



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

HB 19-1230

**REVISED
FISCAL NOTE**

(Replaces fiscal note dated March 25, 2019)

Drafting Number: LLS 19-0954
Prime Sponsors: Rep. Singer; Melton
Sen. Marble

Date: April 19, 2019
Bill Status: Senate Finance
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Bill Topic: MARIJUANA HOSPITALITY ESTABLISHMENTS

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill allows for the operation of marijuana hospitality establishments and retail marijuana hospitality and sales establishments, with local government approval. The bill increases state and local government revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2019-20, the bill requires an appropriation of \$399,479 to the Department of Revenue.

Fiscal Note Status: This revised fiscal note reflects the reengrossed bill.

**Table 1
State Fiscal Impacts Under HB 19-1230**

		FY 2019-20	FY 2020-21
Revenue	Cash Funds	\$202,576	\$431,112
	Total	\$202,576	\$431,112
Expenditures	Cash Funds	\$399,479	\$716,537
	Centrally Appropriated	\$71,103	\$185,570
	Total	\$470,582	\$902,107
Total FTE		3.5 FTE	8.8 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

Beginning January 1, 2020, the bill allows for the operation of marijuana hospitality establishments and retail marijuana hospitality and sales establishments, as approved by a local government. The bill sets provisions for hospitality establishments, including definitions, licensing, rules, and exceptions to currently illegal acts. Marijuana hospitality and hospitality and sales licenses may not be issued for a liquor-licensed location.

Marijuana hospitality establishments. Marijuana hospitality establishments are licensed to allow the consumption of marijuana on the premises. These establishments may be mobile, and may not sell or permit the sale of marijuana on the licensed premises.

Retail marijuana hospitality and sales establishments. Retail marijuana hospitality and sales establishments are licensed to allow the consumption of retail marijuana or retail marijuana products that are sold by the establishment. A hospitality and sales establishment may not be a mobile facility, and may not sell any marijuana products that contain nicotine or alcohol, if the sale of alcohol would require a liquor license. The hospitality and sales establishment may purchase its product from a licensed retail marijuana store, cultivation facility, or marijuana products manufacturer.

Marijuana hospitality and sales establishments must track all retail marijuana and related products from the point they are received to the point of sale, and must limit customers to one transaction per day that may not exceed the sales limit set by the Marijuana Enforcement Division (MED) in the Department of Revenue (DOR). Customers may leave the premises with unconsumed product if it is properly packaged and labeled.

Licensing requirements. Beginning January 1, 2020, the MED may issue licenses for marijuana hospitality establishments and hospitality and sales establishments, conditional upon local government approval. Applicants are prohibited from operating an establishment without state and local government approval, except that a person who operates a marijuana consumption business and applies for a license before December 31, 2019, may continue to operate until a state license is approved or denied. Such businesses must cease operation by January 1, 2020, if they have not applied for a state license.

The bill establishes procedures for application submittal, denial, and revocation. Licenses are good for a period of time set for the licensee by the local government, not to exceed one year. The MED may set application and renewal fee amounts by rule. The bill establishes requirements for the licensee and employees of the licensed establishment, including that licensees prohibit the smoking or consumption of alcohol and tobacco products, and all employees must complete an annual responsible vendor training program that is approved by the MED. The bill adds that information on serving size, potency, and impairment must be included in approved responsible vendor training.

Rules and administration. The MED must promulgate rules related to the implementation of both license types, including general liability insurance requirements, a sales limit, and restrictions on the types of retail marijuana sold at hospitality and sales establishment. The sales limit may not be below certain amounts established by the bill. Rules must also include prohibitions on activity that would require additional licensure, requirements for hospitality establishments that operate as a retail food establishment, and regulations for mobile marijuana hospitality establishments.

Exceptions to illegal acts. Current law prohibits the public consumption and possession of small amounts of retail or medical marijuana, or evidence of marijuana consumption, on premises licensed by the MED. The bill creates an exception for display, consumption, and possession at a licensed marijuana hospitality or hospitality and sales establishment. The bill also creates an exception to the Clean Indoor Air Act for marijuana smoking that occurs in the hospitality space within a licensed hospitality or hospitality and sales establishment, if authorized by a local government ordinance, license, or regulation.

Local ordinances. The bill establishes provisions for local jurisdictions to authorize marijuana hospitality or hospitality and sales establishments through an ordinance or ballot measure. Local jurisdictions may require more stringent regulations than provided in the bill.

