

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 16-0512.01 Thomas Morris x4218

HOUSE BILL 16-1079

HOUSE SPONSORSHIP

Becker K. and Singer,

SENATE SPONSORSHIP

Steadman,

House Committees

Public Health Care & Human Services
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 CONCERNING A CERTIFICATION PROGRAM FOR CANNABIS THAT IS
102 PESTICIDE-FREE, AND, IN CONNECTION THEREWITH, MAKING AN
103 APPROPRIATION.

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/bills summaries>.)

Because marijuana and hemp are illegal under federal law and federal law governs whether a product can be labeled or advertised as "organic", marijuana or hemp that is cultivated, processed, and sold in accordance with state law currently cannot be labeled or advertised as "organic". **Section 3** of the bill directs the commissioner of agriculture to

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.

HOUSE
Amended 2nd Reading
April 22, 2016

promulgate rules governing a program to enable consumers to easily identify medical and retail marijuana and industrial hemp that have been cultivated and processed without the use of pesticides. The department of agriculture will certify third parties who can certify whether the marijuana or hemp cultivated or processed at a particular cannabis facility is free of pesticides. **Sections 1 and 2** allow marijuana product labels to include a standardized notification that the marijuana has been certified as being pesticide-free.

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

2 **SECTION 1.** In Colorado Revised Statutes, 12-43.3-202, **amend**
3 (2) (a) (XIV) as follows:

4 **12-43.3-202. Powers and duties of state licensing authority -**
5 **rules.** (2) (a) Rules promulgated pursuant to paragraph (b) of subsection
6 (1) of this section may include, but need not be limited to, the following
7 subjects:

8 (XIV) Labeling standards, WHICH MUST ALLOW A STANDARDIZED
9 NOTIFICATION THAT THE MEDICAL MARIJUANA HAS BEEN CERTIFIED AS
10 **ORGANIC** PURSUANT TO SECTION 35-11.5-201, C.R.S.;

11 **SECTION 2.** In Colorado Revised Statutes, 12-43.4-202, **amend**
12 (3) (a) (IV) (B) and (3) (a) (VII) introductory portion 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 (IV) (B) Testing ~~shall~~ **MUST** include, but ~~is not be~~ limited to,
18 analysis for residual solvents, poisons, or toxins; harmful chemicals;
19 dangerous molds or mildew; filth; and harmful microbials such as E. Coli
20 or salmonella and pesticides; EXCEPT THAT A LICENSED PREMISES THAT IS
21 CERTIFIED AS ORGANIC PURSUANT TO PART 2 OF ARTICLE 11.5 OF TITLE 35,

1 C.R.S., IS EXEMPT FROM TESTING FOR PESTICIDES.

2 (VII) Labeling requirements for retail marijuana and retail
3 marijuana products sold by a retail marijuana establishment that are at
4 least as stringent as THOSE imposed by section 25-4-1614 (3) (a), C.R.S.
5 THE LABELING REQUIREMENTS MUST ALLOW A STANDARDIZED
6 NOTIFICATION THAT THE MARIJUANA HAS BEEN CERTIFIED AS ORGANIC
7 PURSUANT TO SECTION 35-11.5-201, C.R.S., and MUST include but are not
8 limited to:

9 **SECTION 3.** In Colorado Revised Statutes, **add** part 2 to article
10 11.5 of title 35 as follows:

11 PART 2

12 ORGANIC CANNABIS

13 **35-11.5-201. Certification of organic cannabis.** (1) THE
14 COMMISSIONER SHALL ADOPT A PROGRAM TO ENABLE CONSUMERS TO
15 EASILY IDENTIFY CANNABIS THAT IS ORGANIC.

16 (2) THE DEPARTMENT SHALL CERTIFY, ACCORDING TO THE TERMS
17 OF THE PROGRAM, THIRD-PARTY CERTIFIERS OF LICENSED PREMISES, AS
18 THAT TERM IS DEFINED IN SECTIONS 12-43.3-104 AND 12-43.4-103, C.R.S.,
19 WHO CAN CERTIFY WHETHER THE CANNABIS AT A PARTICULAR PREMISES
20 IS ORGANIC.

