



Legislative Council Staff
Nonpartisan Services for Colorado's Legislature

Final Fiscal Note

Drafting Number: LLS 21-0163 Date: June 21, 2021
Prime Sponsors: Rep. Snyder Bill Status: Postponed Indefinitely
Sen. Holbert; Rodriguez Fiscal Analyst: Anna Gerstle | 303-866-4375
Anna.Gerstle@state.co.us

Bill Topic: LIMITATIONS ON REGULATED MARIJUANA DELIVERY

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

The bill would have waived initial marijuana transporter application and licensing fees for social equity applicants and makes changes to marijuana delivery. It would have decreased state and local revenue and increased state expenditures on an ongoing basis.

Appropriation Summary: In FY 2021-22, the bill would have required an appropriation of \$63,804 to the Department of Revenue.

Fiscal Note Status: This fiscal note reflects the introduced bill, as amended by the House Business Affairs and Labor Committee. This bill was not enacted into law; therefore, the impacts identified in the fiscal note do not take effect.

Table 1
State Fiscal Impacts Under HB21-1159

Table with 4 columns: Category, Sub-category, Budget Year FY 2021-22, and Out Year FY 2022-23. Rows include Revenue, Expenditures, Transfers, and TABOR Refund.

Summary of Legislation

The bill waives initial marijuana transporter application and licensing fees for social equity applicants, and makes the following changes to marijuana delivery:

- requires that retail marijuana stores be open at least five days per week and at least five hours per day in order to obtain a delivery permit;
- allows retail marijuana stores to only deliver products that are available for sale at the physical store;
- specifies that only a licensed marijuana store may hold prepaid customer funds; and
- prohibits a medical or retail marijuana business operator from providing services to a licensed store or transporter that delivers marijuana.

If a retail transporter is found to have committed a delivery-related violation of public safety, the bill requires that the state licensing authority notify the retail store with which the transporter is contracted. If the retail store continues to contract with the transporter and the transporter commits a subsequent delivery-related violation of public safety within a year, the state licensing authority must initiate administrative action against both the retail store and the transporter.

By January 1, 2022, the Department of Revenue must promulgate rules related to emergency exemptions to hours of operation requirements for retail stores that hold a delivery permit. The next sunset review of regulated marijuana which will commence in 2027, must review the metrics and impacts of the regulations on retail sales.

Background

House Bill 20-1424 defined marijuana social equity licensees as individuals who may hold any regulated marijuana business license or permit, may be eligible for incentives, and must:

- be a Colorado resident;
- not have been the owner of a revoked marijuana license;
- hold at least 51 percent of the beneficial ownership of a regulated marijuana business, either individually or collectively with other social equity licensees; and
- have demonstrated at least one of the following:
 - resided for at least 15 years between 1980 and 2010 in an area designated as an opportunity zone, or as a disproportionate impacted area;
 - the applicant or the applicant's immediate family was arrested for or convicted of a marijuana offense or was subject to civil asset forfeiture related to a marijuana investigation; or
 - the applicant's household income in the previous year did not exceed an amount determined by the Marijuana Enforcement Division in the Department of Revenue.

Assumptions

Home delivery of retail marijuana was permitted under state law beginning in January 2021 and local governments are in the process of authorizing delivery in their jurisdictions. In particular, Aurora and Denver will initially only allow social equity applicants to apply for transporter licenses and associated delivery permits. Through the first three months of 2021, about 20 applicants for social equity licenses are in the application process and have indicated their intention to seek a transporter license. Over the first two years, 50 to 70 applications for transporter licenses are expected per year. Transporter applications may vary in future years.

State Revenue

The bill reduces state fee revenue to the Marijuana Cash Fund by at least \$270,000 in FY 2021-22 and \$324,000 in FY 2022-23. Based on the assumptions above, Table 2 shows the impact of waiving marijuana initial transporter application and license fees for social equity licensees. Fee revenue is subject to TABOR. The revenue reduction from new applications may vary in future years. In Denver and Aurora, fewer new applications may be expected after the initial wave of applicants; whereas additional jurisdictions allowing retail marijuana delivery will increase future applicants, resulting in additional lost revenue.

**Table 2
Waived Fees - Social Equity Applicants**

Fiscal Year	Type of Fee	Current Fee¹	Number Waived	Total Fee Impact
FY 2021-22	Retail Marijuana Transporter License - New	\$5,400	50	(\$270,000)
FY 2022-23	Retail Marijuana Transporter License - New	\$5,400	60	(\$324,000)

¹ Includes both the application fee (\$1,000), and the licensing fee (\$4,400)

In future years, fees set administratively by the Marijuana Enforcement Division may be increased to cover the expenditure impact of the bill, thus offsetting a portion of the revenue reduction shown in Table 2. It is unknown when this would occur, as the division currently does not have the ability to modify fees due to the COVID-19 pandemic.

State Expenditures

The bill increases state expenditures by \$63,804 in FY 2021-22 and \$113,784 per year beginning in FY 2022-23 for the Marijuana Enforcement Division in the Department of Revenue.

The division will have additional legal services costs to handle additional violations and administrative actions. For each second violation committed by a transporter licensee within a year, if the retail store continued to contract with the transporter after the first violation, there will be an associated retail store violation. It is estimated that there will be about 10 retail store violations in FY 2021-22 and 20 per year beginning in FY 2022-23, at 30 hours each. In addition, it assumed that there will be one large, complex case and investigation that requires up to 300 hours in FY 2021-22

and 500 hours in subsequent years. Legal hours are provided by the Department of Law at a rate of \$106.35 per hour; the required hours equate to 0.3 FTE in the first year, and 0.6 FTE in subsequent years.

The division will also incur additional workload to modify enforcement and investigation procedures, update forms and notices, conduct rulemaking, and hold any additional hearings. Enforcement of the new restrictions on marijuana delivery can be accomplished as part of the current process for regulating and monitoring delivery operations. This work does not require a change in appropriations.

TABOR refunds. The bill decreases state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will decrease the amount required to be refunded to taxpayers from the General Fund in FY 2023-24. If the bill causes revenue to fall below the limit by \$30 million, it will trigger a transfer of up to \$30 million from the Unclaimed Property Trust Fund to the Housing Development Grant Fund under current law enacted in House Bill 19-1322.

Local Government

Local governments that have authorized marijuana delivery retain a \$1.00 surcharge on each transaction that is used to assist with law enforcement costs. Should the bill reduce delivery transactions, some local governments will see a small reduction in revenue.

State Appropriations

In FY 2021-22, the bill requires an appropriation of \$63,804 from the Marijuana Cash Fund to the Department of Revenue, to be reappropriated to the Department of Law with 0.3 FTE.

Effective Date

The bill was postponed indefinitely by the House Finance Committee on May 6, 2021.

State and Local Government Contacts

Counties	Information Technology	Law
Municipalities	Personnel	Public Health and Environment
Public Safety	Revenue	