

CHAPTER 338

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 16-1261

BY REPRESENTATIVE(S) Pabon, Conti, Court, Foote, Garnett, Kagan, Priola, Roupe, Wilson, Arndt, Ginal, Kraft-Tharp, Lebsack, Melton, Rosenthal, Ryden, Vigil;
also SENATOR(S) Jahn and Baumgardner, Scheffel, Steadman.

AN ACT

CONCERNING CONTINUATION OF THE COLORADO RETAIL MARIJUANA CODE, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATIONS OF THE 2015 SUNSET REPORT ISSUED BY THE DEPARTMENT OF REGULATORY AGENCIES AND MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 12-43.4-103, **amend** (1) and (14.5); and **add** (1.5), (17.5), and (21.5) as follows:

12-43.4-103. Definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Executive director" means the executive director of the department of revenue~~ "ESCORTED" MEANS APPROPRIATELY CHECKED INTO THE LIMITED ACCESS AREA AND ACCOMPANIED BY A PERSON LICENSED BY THE STATE LICENSING AUTHORITY; EXCEPT THAT TRADE CRAFTSPEOPLE NOT NORMALLY ENGAGED IN THE BUSINESS OF CULTIVATING, PROCESSING, OR SELLING RETAIL MARIJUANA NEED NOT BE ACCOMPANIED ON A FULL-TIME BASIS, BUT ONLY REASONABLY MONITORED.

(1.5) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REVENUE.

(14.5) "Resealable" means that the package continues to function ~~with~~ WITHIN effectiveness specifications, which shall be established by the state licensing authority similar to the federal "Poison Prevention Packaging Act of 1970", 15 U.S.C. sec. 1471 et seq., for the number of openings and closings customary for its size and contents, which shall be determined by the state licensing authority.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(17.5) "RETAIL MARIJUANA ESTABLISHMENT OPERATOR" MEANS AN ENTITY OR PERSON THAT IS NOT AN OWNER AND THAT IS LICENSED TO PROVIDE PROFESSIONAL OPERATIONAL SERVICES TO A RETAIL MARIJUANA ESTABLISHMENT FOR DIRECT REMUNERATION FROM THE RETAIL MARIJUANA ESTABLISHMENT.

(21.5) "RETAIL MARIJUANA TRANSPORTER" MEANS AN ENTITY OR PERSON THAT IS LICENSED TO TRANSPORT RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCT FROM ONE RETAIL MARIJUANA ESTABLISHMENT TO ANOTHER RETAIL MARIJUANA ESTABLISHMENT AND TO TEMPORARILY STORE THE TRANSPORTED RETAIL MARIJUANA AND RETAIL MARIJUANA PRODUCTS AT ITS LICENSED PREMISES, BUT IS NOT AUTHORIZED TO SELL RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS UNDER ANY CIRCUMSTANCES.

SECTION 2. In Colorado Revised Statutes, 12-43.4-104, **amend** (3) as follows:

12-43.4-104. Applicability - retail marijuana. (3) As provided in section 16 (5) (f) of article XVIII of the state constitution, any local jurisdiction may enact ordinances or regulations governing the time, place, manner, and number of retail marijuana establishments, which may include a local licensing requirement, or may prohibit the operation of retail marijuana establishments through the enactment of an ordinance or through a referred or initiated measure. IF A COUNTY ACTS THROUGH AN INITIATED MEASURE, THE PROPONENTS SHALL SUBMIT A PETITION SIGNED BY NOT LESS THAN FIFTEEN PERCENT OF THE REGISTERED ELECTORS IN THE COUNTY.

SECTION 3. In Colorado Revised Statutes, **amend** 12-43.4-105 as follows:

12-43.4-105. Limited access areas. Subject to the provisions of section 12-43.4-701, a limited access area shall be a building, room, or other contiguous area upon the licensed premises where retail marijuana and retail marijuana products are cultivated, stored, weighed, packaged, or tested, under control of the licensee, with ~~ACCESS limited access~~ to only those persons licensed by the state licensing authority AND THOSE VISITORS ESCORTED BY A PERSON LICENSED BY THE STATE LICENSING AUTHORITY. All areas of ingress or egress to limited access areas shall be clearly identified as such by a sign as designated by the state licensing authority.

