

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 17-0653.02 Michael Dohr x4347

HOUSE BILL 17-1220

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A BILL FOR AN ACT

101 **CONCERNING MEASURES TO STOP DIVERSION OF LEGAL MARIJUANA TO**
102 **THE ILLEGAL MARKET.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill places a cap on the number of plants that can be possessed or grown on a residential property at 12 plants in the aggregate, with 6 or fewer being mature. A medical marijuana patient or primary caregiver who cultivates more than 12 plants must cultivate the plants in compliance with applicable city, county, or city and county law.

The bill requires a patient or primary caregiver cultivating medical

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

marijuana to comply with all local laws, regulations, and zoning requirements.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Through citizen-initiated measures, Colorado provided its
5 citizens protections for the cultivation and use of medical marijuana in
6 2000 and recreational marijuana in 2012;

7 (b) One of the reasons behind these citizen-initiated measures was
8 to erode the black market for marijuana in Colorado;

9 (c) The constitutional provisions for both medical marijuana and
10 recreational marijuana provide protections for personal marijuana
11 cultivation, but these provisions are silent on the question of where
12 marijuana plants may be grown or processed for medical or recreational
13 use;

14 (d) Although the authority for marijuana cultivation for both
15 medical and recreational marijuana is generally limited to six plants per
16 person, some provisions allow individuals to grow more plants. In the
17 medical marijuana code, a patient can grow an "extended plant count" if
18 his or her physician, who makes the medical marijuana recommendation,
19 also determines the patient has a medical necessity for more than six
20 plants. As well, a primary caregiver can grow medical marijuana for each
21 of the patients that he or she serves.

22 (e) The extended plant count and primary caregiver provisions
23 have created a situation in which individuals are cultivating large
24 quantities of marijuana in residential homes;

25 (f) These large-scale cultivation sites in residential properties

1 create a public safety issue and are a public nuisance. A site in a
2 residential property can overburden the home's electrical system, resulting
3 in excessive power use and creating a fire hazard that puts first
4 responders at risk. A site can also cause water damage and mold in the
5 residential property. A site in a residential property can produce a noxious
6 smell that limits the ability of others who live in the area to enjoy the
7 quiet of their homes. Often the site is a rental home, and the renters cause
8 significant damage to the home by retrofitting the home to be used as a
9 large-scale cultivation site. When residential property is used for a
10 large-scale cultivation site, it often lowers the value of the property and
11 thus the property value of the rest of the neighborhood. Finally, a site in
12 a residential property can serve as a target for criminal activity, creating
13 an untenable public safety hazard.

14 (g) Large-scale cultivation sites in residential properties have been
15 used to divert marijuana out of state and to children.

16 (2) Therefore, the general assembly determines that it is necessary
17 to impose reasonable limits on residential marijuana cultivation that do
18 not encroach on the protections afforded Colorado citizens in the
19 Colorado constitution.

20 **SECTION 2.** In Colorado Revised Statutes, 18-18-406, **amend**
21 (3)(a); and **add** (3)(c) as follows:

22 **18-18-406. Offenses relating to marijuana and marijuana**
23 **concentrate - definition.** (3) (a) (I) It is unlawful for a person to
24 knowingly cultivate, grow, or produce a marijuana plant or knowingly
25 allow a marijuana plant to be cultivated, grown, or produced on land that
26 the person owns, occupies, or controls.

27 (II) (A) REGARDLESS OF WHETHER THE PLANTS ARE FOR MEDICAL

1 OR RECREATIONAL USE, IT IS UNLAWFUL FOR A PERSON TO KNOWINGLY
2 CULTIVATE, GROW, OR PRODUCE MORE THAN TWELVE MARIJUANA PLANTS
3 IN THE AGGREGATE, WITH SIX OR FEWER BEING MATURE, ON OR IN A
4 RESIDENTIAL PROPERTY; OR TO KNOWINGLY ALLOW MORE THAN TWELVE
5 MARIJUANA PLANTS IN THE AGGREGATE, WITH SIX OR FEWER BEING
6 MATURE, TO BE CULTIVATED, GROWN, OR PRODUCED ON OR IN A
7 RESIDENTIAL PROPERTY.

8 (B) A PERSON MAY ASSERT AN AFFIRMATIVE DEFENSE TO
9 SUBSECTION (3)(a)(II)(A) OF THIS SECTION WHEN APPLICABLE COUNTY,
10 MUNICIPALITY, OR CITY AND COUNTY LAW EXPRESSLY PERMITS THE
11 CULTIVATION, GROWTH, OR PRODUCTION OF MORE THAN TWELVE
12 MARIJUANA PLANTS IN A RESIDENTIAL PROPERTY; AND THE CULTIVATION,
13 GROWTH, OR PRODUCTION OF MORE THAN TWELVE MARIJUANA PLANTS IS
14 IN AN ENCLOSED AND LOCKED SPACE.

