

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 21-0814.01 Jennifer Berman x3286

HOUSE BILL 21-1301

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A BILL FOR AN ACT

101 **CONCERNING THE REMOVAL OF IMPEDIMENTS TO CANNABIS FARMING,**
102 **AND, IN CONNECTION THEREWITH, PERMITTING CONTINGENCY**
103 **PLANS TO REDUCE CROP LOSS BASED ON ADVERSE WEATHER AND**
104 **CONVENING A WORKING GROUP TO EXAMINE MEASURES TO**
105 **REDUCE CROSS-POLLINATION, AND MAKING AN APPROPRIATION.**

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://leg.colorado.gov>.)

Section 1 defines "cross-pollination", "farm", "licensed outdoor marijuana farm", "volunteer plant", and "registered outdoor hemp farm"

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
3rd Reading Unamended
May 26, 2021

HOUSE
Amended 2nd Reading
May 25, 2021

in connection with the convening of a working group in **section 2** to examine measures to minimize cross-pollination between cannabis plants.

Section 4 requires the state licensing authority to convene a working group on or before November 1, 2021, to examine existing rules and tax laws that apply to the wholesale marijuana cultivation market to explore how the rules and laws could be amended to better position Colorado businesses to be competitive in interstate commerce if marijuana is legalized federally. The working group is required to report its findings and recommendations to the executive director of the department of revenue and the general assembly on or before June 1, 2022.

Section 5 requires the state licensing authority to engage in rule-making on:

- The process, procedures, and requirements for contingency plans for outdoor marijuana cultivation facilities to ameliorate crop loss due to adverse weather;
- Procedures for outdoor marijuana cultivation facilities to follow to temporarily cover crops to protect them from extreme weather; and
- Procedures for the conditional issuance of an employee license identification card.

Sections 6 and 7 authorize medical marijuana cultivation and retail marijuana cultivation facility licensees with outdoor cultivation facilities, starting January 1, 2022, to file with the state licensing authority a contingency plan for when there is a threat to operations due to an adverse weather event and, if approved, to follow the plan if there is an adverse weather event.

Before January 1, 2022, sections 6 and 7 authorize a medical marijuana cultivation facility licensee or a retail marijuana cultivation facility licensee with outdoor cultivation facilities to take reasonable and necessary steps to ameliorate crop loss due to an adverse weather event. The action is not a violation of state law or rules or local law or regulations unless the state licensing authority or a local authority can show that the action was not reasonable and necessary to prevent or ameliorate crop loss due to an adverse weather event.

Section 3 defines "adverse weather event" to mean damaging weather, such as drought, freeze, hail, excessive moisture, excessive wind, or tornado or an adverse natural occurrence, such as an earthquake or a flood.

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

2 **SECTION 1.** In Colorado Revised Statutes, 35-61-101, **amend**

1 (3); and **add** (4.3), (6.5), (7.4), (7.6), (7.8), (8.4), (8.7), and (10) as
2 follows:

3 **35-61-101. Definitions.** As used in this article 61, unless the
4 context otherwise requires:

5 (3) "Commissioner" means the commissioner of agriculture OR
6 THE COMMISSIONER'S DESIGNEE.

7 (4.3) "CROSS-POLLINATION" MEANS THE TRANSFER OF POLLEN
8 FROM ONE PLANT TO THE FLOWER OF ANOTHER PLANT THAT HAS A
9 DIFFERENT GENETIC CONSTITUTION.

10 (6.5) "FARM" MEANS:

11 (a) A REGISTERED OUTDOOR HEMP FARM;

12 (b) A LICENSED OUTDOOR MARIJUANA CULTIVATION;

13 (c) THE PREMISES FOR WHICH A PERSON APPLIES FOR
14 REGISTRATION TO ENGAGE IN OUTDOOR CULTIVATION OF HEMP OR FOR A
15 LICENSE TO ENGAGE IN OUTDOOR CULTIVATION OF MARIJUANA; OR

16 (d) THE PREMISES ON WHICH A PERSON PREVIOUSLY HAD A
17 REGISTERED OUTDOOR HEMP FARM OR A LICENSED OUTDOOR MARIJUANA
18 CULTIVATION.

