

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0428.01 Michael Dohr x4347

HOUSE BILL 16-1261

HOUSE SPONSORSHIP

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Jahn and Baumgardner,

House Committees
Finance

Senate Committees

A BILL FOR AN ACT

101 CONCERNING CONTINUATION OF THE COLORADO RETAIL MARIJUANA
102 CODE, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE
103 RECOMMENDATIONS OF THE 2015 SUNSET REPORT ISSUED BY
104 THE DEPARTMENT OF REGULATORY AGENCIES.

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://www.leg.state.co.us/billsummaries>.)

Sunset Process - House Finance Committee. The bill implements the following recommendations from the sunset report for the retail marijuana program:

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.

- ! Extending the retail marijuana code until September 1, 2019;
- ! Stating that regulation of labeling, packaging, and testing is a matter of statewide concern; and
- ! Repealing the following provisions from the retail marijuana code:
 - ! The requirement that a licensee post a surety bond as condition of licensure;
 - ! The requirement that the executive director deny a license based on a previous denial at the same location;
 - ! The proscription on the placement and sale of marijuana-themed magazines; and
 - ! The authority to promulgate rules prohibiting misrepresentation and unfair practices.

The bill creates 2 new retail marijuana licenses--a retail marijuana transport license and a retail marijuana operator license--and gives the state licensing authority rulemaking authority over those licenses.

The bill conforms language in the retail marijuana code to language in the medical marijuana code related to mandatory testing, the confidentiality of licensee information, and limited access areas.

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

2 **SECTION 1.** In Colorado Revised Statutes, 12-43.4-103, **amend**
 3 (14.5); and **add** (17.5) and (21.5) as follows:

4 **12-43.4-103. Definitions.** As used in this article, unless the
 5 context otherwise requires:

6 (14.5) "Resealable" means that the package continues to function
 7 ~~with~~ WITHIN effectiveness specifications, which shall be established by
 8 the state licensing authority similar to the federal "Poison Prevention
 9 Packaging Act of 1970", 15 U.S.C. sec. 1471 et seq., for the number of
 10 openings and closings customary for its size and contents, which shall be
 11 determined by the state licensing authority.

12 (17.5) "RETAIL MARIJUANA ESTABLISHMENT OPERATOR" MEANS
 13 AN ENTITY OR PERSON THAT IS NOT AN OWNER AND THAT IS LICENSED TO

1 PROVIDE PROFESSIONAL OPERATIONAL SERVICES TO A RETAIL MARIJUANA
2 ESTABLISHMENT FOR DIRECT REMUNERATION FROM THE RETAIL
3 MARIJUANA ESTABLISHMENT.

4 (21.5) "RETAIL MARIJUANA TRANSPORTER" MEANS AN ENTITY OR
5 PERSON THAT IS LICENSED TO TRANSPORT RETAIL MARIJUANA AND RETAIL
6 MARIJUANA PRODUCT FROM ONE RETAIL MARIJUANA ESTABLISHMENT TO
7 ANOTHER RETAIL MARIJUANA ESTABLISHMENT AND TO TEMPORARILY
8 STORE THE TRANSPORTED RETAIL MARIJUANA AND RETAIL MARIJUANA
9 PRODUCTS AT ITS LICENSED PREMISES, BUT IS NOT AUTHORIZED TO SELL
10 RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS UNDER ANY
11 CIRCUMSTANCES.

12 **SECTION 2.** In Colorado Revised Statutes, **amend** 12-43.4-105
13 as follows:

14 **12-43.4-105. Limited access areas.** Subject to the provisions of
15 section 12-43.4-701, a limited access area shall be a building, room, or
16 other contiguous area upon the licensed premises where retail marijuana
17 and retail marijuana products are cultivated, stored, weighed, packaged,
18 or tested, under control of the licensee, with ACCESS limited ~~access~~ to
19 only those persons licensed by the state licensing authority AND THOSE
20 VISITORS ESCORTED BY A PERSON LICENSED BY THE STATE LICENSING
21 AUTHORITY. All areas of ingress or egress to limited access areas shall be
22 clearly identified as such by a sign as designated by the state licensing
23 authority.

