

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-0457.01 Michael Dohr x4347

SENATE BILL 16-040

SENATE SPONSORSHIP

Holbert,

HOUSE SPONSORSHIP

Pabon,

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING CHANGES TO THE REQUIREMENTS FOR OWNERS OF A**
102 **LICENSED MARIJUANA BUSINESS.**

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://www.leg.state.co.us/billsummaries>.)

The bill includes in the definition of "owner", in the medical and retail marijuana codes, a recipient of a commercially reasonable royalty associated with the use by a licensee of intellectual property and a licensed employee who receives a share of the profits from an employee benefit plan. The state licensing authority has the authority to promulgate rules on the parameters of a commercially reasonable royalty.

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.*

Under current law, an owner of a medical or retail marijuana business must have been a Colorado resident for at least 2 years prior to applying for licensure. The bill allows an owner to be either a 2-year resident of Colorado or a United States citizen on the date of the application for applications submitted on or after January 1, 2017, and prohibits an owner from being a publicly traded company. The bill requires a controlling interest of the licensees, as determined by the operating agreement, to be Colorado residents and maintain that residency while licensees.

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

2 **SECTION 1.** In Colorado Revised Statutes, 12-43.3-104, **amend**
3 (12.3) and (12.4) as follows:

4 **12-43.3-104. Definitions.** As used in this article, unless the
5 context otherwise requires:

6 (12.3) "Owner" means any person having a beneficial interest, as
7 defined by the state licensing authority, in a medical marijuana business
8 other than a holder of a permitted economic interest; A RECIPIENT OF A
9 COMMERCIALY REASONABLE ROYALTY ASSOCIATED WITH THE USE BY A
10 LICENSEE OF INTELLECTUAL PROPERTY; OR A LICENSED EMPLOYEE WHO
11 RECEIVES A SHARE OF THE PROFITS FROM AN EMPLOYEE BENEFIT PLAN.

12 (12.4) "Permitted economic interest" means any unsecured
13 convertible debt instrument, option agreement, warrant, or any other right
14 to obtain an ownership interest when the holder of such interest is a
15 natural person who is a lawful United States resident and whose right to
16 convert into an ownership interest is contingent on the holder qualifying
17 and obtaining a license as an owner under this article; or such other
18 agreements as may be permitted by rule of the state licensing authority A
19 NON-CONTROLLING DIRECT EQUITY INTEREST, A SECURED AGREEMENT,
20 WARRANT, OR ANY OTHER RIGHT TO BECOME AN OWNER THAT IS HELD BY

1 A PERSON OR ANY OTHER AGREEMENT AUTHORIZED BY RULE BY THE STATE
2 LICENSING AUTHORITY. EACH NATURAL PERSON HOLDING A PERMITTED
3 ECONOMIC INTEREST MUST BE A LAWFUL UNITED STATES RESIDENT AND
4 MUST BE ABLE TO QUALIFY AS AN OWNER, EXCEPT FOR THE RESIDENCY
5 REQUIREMENTS IN SECTION 12-43.3-307.5 AND EXCEPT THAT, WHEN A
6 PERMITTED ECONOMIC INTEREST IS OR IS HELD BY A PARTNERSHIP,
7 ASSOCIATION, COMPANY, CORPORATION THAT IS NOT A PUBLICLY TRADED
8 CORPORATION, LIMITED LIABILITY COMPANY, OR ORGANIZATION, EACH
9 BENEFICIAL OWNER MUST BE A LAWFUL UNITED STATES RESIDENT AND
10 MUST BE ABLE TO QUALIFY AS AN OWNER, OTHER THAN THE RESIDENCY
11 REQUIREMENTS IN SECTION 12-43.3-307.5, UNDER THIS ARTICLE.

