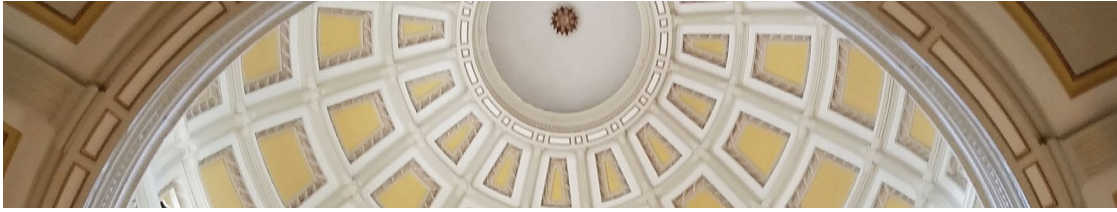


# Marijuana Handbook

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**The open and public consumption of marijuana is prohibited under Colorado law.**

## Section 1: Marijuana Law

### Medical Marijuana

Coloradans initiated and approved a constitutional amendment, Amendment 20, to legalize medical marijuana in 2000.<sup>1</sup> Amendment 20 legalized the acquisition, use, possession, production, and transportation of medical marijuana for patients and caregivers by creating an affirmative defense to the state's criminal marijuana laws.

**Registration required.** The state's Department of Public Health and Environment (CDPHE) maintains the confidential medical marijuana patient registry. In order to apply for the medical marijuana patient registry and to receive a registry identification card, a patient must reside in Colorado and possess written documentation from a licensed physician stating that the patient has been diagnosed with a debilitating medical condition and may benefit from the medical use of marijuana.

**Debilitating and disabling medical conditions.** State law outlines which conditions medical marijuana may be used to treat as follows:

- cancer,
- glaucoma;
- HIV/AIDS;
- chronic or debilitating diseases or medical conditions such as cachexia, severe pain, severe nausea, seizures, and persistent muscle spasms;
- post-traumatic stress disorder;
- autism spectrum disorder; and
- any condition for which a physician could prescribe an opioid for pain.

**Caregivers.** Once a patient receives a registry identification card from the CDPHE, a patient may designate one primary caregiver on the medical marijuana registry, and may update this designation regularly. The law defines a "primary caregiver" as a person who is 18 years of age

<sup>1</sup> Colo. Const. art. XVIII, § 14.

or older who has significant responsibility for managing the well-being of the patient. Primary caregivers may be a parent, advising caregiver, transporting caregiver, or cultivating caregiver. Beginning December 1, 2020, patients under the age of 18 may have both parents or guardians designated as caregivers.<sup>2</sup> Cultivating and transporting caregivers must register with the Marijuana Enforcement Division within the Department of Revenue and may not serve as a caregiver for more than five patients.

**Registry identification cards.** Registry identification cards must be renewed annually. If a patient receives a diagnosis that their medical condition requiring medical marijuana is cured, the registry identification card must be returned to the CDPHE within 24 hours of receiving that diagnosis. Under Senate Bill 19-218, the CDPHE promulgated rules to allow a physician to set the expiration date for a registry identification card issued to a patient with a disabling medical condition to no less than 60 days and no more than one year from issuance.<sup>3</sup> This may enable a patient using medical marijuana instead of an opioid for pain to receive a registry card that is effective for the duration of the disabling medical condition. The bill also authorized dentists and advanced practice practitioners with prescriptive authority, acting within the scope of their practice, to recommend medical marijuana for disabling medical conditions.

**Possession.** Patients may possess up to two ounces of a usable form of medical marijuana (including the seeds, leaves, buds, and flowers) and no more than six marijuana plants, with three or fewer being mature flowering plants. However, patients and primary caregivers may claim that amounts in excess of this are medically necessary to address a patient's debilitating medical condition. Patients may not engage in the medical use of marijuana in a way that endangers the health or well-being of any person or in plain view of, or in a place open to, the public. Employers are not required to accommodate the medical use of marijuana in the workplace, and health insurance providers are not required to provide reimbursement for the medical use of marijuana.

**Minors.** The law specifies additional provisions for the medical use of marijuana for patients under the age of 18. These include requiring two physicians to provide a diagnosis of a debilitating or disabling medical condition and requiring at least one of these physicians to explain the possible risks and benefits of the medical use of marijuana to the patient and each of the patient's parents residing in Colorado.

**Patients aged 18 to 20.** Except for patients who had a medical marijuana registry identification card prior to the age of 18, patients aged 18 to 20 are not eligible for a registry identification card unless the following conditions are met:

- two physicians from separate medical practices have diagnosed the patient with a disabling or debilitating medical condition after an in-person consultation, unless the patient is homebound;
- one of the physicians has explained the risks and benefits of medical marijuana use and has provided written documentation of the diagnosis and recommendation; and
- the patient attends follow-up appointments every six months with one of the physicians.

**Physician certification of medical marijuana.** House Bill 21-1317 added several requirements for a physician certifying that a patient has a debilitating or disabling medical condition that would benefit from the use of medical marijuana. A physician must do the following:

- have a bona fide relationship with the patient applying for the medical marijuana program;
- complete an in-person assessment;
- review the patient's mental health history, and determine whether a health issue could be exacerbated by the use of medical marijuana;

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<sup>2</sup> Section 25-1.5-106 (8)(b)(I) C.R.S.

<sup>3</sup> 5 CCR 1006-2 (3.B.3)



- not charge a fee to patients for recommending an extended plant count or for making a recommendation that exceeds requirements in state law;
- take a continuing education course on the topic for at least five hours every two years;
- include certain information on a patient’s medical marijuana certification, including the patient and physician’s names and addresses, the maximum of tetrahydrocannabinol (THC) potency level recommended, the recommended product, if any, the patient’s daily authorized quantity if it exceeds the statutory limits, and directions for use; and
- maintain a record-keeping system for all patients that the physician has authorized the medical use of marijuana.

CDPHE is required to report the number of physicians who made medical marijuana recommendations the previous year, the number of recommendations each physician made, and the aggregate number of homebound patients aged 18 to 20 in the registry on or before January 31 each year.

**Reference library.** The CDPHE must maintain a marijuana laboratory testing reference library. This reference library must include a library of methodologies for marijuana testing in the areas of potency, homogeneity, contaminants, and solvents, and make these materials available to the public. The reference library is located online [at CDPHE's website](#).<sup>4</sup>

**Statutory implementation.** While the state legalized medical marijuana in 2000, medical marijuana business licensing and enforcement was not codified until 2010 when the Marijuana Enforcement Division within the Department of Revenue was created in law. A temporary statewide moratorium on new medical marijuana licenses was in place from August 1, 2010, and June 30, 2012, to allow local governments to adopt a resolution or ordinance related to the licensing, regulation, or prohibition of the operation of licensed medical marijuana businesses in their jurisdiction.

## Retail Marijuana

In 2012, Coloradans initiated and approved a constitutional amendment, Amendment 64, to legalize the use and possession of marijuana for recreational purposes (retail marijuana) for persons 21 years of age or older.<sup>5</sup>

Retail marijuana must be taxed and regulated in a manner similar to alcohol in several specific ways, including:

- requiring individuals to show proof of age before purchasing marijuana;
- prohibiting the sale of marijuana to minors;
- prohibiting driving under the influence of marijuana; and
- requiring that marijuana be sold by legitimate businesses and be labeled in a way that informs and protects consumers.

For persons 21 years of age or older in Colorado, the following acts are lawful:

- possessing, using, displaying, purchasing, or transporting up to one ounce of marijuana;
- growing no more than six marijuana plants in an enclosed and locked space, with three or fewer being mature, flowering plants;
- transferring up to one ounce of retail marijuana to another person who is 21 years of age or older without remuneration;
- consuming marijuana, though not openly, publicly, or in a manner that endangers others; and
- assisting another person who is 21 years of age or older with any of the above.

<sup>4</sup> Online at: <https://www.colorado.gov/pacific/cdphe/marijuana-reference-library>

<sup>5</sup> Colo. Const. art. XVIII, § 16.

Local governments may not limit an individual's right to possess, grow, and use marijuana. A local government may enact ordinances or regulations governing aspects of retail marijuana establishment operations or prohibit the operation of retail marijuana businesses through the enactment of an ordinance or through an initiated or referred measure. Any initiated or referred measure to prohibit the operation of these establishments must appear on a general election ballot during an even-numbered year.

Additional constitutional provisions specify that:

- employers may have policies restricting the use of marijuana by employees and are not required to permit or accommodate employees' engagement with marijuana in the workplace;
- any person or entity that occupies, owns, or controls a property may prohibit or otherwise regulate the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property; and
- the Department of Revenue is required to manage marijuana licensing and enforcement statewide.

## Regulated Marijuana

Senate Bill 19-224 addressed recommendations from 2018 sunset reports, which included integrating the medical and retail codes into a single code: the Colorado Regulated Marijuana Code.<sup>6</sup> The bill continued the regulation of medical and retail marijuana until September 1, 2028, with changes that included harmonizing the former Medical Marijuana Code and the Retail Marijuana Code.

Senate Bill 24-076 made additional changes to marijuana regulation, including:

- permitting the sale, transfer, or shipment of genetic material from one cultivation facility to other licensed cultivators, testing facilities, or other licensees upon confirmation that the recipient is at least 21 years old and is not a direct consumer;
- placing a cap on initial application fees for retail marijuana businesses and allowing the Marijuana Enforcement Division to annually adjust for inflation or deflation;
- clarifying that the transfer of unprocessed retail marijuana exclusively for microbial control is deemed to not be the first transfer for the purposes of excise taxation; and
- amending processes around retesting products, seed-to-sale tracking system rules, public health disclosures, licensing, social equity licenses, and retail marijuana stores—all of which are discussed in greater detail in other sections below.

## Criminal Penalties Related to Marijuana

The criminal penalties for marijuana range from class 5 felonies for prohibited acts related to the collection of marijuana taxes; all levels of drug felonies, misdemeanors, and petty offenses for the sale or possession of quantities of marijuana or marijuana concentrate above the legal limit; and misdemeanors for fraud related to medical marijuana identification cards. For a complete listing of criminal penalties related to marijuana, see the [Legislative Council Staff Crime Classification Guide](#).<sup>7</sup>

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<sup>6</sup> Section 44-10-101 *et. seq.*, C.R.S.

<sup>7</sup> Online at: [https://leg.colorado.gov/sites/default/files/crime\\_classification\\_guide\\_combined\\_for\\_posting.pdf](https://leg.colorado.gov/sites/default/files/crime_classification_guide_combined_for_posting.pdf).

**Pardons related to marijuana.**<sup>8</sup> House Bill 20-1424 allows the Governor to grant pardons to a class of defendants who were convicted of the possession of up to two ounces of marijuana. On October 1, 2020, Governor Polis issued Executive Order C 2020-004, which granted full and unconditional pardons to individuals convicted of a petty offense, misdemeanor, or felony for the possession of one ounce or less of marijuana.

House Bill 21-1090 legalized the possession of two ounces of marijuana or less in the State of Colorado. On December 30, 2021, Governor Polis issued Executive Order C 2021-019, which granted full and unconditional pardons for convictions for possession of two ounces or less of marijuana.

## Driving Laws

**Driving under the influence.** Under Colorado law, drivers with five nanograms or more of THC per milliliter in whole blood can be prosecuted for driving under the influence (DUI) or driving while ability impaired (DWAI).<sup>9</sup>

**Open marijuana containers.** Persons in a motor vehicle who use or consume marijuana or have an open marijuana container in their possession commit a Class A traffic infraction. This prohibition does not apply to:

- passengers in the back seat(s) of a vehicle that is used for the transportation of people for compensation;
- passengers in the living quarters of a house coach, house trailer, motor home, or trailer coach;
- open marijuana containers that are located in the area behind the last upright seat, or other areas that are not normally occupied, of a motor vehicle that is not equipped with a trunk.<sup>10</sup>

## Where Marijuana Consumption is Permitted

The open and public consumption of marijuana is prohibited under Colorado law.<sup>11</sup> This prohibition applies regardless of the form in which the marijuana is consumed (smoking, eating, vaping, etc.). Any use of marijuana in a manner that endangers others is also prohibited. Examples of public places where marijuana may not be consumed include, but are not limited to: parks, sidewalks, ski resorts, concert venues, businesses, restaurants, bars, and common areas of apartment buildings or condominiums. As an exception, House Bill 19-1230 authorized marijuana hospitality and sales licenses that allow marijuana to be consumed on a licensed premises, if approved by a local government. In addition to marijuana, these businesses may sell food, but may not sell alcohol or manufacture or sell food items with marijuana.