21 (3) A PERSON SHALL NOT, IN CONNECTION WITH AN ORGANIC
22 CERTIFICATION PURSUANT TO THIS PART 2, USE THE ORGANIC SEAL
23 ESTABLISHED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE OR
24 IMPLY ANY TACIT OR DIRECT APPROVAL BY OR ATTRIBUTION TO THE
25 FEDERAL ORGANIC CERTIFICATION PROGRAM.

26 **35-11.5-202. Definitions - program - rules.** (1) FOR PURPOSES
27 OF THIS PART 2, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1 (a) "CANNABIS" MEANS "MEDICAL MARIJUANA" AS DEFINED IN
2 SECTION 12-43.3-104, C.R.S., AND "RETAIL MARIJUANA" AS DEFINED IN
3 SECTION 12-43.4-103, C.R.S.

4 (b) "OMRI" MEANS THE ORGANIC MATERIALS REVIEW INSTITUTE
5 OR AN ANALOGOUS SUCCESSOR ORGANIZATION AS DETERMINED BY THE
6 COMMISSIONER.

7 (c) (I) "ORGANIC" MEANS, AS FURTHER SPECIFIED IN RULES
8 PROMULGATED PURSUANT TO THIS SECTION, THAT:

9 (A) THERE ARE NO BIOSOLIDS PRESENT IN POTTING SOILS OR THE
10 LAND USED FOR CULTIVATION; AND

11 (B) THE USE OF PROHIBITED NONSYNTHETIC SUBSTANCES
12 COMPLIES WITH 7 CFR 205.602.

13 (II) OMRI-APPROVED NUTRIENTS AND INPUTS ARE ALLOWED IN
14 THE CULTIVATION AND TREATMENT OF ORGANIC CANNABIS.

15 (2) THE PROGRAM MUST:

16 (I) NOT ACCEPT APPLICATIONS FOR CERTIFICATION UNTIL THE
17 DEPARTMENT HAS MADE ITS DETERMINATION REGARDING THE USE OF
18 PESTICIDES ON CANNABIS PURSUANT TO SECTION 24-20-112 (1), C.R.S.,
19 AND THE STATE LICENSING AUTHORITY HAS ESTABLISHED THE TESTING
20 AND CERTIFICATION PROGRAM REQUIRED BY SECTION 12-43.4-202 (3) (a)

21 (IV) (A), C.R.S.;

22 (II) HAVE THE CAPACITY TO RUN INDEPENDENT VERIFICATION OF
23 INPUTS NOT ALREADY REVIEWED BY OMRI OR THE DEPARTMENT;

24 (III) SUPPORT INDOOR AND OUTDOOR CULTIVATORS;

25 (IV) REQUIRE INSPECTIONS EACH YEAR OF AT LEAST FIFTEEN
26 PERCENT OF THE LICENSED PREMISES THAT HAVE BEEN CERTIFIED
27 ORGANIC;

1 (V) SPECIFY THAT LICENSED PREMISES THAT HAVE BEEN CERTIFIED
2 ORGANIC PURSUANT TO THIS PART 2 ARE NOT SUBJECT TO TESTING FOR
3 PESTICIDES BY THE STATE LICENSING AUTHORITY OR ANY LOCAL ENTITY;

4 (VI) INCLUDE COMPREHENSIVE DOCUMENTATION OF PESTICIDES
5 AND FERTILIZERS USED AND INSPECTION OF THE DOCUMENTATION BOTH
6 ANNUALLY AND WHEN ANY CHANGES ARE MADE; AND

7 (VII) REQUIRE THE DEPARTMENT TO POST A LIST OF CERTIFIERS
8 AND LICENSED PREMISES THAT ARE CURRENTLY CERTIFIED ON ITS
9 WEBSITE.

