



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

FINAL FISCAL NOTE

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Prime Sponsors: Sen. Marble Bill Status: Postponed Indefinitely
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Bill Topic: MARIJUANA CONSUMPTION CLUB LICENSE

- Summary of Fiscal Impact:
[x] State Revenue [x] TABOR Refund
[x] State Expenditure [x] Local Government
[x] State Transfer [] Statutory Public Entity

The bill creates a marijuana consumption club license in the Colorado Retail Marijuana Code that requires local government approval. It increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2018-19, the bill requires an appropriation of \$184,455 to the Department of Revenue.

Fiscal Note Status: This bill was not enacted into law; therefore, the impacts identified in this analysis do not take effect.

Table 1
State Fiscal Impacts Under SB 18-211

Table with 4 columns: Category, Sub-category, FY 2018-19, FY 2019-20. Rows include Revenue (Cash Funds, Total), Expenditures (Cash Funds, Centrally Appropriated, Total, Total FTE), Transfers, and TABOR Refund (General Fund).

Summary of Legislation

The bill creates a marijuana consumption club (marijuana club) license in the Colorado Retail Marijuana Code. Marijuana clubs will only be able to operate in local jurisdictions after voters or a majority of the governing board for the municipality, county, city, or city and county approve such businesses. A marijuana club in operation when the bill becomes effective may continue to operate if it has filed an application for licensure or approval with the state and local government and has not been denied licensure or approval.

A licensed marijuana club allows its patrons to purchase and consume retail marijuana and retail marijuana products on-site. The bill requires that all retail marijuana and retail marijuana products be consumed, stored, or disposed of on-site. A marijuana club must ensure that purchasers are at least 21 years of age and must confiscate fraudulent proof of age documents and remit them to a state or local law enforcement agency. A marijuana club can purchase retail marijuana and retail marijuana products from a licensed retail marijuana business or become licensed to grow or manufacture its own. A licensed marijuana club is prohibited from selling or serving alcohol or food prepared on-site but can serve light snacks or retail marijuana products prepared elsewhere. A patron can bring food for consumption into the marijuana club but is prohibited from bringing in retail marijuana or retail marijuana products.

Other provisions of the bill include that a marijuana consumption club:

- is not civilly liable for injury or damage because of a person's intoxication due to the sale or service of retail marijuana, or retail marijuana products with some exceptions;
- may be inspected by local law enforcement;
- is prohibited from using a butane torch or similar device on the premises;
- must have its staff successfully complete a responsible vendor program annually;
- can sell no more than the equivalent of one ounce of retail marijuana;
- will track its retail marijuana and retail marijuana products when transferred from its source to the point of sale;
- must follow packaging and labeling rules for retail marijuana and retail marijuana products;
- must include the potency of retail marijuana in a display case next to the product;
- is prohibited from selling or giving away any consumable product;
- must be fully ventilated; and
- is prohibited from selling over the internet or delivering a product to a person not physically present at the club.

Background

Retail marijuana regulation. In response to the passage of Amendment 64, the General Assembly created the Retail Marijuana Code in 2013 which expanded the authority of the Department of Revenue (DOR) to include regulation of retail marijuana. Under the retail code, businesses that grow, transport, process, test, and sell retail marijuana are licensed by the Marijuana Enforcement Division (MED) in DOR.

Marijuana consumption clubs. There are a number of private clubs operating in Colorado that allow for on-site consumption of marijuana. Because these clubs are not licensed, there is no way to account for all of these businesses, but there appear to be less than 20 statewide. While some clubs allow patrons to bring in marijuana for consumption, others provide marijuana to their patrons using a reimbursement model where they either trade marijuana for memberships or sign affidavits saying the club grows the patron's legally allowed six marijuana plants for them.

Comparable Crime

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or changes an element of the existing crime that creates a new factual basis for the offense. This bill makes the public display, consumption, or use of up to one ounce of marijuana inside a marijuana club no longer a petty drug offense. Between March 30, 2015, and March 28, 2018, there were 246 convictions for the crime of public consumption of marijuana. Of these convictions, 199 were male and 47 were female, 197 Caucasian, 17 African American, 16 Hispanic, 1 Asian, 14 other, and 1 not specified. The penalty for a drug petty offense is a maximum fine of \$100 and up to 24 hours of community service. The fiscal note assumes that the bill will have a minimal impact on the petty drug offense.

