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Final Fiscal Note

Drafting Number: LLS 22-0361 Date: May 17, 2022
Prime Sponsors: Sen. Priola; Hansen Bill Status: Postponed Indefinitely
Rep. Amabile; Lynch Fiscal Analyst: Anna Gerstle | 303-866-4375
Anna.Gerstle@state.co.us

Bill Topic: IMPROVE MARIJUANA INDUSTRY REGULATION

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

The bill would have made changes to the regulation of marijuana, including increasing the number of compliance checks, and requiring certain reporting, rulemaking, and online resources. The bill would have increased state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill would have required an appropriation of \$1.0 million to the Department of Revenue.

Fiscal Note Status: The fiscal note reflects the introduced bill. The bill was not enacted into law; therefore, the impacts identified in this fiscal note do not take effect.

Table 1
State Fiscal Impacts Under SB 22-149

Table with 4 columns: Category, Sub-category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (TABOR Refund).

## **Summary of Legislation**

The bill makes changes to the regulation of marijuana, including increasing the number of compliance checks, and requiring certain reporting, rulemaking, and online capabilities.

**Compliance checks.** To the extent achievable within the amount of fees collected each year, the Department of Revenue (DOR) must perform, or coordinate with local authorities to perform, at least two compliance checks at each medical and retail marijuana store. A check must involve engaging a minor under age 21 to attempt to purchase marijuana. If a compliance check reveals a violation, the licensing authority must complete another check within three to six months of the violation.

**Reporting.** Beginning July 1, 2023, the DOR must annually report on state and local enforcement activities, including the number of underage compliance checks and violations, the license name and business name for each violator, and certain information about each violation. The DOR must also annually report on any violations that reached a final agency action. The bill specifies what must be included in the report, and requires that local licensing authorities report information necessary for the annual report to the DOR.

When the DOR reports a voluntary surrender of a license that is the result of a settlement, the report must designate the action as “voluntary surrender – licensing violation settlement” and must state how long the licensee must wait before applying for a new license. When the DOR reports a licensing violation, it must include a business’s “doing business as” name.

**Rulemaking.** The DOR must adopt rules concerning the following:

- penalties related to underage sales must be based on the number of violations and an injury or death, if known, that occurred as a result of a violation;
- product recalls or health and safety advisory, including information on the timing, location, and agency actions; and
- timelines and deadlines for licensee violations, including that a licensee has 90 days to comply with a sanction.

**Working groups.** When the DOR convenes a working group to assist in developing rules or policies that involve public health and safety, it must make every reasonable attempt to have non-marijuana industry parties on the group, post notice of the group’s meetings at least 48 hours in advance, notify each member of the meeting at least five days in advance, and provide all materials received to all members of the group within seven days of receiving them.

**Online databases.** The bill requires that the DOR maintain a free, searchable database on its website related to compliance check records that have reached final agency action and minor in possession of marijuana records. Records must not include any identifying information related to a minor. The DOR must also maintain a method for online submittal of anonymous tips related to licensing violations.

**Seed-to-sale tracking.** At the completion of the current contract, the bill requires that the DOR utilize a transparent, online, and dynamically competitive process to enter into a contract for the development and maintenance services for the seed-to-sale tracking system. The DOR may not award the contract to a person licensed through the Marijuana Code or to any entity that would result in a governmental entity benefitting financially from the contract.

## **Background**

The current contract for METRC, the existing seed-to-sale tracking system, expires in October, 2026

## **Data and Assumptions**

The fiscal notes estimates that the MED will complete 1,666 new compliance checks per year, based on the following data and assumptions:

- 1,050 retail and medical marijuana stores in Colorado;
- 354 compliance checks per year are currently completed, each requiring about 6.7 hours of staff time;
- a 5 percent compliance check failure rate, based on current trends;
- 10 percent of the new compliance checks will be conducted by local licensing authorities; and
- the bill will be implemented beginning July 1, 2022.

## **State Revenue**

The bill increases state revenue by \$1.2 million in FY 2022-23 and \$1.1 million in FY 2021-22. Fee revenue is deposited in the Marijuana Cash Fund.

