

CHAPTER 242

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 15-1305

BY REPRESENTATIVE(S) Foote and Willett, Becker K., Conti, Pabon, Rosenthal, Ryden, Van Winkle, Windholz, Young;
also SENATOR(S) Grantham and Johnston, Cooke, Guzman, Heath, Jones, Kefalas, Kerr, Newell, Todd.

AN ACT

CONCERNING A PROHIBITION ON MANUFACTURING MARIJUANA CONCENTRATE IN AN UNREGULATED ENVIRONMENT USING AN INHERENTLY HAZARDOUS SUBSTANCE, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares that:

(a) The adoption of section 14 of article XVIII of the Colorado constitution created an affirmative defense and a limited exception to state criminal laws for patients and primary caregivers who possess or produce a limited amount of marijuana for medical use to treat a debilitating medical condition;

(b) The adoption of section 16 of article XVIII of the Colorado constitution allows persons twenty-one years of age and older in Colorado now to claim immunity from prosecution under state or local laws for possessing or processing marijuana concentrate in a quantity of one ounce or less for personal use or for distribution to others without compensation;

(c) Section 14 of article XVIII of the Colorado constitution prohibits both patients and primary caregivers from acquiring or producing marijuana in a way that endangers the health or well-being of any person;

(d) Section 16 of article XVIII of the Colorado constitution provides that, in the interest of the health and public safety of our citizenry, marijuana sold in Colorado will be subject to additional regulations to ensure that consumers are protected;

(e) Both constitutional provisions lack clarity on the question of how and where

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

marijuana concentrate may be processed or manufactured for medical or personal use;

(f) Section 18-18-406 (2) (a), Colorado Revised Statutes, currently makes processing and manufacturing marijuana concentrate a level 3 drug felony, but questions remain as to its applicability in the face of sections 14 and 16 of article XVIII of the Colorado constitution; and

(g) The lack of clarity in the law regarding residential production of marijuana concentrate has led to numerous examples of persons using inherently hazardous methods of extracting marijuana concentrate in inappropriate, unregulated settings, including residential locations.

(2) Therefore, it is necessary to specifically prohibit the manufacture of marijuana concentrate outside of the regulated medical and retail marijuana markets when using an inherently hazardous substance to extract the marijuana concentrate, and it is necessary to distinguish that activity from the current provisions in section 18-18-406 (2) (a), Colorado Revised Statutes, due to its elevated danger.

SECTION 2. In Colorado Revised Statutes, **add** 18-18-406.6 as follows:

18-18-406.6. Extraction of marijuana concentrate - definitions. (1) IT SHALL BE UNLAWFUL FOR ANY PERSON WHO IS NOT LICENSED PURSUANT TO ARTICLE 43.3 OR 43.4 OF TITLE 12, C.R.S., TO KNOWINGLY MANUFACTURE MARIJUANA CONCENTRATE USING AN INHERENTLY HAZARDOUS SUBSTANCE.

(2) IT SHALL BE UNLAWFUL FOR ANY PERSON WHO IS NOT LICENSED PURSUANT TO ARTICLE 43.3 OR 43.4 OF TITLE 12, C.R.S., WHO OWNS, MANAGES, OPERATES, OR OTHERWISE CONTROLS THE USE OF ANY PREMISES TO KNOWINGLY ALLOW MARIJUANA CONCENTRATE TO BE MANUFACTURED ON THE PREMISES USING AN INHERENTLY HAZARDOUS SUBSTANCE.

(3) A PERSON WHO VIOLATES THIS SECTION COMMITS A LEVEL 2 DRUG FELONY.

(4) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "INHERENTLY HAZARDOUS SUBSTANCE" MEANS ANY LIQUID CHEMICAL, COMPRESSED GAS, OR COMMERCIAL PRODUCT THAT HAS A FLASH POINT AT OR LOWER THAN THIRTY-EIGHT DEGREES CELSIUS OR ONE HUNDRED DEGREES FAHRENHEIT, INCLUDING BUTANE, PROPANE, AND DIETHYL ETHER AND EXCLUDING ALL FORMS OF ALCOHOL AND ETHANOL.

SECTION 3. In Colorado Revised Statutes, **add** 17-18-118 as follows:

17-18-118. Appropriation to comply with section 2-2-703 - HB 15-1305 - repeal. (1) PURSUANT TO SECTION 2-2-703, C.R.S., THE FOLLOWING STATUTORY APPROPRIATIONS ARE MADE IN ORDER TO IMPLEMENT HOUSE BILL 15-1305, ENACTED IN 2015:

(a) FOR THE 2016-17 STATE FISCAL YEAR, TWENTY-TWO THOUSAND SIXTY-EIGHT DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND.

(b) FOR THE 2017-18 STATE FISCAL YEAR, TWENTY-TWO THOUSAND SIXTY-EIGHT DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND.

(c) FOR THE 2018-19 STATE FISCAL YEAR, ELEVEN THOUSAND THIRTY-FOUR DOLLARS IS APPROPRIATED TO THE DEPARTMENT FROM THE GENERAL FUND.

(2) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2020.

SECTION 4. Effective date - applicability. This act takes effect July 1, 2015, and applies to offenses committed on or after said date.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 29, 2015