

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 17-0653.02 Michael Dohr x4347

HOUSE BILL 17-1220

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A BILL FOR AN ACT

101 **CONCERNING MEASURES TO STOP DIVERSION OF LEGAL MARIJUANA TO**
102 **THE ILLEGAL MARKET.**

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>.)

The bill places a cap on the number of plants that can be possessed or grown on a residential property at 12 plants in the aggregate, with 6 or fewer being mature. A medical marijuana patient or primary caregiver who cultivates more than 12 plants must cultivate the plants in compliance with applicable city, county, or city and county law.

The bill requires a patient or primary caregiver cultivating medical

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.

HOUSE
3rd Reading Unamended
March 13, 2017

HOUSE
Amended 2nd Reading
March 10, 2017

marijuana to comply with all local laws, regulations, and zoning requirements.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Through citizen-initiated measures, Colorado provided its
5 citizens protections for the cultivation and use of medical marijuana in
6 2000 and recreational marijuana in 2012;

7 (b) One of the reasons behind these citizen-initiated measures was
8 to erode the black market for marijuana in Colorado;

9 (c) The constitutional provisions for both medical marijuana and
10 recreational marijuana provide protections for personal marijuana
11 cultivation, but these provisions are silent on the question of where
12 marijuana plants may be grown or processed for medical or recreational
13 use;

14 (d) Although the authority for marijuana cultivation for both
15 medical and recreational marijuana is generally limited to six plants per
16 person, some provisions allow individuals to grow more plants. In the
17 medical marijuana code, a patient can grow an "extended plant count" if
18 his or her physician, who makes the medical marijuana recommendation,
19 also determines the patient has a medical necessity for more than six
20 plants. As well, a primary caregiver can grow medical marijuana for each
21 of the patients that he or she serves.

22 (e) The extended plant count and primary caregiver provisions
23 have created a situation in which individuals are cultivating large
24 quantities of marijuana in residential homes;

25 (f) These large-scale cultivation sites in residential properties

1 create a public safety issue and are a public nuisance. A site in a
2 residential property can overburden the home's electrical system, resulting
3 in excessive power use and creating a fire hazard that puts first
4 responders at risk. A site can also cause water damage and mold in the
5 residential property. A site in a residential property can produce a noxious
6 smell that limits the ability of others who live in the area to enjoy the
7 quiet of their homes. Often the site is a rental home, and the renters cause
8 significant damage to the home by retrofitting the home to be used as a
9 large-scale cultivation site. When residential property is used for a
10 large-scale cultivation site, it often lowers the value of the property and
11 thus the property value of the rest of the neighborhood. Finally, a site in
12 a residential property can serve as a target for criminal activity, creating
13 an untenable public safety hazard.

14 (g) Large-scale, multi-national crime organizations have exploited
15 Colorado laws, rented multiple residential properties for large-scale
16 cultivation sites, and caused an influx of human trafficking and large
17 amounts of weapons as well as the potential for violent crimes in
18 residential neighborhoods.

19 (h) Large-scale cultivation sites in residential properties have been
20 used to divert marijuana out of state and to children.

21 (2) Therefore, the general assembly determines that it is necessary
22 to impose reasonable limits on residential marijuana cultivation that do
23 not encroach on the protections afforded Colorado citizens in the
24 Colorado constitution.

25 **SECTION 2.** In Colorado Revised Statutes, 18-18-406, **amend**
26 (3)(a); and **add** (3)(c) as follows:

27 **18-18-406. Offenses relating to marijuana and marijuana**

1 **concentrate - definition.** (3) (a) (I) It is unlawful for a person to
2 knowingly cultivate, grow, or produce a marijuana plant or knowingly
3 allow a marijuana plant to be cultivated, grown, or produced on land that
4 the person owns, occupies, or controls.

5 (II) (A) REGARDLESS OF WHETHER THE PLANTS ARE FOR MEDICAL
6 OR RECREATIONAL USE, IT IS UNLAWFUL FOR A PERSON TO KNOWINGLY
7 CULTIVATE, GROW, OR PRODUCE MORE THAN SIXTEEN MARIJUANA PLANTS
8 ON OR IN A RESIDENTIAL PROPERTY; OR TO KNOWINGLY ALLOW MORE
9 THAN SIXTEEN MARIJUANA PLANTS TO BE CULTIVATED, GROWN, OR
10 PRODUCED ON OR IN A RESIDENTIAL PROPERTY.

11 (B) IT IS NOT A VIOLATION OF SUBSECTION (3)(a)(II)(A) OF THIS
12 SECTION IF A COUNTY, MUNICIPALITY, OR CITY AND COUNTY LAW
13 EXPRESSLY PERMITS THE CULTIVATION, GROWTH, OR PRODUCTION OF
14 MORE THAN SIXTEEN MARIJUANA PLANTS IN A RESIDENTIAL PROPERTY AND
15 THE PERSON IS CULTIVATING, GROWING, OR PRODUCING MORE THAN
16 SIXTEEN MARIJUANA PLANTS IN AN ENCLOSED AND LOCKED SPACE AND
17 WITHIN THE LIMIT SET BY THE COUNTY, MUNICIPALITY, OR CITY AND
18 COUNTY WHERE THE PLANTS ARE LOCATED.

