

**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. 17-0653.02 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.

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 TWELVE MARIJUANA PLANTS
8 IN THE AGGREGATE, WITH SIX OR FEWER BEING MATURE, ON OR IN A
9 RESIDENTIAL PROPERTY; OR TO KNOWINGLY ALLOW MORE THAN TWELVE
10 MARIJUANA PLANTS IN THE AGGREGATE, WITH SIX OR FEWER BEING
11 MATURE, TO BE CULTIVATED, GROWN, OR PRODUCED ON OR IN A
12 RESIDENTIAL PROPERTY.

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

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

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

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

27 (H) (C) A level 1 drug misdemeanor if the offense involves not

1 more than six plants.

2 (IV) A PERSON WHO VIOLATES THE PROVISIONS OF SUBSECTION
3 (3)(a)(II)(A) OF THIS SECTION COMMITS:

4 (A) AN UNCLASSIFIED DRUG MISDEMEANOR FOR A FIRST OFFENSE
5 CARRYING A PENALTY OF NOT MORE THAN A ONE THOUSAND DOLLAR FINE;

6 (B) A LEVEL 3 DRUG FELONY FOR A SECOND OR SUBSEQUENT
7 OFFENSE IF THE OFFENSE INVOLVES MORE THAN THIRTY PLANTS; OR

8 (C) A LEVEL 4 DRUG FELONY FOR A SECOND OR SUBSEQUENT
9 OFFENSE IF THE OFFENSE INVOLVES MORE THAN TWELVE BUT NOT MORE
10 THAN THIRTY PLANTS.

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

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

22 **25-1.5-106. Medical marijuana program - powers and duties**
23 **of state health agency - rules - medical review board - medical**
24 **marijuana program cash fund - subaccount - created - repeal.**

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

1 (e.3) "RESIDENTIAL PROPERTY" MEANS A SINGLE UNIT PROVIDING
2 COMPLETE INDEPENDENT LIVING FACILITIES FOR ONE OR MORE PERSONS,
3 INCLUDING PERMANENT PROVISIONS FOR LIVING, SLEEPING, EATING,
4 COOKING, AND SANITATION, AND INCLUDES SINGLE ROOMING UNITS.
5 "RESIDENTIAL PROPERTY" ALSO INCLUDES THE REAL PROPERTY
6 SURROUNDING A STRUCTURE, OWNED IN COMMON WITH THE STRUCTURE,
7 THAT INCLUDES ONE OR MORE SINGLE UNITS PROVIDING COMPLETE
8 INDEPENDENT LIVING FACILITIES.

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

22 (8.5) **Encourage patient voluntary registration - plant limits.**
23 (a.5) UNLESS OTHERWISE EXPRESSLY AUTHORIZED BY LOCAL LAW, IT IS
24 UNLAWFUL FOR A PATIENT TO POSSESS AT OR CULTIVATE ON A
25 RESIDENTIAL PROPERTY MORE THAN TWELVE PLANTS, WITH SIX OR FEWER
26 BEING MATURE, REGARDLESS OF THE NUMBER OF PERSONS RESIDING,
27 EITHER TEMPORARILY OR PERMANENTLY, AT THE PROPERTY. A PATIENT

1 WHO CULTIVATES MORE THAN TWELVE MARIJUANA PLANTS SHALL LOCATE
2 HIS OR HER CULTIVATION OPERATION ON A PROPERTY, OTHER THAN A
3 RESIDENTIAL PROPERTY, WHERE MARIJUANA CULTIVATION IS ALLOWED BY
4 LOCAL LAW OR ON A RESIDENTIAL PROPERTY IF ALLOWED BY LOCAL LAW
5 AND SHALL COMPLY WITH ANY APPLICABLE LOCAL LAW REQUIRING
6 DISCLOSURE OF THE LOCATION OF THE CULTIVATION OPERATION.
7 CULTIVATION OPERATIONS ARE SUBJECT TO ANY COUNTY AND MUNICIPAL
8 BUILDING AND PUBLIC HEALTH INSPECTION REQUIRED BY LOCAL LAW. A
9 PERSON WHO VIOLATES THIS SUBSECTION (8.5)(a.5) IS SUBJECT TO THE
10 OFFENSES AND PENALTIES DESCRIBED IN SECTION 18-18-406.

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

14 (8.6) **Primary caregivers plant limits - exceptional**
15 **circumstances.** (a) (I) (A) A primary caregiver shall not cultivate,
16 transport, or possess more than thirty-six plants unless the primary
17 caregiver has one or more patients who, based on medical necessity, have
18 an extended plant count.

19 (B) UNLESS OTHERWISE EXPRESSLY AUTHORIZED BY LOCAL LAW,
20 IT IS UNLAWFUL FOR A PRIMARY CAREGIVER TO POSSESS AT OR CULTIVATE
21 ON A RESIDENTIAL PROPERTY MORE THAN TWELVE PLANTS, WITH SIX OR
22 FEWER BEING MATURE, REGARDLESS OF THE NUMBER OF PERSONS
23 RESIDING, EITHER TEMPORARILY OR PERMANENTLY, AT THE PROPERTY.
24 ANY PRIMARY CAREGIVER WHO CULTIVATES MORE THAN TWELVE
25 MARIJUANA PLANTS SHALL LOCATE HIS OR HER CULTIVATION OPERATION
26 ON A PROPERTY, OTHER THAN A RESIDENTIAL PROPERTY, WHERE
27 MARIJUANA CULTIVATION IS ALLOWED BY LOCAL LAW OR ON A

1 RESIDENTIAL PROPERTY IF ALLOWED BY LOCAL LAW AND SHALL COMPLY
2 WITH ANY APPLICABLE LOCAL LAW REQUIRING DISCLOSURE OF THE
3 LOCATION OF THE CULTIVATION OPERATION. CULTIVATION OPERATIONS
4 ARE SUBJECT TO ANY COUNTY AND MUNICIPAL BUILDING AND PUBLIC
5 HEALTH INSPECTION REQUIRED BY LOCAL LAW. A PERSON WHO VIOLATES
6 THIS SUBSECTION (8.6)(a)(I)(B) IS SUBJECT TO THE OFFENSES AND
7 PENALTIES DESCRIBED IN SECTION 18-18-406.

8 **SECTION 4. Act subject to petition - effective date -**
9 **applicability.** (1) This act takes effect January 1, 2018; except that, if a
10 referendum petition is filed pursuant to section 1 (3) of article V of the
11 state constitution against this act or an item, section, or part of this act
12 within the ninety-day period after final adjournment of the general
13 assembly, then the act, item, section, or part will not take effect unless
14 approved by the people at the general election to be held in November
15 2018 and, in such case, will take effect on the date of the official
16 declaration of the vote thereon by the governor.

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