Marijuana may only be used on private property in a manner that is not open and public. Property owners may choose to restrict the ability of persons on their property to possess or consume marijuana.<sup>12</sup> For example, many hotels, apartments, rental properties, businesses, hospitals, and other entities ban the possession and/or consumption of marijuana on their property. Consumption of marijuana is also prohibited on federal land, including national parks and wilderness areas.

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<sup>8</sup> Retrieved from: <https://cbi.colorado.gov/sections/biometric-identification-and-records-unit/marijuana-pardons>.

<sup>9</sup> Section 42-4-1301 (6)(a)(IV), C.R.S.; <https://cannabis.colorado.gov/legal-marijuana-use/driving-and-traveling>.

<sup>10</sup> Section 42-4-1305.5, C.R.S.

<sup>11</sup> Colo. Const., Art. XVIII, Section 16 (3), Section 44-10-702 (1), C.R.S.

<sup>12</sup> Colo. Const., Art. XVIII, Section 16 (6)(d).

**Local governments.** Local governments may enact laws affecting where marijuana may be consumed.<sup>13</sup> For example, in 2016, voters in Denver approved Initiative 300, which allows the city and county of Denver to issue permits for designated cannabis consumption areas. Under this measure, businesses that meet certain criteria and receive a permit may operate a consumption area where persons over the age of 21 may consume marijuana products.

## Marijuana on School Property

**Medical marijuana possession and administration.** State law requires that schools treat nonsmokeable medical marijuana that is legally recommended by a physician in the same way that prescribed medication is treated. School districts are required to adopt policies allowing for the administration and storage of medical marijuana on school grounds, on a school bus, or at any school-sponsored event. Medical marijuana must be administered according to a written plan agreed to by the school principal and the student's parents and consistent with instructions from the recommending physician.

Students are prohibited from possessing or self-administering medical marijuana on school grounds, with some exceptions. Primary caregivers and school personnel are allowed to possess and administer medical marijuana in a nonsmokeable form to an enrolled student, consistent with the student's written plan. School personnel may volunteer to administer medical marijuana and may not be disciplined or retaliated against for administering it in accordance with a student's administration plan. Primary caregivers and school personnel are prohibited from administering the medical marijuana in a manner that creates disruption or causes exposure to other students.<sup>14</sup>

Schools are not required to comply with medical marijuana administration provisions in state law if the school can demonstrate a reasonable, documented expectation of losing federal funding and if the school posts a statement of its decision not to comply on its website; or if a student participates in a school activity that takes place outside of Colorado.

**Retail marijuana on school property.** Colorado law requires school district boards of education to adopt appropriate policies and rules that mandate a prohibition against the use of all tobacco products and all retail marijuana or retail marijuana products on all school property by students, teachers, staff, and visitors.<sup>15</sup>

## Marijuana-Related Studies and Reports

Several departments and other entities are required to perform marijuana-related studies. These studies are described below, with links to the most recent findings where available.

**Report on marijuana health effects.** The General Assembly charged the CDPHE with appointing the Retail Marijuana Public Health Advisory Committee to monitor the health effects of marijuana and publish biennial reports.<sup>16</sup> These reports contain data from four state health surveys, data from hospitals and the poison control center, a scientific literature review, public health and evidence statements, and public health recommendations, and identifies gaps in research regarding marijuana use and its health effects. More information is available [here](#).

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13 Section 44-10-702 (2), C.R.S.

14 Section 22-1-119.3 (3), C.R.S.

15 Section 25-14-103.5 (3), C.R.S.

16 Section 25-1.5-110, C.R.S.

**Study of high-potency THC marijuana concentrates.** The Colorado School of Public Health (SPH) is required to review and report on available evidence-based research on the possible physical and mental health effects of high potency THC marijuana concentrates, and convene a scientific review council to review the report and make recommendations to the General Assembly. The SPH was required to provide a report to the General Assembly on any research gaps and the funding and timeline needed to complete necessary studies by July 1, 2022. Subject to available appropriations, the SPH may conduct and must report on any additional research. The SPH may not accept gifts, grants, or donations for this research.<sup>17</sup> [The reports generated by the SPH](#)<sup>18</sup> can be found online.

**Report on the THC concentration in marijuana.** In a footnote in the 2019 Long Bill, the General Assembly directed CDPHE to review and study data on the THC potency of marijuana and any related health effects.<sup>19</sup> The Retail Marijuana Public Health Advisory Committee released [its report](#)<sup>20</sup> on July 31, 2020.

**Emergency room intake report.** CDPHE is required to create a report from hospital and emergency room discharge data and present it during its annual SMART Act hearing. The report must include hospital and emergency room discharge data of patients presenting with conditions or diagnosis that reflect marijuana use.<sup>21</sup>

**Toxicology screening report.** The association representing coroners must establish a working group to study methods to test for scheduled drugs and THC in individuals under age 25 in a case of non-natural death.<sup>22</sup> The association's recommendations are available in [its reporting](#).

Beginning January 1, 2022, for each case of a non-natural death, excluding homicide, of a person under age 25, coroners are required to order a toxicology screening, which must test for THC, alcohol, and scheduled drugs. The coroner must share the results of the screening with CDPHE to be included in the Colorado Violent Death Reporting System. In the event of a death in a hospital, the treating clinician must order a toxicology screening and document the results of the screening to the Health Information Exchange. The information in these screenings is not subject to Colorado Open Records Act, with limited exceptions. CDPHE must report the [results of toxicology screenings conducted](#)<sup>23</sup> by coroners by January 2, 2023, and annually each year thereafter.

**Study of law enforcement activity related to marijuana.** The General Assembly tasked the Division of Criminal Justice in the Department of Public Safety with conducting a two-year scientific study of law enforcement activity related to the implementation of Amendment 64.<sup>24</sup> The division is also required to [report annually](#)<sup>25</sup> certain data concerning substance-affected driving citations that occurred in the previous year.<sup>26</sup>

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17 Section 23-20-143, C.R.S.

18 Online at: <https://coloradosph.cuanschutz.edu/research-and-practice/practice/cannabis-research>.

19 Senate Bill 19-207, Department of Public Health and Environment, Footnote 88a.

20 Online at: <https://marijuanahealthinfo.colorado.gov/reports-and-summaries>.

21 Section 25-3-127, C.R.S.

22 Section 30-10-624, C.R.S.

23 Online at: <https://marijuanahealthreport.colorado.gov/reports-and-summaries>.

24 Section 24-33.5-516, C.R.S.

25 Online at: <https://dcj.colorado.gov/dcj-offices/ors/doc-rpt>.

26 Section 24-33.5-520, C.R.S.

## Marijuana-Related Education Efforts

**High-potency THC effects.** The Colorado School of Public Health is required to produce a public education campaign for the general public regarding the effect of high-potency THC marijuana on the developing brain and on physical and mental health. The campaign must be based on the research and findings from the above studies conducted by the Colorado School of Public Health and must be approved by the Colorado School of Public Health Scientific Review Council.<sup>27</sup>

**Concentrate educational resource.** House Bill 21-1317 required the Marijuana Enforcement Division to convene a stakeholder work group to develop a tangible educational resource regarding the use of regulated marijuana concentrate.<sup>28</sup> Reporting and educational resources are available on this [Colorado School of Public Health website](#).<sup>29</sup>

**Marijuana Educational Oversight Committee and educational materials.** Senate Bill 13-283 required the Governor to designate a state agency to establish an educational oversight committee composed of members with relevant experience in marijuana issues. The committee must develop and implement recommendations for education of all necessary stakeholders on issues related to marijuana use, cultivation, and any other relevant topics. The bill also required the Governor to designate a state agency to establish educational materials regarding appropriate retail marijuana use and prevention of marijuana use by those under 21 years of age. Executive Order D 2013-007 established the Governor's Office as the designated agency for these two initiatives.<sup>30</sup>

**Marijuana resource bank.** Senate Bill 17-025 required the Department of Education, with assistance from the CDPHE and the Marijuana Educational Oversight Committee, to create and maintain a resource bank of evidence-based, research-based, and promising program materials and curricula pertaining to marijuana, which may be used in elementary and secondary schools. The [resource bank](#)<sup>31</sup> must be provided free of charge.

In addition, the Department of Education, upon request, must provide technical assistance to a school district, charter school, or board of cooperative educational services regarding the development of curricula on marijuana use.<sup>32</sup>

**Statewide marijuana education campaign.** Senate Bill 14-215 required the CDPHE to develop, implement, and evaluate an ongoing statewide prevention and education campaign to address the long-term marijuana education needs in the state.<sup>33</sup> Through this effort, the CDPHE launched the Good to Know and Protect What's Next campaigns, and the [state's marijuana website](#).<sup>34</sup>

**Colorado Department of Transportation education campaign.** The Colorado Department of Transportation has developed several education campaigns related to the dangers of marijuana-impaired driving. Two of these recent campaigns have included "Drive High, Get a DUI" and "Uncomfortable High." More information can be found on the [CDOT website](#).<sup>35</sup>

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27 Section 23-20-143 (3), C.R.S.

28 Section 44-10-202 (8)(a)(II), C.R.S.

29 Online at: <https://coloradosph.cuanschutz.edu/research-and-practice/practice/cannabis-research>.

30 Section 24-20-112 (4) and (5), C.R.S.

31 Online at: [www.cde.state.co.us/healthandwellness/marijuana](http://www.cde.state.co.us/healthandwellness/marijuana).

32 Section 22-2-127.7, C.R.S.

33 Section 25-3.5-1001, *et seq.*, C.R.S.

34 Online at: <https://cannabis.colorado.gov/>.

35 Online at: <https://www.codot.gov/safety/impaired-driving/druggeddriving>.



## Marijuana-Related Grant Programs

**Behavioral Health Care Professional Matching Grant Program.** Senate Bill 14-215 created the Behavioral Health Care Professional Matching Grant Program in the Department of Education.<sup>36</sup> The grant program is intended to provide funding to education providers to increase the presence of school health professionals and training and resources for school staff to provide substance use or misuse and other behavioral health care services and education to students. The grant program is funded with money from the Marijuana Tax Cash Fund.

**Gray and Black Market Marijuana Enforcement Grant Program.** House Bill 17-1221 created the Gray and Black Market Marijuana Enforcement Grant Program within the Department of Local Affairs.<sup>37</sup> The grant program is intended to award grants to local law enforcement agencies and district attorneys to cover investigation and prosecution costs associated with unlicensed marijuana cultivation or distribution operations conducted in violation of state law. The grant program is funded with money from the Marijuana Tax Cash Fund.

**Medical Assistance Act grants.** The Department of Health Care Policy and Financing awards Medical Assistance Act grants to organizations to operate a substance abuse screening, brief intervention, and referral to treatment practice.<sup>38</sup> One of the requirements of receiving a grant is that the organization must campaign to increase public awareness of the risks related to alcohol, marijuana, tobacco, and drug use and to reduce any stigma associated with treatment. The grant program is funded with money from the Marijuana Tax Cash Fund.