Assumptions

The fiscal note assumes that local jurisdictions will need time to adopt ordinances or approve ballot measures related to this license type. Therefore, FY 2019-20 will be the bill's first full implementation year. In addition, the fiscal note assumes that:

- few local governments will approve the operation of marijuana clubs in FY 2018-19 or FY 2019-20;
- individuals seeking licensure will generally not hold existing retail marijuana licenses;
- the MED will receive 10 applications for marijuana club licenses in FY 2018-19, and 30 new applications and 10 renewals in FY 2019-20;
- applicants will be fingerprinted upon initial application;
- each application will have three direct beneficial owners associated with it; and
- licensing will begin January 1, 2019.

State Revenue

This bill will increase revenue by \$92,891 in FY 2018-19 and \$293,672 in FY 2019-20 to the Marijuana Cash Fund.

Fee impact on marijuana club licensees. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by the DOR based on cash fund balance, estimated program costs, and the estimated number of applications and licenses subject to the fee. Table 2 below identifies the fee impact of this bill.

**Table 2
 Fee Impact on Marijuana Clubs**

| Fiscal Year | Type of Fee | Estimated Fee | Number Affected | Total Fee Impact |
|-------------------------|--|----------------------|------------------------|-------------------------|
| FY 2018-19 | Marijuana Club Application | \$2,500 | 10 | \$25,000 |
| | Marijuana Club License | \$2,000 | 10 | \$20,000 |
| | Direct Beneficial Interest Owner | \$1,400 | 30 | \$42,000 |
| | Due Diligence Investigations | \$150 | 30 | \$4,500 |
| | CBI Fingerprint-based Background Check | \$46.35 | 30 | \$1,391 |
| FY 2018-19 Total | | | | \$92,891 |
| FY 2019-20 | Marijuana Club Application | \$2,500 | 30 | \$75,000 |
| | Marijuana Club License | \$2,000 | 30 | \$60,000 |
| | Marijuana Club License Renewal | \$1,500 | 10 | \$15,000 |
| | Direct Beneficial Interest Owner | \$1,400 | 90 | \$126,000 |
| | Due Diligence Investigations | \$150 | 90 | \$13,500 |
| | CBI Fingerprint-based Background Check | \$46.35 | 90 | \$4,172 |
| FY 2019-20 Total | | | | \$293,672 |

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. For purposes of the fiscal note, investigations are estimated at \$150 each.

Fingerprint-based criminal background checks. This bill will increase state cash fund revenue by \$1,391 in FY 2018-19 and \$4,172 in FY 2019-20 collected by the MED and reappropriated to the Colorado Bureau of Investigation (CBI) in the Department of Public Safety (DPS) for fingerprint-based criminal background checks. Revenue increases assume a fee of \$46.35 per applicant for fingerprinting and name check. Of this amount, \$34.35 is retained by the CBI, and \$10 is passed through to the Federal Bureau of Investigation (FBI).

TABOR Refund

This bill increases state revenue from fees by \$92,591 in FY 2018-19, and 4292,772 in FY 2019-20, which will increase the amount of money required to be refunded under TABOR for FY 2018-19 and FY 2019-20. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount. State revenue subject to TABOR is not estimated for years beyond FY 2019-20.

State Expenditures

This bill will increase expenditures by \$199,561 and 1.1 FTE in FY 2018-19 and \$227,152 and 2.2 FTE in FY 2019-20 from the Marijuana Cash Fund. These costs are shown in Table 3 and explained below.

**Table 3
 Expenditures Under HB 18-211**

| | FY 2018-19 | FY 2019-20 |
|---|-------------------|-------------------|
| Department of Revenue | | |
| Personal Services | \$50,041 | \$120,100 |
| Operating Expenses and Capital Outlay Costs | \$5,463 | \$6,603 |
| Legal Services | \$50,616 | \$34,632 |
| Vehicle Lease and Mileage | \$7,400 | \$9,850 |
| Due Diligence Investigations | \$4,500 | \$13,500 |
| Fingerprint Background Checks | \$1,391 | \$4,172 |
| Law Enforcement Equipment and Supplies | \$5,777 | \$987 |
| Computer Programming | \$59,267 | \$0 |
| Centrally Appropriated Costs* | \$15,106 | \$37,308 |
| FTE – Personal Services | 0.8 FTE | 2.0 FTE |
| FTE – Legal Services | 0.3 FTE | 0.2 FTE |
| Total Cost | \$199,561 | \$227,152 |
| Total FTE | 1.1 FTE | 2.2 FTE |

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

Personal services. Part-time staff will be hired in September 2018 in the MED and will develop the new licensure program and train for the January 1, 2019, program start date. In FY 2019-20, the MED will have a full staff of a criminal investigator and compliance investigator. Staff duties will include:

- accepting and processing applications;
- updating the MED licensing software and database;
- conducting computer-based inquiries and requests;
- investigating applicants' financial backgrounds;
- interviewing applicants; and
- reporting on investigative findings.

