USE OF MARIJUANA
19 UNLESS:

20 (I) TWO PHYSICIANS HAVE DIAGNOSED THE PATIENT AS HAVING A
21 DISABLING MEDICAL CONDITION;

22 (II) ONE OF THE PHYSICIANS REFERRED TO IN SUBSECTION
23 (2.5)(i)(I) OF THIS SECTION HAS EXPLAINED THE POSSIBLE RISKS AND
24 BENEFITS OF THE MEDICAL USE OF MARIJUANA TO THE PATIENT AND EACH
25 OF THE PATIENT'S PARENTS RESIDING IN COLORADO;

26 (III) THE PHYSICIAN REFERRED TO IN SUBSECTION (2.5)(i)(II) OF
27 THIS SECTION HAS PROVIDED THE PATIENT WITH THE WRITTEN

1 DOCUMENTATION SPECIFYING THAT THE PATIENT HAS BEEN DIAGNOSED
2 WITH A DISABLING MEDICAL CONDITION AND THE PHYSICIAN HAS
3 CONCLUDED THAT THE PATIENT MIGHT BENEFIT FROM THE MEDICAL USE
4 OF MARIJUANA;

5 (IV) EACH OF THE PATIENT'S PARENTS RESIDING IN COLORADO
6 CONSENT IN WRITING TO THE STATE HEALTH AGENCY TO PERMIT THE
7 PATIENT TO ENGAGE IN THE MEDICAL USE OF MARIJUANA;

8 (V) A PARENT RESIDING IN COLORADO CONSENTS IN WRITING TO
9 SERVE AS THE PATIENT'S PRIMARY CAREGIVER;

10 (VI) A PARENT SERVING AS A PRIMARY CAREGIVER COMPLETES
11 AND SUBMITS AN APPLICATION FOR A REGISTRY IDENTIFICATION CARD AND
12 THE WRITTEN CONSENTS REFERRED TO IN SUBSECTIONS (2.5)(i)(IV) AND
13 (2.5)(i)(V) OF THIS SECTION TO THE STATE HEALTH AGENCY;

14 (VII) THE STATE HEALTH AGENCY APPROVES THE PATIENT'S
15 APPLICATION AND TRANSMITS THE PATIENT'S REGISTRY IDENTIFICATION
16 CARD TO THE PARENT DESIGNATED AS A PRIMARY CAREGIVER;

17 (VIII) THE PATIENT AND PRIMARY CAREGIVER COLLECTIVELY
18 POSSESS AMOUNTS OF MARIJUANA NO GREATER THAN THOSE SPECIFIED IN
19 SUBSECTION (2.5)(g) OF THIS SECTION; AND

20 (IX) THE PRIMARY CARE-GIVER CONTROLS THE ACQUISITION OF
21 SUCH MARIJUANA AND THE DOSAGE AND FREQUENCY OF ITS USE BY THE
22 PATIENT WITH A DISABLING MEDICAL CONDITION.

23 (3) Rule-making. (a) The state health agency shall, pursuant to
24 section 14 of article XVIII of the state constitution, promulgate rules of
25 administration concerning the implementation of the medical marijuana
26 program that specifically govern the following:

27 (VI) Communications with law enforcement officials about

1 registry identification cards that have been suspended when a patient is
2 no longer diagnosed as having a debilitating medical condition OR
3 DISABLING MEDICAL CONDITION;

4 (5) Physicians. A physician who certifies a debilitating medical
5 condition OR DISABLING MEDICAL CONDITION for an applicant to the
6 medical marijuana program shall comply with all of the following
7 requirements:

8 (b) After a physician, who has a bona fide physician-patient
9 relationship with the patient applying for the medical marijuana program,
10 determines, for the purposes of making a recommendation, that the
11 patient has a debilitating medical condition OR DISABLING MEDICAL
12 CONDITION and that the patient may benefit from the use of medical
13 marijuana, the physician shall certify to the state health agency that the
14 patient has a debilitating medical condition OR DISABLING MEDICAL
15 CONDITION and that the patient may benefit from the use of medical
16 marijuana. If the physician certifies that the patient would benefit from
17 the use of medical marijuana based on a chronic or debilitating disease or
18 medical condition OR DISABLING MEDICAL CONDITION, the physician shall
19 specify the chronic or debilitating disease or medical condition OR
20 DISABLING MEDICAL CONDITION and, if known, the cause or source of the
21 chronic or debilitating disease or medical condition OR DISABLING
22 MEDICAL CONDITION.

23 (d) A physician shall not:

24 (III) Examine a patient for purposes of diagnosing a debilitating
25 medical condition OR A DISABLING MEDICAL CONDITION at a location
26 where medical marijuana is sold or distributed; or

27 (IV) Hold an economic interest in an enterprise that provides or

1 distributes medical marijuana if the physician certifies the debilitating
2 medical condition OR DISABLING MEDICAL CONDITION of a patient for
3 participation in the medical marijuana program.