12 **SECTION 2.** In Colorado Revised Statutes, 12-43.3-201, **add (6)**
13 **as follows:**

14 **12-43.3-201. State licensing authority - creation. (6) THE STATE**
15 **LICENSING AUTHORITY MAY UTILIZE NO-COST PROCUREMENT CONTRACTS**
16 **FOR THE PRECERTIFICATION OF NONRESIDENT OWNERS DURING THE**
17 **BACKGROUND INVESTIGATION PROCESS UNDER THIS ARTICLE AND ARTICLE**
18 **43.4 OF THIS TITLE.**

19 **SECTION 3.** In Colorado Revised Statutes, 12-43.3-202, **amend**
20 **(2) (a) (XIX) and (2) (a) (XX); and add (2) (a) (XXI) as follows:**

21 **12-43.3-202. Powers and duties of state licensing authority -**
22 **rules. (2) (a) Rules promulgated pursuant to paragraph (b) of subsection**
23 **(1) of this section may include, but need not be limited to, the following**
24 **subjects:**

25 (XIX) Authorization for the department of revenue to issue
26 administrative citations and procedures for issuing, appealing, and
27 creating a citation violation list and schedule of penalties; ~~and~~

1 (XX) Such other matters as are necessary for the fair, impartial,
2 stringent, and comprehensive administration of this article; AND

3 (XXI) THE PARAMETERS FOR A COMMERCIALY REASONABLE
4 ROYALTY.

5 **SECTION 4.** In Colorado Revised Statutes, 12-43.3-307, **amend**
6 **(1)(a)**; **repeal** (1) (m); and **add** (1) (n) as follows:

7 **12-43.3-307. Persons prohibited as licensees.** (1) A license
8 provided by this article shall not be issued to or held by:

9 **(a) A person until the annual fee therefore has been paid;**

10 ~~(m) An owner, as defined by rule of the state licensing authority,~~
11 ~~who has not been a resident of Colorado for at least two years prior to the~~
12 ~~date of the owner's application.~~

13 (n) A PUBLICLY TRADED COMPANY.

14 **SECTION 5.** In Colorado Revised Statutes, **add** 12-43.3-307.5
15 as follows:

16 **12-43.3-307.5. Owner residency requirement.** (1) AN OWNER,
17 AS DEFINED BY RULE OF THE STATE LICENSING AUTHORITY, MUST EITHER:

18 (a) HAVE BEEN A RESIDENT OF COLORADO FOR AT LEAST TWO
19 YEARS PRIOR TO THE DATE OF THE OWNER'S APPLICATION; OR

20 (b) BE A UNITED STATES CITIZEN PRIOR TO THE DATE OF THE
21 OWNER'S APPLICATION.

22 **SECTION 6.** In Colorado Revised Statutes, 12-43.3-310, **amend**
23 **(6)** as follows:

24 **12-43.3-310. Licensing in general.** (6) A CONTROLLING
25 INTEREST OF THE LICENSEES, AS DETERMINED BY THE GOVERNING
26 DOCUMENTS AND AS SWORN TO BY AT LEAST ONE COLORADO RESIDENT
27 OWNER WHO HAS BEEN A COLORADO RESIDENT FOR AT LEAST TWO YEARS

1 WITH MANAGERIAL AUTHORITY ON FORMS PROMULGATED BY THE
2 LICENSING AUTHORITY, AND all officers and managers and employees of
3 a medical marijuana center, optional premises cultivation operation, or
4 medical marijuana-infused products manufacturer shall be residents of
5 Colorado upon the date of their license application AND SHALL MAINTAIN
6 COLORADO RESIDENCY AT ALL TIMES WHILE LICENSED. An owner shall
7 meet the residency OR CITIZENSHIP requirements in ~~section 12-43.3-307~~
8 (+)(m) SECTION 12-43.3-307.5. All licenses granted pursuant to this
9 article shall be valid for a period not to exceed two years after the date of
10 issuance unless revoked or suspended pursuant to this article or the rules
11 promulgated pursuant to this article.

12 **SECTION 7.** In Colorado Revised Statutes, 12-43.3-305, **add** (4)
13 as follows:

14 **12-43.3-305. State licensing authority - application and**
15 **issuance procedures.** (4) A LICENSE ISSUED PURSUANT TO THIS ARTICLE
16 IS VALID FOR THREE YEARS.