SECTION 4. In Colorado Revised Statutes, 12-43.4-202, **amend** (2) (d), (3) (a) (IV) (B), (3) (a) (IV) (C), (3) (a) (IV) (D), (3) (a) (IV) (E), (3) (a) (IV) (F), (3) (a) (VII), and (3) (a) (XV); **add** (3) (a) (XVII), (3) (a) (XVIII), (3)(a)(XIX), and (3) (f); and **repeal** (3) (b) (IV) and (3) (c) (II) as follows:

12-43.4-202. Powers and duties of state licensing authority - rules. (2) The state licensing authority has the authority to:

(d) Maintain the confidentiality of reports or other information obtained from a licensee ~~showing the sales volume or quantity of retail marijuana or retail marijuana products sold~~ CONTAINING ANY INDIVIDUALIZED DATA, INFORMATION, OR RECORDS RELATED TO THE LICENSEE OR ITS OPERATION, INCLUDING SALES INFORMATION, FINANCIAL RECORDS, TAX RETURNS, CREDIT REPORTS, CULTIVATION INFORMATION, TESTING RESULTS, AND SECURITY INFORMATION AND PLANS, or revealing any customer information, or any other records that are exempt from public inspection pursuant to state law. Such reports or other information may be used only for a

purpose authorized by this article or for any other state or local law enforcement purpose. Any customer information may be used only for a purpose authorized by this article.

(3) (a) Rules promulgated pursuant to paragraph (b) of subsection (2) of this section must include, but need not be limited to, the following subjects:

~~(IV) (B) Testing shall include, but not be limited to, analysis for residual solvents, poisons, or toxins; harmful chemicals; dangerous molds or mildew; filth; and harmful microbials such as E. Coli or salmonella and pesticides~~ TESTING MAY INCLUDE ANALYSIS FOR MICROBIAL AND RESIDUAL SOLVENTS AND CHEMICAL AND BIOLOGICAL CONTAMINANTS DEEMED TO BE PUBLIC HEALTH HAZARDS BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT BASED ON MEDICAL REPORTS AND PUBLISHED SCIENTIFIC LITERATURE.

~~(C) In the event that test results indicate the presence of quantities of any substance determined to be injurious to health, such products shall be immediately quarantined and immediate notification to the marijuana enforcement division shall be made. The adulterated product shall be documented and properly destroyed~~ THE LICENSEE SHALL IMMEDIATELY QUARANTINE THE PRODUCTS AND NOTIFY THE STATE LICENSING AUTHORITY. THE STATE LICENSING AUTHORITY SHALL GIVE THE LICENSEE AN OPPORTUNITY TO REMEDIATE THE PRODUCT IF THE TEST INDICATED THE PRESENCE OF A MICROBIAL. IF THE LICENSEE IS UNABLE TO REMEDIATE THE PRODUCT, THE LICENSEE SHALL DOCUMENT AND PROPERLY DESTROY THE ADULTERATED PRODUCT.

~~(D) Testing shall also verify THC potency representations for correct labeling and create process validation for edible marijuana products and other marijuana products in multi-serving packages for a ten milligram serving in a one hundred milligram package, including homogeneity, potency, solvents, and pesticides~~ TESTING SHALL ALSO VERIFY THC POTENCY REPRESENTATIONS AND HOMOGENEITY FOR CORRECT LABELING AND PROVIDE A CANNABINOID PROFILE FOR THE MARIJUANA PRODUCT. An individual marijuana piece of ten milligrams or less that has gone through process validation is exempt from continued homogeneity testing. Homogeneity testing for one hundred milligram servings may utilize validation measures.