**Medical Marijuana Health Research Grant Program.** Senate Bill 14-155 created the Medical Marijuana Health Research Grant Program in the CDPHE.<sup>39</sup> The grant program funds research to ascertain the general medical efficacy and appropriate administration of marijuana and its component parts. The Medical Marijuana Scientific Advisory Council submits recommendations for research grants to the State Board of Health for approval. The grant program is funded with money from the Health Research Subaccount in the Medical Marijuana Program Cash Fund. [Information about the research grants](#)<sup>40</sup> that have been approved are posted online by CDPHE.

**School-based Health Center Grant Program.** House Bill 18-1003 created the School-based Health Center Grant Program in the CDPHE.<sup>41</sup> The grant program assists with the establishment, expansion, and ongoing operations of school-based health centers in the state. Grants may be used for a variety of purposes, including the expansion of behavioral health services and education, intervention, and prevention services for opioid, alcohol, and marijuana, and other substance use disorders. The grant program is funded with money from the Marijuana Tax Cash Fund.

**School-based Substance Abuse Prevention and Intervention Grant Program.** Senate Bill 14-215 created the School-based Substance Abuse Prevention and Intervention Grant Program in the Department of Health Care Policy and Financing.<sup>42</sup> The grant program awards competitive grants to eligible entities to provide school-based prevention and intervention programs for individuals 12 to 19 years of age, with a primary focus on reducing marijuana use, but also including strategies and efforts to reduce alcohol use and prescription drug misuse. Entities eligible to receive grants include schools, school districts, boards of cooperative educational services, nonprofits, not-for-profit community-based organizations, and community-based behavioral health organizations.

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36 Section 22-96-103, C.R.S.

37 Section 24-32-119, C.R.S.

38 Section 25.5-5-208, C.R.S.

39 Section 25-1.5-106.5, C.R.S.

40 Online at: <https://www.colorado.gov/pacific/cdphe/marijuana-research>.

41 Section 25-20.5-503, C.R.S.

42 Section 25.5-1-206, C.R.S.

**Tony Grampsas Youth Services Program.** Senate Bill 14-215 allowed funding from the Tony Grampsas Youth Services Program to be used for community-based programs specifically related to the prevention and intervention of adolescent and youth marijuana use.<sup>43</sup> The Department of Human Services administers the grants awarded by the Tony Grampsas Youth Services Board and monitors the effectiveness of programs that receive grant funding. The grant program is partially funded with money from the Marijuana Tax Cash Fund.

## **Institute of Cannabis Research, Colorado State University**

Senate Bill 16-191 established the [Institute of Cannabis](#)<sup>44</sup> Research at the Colorado State University at Pueblo. The institute supports and conducts research related to marijuana, including clinical research, biotechnologies, clinical studies, the efficacies of medical marijuana, and economic development. The institute also hosts a multidisciplinary national cannabis conference, and publishes the peer-reviewed multidisciplinary *Journal of Cannabis Studies*.

House Bill 19-1311 established the institute's mission in statute, created a governing board to oversee the institute, and set parameters on awarding research funds. Research funds may be awarded to Colorado-based nonprofits and institutions of higher education, including research entities associated with the institution and marijuana research and development licensees working with institutions. The institute receives funding from the Marijuana Tax Cash Fund, and may receive revenue from gifts, grants, donations, fees, or the sale or licensing of intellectual property.

## **Pesticides**

The use of pesticides in Colorado is regulated under the Pesticide Applicator's Act, which is administered by the state's Department of Agriculture. In addition, the U.S. Environmental Protection Agency administers the Federal Insecticide, Fungicide, and Rodenticide Act, which requires that all pesticides distributed or sold in the United States must be registered by the Environmental Protection Agency. Because marijuana falls within the definition of a raw agricultural commodity, the Colorado Food and Drug Act authorizes the CDPHE to deem a marijuana crop unsafe if the crop is contaminated with pesticides. Regulation is complicated by marijuana's designation as a Schedule I controlled substance under federal law and by the many ways in which marijuana can be consumed — inhaled, ingested, or topically applied.

The Colorado Department of Agriculture has developed rules for determining which pesticides can be used on marijuana crops and maintains a list of these pesticides on its website.<sup>45</sup> These products have not been tested to determine their health effects, and the department makes no assurances of their safety or effectiveness when used on marijuana. The department educates the marijuana industry on the proper use of pesticides on marijuana crops.

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<sup>43</sup> Section 26-6.8-102, C.R.S.

<sup>44</sup> Online at: [www.csueblo.edu/institute-of-cannabis-research/index.html](http://www.csueblo.edu/institute-of-cannabis-research/index.html).

<sup>45</sup> Online at: <https://ag.colorado.gov/plants>.





**A local licensing authority may determine its own licensing requirements and forms, and must also consider the minimum licensing requirements set forth by the state.**

## Section 2: Marijuana Licensing

### Licensing Process

Medical and retail marijuana businesses must be licensed by both the state and local licensing authorities.

**State licensing authority.** The Marijuana Enforcement Division in the Department of Revenue serves as the state licensing authority, overseeing the licensing of medical and retail marijuana businesses. The division has the following functions:

- applications and licensing;
- investigations, hearings, and enforcement;
- developing forms, applications, and licenses;
- developing identification badges for owners and employees;
- maintaining a seed-to-sale tracking system that tracks marijuana from the seed or immature plant stage to when it is sold to a customer, with an exception for marijuana transferred for research purposes;
- promulgating rules related to the operation of medical and retail marijuana businesses, including security requirements for licensed premises, labeling and packaging standards, and restrictions related to advertising by marijuana businesses;
- data collection and maintenance; and
- annual reporting.

**Local licensing authority.** A local licensing authority is an authority designated by municipal or county charter, ordinance, or resolution, or the governing body of a municipality, city and county, or the board of county commissioners of a county if no such authority is designated. A local licensing authority may determine its own licensing requirements and forms, and must also consider the minimum licensing requirements set forth by the state. State law suggests considerations related to distance restrictions between licensed premises, premises size restrictions, and other requirements that ensure control of premises and ease of enforcement. Local governments may enact regulations based on local government zoning, health, safety, and public welfare laws that

are more restrictive than state law. Local governments may also prohibit the operation of medical or retail marijuana businesses.

**Public hearing.** For each new license, the local government may schedule a public hearing to take place within 30 days of the application date. If a hearing is scheduled, it must meet public notice requirements, both in publications and posted at the proposed location. If a public hearing is held, the local licensing authority must provide its findings to the applicant at least five days prior to the hearing.

**Application investigation results and decision.** A local licensing authority must approve or deny an application within 30 days after the public hearing, if applicable, or upon completion of the application investigation. Licensing decisions must be in writing and sent via certified mail. Once an application is approved, the license may not be issued until the building is ready for occupancy and has passed a premises inspection performed by either licensing authority (applicants are required to file plans and specifications for the interior of the building with their application). A license may be denied by either the state or local licensing authority.

**Radius restrictions and impact on competition (only applies to medical marijuana businesses).** Licensed medical marijuana businesses may not be located within 1,000 feet of a school; alcohol or drug treatment facility; the principal campus of a college, university, or seminary; or a residential child care facility. The state and local licensing authorities may not approve an application for a second or additional medical marijuana business license for the same licensee or the same owner of another licensed medical marijuana business if the effect would restrain competition.

## General Licensing Provisions

A separate license is required for each specific business or business entity and each geographical location.

**License issuance.** Applications for a state medical marijuana or retail marijuana business license must be made to the Marijuana Enforcement Division on division forms and include the name and address of the applicant, required disclosures, and all other information deemed necessary by the division. State approval is predicated on the satisfactory completion of the applicable criminal history background check and is conditioned on local licensing authority approval. If the local licensing authority does not approve the application within one year of state approval, the state license may be renewed for up to one year and remains conditional on local licensing authority approval. If the local licensing authority denies an application, the state license is revoked.

**License validity and renewal.** Under [Senate Bill 24-076](#), the renewal period for state-issued retail marijuana licenses is two years after the date of issuance unless revoked or suspended. Medical marijuana licenses are similarly valid for a period not to exceed two years after the date of issuance unless revoked or suspended.

Beginning January 1, 2026, multiple marijuana business licensees with the same controlling beneficial owners (see Licensee Requirements – Business Owner Requirements section below) may to submit a single initial or renewal application.

State and local licensing authorities may revoke or elect not to renew any license for good cause subject to judicial review, or if it determines that the licensed premises have been inactive, without good cause, for at least one year. The Marijuana Enforcement Division must notify licensees prior to an upcoming license expiration, and renewal applications must be submitted to the state and local licensing authorities prior to the date of expiration. If a licensee submits a timely and

sufficient renewal application, the licensee may continue to operate until the application is acted upon by the division.

**Limited access areas.** Marijuana must be grown, cultivated, stored, weighed, displayed, packaged, sold, or possessed for sale in a limited access area of the licensed premises, with access limited to persons licensed by the Marijuana Enforcement Division and visitors escorted by these licensees.

**Inspections.** Licensed premises and transaction records are subject to inspection by the Marijuana Enforcement Division at any time during business hours. Transaction records must be kept for a period of three years.

**Unlawful acts.** Under the Regulated Marijuana Code, among other provisions, it is unlawful for:

- with the exception of marijuana hospitality businesses and hospitality and sales businesses, any person to consume regulated marijuana or regulated marijuana products in a licensed medical or retail marijuana business and for licensees to provide public premises for the purpose of consumption of regulated marijuana or marijuana products;
- any person to buy, sell, transfer, give away, or acquire regulated marijuana or regulated marijuana products except as permitted by the state constitution or statute;
- a medical marijuana patient, with knowledge, to permit or fail to prevent the use of their registry card by another person for the unlawful purchase of medical marijuana;
- a person to have certain ownership or financial interests without making proper disclosures;
- a person to knowingly adulterate or alter or attempt to adulterate or alter regulated marijuana or regulated marijuana products to circumvent testing results;
- licensees to display signs that are inconsistent with local laws or regulations;
- licensees to use advertising that is misleading, deceptive, or false, or that is designed to appeal to minors;
- medical marijuana licensees to sell medical marijuana to a person without a valid registry identification card;
- retail marijuana licensees to sell to a person under 21 years of age (class 1 misdemeanor);
- retail marijuana licensees to distribute directly to another person using a mobile distribution store;
- a physician who makes referrals to a licensed medical marijuana store to receive anything of value from the store or for the licensee to offer anything of value to a physician for making referrals.

Except where noted otherwise, these unlawful acts are class 2 misdemeanors. For violations that also constitute a violation of Title 18 of the Colorado Revised Statutes, those violations are to be charged and prosecuted pursuant to Title 18.

**Disciplinary actions.** The Marijuana Enforcement Division has the authority to suspend or revoke a license after an investigation and public hearing. The division or local licensing authority has the power to administer oaths and issue subpoenas. State law outlines procedures and fine amounts, as well as the process for disposition of unauthorized marijuana or marijuana-infused products. All decisions made by the division or local licensing authority are subject to judicial review. In calendar year 2023, the division levied penalties (fines and fees) of \$0.77 million.

**Sales limits – medical.** State law sets sales limits for different types of medical marijuana. Sales limits for medical marijuana stores are listed in Table 1 below.

**Table 1**  
**Medical Marijuana Sales Limits<sup>46</sup>**

	<b>Limit (per person per day)</b>	<b>Exception</b>
Medical marijuana	two ounces of medical marijuana	A store may sell more than two ounces if an extended ounce count is recommended by the patient's recommending physician.
Immature plants	six immature plants	A store may sell more than six immature plants, if an extended plant count is recommended by the patient's recommending physician, but may not exceed over half the recommended plant count.
Medical marijuana flower	combined total of two ounces	A store may sell more medical marijuana flower to a patient who has a physician recommendation for more than two ounces of flower and is registered with the medical marijuana store.
Medical marijuana products	combined total of 20,000 milligrams	A store may sell medical marijuana products in an amount that exceeds this only to a patient who has a physician exemption from the sales limitation and is registered with the medical marijuana store.
Medical marijuana concentrates	combined total of eight grams of medical marijuana concentrate, or two grams to a patient between 18 and 20 years old.	These limits do not apply if: <ul style="list-style-type: none"> <li>the patient is homebound and has physician authorization for a higher amount;</li> <li>it would be a significant physical or geographic hardship to make a daily purchase; or</li> <li>if the patient had a medical marijuana registry card prior to the age of 18.</li> </ul>

**Sales limits—retail.** A retail marijuana store may not sell more than one ounce of retail marijuana or its equivalent in retail marijuana products, during a single transaction to a person. Retail marijuana stores also may not sell more than eight grams of retail marijuana concentrate to a person in a single day. The sales limit does not include nonedible, nonpsychoactive retail marijuana products such as ointments, lotions, balms, and other nontransdermal topical products.