19 (7.4) "LICENSED OUTDOOR MARIJUANA CULTIVATION" MEANS THE
20 LICENSED PREMISES, AS DEFINED IN SECTION 44-10-103 (24), USED FOR
21 OUTDOOR CULTIVATION OF MARIJUANA.

22 (7.6) "MARIJUANA" HAS THE SAME MEANING AS "REGULATED
23 MARIJUANA" AS DEFINED IN SECTION 44-10-103 (54).

24 (7.8) (a) "OUTDOOR CULTIVATION", WITH RESPECT TO MARIJUANA,
25 MEANS A LICENSED MARIJUANA GROW THAT OPERATES SEASONALLY
26 WITHIN A TEMPORARY GREENHOUSE OR ON AN OPEN PLOT OF LAND.

27 (b) "OUTDOOR CULTIVATION", WITH RESPECT TO MARIJUANA, DOES

1 NOT INCLUDE A LICENSED MARIJUANA GROW THAT OPERATES
2 YEAR-ROUND WITHIN A CONSTRUCTED FACILITY OR PERMANENT
3 GREENHOUSE.

4 (8.4) "REGISTERED OUTDOOR HEMP FARM" MEANS THE PREMISES
5 THAT ARE SUBJECT TO REGISTRATION UNDER SECTION 35-61-104 AND ARE
6 USED FOR OUTDOOR CULTIVATION OF HEMP.

7 (8.7) "STATE LICENSING AUTHORITY" MEANS THE STATE LICENSING
8 AUTHORITY CREATED IN SECTION 44-10-201 FOR THE PURPOSE OF
9 REGULATING AND CONTROLLING THE LICENSING OF THE CULTIVATION,
10 MANUFACTURE, DISTRIBUTION, SALE, AND TESTING OF MARIJUANA IN THIS
11 STATE.

12 (10) "VOLUNTEER PLANT" MEANS A CANNABIS PLANT GROWING
13 SPONTANEOUSLY WITHOUT DIRECT HUMAN CONTROL OR SUPERVISION.

14 **SECTION 2.** In Colorado Revised Statutes, **add** 35-61-110.3 as
15 follows:

16 **35-61-110.3. Cross-pollination - working group - reporting -**
17 **repeal.** (1) ON OR BEFORE NOVEMBER 1, 2021, THE COMMISSIONER, IN
18 COLLABORATION WITH THE STATE LICENSING AUTHORITY, THE
19 GOVERNOR'S DEPUTY LEGAL COUNSEL, AND THE GOVERNOR'S SPECIAL
20 ADVISOR ON CANNABIS, SHALL CONVENE A WORKING GROUP TO STUDY
21 AND RECOMMEND OPTIONS FOR MINIMIZING CROSS-POLLINATION BETWEEN
22 CANNABIS PLANTS, INCLUDING:

23 (a) HOW TO MINIMIZE VOLUNTEER PLANTS GROWING ON AREAS OF
24 LAND THAT ARE NOT REGISTERED OUTDOOR HEMP FARMS OR LICENSED
25 OUTDOOR MARIJUANA CULTIVATIONS, REGARDLESS OF WHETHER THE
26 PROPERTY WAS PREVIOUSLY REGISTERED OR LICENSED;

27 (b) HOW BEST TO SHARE FARM DATA AND THE PROXIMITY

1 BETWEEN THE LOCATIONS OF REGISTERED OUTDOOR HEMP FARMS,
2 LICENSED OUTDOOR MARIJUANA CULTIVATIONS, AND THE PROPERTIES OF
3 APPLICANTS FOR REGISTERED OUTDOOR HEMP FARMS OR LICENSED
4 OUTDOOR MARIJUANA CULTIVATIONS, INCLUDING INFORMATION FOR EACH
5 FARM REGARDING:

6 (I) THE POTENTIAL FOR CROSS-POLLINATION BETWEEN THE FARM
7 AND OTHER FARMS OR AREAS OF LAND WITH VOLUNTEER PLANTS; AND

8 (II) PROPERTY SIZE;

