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Fiscal Note

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Prime Sponsors: Sen. Rodriguez Bill Status: Senate Business
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Bill Topic: MARIJUANA FINANCIAL RESPONSIBILITY REQUIREMENTS

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

The bill requires marijuana licensees to carry liability insurance. Starting in FY 2023-24, the bill increases state revenue and expenditures and minimally increases local workload on an ongoing basis.

Appropriation Summary: For FY 2023-24, the bill requires an appropriation of \$38,739 to the Department of Revenue.

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

Table 1
State Fiscal Impacts Under SB 23-045

Table with 4 columns: Category, Sub-category, Budget Year FY 2023-24, and Out Year FY 2024-25. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (Cash Funds, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (TABOR Impact).

## Summary of Legislation

The bill requires marijuana license applicants to provide proof of at least \$100,000 in liability coverage when making an initial or renewal application to the Marijuana Enforcement Division (MED) in the Department of Revenue. The liability insurance must cover bodily injury to lawful users resulting from the manufacture, distribution, transportation, or sale of adulterated marijuana products. “Bodily injury” does not include expected or intended effects, or a long-term adverse effect, of consumption of marijuana products, and “adulterated marijuana” means a marijuana product that contains any unintended substance that causes an adverse reaction after consumption.

If a liability policy is not maintained by the licensee, the MED must immediately suspend the license.

Licensees may change policies by giving 30-days notice to the MED and providing proof of the new policy within that timeframe.

## Background and Assumptions

This fiscal note assumes the bill applies to marijuana business licensees, not individual marijuana licensees—see Technical Note. As of January 2023, there are a total of 1,061 medical and 1,859 retail marijuana business licenses, for a total of 2,920 licensed establishments.

Information from the Divisions of Banking and Financial Services indicates that there are limited insurance options available to marijuana businesses. In a [survey](#) of 111 businesses, about 83 percent indicated that their business carried some level of insurance.

## State Revenue

The bill will increase revenue to the Marijuana Cash Fund in the MED by approximately \$50,000 per year to cover the costs outlined in the State Expenditures section below.

**Fee impact on marijuana business licensees.** Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. Actual fees will be set administratively by the MED based on cash fund balance, program costs, and the number of marijuana licenses subject to the fee. Table 2 below identifies the fee impact of this bill on marijuana business licensees based on increased expenditures from the Marijuana Cash Fund to implement the bill.

**Table 2**  
**Fee Impact on Marijuana Business Licenses**

<b>Fiscal Year</b>	<b>Type of Fee</b>	<b>Fee Per Business</b>	<b>Total Fee Impact</b>
FY 2023-24	Marijuana Business License	\$15.90	\$46,150
FY 2024-25	Marijuana Business License	\$16.60	\$48,271

**State Expenditures**

The bill increases state expenditures in the MED by approximately \$50,000 per year once fully implemented. The fiscal note assumes costs will be paid from the Marijuana Cash Fund—see Technical Note. The bill may also increase workload in the Division of Insurance. Expenditures are shown in Table 3 and detailed below.

**Table 3  
Expenditures Under SB 23-045**

	FY 2023-24	FY 2024-25
<b>Department of Revenue</b>		
Personal Services	\$32,069	\$38,484
Operating Expenses	-	\$675
Capital Outlay Costs	\$6,670	-
Centrally Appropriated Costs <sup>1</sup>	\$7,411	\$9,112
<b>Total Cost</b>	<b>\$46,150</b>	<b>\$48,271</b>
<b>Total FTE</b>	<b>0.4 FTE</b>	<b>0.5 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Revenue.** Costs will increase for the MED to update rules, ensure businesses are in compliance with the insurance requirement, investigate complaints of noncompliance, process license suspensions, and prepare for hearings, as applicable.

- **Assumptions.** While fiscal notes generally assume legal compliance, because the bill requires the MED to immediately suspend a license of a business that does not carry insurance, this fiscal note assumes that the bill will create a measurable increase in license suspensions. Specifically, the fiscal note assumes that 2 percent of licensees will have their license suspended per year, for a total of 60 suspensions.
- **Personal services.** A suspension takes approximately 18 hours for a Legal Assistant II to process, which equates to 0.5 FTE. First-year costs are prorated for a September 1 start date and include standard operating and capital outlay costs, where applicable.
- **Hearings Division.** Following suspension, licensees may initiate a hearing with the MED. In 2022, 54 cases were filed with the MED, 17 of which had a full hearing. Extrapolating this trend to the licensed establishment population under the bill, the fiscal note assumes that any hearing workload impact will be minimal and requires no change in appropriation.
- **Compliance investigations.** Finally, the bill may require additional enforcement action and increase complaints. The fiscal note assumes that the MED will review complaints under the bill and prioritize investigations as necessary 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 2.

**Department of Regulatory Agencies.** The Division of Insurance may see an increase in consumer inquiries regarding where to purchase marijuana liability insurance. The division may need to create informational materials regarding this type of insurance to assist in responding these requests, which can be accomplished within existing resources.

## **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 December 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25. 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**

The bill may minimally increase workload for local licensing authorities that offer marijuana licenses to update local licensing regulations.

## **Technical Note**

**Applicability.** The bill can currently be interpreted to apply to all marijuana licensees, including employee licenses. The fiscal note assumes that a future amendment will clarify that the intent is to apply only to business entities.

**Marijuana Cash Fund.** The Marijuana Cash Fund is in a cash fund deficit. The fiscal note anticipates that the MED will adjust fees to make the fund solvent within FY 2023-24; however, General Fund may be required to fund initial program costs.

## **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 2023-24, the bill requires an appropriation of \$38,739 from the Marijuana Cash Fund to the MED, and 0.4 FTE.

## **Departmental Difference**

The MED estimates that the bill will result in General Fund costs of \$6,381,673 and 65.0 FTE in FY 2023-24 and \$9,379,376 and 97.5 FTE in FY 2024-25 based on the bill applying to both marijuana business and personal license types. The MED assumes that because of the bill's applicability to all marijuana licenses, compounded by lack of liability insurance product availability for the marijuana industry, 41,560 license suspensions will occur within the first two years of implementation. The MED estimate includes legal assistant staff for suspension processing, additional compliance investigator staff to enforce the bill, and hearing staff. Due to the current fund deficit of the Marijuana Cash Fund, the MED assumes General Fund is required until the fund regains its balance through fee adjustments.

This fiscal note assumes that the bill applies only to business license types, that all but an estimated two percent of marijuana businesses will comply with the law, and that any compliance investigation work will be accomplished with existing resources.

## **State and Local Government Contacts**

Law

Regulatory Agencies

Revenue