24 **SECTION 3.** In Colorado Revised Statutes, 12-43.4-202, **amend**
25 (2) (d), (3) (a) (IV) (B), (3) (a) (IV) (C), (3) (a) (IV) (D), (3) (a) (IV) (E),
26 (3) (a) (IV) (F), and (3) (a) (XV); **add** (3) (a) (XVII), (3) (a) (XVIII), and
27 (3) (f); and **repeal** (3) (b) (IV) and (3) (c) (II) as follows:

1 **12-43.4-202. Powers and duties of state licensing authority -**

2 **rules.** (2) The state licensing authority has the authority to:

3 (d) Maintain the confidentiality of reports or other information
4 obtained from a licensee ~~showing the sales volume or quantity of retail~~
5 ~~marijuana or retail marijuana products sold~~ CONTAINING ANY
6 INDIVIDUALIZED DATA, INFORMATION, OR RECORDS RELATED TO THE
7 LICENSEE OR ITS OPERATION, INCLUDING SALES INFORMATION, FINANCIAL
8 RECORDS, TAX RETURNS, CREDIT REPORTS, CULTIVATION INFORMATION,
9 TESTING RESULTS, AND SECURITY INFORMATION AND PLANS, or revealing
10 any customer information, or any other records that are exempt from
11 public inspection pursuant to state law. Such reports or other information
12 may be used only for a purpose authorized by this article or for any other
13 state or local law enforcement purpose. Any customer information may
14 be used only for a purpose authorized by this article.

15 (3) (a) Rules promulgated pursuant to paragraph (b) of subsection
16 (2) of this section must include, but need not be limited to, the following
17 subjects:

18 (IV) (B) ~~Testing shall include, but not be limited to, analysis for~~
19 ~~residual solvents, poisons, or toxins; harmful chemicals; dangerous molds~~
20 ~~or mildew; filth; and harmful microbials such as E. Coli or salmonella~~
21 ~~and pesticides~~ TESTING MAY INCLUDE ANALYSIS FOR MICROBIAL AND
22 RESIDUAL SOLVENTS AND CHEMICAL AND BIOLOGICAL CONTAMINANTS
23 DEEMED TO BE PUBLIC HEALTH HAZARDS BY THE COLORADO DEPARTMENT
24 OF PUBLIC HEALTH AND ENVIRONMENT BASED ON MEDICAL REPORTS AND
25 PUBLISHED SCIENTIFIC LITERATURE.

26 (C) In the event that test results indicate the presence of quantities
27 of any substance determined to be injurious to health, ~~such products shall~~

1 ~~be immediately quarantined and immediate notification to the marijuana~~
2 ~~enforcement division shall be made. The adulterated product shall be~~
3 ~~documented and properly destroyed~~ THE LICENSEE SHALL IMMEDIATELY
4 QUARANTINE THE PRODUCTS AND NOTIFY THE STATE LICENSING
5 AUTHORITY. THE LICENSEE SHALL DOCUMENT AND PROPERLY DESTROY
6 THE ADULTERATED PRODUCT.

7 (D) ~~Testing shall also verify THC potency representations for~~
8 ~~correct labeling and create process validation for edible marijuana~~
9 ~~products and other marijuana products in multi-serving packages for a ten~~
10 ~~milligram serving in a one hundred milligram package, including~~
11 ~~homogeneity, potency, solvents, and pesticides~~ TESTING SHALL ALSO
12 VERIFY THC POTENCY REPRESENTATIONS AND HOMOGENEITY FOR
13 CORRECT LABELING AND PROVIDE A CANNABINOID PROFILE FOR THE
14 MARIJUANA PRODUCT. An individual marijuana piece of ten milligrams or
15 less that has gone through process validation is exempt from continued
16 homogeneity testing. Homogeneity testing for one hundred milligram
17 servings may utilize validation measures.

18 (E) THE STATE LICENSING AUTHORITY SHALL DETERMINE AN
19 ACCEPTABLE VARIANCE FOR POTENCY REPRESENTATIONS AND
20 PROCEDURES TO ADDRESS POTENCY MISREPRESENTATIONS. The ~~agency~~
21 STATE LICENSING AUTHORITY shall determine an acceptable variance of
22 at least plus or minus fifteen percent for potency representations and
23 procedures to address potency misrepresentations.

24 (F) The ~~agency~~ STATE LICENSING AUTHORITY shall determine the
25 protocols and frequency of marijuana testing by licensees.