9 (c) THE BEST PRACTICES FOR PREVENTING CROSS-POLLINATION
10 INCLUDING:

11 (I) AN EXAMINATION OF THE STANDARDS DEVELOPED BY
12 AGRICULTURAL ORGANIZATIONS WITH EXPERTISE IN INDUSTRY-WIDE
13 STANDARDS AND PRACTICES;

14 (II) RECOMMENDATIONS FROM SUBJECT-MATTER EXPERTS; AND

15 (III) IF AVAILABLE, A REVIEW OF PRACTICES DEVELOPED BY THE
16 HEMP CENTER OF EXCELLENCE; AND

17 (d) THE FEASIBILITY OF CONDUCTING AND FINANCING FIELD
18 STUDIES TO EXAMINE CROSS-POLLINATION BETWEEN FARMS AND BETWEEN
19 FARMS AND AREAS OF LAND WITH VOLUNTEER PLANTS.

20 (2) IN CONVENING THE WORKING GROUP, THE COMMISSIONER
21 SHOULD STRIVE TO INCLUDE REPRESENTATION OF A DIVERSE
22 CROSS-SECTION OF:

23 (a) AFFECTED BUSINESSES;

24 (b) SCIENTISTS AND AGRONOMISTS WITH EXPERTISE IN
25 CROSS-POLLINATION;

26 (c) SOFTWARE COMPANIES THAT SERVICE THE AGRICULTURAL
27 INDUSTRY;

1 (d) COMPANIES WITH EXPERTISE IN AGRICULTURAL SURVEYING;

2 AND

3 (e) ORGANIZATIONS WITH EXPERIENCE IN CERTIFIED HEMP SEED
4 DEVELOPMENT.

5 (3) THE WORKING GROUP'S RECOMMENDATIONS MUST NOT
6 INCLUDE MANDATES ON THE TYPE, LOCATION, OR TIMING OF ANY CROP
7 PLANTING; HOWEVER, THIS WILL NOT LIMIT THE ABILITY OF PROPERTY
8 OWNERS TO ENTER INTO VOLUNTARY AGREEMENTS.

9 (4) ON OR BEFORE NOVEMBER 1, 2022, THE WORKING GROUP
10 SHALL SUBMIT A REPORT OF ITS FINDINGS AND RECOMMENDATIONS TO THE
11 HOUSE OF REPRESENTATIVES AGRICULTURE, LIVESTOCK, AND WATER
12 COMMITTEE AND THE SENATE AGRICULTURE AND NATURAL RESOURCES
13 COMMITTEE, OR THEIR SUCCESSOR COMMITTEES. THE DEPARTMENT AND
14 THE STATE LICENSING AUTHORITY SHALL POST THE REPORT ON THEIR
15 PUBLIC WEBSITES.

16 (5) THIS SECTION IS REPEALED, EFFECTIVE JANUARY 1, 2023.

17 **SECTION 3.** In Colorado Revised Statutes, 44-10-103, **add** (6.5)
18 as follows:

19 **44-10-103. Definitions.** As used in this article 10, unless the
20 context otherwise requires:

21 (6.5) "ADVERSE WEATHER EVENT" MEANS:

22 (a) DAMAGING WEATHER, SUCH AS DROUGHT, FREEZE, HAIL,
23 EXCESSIVE MOISTURE, EXCESSIVE WIND, OR TORNADO; OR

24 (b) AN ADVERSE NATURAL OCCURRENCE, SUCH AS AN
25 EARTHQUAKE OR A FLOOD.