Retail marijuana stores may sell food, including food that is not infused with marijuana or hemp products or extracts, so long as food sales are not in excess of 20 percent of a store's annual gross revenue.

**Seed-to-sale tracking system.** The Marijuana Enforcement Division maintains a seed-to-sale tracking system that tracks marijuana from the seed or immature plant stage to when it is sold to a customer, with an exception for marijuana transferred for research purposes. Medical marijuana stores are required to immediately record each sales transaction in the seed-to-sale tracking system in order to allow the system to:

- identify discrepancies with a patient's daily authorized quantity limits and THC potency authorizations; and
- based on the patient's identification number, respond with a user error message if a sale to a patient or caregiver will exceed the patient's daily authorized quantity limit for that business day or THC potency authorization.

<sup>46</sup> Section 44-10-501, C.R.S.

Prior to Senate Bill 24-076, seed-to-sale tracking required use of radio frequency identification technology. This bill requires the Marijuana Enforcement Division to promulgate new seed-to-sale tracking rules by January 1, 2027 that do not require use of radio frequency identification technology.

**Product labeling and packaging requirements.** State law requires the Marijuana Enforcement Division to promulgate rules establishing labeling requirements for regulated marijuana and regulated marijuana products that are sold by medical and retail marijuana businesses. These labels must include:

- warning labels;
- the amount of THC per serving and the number of servings per package for regulated marijuana products;
- a universal symbol indicating that the package contains marijuana; and
- the potency of the regulated marijuana and regulated marijuana products.<sup>47</sup>

Edible marijuana products must be clearly identifiable, when practicable, with a standard symbol indicating that they contain marijuana and are not for consumption by children.<sup>48</sup> The law also prohibits edible marijuana products from being in the shape of a human, animal, or fruit.<sup>49</sup> Marijuana must be placed in child-proof packaging that is placed in an opaque and resealable exit package or container prior to exiting the store.<sup>50</sup>

Single servings of edible and liquid retail marijuana products may not contain more than 10 milligrams of active THC. A sealed package of edible and liquid retail marijuana may not contain more than a total of 100 milligrams of active THC.<sup>51</sup> Multi-serving liquid retail marijuana products must be packaged in a structure that uses a single mechanism to achieve both child-resistance and accurate pouring measurement of each serving in increments equal to or less than 10 milligrams of active THC.<sup>52</sup>

The Marijuana Enforcement Division is required to promulgate rules establishing requirements for medical and retail marijuana concentrate to promote consumer health and awareness, including a recommended serving size, visual representation of one recommended serving, labeling requirements, and may include a measuring device that may be used to measure one recommended serving.<sup>53</sup> Educational resources about marijuana concentrate must be physically attached to the receipt of sale to the consumer, and certain warnings about the impact of marijuana on pregnancy to be posted at every point of sale.<sup>54</sup>

**Advertising prohibitions.** Marijuana businesses are prohibited from:

- engaging in mass-market advertising or marketing campaigns that have a high likelihood of reaching persons under 18 years of age for medical marijuana (21 years of age for retail marijuana);
- making health or physical benefit claims in advertising, merchandising, and packaging;
- engaging in unsolicited pop-up advertising on the internet;
- placing banner ads on mass-market websites;
- engaging in opt-in marketing that does not permit an easy and permanent opt-out feature;

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47 Section 44-10-203 (2)(f), C.R.S.

48 Section 44-10-203 (2)(y), C.R.S.

49 Section 44-10-203 (3)(g), C.R.S.

50 Section 44-10-203 (3)(b), C.R.S.

51 Section 44-10-203 (3)(d), C.R.S.

52 Section 44-10-603 (4)(b), C.R.S.

53 Section 44-10-203 (2)(ii), C.R.S.

54 Section 44-10-203 (3)(h), C.R.S.

- engaging in marketing directed toward location-based devices, including cell phones; or
- violating other limitations that may be adopted in rule.

The Marijuana Enforcement Division is required to promulgate rules establishing requirements that any advertising or marketing specific to medical or retail marijuana concentrate include a notice regarding the potential risks of medical or retail marijuana concentrate overconsumption.<sup>55</sup>

## Licensee Requirements

**Background check requirements.** All owners, with the exception of indirect financial interest holders, officers, managers, and employees of a regulated marijuana business must pass a fingerprint-based criminal history record check as required by the Marijuana Enforcement Division and obtain the required identification prior to being associated with, managing, owning, or working at the operation.

**Persons prohibited as licensees.** Among other criteria, state law prohibits medical and retail marijuana licenses from being issued to or held by:

- a person until the licensing fee has been paid;
- a person under 21 years of age;
- a person who is not of good moral character themselves or is financed by a person not of good moral character;
- a person who fails to meet the qualifications for licensure;
- a person applying for a license at a location currently licensed as a retail food establishment (does not apply to persons applying for a marijuana hospitality or hospitality and sales license);
- a person with a financial interest organized or formed under a country that provides support for terrorism;
- a person considered a bad actor or ineligible issuer under federal securities law;
- a person, who during a period of licensure, failed to file and pay applicable taxes, interest and penalties;
- a person who was convicted of a felony in the three years immediately preceding their application date, except for an accelerator license;
- a person currently subject to a deferred judgement or sentence for a felony; or
- a sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the state licensing authority or a local licensing authority.

In addition, medical marijuana licenses may not be issued to or held by a licensed physician making patient recommendations or by a person whose authority to be a primary caregiver has been revoked by the CDPHE.<sup>56</sup>

**Business owner requirements.** There are three ownership categories for a marijuana business:

- controlling beneficial owners;
- passive beneficial owners, and;
- indirect financial interest holders.

All persons applying to become a controlling beneficial owner or passive beneficial owner are required to receive a finding of suitability or an exemption from the Marijuana Enforcement Division.

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<sup>55</sup> Section 44-10-203 (3)(a), C.R.S.

<sup>56</sup> Section 44-10-307, C.R.S.



**Controlling beneficial owner.** A controlling beneficial owner means a natural person, a domestic or foreign entity that is organized under the laws of and for which its principal place of business is located in one of the states or territories of the United States or District of Columbia, a publicly traded corporation, or a qualified private fund that is not otherwise licensed as a qualified institutional investor:

- that owns or acquires beneficial ownership (voting power) of 10 percent or more of a marijuana business;
- that is an affiliate that controls a marijuana business;
- that is otherwise in a position to control the marijuana business; or
- a qualified institutional investor that owns or acquires beneficial ownership of 30 percent or more of the securities of a marijuana business.

**Indirect financial interest holder.** This type of investor is a person that is not an affiliate, a controlling beneficial owner, or a passive beneficial owner of a marijuana business and that:

- holds a commercially reasonable royalty interest in exchange for a marijuana business's use of the person's intellectual property;
- holds a permitted economic interest issued prior to January 1, 2020, that has not been converted into an ownership interest;
- is a contract counterparty; or
- is identified by the division as an indirect financial interest holder.

**Passive beneficial owner.** The passive beneficial owner is a person owning or acquiring any interest in a regulated marijuana business that is not otherwise a controlling beneficial owner or in control.<sup>57</sup>

**Social equity licensees.** Social equity licensees may hold any regulated marijuana business license or permit and may be eligible for grants, loans, and technical assistance through the Cannabis Business Office in the Office of Economic Development and International Trade. To qualify as a social equity licensee, the applicant 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 as defined in rule by Marijuana Enforcement Division;
  - 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;
  - the applicant's household income in the previous year did not exceed an amount determined by the Marijuana Enforcement Division; or
  - beginning February 1, 2025, the individual received government assistance through certain state and federal programs.<sup>58</sup>

More information about the Cannabis Business Office is online at [its website](#).<sup>59</sup> More information about social equity licenses can be found on the [Department of Revenue's Social Equity website](#).<sup>60</sup>

<sup>57</sup> Sections 44-10-308 through 44-10-310, C.R.S.

<sup>58</sup> Section 44-10-308 (4), C.R.S.

<sup>59</sup> Online at: <https://oedit.colorado.gov/cannabis-business-office>.

<sup>60</sup> Online at: <https://sbg.colorado.gov/med/social-equity>.

## Business License and Permit Types

**Medical marijuana license and permit types.** The following sections outline medical marijuana license and permit types. The number of licenses issued in each category as of October 2024, is shown in Table 2.

- **Medical marijuana store license.** These licenses may be issued to persons selling medical marijuana to medical marijuana patients. Medical marijuana stores may sell medical marijuana products that are prepackaged and labeled in a way that clearly indicates that the product contains medical marijuana; that the product is manufactured without any regulatory oversight for health, safety, or efficacy; and that there may be health risks associated with the consumption or use of the product. Medical marijuana stores may also sell immature plants (nonflowering and no taller than 8 inches and no wider than 8 inches).
  - Medical marijuana delivery permit. A medical marijuana delivery permit may be issued to a licensed medical marijuana store, thereby authorizing the store to deliver medical marijuana and medical marijuana products to patients or parents or guardians at private residences. A one-dollar surcharge must be assessed on each delivery, to be remitted to the local municipality where the store is located to assist with local law enforcement costs. The Marijuana Enforcement Division began issuing delivery permits on January 2, 2020.
- **Medical marijuana cultivation facility license.** These licenses may be issued to persons cultivating medical marijuana for sale and distribution to licensed medical marijuana stores, medical marijuana product manufacturers, and other medical marijuana cultivation facilities. The Marijuana Enforcement Division is required to create a statewide licensure class system for cultivation facility licenses, with classifications based on square footage of the facility; lights, lumens, or wattage; lit canopy; the number of cultivating plants; other reasonable metrics; or any combination of these.
  - Centralized distribution permit. A centralized distribution permit may be issued to a licensed medical marijuana cultivation facility. Permit holders may provide for the temporary storage of medical marijuana concentrate and medical marijuana products received from a medical marijuana product manufacturer on its licensed premises for the sole purpose of these products being transferred to the permit holders' commonly owned medical marijuana stores. These products may not be stored for more than 90 days.
- **Medical marijuana products manufacturer license.** These licenses may be issued to persons manufacturing medical marijuana products and are required to manufacture cannabinoid products derived from marijuana. Medical marijuana products must be prepared on a licensed premises that is used exclusively for the manufacture and preparation of medical marijuana products and using equipment that is used exclusively for the manufacture and preparation of medical marijuana products. A medical marijuana products manufacturer may sell its products to any licensed medical marijuana store or any licensed medical marijuana products manufacturer. There are specific limitations related to medical marijuana products manufacturers' use or imitation of trademarked food products.
- **Medical marijuana business operator license.** These licenses may be issued to entities or persons operating a licensed medical marijuana business and those who receive a portion of the profits as compensation.
- **Medical marijuana occupational licenses and registrations.** These licenses and registrations are required for owners, managers, operators, employees, contractors, and other support staff employed by, working in, or having access to restricted areas of the licensed premises, as determined by the Marijuana Enforcement Division.



