

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 20-1023.01 Michael Dohr x4347

HOUSE BILL 20-1328

HOUSE SPONSORSHIP

Valdez A. and Esgar,

SENATE SPONSORSHIP

Rodriguez and Bridges,

House Committees

Rural Affairs & Agriculture
Finance

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CONTINGENCY PLANS FOR OUTDOOR MARIJUANA**
102 **CULTIVATION FACILITIES WHEN THERE IS AN EXTRAORDINARY**
103 **THREAT TO OPERATIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

By January 1, 2021, the bill requires the marijuana state licensing authority to promulgate rules regarding the process and procedure for filing and approving contingency plans for outdoor cultivation facilities when there is a threat to operations due to an adverse weather event or other catastrophe. A medical marijuana cultivation facility or retail

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

marijuana cultivation facility may file a contingency plan with the state licensing authority and, if the plan is approved, may follow the plan if there is an adverse weather event or other catastrophe.

Prior to January 1, 2021, a medical marijuana cultivation facility licensee or retail marijuana cultivation facility licensee that cultivates marijuana outdoors may take any reasonable and necessary action to prevent or ameliorate crop loss due to an adverse weather event. The action is not a violation of state or local law or regulations unless the state licensing authority or local authorities can show that the action was not reasonable and necessary to prevent or ameliorate crop loss due to an adverse weather event.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) Since creating a regulatory framework for medical and retail
5 marijuana sales, some licensed cultivators have grown marijuana
6 outdoors;

7 (b) Like any other crops that are grown outdoors, marijuana is
8 susceptible to adverse weather events;

9 (c) Under current law, measures that could be taken to prevent
10 loss or damage to marijuana crops due to adverse weather events are
11 unavailable to cultivators because those measures could violate state or
12 local regulations, which could result in a revocation of licensure; and

13 (d) Not only do the cultivators lose their crops in these cases, but
14 the state and local governments lose tax revenue that would have been
15 generated by the sale of the marijuana lost to an adverse weather event.

16 (2) Therefore, the general assembly determines that is necessary
17 to provide marijuana cultivators with a way to protect their crops from an
18 adverse weather event without jeopardizing their licenses.

19 **SECTION 2.** In Colorado Revised Statutes, 44-10-103, **add** (6.5)

1 as follows:

2 **44-10-103. Definitions.** As used in this article 10, unless the
3 context otherwise requires:

4 (6.5) "ADVERSE WEATHER EVENT" MEANS:

5 (a) DAMAGING WEATHER, SUCH AS DROUGHT, FREEZE, HAIL,
6 EXCESSIVE MOISTURE, EXCESSIVE WIND, OR TORNADO; OR

7 (b) AN ADVERSE NATURAL OCCURRENCE, SUCH AS EARTHQUAKE
8 OR FLOOD.

9
10 **SECTION 3.** In Colorado Revised Statutes, 44-10-203, **amend**
11 (2)(ff)(VII) and (2)(gg)(VI); and **add** (2)(hh) and (9) as follows:

12 **44-10-203. State licensing authority - rules. (2) Mandatory**
13 **rule-making.** Rules promulgated pursuant to section 44-10-202 (1)(c)
14 must include but need not be limited to the following subjects:

15 (ff) The implementation of marijuana hospitality and retail
16 marijuana hospitality and sales business licenses, including but not
17 limited to:

18 (VII) Rules to ensure compliance with section 42-4-1305.5; ~~and~~

19 (gg) For marijuana hospitality businesses that are mobile,
20 regulations including but not limited to:

21 (VI) Proper ventilation within the vehicle; AND

22 (hh) BY JANUARY 1, 2021, THE PROCESS, PROCEDURES, AND
23 REQUIREMENTS FOR CONTINGENCY PLANS FOR OUTDOOR CULTIVATION
24 FACILITIES TO PREVENT OR AMELIORATE CROP LOSS DUE TO AN ADVERSE
25 WEATHER EVENT.