26 **SECTION 4.** In Colorado Revised Statutes, 44-10-202, **amend**
27 (1)(f) and (1)(g); and **add** (1)(h) as follows:

1 **44-10-202. Powers and duties of state licensing authority -**
2 **rules - report - legislative declaration - repeal. (1) Powers and duties.**

3 The state licensing authority shall:

4 (f) Prepare and transmit annually, in the form and manner
5 prescribed by the heads of the principal departments pursuant to section
6 24-1-136, a report accounting to the governor for the efficient discharge
7 of all responsibilities assigned by law or directive to the state licensing
8 authority; **and**

9 (g) Collect and maintain data related to licensing disqualifications
10 and all sanctions based on past criminal history pursuant to the
11 requirements in section 24-34-104 (6)(b)(IX); **AND**

12 (h) (I) ON OR BEFORE NOVEMBER 1, 2021, IN COLLABORATION
13 WITH THE GOVERNOR'S DEPUTY LEGAL COUNSEL AND THE GOVERNOR'S
14 SPECIAL ADVISOR ON CANNABIS, CONVENE A WORKING GROUP TO EXAMINE
15 THE EXISTING RULES AND TAX LAWS THAT APPLY TO THE STATE'S
16 WHOLESALE MARIJUANA CULTIVATION MARKET. THE WORKING GROUP
17 SHALL EXPLORE OPTIONS ON HOW THE EXISTING RULES AND TAX LAWS
18 COULD BE AMENDED TO BETTER POSITION BUSINESSES IN THE STATE TO BE
19 COMPETITIVE IF MARIJUANA IS LEGALIZED UNDER FEDERAL LAW. ON OR
20 BEFORE JUNE 1, 2022, THE WORKING GROUP SHALL SUBMIT A REPORT OF
21 ITS FINDINGS AND RECOMMENDATIONS TO THE EXECUTIVE DIRECTOR AND
22 THE GENERAL ASSEMBLY, WHICH REPORT MAY INCLUDE
23 RECOMMENDATIONS FOR LEGISLATION.

24 (II) THIS SUBSECTION (1)(h) IS REPEALED, EFFECTIVE SEPTEMBER
25 1, 2022.

26 **SECTION 5.** In Colorado Revised Statutes, 44-10-203, **amend**
27 **(1)(j); and add (1)(j.5) and (9) as follows:**

1 **44-10-203. State licensing authority - rules - definition.**

2 **(1) Permissive rule-making.** Rules promulgated pursuant to section
3 44-10-202 (1)(c) may include but need not be limited to the following
4 subjects:

5 (j) A definition for "disproportionate impacted area" to the extent
6 relevant state of Colorado data exists, is available, and is used for the
7 purpose of determining eligibility for a social equity licensee; ~~and~~

8 (j.5) THE IMPLEMENTATION OF CONTINGENCY PLANS PURSUANT TO
9 SECTIONS 44-10-502 (9) AND 44-10-602 (13), INCLUDING THE PROCESS,
10 PROCEDURES, REQUIREMENTS, AND RESTRICTIONS FOR CONTINGENCY
11 PLANS; AND

12 (9) (a) THE STATE LICENSING AUTHORITY MAY, BY RULE,
13 ESTABLISH PROCEDURES FOR THE CONDITIONAL ISSUANCE OF AN
14 EMPLOYEE LICENSE IDENTIFICATION CARD AT THE TIME OF APPLICATION.

15 (b) (I) THE STATE LICENSING AUTHORITY SHALL BASE ITS
16 ISSUANCE OF AN EMPLOYEE LICENSE IDENTIFICATION CARD PURSUANT TO
17 THIS SUBSECTION (9) ON THE RESULTS OF AN INITIAL INVESTIGATION THAT
18 DEMONSTRATE THE APPLICANT IS QUALIFIED TO HOLD SUCH LICENSE. THE
19 EMPLOYEE LICENSE APPLICATION FOR WHICH AN EMPLOYEE LICENSE
20 IDENTIFICATION CARD WAS ISSUED PURSUANT TO THIS SUBSECTION (9)
21 REMAINS SUBJECT TO DENIAL PENDING THE COMPLETE RESULTS OF THE
22 APPLICANT'S INITIAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD
23 CHECK.

