



Legislative  
Council Staff

*Nonpartisan Services for Colorado's Legislature*

**FISCAL NOTE**

**Drafting Number:** LLS 19-0365      **Date:** April 8, 2019  
**Prime Sponsors:** Sen. Gonzales; Fenberg      **Bill Status:** Senate Finance  
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**Bill Topic:** SUNSET REGULATED MARIJUANA

**Summary of Fiscal Impact:**

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

**Sunset bill.** This bill continues the regulation of medical and retail marijuana in the Department of Revenue, which is scheduled to repeal on September 1, 2019. State fiscal impacts include increased revenue and expenditures from changes to the program under the bill, as well as the continuation of the program's current revenue and expenditures. The program is continued through September 1, 2028.

**Appropriation Summary:** For FY 2019-20, the bill requires an appropriation of \$372,403 to the Department of Revenue.

**Fiscal Note Status:** The fiscal note reflects the introduced bill.

**Table 1  
State Fiscal Impacts Under SB 19-224**

| New Impacts                |                        | FY 2019-20       | FY 2020-21       |
|----------------------------|------------------------|------------------|------------------|
| <b>Revenue</b>             | Cash Funds             | \$400,000        | \$400,000        |
|                            | <b>Total</b>           | <b>\$400,000</b> | <b>\$400,000</b> |
| <b>Expenditures</b>        | Cash Funds             | \$372,403        | \$181,141        |
|                            | Centrally Appropriated | \$28,595         | \$31,513         |
|                            | <b>Total</b>           | <b>\$400,998</b> | <b>\$212,654</b> |
|                            | <b>Total FTE</b>       | <b>2.4 FTE</b>   | <b>2.1 FTE</b>   |
| <b>Diversion</b>           | General Fund           | \$528,027        | \$522,746        |
|                            | Cash Funds             | (\$528,027)      | (\$522,746)      |
|                            | <b>Total</b>           | <b>\$0</b>       | <b>\$0</b>       |
| Continuing Program Impacts |                        | FY 2019-20       | FY 2020-21       |
| <b>Revenue</b>             | Cash Funds             | -                | \$13.1 million   |
|                            | <b>Expenditures</b>    |                  |                  |
|                            | Cash Funds             | -                | \$13.1 million   |
|                            | FTE                    | -                | 112.1 FTE        |

\* Table 1 shows the new impacts resulting from changes to the program under the bill and the continuing impacts from extending the program beyond its current repeal date. The continuing program impacts will end if the bill is not passed and the program is allowed to repeal.

## **Summary of Legislation**

This bill continues the regulation of medical and retail marijuana until September 1, 2028, and incorporates recommendations from the sunset reviews for the Colorado Medical Marijuana Code and the Colorado Retail Marijuana Code. One of the recommended changes is to integrate the two codes into one code entitled the Colorado Marijuana Code. Other changes affect licensing, enforcement, medical marijuana specifically, and industrial hemp as shown below.

**Licensing.** The bill makes the following changes to marijuana licensing:

- creates new ownership types and repeals the definition of direct beneficial interest owner, indirect beneficial interest owner, and permitted economic interest;
- streamlines the license renewal process;
- merges the research and development license and research and development cultivation licenses;
- requires the Marijuana Enforcement Division (MED) to track information on license disqualifications based on criminal history;
- makes certain confidential information available to the public on an aggregated and de-identified basis; and
- reduces the amount of time after a felony conviction or drug felony conviction for a person to be eligible to apply for licensure.

**Enforcement.** The bill makes the following changes to the enforcement function of the MED:

- redirects fine revenue from the Marijuana Cash Fund to the General Fund;
- authorizes the MED to seek injunctive relief and investigatory subpoenas from district courts as necessary to enforce the codes;
- harmonizes the unlawful acts between the two codes; and
- makes it unlawful to knowingly adulterate or alter samples to circumvent testing results.