26 (XV) Compliance with, enforcement of, or violation of any
27 provision of this article, section 18-18-406.3 (7), C.R.S., or any rule

1 issued pursuant to this article, including procedures and grounds for
2 denying, suspending, fining, restricting, or revoking a state license issued
3 pursuant to this article; ~~and~~

4 (XVII) RETAIL MARIJUANA TRANSPORTER LICENSED BUSINESSES,
5 INCLUDING REQUIREMENTS FOR DRIVERS, INCLUDING OBTAINING AND
6 MAINTAINING A VALID COLORADO DRIVER'S LICENSE; INSURANCE
7 REQUIREMENTS; ACCEPTABLE TIME FRAMES FOR TRANSPORT, STORAGE,
8 AND DELIVERY; REQUIREMENTS FOR TRANSPORT VEHICLES; AND
9 REQUIREMENTS FOR LICENSED PREMISES; AND

10 (XVIII) RETAIL MARIJUANA ESTABLISHMENT OPERATOR
11 LICENSEES, INCLUDING THE FORM AND STRUCTURE OF ALLOWABLE
12 AGREEMENTS BETWEEN OPERATORS AND OWNERS.

13 (b) Rules promulgated pursuant to paragraph (b) of subsection (2)
14 of this section must also include the following subjects:

15 (IV) ~~Prohibition of misrepresentation and unfair practices;~~

16 (c) Rules promulgated pursuant to paragraph (b) of subsection (2)
17 of this section must also include the following subjects, and the state
18 licensing authority may seek the assistance of the department of public
19 health and environment when necessary before promulgating the rules:

20 (II) ~~Requiring that magazines whose primary focus is marijuana
21 or marijuana businesses are only sold in retail marijuana stores or behind
22 the counter in establishments where persons under twenty-one years of
23 age are present;~~

24 (f) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT MATTERS
25 RELATED TO LABELING AS REGULATED PURSUANT TO SUBPARAGRAPH
26 (VII) OF PARAGRAPH (a) OF THIS SUBSECTION (3) AND SUBPARAGRAPHS
27 (V) AND (VI) OF PARAGRAPH (c) OF THIS SUBSECTION (3), PACKAGING AS

1 REGULATED PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (c) OF THIS
2 SUBSECTION (3), AND TESTING AS REGULATED PURSUANT TO
3 SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (3) ARE
4 MATTERS OF STATEWIDE CONCERN, AND THE SOLE REGULATORY
5 AUTHORITY FOR LABELING, PACKAGING, AND TESTING IS PURSUANT TO
6 THIS SECTION.

7 **SECTION 4.** In Colorado Revised Statutes, **repeal** 12-43.4-303
8 as follows:

9 **12-43.4-303. Retail marijuana license bond.** ~~(1) Before the state~~
10 ~~licensing authority issues a state license to an applicant, the applicant~~
11 ~~shall procure and file with the state licensing authority evidence of a good~~
12 ~~and sufficient bond in the amount of five thousand dollars with corporate~~
13 ~~surety thereon duly licensed to do business with the state, approved as to~~
14 ~~form by the attorney general of the state, and conditioned that the~~
15 ~~applicant shall report and pay all sales and use taxes due to the state, or~~
16 ~~for which the state is the collector or collecting agent, in a timely manner,~~
17 ~~as provided in law.~~

18 ~~(2) A corporate surety shall not be required to make payments to~~
19 ~~the state claiming under such bond until a final determination of failure~~
20 ~~to pay taxes due to the state is made by the executive director of the~~
21 ~~department of revenue or a court of competent jurisdiction.~~

22 ~~(3) All bonds required pursuant to this section must be renewed~~
23 ~~at such time as the bondholder's license is renewed. The renewal may be~~
24 ~~accomplished through a continuation certificate issued by the surety.~~

25 **SECTION 5.** In Colorado Revised Statutes, 12-43.4-306, **amend**
26 (1) (f) as follows:

27 **12-43.4-306. Persons prohibited as licensees - definitions.**

1 (1) A license provided by this article shall not be issued to or held by:

2 (f) A person licensed pursuant to this article who, during a period
3 of licensure, or who, at the time of application, has failed to:

4 (I) ~~Provide a surety bond or~~ File any tax return related to a
5 MEDICAL OR retail marijuana establishment; or

6 (II) Pay any taxes, interest, or penalties due ~~the department of~~
7 ~~revenue~~ relating to a MEDICAL OR retail marijuana establishment;

8 **SECTION 6.** In Colorado Revised Statutes, 12-43.4-307, **repeal**
9 (1) (a) as follows:

10 **12-43.4-307. Restrictions for applications for new licenses.**

11 (1) The state licensing authority shall not approve an application for the
12 issuance of a state license pursuant to this article:

13 (a) ~~If the application for the license concerns a particular location~~
14 ~~that is the same as or within one thousand feet of a location for which,~~
15 ~~within the two years immediately preceding the date of the application,~~
16 ~~the state licensing authority denied an application for the same class of~~
17 ~~license due to the nature of the use or other concern related to the~~
18 ~~location; or~~

19 **SECTION 7.** In Colorado Revised Statutes, 12-43.4-401, **amend**
20 (1) (d); and **add** (1) (f) and (1) (g) as follows:

21 **12-43.4-401. Classes of licenses.** (1) For the purpose of
22 regulating the cultivation, manufacture, distribution, sale, and testing of
23 retail marijuana and retail marijuana products, the state licensing
24 authority in its discretion, upon receipt of an application in the prescribed
25 form, may issue and grant to the applicant a license from any of the
26 following classes, subject to the provisions and restrictions provided by
27 this article:

- 1 (d) Retail marijuana testing facility license; ~~and~~
- 2 (f) RETAIL MARIJUANA TRANSPORT LICENSE; AND
- 3 (g) RETAIL MARIJUANA BUSINESS OPERATOR LICENSE.

4 **SECTION 8.** In Colorado Revised Statutes, **add** 12-43.4-406 and
5 12-43.4-407 as follows:

6 **12-43.4-406. Retail marijuana transport license.** (1) A RETAIL
7 MARIJUANA TRANSPORT LICENSE MAY BE ISSUED TO A PERSON WHO ONLY
8 TEMPORARILY STORES AND TRANSPORTS RETAIL MARIJUANA THROUGHOUT
9 THE STATE FOR OTHER ENTITIES LICENSED PURSUANT TO THIS PART 4.

10 (2) A RETAIL MARIJUANA TRANSPORT LICENSEE SHALL MAINTAIN
11 A LICENSED PREMISES FOR THE TEMPORARY STORAGE OF RETAIL
12 MARIJUANA.

13 (3) A RETAIL MARIJUANA TRANSPORT LICENSEE SHALL HAVE
14 ACCESS TO AND SHALL USE THE SEED-TO-SALE TRACKING SYSTEM
15 DEVELOPED PURSUANT TO SECTION 12-43.4-202 (1) TO CREATE SHIPPING
16 MANIFESTS DOCUMENTING THE TRANSPORT OF RETAIL MARIJUANA
17 THROUGHOUT THE STATE.

18 (4) AN ENTITY LICENSED PURSUANT TO THIS PART 4 MAY
19 TRANSPORT ITS OWN RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS
20 WITHOUT POSSESSING A LICENSE PURSUANT TO THIS SECTION.

21 **12-43.4-407. Retail marijuana business operator license.** A
22 RETAIL MARIJUANA BUSINESS OPERATOR LICENSE MAY BE ISSUED TO A
23 PERSON WHO OPERATES A RETAIL MARIJUANA ESTABLISHMENT LICENSED
24 PURSUANT TO THIS ARTICLE, FOR AN OWNER LICENSED PURSUANT TO THIS
25 ARTICLE, AND WHO MAY RECEIVE A PORTION OF THE PROFITS AS
26 COMPENSATION.

27 **SECTION 9.** In Colorado Revised Statutes, 12-43.4-1001,

1 **amend** (1) as follows:

2 **12-43.4-1001. Sunset review - article repeal.** (1) This article is
3 repealed, effective ~~July 1, 2016~~ SEPTEMBER 1, 2019.

4 **SECTION 10.** In Colorado Revised Statutes, 24-34-104, **repeal**
5 (47) (d); and **add** (50.5) (o) as follows:

6 **24-34-104. General assembly review of regulatory agencies**
7 **and functions for termination, continuation, or reestablishment.**

8 (47) The following agencies, functions, or both, shall terminate on July
9 1, 2016:

10 (d) ~~The regulation of persons licensed pursuant to article 43.4 of~~
11 ~~title 12, C.R.S.~~

12 (50.5) The following agencies, functions, or both, terminate on
13 September 1, 2019:

14 (o) THE REGULATION OF PERSONS LICENSED PURSUANT TO ARTICLE
15 43.4 OF TITLE 12, C.R.S.

16 **SECTION 11. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.