Operating expenses and capital outlay costs. The fiscal note includes expenses for 2.0 FTE for office furniture, telephones, computers, and supplies, which represents the number of FTE when all staff are hired.

Computer programming. The DOR will incur one-time programming costs of \$59,267 in FY 2018-19 which includes: \$12,000 to update tax collection information in GenTax; \$4,067 to establish a new license type in MYLO; and \$43,200 to develop reports and track sales at marijuana clubs for METRC.

Law enforcement equipment. The criminal investigator in field enforcement will hold peace officer status. The MED will supply this investigator with appropriate police equipment for one-time capital equipment costs of \$4,790 and ongoing annual supply costs of \$987.

Legal services. The MED is expected to require 475 hours of legal services in FY 2018-19 and 325 hours in FY 2019-20 at a rate of \$106.56 per hour. This volume of work requires an allocation of 0.3 FTE to the Department of Law in FY 2018-19 and 0.2 FTE in FY 2019-20. In FY 2018-19, the department will provide general counsel and rulemaking support. In FY 2019-20, the department will provide general counsel, regulatory representation for underage hearings, and counsel in licensing disputes.

Vehicles. Beginning FY 2018-19, the MED requires one vehicle for the criminal investigator for field enforcement. The Department of Personnel and Administration, which will administer the vehicle lease, will be reappropriated \$4,950 each year. The remainder of the costs are for mileage, calculated at 5,000 miles in FY 2018-19, and 10,000 miles in FY 2019-20 at a rate of \$0.49 per mile.

Due diligence investigations. As noted in the State Revenue section, the MED will charge applicants for the direct costs of conducting due diligence investigations into the suitability of businesses and individuals. The MED needs sufficient appropriations to conduct investigations of applicants estimated at \$150 per investigation. The applicants will be charged an hourly investigation rate, that will be set by the MED, and actual investigation expenses, which will include travel costs.

Fingerprint background checks. These costs are for the CBI in the DPS to conduct background checks and for the FBI portion of the background checks. The revenue collected for background checks will be reappropriated to DPS.

Judicial Department. This bill may reduce the number of filings in trial courts for open consumption of marijuana violations but, as discussed in the comparable crime section, any reduction is expected to be minimal.

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. These costs, which include employee insurance and supplemental employee retirement payments, are estimated to be \$15,106 in FY 2018-19 and \$37,308 in FY 2019-20.

Local Government

Local governments that approve marijuana clubs will experience increases in enforcement workload and potentially increases in licensing and sales tax revenue. Local governments have discretion in allowing the establishment of marijuana clubs within their jurisdictions.

Effective Date

The bill was postponed indefinitely by the Senate Business, Labor and Technology Committee on April 2, 2018.

State Appropriations

For FY 2018-19, the bill requires an appropriation of \$184,455 to the Department of Revenue from the Marijuana Cash Fund and an allocation of 0.8 FTE. Of this, the Department of Law requires \$50,616 in reappropriated funds and an allocation of 0.3 FTE, the Department of Public Safety requires \$1,391 in reappropriated funds, and the Department of Personnel and Administration requires \$4,950 in reappropriated funds.

Departmental Difference

The DOR estimates that this bill will increase revenue by \$524,549 in FY 2018-19, and \$493,118 in FY 2019-20. The DOR estimates that cash fund expenditures will increase by \$524,549 and 4.8 FTE in FY 2018-19 and \$493,118 and 6.0 FTE in FY 2019-20 from the Marijuana Cash Fund. The DOR assumes that they will receive 75 license applications each year and 171 direct beneficial interest owner applications in FY 2018-19 and 225 direct beneficial interest owner applications in FY 2019-20. This fiscal note estimates that fewer license applications will be filed.

State and Local Government Contacts

| | |
|-------------------------------|------------------------|
| Counties | District Attorneys |
| Governor | Information Technology |
| Judicial | Law |
| Local Affairs | Municipalities |
| Public Health and Environment | Public Safety |
| Revenue | Sheriffs |