(E) THE STATE LICENSING AUTHORITY SHALL DETERMINE AN ACCEPTABLE VARIANCE FOR POTENCY REPRESENTATIONS AND PROCEDURES TO ADDRESS POTENCY MISREPRESENTATIONS. ~~The agency~~ STATE LICENSING AUTHORITY shall determine an acceptable variance of at least plus or minus fifteen percent for potency representations and procedures to address potency misrepresentations.

(F) ~~The agency~~ STATE LICENSING AUTHORITY shall determine the protocols and frequency of marijuana testing by licensees.

(VII) Labeling requirements for retail marijuana and retail marijuana products sold by a retail marijuana establishment that are at least as stringent as imposed by section 25-4-1614 (3) (a), C.R.S., and include but are not limited to:

(A) ~~The license number of the retail marijuana cultivation license;~~

- (B) ~~The license number of the retail marijuana store;~~
- (C) ~~An identity statement and standardized graphic symbol;~~
- (D) ~~The batch number;~~
- (E) ~~A net weight statement;~~
- (F) ~~THC potency and the potency of such other cannabinoids or other chemicals, including but not limited to CBD, as determined relevant by the state licensing authority;~~
- (G) ~~A list of the nonorganic pesticides, fungicides, herbicides, and solvents used during cultivation or production;~~
- (H) ~~A statement to the effect of: "This product contains marijuana and was cultivated or produced without regulatory oversight for health, safety, or efficacy, and there may be health risks associated with the consumption of the product.";~~
- (I) Warning labels;
- (J) ~~Solvents used in the extraction process;~~
- (K) Amount of THC per serving and the number of servings per package for marijuana products;
- (L) ~~A list of ingredients and possible allergens for retail marijuana products;~~
- (M) ~~A recommended use by or expiration date for retail marijuana products;~~
- (N) ~~A nutritional fact panel for edible marijuana products; and~~
- (O) A universal symbol indicating the package contains marijuana; AND
- (P) THE POTENCY OF THE RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCT HIGHLIGHTED ON THE LABEL.
- (XV) Compliance with, enforcement of, or violation of any provision of this article, section 18-18-406.3 (7), C.R.S., or any rule issued pursuant to this article, including procedures and grounds for denying, suspending, fining, restricting, or revoking a state license issued pursuant to this article; ~~and~~
- (XVII) RETAIL MARIJUANA TRANSPORTER LICENSED BUSINESSES, INCLUDING REQUIREMENTS FOR DRIVERS, INCLUDING OBTAINING AND MAINTAINING A VALID COLORADO DRIVER'S LICENSE; INSURANCE REQUIREMENTS; ACCEPTABLE TIME FRAMES FOR TRANSPORT, STORAGE, AND DELIVERY; REQUIREMENTS FOR TRANSPORT VEHICLES; AND REQUIREMENTS FOR LICENSED PREMISES;
- (XVIII) RETAIL MARIJUANA ESTABLISHMENT OPERATOR LICENSEES, INCLUDING THE FORM AND STRUCTURE OF ALLOWABLE AGREEMENTS BETWEEN OPERATORS AND OWNERS; AND

(XIX) NON-ESCORTED VISITORS IN LIMITED ACCESS AREAS.

(b) Rules promulgated pursuant to paragraph (b) of subsection (2) of this section must also include the following subjects:

(IV) ~~Prohibition of misrepresentation and unfair practices;~~

(c) Rules promulgated pursuant to paragraph (b) of subsection (2) of this section must also include the following subjects, and the state licensing authority may seek the assistance of the department of public health and environment when necessary before promulgating the rules:

~~(II) Requiring that magazines whose primary focus is marijuana or marijuana businesses are only sold in retail marijuana stores or behind the counter in establishments where persons under twenty-one years of age are present;~~

(f) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT MATTERS RELATED TO LABELING AS REGULATED PURSUANT TO SUBPARAGRAPH (VII) OF PARAGRAPH (a) OF THIS SUBSECTION (3) AND SUBPARAGRAPHS (V) AND (VI) OF PARAGRAPH (c) OF THIS SUBSECTION (3), PACKAGING AS REGULATED PURSUANT TO SUBPARAGRAPH (III) OF PARAGRAPH (c) OF THIS SUBSECTION (3), AND TESTING AS REGULATED PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (a) OF THIS SUBSECTION (3) ARE MATTERS OF STATEWIDE CONCERN, AND THE SOLE REGULATORY AUTHORITY FOR LABELING, PACKAGING, AND TESTING IS PURSUANT TO THIS SECTION.

