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Nonpartisan Services for Colorado's Legislature

Revised Fiscal Note

(replaces fiscal note dated)

Drafting Number: LLS 21-0204 Date: June 2, 2021
Prime Sponsors: Rep. Valdez A.; Van Winkle Bill Status: Senate Second Reading
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Bill Topic: MARIJUANA LICENSEES ABILITY TO CHANGE DESIGNATION

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

The bill allows for certain marijuana licensees to change the designation of marijuana from medical to retail, and vice versa. The bill increases state expenditures, and may impact state and local revenue on an ongoing basis.

Appropriation Summary: In FY 2021-22, the bill requires an appropriation of \$569,601 for the Department of Revenue.

Fiscal Note Status: This revised fiscal note is provided pursuant to Senate Rule 25(e). It reflects the reengrossed bill, as amended by the Senate Business, Labor and Technology Committee.

Table 1
State Fiscal Impacts Under HB 21-1216

Table with 4 columns: Category, Sub-category, Budget Year FY 2021-22, and Out Year FY 2022-23. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and TABOR Refund.

Summary of Legislation

The bill provides for the licensees to change the designation of marijuana from medical to retail, and vice versa.

Retail to medical. The bill allows a retail marijuana cultivation facility to transfer retail marijuana to a co-located medical marijuana cultivation facility, and change the marijuana's designation from retail to medical. The bill also applies to a medical marijuana products manufacturer, which may receive retail marijuana that has been extracted and is in concentrated form from a co-located retail marijuana products manufacturer and change the marijuana's designation from retail to medical.

The bill specifies that a transfer and change of designation from retail to medical does not result in a right to a refund of any retail marijuana excise tax paid prior to the transfer.

Medical to retail. The bill allows a medical marijuana cultivation facility to transfer medical marijuana to a co-located retail marijuana cultivation facility and change the marijuana's designation from medical to retail. A medical marijuana cultivation facility may also transfer marijuana to a retail marijuana cultivation facility that is not co-located if the following conditions are met:

- the medical and retail cultivation facilities have at least one identical controlling beneficial owner;
- the two facilities cannot be co-located because the local jurisdiction prohibits the operation of a retail cultivation facility; and
- the medical marijuana cultivation facility receives approval from the state licensing authority that the above requirements are met.

Both cultivation facilities must remain at or under their inventory limits, and the retail marijuana cultivation facility must pay any retail marijuana excise sales tax.

Transfer requirements. Marijuana must obtain passing test results prior to a transfer, co-located facilities must share at least one controlling beneficial owner, and the designation change must be entered into the seed-to-sale tracking system. Once the change is entered, the marijuana is the product of the cultivation facility or products manufacturer that received the marijuana and cannot be transferred back to the originating facility.

State Revenue

The bill increases state revenue by at least \$665,912 in FY 2021-22 and \$660,345 in FY 2022-23. Fee revenue is deposited in the Marijuana Cash Fund to cover additional expenditures required to implement this bill. In addition, the bill may impact marijuana tax revenue collections, as discussed below.

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

Table 2
Fee Impact of HB 21-1216

Fiscal Year	Type of Fee	Total Fee Impact
FY 2021-22	Marijuana Licensing Fees	\$665,913
FY 2022-23	Marijuana Licensing Fees	\$660,345

Marijuana tax impacts. Beginning in FY 2021-22, changing the marijuana designation impacts the taxes that will be paid on it. The exact change has not been estimated and will depend on how much marijuana is changed from retail to medical or medical to retail. The overall impact is expected to be minimal.

Marijuana transferred from medical to retail will be taxed at the 15 percent retail marijuana sales tax and 15 percent excise tax rates, rather than the lower 2.9 percent sales tax paid on medical marijuana. This results in an increase in revenue. Marijuana transferred from retail to medical will be taxed at the 2.9 percent sales tax, rather than the higher 15 percent sales tax and 15 percent excise tax rate paid on retail marijuana. This results in a decrease in revenue, although the impact will depend on whether cultivation licensees have paid the excise tax on retail marijuana prior to changing the designation.

Funds that receive marijuana sales and/or excise tax revenue include the General Fund, Marijuana Tax Cash Fund (MTCF), State Public School Fund, and Public School Capital Construction Assistance Fund. Revenue from the 2.9 percent sales tax on medical marijuana is subject to TABOR; sales and excise taxes on retail marijuana are exempt from TABOR.

State Expenditures

The bill increases state expenditures by \$665,913 in FY 2021-22 and \$660,345 in FY 2022-23 for the Department of Revenue. Costs are paid from the Marijuana Cash Fund, listed in Table 2, and discussed below.

Table 2
Expenditures Under HB 21-1216

Cost Components	FY 2021-22	FY 2022-23
Department of Revenue		
Personal Services	\$401,322	\$442,696
Operating Expenses	\$8,100	\$8,775
Capital Outlay Costs	\$37,200	-
Legal Services	\$53,170	\$53,170
Vehicle Costs	\$41,280	\$41,280
Compliance Investigator Costs	\$28,529	\$9,368
Centrally Appropriated Costs ¹	\$96,312	\$105,056
FTE - Personal Services	6.0 FTE	6.5 FTE
FTE - Legal Services	0.3 FTE	0.3 FTE
Total	\$665,913	\$660,345
Total FTE	6.3 FTE	6.8 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Marijuana Enforcement Division. The MED requires 6.0 FTE in FY 2021-22 and 6.5 FTE in FY 2022-23. The staffing increase includes an administrative assistant to process transfer requests from licensees that are not co-located, compliance investigators to conduct enforcement and handle complex investigations, and research and statistical staff to support compliance related to testing and taxation. Costs include standard equipment costs for compliance investigators. In addition, compliance investigators will each require a fleet vehicle, provided by the Department of Personnel and Administration, at a leased cost of \$4,950 per year and \$5,370 per year in mileage and operations.

Legal services. The MED requires 500 hours of legal services for rulemaking and administrative actions. Legal services are provided by the Department of Law at a rate of \$106.34 per hour.

TABOR refunds. The bill increases state revenue subject to TABOR, as revenue from the 2.9 percent sales tax on medical marijuana is 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 increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

Federal ARPA funds. This bill impacts state revenue, which may impact the state's flexibility in spending federal American Rescue Plan Act (ARPA) funds. For more information, see the LCS memo, titled "Legislative Changes and Flexibility in Use of American Rescue Plan Funds," available online at: <https://leg.colorado.gov/node/2211881>.

Local Government

To the extent the bill impacts revenue from the special sales tax on retail marijuana, it will reduce the amount that is distributed to local governments. Of the special sales tax revenue, 10 percent is allocated proportionally to local governments based on where sales occur.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

In FY 2021-22, the bill requires an appropriation of \$569,601 from the Marijuana Tax Cash Fund to the Department of Revenue, and 6.0 FTE. Of that amount:

- \$53,170 is reappropriated to the Department of Law for legal services, with an additional 0.3 FTE; and
- \$41,280 is reappropriated to the Department of Personnel and Administration for fleet vehicle services.

State and Local Government Contacts

Counties	Law	Municipalities
Public Health and Environment	Revenue	