

First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

REDRAFT  
2.14.17

Double underlining  
denotes changes from  
prior draft

DRAFT

LLS NO. 17-0653.02 Michael Dohr x4347

HOUSE BILL

HOUSE SPONSORSHIP

Becker K.,

SENATE SPONSORSHIP

(None),

**BILL TOPIC:** "Prevent Marijuana Diversion To Illegal Market"

**DEADLINES:** Finalize by: JAN 3, 2017 File by: JAN 6, 2017

A BILL FOR AN ACT

101 CONCERNING MEASURES TO STOP DIVERSION OF LEGAL MARIJUANA TO  
102 THE ILLEGAL MARKET.

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>.)*

The bill places a cap on the number of plants that can be possessed or grown on a residential property at 12 plants in the aggregate, 6 or fewer being mature. A medical marijuana patient or primary caregiver who cultivates more than 12 plants must cultivate the plants in compliance with applicable city, county, or city and county law.

The bill requires a patient or primary caregiver cultivating medical marijuana to comply with all local laws, regulations, and zoning

*Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.*

requirements. The bill requires a primary caregiver who cultivates medical marijuana for patients to use a form that shows the date and time of the transfers of medical marijuana to the patient signed by the both the caregiver and patient.

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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) Through citizen-initiated measures, Colorado provided its  
5 citizens protections for the cultivation and use of medical marijuana in  
6 2000 and recreational marijuana in 2012;

7 (b) One of the reasons behind these citizen-initiated measures was  
8 to erode the black market for marijuana in Colorado;

9 (c) The constitutional provisions for both medical marijuana and  
10 recreational marijuana permit Colorado citizens to cultivate marijuana at  
11 home;

12 (d) Although the authority for marijuana cultivation for both  
13 medical and recreational marijuana is generally limited to six plants per  
14 person, there are some provisions that can allow for more plants to be  
15 grown at one residence. In the medical marijuana code, a patient can grow  
16 an "extended plant count" if his or her physician, who makes the medical  
17 marijuana recommendation, also determines the patient has a medical  
18 necessity for more than six plants. Both the medical marijuana and  
19 recreational constitutional provisions allow a citizen to assist another  
20 citizen in the cultivation of marijuana.

21 (e) The extended plant count and the assist provisions have  
22 created a situation in which a person can cultivate a large quantity of  
23 marijuana in a residential home relying either on an extended plant count

1 or assisting others by cultivating their plants for them in one residential  
2 location;

3 (f) These large-scale cultivation sites in residential areas create a  
4 public safety issue and are a public nuisance. A site in a residential home  
5 can overburden the home's electrical system, resulting in excessive power  
6 use and creating a fire hazard that puts first responders at risk. A site can  
7 also cause water damage and mold in the residential home. A site in a  
8 residential home can produce a noxious smell that limits the ability of  
9 others who live in the area to enjoy the quiet of their homes. Often the site  
10 is a rental home, and the renters cause significant damage to the home by  
11 retrofitting the home to be used as a large-scale cultivation site. When a  
12 residential home is used for a large-scale cultivation site, it often lowers  
13 the property value of the home and thus the property value of the rest of  
14 the neighborhood. Finally, a site in a residential area can serve as a target  
15 for criminal activity, creating an untenable public safety hazard.

16 (g) These large-scale cultivation sites in residential areas have  
17 been used to divert marijuana out of state and to children.

18 (2) Therefore, the general assembly determines that it is necessary  
19 to impose reasonable limits on residential marijuana cultivation that do  
20 not encroach on the protections afforded Colorado citizens in the  
21 Colorado constitution.

22 **SECTION 2.** In Colorado Revised Statutes, 18-18-406, **amend**  
23 (3) as follows:

24 **18-18-406. Offenses relating to marijuana and marijuana**  
25 **concentrate - definition.** (3) (a) (I) It is unlawful for a person to  
26 knowingly cultivate, grow, or produce a marijuana plant or knowingly  
27 allow a marijuana plant to be cultivated, grown, or produced on land that

1 the person owns, occupies, or controls.

2 (II) (A) REGARDLESS OF WHETHER THE PLANTS ARE FOR MEDICAL  
3 OR RECREATIONAL USE, IT IS UNLAWFUL FOR A PERSON TO, ON OR IN A  
4 RESIDENTIAL PROPERTY, KNOWINGLY CULTIVATE, GROW, OR PRODUCE  
5 MORE THAN TWELVE MARIJUANA PLANTS IN THE AGGREGATE, WITH SIX OR  
6 FEWER BEING MATURE; OR KNOWINGLY ALLOW MORE THAN TWELVE  
7 MARIJUANA PLANTS IN THE AGGREGATE, WITH SIX OR FEWER BEING  
8 MATURE, TO BE CULTIVATED, GROWN, OR PRODUCED.