24 (II) RESULTS OF A FINGERPRINT-BASED CRIMINAL HISTORY RECORD
25 CHECK THAT DEMONSTRATE THAT AN APPLICANT POSSESSING AN
26 EMPLOYEE LICENSE IDENTIFICATION CARD PURSUANT TO THIS SUBSECTION
27 (9) IS NOT QUALIFIED TO HOLD A LICENSE ISSUED UNDER THIS ARTICLE 10

1 ARE GROUNDS FOR DENIAL OF THE EMPLOYEE LICENSE APPLICATION. IF
2 THE EMPLOYEE LICENSE APPLICATION IS DENIED, THE APPLICANT SHALL
3 RETURN THE EMPLOYEE LICENSE IDENTIFICATION CARD TO THE STATE
4 LICENSING AUTHORITY WITHIN A TIME PERIOD THAT THE STATE LICENSING
5 AUTHORITY ESTABLISHES BY RULE.

6 **SECTION 6.** In Colorado Revised Statutes, 44-10-502, **add** (9)
7 as follows:

8 **44-10-502. Medical marijuana cultivation facility**
9 **license - rules - definitions.** (9) BEGINNING JANUARY 1, 2022, A
10 MEDICAL MARIJUANA CULTIVATION FACILITY LICENSEE THAT CULTIVATES
11 MEDICAL MARIJUANA OUTDOORS MAY FILE A CONTINGENCY PLAN FOR ITS
12 OUTDOOR CULTIVATION OPERATION TO ADDRESS HOW THE LICENSEE WILL
13 RESPOND WHEN THERE IS AN ADVERSE WEATHER EVENT. IF THE LICENSEE
14 FILES A CONTINGENCY PLAN, THE LICENSEE SHALL ALSO SUBMIT A COPY OF
15 THE PLAN TO THE LOCAL LICENSING AUTHORITY IN THE LOCAL
16 JURISDICTION WHERE THE LICENSEE OPERATES. IF THE CONTINGENCY PLAN
17 IS APPROVED BY THE STATE LICENSING AUTHORITY, THE MEDICAL
18 MARIJUANA CULTIVATION FACILITY LICENSEE MAY FOLLOW THE
19 CONTINGENCY PLAN IN THE CASE OF AN ADVERSE WEATHER EVENT.

20 (c) AFTER THE STATE LICENSING AUTHORITY APPROVES A
21 CONTINGENCY PLAN, IT SHALL NOTIFY THE LOCAL LICENSING AUTHORITY
22 OF THE APPROVAL. THE LOCAL LICENSING AUTHORITY MAY ENFORCE
23 LOCAL LAND USE AND ZONING LAWS AND REGULATIONS REGARDING THE
24 CONTINGENCY PLAN AND MAY DEVELOP INTERNAL REGULATORY
25 PROCESSES TO EVALUATE CONTINGENCY PLANS.

26 (d) ON AND AFTER JANUARY 1, 2023, A LOCAL LICENSING
27 AUTHORITY MAY REQUIRE THAT AN APPLICANT FOR A MEDICAL

1 MARIJUANA CULTIVATION FACILITY LICENSE INCLUDE A CONTINGENCY
2 PLAN WITH THE APPLICATION FOR THE LOCAL LICENSING AUTHORITY'S
3 REVIEW AND APPROVAL.

4

5 **SECTION 7.** In Colorado Revised Statutes, 44-10-602, **add** (13)
6 as follows:

7 **44-10-602. Retail marijuana cultivation facility license - rules**

8 **- definitions.** (13) (a) BEGINNING JANUARY 1, 2022, A RETAIL
9 MARIJUANA CULTIVATION FACILITY LICENSEE THAT CULTIVATES RETAIL
10 MARIJUANA OUTDOORS MAY FILE A CONTINGENCY PLAN FOR ITS OUTDOOR
11 CULTIVATION OPERATION TO ADDRESS HOW THE LICENSEE WILL RESPOND
12 WHEN THERE IS AN ADVERSE WEATHER EVENT. IF THE LICENSEE FILES A
13 CONTINGENCY PLAN, THE LICENSEE SHALL ALSO SUBMIT A COPY OF THE
14 PLAN TO THE LOCAL LICENSING AUTHORITY IN THE LOCAL JURISDICTION
15 WHERE THE LICENSEE OPERATES. IF THE CONTINGENCY PLAN IS APPROVED
16 BY THE STATE LICENSING AUTHORITY, THE RETAIL MARIJUANA
17 CULTIVATION FACILITY LICENSEE MAY FOLLOW THE CONTINGENCY PLAN
18 IN THE CASE OF AN ADVERSE WEATHER EVENT.