**Medical Marijuana.** Several changes in the bill affect only medical marijuana. These include:

- requiring the MED to adopt equivalency standards for medical marijuana products and concentrate by July 1, 2020;
- repealing provisions allowing medical research and pesticide manufacturers to obtain medical marijuana without a license;
- repealing the requirement that a medical marijuana patient show a certified mail receipt as proof of a registry application submission; and
- expanding the applicability of the Colorado Food and Drug Act to medical marijuana.

**Industrial Hemp.** Two changes in the bill address industrial hemp products. These include:

- allowing retail marijuana stores to sell industrial hemp consumable products; and
- requiring industrial hemp to be tested prior to being manufactured into regulated marijuana products.

## **Background**

As of March 1, 2019, there are 2,987 licensed medical and retail marijuana businesses and 41,796 active occupational licenses. The number and type of business licenses are as follows:

**Medical Marijuana Business Licenses:**

- 468 Medical Marijuana Centers;
- 662 Medical Cultivation Facilities;
- 238 Medical Marijuana Infused Product Manufacturers;
- 11 Testing Facilities;
- 6 Operators;
- 11 Transporters; and
- 1 Research and Development Cultivation.

**Retail Marijuana Business Licenses:**

- 553 Retail Marijuana Stores;
- 716 Retail Cultivation Facilities;
- 285 Retail Marijuana Product Manufacturing Facilities;
- 12 Testing Facilities;
- 9 Operators; and
- 15 Transporters.

**Continuing Program Impacts**

Based on the department's FY 2019-20 budget request, the Department of Revenue is expected to have revenue of \$13.1 million (assuming a planned fee increase takes effect) and expenditures of \$13.1 million to administer the regulation of marijuana. If this bill is enacted, current revenue and expenditures will continue for the program starting in FY 2020-21. This continuing revenue is subject to the state TABOR limits; however under the March 2019 Legislative Council Staff forecast, a TABOR surplus is not expected in FY 2019-20 or FY 2020-21. If this bill is not enacted, the program will end on September 1, 2020, following a wind-down period, and state revenue and expenditures will decrease starting in FY 2020-21 by the amounts shown in Table 1. The changes to the program that drive additional revenue and costs are discussed in the State Revenue and State Expenditure sections below.

Medical and retail marijuana are subject to several taxes, which are explained below. Though not addressed in this bill, if the regulation of marijuana was allowed to sunset, the fiscal note assumes these taxes would no longer be collected.

**State retail marijuana sales tax.** There is a 15 percent retail marijuana sales tax on all sales of retail marijuana and retail marijuana products applied to the purchase price. This tax raises over \$250 million per year that is shared with local governments; the state share is deposited into the Marijuana Tax Cash Fund. This revenue funds a number of programs in multiple agencies.

**Excise tax.** A 15 percent excise tax is imposed on the first sale or transfer of retail marijuana from a retail marijuana cultivation facility to a retail marijuana store or retail marijuana product manufacturing facility. The first \$40 million or 90 percent (whichever is higher) in excise tax is deposited into the Building Excellent Schools Today fund and the remainder is deposited into the Public School Fund. Revenue for FY 2019-20 is forecasted to be \$62.5 million.

**Sales tax.** The 2.9 percent state sales tax is applied to medical marijuana sales. The sales tax generates \$10.7 million per year deposited into the General Fund.

## **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. This section outlines data on crimes comparable to the offense in this bill and discusses assumptions on future rates of criminal conviction for those offense.

**Prior conviction data and assumptions.** This bill creates the new offense of adulterating samples of regulated marijuana to circumvent contaminant or potency testing, a class 2 misdemeanor. The bill also adds the offense of having unreported ownership to medical marijuana. There have only been seven convictions for all offenses under the Medical Marijuana Code and Retail Marijuana Code in the past three years. These convictions are primarily for sale to underage or ineligible purchasers. Violations of the codes are more often handled administratively by the MED. Therefore, the fiscal note assumes that there will be minimal or no additional case filings or convictions for the new offense under the bill. 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.

Visit [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

## **State Revenue**

This bill is expected to increase revenue to the DOR by \$400,000 per year beginning in FY 2019-20. The DOR is expected to increase fees to cover its continuing expenditures and the new expenditures created by this bill by a total of \$1.9 million. This revenue is subject to TABOR. Fee increases are not estimated in this fiscal note but will be set administratively by based on cash fund balance, estimated program costs, and the estimated number of licenses subject to the fee.