**Fee impact on marijuana 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, actual fees will be set administratively by the DOR based on cash fund balance, estimated program costs, and the estimated number of licensees subject to the fee. It is not known which fees will be increased to fund the bill; as a result, the table below identifies the total fee increase necessary to cover the bill's expenditures.

**Table 2**  
**Fee Impact on Marijuana Licensees**

<b>Fiscal Year</b>	<b>Type of Fee</b>	<b>Total Fee Increase</b>
<b>FY 2022-23</b>	Marijuana Licensing Fees	\$1,150,800
<b>FY 2023-24</b>	Marijuana Licensing Fees	\$1,101,200

**State Expenditures**

The bill increases state expenditures in the DOR by \$1.2 million in FY 2022-23 and \$1.1 million in FY 2023-24 from the Marijuana Cash Fund. Expenditures are shown in Table 3 and detailed below.

**Table 3  
 Expenditures Under SB22-149**

	FY 2022-23	FY 2023-24
<b>Department of Revenue</b>		
Personal Services	\$501,486	\$501,486
Operating Expenses	\$10,800	\$10,800
Capital Outlay Costs	\$49,600	-
Minor Contractor Costs	\$89,959	\$89,959
Vehicle Costs	\$13,080	\$13,080
Legal Services	\$360,766	\$360,766
Centrally Appropriated Costs <sup>1</sup>	\$125,109	\$125,109
FTE – Personal Services	8.0 FTE	8.0 FTE
FTE – Legal Services	2.0 FTE	2.0 FTE
<b>Total Cost</b>	<b>\$1,150,800</b>	<b>\$1,101,200</b>
<b>Total FTE</b>	<b>10.0 FTE</b>	<b>10.0 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Staffing.** The DOR requires additional staff to conduct the required compliance checks, implement the new reporting requirements and online resources, and handle the additional working group and rulemaking requirements. New staff requirements include 5.4 FTE for compliance checks, 1.6 FTE for new administrative actions, and 1.0 FTE for working group, reporting, and new online resources. Costs include standard operating and capital outlay costs, as well as vehicle costs to conduct the compliance checks, as shown in Table 3 above.

**Legal services.** To handle the additional administrative actions, the DOR requires 3,600 hours of legal services, which equates to 2.0 FTE. This increase is based on current cases that result from compliance checks, and the assumption that the provisions related to settlement of violations will result in fewer settlements and larger cases going to a hearing. Legal services are provided by the Department of Law at a rate of \$98.57 per hour.

**Minor contractor costs.** For each compliance check, the department must use a minor contractor to attempt to purchase products. This requires three hours, for each of the 1,666 new compliance checks, at a rate of \$18 per hour.

**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 shown in Table 2.

## **Other Budget Impacts**

**TABOR refunds.** The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the March 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

## **Local Government**

The bill will increase workload and costs for local licensing authorities and may require increases in local licensing fees to fund the additional regulatory requirements. The fiscal note assumes that 10 percent of the required compliance checks will be conducted by local licensing authorities, and DOR will require additional reporting information from local entities in order to fulfill the bill's reporting requirements.

## **Technical Note**

The bill requires that the DOR is complete the two compliance checks to the extent achievable within the amount of fees collected each year. The DOR is unable to complete additional checks within current revenue, and the Marijuana Cash Fund is not expected to end the fiscal year with a surplus. As a result, the fiscal note reflects the cost to fully implement the bill, as well as the fee increase required to fund the new expenditures.

## **Effective Date**

The bill was postponed indefinitely by the Senate Health and Human Services Committee on March 30, 2022.

## **State Appropriations**

In FY 2022-23, the bill requires an appropriation of \$1,025,691 from the Marijuana Cash Fund to the Department of Revenue, and 8.0 FTE. Of this amount, \$360,766 must be reappropriated to the Department of Law with an additional 2.0 FTE for legal services and \$13,080 must be reappropriated to the Department of Personnel and Administration for fleet vehicle services.

## **State and Local Government Contacts**

Agriculture

Law

Personnel

Revenue