



Legislative Council Staff
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Fiscal Note

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Prime Sponsors: Sen. Coram; Fenberg Bill Status: Senate Business
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Bill Topic: INTOXICATING HEMP & TETRAHYDROCANNABINOL PRODUCTS

- Summary of Fiscal Impact:
[X] State Revenue [X] TABOR Refund
[X] State Expenditure [X] Local Government
[] State Transfer [] Statutory Public Entity

This bill classifies certain industrial hemp products as adult-use cannabis products, requires that the manufacturer of these products be licensed under the Colorado Marijuana Code, and creates penalties for violations. The bill increases state revenue and expenditures beginning in FY 2022-23 and ongoing, and may impact local government revenue.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$1,456,483 to multiple state agencies.

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

Table 1
State Fiscal Impacts Under SB 22-205

Table with 4 columns: Category, Sub-category, Budget Year FY 2022-23, and Out Year FY 2023-24. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (TABOR Refund).

Summary of Legislation

The bill amends the Pure Food and Drug Act administered by the Department of Public Health and Environment (CDPHE), the Colorado Marijuana Code administered by the Department of Revenue, and the Colorado Consumer Protection Act administered by the Department of Law, to regulate products that contain certain amounts of intoxicating cannabinoids as adult use cannabis products.

Pure Food and Drug Act. Under current law, a product containing industrial hemp produced by wholesale food manufacturing facilities registered with the CDPHE is not deemed to be adulterated. The bill clarifies that a product containing adult use cannabis is deemed adulterated if it is not manufactured by a person licensed under the Marijuana Code. The bill creates three new misdemeanor criminal offenses related to adult use cannabis products that are also subject to civil penalties up to \$10,000 per violation. The bill also prohibits a local government from conducting food safety inspections where industrial hemp products for human consumption are held without approval by the CDPHE.

Marijuana Code. The bill establishes new definitions for adult use cannabis products, artificially derived cannabinoid, intoxicating cannabinoid, and tetrahydrocannabinol. The Marijuana Enforcement Division in the Department of Revenue is required to promulgate rules to set limits for the amounts of tetrahydrocannabinols (THC) and intoxicating cannabinoids in adult use cannabis products and establish procedures for designating and transferring an adult use cannabis product as a retail marijuana product. A retail marijuana store is prohibited from receiving or selling an adult use cannabis product that was not properly designated and transferred as a retail marijuana product. A retail marijuana products manufacturer is prohibited from transferring an adult use cannabis product unless it is designated and transferred as a retail marijuana product.

Consumer Protection Act. A person who violates the provisions of the bill related to hemp, cannabis, or anything made from hemp or cannabis, engages in a deceptive trade practice.

Background

Delta-9 THC occurs naturally in cannabis and is the main psychoactive ingredient in medical and retail marijuana. Industrial hemp is defined in Colorado law as cannabis that contains a delta-9 THC concentration of no more than three-tenths of one percent on a dry weight basis. Industrial hemp, because of its low delta-9 THC content, is not considered a Schedule 1 Controlled Substance federally.

Industrial hemp also contains cannabidiol (CBD) which is made into a number of products including foods, lotions, and medications that are widely available. Industrial hemp products not currently are currently on the market outside of regulated marijuana markets that contain delta-8 THC, an artificially derived CBD produced from industrial hemp. The delta-8 THC is synthesized from CBD with the use of solvents and has psychoactive and intoxicating effects. The federal Food and Drug Administration has not evaluated or approved products containing delta-8 THC.

Special sales tax. Retail marijuana is not subject to the state sales tax but is subject to a special 15 percent sales tax on the final consumer purchase price, which is deposited into the Marijuana Tax Cash Fund; 10 percent of which is apportioned to local jurisdictions where retail marijuana is sold. Local jurisdictions may also apply a special tax on retail marijuana sales.

Excise tax. Retail marijuana is subject to a 15 percent state excise tax applied to the average market rate or contract price of retail marijuana. The first \$40 million collected from the excise tax is transferred to the Public School Capital Construction Assistance Fund and the remainder deposited to the State Public School Fund. Several counties also assess an excise tax on retail marijuana.

Comparable Crime Analysis

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or creates a new factual basis for an existing crime. This section outlines data on crimes comparable to the offense in this bill and discusses assumptions on future rates of criminal conviction for those offense.

Prior conviction data and assumptions. This bill creates a new factual basis for the existing offense of violating the Pure Food and Drug Act by adding that making a product that contains levels of THC that result in adult use cannabis by an entity that is not a regulated marijuana licensee is a violation. From FY 2018-19 to FY 2020-21, zero offenders have been sentenced and convicted for this offense; therefore, the fiscal note assumes that there will continue to be minimal or no additional criminal case filings or convictions for this offense under the bill. Because the bill is not expected to have a tangible impact on criminal justice-related revenue or expenditures at the state or local levels, these potential impacts are not discussed further in this fiscal note.

Visit leg.colorado.gov/fiscalnotes for more information about criminal justice costs in fiscal notes.

State Revenue

The bill increases state revenue by \$951,523 in FY 2022-23 and \$1,768,557 in FY 2023-24 from marijuana licensing fees to the Marijuana Cash Fund. This revenue is subject to TABOR. The bill will also increase revenue from civil penalties for violations of the Pure Food and Drug Act, which are credited to the Wholesale Food Manufacturing and Storage Protection Cash Fund.