17 **SECTION 8.** In Colorado Revised Statutes, 12-43.3-311, **amend**
18 (2) (b); **add** (1.5) as follows:

19 **12-43.3-311. License renewal.** (1.5) NOTWITHSTANDING THE
20 PROVISIONS OF SECTION 12-43.3-307 (2) (c), IF A LICENSEE, WHEN
21 APPLYING FOR RENEWAL, PROVIDES CERTIFICATION THAT THERE ARE NO
22 CHANGED CIRCUMSTANCES AFFECTING LICENSURE SINCE THE INITIAL
23 APPLICATION OR LAST RENEWAL OR PROVIDES DETAILS REGARDING ANY
24 CHANGED CIRCUMSTANCES, THE STATE LICENSING AUTHORITY MAY
25 REQUIRE A LICENSEE TO SUBMIT A NEW BACKGROUND CHECK, INCLUDING
26 A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK, DURING THE
27 RENEWAL PROCESS.

1 (2) (b) The state and local licensing authorities may not accept a
2 late renewal application more than ninety days after the expiration of a
3 licensee's permanent annual license. A licensee whose permanent annual
4 license has been expired for more than ninety days shall not cultivate,
5 manufacture, distribute, or sell any medical marijuana until all required
6 licenses have been obtained.

7 **SECTION 9.** In Colorado Revised Statutes, 12-43.4-103, **amend**
8 (12) and (12.4) as follows:

9 **12-43.4-103. Definitions.** As used in this article, unless the
10 context otherwise requires:

11 (12) "Owner" means any person having a beneficial interest, as
12 defined by the state licensing authority, in a retail marijuana
13 establishment other than a holder of a permitted economic interest; A
14 RECIPIENT OF A COMMERCIALY REASONABLE ROYALTY ASSOCIATED WITH
15 THE USE BY A LICENSEE OF INTELLECTUAL PROPERTY; OR A LICENSED
16 EMPLOYEE WHO RECEIVES A SHARE OF THE PROFITS FROM AN EMPLOYEE
17 BENEFIT PLAN.

18 (12.4) "Permitted economic interest" means any unsecured
19 convertible debt instrument, option agreement, warrant, or any other right
20 to obtain an ownership interest when the holder of such interest is a
21 natural person who is a lawful United States resident and whose right to
22 convert into an ownership interest is contingent on the holder qualifying
23 and obtaining a license as an owner under this article or such other
24 agreements as may be permitted by rule by the state licensing authority A
25 NON-CONTROLLING DIRECT EQUITY INTEREST, A SECURED AGREEMENT,
26 WARRANT, OR ANY OTHER RIGHT TO BECOME AN OWNER THAT IS HELD BY
27 A PERSON OR ANY OTHER AGREEMENT AUTHORIZED BY RULE BY THE STATE

1 LICENSING AUTHORITY. EACH NATURAL PERSON HOLDING A PERMITTED
2 ECONOMIC INTEREST MUST BE A LAWFUL UNITED STATES RESIDENT AND
3 MUST BE ABLE TO QUALIFY AS AN OWNER, EXCEPT FOR THE RESIDENCY
4 REQUIREMENTS IN SECTION 12-43.4-306.5 AND EXCEPT THAT, WHEN A
5 PERMITTED ECONOMIC INTEREST IS OR IS HELD BY A PARTNERSHIP,
6 ASSOCIATION, COMPANY, CORPORATION THAT IS NOT A PUBLICLY TRADED
7 CORPORATION, LIMITED LIABILITY COMPANY, OR ORGANIZATION, EACH
8 BENEFICIAL OWNER MUST BE A LAWFUL UNITED STATES RESIDENT AND
9 MUST BE ABLE TO QUALIFY AS AN OWNER, OTHER THAN THE RESIDENCY
10 REQUIREMENTS IN SECTION 12-43.4-306.5, UNDER THIS ARTICLE.

11 **SECTION 10.** In Colorado Revised Statutes, 12-43.4-202,
12 **amend** (3) (a) (XV) and (3) (a) (XVI); and **add** (3) (a) (XVII) as follows:

13 **12-43.4-202. Powers and duties of state licensing authority -**
14 **rules.** (3) (a) Rules promulgated pursuant to paragraph (b) of subsection
15 (2) of this section must include, but need not be limited to, the following
16 subjects:

17 (XV) Compliance with, enforcement of, or violation of any
18 provision of this article, section 18-18-406.3 (7), C.R.S., or any rule
19 issued pursuant to this article, including procedures and grounds for
20 denying, suspending, fining, restricting, or revoking a state license issued
21 pursuant to this article; ~~and~~

22 (XVI) Establishing a schedule of penalties and procedures for
23 issuing and appealing citations for violation of statutes and rules and
24 issuing administrative citations; AND

25 (XVII) THE PARAMETERS FOR A COMMERCIALY REASONABLE
26 ROYALTY.

