

CHAPTER 304

REVENUE - ACTIVITIES REGULATION

HOUSE BILL 21-1301

BY REPRESENTATIVE(S) Esgar and Holtorf, Bennett, Bird, Boesenecker, Duran, Gray, Hooton, Lontine, McCormick, McLachlan, Michaelson Jenet, Ricks, Snyder, Valdez A., Woodrow, Jackson, McCluskie, Ortiz, Titone; also SENATOR(S) Coram and Moreno, Ginal, Gonzales, Holbert, Jaquez Lewis, Rankin.

AN ACT

CONCERNING THE REMOVAL OF IMPEDIMENTS TO CANNABIS FARMING, AND, IN CONNECTION THEREWITH, PERMITTING CONTINGENCY PLANS TO REDUCE CROP LOSS BASED ON ADVERSE WEATHER AND CONVENING A WORKING GROUP TO EXAMINE MEASURES TO REDUCE CROSS-POLLINATION, AND MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 35-61-101, **amend** (3); and **add** (4.3), (7.4), (7.6), (7.8), (8.4), (8.7), and (10) as follows:

35-61-101. Definitions. As used in this article 61, unless the context otherwise requires:

(3) "Commissioner" means the commissioner of agriculture OR THE COMMISSIONER'S DESIGNEE.

(4.3) "CROSS-POLLINATION" MEANS THE TRANSFER OF POLLEN FROM ONE PLANT TO THE FLOWER OF ANOTHER PLANT.

(7.4) "LICENSED OUTDOOR MARIJUANA CULTIVATION" MEANS THE LICENSED PREMISES, AS DEFINED IN SECTION 44-10-103 (24), USED FOR OUTDOOR CULTIVATION OF MARIJUANA.

(7.6) "MARIJUANA" HAS THE SAME MEANING AS "REGULATED MARIJUANA" AS DEFINED IN SECTION 44-10-103 (54).

(7.8) (a) "OUTDOOR CULTIVATION" MEANS:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(I) A REGISTERED OUTDOOR HEMP CULTIVATION;

(II) A LICENSED OUTDOOR MARIJUANA CULTIVATION;

(III) THE PREMISES FOR WHICH A PERSON APPLIES FOR REGISTRATION TO ENGAGE IN OUTDOOR CULTIVATION OF HEMP OR A LICENSE TO ENGAGE IN OUTDOOR CULTIVATION OF MARIJUANA; OR

(IV) THE PREMISES ON WHICH A PERSON PREVIOUSLY HAD A REGISTERED OUTDOOR HEMP CULTIVATION OR A LICENSED OUTDOOR MARIJUANA CULTIVATION.

(b) "OUTDOOR CULTIVATION", WITH RESPECT TO MARIJUANA, MEANS A LICENSED MARIJUANA GROW THAT OPERATES SEASONALLY WITHIN A TEMPORARY GREENHOUSE OR ON AN OPEN PLOT OF LAND.

(c) "OUTDOOR CULTIVATION", WITH RESPECT TO MARIJUANA, DOES NOT INCLUDE A LICENSED MARIJUANA GROW THAT OPERATES YEAR-ROUND WITHIN A CONSTRUCTED FACILITY OR PERMANENT GREENHOUSE.

(8.4) "REGISTERED OUTDOOR HEMP CULTIVATION" MEANS THE PREMISES THAT ARE SUBJECT TO REGISTRATION UNDER SECTION 35-61-104 AND ARE USED FOR OUTDOOR CULTIVATION OF HEMP.

(8.7) "STATE LICENSING AUTHORITY" MEANS THE STATE LICENSING AUTHORITY CREATED IN SECTION 44-10-201 FOR THE PURPOSE OF REGULATING AND CONTROLLING THE LICENSING OF THE CULTIVATION, MANUFACTURE, DISTRIBUTION, SALE, AND TESTING OF MARIJUANA IN THIS STATE.

(10) "VOLUNTEER CANNABIS PLANT" MEANS A CANNABIS PLANT GROWING SPONTANEOUSLY WITHOUT DIRECT HUMAN CONTROL OR SUPERVISION.

