



**Colorado  
Legislative  
Council  
Staff**

**SB16-040**

**FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 16-0457  
**Prime Sponsor(s):** Sen. Holbert  
Rep. Pabon

**Date:** February 16, 2016  
**Bill Status:** Senate Business, Labor & Technology  
**Fiscal Analyst:** Clare Pramuk (303-866-2677)

**BILL TOPIC:** MARIJUANA OWNER CHANGES

<b>Fiscal Impact Summary</b>	<b>FY 2016-2017</b>	<b>FY 2017-2018</b>
<b>State Revenue</b>	<b><u>at least \$674,302</u></b>	<b><u>at least \$2,431,946</u></b>
Cash Funds	at least 674,302	at least 2,431,946
<b>State Expenditures</b>	<b><u>\$886,687</u></b>	<b><u>\$1,091,394</u></b>
Cash Funds	740,890	923,083
Centrally Appropriated Costs	145,797	168,311
<b>TABOR Impact</b>	\$674,302	\$2,431,946
<b>FTE Position Change</b>	8.0 FTE	9.3 FTE
<b>Appropriation Required:</b> \$740,890 - Multiple agencies (FY 2016-17).		
<b>Future Year Impacts:</b> Ongoing state revenue and expenditure increases.		

**Summary of Legislation**

This bill modifies the ownership requirements for medical and retail marijuana licenses to allow U.S. citizens who are not Colorado residents to be licensed as owners but requires that a controlling interest of the licensees be Colorado residents. The bill allows for employee profit sharing and payment of commercially reasonable royalties for the use by a licensee of intellectual property without creating an ownership interest. The Marijuana Enforcement Division (MED) in the Department of Revenue (DOR) is authorized to promulgate rules for the parameters of what constitutes a commercially reasonable royalty. Finally, the bill prohibits a publicly traded company from licensure under the Medical and Retail Marijuana Codes. The bill applies to applications made on or after January 1, 2017.

**Background**

Under current law, owners of medical marijuana businesses and retail marijuana establishments are required to be Colorado residents for at least two years prior to application and to remain residents while licensed. As of January 2016, there were 1,469 licensed medical marijuana businesses and 1,153 licensed retail marijuana establishments. Each medical and retail

marijuana license applicant must undergo a fingerprint-based background check and supply personal history information in accordance with statutory requirements. Owners have heightened requirements, including divulging all ownership agreements. The agreements are often complex and require a substantial amount of time to investigate for compliance with the Medical and Retail Marijuana Codes, and to ensure that all interests have been revealed. The MED is required by the Colorado Constitution to take action on a retail license within 90 days of application.

In addition to initial licensing, each license must be renewed every year. Each renewal generates its own background investigation to ensure continued statutory and regulatory compliance. Change in ownership applications can be submitted at any time and require investigations. In calendar year 2015, the MED received nearly 450 change of ownership applications for medical marijuana businesses and retail marijuana establishments.

Current law, promulgated by House Bill 15-1379, allows individuals who are not Colorado residents to hold a permitted economic interest (PEI) in a regulated medical marijuana business or retail marijuana establishment. Only a natural person who is a lawful United States resident may obtain a PEI, and the interest is limited to an unsecured debt instrument, option agreement, warrant, or any other right to obtain an ownership interest. Applicants must submit to and pass a criminal history record check, divestiture, and other agreements to qualify as PEIs. The MED began accepting PEI applications on February 10, 2016, so it is too soon to analyze the effect of that program.

## **Assumptions**

This fiscal note is based on the following assumptions:

- 30 percent (786) of licensees will seek regulatory approval for out-of-state investors in FY 2016-17 and FY 2017-18;
- of the 786 licensees, 157 will seek approval in FY 2016-17; and
- 629 will seek approval in FY 2017-18.

## **State Revenue**

**This bill will increase state cash fund revenue from fees by at least \$674,302 in FY 2016-17 and \$2,431,946 in FY 2017-18 to the Marijuana Cash Fund in DOR.**

***Fee impact on individuals and business.*** State law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Table 1 below identifies the fee impact of this bill which are explained below. Actual fees will be set by the MED in rule.

<b>Table 1. Fee Impact on Individuals, Families or Business</b>					
		<b>Number Affected</b>		<b>Fee Revenue</b>	
<b>Type of Fee</b>	<b>Proposed Fee</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Associated Key/Owner License	\$1,300	157	629	\$204,100	\$817,700
Transfer of Ownership	2,000	157	629	314,000	1,258,000
Due Diligence Investigations	Varies			150,000	300,000
Associate Key/Owner License Renewal	200	0	157	0	31,400
Royalty Registration	TBD				
Background Checks - CBI and FBI	39.50	157	629	6,202	24,846
<b>TOTAL</b>				<b>\$674,302</b>	<b>\$2,431,946</b>

**Owner licensure.** To become an owner in an existing marijuana license, newly eligible applicants will apply for an associated key/owner license which is required for any stockholder holding an interest in a marijuana licensee, and a transfer of ownership which is required whenever a percentage of a license is being sold, for a total fee of \$3,300. After the first year, the owner will need to renew the associated key/owner license for a fee of \$200.