26 (9) (a) THE STATE LICENSING AUTHORITY MAY ESTABLISH
27 PROCEDURES FOR THE CONDITIONAL ISSUANCE OF AN EMPLOYEE LICENSE

1 IDENTIFICATION CARD AT THE TIME OF APPLICATION.

2 (b) (I) THE STATE LICENSING AUTHORITY'S ISSUANCE OF AN
3 EMPLOYEE LICENSE IDENTIFICATION CARD PURSUANT TO THIS SUBSECTION
4 (9) SHALL BE BASED ON THE RESULTS OF AN INITIAL INVESTIGATION THAT
5 DEMONSTRATE THE APPLICANT IS QUALIFIED TO HOLD SUCH LICENSE. THE
6 EMPLOYEE LICENSE APPLICATION FOR WHICH AN EMPLOYEE LICENSE
7 IDENTIFICATION CARD WAS ISSUED PURSUANT TO THIS SUBSECTION (9)
8 REMAINS SUBJECT TO DENIAL PENDING THE COMPLETE RESULTS OF THE
9 APPLICANT'S INITIAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD
10 CHECK.

11 (II) RESULTS OF A FINGERPRINT-BASED CRIMINAL HISTORY RECORD
12 CHECK THAT DEMONSTRATE AN APPLICANT POSSESSING AN EMPLOYEE
13 LICENSE IDENTIFICATION CARD PURSUANT TO THIS SUBSECTION (9) IS NOT
14 QUALIFIED TO HOLD A LICENSE ISSUED UNDER THIS ARTICLE 10 ARE
15 GROUNDS FOR DENIAL OF THE EMPLOYEE LICENSE APPLICATION. IF THE
16 EMPLOYEE LICENSE APPLICATION IS DENIED, THE APPLICANT SHALL
17 RETURN THE EMPLOYEE LICENSE IDENTIFICATION CARD TO THE STATE
18 LICENSING AUTHORITY WITHIN A TIME PERIOD ESTABLISHED BY RULE.

19 **SECTION 4.** In Colorado Revised Statutes, 44-10-502, **add** (9)
20 as follows:

21 **44-10-502. Medical marijuana cultivation facility license -**
22 **rules - definitions - repeal.** (9) (a) (I) A MEDICAL MARIJUANA
23 CULTIVATION FACILITY LICENSEE THAT CULTIVATES MEDICAL MARIJUANA
24 OUTDOORS MAY TAKE [REDACTED] REASONABLE AND NECESSARY ACTION
25 PURSUANT TO A WRITTEN CONTINGENCY PLAN MAINTAINED ON THE
26 LICENSED PREMISES AND SENT TO THE STATE LICENSING AUTHORITY TO
27 PREVENT OR AMELIORATE CROP LOSS DUE TO AN ADVERSE WEATHER

1 EVENT. THE ACTION IS NOT A VIOLATION OF STATE LAW OR RULES OR
2 LOCAL LAW OR REGULATIONS UNLESS THE STATE LICENSING AUTHORITY
3 OR LOCAL AUTHORITIES CAN SHOW THAT THE ACTION WAS NOT
4 REASONABLE AND NECESSARY TO PREVENT OR AMELIORATE CROP LOSS
5 DUE TO AN ADVERSE WEATHER EVENT.

6 (II) IT IS NOT A VIOLATION OF THIS ARTICLE 10, OR RULES
7 PROMULGATED THERETO, OR LOCAL ORDINANCES OR RULES FOR A
8 LICENSEE TO TAKE ACTION CONSISTENT WITH A WRITTEN CONTINGENCY
9 PLAN IF:

10 (A) THE LICENSEE PROVIDES THE STATE AND LOCAL LICENSING
11 AUTHORITIES THE WRITTEN CONTINGENCY PLAN AND NOTICE OF ACTION
12 PURSUANT TO THAT CONTINGENCY PLAN WITHIN FORTY-EIGHT HOURS OF
13 THE ACTION;

14 (B) THE LICENSEE IDENTIFIES THE ADVERSE WEATHER EVENT,
15 INCLUDING DOCUMENTS REASONABLY REQUIRED OR REQUESTED BY THE
16 STATE LICENSING AUTHORITY TO VERIFY THE ADVERSE WEATHER EVENT;

17 (C) THE LICENSEE'S ACTIONS ARE DIRECTLY RELATED TO THE
18 ADVERSE WEATHER EVENT;

19 (D) ALL REGULATED MARIJUANA IS ACCURATELY IDENTIFIED IN
20 THE SEED-TO-SALE TRACKING SYSTEM WITHIN SEVEN DAYS OF THE
21 ADVERSE WEATHER EVENT; AND

22 (E) THE ACTION DOES NOT EXCEED THIRTY DAYS OR
23 ALTERNATIVELY THE LICENSEE COMPLIES WITH ALL STATUTES AND RULES
24 WITHIN THIRTY DAYS OF THE ADVERSE WEATHER EVENT.