9 (B) A PERSON MAY ASSERT AN AFFIRMATIVE DEFENSE TO  
10 SUBSECTION (3)(a)(II)(A) OF THIS SECTION WHEN APPLICABLE COUNTY,  
11 MUNICIPALITY, OR CITY AND COUNTY LAW EXPRESSLY PERMITS THE  
12 CULTIVATION, GROWTH, OR PRODUCTION OF MORE THAN TWELVE  
13 MARIJUANA PLANTS IN A RESIDENTIAL PROPERTY; AND THE CULTIVATION,  
14 GROWTH, OR PRODUCTION OF MORE THAN TWELVE MARIJUANA PLANTS IS  
15 IN AN ENCLOSED AND LOCKED SPACE.

16 (III) A person who violates the provisions of ~~this subsection (3)~~  
17 SUBSECTION (3)(a)(I) OF THIS SECTION commits:

18 ~~(f)~~ (A) A level 3 drug felony if the offense involves more than  
19 thirty plants;

20 ~~(ff)~~ (B) A level 4 drug felony if the offense involves more than six  
21 but not more than thirty plants; or

22 ~~(HH)~~ (C) A level 1 drug misdemeanor if the offense involves not  
23 more than six plants.

24 (IV) A PERSON WHO VIOLATES THE PROVISIONS OF SUBSECTION  
25 (3)(a)(II)(A) OF THIS SECTION COMMITS:

26 (A) A LEVEL 3 DRUG FELONY IF THE OFFENSE INVOLVES MORE  
27 THAN THIRTY PLANTS; OR

1           (B) A LEVEL 4 DRUG FELONY IF THE OFFENSE INVOLVES MORE  
2 THAN TWELVE BUT NOT MORE THAN THIRTY PLANTS.

3           (b) It is not a violation of this subsection (3) if:

4           (I) The person is lawfully cultivating medical marijuana pursuant  
5 to IN COMPLIANCE WITH the authority granted in section 14 of article  
6 XVIII of the state constitution in an enclosed and locked space.

7           (II) The person is lawfully cultivating marijuana in an enclosed  
8 and locked space pursuant to IN COMPLIANCE WITH the authority granted  
9 in section 16 of article XVIII of the state constitution; except that, if the  
10 cultivation area is located in a residence and:

11           (A) A person under twenty-one years of age lives at the residence,  
12 the cultivation area itself must be enclosed and locked; and

13           (B) If no person under twenty-one years of age lives at the  
14 residence, the external locks of the residence constitutes an enclosed and  
15 locked space. If a person under twenty-one years of age enters the  
16 residence, the person must ensure that access to the cultivation site is  
17 reasonably restricted for the duration of that person's presence in the  
18 residence.

19           (c) FOR PURPOSES OF THIS SUBSECTION (3), "RESIDENTIAL  
20 PROPERTY" MEANS A SINGLE UNIT PROVIDING COMPLETE INDEPENDENT  
21 LIVING FACILITIES FOR ONE OR MORE PERSONS, INCLUDING PERMANENT  
22 PROVISIONS FOR LIVING, SLEEPING, EATING, COOKING, AND SANITATION,  
23 AND INCLUDES SINGLE ROOMING UNITS.

24           **SECTION 3.** In Colorado Revised Statutes, 25-1.5-106, **amend**  
25 (7)(e)(I)(A) and (8.6)(a)(I); and **add** (2)(e.3), (7)(g), (8.5)(a.5), and  
26 (8.5)(b.5) as follows:

27           **25-1.5-106. Medical marijuana program - powers and duties**

1 **of state health agency - rules - medical review board - medical**  
2 **marijuana program cash fund - subaccount - created - repeal.**

3 (2) **Definitions.** In addition to the definitions set forth in section 14 (1)  
4 of article XVIII of the state constitution, as used in this section, unless the  
5 context otherwise requires:

6 (e.3) "RESIDENTIAL PROPERTY" MEANS A SINGLE UNIT PROVIDING  
7 COMPLETE INDEPENDENT LIVING FACILITIES FOR ONE OR MORE PERSONS,  
8 INCLUDING PERMANENT PROVISIONS FOR LIVING, SLEEPING, EATING,  
9 COOKING, AND SANITATION, AND INCLUDES SINGLE ROOMING UNITS.

