



**Colorado  
Legislative  
Council  
Staff**

**SB17-192**

**FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 17-0941 **Date:** February 28, 2017  
**Prime Sponsor(s):** Sen. Neville T. **Bill Status:** Senate Business  
 Rep. Melton; Singer **Fiscal Analyst:** Clare Pramuk (303-866-2677)

**BILL TOPIC:** MARIJUANA BUSINESS EFFICIENCY MEASURES

<b>Fiscal Impact Summary</b>	<b>FY 2017-2018</b>	<b>FY 2018-2019</b>
<b>State Revenue</b>	<b>\$267,240</b>	<b>\$422,540</b>
Cash Funds	267,240	422,540
<b>State Expenditures</b>	<b>\$267,168</b>	<b>\$422,442</b>
Cash Funds	230,968	340,350
Centrally Appropriated Costs	36,200	82,092
<b>TABOR Impact</b>	267,240	422,540
<b>FTE Position Change</b>	2.1 FTE	4.6 FTE
<b>Appropriation Required:</b> \$230,968 - Department of Revenue (FY 2017-18).		
<b>Future Year Impacts:</b> Ongoing revenue and expenditure increase.		

**Summary of Legislation**

This bill allows for the delivery of medical marijuana, concentrate, and infused products, and retail marijuana and retail marijuana products to private residences, as well as a single-instance transfers of retail marijuana and retail marijuana products from a retail marijuana licensee to a medical marijuana licensee. It also moves the authority and timing of the determination of the average market rate of retail marijuana used to calculate excise taxes.

**Delivery.** The Marijuana Enforcement Division in the Department of Revenue (DOR) is required to begin issuing medical marijuana delivery endorsements to medical marijuana centers on January 2, 2018, and retail marijuana delivery endorsements to licensed retail marijuana stores on January 2, 2019. The division is required to set an application and renewal fee in rule and the amount of the fee must reflect the expected costs of administering the endorsement. The fee may be subsequently adjusted to reflect the actual costs of administration. Delivery amounts cannot exceed the amounts authorized for in-person sales. A person making a delivery must possess a valid occupational license, be employed by the licensee with the delivery endorsement, and have undergone specific training. Alternately, a licensed marijuana transporter may contract with a medical marijuana center or retail marijuana store for deliveries. Orders may be taken over the phone or internet. A local jurisdiction may not prohibit deliveries.

**Single-instance transfers.** A retail marijuana licensee may transfer retail marijuana or retail marijuana products to a medical marijuana licensee based on a business need due to a change in local, state, or federal law or enforcement policy. The transfer must occur within six months of the transfer being approved by the division.

**Average market rate.** Under current law, the average market rate used to calculate excise taxes on the sale or transfer of unprocessed retail marijuana is determined twice a year by the Office of Research and Analysis in the DOR. The bill requires the Marijuana Enforcement Division to determine the average market rate on a quarterly basis. Under the bill, the average market rate must include a tier for unprocessed marijuana to be used for extractions that is lower than the tier unprocessed marijuana for direct sale to consumers.

## **Background**

**Licenses.** As of February 1, 2017, there are 524 medical marijuana centers and 463 retail marijuana stores eligible to apply for delivery endorsements.

**Average market rate.** Retail marijuana is subject to a 15 percent excise tax collected when marijuana is transferred from a grow facility to a retail store or a processing facility. The DOR calculates the average market rate every six months for five different types of marijuana: marijuana flower, trim, immature plants, wet whole plant, and marijuana seeds. The average market rate calculated by the DOR is used to calculate the excise tax for both arm's-length transactions and affiliated marijuana businesses.

## **State Revenue**

***This bill will increase state cash fund revenue by \$267,240 in FY 2017-18 and \$422,540 in FY 2018-19 to the Marijuana Cash Fund in the DOR.*** The bill may also affect excise tax revenue but the amount of excise tax revenue collected is based on a variety of factors and cannot be determined.

**Assumptions.** The fiscal note assumes that 75 percent (393) of medical marijuana centers and 75 percent (347) of retail marijuana stores will apply for a delivery endorsement.

**Fee impact on medical marijuana centers and retail marijuana stores.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Because the bill requires that the fee reflect the expected costs of administering the endorsement, these fee amounts are estimates based on the expenditure estimate of the fiscal note and the assumed number of endorsement applications. The Department of Revenue will set the fees administratively based on expected costs and can adjust the fees to reflect the actual costs to administer the endorsement. Table 1 below identifies the fee impact of this bill.

<b>Table 1. Fee Impact on Medical Marijuana Centers and Retail Marijuana Stores</b>			
<b>Type of Fee</b>	<b>Proposed Fee</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
<b>FY 2017-18</b>			<b>\$267,240</b>
Delivery Endorsement	\$680	393	267,240
<b>FY 2018-19</b>			<b>\$422,540</b>
Delivery Endorsement	\$571	347	198,137
Delivery Endorsement Renewal	571	393	224,403

**TABOR Impact**

This bill increases state cash fund revenue from fees, which will increase the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

**State Expenditures**

***This bill will increase cash fund expenditures in the DOR by \$267,168 and 2.1 FTE in FY 2017-18 and \$422,442 and 4.6 FTE in FY 2018-19 from the Marijuana Cash Fund.*** These costs are shown in Table 2 and explained below.