Fee impact on marijuana licensees. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. These fee amounts are estimates only, actual fees will be set administratively by the DOR based on cash fund balance, estimated program costs, and the estimated number of licensees subject to the fee. It is not known which fees will be increased to fund the bill; as a result, the table below identifies the total fee increase necessary to cover the bill's expenditures.

**Table 2
Fee Impact on Marijuana Licensees**

Fiscal Year	Type of Fee	Total Fee Increase
FY 2022-23	Marijuana Licensing Fees	\$951,523
FY 2023-24	Marijuana Licensing Fees	\$1,768,557

Other revenue impacts. There may also be changes in revenue from licensing of food manufacturers by the CDPHE if manufacturers are no longer regulated by the CDPHE, and instead are licensed with the Marijuana Enforcement Division. Excise and sales tax revenue may also change if the cost of producing retail marijuana products changes or if industrial hemp is not subject to excise taxes. These revenue changes depend on a variety of unknown factors and have not been estimated.

Assumptions

The fiscal note assumes that 250 industrial hemp product manufacturers currently registered with the CDPHE will apply to become licensed with the Marijuana Enforcement Division. If this number is determined to be significantly different than the number of manufacturers that want to enter the regulated marijuana market, the regulatory staffing costs may vary.

State Expenditures

The bill increases state expenditures from the Marijuana Cash Fund by \$951,523 in FY 2022-23 and \$1,768,557 in FY 2023-24 in the Department of Revenue and by \$816,579 in FY 2022-23 and \$885,279 in the CDPHE. Expenditures are shown in Table 3 and detailed below.

**Table 3
Expenditures Under SB 22-205**

Cost Components	FY 2022-23	FY 2023-24
Department of Revenue		
Personal Services	\$643,648	\$1,275,152
Operating Expenses	\$11,205	\$22,275
Capital Outlay Costs	\$105,400	-
Legal Services	\$43,371	\$177,426
Vehicles	\$6,945	\$13,890
Centrally Appropriated Costs ¹	\$140,954	\$279,814
FTE – Personal Services	8.3 FTE	16.5 FTE
FTE – Legal Services	0.2 FTE	1.0 FTE
DOR Subtotal	\$951,523	\$1,768,557

**Table 3
 Expenditures Under SB 22-205 (Cont.)**

Cost Components	FY 2022-23	FY 2023-24
Department of Public Health and Environment		
Personal Services	\$180,501	\$243,674
Operating Expenses	\$2,970	\$4,050
Capital Outlay Costs	\$18,600	-
Lab Equipment	\$243,843	\$243,843
Lab Operating	\$200,000	\$200,000
Centrally Appropriated Costs ¹	\$170,665	\$193,712
FTE – Personal Services	2.2 FTE	3.0 FTE
CDPHE Subtotal	\$816,579	\$885,279
Total	\$1,768,101	\$2,653,836
Total FTE	10.7 FTE	20.5 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Department of Revenue. The Marijuana Enforcement Division will add 16.5 FTE, prorated to 8.3 FTE in FY 2022-23 for a January 1, 2023, start date. This staff will address the following tasks:

- rulemaking to define adult use cannabis products;
- license application processing;
- outreach and education;
- investigations;
- coordinating with the CDPHE and law enforcement;
- updating to testing requirements for testing facilities;
- inspections; and
- investigations and enforcement actions.

The division also requires legal services to assist with rulemaking and administrative actions. The division requires 440 hours in FY 2022-23 and 1,800 hours in FY 2023-24 at a rate of \$98.57 per hour. Legal services are provided by the Department of Law. Standard operating, capital outlay costs, and vehicle leases are included.

Department of Public Health and Environment. The CDPHE will add 2.0 FTE to the Disease Control and Public Health Response Division to analyze industrial hemp products and work with testing labs, and 1.0 FTE to the Marijuana Health Monitoring and Research Section to study the health effects of adult use cannabis products. The FTE are prorated for staggered start dates. Expenditures also include specialized lab equipment for analyzing synthetically derived cannabinoids. Standard operating and capital outlay costs are included.

Department of Law. By establishing violations of this bill as unfair and deceptive trade practices, the bill may increase the number of complaints the department receives. The department will assess the complaints and prioritize workload to determine which will be investigated within existing resources.

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. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 3.

Other Budget Impacts

TABOR refunds. The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the March 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. 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.

Local Government

This bill may change sales and excise tax revenue to some local jurisdictions, which cannot be estimated in this fiscal note.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, except provisions in the Marijuana Code and Consumer Protection Act, which take effect January 1, 2023.

State Appropriations

For FY 2022-23 the bill requires an appropriation of \$1,456,483 as follows:

- \$810,569 to the Department of Revenue from the Marijuana Cash Fund and 8.3 FTE, of which \$43,371 is reappropriated to the Department of Law and 0.2 FTE, and \$6,945 is reappropriated to the Department of Personnel and Administration for vehicle lease payments; and
- \$645,914 to the Department of Public Health and Environment from the Marijuana Tax Cash Fund and 2.2 FTE.

State and Local Government Contacts

Agriculture	Counties	Information Technology
Law	Municipalities	Public Health and Environment
Revenue		

The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit: leg.colorado.gov/fiscalnotes.