HOUSE BILL 17-1220

A BILL FOR AN ACT

CONCERNING MEASURES TO STOP DIVERSION OF LEGAL MARIJUANA TO 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
marijuana to comply with all local laws, regulations, and zoning requirements.

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

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

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

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

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

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

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

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

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

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

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

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

18-18-406. Offenses relating to marijuana and marijuana
concentrate - definition. (3) (a) (I) It is unlawful for a person to knowingly cultivate, grow, or produce a marijuana plant or knowingly allow a marijuana plant to be cultivated, grown, or produced on land that the person owns, occupies, or controls.

(II) (A) REGARDLESS OF WHETHER THE PLANTS ARE FOR MEDICAL OR RECREATIONAL USE, IT IS UNLAWFUL FOR A PERSON TO KNOWINGLY CULTIVATE, GROW, OR PRODUCE MORE THAN TWELVE MARIJUANA PLANTS IN THE AGGREGATE, WITH SIX OR FEWER BEING MATURE, ON OR IN A RESIDENTIAL PROPERTY; OR TO KNOWINGLY ALLOW MORE THAN TWELVE MARIJUANA PLANTS IN THE AGGREGATE, WITH SIX OR FEWER BEING MATURE, TO BE CULTIVATED, GROWN, OR PRODUCED ON OR IN A RESIDENTIAL PROPERTY.

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

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

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

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

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

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

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

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

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

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

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

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - subaccount - 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:
(e.3) "RESIDENTIAL PROPERTY" MEANS A SINGLE UNIT PROVIDING COMPLETE INDEPENDENT LIVING FACILITIES FOR ONE OR MORE PERSONS, INCLUDING PERMANENT PROVISIONS FOR LIVING, SLEEPING, EATING, COOKING, AND SANITATION, AND INCLUDES SINGLE ROOMING UNITS. "RESIDENTIAL PROPERTY" ALSO INCLUDES THE REAL PROPERTY SURROUNDING A STRUCTURE, OWNED IN COMMON WITH THE STRUCTURE, THAT INCLUDES ONE OR MORE SINGLE UNITS PROVIDING COMPLETE INDEPENDENT LIVING FACILITIES.

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

(8.5) Encourage patient voluntary registration - plant limits. (a.5) UNLESS OTHERWISE EXPRESSLY AUTHORIZED BY LOCAL LAW, IT IS UNLAWFUL FOR A PATIENT TO POSSESS AT OR CULTIVATE ON A RESIDENTIAL PROPERTY MORE THAN TWELVE PLANTS, WITH SIX OR FEWER BEING MATURE, REGARDLESS OF THE NUMBER OF PERSONS RESIDING, EITHER TEMPORARILY OR PERMANENTLY, AT THE PROPERTY. A PATIENT
WHO CULTIVATES MORE THAN TWELVE MARIJUANA PLANTS SHALL LOCATE HIS OR HER CULTIVATION OPERATION ON A PROPERTY, OTHER THAN A RESIDENTIAL PROPERTY, WHERE MARIJUANA CULTIVATION IS ALLOWED BY LOCAL LAW OR ON A RESIDENTIAL PROPERTY IF ALLOWED BY LOCAL LAW AND SHALL COMPLY WITH ANY APPLICABLE LOCAL LAW REQUIRING DISCLOSURE OF THE LOCATION OF THE CULTIVATION OPERATION. CULTIVATION OPERATIONS ARE SUBJECT TO ANY COUNTY AND MUNICIPAL BUILDING AND PUBLIC HEALTH INSPECTION REQUIRED BY LOCAL LAW. A PERSON WHO VIOLATES THIS SUBSECTION (8.5)(a.5) IS SUBJECT TO THE OFFENSES AND PENALTIES DESCRIBED IN SECTION 18-18-406.

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

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

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

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

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