- **Marijuana research and development license.** These licenses allow persons to grow, cultivate, possess, and transfer, by sale or donation, marijuana for limited research purposes. These research purposes include: testing chemical potency and composition levels; conducting clinical investigations of marijuana-derived medicinal products; conducting research on the efficacy and safety of administering marijuana as part of medical treatment; conducting genomic, horticultural, or agricultural research; and conducting research on marijuana-affiliated products or systems. Research conducted with a public institution or with public money must be reviewed by the Colorado Medical Marijuana Scientific Advisory Council.
- **Medical marijuana testing facility license.** These licenses may be issued to persons performing testing and research on medical marijuana, medical marijuana products, and industrial hemp products for medical marijuana licensees, patients, and caregivers. State law limits interests that a medical marijuana testing facility licensee may have with other medical and retail licensees.
- **Medical marijuana transporter license.** These licenses may be issued to persons providing logistics, distribution, delivery, and storage of medical marijuana and medical marijuana products. These licensees may maintain a licensed premises for temporary storage needs and to use as a centralized distribution location.
  - Medical marijuana delivery permit. A medical marijuana delivery permit may be issued to a licensed medical marijuana transporter, thereby authorizing the licensee to deliver medical marijuana and medical marijuana products to patients or parents or guardians at private residences. The Marijuana Enforcement Division began issuing delivery permits to medical marijuana transporter licensees on January 2, 2021.

**Table 2**  
**Number of Licensed Medical Marijuana Businesses**  
**As of October 2024**

License Type	Number
Medical Marijuana Stores	315
Medical Marijuana Cultivation Facilities	261
Medical Marijuana Product Manufacturers	173
Medical Marijuana Business Operators	6
Medical Marijuana Research and Development Cultivations	1
Medical Marijuana Testing Facilities	7
Medical Marijuana Delivery	7
Medical Marijuana Transport Businesses	7

Source: [Marijuana Enforcement Division, Department of Revenue.](#)

**Retail marijuana license and permit types.** The following sections outline retail marijuana license and permit types. The number of licenses issued in each category as of October 2024, is shown in Table 3.

- **Retail marijuana store license.** These licenses may be issued to persons selling retail marijuana or retail marijuana products. Licensees may only sell retail marijuana, retail marijuana products, marijuana accessories, nonconsumable products such as apparel, industrial hemp products, and marijuana-related products, such as childproof packaging containers. Prior to Senate Bill 24-076, licensees were prohibited from selling or giving away any consumable product,

including cigarettes, alcohol, and edible products that do not contain marijuana. Senate Bill 24-076 allows retail marijuana stores to sell food that is not infused with marijuana or hemp products or extracts so long as food sales are not in excess of 20 percent of a store's annual gross revenue. A licensee may either sell its own marijuana, if it also has a retail marijuana cultivation facility license, or sell marijuana purchased from a licensed cultivator. Store employees must verify that a purchaser is 21 years of age or older with a valid identification card.

- Retail marijuana delivery permit. A retail marijuana delivery permit may be issued to a licensed retail marijuana store, thereby authorizing the store to deliver retail marijuana and retail marijuana products to individuals at private residences. A one-dollar surcharge must be assessed on each delivery, to be remitted to the local municipality where the store is located to assist with local law enforcement costs. The Marijuana Enforcement Division began issuing retail marijuana delivery permits on January 2, 2021.
- Retail marijuana accelerator store license. A retail marijuana accelerator store license may be issued to a social equity licensee qualified to operate a retail marijuana store on the site of a retail marijuana store with an accelerator endorsement. The licensee may receive technical assistance and financial support from the retail marijuana store licensee.
- **Retail marijuana cultivation facility license**. These licenses may be issued to persons who cultivate retail marijuana for sale and distribution to other retail marijuana licensees. The Marijuana Enforcement Division is required to create a statewide licensure class system for cultivation facility licenses, with classifications based on square footage of the facility; lights, lumens, or wattage; lit canopy; the number of cultivating plants; other reasonable metrics; or any combination of these.
  - Centralized distribution permit. A centralized distribution permit may be issued to a licensed retail marijuana cultivation facility. Permit holders may provide for the temporary storage of retail marijuana concentrate and retail marijuana products received from a retail marijuana business on its licensed premises for the sole purpose of these products being transferred to the permit holders' commonly owned retail marijuana stores. These products may not be stored for more than 90 days.
  - Retail marijuana accelerator cultivator license. A retail marijuana accelerator cultivator license may be issued to a social equity licensee qualified to operate a cultivation operation on the site of a retail marijuana cultivation facility with an accelerator endorsement. The licensee may receive technical assistance and financial support from the retail marijuana cultivation facility licensee.
- **Retail marijuana products manufacturer license**. These licenses may be issued to persons manufacturing retail marijuana products and are required to manufacture cannabinoid products derived from marijuana. Retail marijuana products must be prepared on a licensed premises that is used exclusively for the manufacture and preparation of retail marijuana or retail marijuana products and using equipment that is used exclusively for the manufacture and preparation of retail marijuana products. There are specific limitations related to retail marijuana products manufacturers' use or imitation of trademarked food products.
  - Retail marijuana accelerator manufacturer license. A retail marijuana accelerator manufacturer license may be issued to a social equity licensee qualified to operate a retail marijuana products manufacturing operation on the site of a retail marijuana products manufacturing facility with an accelerator endorsement. The licensee may receive technical assistance and financial support from the retail marijuana products manufacturer licensee.

- **Retail marijuana business operator license.** These licenses may be issued to persons operating a licensed retail marijuana business, owners of such businesses, and those who receive a portion of the profits as compensation.
- **Marijuana hospitality business license.** If allowed by local government ordinance or resolution, these licenses may be issued to persons operating a licensed premises where marijuana may be consumed. These licensees may be mobile. These licensees may not sell retail or medical marijuana. Additionally, these licensees may not admit anyone under the age of 21, allow free samples of marijuana to be distributed, permit the use or consumption of marijuana by a patron who displays any visible signs of intoxication, allow on-duty employees to consume marijuana, allow alcohol to be consumed on the premises, or allow tobacco products to be smoked on the premises, among other restrictions. Employees of the business must have a valid responsible vendor designation. Licensees must provide informational materials regarding the safe consumption of marijuana. Retail food establishments may operate a licensed marijuana hospitality business in an isolated portion of the premises.
- **Retail marijuana hospitality and sales business license.** If allowed by local government ordinance or resolution, these licenses may be issued to persons operating a licensed premises where marijuana may be sold and consumed. These licensees may not admit anyone under the age of 21, allow free samples of marijuana to be distributed, sell or serve marijuana to a patron who displays any visible signs of intoxication, allow on-duty employees to consume marijuana, allow alcohol to be consumed on the premises, allow tobacco products to be smoked on the premises, among other restrictions. Employees of the business must have a valid responsible vendor designation. Licensees must provide informational materials regarding the safe consumption of marijuana. Retail food establishments may operate a licensed marijuana hospitality and sales business in an isolated portion of the premises.
- **Retail marijuana occupational licenses and registrations.** These licenses and registrations are required for owners, managers, operators, employees, contractors, and other support staff employed by, working in, or having access to restricted areas of the licensed premises, as determined by the Marijuana Enforcement Division.
- **Retail marijuana testing facility license.** These licenses may be issued to persons performing testing and research on retail marijuana, industrial hemp, and industrial hemp products. State law limits interests that a retail marijuana testing facility licensee may have with other medical and retail marijuana licensees.
- **Retail marijuana transporter license.** These licenses may be issued to persons providing logistics, distribution, delivery, and storage of retail marijuana and retail marijuana products. These licensees may maintain a licensed premises for temporary storage needs and to use as a centralized distribution location.
  - Retail marijuana delivery permit. A retail marijuana delivery permit may be issued to a licensed retail marijuana transporter, thereby authorizing the licensee to deliver retail marijuana and retail marijuana products to individuals at private residences. The Marijuana Enforcement Division began issuing delivery permits to retail marijuana transporter licensees on January 2, 2021.

**Table 3**  
**Number of Licensed Retail Marijuana Businesses**  
**As of October 2024**

License Type	Number
Retail Marijuana Stores	663
Retail Marijuana Cultivation Facilities	553
Retail Marijuana Product Manufacturers	251
Retail Marijuana Business Operators	11
Retail Marijuana Testing Facilities	7
Retail Marijuana Delivery	29
Retail Marijuana Transport Businesses	17
Retail Marijuana Hospitality and Sales	6

Source: [Marijuana Enforcement Division, Department of Revenue.](#)

**Licensed marijuana testing facilities.** Marijuana testing facilities must receive a business license and certification from the Marijuana Enforcement Division. The CDPHE is responsible for inspecting facilities to determine whether they qualify for certification as a marijuana testing facility by the Marijuana Enforcement Division. The CDPHE also maintains a reference library to provide guidance to testing facilities on testing methodologies.

Medical and retail marijuana testing facilities must be accredited pursuant to the [International Organization for Standardization/International Electrotechnical Commission 17025:2005](#) standard that stipulates general requirements for the competence of testing and calibration laboratories. Marijuana samples are tested for potency and the presence of contaminants such as pesticides, solvents and mold. In addition to listing which pesticides growers may use on marijuana and regulating pesticide use, the Department of Agriculture lab tests marijuana for pesticide residue and the presence of prohibited pesticides.

Testing facilities may retest products that indicated the presence of harmful contaminants upon initial testing. If a product is able to be remediated, and it passes retesting, businesses are not required to indicate on the label that the product previously failed a test.

## Sunset Review

In Colorado, a program subject to the sunset review process is set to repeal on a specific date unless the General Assembly affirmatively acts to extend it. The Regulated Marijuana Code and the Medical Marijuana Program are subject to the sunset review process conducted by the Department of Regulatory Agencies. The first review for the former Medical Marijuana Code is available at [Medical Marijuana Sunset 2014](#),<sup>61</sup> and the first review for the former Retail Marijuana Code is available at [Retail Marijuana Sunset 2015](#).<sup>62</sup> The Medical Marijuana Program at the CDPHE was subject to sunset review beginning in 2018 and the repeal dates for both codes and the program were set to coincide henceforth, beginning on September 1, 2019. A copy of the most recent sunset report for the former medical and retail marijuana codes is available at [Marijuana Sunset Reports 2018](#).<sup>63</sup> A copy of the report for the Medical Marijuana Program is available at:

61 Retrieved from: <https://drive.google.com/file/d/0B8bNvcf083ydTFpkdVRwdnhTazQ/view>.

62 Retrieved from: <https://drive.google.com/file/d/0B8bNvcf083ydSIh4NWtHTjFoa2s/view>.

63 Retrieved from: <https://drive.google.com/file/d/1QeSxuD7cqil3L5mLulnWze2BsyYpCSQj/view>.

Medical Marijuana Sunset Report 2018. The next sunset review for the Regulated Marijuana Code is scheduled for publication on October 15, 2027.