19 (III) A person who violates the provisions of ~~this subsection (3)~~
20 SUBSECTION (3)(a)(I) OF THIS SECTION commits:

21 (H) (A) A level 3 drug felony if the offense involves more than
22 thirty plants;

23 (H) (B) A level 4 drug felony if the offense involves more than six
24 but not more than thirty plants; or

25 (H) (C) A level 1 drug misdemeanor if the offense involves not
26 more than six plants.

27 (IV) A PERSON WHO VIOLATES THE PROVISIONS OF SUBSECTION

1 (3)(a)(II)(A) OF THIS SECTION COMMITS:

2 (A) A LEVEL 1 DRUG PETTY OFFENSE FOR A FIRST OFFENSE IF THE
3 OFFENSE INVOLVES MORE THAN TWELVE PLANTS, AND UPON CONVICTION,
4 SHALL BE PUNISHED BY A FINE OF UP TO ONE THOUSAND DOLLARS;

5 (B) A LEVEL 4 DRUG FELONY FOR A SECOND OR SUBSEQUENT
6 OFFENSE IF THE OFFENSE INVOLVES MORE THAN TWELVE BUT NOT MORE
7 THAN THIRTY PLANTS; OR

8 (C) A LEVEL 3 DRUG FELONY FOR A SECOND OR SUBSEQUENT
9 OFFENSE IF THE OFFENSE INVOLVES MORE THAN THIRTY PLANTS.

10 (V) PROSECUTION UNDER SUBSECTION (3)(a)(II)(A) DOES NOT
11 PROHIBIT PROSECUTION UNDER ANY OTHER SECTION OF LAW.

12

13 (c) FOR PURPOSES OF THIS SUBSECTION (3):

14 (I) "FLOWERING" THE REPRODUCTIVE STATE OF THE CANNABIS
15 PLANT IN WHICH THERE ARE PHYSICAL SIGNS OF FLOWER BUDDING OUT OF
16 THE NODES.

17 (II) "PLANT" MEANS ANY PLANT OF THE GENUS CANNABIS IN A
18 CULTIVATING CONTAINER THAT IS MORE THAN EIGHT INCHES WIDE BY
19 EIGHT INCHES HIGH OR A FLOWERING CANNABIS PLANT REGARDLESS OF ITS
20 SIZE.

21 (III) "RESIDENTIAL PROPERTY" MEANS A SINGLE UNIT PROVIDING
22 COMPLETE INDEPENDENT LIVING FACILITIES FOR ONE OR MORE PERSONS,
23 INCLUDING PERMANENT PROVISIONS FOR LIVING, SLEEPING, EATING,
24 COOKING, AND SANITATION, AND INCLUDES SINGLE ROOMING UNITS.
25 "RESIDENTIAL PROPERTY" ALSO INCLUDES THE REAL PROPERTY
26 SURROUNDING A STRUCTURE, OWNED IN COMMON WITH THE STRUCTURE,
27 THAT INCLUDES ONE OR MORE SINGLE UNITS PROVIDING COMPLETE

1 INDEPENDENT LIVING FACILITIES.

2 **SECTION 3.** In Colorado Revised Statutes, 25-1.5-106, **amend**
3 (7)(e)(I)(A) and (8.6)(a)(I); and **add** (2)(e.3), (8.5)(a.5), and (8.5)(b.5) as
4 follows:

5 **25-1.5-106. Medical marijuana program - powers and duties**
6 **of state health agency - rules - medical review board - medical**
7 **marijuana program cash fund - subaccount - created - repeal.**

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

11 (e.3) "RESIDENTIAL PROPERTY" MEANS A SINGLE UNIT PROVIDING
12 COMPLETE INDEPENDENT LIVING FACILITIES FOR ONE OR MORE PERSONS,
13 INCLUDING PERMANENT PROVISIONS FOR LIVING, SLEEPING, EATING,
14 COOKING, AND SANITATION. "RESIDENTIAL PROPERTY" ALSO INCLUDES
15 THE REAL PROPERTY SURROUNDING A STRUCTURE, OWNED IN COMMON
16 WITH THE STRUCTURE, THAT INCLUDES ONE OR MORE SINGLE UNITS
17 PROVIDING COMPLETE INDEPENDENT LIVING FACILITIES.

18 (7) **Primary caregivers.** (e) (I) (A) In order to be a primary
19 caregiver who cultivates medical marijuana for his or her patients or
20 transports medical marijuana for his or her patients, he or she shall also
21 register with the state licensing authority AND COMPLY WITH ALL LOCAL
22 LAWS, REGULATIONS, AND ZONING AND USE RESTRICTIONS. A person may
23 not register as a primary caregiver if he or she is licensed as a medical
24 marijuana business as described in part 4 of article 43.3 of title 12 ~~C.R.S.~~;
25 or a retail marijuana business as described in part 4 of article 43.4 of title
26 12. ~~C.R.S.~~ An employee, contractor, or other support staff employed by
27 a licensed entity pursuant to article 43.3 or 43.4 of title 12, ~~C.R.S.~~ or

1 working in or having access to a restricted area of a licensed premises
2 pursuant to article 43.3 or 43.4 of title 12, ~~C.R.S.~~, may be a primary
3 caregiver.