10 (3) THE COMMISSIONER SHALL, AFTER CONSULTING WITH THE
11 STATE LICENSING AUTHORITY SPECIFIED IN SECTION 12-43.3-201 (1),
12 C.R.S., ADOPT RULES TO IMPLEMENT THIS PART 2. THE RULES MUST:

13 (a) SPECIFY THE EXPERIENCE OR CREDENTIALS AND THE
14 RESOURCES THAT A PERSON MUST HAVE, AND THE EVIDENCE THAT THE
15 PERSON MUST SUBMIT, TO BE QUALIFIED AS A CERTIFIER PURSUANT TO THIS
16 PART 2, INCLUDING A PLAN THAT THE CERTIFIER WILL FOLLOW IN ISSUING
17 CERTIFICATIONS;

18 (b) CONTAIN STANDARDS THAT CERTIFIERS MUST FOLLOW IN
19 CERTIFYING CANNABIS PURSUANT TO THIS PART 2; ■■■

20 (c) REQUIRE EACH CERTIFIER TO SUBMIT AN ANNUAL REPORT TO
21 THE DEPARTMENT THAT SUMMARIZES THE CERTIFIER'S ACTIVITIES IN THE
22 PREVIOUS CALENDAR YEAR ALONG WITH OTHER INFORMATION SPECIFIED
23 IN THE RULES;

24 (d) AUTHORIZE THE DEPARTMENT TO CONDUCT A PERIODIC OR
25 RISK-BASED ON-SITE AUDIT OF A CERTIFIER THAT INCLUDES THE ABILITY
26 TO ACCOMPANY A CERTIFIER WHILE THE CERTIFIER VISITS A LICENSED
27 PREMISES OR LAND AREA AND WHILE THE CERTIFIER CONDUCTS THE

1 NECESSARY ANALYSIS OF THE DATA COLLECTED DURING THE VISIT;
2 (e) SPECIFY FEES THAT THE DEPARTMENT MAY CHARGE TO CERTIFY
3 A CERTIFIER, WHICH FEES MUST BE SET IN AN AMOUNT SUFFICIENT TO
4 RECOVER THE DEPARTMENT'S DIRECT AND INDIRECT COSTS ASSOCIATED
5 WITH IMPLEMENTING THIS PART 2; AND

6 (f) PROVIDE FOR THE CONFIDENTIALITY OF DOCUMENTS AND
7 INFORMATION AS SPECIFIED IN SECTION 35-11.5-105 (4).

8 **35-11.5-203. Funding.** THE DEPARTMENT MAY SEEK, ACCEPT,
9 AND EXPEND GIFTS, GRANTS, OR DONATIONS FROM PRIVATE OR PUBLIC
10 SOURCES FOR THE PURPOSES OF THIS PART 2. THE DEPARTMENT SHALL
11 TRANSMIT ALL MONEY RECEIVED PURSUANT TO THIS PART 2 TO THE STATE
12 TREASURER, WHO SHALL CREDIT THE MONEY TO THE MARIJUANA CASH
13 FUND CREATED IN SECTION 12-43.3-501 (1) (a), C.R.S.

14 **SECTION 4.** In Colorado Revised Statutes, **amend** 35-11.5-101
15 as follows:

16 **35-11.5-101. Short title.** THE SHORT TITLE of this ~~article shall be~~
17 ~~known and may be cited as~~ PART 1 IS the "Organic Certification Act".

18 **SECTION 5.** In Colorado Revised Statutes, **amend** 35-11.5-102
19 as follows:

20 **35-11.5-102. Legislative declaration.** The general assembly
21 declares that the purpose of this ~~article~~ PART 1 is to provide a means for
22 the general public to recognize and purchase organically grown
23 agricultural products and to assist Colorado producers in the marketing
24 of such products. The general assembly further declares that uniformity
25 in labeling will protect both consumers and producers by providing
26 assurance of compliance with recognized production standards.

27 **SECTION 6.** In Colorado Revised Statutes, 35-11.5-105, **amend**

1 (3) as follows:

2 **35-11.5-105. Delegation of duties - inspections - cooperative**
3 **agreements - confidentiality.** (3) The department and the commissioner
4 shall coordinate with the secretary to implement the state organic
5 certification program pursuant to this ~~article~~ PART 1.