## Local Ordinances

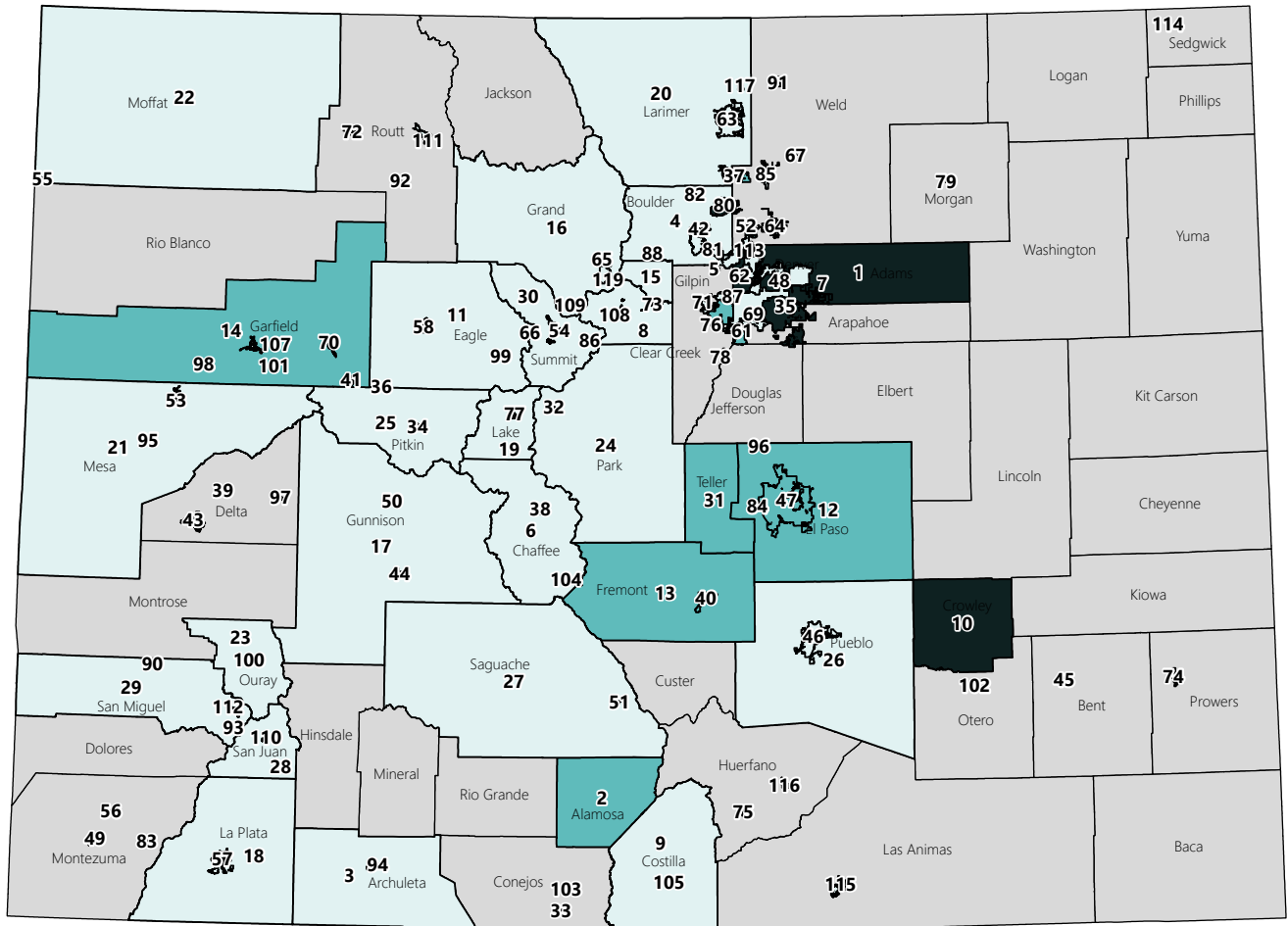
Colorado law allows local governments to prohibit the operation of medical and/or retail marijuana businesses within their jurisdiction.<sup>64</sup> Local governments may also enact ordinances regulating the operations of medical and retail marijuana businesses that are more restrictive than state law. For information related to which local authorities allow the operation of medical and/or retail marijuana businesses, see Figure 1, which is also available on Legislative Council Staff's website.<sup>65</sup>

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64 Colo. Const. art. XVIII, § 16 (5)(f) and Section 44-10-104, C.R.S.

65 Retrieved from: <http://coleg.maps.arcgis.com/apps/View/index.html?appid=12a59bd1b6814ea8aafe8f4aae0b1f3e>.

**Figure 1**  
**Local Jurisdictions Where Medical and/or Retail Marijuana is Permitted as of 2023**  
 See Table 4 for information corresponding to labels



- Medical and Retail (70)
- Medical Only (7)
- Retail Only (11)

Map prepared by Colorado Legislative Council Staff  
 January 11, 2024



**Table 4**  
**Local Jurisdictions Where Medical and/or Retail Marijuana is Permitted as of 2024, as shown in Figure 1**

Label	Jurisdiction	Marijuana Type	Label	Jurisdiction	Marijuana Type	Label	Jurisdiction	Marijuana Type
1	Adams County	Retail Only	41	Town of Carbondale	Medical and Retail	81	City of Louisville	Medical and Retail
2	Alamosa County	Medical Only	42	City of Boulder	Medical and Retail	82	Town of Lyons	Medical and Retail
3	Archuleta County	Medical and Retail	43	City of Delta	Retail Only	83	Town of Mancos	Medical and Retail
4	Boulder County	Medical and Retail	44	City of Gunnison	Medical and Retail	84	City of Manitou Springs	Medical and Retail
5	City/County of Broomfield	Medical and Retail	45	City of Las Animas	Medical and Retail	85	Town of Milliken	Medical and Retail
6	Chaffee County	Medical and Retail	46	City of Pueblo	Medical and Retail	86	Town of Montezuma	Medical and Retail
7	City/County of Denver	Medical and Retail	47	City of Colo. Springs	Medical and Retail	87	Town of Mountain View	Medical and Retail
8	Clear Creek County	Medical and Retail	48	City of Commerce City	Medical and Retail	88	Town Nederland	Medical and Retail
9	Costilla County	Medical and Retail	49	City of Cortez	Medical and Retail	89	City of Northglenn	Medical and Retail
10	Crowley County	Retail Only	50	Town of Crested Butte	Medical and Retail	90	Town of Norwood	Medical and Retail
11	Eagle County	Medical and Retail	51	Town of Crestone	Retail Only	91	Town of Nunn	Medical and Retail
12	El Paso County	Medical Only	52	City of Dacono	Medical Only	92	Town of Oak Creek	Medical and Retail
13	Fremont County	Medical Only	53	Town of De Beque	Retail Only	93	Town of Ophir	Medical and Retail
14	Garfield County	Medical Only	54	Town of Dillon	Retail Only	94	Town of Pagosa Springs	Medical and Retail
15	Gipin County	Medical and Retail	55	Town of Dinosaur	Medical and Retail	95	Town of Palisade	Medical and Retail
16	Grand County	Medical and Retail	56	Town of Dolores	Medical and Retail	96	Town of Palmer Lake	Medical and Retail
17	Gunnison County	Medical and Retail	57	City of Durango	Medical and Retail	97	Town of Paonia	Medical and Retail
18	La Plata County	Medical and Retail	58	Town of Eagle	Medical and Retail	98	Town of Parachute	Medical and Retail
19	Lake County	Medical and Retail	59	City of Edgewater	Medical and Retail	99	Town of Red Cliff	Medical and Retail
20	Larimer County	Medical and Retail	60	Town of Empire	Medical and Retail	100	Town of Ridgway	Medical and Retail
21	Mesa County	Medical and Retail	61	City of Englewood	Medical and Retail	101	City of Rifle	Medical and Retail
22	Moffat County	Medical and Retail	62	City of Federal Heights	Medical and Retail	102	City of Rocky Ford	Medical Only
23	Ourray County	Medical and Retail	63	City of Fort Collins	Medical and Retail	103	Town of Romeo	Retail Only
24	Park County	Medical and Retail	64	City of Fort Lupton	Medical and Retail	104	City of Salida	Medical and Retail
25	Pitkin County	Medical and Retail	65	Town of Fraser	Medical and Retail	105	Town of San Luis	Medical and Retail
26	Pueblo County	Medical and Retail	66	Town of Frisco	Medical and Retail	106	Town of Sheridan	Retail Only
27	Saguache County	Medical and Retail	67	Town of Garden City	Medical and Retail	107	Town of Silt	Retail Only
28	San Juan County	Medical and Retail	68	Town of Georgetown	Medical and Retail	108	Town of Silver Plume	Medical and Retail
29	San Miguel County	Medical and Retail	69	City of Glendale	Medical and Retail	109	Town of Silverthorne	Medical and Retail
30	Summit County	Medical and Retail	70	City of Glenwood	Medical and Retail	110	Town of Silverton	Medical and Retail
31	Teller County	Medical Only	71	City of Golden	Medical and Retail	111	City of Steamboat Springs	Medical and Retail
32	Town of Alma	Medical and Retail	72	Town of Hayden	Medical and Retail	112	Town of Telluride	Medical and Retail
33	Town of Antonito	Retail Only	73	City of Idaho Springs	Medical and Retail	113	City of Thornton	Medical and Retail
34	City of Aspen	Medical and Retail	74	City of Lamar	Medical and Retail	114	Town of Sedgwick	Medical and Retail
35	City of Aurora	Retail Only	75	Town of La Veta	Medical and Retail	115	City of Trinidad	Medical and Retail
36	Town of Basalt	Medical and Retail	76	City of Lakewood	Medical and Retail	116	City of Walsenburg	Retail Only
37	Town of Berthoud	Medical Only	77	City of Leadville	Medical and Retail	117	Town of Wellington	Medical and Retail
38	Town of Buena Vista	Medical and Retail	78	City of Littleton	Medical and Retail	118	City of Wheat Ridge	Medical and Retail
39	Town of Cedaredge	Medical and Retail	79	Town of Log Lane Vill.	Medical and Retail	119	Town of Winter Park	Medical and Retail
40	Canon City	Medical and Retail	80	City of Longmont	Retail Only			







**Marijuana tax revenue grew consistently for the first eight years of legalization, peaking at \$425 million in fiscal year 2020-2021. Revenue has been in decline since.**

## Section 3: Marijuana in the State Budget

Colorado collected \$248.2 million from the marijuana industry in FY 2023-24 from three distinct taxes:

- a 15 percent excise tax,
- a 15 percent special sales tax, and
- the state's 2.9 percent general sales tax.

Marijuana tax revenue is distributed in statute and through the budget process each year. Sixteen state agencies, multiple local governments, and the state General Fund received marijuana tax revenue in FY 2023-24. K-12 schools received \$93.1 million for school construction and school funding, representing 35 percent of total marijuana distributions.

Additionally, local governments that license marijuana businesses may impose and collect their own taxes on marijuana products.

### Taxes on Marijuana

Three distinct state taxes apply to sales of marijuana. Retail marijuana is subject to a voter-approved excise tax of 15 percent and a voter-approved special sales tax of 15 percent, in lieu of the state sales tax. As voter-approved taxes, this revenue is exempt from the state's constitutional spending limit (TABOR limit). Medical marijuana and any non-marijuana products sold by a marijuana store are subject to the state sales tax. Table 5 shows the tax that applies to each type of marijuana.

**Table 5**  
**Colorado Marijuana Taxes**

	Medical Marijuana	Retail Marijuana	Non-Marijuana Products Sold in Marijuana Stores
State Sales Tax (2.9%) <sup>1</sup>	✓		✓
Special Sales Tax (15.0%) <sup>2</sup>		✓	
Excise Tax (15.0%)		✓	

1. Prior to July 1, 2017, retail marijuana was subject to the 2.9% sales tax. After July 1, 2017, only retail marijuana products that do not contain marijuana are subject to the 2.9% sales tax.
2. Prior to July 1, 2017, the excise tax rate was 10%.

**Excise tax.** The 15 percent excise tax is due when retail marijuana is first transferred from a cultivator to a processor or distributor. The excise tax is applied to the wholesale price of retail marijuana.<sup>66</sup> For marijuana businesses that are vertically integrated, meaning that the processor, distributor, and cultivator are all the same business, the excise tax is applied to a wholesale price calculated by the Department of Revenue.

**Special sales tax.** The 15 percent special sales tax is paid by consumers when retail marijuana is sold. The tax applies similar to a general sales tax.<sup>67</sup>

**State sales tax.** Medical marijuana is not subject to the excise tax or the special sales tax, only the state’s standard 2.9 percent general sales tax. Non-marijuana products sold by marijuana retailers is also subject to the general sales tax. Sales tax revenue is subject to the TABOR limit.<sup>68</sup>

## Marijuana Tax Collections

Marijuana tax revenue grew consistently for the first eight years of legalization, peaking at \$425.2 million FY 2020-21. Revenue fell for the first time in FY 2021-22, declining by 12.9 percent, by another 23.1 percent in FY 2022-23, and by another 12.8 percent in FY 2023-24. Annual marijuana tax revenue collections are shown in Figure 2.