15 (III) A person who violates the provisions of ~~this subsection (3)~~
16 SUBSECTION (3)(a)(I) OF THIS SECTION commits:

17 ~~(A)~~ (A) A level 3 drug felony if the offense involves more than
18 thirty plants;

19 ~~(B)~~ (B) A level 4 drug felony if the offense involves more than six
20 but not more than thirty plants; or

21 ~~(C)~~ (C) A level 1 drug misdemeanor if the offense involves not
22 more than six plants.

23 (IV) A PERSON WHO VIOLATES THE PROVISIONS OF SUBSECTION
24 (3)(a)(II)(A) OF THIS SECTION COMMITS:

25 (A) A LEVEL 3 DRUG FELONY IF THE OFFENSE INVOLVES MORE
26 THAN THIRTY PLANTS; OR

27 (B) A LEVEL 4 DRUG FELONY IF THE OFFENSE INVOLVES MORE

1 THAN TWELVE BUT NOT MORE THAN THIRTY PLANTS.

2 (c) FOR PURPOSES OF THIS SUBSECTION (3), "RESIDENTIAL
3 PROPERTY" MEANS A SINGLE UNIT PROVIDING COMPLETE INDEPENDENT
4 LIVING FACILITIES FOR ONE OR MORE PERSONS, INCLUDING PERMANENT
5 PROVISIONS FOR LIVING, SLEEPING, EATING, COOKING, AND SANITATION,
6 AND INCLUDES SINGLE ROOMING UNITS. "RESIDENTIAL PROPERTY" ALSO
7 INCLUDES THE REAL PROPERTY SURROUNDING A STRUCTURE, OWNED IN
8 COMMON WITH THE STRUCTURE, THAT INCLUDES ONE OR MORE SINGLE
9 UNITS PROVIDING COMPLETE INDEPENDENT LIVING FACILITIES.

10 **SECTION 3.** In Colorado Revised Statutes, 25-1.5-106, **amend**
11 (7)(e)(I)(A) and (8.6)(a)(I); and **add** (2)(e.3), (8.5)(a.5), and (8.5)(b.5) as
12 follows:

13 **25-1.5-106. Medical marijuana program - powers and duties**
14 **of state health agency - rules - medical review board - medical**
15 **marijuana program cash fund - subaccount - created - repeal.**

16 (2) **Definitions.** In addition to the definitions set forth in section 14 (1)
17 of article XVIII of the state constitution, as used in this section, unless the
18 context otherwise requires:

19 (e.3) "RESIDENTIAL PROPERTY" MEANS A SINGLE UNIT PROVIDING
20 COMPLETE INDEPENDENT LIVING FACILITIES FOR ONE OR MORE PERSONS,
21 INCLUDING PERMANENT PROVISIONS FOR LIVING, SLEEPING, EATING,
22 COOKING, AND SANITATION, AND INCLUDES SINGLE ROOMING UNITS.
23 "RESIDENTIAL PROPERTY" ALSO INCLUDES THE REAL PROPERTY
24 SURROUNDING A STRUCTURE, OWNED IN COMMON WITH THE STRUCTURE,
25 THAT INCLUDES ONE OR MORE SINGLE UNITS PROVIDING COMPLETE
26 INDEPENDENT LIVING FACILITIES.

27 (7) **Primary caregivers.** (e) (I) (A) In order to be a primary

1 caregiver who cultivates medical marijuana for his or her patients or
2 transports medical marijuana for his or her patients, he or she shall also
3 register with the state licensing authority AND COMPLY WITH ALL LOCAL
4 LAWS, REGULATIONS, AND ZONING AND USE RESTRICTIONS. A person may
5 not register as a primary caregiver if he or she is licensed as a medical
6 marijuana business as described in part 4 of article 43.3 of title 12 ~~C.R.S.~~,
7 or a retail marijuana business as described in part 4 of article 43.4 of title
8 12. ~~C.R.S.~~ An employee, contractor, or other support staff employed by
9 a licensed entity pursuant to article 43.3 or 43.4 of title 12, ~~C.R.S.~~, or
10 working in or having access to a restricted area of a licensed premises
11 pursuant to article 43.3 or 43.4 of title 12, ~~C.R.S.~~, may be a primary
12 caregiver.