Retail food establishments. A licensed retail food establishment may apply for a marijuana hospitality or hospitality and sales license in an isolated portion of the facility, as long as it does not hold a liquor license. Food establishments are subject to licensing and inspection requirements of the Colorado Department of Public Health and Environment, and may not manufacture marijuana food products or add marijuana to food provided at the food establishment.

Educational information. Marijuana hospitality and hospitality and sales licensees must provide information regarding the safe consumption of marijuana, based on the requirements established by the Marijuana Education Oversight Committee, and the panel of health professionals that monitors the effects of marijuana.

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 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 MED.

Existing marijuana consumption businesses. There are currently 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 approximately 21. In addition, there are currently two licensed social consumption clubs operating in Denver, and approximately 51 marijuana-related events that allow marijuana consumption.

Comparable Crime Analysis

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 an existing crime. The following sections outline data on crimes that are comparable to the offense in this bill and discuss assumptions on future rates of criminal convictions under the bill.

Prior conviction data. This bill makes the following changes to existing crimes:

- creates an exception to the crime of consuming or allowing to be consumed marijuana in a licensed establishment, which is currently a class 2 misdemeanor. In the past two fiscal years, one person was sentenced for consumption on a licensed premises.

- allows the public display, consumption, or use marijuana in a licensed hospitality or hospitality and sales establishment, as long as it does not exceed the sales limit established by the MED. In the last two fiscal years, 133 people were convicted and sentenced for public display, consumption, or use of less than two ounces of marijuana, which is a drug petty offense.

Due to the limited exceptions created by the bills, the fiscal note assumes that any decrease in the number of crimes will be minimal. Because the bill is not expected to have a tangible impact on criminal justice-related expenditures or revenue at the state or local levels, these potential impacts are not discussed further in this fiscal note.

Assumptions

The estimates in the fiscal note are based on the following assumptions:

- all of the existing 21 marijuana clubs and 51 temporary events will apply for a license, of which half will apply in FY 2019-20;
- 138 (25 percent) of the current 553 retail marijuana stores will apply for a license, of which 5 percent will occur in the first year, and 30 percent in the second year; and
- new licenses will be phased in over time, as they are contingent on local government approval.

Based on these assumptions, the fiscal note assumes that there will be 44 new licenses issued in FY 2019-20 and 78 in FY 2020-21. These licensees are assumed to each have two direct beneficial interest owners that will require background and name checks. The fiscal note also assumes that 90 percent of licensees will renew their license when it expires after one year.

State Revenue

The bill increases state revenue by \$202,576 in FY 2019-20 and \$431,112 in FY 2020-21 to the Marijuana Cash Fund. This revenue is subject to TABOR; however, no TABOR refund is expected in FY 2019-20 and FY 2020-21.

Fee impact on marijuana hospitality 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, based on current fees for a retail marijuana store. Actual fees will be set administratively by DOR based on cash fund balance, estimated program costs, and the estimated number of applications and licenses subject to the fee. License fees are assumed to include licensing, application, and investigation fees. Table 2 below identifies the fee impact of this bill.

Table 2
Fee Impact on Marijuana Hospitality Licensees

Fiscal Year	Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
FY 2019-20	License Fee - New	\$4,500	44	\$198,000
	CBI Fingerprint-based Background Check	\$52	88	\$4,576
FY 2019-20 Total				\$202,576
FY 2020-21	License Fee - New	\$4,500	78	\$351,000
	License Fee - Renewal	\$1,800	40	\$72,000
	CBI Fingerprint-based Background Check	\$52	156	\$8,112
FY 2020-21 Total				\$431,112

Fingerprint-based background checks. This bill increases state cash fund revenue from fingerprint-based criminal history background checks by \$4,576 in FY 2019-20 and \$8,112 in FY 2020-21. The fiscal note assumes 88 checks will be conducted in FY 2019-20 and 156 in FY 2020-21. The current fee for a background check and name check is \$52. This revenue will be reappropriated to the Department of Public Safety.

CDPHE. The Colorado Department of Public Health and Environment (CDPHE) oversees retail food establishments. Any hospitality or hospitality and sales establishment that also operates as a retail food establishment must comply with CDPHE licensing requirements, including paying licensing fees. The increase in retail food establishments is expected to be minimal; as a result, any increase in revenue to CDPHE is expected to be minimal.

State Expenditures

This bill will increase state expenditures by \$470,582 and 3.5 FTE in FY 2019-20 and \$902,107 and 8.8 FTE in FY 2020-21 from the Marijuana Cash Fund. These costs are shown in Table 3 and discussed below.