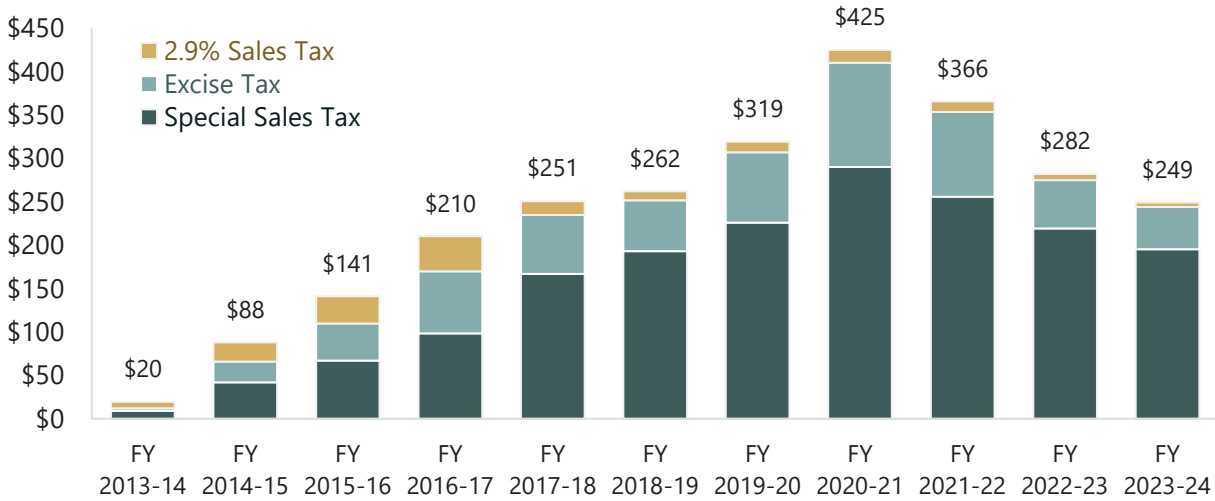
In addition to taxes, there are also licensing fees, operating fees, and fines that are collected from the marijuana industry. These are a minor source of revenue relative to the sales and excise taxes that are largely dedicated to regulating the marijuana industry. Senate Bill 24-076 placed a cap on initial application fees for retail marijuana businesses and allows the Marijuana Enforcement Division to adjust these fees annually for inflation or deflation.

<sup>66</sup> Section 39-28.8-302

<sup>67</sup> Section 39-28.8-202

<sup>68</sup> Colo. Const. art. X, § 20 (7).

**Figure 2**  
**Colorado Marijuana Tax Revenue**  
 Dollars in Millions

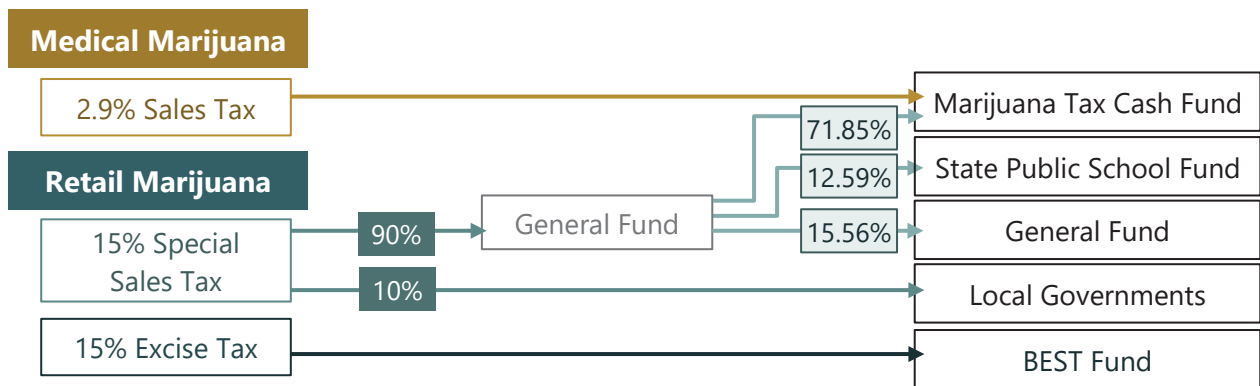


Source: Colorado Department of Revenue.

### Marijuana Tax Revenue Distribution Formulas

Marijuana tax revenue is distributed to three state cash funds, the General Fund, and local governments that allow the sale of retail marijuana. The distribution of marijuana tax revenue is illustrated in Figure 3.

**Figure 3**  
**Distribution of Marijuana Tax Revenue**



Source: Legislative Council Staff; Article 28.8 of Title 39, C.R.S.

**Sales tax on medical marijuana and other products sold in marijuana stores.** State sales tax revenue on medical marijuana is deposited in the Marijuana Tax Cash Fund (MTCF).<sup>69</sup> The 2.9 percent sales tax is collected on medical marijuana and on merchandise and non-marijuana products sold in retail marijuana stores.

**Special sales tax on retail marijuana.** Revenue from the 15 percent special sales tax is shared between the state (90 percent) and local governments (10 percent). The state share is deposited into the General Fund, and then distributed as follows:

- 71.85 percent is deposited into the Marijuana Tax Cash Fund;
- 12.59 percent is deposited into the State Public School Fund; and
- 15.56 percent remains in the General Fund.<sup>70</sup>

Local governments that permit sales of retail marijuana receive 10 percent of special sales tax revenue. Revenue is distributed to cities and counties in proportion to the geographic location of retail marijuana sales.<sup>71</sup>

**Excise tax on retail marijuana.** All revenue from the 15 percent excise tax is deposited into the Public School Capital Construction Assistance Fund, commonly known as the fund used for the Building Excellent Schools Today (BEST) program, or the "BEST Fund."<sup>72</sup> The first \$40 million of excise tax revenue each year is constitutionally dedicated to school construction.<sup>73</sup>

**FY 2023-24 distributions.** The state collected \$248.2 million from marijuana in FY 2023-24. The amount of revenue distributed to each fund is shown in Figure 4.

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69 Section 39-28.8-501 (1), C.R.S.

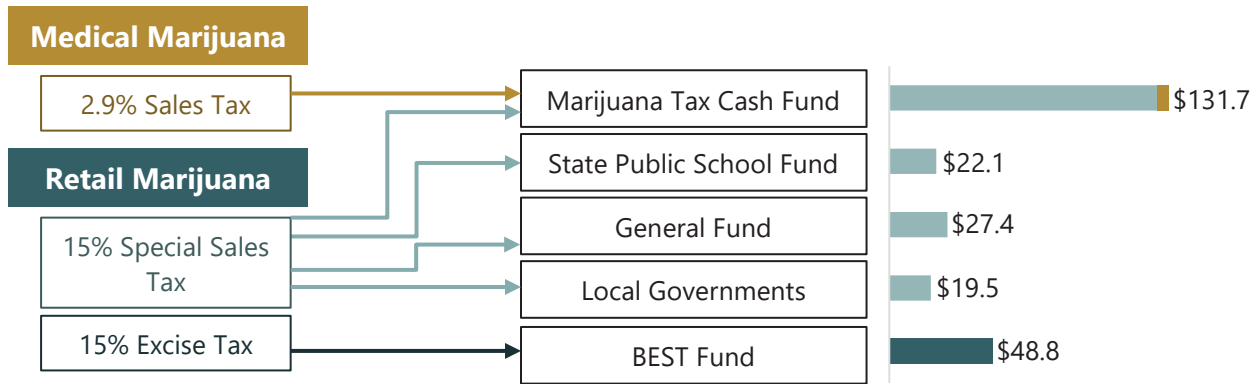
70 Section 39-28.8-203 (1)(b)(I.5), C.R.S.

71 Section 39-28.8-203 (1)(a)(I), C.R.S.

72 Section 39-28.8-305 (1)(a)(III), C.R.S.

73 Colo. Const. art. XVIII, §16 (5)(d)

**Figure 4**  
**FY 2023-24 Estimated Distribution of Marijuana Tax Revenue**  
 Dollars in Millions



### Expenditures of Marijuana Revenue

Marijuana revenue is distributed to three different cash funds, the General Fund, and to local governments. The uses of these funds are described in more detail below.

**Marijuana Tax Cash Fund.** The General Assembly annually appropriates money from the Marijuana Tax Cash Fund. Appropriations are limited to specific uses, including regulation of marijuana, marijuana education, behavioral health services, and law enforcement.<sup>74</sup> The General Assembly is required to maintain a reserve of 15 percent of expenditures from the fund, which must be in addition to any amounts designated as part of the TABOR emergency reserve.<sup>75</sup> For FY 2024-25, the General Assembly allocated \$145.3 million to 15 different agencies.

**General Fund.** A portion of special sales tax revenue is retained in the state General Fund. This portion of marijuana revenue is not dedicated for a specific purpose. The General Fund is used to fund most general government functions of the state, and annually appropriated by the General Assembly.

**State Public School Fund.** The State Public School Fund is used for a portion of the state share of school finance (6.0 percent for FY 2023-24) and for other education-related programs and functions. In addition to marijuana tax revenue, the SPSF receives interest earnings on the balance of the Public School Fund (the “Permanent Fund”), federal mineral leasing revenue, and rent and royalties from state school lands.

**Local governments.** Of the revenue collected from the special sales tax, 10 percent is distributed to counties and municipalities. Revenue is distributed in proportion to the amount of special sales tax revenue collected in each area. Municipalities receive funding based on the percentage of revenue that was collected in each municipality, while counties receive funding based on how much revenue was collected only in the unincorporated areas of the county. Local governments are not limited in how they spend these funds.

**BEST Fund.** The legislature adopted the Building Excellent Schools Today (BEST) Act<sup>76</sup> in 2008 to provide competitive grants to public schools for construction projects, with priority given to

<sup>74</sup> Section 39-28.8-501 (2)(b), C.R.S.

<sup>75</sup> Section 39-28.8-501 (5), C.R.S.

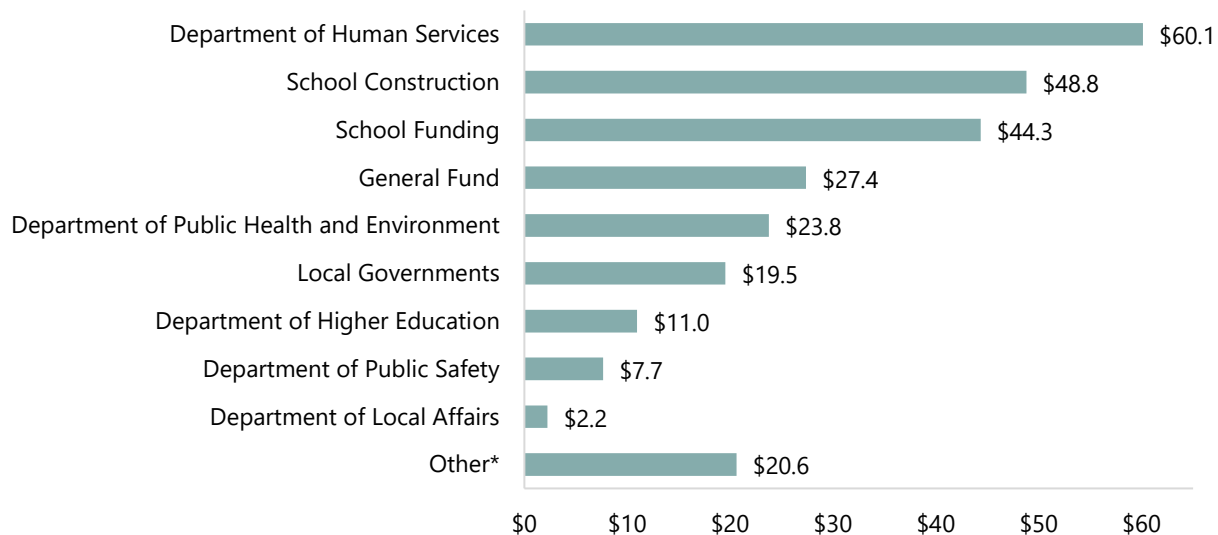
<sup>76</sup> Section 22-43.7-101, et seq., C.R.S.

projects that address health, safety, and security concerns. Grants are available to all public school districts, charter schools, institute charter schools, boards of cooperative educational services, and the Colorado School for the Deaf and the Blind. Grants may be used for a variety of projects, including new roofs and boilers, major renovations, and occasionally the construction of new schools. The Colorado Department of Education Division of Public School Construction Assistance administers the program. Grant applications are reviewed annually and recommended for funding by the Capital Construction Assistance Board.