13 **(8.5) Encourage patient voluntary registration - plant limits.**

14 (a.5) UNLESS OTHERWISE EXPRESSLY AUTHORIZED BY LOCAL LAW, IT IS
15 UNLAWFUL FOR A PATIENT TO POSSESS AT OR CULTIVATE ON A
16 RESIDENTIAL PROPERTY MORE THAN TWELVE PLANTS, WITH SIX OR FEWER
17 BEING MATURE, REGARDLESS OF THE NUMBER OF PERSONS RESIDING,
18 EITHER TEMPORARILY OR PERMANENTLY, AT THE PROPERTY. A PATIENT
19 WHO CULTIVATES MORE THAN TWELVE MARIJUANA PLANTS SHALL LOCATE
20 HIS OR HER CULTIVATION OPERATION ON A PROPERTY, OTHER THAN A
21 RESIDENTIAL PROPERTY, WHERE MARIJUANA CULTIVATION IS ALLOWED BY
22 LOCAL LAW OR ON A RESIDENTIAL PROPERTY IF ALLOWED BY LOCAL LAW
23 AND SHALL COMPLY WITH ANY APPLICABLE LOCAL LAW REQUIRING
24 DISCLOSURE OF THE LOCATION OF THE CULTIVATION OPERATION.
25 CULTIVATION OPERATIONS ARE SUBJECT TO ANY COUNTY AND MUNICIPAL
26 BUILDING AND PUBLIC HEALTH INSPECTION REQUIRED BY LOCAL LAW. A
27 PERSON WHO VIOLATES THIS SUBSECTION (8.5)(a.5) IS SUBJECT TO THE

1 OFFENSES AND PENALTIES DESCRIBED IN SECTION 18-18-406.

2 (b.5) A PATIENT WHO CULTIVATES HIS OR HER OWN MEDICAL
3 MARIJUANA PLANTS SHALL COMPLY WITH ALL LOCAL LAWS, REGULATIONS,
4 AND ZONING AND USE RESTRICTIONS.

5 (8.6) **Primary caregivers plant limits - exceptional**
6 **circumstances.** (a) (I) (A) A primary caregiver shall not cultivate,
7 transport, or possess more than thirty-six plants unless the primary
8 caregiver has one or more patients who, based on medical necessity, have
9 an extended plant count.

10 (B) UNLESS OTHERWISE EXPRESSLY AUTHORIZED BY LOCAL LAW,
11 IT IS UNLAWFUL FOR A PRIMARY CAREGIVER TO POSSESS AT OR CULTIVATE
12 ON A RESIDENTIAL PROPERTY MORE THAN TWELVE PLANTS, WITH SIX OR
13 FEWER BEING MATURE, REGARDLESS OF THE NUMBER OF PERSONS
14 RESIDING, EITHER TEMPORARILY OR PERMANENTLY, AT THE PROPERTY.
15 ANY PRIMARY CAREGIVER WHO CULTIVATES MORE THAN TWELVE
16 MARIJUANA PLANTS SHALL LOCATE HIS OR HER CULTIVATION OPERATION
17 ON A PROPERTY, OTHER THAN A RESIDENTIAL PROPERTY, WHERE
18 MARIJUANA CULTIVATION IS ALLOWED BY LOCAL LAW OR ON A
19 RESIDENTIAL PROPERTY IF ALLOWED BY LOCAL LAW AND SHALL COMPLY
20 WITH ANY APPLICABLE LOCAL LAW REQUIRING DISCLOSURE OF THE
21 LOCATION OF THE CULTIVATION OPERATION. CULTIVATION OPERATIONS
22 ARE SUBJECT TO ANY COUNTY AND MUNICIPAL BUILDING AND PUBLIC
23 HEALTH INSPECTION REQUIRED BY LOCAL LAW. A PERSON WHO VIOLATES
24 THIS SUBSECTION (8.6)(a)(I)(B) IS SUBJECT TO THE OFFENSES AND
25 PENALTIES DESCRIBED IN SECTION 18-18-406.

26 **SECTION 4. Act subject to petition - effective date -**
27 **applicability.** (1) This act takes effect January 1, 2018; except that, if a

1 referendum petition is filed pursuant to section 1 (3) of article V of the
2 state constitution against this act or an item, section, or part of this act
3 within the ninety-day period after final adjournment of the general
4 assembly, then the act, item, section, or part will not take effect unless
5 approved by the people at the general election to be held in November
6 2018 and, in such case, will take effect on the date of the official
7 declaration of the vote thereon by the governor.

8 (2) Section 2 of this act applies to offenses committed on or after
9 the applicable effective date of this act.