19 (c) AFTER THE STATE LICENSING AUTHORITY APPROVES A
20 CONTINGENCY PLAN, IT SHALL NOTIFY THE LOCAL LICENSING AUTHORITY
21 OF THE APPROVAL. THE LOCAL LICENSING AUTHORITY MAY ENFORCE
22 LOCAL LAND USE AND ZONING LAWS AND REGULATIONS REGARDING THE
23 CONTINGENCY PLAN AND MAY DEVELOP INTERNAL REGULATORY
24 PROCESSES TO EVALUATE CONTINGENCY PLANS.

25 (d) ON AND AFTER JANUARY 1, 2023, A LOCAL LICENSING
26 AUTHORITY MAY REQUIRE THAT AN APPLICANT FOR A RETAIL MARIJUANA
27 CULTIVATION FACILITY LICENSE INCLUDE A CONTINGENCY PLAN WITH THE

1 APPLICATION FOR THE LOCAL LICENSING AUTHORITY'S REVIEW AND
2 APPROVAL.

3

4 **SECTION 8. Appropriation.** (1) For the 2021-22 state fiscal
5 year, \$104,780 is appropriated to the department of agriculture for use by
6 agricultural services. This appropriation consists of \$52,390 from the
7 industrial hemp registration program cash fund created in section
8 35-61-106 (1), C.R.S., and \$52,390 from the marijuana tax cash fund
9 created in section 39-28.8-501 (1), C.R.S. To implement this act, the
10 department may use this appropriation as follows:

11 (a) \$83,512, which consists of \$52,390 from the industrial hemp
12 registration program cash fund and \$31,122 from the marijuana tax cash
13 fund, for use by agricultural services for the plant industry division, which
14 amount is based on an assumption that the department will require an
15 additional 0.7 FTE; and

16 (b) \$21,268 from the marijuana tax cash fund for the purchase of
17 legal services.

18 (2) For the 2021-22 state fiscal year, \$21,268 is appropriated to
19 the department of law. This appropriation is from reappropriated funds
20 received from the department of agriculture under subsection (1)(b) of
21 this section and is based on an assumption that the department of law will
22 require an additional 0.1 FTE. To implement this act, the department of
23 law may use this appropriation to provide legal services for the
24 department of agriculture.

25 (3) For the 2021-22 state fiscal year, \$279,194 is appropriated to
26 the department of revenue. This appropriation is from the marijuana cash
27 fund created in section 44-10-801 (1)(a), C.R.S. To implement this act,

1 the department may use this appropriation as follows:

2 (a) \$247,292 for use by the specialized business group for
3 marijuana enforcement, which amount is based on an assumption that the
4 group will require an additional 1.9 FTE; and

5 (b) \$31,902 for the purchase of legal services.

6 (4) For the 2021-22 state fiscal year, \$31,902 is appropriated to
7 the department of law. This appropriation is from reappropriated funds
8 received from the department of revenue under subsection (3)(b) of this
9 section and is based on an assumption that the department of law will
10 require an additional 0.2 FTE. To implement this act, the department of
11 law may use this appropriation to provide legal services for the
12 department of revenue.

13 **SECTION 9. Act subject to petition - effective date.** This act
14 takes effect at 12:01 a.m. on the day following the expiration of the
15 ninety-day period after final adjournment of the general assembly; except
16 that, if a referendum petition is filed pursuant to section 1 (3) of article V
17 of the state constitution against this act or an item, section, or part of this
18 act within such period, then the act, item, section, or part will not take
19 effect unless approved by the people at the general election to be held in
20 November 2022 and, in such case, will take effect on the date of the
21 official declaration of the vote thereon by the governor.