4 **(9) Registry identification card required - denial - revocation**
5 **- renewal. (a) A PERSON WITH A DISABLING MEDICAL CONDITION MAY**
6 **APPLY TO THE STATE HEALTH AGENCY FOR A REGISTRY IDENTIFICATION**
7 **CARD. To be considered in compliance with the provisions of section 14**
8 **of article XVIII of the state constitution, this section, and the rules of the**
9 **state health agency, a patient or primary caregiver shall have his or her**
10 **registry identification card in his or her possession at all times that he or**
11 **she is in possession of any form of medical marijuana and produce the**
12 **same upon request of a law enforcement officer to demonstrate that the**
13 **patient or primary caregiver is not in violation of the law; except that, if**
14 **more than thirty-five days have passed since the date the patient or**
15 **primary caregiver filed his or her medical marijuana program application**
16 **and the state health agency has not yet issued or denied a registry**
17 **identification card, a copy of the patient's or primary caregiver's**
18 **application along with proof of the date of submission shall be in the**
19 **patient's or primary caregiver's possession at all times that he or she is in**
20 **possession of any form of medical marijuana until the state health agency**
21 **issues or denies the registry identification card. A person who violates**
22 **section 14 of article XVIII of the state constitution, this section, or the**
23 **rules promulgated by the state health agency may be subject to criminal**
24 **prosecution for violations of section 18-18-406. C.R.S.**

25 **(b) The state health agency may deny a patient's or primary**
26 **caregiver's application for a registry identification card or revoke the card**
27 **if the state health agency, in accordance with article 4 of title 24, C.R.S.,**

1 determines that the physician who diagnosed the patient's debilitating
2 medical condition OR DISABLING MEDICAL CONDITION, the patient, or the
3 primary caregiver violated section 14 of article XVIII of the state
4 constitution, this section, or the rules promulgated by the state health
5 agency pursuant to this section; except that, when a physician's violation
6 is the basis for adverse action, the state health agency may only deny or
7 revoke a patient's application or registry identification card when the
8 physician's violation is related to the issuance of a medical marijuana
9 recommendation.

10 (12) Use of medical marijuana. (b) A patient or primary
11 caregiver shall not:

12 (VII) Use medical marijuana if the person does not have a
13 debilitating medical condition OR DISABLING MEDICAL CONDITION as
14 diagnosed by the person's physician in the course of a bona fide
15 physician-patient relationship and for which the physician has
16 recommended the use of medical marijuana.

17 (14) Affirmative defense. If a patient or primary caregiver raises
18 an affirmative defense as provided in section 14 (4)(b) of article XVIII of
19 the state constitution OR SUBSECTION (2.5)(g)(II) OF THIS SECTION, the
20 patient's physician shall certify the specific amounts in excess of two
21 ounces that are necessary to address the patient's debilitating medical
22 condition OR DISABLING MEDICAL CONDITION and why such amounts are
23 necessary. A patient who asserts this affirmative defense shall waive
24 confidentiality privileges related to the condition or conditions that were
25 the basis for the recommendation. If a patient, primary caregiver, or
26 physician raises an exception to the state criminal laws as provided in
27 section 14 (2)(b) or (2)(c) of article XVIII of the state constitution OR

1 SUBSECTION (2.5)(c) OR (2.5)(d) OF THIS SECTION, the patient, primary
2 caregiver, or physician waives the confidentiality of his or her records
3 related to the condition or conditions that were the basis for the
4 recommendation maintained by the state health agency for the medical
5 marijuana program. Upon request of a law enforcement agency for such
6 records, the state health agency shall only provide records pertaining to
7 the individual raising the exception, and shall redact all other patient,
8 primary caregiver, or physician identifying information.

9 (16) Fees. (a) The state health agency may collect fees from
10 patients who, pursuant to section 14 of article XVIII of the state
11 constitution OR SUBSECTION (9) OF THIS SECTION, apply to the medical
12 marijuana program for a registry identification card for the purpose of
13 offsetting the state health agency's direct and indirect costs of
14 administering the program. The amount of the fees shall be set by rule of
15 the state health agency. The amount of the fees set pursuant to this section
16 shall reflect the actual direct and indirect costs of the state licensing
17 authority in the administration and enforcement of this article so that the
18 fees avoid exceeding the statutory limit on uncommitted reserves in
19 administrative agency cash funds as set forth in section 24-75-402 (3).
20 C.R.S. The state health agency shall not assess a medical marijuana
21 registry application fee to an applicant who demonstrates, pursuant to a
22 copy of the applicant's state tax return certified by the department of
23 revenue, that the applicant's income does not exceed one hundred
24 eighty-five percent of the federal poverty line, adjusted for family size.
25 All fees collected by the state health agency through the medical
26 marijuana program shall be transferred to the state treasurer who shall
27 credit the same to the medical marijuana program cash fund, which fund

1 is hereby created.

2 **SECTION 2. Safety clause.** The general assembly hereby finds,
3 determines, and declares that this act is necessary for the immediate
4 preservation of the public peace, health, and safety.