



## Legislative Council Staff

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# Fiscal Note

**Drafting Number:** LLS 22-0239  
**Prime Sponsors:** Rep. Hooton; Titone

**Date:** February 18, 2022  
**Bill Status:** House Business  
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**Bill Topic:** **PROHIBIT EMPLOYER ADVERSE ACTION MARIJUANA USE**

**Summary of Fiscal Impact:**

- State Revenue
- State Expenditure
- State Transfer
- TABOR Refund
- Local Government
- Statutory Public Entity

This bill prohibits employers from taking adverse actions against employees or applicants who use medical marijuana, both on duty and off, or retail marijuana, off duty, except for when an occupational safety requirement exists that would necessitate a restriction. The bill will increase state expenditures and may minimally increase state revenue on an ongoing basis.

**Appropriation Summary:** For FY 2022-23, the bill requires appropriations of \$1,350,926 to multiple departments.

**Fiscal Note Status:** The fiscal note reflects the introduced bill.

**Table 1**  
**State Fiscal Impacts Under HB 22-1152**

		Budget Year FY 2022-23	Out Year FY 2023-24
<b>Revenue</b>		-	-
<b>Expenditures</b>	General Fund	\$1,350,926	\$177,426
	Cash Funds	-	\$1,173,500
	<b>Total</b>	<b>\$1,350,926</b>	<b>\$1,350,926</b>
	<b>Total FTE</b>	<b>2.0 FTE</b>	<b>2.0 FTE</b>
<b>Transfers</b>		-	-
<b>Other Budget Impacts</b>	General Fund Reserve	\$202,639	\$26,614
	TABOR Refund	-	-

## Summary of Legislation

The bill prohibits employers from taking adverse actions, such as not hiring, firing, harassing, etc., against employees or applicants for employment who use medical marijuana during working hours. Additionally, the bill prohibits adverse actions against employees who use medical or retail marijuana during non-working hours. The bill permits restrictions on an employee's use of medical or retail marijuana at work and off-duty where bona fide occupational requirements exist.

## Assumptions

In recent years, the state has received an average of 15 employment-related discrimination claims per year. The fiscal note assumes that an additional three cases will be filed that involve adverse actions taken due to marijuana use under this bill. The fiscal note assumes that all positions that meet the bona fide requirement for exclusion from this bill's effects are excluded and, therefore, pose no additional legal risk for the state. However, employee travel that is not excluded as a bona fide job requirement is assumed to be subject to state liability for motor vehicle crashes where marijuana is found to be a factor.

## State Revenue

To the extent the bill increases civil case filings, state revenue will increase beginning in FY 2022-23. This fee revenue is subject to TABOR.

## State Expenditures

The bill increases state expenditures in the Department of Personnel and Administration (DPA) and Department of Law by \$1,350,926 in FY 2022-23 and \$FY 2023-24 from the General Fund and Risk Management Fund. Expenditures are shown in Table 2 and detailed below.

**Department of Personnel and Administration.** Based on the assumptions above, the DPA is estimated to have costs in three areas starting in FY 2022-23.

- *Legal services.* Assuming 350 hours per case for three additional cases, legal services costs provided by the Department of Law will increase by \$103,500 per year. Additionally, for motor vehicle claims, assuming the same conditions, for three additional cases, the cost of legal services provided will be \$70,000. These costs are paid from the General Fund in FY 2022-23 and the Risk Management Fund in FY 2023-24.
- *Settlement payments.* It is assumed one discrimination case per year will result in a settlement with the state in the amount of \$125,000. Claim settlement costs, including liability and property damages, are expected to total approximately \$875,000 per year for motor vehicle claims. These costs are paid from the General Fund in FY 2022-23 and from the Risk Management Fund in FY 2023-24.

**Table 2  
Expenditures Under HB 22-1152**

<b>Cost Components</b>	<b>FY 2022-23</b>	<b>FY 2023-24</b>
<b>Department of Personnel and Administration</b>		
Legal Services	\$173,500	\$173,500
Settlement Costs	\$1,000,000	\$1,000,000
FTE – Legal Services	1.0 FTE	1.0 FTE
<b>DPA Subtotal</b>	<b>\$1,173,500</b>	<b>\$1,173,500</b>
<b>Department of Law</b>		
Legal Services	\$177,426	\$177,426
FTE – Legal Services	1.0 FTE	1.0 FTE
<b>Law Subtotal</b>	<b>\$177,426</b>	<b>\$177,426</b>
<b>Total</b>	<b>\$1,350,926</b>	<b>\$1,350,926</b>
<b>Total FTE</b>	<b>2.0 FTE</b>	<b>2.0 FTE</b>

**Department of Law.** The department will increase by 1,800 hours per year to provide counsel to state agencies with respect to supervisor responsibilities under the bill. At the blended rate of \$98.57 per hour, an appropriation of \$177,426 and 1.0 FTE will be required to carry out the requirements in the bill.

**Department of Labor and Employment.** The bill’s requirements will increase the workload for the department to determine and classify which occupational requirements may require the new restrictions on the use of medical or retail marijuana. The expected workload increase is minimal and can be absorbed within existing staff and appropriations.

**Judicial Department.** To the extent that the bill increases the number of employment-related cases, workload in the trial courts of the Judicial Department will increase. No change in appropriations is required to manage a small number of additional civil cases.

**Other Budget Impacts**

**TABOR refunds.** The bill is expected to minimally increase the amount of state revenue required to be refunded to taxpayers. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

**General Fund reserve.** Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, which will decrease the amount of General Fund available for other purposes.

## Local Government

Similar to the state, the bill potentially increases costs for cities, counties, school districts, and other local governments relating to increased liability as an employer. These impacts will vary by local government and have not been estimated.

## Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

## State Appropriations

For FY 2022-23, the bill requires the following General Fund appropriations:

- \$177,426 to the Department of Law and 1.0 FTE; and
- \$1,173,500 to the Department of Personnel and Administration, of which \$173,500 is reappropriated to the Department of Law with 1.0 FTE.

## State and Local Government Contacts

Counties

Judicial

Labor

Law

Municipalities

Personnel

Regulatory Agencies