4 **(8.5) Encourage patient voluntary registration - plant limits.**

5 (a.5) UNLESS OTHERWISE EXPRESSLY AUTHORIZED BY LOCAL LAW, IT IS
6 UNLAWFUL FOR A PATIENT TO POSSESS AT OR CULTIVATE ON A
7 RESIDENTIAL PROPERTY MORE THAN SIXTEEN MARIJUANA PLANTS
8 REGARDLESS OF THE NUMBER OF PERSONS RESIDING, EITHER TEMPORARILY
9 OR PERMANENTLY, AT THE PROPERTY. A PATIENT WHO CULTIVATES MORE
10 THAN SIXTEEN MARIJUANA PLANTS SHALL LOCATE HIS OR HER
11 CULTIVATION OPERATION ON A PROPERTY, OTHER THAN A RESIDENTIAL
12 PROPERTY, WHERE MARIJUANA CULTIVATION IS ALLOWED BY LOCAL LAW
13 OR ON A RESIDENTIAL PROPERTY IF ALLOWED BY LOCAL LAW AND SHALL
14 COMPLY WITH ANY APPLICABLE LOCAL LAW REQUIRING DISCLOSURE OF
15 THE LOCATION OF THE CULTIVATION OPERATION. CULTIVATION
16 OPERATIONS ARE SUBJECT TO ANY COUNTY AND MUNICIPAL BUILDING AND
17 PUBLIC HEALTH INSPECTION REQUIRED BY LOCAL LAW. A PERSON WHO
18 VIOLATES THIS SUBSECTION (8.5)(a.5) IS SUBJECT TO THE OFFENSES AND
19 PENALTIES DESCRIBED IN SECTION 18-18-406.

20 (b.5) A PATIENT WHO CULTIVATES HIS OR HER OWN MEDICAL
21 MARIJUANA PLANTS SHALL COMPLY WITH ALL LOCAL LAWS, REGULATIONS,
22 AND ZONING AND USE RESTRICTIONS.

23 **(8.6) Primary caregivers plant limits - exceptional**

24 **circumstances.** (a) (I) (A) A primary caregiver shall not cultivate,
25 transport, or possess more than thirty-six plants unless the primary
26 caregiver has one or more patients who, based on medical necessity, have
27 an extended plant count.

1 (B) UNLESS OTHERWISE EXPRESSLY AUTHORIZED BY LOCAL LAW,
2 IT IS UNLAWFUL FOR A PRIMARY CAREGIVER TO POSSESS AT OR CULTIVATE
3 ON A RESIDENTIAL PROPERTY MORE THAN SIXTEEN MARIJUANA PLANTS
4 REGARDLESS OF THE NUMBER OF PERSONS RESIDING, EITHER TEMPORARILY
5 OR PERMANENTLY, AT THE PROPERTY. ANY PRIMARY CAREGIVER WHO
6 CULTIVATES MORE THAN SIXTEEN MARIJUANA PLANTS SHALL LOCATE HIS
7 OR HER CULTIVATION OPERATION ON A PROPERTY, OTHER THAN A
8 RESIDENTIAL PROPERTY, WHERE MARIJUANA CULTIVATION IS ALLOWED BY
9 LOCAL LAW OR ON A RESIDENTIAL PROPERTY IF ALLOWED BY LOCAL LAW
10 AND SHALL COMPLY WITH ANY APPLICABLE LOCAL LAW REQUIRING
11 DISCLOSURE OF THE LOCATION OF THE CULTIVATION OPERATION.
12 CULTIVATION OPERATIONS ARE SUBJECT TO ANY COUNTY AND MUNICIPAL
13 BUILDING AND PUBLIC HEALTH INSPECTION REQUIRED BY LOCAL LAW. A
14 PERSON WHO VIOLATES THIS SUBSECTION (8.6)(a)(I)(B) IS SUBJECT TO THE
15 OFFENSES AND PENALTIES DESCRIBED IN SECTION 18-18-406.

16 **SECTION 4. Act subject to petition - effective date -**
17 **applicability.** (1) This act takes effect January 1, 2018; except that, if a
18 referendum petition is filed pursuant to section 1 (3) of article V of the
19 state constitution against this act or an item, section, or part of this act
20 within the ninety-day period after final adjournment of the general
21 assembly, then the act, item, section, or part will not take effect unless
22 approved by the people at the general election to be held in November
23 2018 and, in such case, will take effect on the date of the official
24 declaration of the vote thereon by the governor.

25 (2) Section 2 of this act applies to offenses committed on or after
26 the applicable effective date of this act.