## **State Diversion**

By requiring that civil fine revenue be deposited into the General Fund, this bill diverts \$528,027 in FY 2019-20 and \$522,746 in FY 2020-21 from the Marijuana Cash Fund. Historically, fine revenue has been declining by 1 percent per year.

## **State Expenditures**

This bill will increase expenditures by \$400,998 and 2.4 FTE in FY 2019-20 and \$212,654 and 2.1 FTE in FY 2020-21 for the DOR and will increase workload for the Department of Public Health and Environment and the Judicial Department. The expenditures are shown in Table 2 and increased costs and workload are explained below.

**Table 2  
 Expenditures Under SB 19-224**

|   | <b>FY 2019-20</b> | <b>FY 2020-21</b> |
|---|-------------------|-------------------|
| <b>Department of Revenue</b>                |                   |                   |
| Personal Services                           | \$140,555         | \$153,333         |
| Operating Expenses and Capital Outlay Costs | \$11,116          | \$1,900           |
| Computer Programming                        | \$37,200          | -                 |
| Equivalency Study                           | \$79,902          | -                 |
| Legal Services                              | \$103,630         | \$25,908          |
| Centrally Appropriated Costs*               | \$28,595          | \$31,513          |
| <b>FTE – Personal Services</b>              | <b>1.8 FTE</b>    | <b>2.0 FTE</b>    |
| <b>FTE – Legal Services</b>                 | <b>0.6 FTE</b>    | <b>0.1 FTE</b>    |
| <b>Total Cost</b>                           | <b>\$400,998</b>  | <b>\$212,654</b>  |
| <b>Total FTE</b>                            | <b>2.4 FTE</b>    | <b>2.1 FTE</b>    |

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

**Marijuana Enforcement Division, DOR.** The MED will add 2.0 FTE statisticians to support the increase in risk-based monitoring and analysis of regulated marijuana licensees that will now be selling products containing industrial hemp. To collect and maintain data related to licensing disqualifications and sanctions based on past criminal history, and to receive food manufacturer information from CDPHE, the DOR requires programming costs for the MyLo and METRC systems at a cost of \$37,200 in FY 2019-20 only. The bill allows the MED to contract for a scientific study to determine the equivalency of medical marijuana products. The study is expected to cost \$79,902, based on a comparable study for retail marijuana.

The MED will have a significant amount of rulemaking to implement the bill and because the bill has two effective dates, will require two rulemaking proceedings. Rulemaking will also be required to address the inclusion of industrial hemp in regulated marijuana products. This will require 1,000 hours of legal services, or 0.6 FTE, from the Department of Law in FY 2019-20 and 250 hours, or 0.1 FTE, per year thereafter.

**Department of Public Health and Environment.** If the testing requirements for industrial hemp prior to manufacturing results in an increase in the number of licensed testing facilities, the CDPHE's Laboratory Services Division Marijuana Certification Program will have an increase in workload. This workload does not require an increase in appropriations.

**Judicial Department.** The bill may increase workload for the Judicial Department in several ways. Trial courts may see an increase in workload to issue injunctions and investigative subpoenas and handle additional criminal cases related to the change in offenses. New offenses created by the bill may result in increased workload for the probation. The fiscal note assumes that most licensees will comply with the law and that these impacts do not require an increase in appropriations.

**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 \$28,595 in FY 2019-20 and \$31,513 in FY 2020-21.

### **Effective Date**

Sections 45 through 76 of the bill take effect January 1, 2020. The remainder of 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 \$372,403 to the Department of Revenue from the Marijuana Cash Fund and 1.8 FTE. Of this, the Department of Law requires \$103,630 and 0.6 FTE in reappropriated funds.

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

|                    |                               |
|--------------------|-------------------------------|
| Agriculture        | Counties                      |
| District Attorneys | Information Technology        |
| Judicial           | Law                           |
| Municipalities     | Public Health and Environment |
| Public Safety      | Revenue                       |