SECTION 2. In Colorado Revised Statutes, **add** 35-61-110.3 as follows:

35-61-110.3. Cross-pollination - working group - reporting - repeal. (1) ON OR BEFORE NOVEMBER 1, 2021, THE COMMISSIONER, IN COLLABORATION WITH THE STATE LICENSING AUTHORITY, THE GOVERNOR'S DEPUTY LEGAL COUNSEL, AND THE GOVERNOR'S SPECIAL ADVISOR ON CANNABIS, SHALL WORK WITH A WORKING GROUP CONVENED TO STUDY AND RECOMMEND OPTIONS FOR MINIMIZING CROSS-POLLINATION BETWEEN CANNABIS PLANTS, INCLUDING:

(a) HOW TO MINIMIZE VOLUNTEER CANNABIS PLANTS GROWING ON AREAS OF LAND THAT ARE NOT REGISTERED OUTDOOR HEMP CULTIVATIONS OR LICENSED OUTDOOR MARIJUANA CULTIVATIONS, REGARDLESS OF WHETHER THE PROPERTY WAS PREVIOUSLY REGISTERED OR LICENSED;

(b) HOW BEST TO SHARE DATA AND THE PROXIMITY BETWEEN THE LOCATIONS OF REGISTERED OUTDOOR HEMP CULTIVATIONS, LICENSED OUTDOOR MARIJUANA CULTIVATIONS, AND THE PROPERTIES OF APPLICANTS FOR REGISTERED OUTDOOR HEMP CULTIVATIONS OR LICENSED OUTDOOR MARIJUANA CULTIVATIONS, INCLUDING INFORMATION FOR EACH OUTDOOR CULTIVATION REGARDING:

(I) THE POTENTIAL FOR CROSS-POLLINATION BETWEEN THE OUTDOOR CULTIVATION AND OTHER OUTDOOR CULTIVATIONS OR AREAS OF LAND WITH VOLUNTEER CANNABIS PLANTS; AND

(II) PROPERTY SIZE;

(c) THE BEST PRACTICES FOR PREVENTING CROSS-POLLINATION INCLUDING:

(I) AN EXAMINATION OF THE STANDARDS DEVELOPED BY AGRICULTURAL ORGANIZATIONS WITH EXPERTISE IN INDUSTRY-WIDE STANDARDS AND PRACTICES;

(II) RECOMMENDATIONS FROM SUBJECT-MATTER EXPERTS; AND

(III) IF AVAILABLE, A REVIEW OF PRACTICES DEVELOPED BY THE HEMP CENTER OF EXCELLENCE; AND

(d) THE FEASIBILITY OF CONDUCTING AND FINANCING FIELD STUDIES TO EXAMINE CROSS-POLLINATION BETWEEN OUTDOOR CULTIVATIONS AND AREAS OF LAND WITH VOLUNTEER CANNABIS PLANTS.

(2) IN CONVENING THE WORKING GROUP, THE APPOINTING AUTHORITIES SHOULD STRIVE TO INCLUDE REPRESENTATION OF A DIVERSE CROSS-SECTION OF MEMBERS. MEMBERS OF THE WORKING GROUP SHALL BE APPOINTED ON OR BEFORE OCTOBER 15, 2021, AS FOLLOWS:

(a) THE CHAIRS OF THE HOUSE AGRICULTURE, LIVESTOCK, AND WATER COMMITTEE AND THE SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE OR THEIR SUCCESSOR COMMITTEES SHALL JOINTLY APPOINT:

(I) TWO MEMBERS FROM AFFECTED LICENSED MARIJUANA CULTIVATION BUSINESSES IN THE STATE;

(II) ONE GENETICIST WITH EXPERTISE IN CANNABIS BREEDING;

(III) ONE SCIENTIST OR AGRONOMIST WITH EXPERTISE IN CROSS-POLLINATION;

(IV) TWO MEMBERS FROM SOFTWARE COMPANIES THAT SERVICE THE AGRICULTURAL INDUSTRY;

(V) TWO MEMBERS FROM BUSINESSES IN THE STATE WITH EXPERIENCE GROWING HEMP FROM FEMINIZED SEEDS OR CLONES PRIMARILY FOR CANNABINOID PRODUCTION;

(VI) TWO MEMBERS REPRESENTING COMPANIES WITH EXPERTISE IN AGRICULTURAL SURVEYING;