**Total distributions.** Taking into account the statutory distributions and the MCTF appropriations, K-12 education received just over 35 percent of total spending from marijuana revenue for school funding and school construction. The Department of Human Services received just under 23 percent for a variety of programs, including those focused on behavioral health and addiction. Figure 4 summarizes the uses of marijuana revenue in FY 2023-24. A detailed history of program appropriations from the MTCF is available in Legislative Council Staff’s [Marijuana Revenue in the State Budget](#) memorandum.

**Figure 5**  
**FY 2023-24 Marijuana Tax Revenue Distributions by Use**

*Dollars in Millions*



Source: Joint Budget Committee Appropriations Report.

\* "Other" includes (in order of the amount appropriated) the Judicial Branch, Department of Agriculture, Department of Law, Department of Transportation, Department of Health Care Policy and Financing, Office of the Governor, Department of Revenue, Department of Early Childhood, Division of Criminal Justice, Department of Labor and Employment, and Department of Regulatory Agencies.





## Section 4: Colorado Regulations

### Code of Colorado Regulations

**Department of Revenue.** State law requires the Department of Revenue to promulgate a variety of rules related to the cultivation, manufacture, distribution, sale, and testing of marijuana, including, but not limited to:

- licensure requirements, including a required fingerprint-based criminal history record check;
- the establishment of an independent testing and certification program for marijuana products;
- licensed premises security requirements, including lighting, physical security, video, and alarm requirements;
- underage sale prevention;
- labeling requirements, including warnings, amount of THC per serving, servings per package, universal marijuana symbol, and product potency;
- health and safety regulations;
- limitations on the display of retail marijuana and marijuana products;
- enforcement procedures;
- penalty schedule;
- rules specific to certain license types and investors; and
- a statewide license class system and fee structure.

Department of Revenue regulations related to marijuana may be found in the following sections of the code:

- [1 CCR 212-1](#): Medical Marijuana Rules
- [1 CCR 212-2](#): Retail Marijuana Rules
- [1 CCR 212-3](#): Colorado Marijuana Rules

**Department of Public Health and Environment.** CDPHE regulations related to medical marijuana and the medical marijuana registry may be found in the following sections of the code:

- [5 CCR 1006-2](#). Medical Use of Marijuana

**Department of Agriculture.** Department of Agriculture regulations related to pesticides and marijuana may be found in the following sections of the code:

- [8 CCR 1203-26](#). The Use of Pesticides in the Cultivation of Retail Marijuana







**Marijuana remains classified as a Schedule I controlled substance at the federal level.**

## Section 5: Federal Law and Jurisdictional Issues

Under the federal Controlled Substances Act, "marihuana" is designated as a Schedule I drug.<sup>77</sup> Drugs, substances, and chemicals with a Schedule I designation are considered to have a high potential for abuse, have no currently accepted medical use in treatment in the United States, and lack accepted safety for use of the drug under medical supervision.

**Proposed Reclassification of Marijuana.** In October 2022, President Joe Biden requested the U.S. Attorney General and the Secretary of Health and Human Services to conduct a scientific analysis of how marijuana is scheduled under federal law. Based on the review's scientific and medical determinations, the Attorney General initiated the rulemaking process to transfer marijuana to schedule III in May 2024.<sup>78</sup> The Drug Enforcement Administration (DEA) will make a final determination after gathering and considering information submitted by the public; until then, marijuana will remain a schedule I controlled substance.

**U.S. Department of Justice guidance.** Under the Obama administration, the Department of Justice established guidelines for states that had legalized marijuana that endeavored to minimize federal enforcement of the Controlled Substances Act as it related to marijuana, as long as states established certain regulatory and law enforcement systems.

**The Ogden Memo.** In 2009, the Department of Justice announced formal guidelines for federal prosecutors in states that enacted laws authorizing the use of marijuana for medical purposes. The Ogden Memo, named for Deputy Attorney General David Ogden who issued it, put a low priority on prosecuting those who buy and sell marijuana for medicinal purposes and opened the door for medical marijuana businesses to begin operations throughout Colorado and other states with legalized medical marijuana.

**The Cole memos.** Deputy Attorney General James Cole released clarifications to the Ogden Memo to provide further guidance to states regarding federal enforcement. The first, in 2011, stated that the "Ogden Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law."

<sup>77</sup> 21 U.S.C. § 812 (c).

<sup>78</sup> Online at: <https://www.justice.gov/opa/pr/justice-department-submits-proposed-regulation-reschedule-marijuana>.

Two years later, in what is known as the "Cole Memo," the Department of Justice again attempted to clarify how federal law enforcement would address legalized marijuana cultivation and use in Colorado and Washington State. The Cole Memo provided guidance to federal prosecutors for federal enforcement activity concerning marijuana and identified certain priorities, the violation of which could trigger federal enforcement action. The memo suggested that states that legalize marijuana implement strong regulatory structures to prevent the following:

- distribution of marijuana to minors;
- revenue from the sale of marijuana going to criminal enterprises, gangs, and cartels;
- the diversion of marijuana from states where it is legal under state law in some form to other states;
- state-authorized marijuana activity being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- violence and the use of firearms in the cultivation and distribution of marijuana;
- drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- marijuana possession or use on federal property.

Finally, in early 2014, a third memorandum from Deputy Attorney General Cole directed prosecutors to use the same regulatory priorities listed in the 2013 Cole Memo to determine whether to take federal legal action against financial services companies that attempted to provide banking services to marijuana businesses.

**The Sessions Memo.** In January of 2018, Attorney General Jeff Sessions rescinded all previous guidance regarding marijuana enforcement. The Sessions Memo directs federal prosecutors to use their own discretion in enforcing federal law in states where marijuana is legal for recreational or medical purposes.

**Banking.** According to the U.S. Treasury Department, over 800 banks and credit unions serve the marijuana industry nationwide.<sup>79</sup> Because marijuana is illegal at the federal level, banks are at risk of federal action in response to a number of federal laws, including the Controlled Substances Act, Bank Secrecy Act, Anti-Money Laundering law, and the Know Your Customer doctrine.

The Financial Crimes Enforcement Network (FinCEN) in the U.S. Department of the Treasury oversees and implements policies to prevent and detect money laundering. In 2014, FinCEN issued guidance for financial institutions that provide services to marijuana-related businesses based on the priorities included in the now-rescinded Cole Memo. The guidance requires that financial institutions file suspicious activity reports (SARs) for marijuana businesses based on their compliance with state law and interference with Cole Memo priorities. Levels of SAR filings include:

- **Marijuana Limited SAR** – where a financial institution believes that a business is in compliance with state laws and is not interfering with any of the Cole Memo priorities;
- **Marijuana Priority SAR** – where a financial institution believes that a business is violating state law or interfering with one or more of the Cole Memo priorities; and
- **Marijuana Termination SAR** – where a financial institution deems it necessary to terminate its relationship with a business to maintain an effective anti-money laundering compliance program.

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<sup>79</sup> Frequently Requested FOIA-Processed Records. United States Treasury Financial Crimes Enforcement Network. <https://www.fincen.gov/frequently-requested-foia-processed-records>. Accessed October 2024.

Banks that are willing to serve marijuana businesses can charge high fees to cover the additional monitoring required for those accounts. As of this writing, this guidance is still in effect but does not have the force of law, and the current administration can withdraw the guidance at any time.

**Taxing issues—Section 280E.** Section 280E of the Internal Revenue Code prohibits businesses from subtracting business expenses to calculate taxable income if the business consists of trafficking in controlled substances. Because marijuana is a Schedule I controlled substance, the federal Internal Revenue Service applies this section to legal marijuana businesses. Congress created section 280E in 1982 to prevent drug dealers from deducting business expenses from their income trafficking controlled substances. Because of the application of 280E, marijuana businesses are subject to a significantly higher effective tax rate than similar non-marijuana businesses. Colorado law allows marijuana businesses to deduct certain business expenses from their state income taxes that are disallowed on federal returns by Section 280E.

**Rohrabacher–Farr amendment.** Beginning in 2014, Congress has annually passed an amendment to various federal spending bills prohibiting the U.S. Department of Justice from using funds to interfere with state-legal medical marijuana programs. After the amendment’s initial passage in 2014, the U.S. Department of Justice interpreted the amendment to mean that only state officials were protected from investigation and prosecution. In 2015, a District Court decision ruled against the U.S. Department of Justice’s interpretation and indicated that the amendment protects all private individuals and entities involved in the use, distribution, possession, or cultivation of medical marijuana in states where it is legal.<sup>80</sup>

**Marijuana research.** Due to marijuana’s classification as a Schedule I controlled substance, scientific researchers are required to follow specific procedures outlined in federal laws and regulations in order to conduct research involving marijuana. This includes applying for and obtaining registration from a variety of federal agencies, including the Drug Enforcement Administration and the Food and Drug Administration.<sup>81</sup>

Marijuana used for scientific research must be obtained by a grower licensed by the Drug Enforcement Administration. Currently, the National Institute on Drug Abuse is the only entity licensed by the Drug Enforcement Administration as a marijuana grower. Researchers must apply with the institute to obtain marijuana for specific research purposes through its Drug Supply Program.

The National Institute on Drug Abuse currently contracts with the University of Mississippi to grow marijuana for use in research studies. Both entities are registered by the Drug Enforcement Administration (DEA) under the U.S. Controlled Substances Act, which requires every person who manufactures or distributes any controlled substance, including marijuana, to be registered annually.<sup>82</sup> In August 2016, the Drug Enforcement Administration adopted a new policy indicating that additional marijuana growers may apply to become registered marijuana growers and suppliers of marijuana for research purposes.<sup>83</sup> On August 27, 2019, the Drug Enforcement Administration announced plans to approve additional marijuana growers for research purposes, and its intention to propose new regulations to govern those marijuana growers.<sup>84</sup> The DEA finalized these [regulations](#) on December 18, 2020. As of March 2023, the DEA has approved seven growers to produce cannabis products for research.<sup>85</sup>

80 United States of America vs. Marin Alliance for Medical Marijuana, No. 3:98-cv-00086 (Northern Dist. of California, 10/19/15).

81 21 C.F.R. § 1301.18.

82 21 U.S.C. § 822.

83 Retrieved from: <http://federalregister.gov/a/2016-17955>.

84 Retrieved from: <https://www.federalregister.gov/documents/2019/08/27/2019-18456/bulk-manufacturer-of-controlled-substances-applications-bulk-manufacturers-of-marihuana>.

85 Retrieved from: <https://www.nccih.nih.gov/grants/dea-approved-bulk-cannabis-suppliers#:~:text=As%20of%20March%202023%2C%20the,and%20cannabis%20products%20for%20research>.

## Section 6: Additional Resources

### Legislative Council Staff publications:

- [Marijuana Revenue in the State Budget, Interested Persons Memorandum, August 16, 2023](#)
- [Summary of Legislation, 2023: Alcohol, Nicotine, Marijuana, Natural Medicine, and Gaming](#)
- [Colorado Marijuana Personal Cultivation Laws, Issue Brief, June 2019](#)

### Office of Legislative Legal Services publications:

- [Retail Marijuana, October 2024](#)
- [Medical Marijuana, October 2024](#)

### Joint Budget Committee Staff publications:

- [Marijuana Policy Overview, FY 2024-25](#)

### State of Colorado resources:

- [Official state marijuana website](#)
- [Marijuana Enforcement Division](#)