SECTION 5. In Colorado Revised Statutes, 12-43.4-306, **amend** (1) (f) as follows:

12-43.4-306. Persons prohibited as licensees - definitions. (1) A license provided by this article shall not be issued to or held by:

(f) A person licensed pursuant to this article who, during a period of licensure, or who, at the time of application, has failed to:

~~(I) Provide a surety bond or~~ File any tax return related to a MEDICAL OR retail marijuana establishment; or

~~(II) Pay any taxes, interest, or penalties due the department of revenue~~ relating to a MEDICAL OR retail marijuana establishment;

SECTION 6. In Colorado Revised Statutes, 12-43.4-307, **repeal** (1) (a) as follows:

12-43.4-307. Restrictions for applications for new licenses. (1) The state licensing authority shall not approve an application for the issuance of a state license pursuant to this article:

~~(a) If the application for the license concerns a particular location that is the same as or within one thousand feet of a location for which, within the two years immediately preceding the date of the application, the state licensing authority denied an application for the same class of license due to the nature of the use or~~

~~other concern related to the location; or~~

SECTION 7. In Colorado Revised Statutes, 12-43.4-401, **amend** (1) (d); and **add** (1) (f), (1) (g), and (4) as follows:

12-43.4-401. Classes of licenses. (1) For the purpose of regulating the cultivation, manufacture, distribution, sale, and testing of retail marijuana and retail marijuana products, the state licensing authority in its discretion, upon receipt of an application in the prescribed form, may issue and grant to the applicant a license from any of the following classes, subject to the provisions and restrictions provided by this article:

- (d) Retail marijuana testing facility license; ~~and~~
- (f) RETAIL MARIJUANA TRANSPORT LICENSE; AND
- (g) RETAIL MARIJUANA BUSINESS OPERATOR LICENSE.

(4) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY, A LICENSED RETAIL CULTIVATION FACILITY OR A LICENSED RETAIL MARIJUANA PRODUCTS MANUFACTURER MAY COMPENSATE ITS EMPLOYEES USING PERFORMANCE-BASED INCENTIVES.

SECTION 8. In Colorado Revised Statutes, 12-43.4-402, **amend** (3) (a) (I); **add** (11); and **repeal** (3) (a) (II) as follows:

12-43.4-402. Retail marijuana store license - definitions. (3) (a) (I) A retail marijuana store may not sell more than one ounce of retail marijuana or its equivalent in retail marijuana products, including retail marijuana concentrate, EXCEPT FOR NON-EDIBLE, NON-PSYCHOACTIVE RETAIL MARIJUANA PRODUCTS, INCLUDING OINTMENTS, LOTIONS, BALMS, AND OTHER NON-TRANSDERMAL TOPICAL PRODUCTS during a single transaction to a person. ~~who has a valid identification card showing that the person is a resident of the state of Colorado.~~

~~(II) A retail marijuana store may not sell more than a quarter of an ounce of retail marijuana or its equivalent in retail marijuana products, including retail marijuana concentrate, during a single transaction to a person who does not have a valid identification card showing that the person is a resident of the state of Colorado.~~

(11) A DISPLAY CASE CONTAINING MARIJUANA CONCENTRATE MUST INCLUDE THE POTENCY OF THE MARIJUANA CONCENTRATE NEXT TO THE NAME OF THE PRODUCT.