(VII) TWO MEMBERS FROM BUSINESSES IN THE STATE WITH EXPERIENCE IN THE DEVELOPMENT OF SEED THAT IS CERTIFIED BY THE ASSOCIATION OF OFFICIAL SEED CERTIFYING AGENCIES; AND

(VIII) TWO MEMBERS FROM BUSINESSES IN THE STATE WITH EXPERIENCE IN

GROWING HEMP GRAIN AND FIBER VARIETIES; AND

(b) THE STATE LICENSING AUTHORITY SHALL APPOINT FOUR MEMBERS AS FOLLOWS:

(I) TWO EACH WITH EXPERTISE IN LICENSED MARIJUANA CULTIVATION REGULATIONS; AND

(II) TWO EACH REPRESENTING A LICENSED MARIJUANA OUTDOOR CULTIVATION BUSINESS WITH EXPERTISE IN CANNABIS GENETICS.

(3) THE WORKING GROUP'S RECOMMENDATIONS MUST NOT INCLUDE MANDATES ON THE TYPE, LOCATION, OR TIMING OF ANY CROP PLANTING; HOWEVER, THIS WILL NOT LIMIT THE ABILITY OF PROPERTY OWNERS TO ENTER INTO VOLUNTARY AGREEMENTS.

(4) ON OR BEFORE NOVEMBER 1, 2022, THE WORKING GROUP SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDATIONS TO THE HOUSE OF REPRESENTATIVES AGRICULTURE, LIVESTOCK, AND WATER COMMITTEE AND THE SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE, OR THEIR SUCCESSOR COMMITTEES. THE DEPARTMENT AND THE STATE LICENSING AUTHORITY SHALL POST THE REPORT ON THEIR PUBLIC WEBSITES.

(5) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2023.

SECTION 3. In Colorado Revised Statutes, 44-10-103, **add** (6.5) as follows:

44-10-103. Definitions. As used in this article 10, unless the context otherwise requires:

(6.5) "ADVERSE WEATHER EVENT" MEANS:

(a) DAMAGING WEATHER, WHICH INVOLVES A DROUGHT, A FREEZE, HAIL, EXCESSIVE MOISTURE, EXCESSIVE WIND, OR A TORNADO;

(b) AN ADVERSE NATURAL OCCURRENCE, WHICH INVOLVES AN EARTHQUAKE, WILDFIRE, OR FLOOD; OR

(c) ANY ADDITIONAL ADVERSE WEATHER EVENT OR ADVERSE NATURAL OCCURRENCE AS THE STATE LICENSING AUTHORITY MAY DEFINE BY RULE.

SECTION 4. In Colorado Revised Statutes, 44-10-202, **amend** (1)(f) and (1)(g); and **add** (1)(h) as follows:

44-10-202. Powers and duties of state licensing authority - rules - report - legislative declaration - repeal. (1) **Powers and duties.** The state licensing authority shall:

(f) Prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to section 24-1-136, a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or

directive to the state licensing authority; ~~and~~

(g) Collect and maintain data related to licensing disqualifications and all sanctions based on past criminal history pursuant to the requirements in section 24-34-104 (6)(b)(IX); AND

(h) (I) ON OR BEFORE NOVEMBER 1, 2021, IN COLLABORATION WITH THE GOVERNOR'S DEPUTY LEGAL COUNSEL AND THE GOVERNOR'S SPECIAL ADVISOR ON CANNABIS, CONVENE A WORKING GROUP TO EXAMINE THE EXISTING RULES AND TAX LAWS THAT APPLY TO THE STATE'S WHOLESALE MARIJUANA CULTIVATION MARKET. THE WORKING GROUP SHALL EXPLORE OPTIONS ON HOW THE EXISTING RULES AND TAX LAWS COULD BE AMENDED TO BETTER POSITION BUSINESSES IN THE STATE TO BE COMPETITIVE IF MARIJUANA IS LEGALIZED UNDER FEDERAL LAW. ON OR BEFORE JUNE 1, 2022, THE WORKING GROUP SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDATIONS TO THE EXECUTIVE DIRECTOR AND THE GENERAL ASSEMBLY, WHICH REPORT MAY INCLUDE RECOMMENDATIONS FOR LEGISLATION.

(II) THIS SUBSECTION (1)(h) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2022.