25 (III) THIS SUBSECTION (9)(a) IS REPEALED, EFFECTIVE JANUARY 1,
26 2021.

27 (b) BEGINNING JANUARY 1, 2021, A MEDICAL MARIJUANA

1 CULTIVATION FACILITY LICENSEE THAT CULTIVATES MEDICAL MARIJUANA
2 OUTDOORS MAY FILE A CONTINGENCY PLAN FOR ITS OUTDOOR
3 CULTIVATION OPERATION WHEN THERE IS [REDACTED] AN ADVERSE WEATHER
4 EVENT. IF THE LICENSEE DOES FILE A CONTINGENCY PLAN, THE LICENSEE
5 SHALL ALSO SUBMIT A COPY OF THE PLAN TO THE LOCAL JURISDICTION
6 WHERE THE LICENSEE OPERATES. IF THE CONTINGENCY PLAN IS APPROVED
7 BY THE STATE LICENSING AUTHORITY, THE MEDICAL MARIJUANA
8 CULTIVATION FACILITY LICENSEE MAY FOLLOW THE CONTINGENCY PLAN
9 IN THE CASE OF AN ADVERSE WEATHER EVENT.

10 (c) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT
11 THE EXISTING LAND-USE AUTHORITY AND ZONING AUTHORITY OF ANY
12 LOCAL GOVERNMENT.

13 SECTION 5. In Colorado Revised Statutes, 44-10-602, add (13)
14 as follows:

15 44-10-602. Retail marijuana cultivation facility license - rules
16 - definitions - repeal. (13) (a) (I) A RETAIL MARIJUANA CULTIVATION
17 FACILITY LICENSEE THAT CULTIVATES RETAIL MARIJUANA OUTDOORS MAY
18 TAKE [REDACTED] REASONABLE AND NECESSARY ACTION TO PREVENT OR
19 AMELIORATE CROP LOSS DUE TO AN ADVERSE WEATHER EVENT. THE
20 ACTION IS NOT A VIOLATION OF STATE LAW OR RULES OR LOCAL LAW OR
21 REGULATIONS UNLESS THE STATE LICENSING AUTHORITY OR LOCAL
22 AUTHORITIES CAN SHOW THAT THE ACTION WAS NOT REASONABLE AND
23 NECESSARY TO PREVENT OR AMELIORATE CROP LOSS DUE TO AN ADVERSE
24 WEATHER EVENT.

25 (II) THIS SUBSECTION (13)(a) IS REPEALED, EFFECTIVE JANUARY
26 1, 2021.

27 (b) BEGINNING JANUARY 1, 2021, A RETAIL MARIJUANA

1 CULTIVATION FACILITY LICENSEE THAT CULTIVATES RETAIL MARIJUANA
2 OUTDOORS MAY FILE A CONTINGENCY PLAN FOR ITS OUTDOOR
3 CULTIVATION OPERATION WHEN THERE IS AN ADVERSE WEATHER
4 EVENT. IF THE LICENSEE DOES FILE A CONTINGENCY PLAN, THE LICENSEE
5 SHALL ALSO SUBMIT A COPY OF THE PLAN TO THE LOCAL JURISDICTION
6 WHERE THE LICENSEE OPERATES. IF THE CONTINGENCY PLAN IS APPROVED
7 BY THE STATE LICENSING AUTHORITY, THE RETAIL MARIJUANA
8 CULTIVATION FACILITY LICENSEE MAY FOLLOW THE CONTINGENCY PLAN
9 IN THE CASE OF AN ADVERSE WEATHER EVENT.

10 (c) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AFFECT
11 THE EXISTING LAND-USE AUTHORITY AND ZONING AUTHORITY OF ANY
12 LOCAL GOVERNMENT.

13 **SECTION 6. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, or safety.