SECTION 9. In Colorado Revised Statutes, **add** 12-43.4-406 and 12-43.4-407 as follows:

12-43.4-406. Retail marijuana transport license. (1) A RETAIL MARIJUANA TRANSPORT LICENSE MAY BE ISSUED TO A PERSON WHO ONLY TEMPORARILY STORES AND TRANSPORTS RETAIL MARIJUANA THROUGHOUT THE STATE FOR OTHER ENTITIES LICENSED PURSUANT TO THIS PART 4.

(2) A RETAIL MARIJUANA TRANSPORT LICENSEE SHALL MAINTAIN A LICENSED

PREMISES FOR THE TEMPORARY STORAGE OF RETAIL MARIJUANA.

(3) A RETAIL MARIJUANA TRANSPORT LICENSEE SHALL HAVE ACCESS TO AND SHALL USE THE SEED-TO-SALE TRACKING SYSTEM DEVELOPED PURSUANT TO SECTION 12-43.4-202 (1) TO CREATE SHIPPING MANIFESTS DOCUMENTING THE TRANSPORT OF RETAIL MARIJUANA THROUGHOUT THE STATE.

(4) AN ENTITY LICENSED PURSUANT TO THIS PART 4 MAY TRANSPORT ITS OWN RETAIL MARIJUANA OR RETAIL MARIJUANA PRODUCTS WITHOUT POSSESSING A LICENSE PURSUANT TO THIS SECTION.

12-43.4-407. Retail marijuana business operator license. A RETAIL MARIJUANA BUSINESS OPERATOR LICENSE MAY BE ISSUED TO A PERSON WHO OPERATES A RETAIL MARIJUANA ESTABLISHMENT LICENSED PURSUANT TO THIS ARTICLE, FOR AN OWNER LICENSED PURSUANT TO THIS ARTICLE, AND WHO MAY RECEIVE A PORTION OF THE PROFITS AS COMPENSATION.

SECTION 10. In Colorado Revised Statutes, 12-43.4-1001, **amend** (1) as follows:

12-43.4-1001. Sunset review - article repeal. (1) This article is repealed, effective ~~July 1, 2016~~ SEPTEMBER 1, 2019.

SECTION 11. In Colorado Revised Statutes, 18-18-406, **add** (5.5) as follows:

18-18-406. Offenses relating to marijuana and marijuana concentrate. (5.5) (a) IT IS UNLAWFUL FOR A PERSON TO TRANSFER MARIJUANA OR MARIJUANA CONCENTRATE AT NO COST TO A PERSON IF THE TRANSFER IS IN ANY WAY RELATED TO REMUNERATION FOR ANY OTHER SERVICE OR PRODUCT.

(b) A VIOLATION OF THIS SUBSECTION (5.5) IS A LEVEL 1 DRUG MISDEMEANOR.

SECTION 12. In Colorado Revised Statutes, 24-34-104, **repeal** (47) (d); and **add** (50.5) (o) as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (47) The following agencies, functions, or both, shall terminate on July 1, 2016:

(d) ~~The regulation of persons licensed pursuant to article 43.4 of title 12, C.R.S.~~

(50.5) The following agencies, functions, or both, terminate on September 1, 2019:

(o) THE REGULATION OF PERSONS LICENSED PURSUANT TO ARTICLE 43.4 OF TITLE 12, C.R.S.

SECTION 13. Appropriation. (1) For the 2016-17 state fiscal year, \$132,251 is appropriated to the department of revenue. This appropriation is from the marijuana cash fund created in section 12-43.3-501 (1) (a), C.R.S. To implement this act, the department may use this appropriation as follows:

(a) \$108,512 for marijuana enforcement, which amount is based on an assumption that the department will require an additional 2.0 FTE;

(b) \$14,238 for CITA annual maintenance and support; and

(c) \$9,501 for the purchase of legal services.

(2) For the 2016-17 state fiscal year, \$9,501 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of revenue under paragraph (c) of subsection (1) of this section. To implement this act, the department of law may use this appropriation to provide legal services for the department of revenue.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 10, 2016