SECTION 5. In Colorado Revised Statutes, 44-10-203, **amend** (1)(j); and **add** (1)(j.5) and (9) as follows:

44-10-203. State licensing authority - rules - definition. (1) **Permissive rule-making.** Rules promulgated pursuant to section 44-10-202 (1)(c) may include but need not be limited to the following subjects:

(j) A definition for "disproportionate impacted area" to the extent relevant state of Colorado data exists, is available, and is used for the purpose of determining eligibility for a social equity licensee; ~~and~~

(j.5) THE IMPLEMENTATION OF CONTINGENCY PLANS PURSUANT TO SECTIONS 44-10-502 (10) AND 44-10-602 (14), INCLUDING THE DEFINITION OF OUTDOOR CULTIVATION, ADVERSE WEATHER EVENT, OR ADVERSE NATURAL OCCURRENCE AND THE PROCESS, PROCEDURES, REQUIREMENTS, AND RESTRICTIONS FOR CONTINGENCY PLANS; AND

(9)(a) THE STATE LICENSING AUTHORITY MAY, BY RULE, ESTABLISH PROCEDURES FOR THE CONDITIONAL ISSUANCE OF AN EMPLOYEE LICENSE IDENTIFICATION CARD AT THE TIME OF APPLICATION.

(b) (I) THE STATE LICENSING AUTHORITY SHALL BASE ITS ISSUANCE OF AN EMPLOYEE LICENSE IDENTIFICATION CARD PURSUANT TO THIS SUBSECTION (9) ON THE RESULTS OF AN INITIAL INVESTIGATION THAT DEMONSTRATE THE APPLICANT IS QUALIFIED TO HOLD SUCH LICENSE. THE EMPLOYEE LICENSE APPLICATION FOR WHICH AN EMPLOYEE LICENSE IDENTIFICATION CARD WAS ISSUED PURSUANT TO THIS SUBSECTION (9) REMAINS SUBJECT TO DENIAL PENDING THE COMPLETE RESULTS OF THE APPLICANT'S INITIAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK.

(II) RESULTS OF A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK THAT DEMONSTRATE THAT AN APPLICANT POSSESSING AN EMPLOYEE LICENSE IDENTIFICATION CARD PURSUANT TO THIS SUBSECTION (9) IS NOT QUALIFIED TO HOLD

A LICENSE ISSUED UNDER THIS ARTICLE 10 ARE GROUNDS FOR DENIAL OF THE EMPLOYEE LICENSE APPLICATION. IF THE EMPLOYEE LICENSE APPLICATION IS DENIED, THE APPLICANT SHALL RETURN THE EMPLOYEE LICENSE IDENTIFICATION CARD TO THE STATE LICENSING AUTHORITY WITHIN A TIME PERIOD THAT THE STATE LICENSING AUTHORITY ESTABLISHES BY RULE.

SECTION 6. In Colorado Revised Statutes, 44-10-502, **add** (10) as follows:

44-10-502. Medical marijuana cultivation facility license - rules - definitions.

(10) (a) BEGINNING JANUARY 1, 2022, A MEDICAL MARIJUANA CULTIVATION FACILITY LICENSEE THAT CULTIVATES MEDICAL MARIJUANA OUTDOORS MAY FILE A CONTINGENCY PLAN FOR ITS OUTDOOR CULTIVATION OPERATION TO ADDRESS HOW THE LICENSEE WILL RESPOND WHEN THERE IS AN ADVERSE WEATHER EVENT. IF THE LICENSEE FILES A CONTINGENCY PLAN, THE LICENSEE SHALL ALSO SUBMIT A COPY OF THE PLAN TO THE LOCAL LICENSING AUTHORITY IN THE LOCAL JURISDICTION WHERE THE LICENSEE OPERATES. IF THE CONTINGENCY PLAN IS APPROVED BY THE STATE LICENSING AUTHORITY, THE MEDICAL MARIJUANA CULTIVATION FACILITY LICENSEE MAY FOLLOW THE CONTINGENCY PLAN IN THE CASE OF AN ADVERSE WEATHER EVENT.

(b) AFTER THE STATE LICENSING AUTHORITY APPROVES A CONTINGENCY PLAN, IT SHALL NOTIFY THE LOCAL LICENSING AUTHORITY OF THE APPROVAL. THE LOCAL LICENSING AUTHORITY MAY ENFORCE LOCAL LAND USE AND ZONING LAWS AND REGULATIONS REGARDING THE CONTINGENCY PLAN AND MAY DEVELOP INTERNAL REGULATORY PROCESSES TO EVALUATE CONTINGENCY PLANS.