<b>Table 2. Expenditures Under SB17-192.</b>		
<b>Cost Components</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>
Personal Services	\$122,386	\$264,379
FTE	2.1 FTE	4.6 FTE
Operating Expenses and Capital Outlay Costs	11,621	13,996
Legal Services	30,891	30,891
Law Enforcement Expenses (one-time)	4,790	4,790
Law Enforcement Expenses (ongoing)	997	1,994
Vehicle and Travel	12,150	24,300
Computer Programming	48,133	0
Centrally Appropriated Costs*	36,200	82,092
<b>TOTAL</b>	<b>\$267,168</b>	<b>\$422,442</b>

\* Centrally appropriated costs are not included in the bill's appropriation.

**Assumptions.** The fiscal note assumes that the delivery endorsement does not require background investigations beyond what is already conducted for the licensed medical marijuana center or retail marijuana store applying for the endorsement. Implementation of the bill will require an increase in compliance and monitoring by the division. No resources are included for the one time transfer because the transfer is conditional on a future policy change.

**Enforcement.** This bill requires an increase in field enforcement and analysis to ensure compliance with the delivery rules. For FY 2017-18, 2.0 FTE is required for a criminal investigator and a compliance investigator to conduct compliance activities (prorated to 1.6 FTE in the first year). This increases to 4.0 FTE in FY 2018-19 and thereafter when the retail marijuana deliveries begin. Criminal investigators are allocated law enforcement equipment at a one-time cost of \$4,790 each and \$997, ongoing as well as a vehicle and mileage of \$12,150 each per year. Vehicle costs are reappropriated to the Department of Personnel and Administration.

**Calculation of average market rate.** The bill requires the rate to be calculated twice as often so the DOR requires an additional 0.4 FTE of a statistician to perform the analysis more frequently beginning in FY 2017-18.

**Legal services.** The division will promulgate rules to implement the bill. This will require a stakeholder process and legal services support from the Department of Law of 150 hours in FY 2017-18 and 100 hours for FY 2018-19 and thereafter. The Department of Law will also provide support for legal proceedings estimated at 175 hours in FY 2017-18 and 225 hours in FY 2018-19 and thereafter. Legal services are provided at a rate of \$95.05 per hour and the Department of Law requires an allocation of 0.2 FTE per year to provide the 325 hours of legal services annually.

**Computer programming.** The DOR will have costs to modify its computer systems in FY 2017-18 only. To put the new average market rates into operation, the DOR will contract with its computer system vendors to update its taxation system, GenTax, at a cost of \$17,600 for 88 hours of programming, at a rate of \$200 per hour. To expand the tracking requirements for home deliveries, the DOR will update its marijuana tracking system, METRC, at a cost of \$22,400. Programming, and testing to add the delivery endorsement to the licensing system, MYLO, will cost \$8,133.

**Centrally appropriated costs.** Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 3. Leased space is included to show the incremental impact of the additional FTE in the DOR, and calculated at 200 square feet per FTE at a rate of \$27 per square foot.

<b>Table 3. Centrally Appropriated Costs Under SB17-192</b>		
<b>Cost Components</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$14,973	\$34,642
Supplemental Employee Retirement Payments	10,967	23,690
Leased Space	10,260	23,760
<b>TOTAL</b>	<b>\$36,200</b>	<b>\$82,092</b>

**Local Government Impact**

Local sales taxes are collected based on the location of the transaction. Because the bill allows for delivery to jurisdictions that currently prohibit the sale of medical marijuana, retail marijuana, or both, sales tax revenue may increase for those jurisdictions and decrease for the

jurisdictions where the delivery originated. For local governments that levy an excise tax on retail marijuana, the changes to the frequency and method of calculating the average market rate will have an impact on revenue collected. Because of the variety of factors involved in the retail marijuana market, the effect on revenue collected for excise taxes cannot be determined.

**Effective Date**

The bill takes effect August 9, 2017, if the General Assembly adjourns on May 10, 2017, as scheduled, and no referendum petition is filed.

**State Appropriations**

For FY 2017-18 the bill requires the following appropriations:

- \$230,968 to the Department of Revenue from the Marijuana Cash Fund and an allocation of 1.9 FTE;
- \$30,891 to the Department of Law in reappropriated funds and an allocation of 0.2 FTE; and
- \$4,950 to the Department of Personnel and Administration in reappropriated funds.

**Departmental Difference**

The DOR estimates that this bill will increase cash funds revenue to the Marijuana Cash Fund by \$384,031 in FY 2017-18 and \$782,134 in FY 2018-19. The DOR further estimates that the bill requires expenditures of \$378,140 and 2.9 FTE in FY 2017-18 and 621,269 and 7.0 FTE in FY 2018-19. These estimates assume 39 new licensees and 117 direct beneficial interest owners who will be investigated prior to the endorsement being issued in FY 2017-18 and 34 new licensees and 102 direct beneficial interest owners plus renewals will be investigated in FY 2018-19. The fiscal note expenditures assume a lower level of investigations will be required so the fiscal note does not reflect those costs.

**State and Local Government Contacts**

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