6 **SECTION 7.** In Colorado Revised Statutes, 35-11.5-113, **amend**
7 (1) as follows:

8 **35-11.5-113. Money credited to plant health, pest control, and**
9 **environmental protection cash fund.** (1) All fees and penalties
10 collected pursuant to this ~~article~~ PART 1 shall be transmitted to the state
11 treasurer, who shall credit ~~the same~~ THEM to the plant health, pest control,
12 and environmental protection cash fund created in section 35-1-106.3.
13 ~~Within sixty days after July 1, 2009, the unexpended and unencumbered~~
14 ~~balance of the organic certification fund, as that fund existed prior to July~~
15 ~~1, 2009, shall be transferred to the plant health, pest control, and~~
16 ~~environmental protection cash fund.~~

17 **SECTION 8.** In Colorado Revised Statutes, 35-11.5-114, **amend**
18 (1) introductory portion as follows:

19 **35-11.5-114. Advisory board.** (1) Effective July 1, 2010, for the
20 purpose of assisting the commissioner in formulating rules for carrying
21 out the provisions of this ~~article~~ PART 1, there is hereby created an organic
22 certification advisory board, to be composed of twelve members
23 appointed by the commissioner, as follows: Nine ~~shall~~ MUST represent
24 certified organic operations; one ~~shall~~ MUST be a consumer representing
25 the general public; one ~~shall~~ MUST be a representative from the Colorado
26 cooperative extension service; and one ~~shall~~ MUST be a representative
27 from the Colorado agricultural experiment station. The nine advisory

1 board members representing certified organic operations ~~shall~~ MUST
2 represent the following four categories of organic certification, in
3 proportion to the number of organic operations certified in each category:

4 **SECTION 9.** In Colorado Revised Statutes, **amend** 35-11.5-117
5 as follows:

6 **35-11.5-117. Conflict with federal law.** If the secretary or a court
7 of competent jurisdiction determines that there is a conflict between this
8 ~~article~~ PART 1 and any provisions of the federal "Organic Foods
9 Production Act of 1990", 7 U.S.C. sec. 6501 et seq. or 7 CFR part 205,
10 the provisions of the federal act and rules ~~shall~~ control, and the
11 commissioner shall perform the duties and discharge the obligations
12 contained in the federal act. If such a determination is made, the
13 commissioner shall submit a report to the general assembly explaining the
14 conflict.

15 **SECTION 10.** In Colorado Revised Statutes, 12-43.3-501,
16 **amend** (1) (b) as follows:

17 **12-43.3-501. Marijuana cash fund.** (1) (b) ~~Moneys~~ MONEY in
18 the fund ~~are~~ IS subject to annual appropriation by the general assembly to:

19 (I) The department of revenue for the direct and indirect costs
20 associated with implementing this article, article 43.4 of this title, and
21 article 28.8 of title 39, C.R.S.; AND

22 (II) THE DEPARTMENT OF AGRICULTURE FOR THE DIRECT AND
23 INDIRECT COSTS ASSOCIATED WITH IMPLEMENTING PART 2 OF ARTICLE 11.5
24 OF TITLE 35, C.R.S.

25 **SECTION 11. Appropriation.** (1) For the 2016-17 state fiscal
26 year, \$65,640 is appropriated to the department of agriculture. This
27 appropriation is from the marijuana cash fund created in section 12-43.3-

1 501 (1) (a), C.R.S. To implement this act, the department may use this
2 appropriation as follows:

3 (a) \$37,137 for the plant industry division, which amount is based
4 on an assumption that the division will require an additional 0.5 FTE; and

5 (b) \$28,503 for the purchase of legal services.

6 (2) For the 2016-17 state fiscal year, \$28,503 is appropriated to
7 the department of law. This appropriation is from reappropriated funds
8 received from the department of agriculture under paragraph (b) of
9 subsection (1) of this section and is based on an assumption that the
10 department of law will require an additional 0.2 FTE. To implement this
11 act, the department of law may use this appropriation to provide legal
12 services for the department of agriculture.

13 **SECTION 12. Severability.** Section 2-4-204, Colorado Revised
14 Statutes, regarding severability, applies to this act.

15 **SECTION 10. Applicability.** This act applies to conduct
16 occurring on or after the effective date of this act.

17 **SECTION 11. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.