(c) ON AND AFTER JANUARY 1, 2023, A LOCAL LICENSING AUTHORITY MAY REQUIRE THAT AN APPLICANT FOR A MEDICAL MARIJUANA CULTIVATION FACILITY LICENSE INCLUDE A CONTINGENCY PLAN WITH THE APPLICATION FOR THE LOCAL LICENSING AUTHORITY'S REVIEW AND APPROVAL.

SECTION 7. In Colorado Revised Statutes, 44-10-602, **add** (14) as follows:

44-10-602. Retail marijuana cultivation facility license - rules - definitions.

(14) (a) BEGINNING JANUARY 1, 2022, A RETAIL MARIJUANA CULTIVATION FACILITY LICENSEE THAT CULTIVATES RETAIL MARIJUANA OUTDOORS MAY FILE A CONTINGENCY PLAN FOR ITS OUTDOOR CULTIVATION OPERATION TO ADDRESS HOW THE LICENSEE WILL RESPOND WHEN THERE IS AN ADVERSE WEATHER EVENT. IF THE LICENSEE FILES A CONTINGENCY PLAN, THE LICENSEE SHALL ALSO SUBMIT A COPY OF THE PLAN TO THE LOCAL LICENSING AUTHORITY IN THE LOCAL JURISDICTION WHERE THE LICENSEE OPERATES. IF THE CONTINGENCY PLAN IS APPROVED BY THE STATE LICENSING AUTHORITY, THE RETAIL MARIJUANA CULTIVATION FACILITY LICENSEE MAY FOLLOW THE CONTINGENCY PLAN IN THE CASE OF AN ADVERSE WEATHER EVENT.

(b) AFTER THE STATE LICENSING AUTHORITY APPROVES A CONTINGENCY PLAN, IT SHALL NOTIFY THE LOCAL LICENSING AUTHORITY OF THE APPROVAL. THE LOCAL LICENSING AUTHORITY MAY ENFORCE LOCAL LAND USE AND ZONING LAWS AND REGULATIONS REGARDING THE CONTINGENCY PLAN AND MAY DEVELOP INTERNAL REGULATORY PROCESSES TO EVALUATE CONTINGENCY PLANS.

(c) ON AND AFTER JANUARY 1, 2023, A LOCAL LICENSING AUTHORITY MAY REQUIRE THAT AN APPLICANT FOR A RETAIL MARIJUANA CULTIVATION FACILITY LICENSE INCLUDE A CONTINGENCY PLAN WITH THE APPLICATION FOR THE LOCAL LICENSING AUTHORITY'S REVIEW AND APPROVAL.

SECTION 8. Appropriation. (1) For the 2021-22 state fiscal year, \$104,780 is appropriated to the department of agriculture for use by agricultural services. This appropriation consists of \$52,390 from the industrial hemp registration program cash fund created in section 35-61-106 (1), C.R.S., and \$52,390 from the marijuana tax cash fund created in section 39-28.8-501 (1), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$83,512, which consists of \$52,390 from the industrial hemp registration program cash fund and \$31,122 from the marijuana tax cash fund, for use by agricultural services for the plant industry division, which amount is based on an assumption that the department will require an additional 0.7 FTE; and

(b) \$21,268 from the marijuana tax cash fund for the purchase of legal services.

(2) For the 2021-22 state fiscal year, \$21,268 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of agriculture under subsection (1)(b) of this section and is based on an assumption that the department of law will require an additional 0.1 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of agriculture.

(3) For the 2021-22 state fiscal year, \$279,194 is appropriated to the department of revenue. This appropriation is from the marijuana cash fund created in section 44-10-801 (1)(a), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$247,292 for use by the specialized business group for marijuana enforcement, which amount is based on an assumption that the group will require an additional 1.9 FTE; and

(b) \$31,902 for the purchase of legal services.

(4) For the 2021-22 state fiscal year, \$31,902 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of revenue under subsection (3)(b) of this section and is based on an assumption that the department of law will require an additional 0.2 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of revenue.

SECTION 9. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; 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 such period, 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 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 23, 2021