27 **SECTION 11.** In Colorado Revised Statutes, 12-43.4-306,

1 **amend (1) (a); repeal (1) (k); and add (1) (l)** as follows:

2 **12-43.4-306. Persons prohibited as licensees - definitions.**

3 (1) A license provided by this article shall not be issued to or held by:

4 (a) A person until the annual fee therefor has been paid;

5 ~~(k) An owner who has not been a resident of Colorado for at least~~
6 ~~two years prior to the date of the owner's application.~~

7 (l) A PUBLICLY TRADED COMPANY.

8 **SECTION 12.** In Colorado Revised Statutes, **add** 12-43.4-306.5
9 as follows:

10 **12-43.4-306.5. Owner residency requirement.** (1) AN OWNER,
11 AS DEFINED BY RULE OF THE STATE LICENSING AUTHORITY, MUST EITHER:

12 (a) HAVE BEEN A RESIDENT OF COLORADO FOR AT LEAST TWO
13 YEARS PRIOR TO THE DATE OF THE OWNER'S APPLICATION; OR

14 (b) BE A UNITED STATES CITIZEN PRIOR TO THE DATE OF THE
15 OWNER'S APPLICATION.

16 **SECTION 13.** In Colorado Revised Statutes, 12-43.4-309,
17 **amend** (5) as follows:

18 **12-43.4-309. Licensing in general.** (5) A CONTROLLING
19 INTEREST OF THE LICENSEES, AS DETERMINED BY THE GOVERNING
20 DOCUMENTS AND AS SWORN TO BY AT LEAST ONE COLORADO RESIDENT
21 OWNER WHO HAS BEEN A COLORADO RESIDENT FOR AT LEAST TWO YEARS
22 WITH MANAGERIAL AUTHORITY ON FORMS PROMULGATED BY THE
23 LICENSING AUTHORITY, AND all officers, managers, and employees of a
24 retail marijuana establishment shall be residents of Colorado upon the
25 date of their license application AND SHALL MAINTAIN COLORADO
26 RESIDENCY AT ALL TIMES WHILE LICENSED. An owner shall meet the
27 residency OR CITIZENSHIP requirements in ~~section 12-43.4-306 (1) (k)~~

1 SECTION 12-43.4-306.5. All licenses granted pursuant to this article are
2 valid for a period of one year after the date of issuance unless revoked or
3 suspended pursuant to this article or the rules promulgated pursuant to
4 this article.

5 **SECTION 14.** In Colorado Revised Statutes, 12-43.4-304, **add**
6 **(3) as follows:**

7 **12-43.4-304. State licensing authority - application and**
8 **issuance procedures. (3) A LICENSE ISSUED PURSUANT TO THIS ARTICLE**
9 **IS VALID FOR THREE YEARS.**

10 **SECTION 15.** In Colorado Revised Statutes, 12-43.4-310, **add**
11 **(1.5) as follows:**

12 **12-43.4-310. License renewal. (1.5) IF A LICENSEE, WHEN**
13 **APPLYING FOR RENEWAL, PROVIDES CERTIFICATION THAT THERE ARE NO**
14 **CHANGED CIRCUMSTANCES AFFECTING LICENSURE SINCE THE INITIAL**
15 **APPLICATION OR LAST RENEWAL OR PROVIDES DETAILS REGARDING ANY**
16 **CHANGED CIRCUMSTANCES, THE STATE LICENSING AUTHORITY MAY NOT**
17 **REQUIRE A LICENSEE TO SUBMIT A NEW BACKGROUND CHECK, INCLUDING**
18 **A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK, DURING THE**
19 **RENEWAL PROCESS.**

20 **SECTION 16. Applicability.** This act applies to applications
21 made on or after January 1, 2017.

22 **SECTION 17. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.