**Table 3
 Expenditures Under HB 19-1230**

Cost Components	FY 2019-20	FY 2020-21
Department of Revenue		
Personal Services	\$240,521	\$602,688
Operating Expenses and Capital Outlay Costs	\$21,852	\$31,590
Legal Services	\$72,023	\$53,888
Vehicle Lease & Mileage	\$8,465	\$16,930
Law Enforcement Equipment & Supplies	\$2,342	\$3,329
Fingerprint Costs	\$4,576	\$8,112
Computer Programming	\$49,700	-
Centrally Appropriated Costs*	\$71,103	\$185,570
FTE – Personal Services	3.2 FTE	8.5 FTE
FTE – Legal Services	0.3 FTE	0.3 FTE
Total	\$470,582	\$902,107
Total FTE	3.5 FTE	8.8 FTE

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

Personal services. DOR requires 3.2 FTE in FY 2019-20 and 8.5 FTE in FY 2020-21 to adopt rules, implement and process new and renewed licenses, conduct application investigations, and field enforcement activities. The required FTE beginning in FY 2020-21 includes:

- 3.0 FTE for a Compliance Investigator II;
- 2.0 FTE for a Criminal Investigator III;
- 1.0 FTE each for a Statistical Analyst III, Technician III, and Legal Assistant II; and
- 0.5 FTE for a Hearings Officer II.

Computer programming. DOR will require one-time programming costs of \$49,700 in FY 2019-20, which includes: \$2,000 to update tax collection information in GenTax; \$4,500 to establish new license types in MyLo; and \$43,200 to develop reports and track sales in marijuana hospitality and sales establishments in METRC.

Law enforcement equipment. The criminal investigators will require appropriate police equipment with one-time capital equipment costs of \$1,355 and ongoing annual supply costs of \$987 per investigator.

Legal services. Under the bill, the DOR will require 695 hours of legal services in FY 2019-20 and 520 hours in FY 2020-21 to conduct rulemaking, handle complex administrative cases, and provide general counsel. Legal services are provided by the Department of Law at a rate of \$103.63 per hour, resulting in a cost of \$72,023 in FY 2019-20, and \$53,888 in FY 2020-21. These costs are reappropriated to the Department of Law, which requires 0.3 FTE to provide the identified legal services.

Vehicles. The MED requires one vehicle in FY 2019-20 and two vehicles in FY 2020-21 for the criminal investigators for field enforcement. The Department of Personnel and Administration, which administers vehicle leases, will be reappropriated \$4,790 in FY 2019-20 and \$9,580 in FY 2020-21. The remainder of the costs are for mileage, calculated at a rate of \$0.52 per mile.

Fingerprint background checks. These costs are for the Department of Public Safety to conduct background checks based on an estimated 88 checks in FY 2019-20 and 156 checks in FY 2020-21.

CDPHE. To the extent that new marijuana hospitality or hospitality and sales establishments also operate as a retail food establishment that must comply with CDPHE licensing requirements, the workload for licensing and inspections will increase for CDPHE. The overall increase in workload is expected to be minimal and no change in appropriations is required.

Judicial Department. Under current law, there may be judicial review of decisions made by the MED related to new licenses, such as a denial of a license. Should the bill result in additional cases of judicial review, workload for the courts will increase. In addition, should the bill result in fewer cases related to public display and consumption of small quantities of marijuana, workload for the trial courts and probation will decrease. Any change in workload 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 \$71,103 in FY 2019-20 and \$185,570 in FY 2020-21.

Local Government

Local governments that adopt ordinances and approve marijuana hospitality or hospitality and sales licenses will have increased licensing and enforcement costs, and potentially increases in licensing and sales tax revenue. Local governments have discretion in allowing either marijuana hospitality or hospitality and sales establishments within their jurisdiction, including allowing an exception to the Clean Indoor Air Act for marijuana smoking at a licensed hospitality establishment.

In addition, to the extent that new marijuana hospitality or hospitality and sales establishments also operate as retail food establishments that must comply with local health department licensing requirements, the workload for licensing and enforcement will increase for local health departments.

Effective Date

The bill takes effect August 2, 2019, if the General Assembly adjourns on May 3, 2019, as scheduled, and no referendum petition is filed.

State Appropriations

For FY 2019-20, the bill requires an appropriation of \$399,479 to the Department of Revenue from the Marijuana Cash Fund, and an allocation of 3.2 FTE. Of this amount:

- \$72,023 is reappropriated to the Department of Law, and an allocation of 0.3 FTE;
- \$4,790 is reappropriated to the Department of Personnel and Administration; and
- \$4,576 is reappropriated to the Department of Public Safety.

State and Local Government Contacts

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