**Due diligence investigations.** The MED will charge applicants for the direct costs of conducting due diligence investigations into the suitability of businesses and individuals. The revenue from applicants will offset the cost of the investigations. This includes an hourly rate for investigator time; the number of hours required will depend on the complexity of an application. Based on experience from the Division of Gambling which also licenses nonresident owners, the MED will generate \$300,000 per year from these fees. FY 2016-17 is only expected to generate \$150,000 since the program goes into effect January 1, 2017.

**Royalty registration.** The MED will charge fees associated with the registration of commercially reasonable royalties. These fee types will include the applicable registration and the renewal of royalties should renewal be required. These registration fees will depend on the outcome of rulemaking and are not included in the fiscal note.

**Background checks.** Applicants will undergo a fingerprint-based background checks which are \$39.50. This includes \$22.25 for the Colorado Bureau of Investigation (CBI) check and 17.25 for the Federal Bureau of Investigation (FBI) check.

### **TABOR Impact**

This bill increases state cash fund revenue from fees, which will increase the amount of money required to be refunded under TABOR. TABOR refunds are paid out of the General Fund.

### **State Expenditures**

**This bill increases state cash fund expenditures by \$886,687 and 8.0 FTE in FY 2016-17 and \$1,091,394 and 9.3 FTE in FY 2017-18 and each year thereafter from the Marijuana Cash Fund in DOR. These costs are shown in Table 2 and explained below.**

<b>Table 2. Expenditures Under SB16-040</b>		
<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Personal Services	\$460,709	\$529,720
FTE*	8.0 FTE	9.3 FTE
Operating Expenses and Capital Outlay Costs	49,642	8,550
Law Enforcement Equipment and Supplies	17,331	2,961
Legal Services	57,006	57,006
Pass Through Investigation Costs	150,000	300,000
Pass Through Background Checks	6,202	24,846
Centrally Appropriated Costs*	145,797	168,311
<b>TOTAL</b>	<b>\$886,687</b>	<b>\$1,091,394</b>

\* Includes 0.3 FTE for Department of Law for legal services in each fiscal year.

\*\* Centrally appropriated costs are not included in the bill's appropriation.

**Personal services.** The MED will add 3.0 FTE criminal investigators, 4.0 FTE compliance investigators and 2.0 FTE administrative assistants to its Background Investigation Unit (BIU) to implement this bill. Staff will be hired beginning in August and personal services costs are adjusted to account for variable start dates. With assistance from existing BIU staff, the new investigative staff will develop the new licensure program and train for the January 1, 2017 program start date.

Beginning January 1, 2017, staff will:

- accept and process applications;
- update licensing software and database;
- conduct computer-based inquiries and requests;
- investigate applicants' financial backgrounds;
- interview applicants;
- travel nationwide for verification of assets and investigative oversight; and
- prepare and report investigative findings for approved and denied changes of ownership.

**Operating expenses and capital outlay costs.** The fiscal note includes expenses for 9.0 new FTE for office furniture, telephones, computers, and supplies, which represents the number of FTE when all staff are hired.

**Law enforcement equipment.** The 3.0 FTE criminal investigators will hold peace officer status. The MED will supply these investigators with appropriate police equipment for one-time capital equipment costs of \$17,331 and ongoing annual supply costs of \$2,960.

**Legal services.** The MED is expected to require 600 hours of legal service costs at a rate of \$95.01 per hour. This volume of work requires an allocation of 0.3 FTE to the Department of Law (DOL). In FY 2016-17, the DOL will provide general counsel and rulemaking support. In FY 2017-18, the DOL will provide regulatory representation for disputed denials of royalties and licensure as well as compliance actions against licensees.

**Due diligence investigations.** These costs provide spending authority for MED staff to conduct investigations of applicants. The applicants will be charged an hourly investigation rate and actual investigation expenses, which will include travel costs.

**Pass through background checks.** These costs are for the CBI in the Department of Public Safety to conduct background checks and for the FBI portion of the background checks.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 3.

<b>Cost Components</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$61,822	\$72,245
Supplemental Employee Retirement Payments	39,425	47,466
Leased Space	44,550	48,600
<b>TOTAL</b>	<b>\$145,797</b>	<b>\$168,311</b>

### **Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature. It applies to applications made on or after January 1, 2017.

### **State Appropriations**

For FY 2016-17, the bill requires the following appropriations:

- the Department of Revenue - \$740,890 from the Marijuana Cash Fund and an allocation of 7.7 FTE;
- the Department of Law - \$57,006 reappropriated funds and an allocation of 0.3 FTE; and
- the Department of Public Safety - \$6,202 reappropriated funds.

### **State and Local Government Contacts**

Governor's Marijuana Office  
Public Safety

Information Technology  
Revenue

Law