10 (7) **Primary caregivers.** (e) (I) (A) In order to be a primary  
11 caregiver who cultivates medical marijuana for his or her patients or  
12 transports medical marijuana for his or her patients, he or she shall also  
13 register with the state licensing authority AND COMPLY WITH ALL LOCAL  
14 LAWS, REGULATIONS, AND ZONING AND USE RESTRICTIONS. A person may  
15 not register as a primary caregiver if he or she is licensed as a medical  
16 marijuana business as described in part 4 of article 43.3 of title 12,  
17 ~~€R.S.~~, or a retail marijuana business as described in part 4 of article 43.4  
18 of title 12. ~~€R.S.~~ An employee, contractor, or other support staff  
19 employed by a licensed entity pursuant to article 43.3 or 43.4 of title 12,  
20 ~~€R.S.~~, or working in or having access to a restricted area of a licensed  
21 premises pursuant to article 43.3 or 43.4 of title 12, ~~€R.S.~~, may be a  
22 primary caregiver.

23 (g) IN ORDER TO BE A PRIMARY CAREGIVER WHO CULTIVATES  
24 MEDICAL MARIJUANA FOR HIS OR HER PATIENTS, HE OR SHE SHALL  
25 MAINTAIN, AT THE PREMISES WHERE HE OR SHE CULTIVATES MEDICAL  
26 MARIJUANA, A FORM CREATED BY THE STATE HEALTH AGENCY THAT  
27 SHOWS THE DATE AND TIME OF EACH TRANSFER OF MEDICAL MARIJUANA

1 FROM THE CAREGIVER TO HIS OR HER PATIENTS AND THE QUANTITY OF  
2 MEDICAL MARIJUANA TRANSFERRED DURING EACH TRANSFER. EACH  
3 TRANSFER SHALL BE SWORN TO BY THE CAREGIVER AND PATIENT BY  
4 SIGNATURE UNDER PENALTY OF PERJURY. THE PRIMARY CAREGIVER SHALL  
5 PROVIDE A COPY OF THE FORM TO A LAW ENFORCEMENT OFFICER OR THE  
6 STATE HEALTH AGENCY UPON REQUEST OR PERMIT A LAW ENFORCEMENT  
7 OFFICER OR THE STATE HEALTH AGENCY TO INSPECT THE FORM.

8 **(8.5) Encourage patient voluntary registration - plant limits.**

9 (a.5) UNLESS OTHERWISE EXPRESSLY PROVIDED BY LOCAL LAW, A  
10 PATIENT SHALL NOT POSSESS AT OR CULTIVATE ON A RESIDENTIAL  
11 PROPERTY MORE THAN TWELVE PLANTS WITH SIX OR FEWER BEING  
12 MATURE, REGARDLESS OF THE NUMBER OF PERSONS RESIDING, EITHER  
13 TEMPORARILY OR PERMANENTLY, AT SUCH PROPERTY. A PATIENT WHO  
14 CULTIVATES MORE THAN TWELVE MARIJUANA PLANTS SHALL LOCATE HIS  
15 OR HER CULTIVATION OPERATION ON A PROPERTY, OTHER THAN A  
16 RESIDENTIAL PROPERTY, WHERE MARIJUANA CULTIVATION IS ALLOWED BY  
17 LOCAL LAW OR ON A RESIDENTIAL PROPERTY IF ALLOWED BY LOCAL LAW  
18 AND SHALL COMPLY WITH ANY APPLICABLE LOCAL LAW REQUIRING  
19 DISCLOSURE OF THE LOCATION OF THE CULTIVATION OPERATION. THE  
20 CULTIVATION OPERATIONS ARE SUBJECT TO ANY COUNTY AND MUNICIPAL  
21 BUILDING AND PUBLIC HEALTH INSPECTION REQUIRED BY LOCAL LAW.

22 (b.5) A PATIENT WHO CULTIVATES HIS OR HER OWN MEDICAL  
23 MARIJUANA PLANTS SHALL COMPLY WITH ALL LOCAL LAWS, REGULATIONS,  
24 AND ZONING AND USE RESTRICTIONS.

25 **(8.6) Primary caregivers plant limits - exceptional**  
26 **circumstances.** (a) (I) (A) A primary caregiver shall not cultivate,  
27 transport, or possess more than thirty-six plants unless the primary

1 caregiver has one or more patients who, based on medical necessity, have  
2 an extended plant count.

3 (B) UNLESS OTHERWISE EXPRESSLY PROVIDED BY LOCAL LAW, A  
4 PRIMARY CAREGIVER SHALL NOT POSSESS AT OR CULTIVATE ON A  
5 RESIDENTIAL PROPERTY MORE THAN TWELVE PLANTS WITH SIX OR FEWER  
6 BEING MATURE, REGARDLESS OF THE NUMBER OF PERSONS RESIDING,  
7 EITHER TEMPORARILY OR PERMANENTLY, AT SUCH PROPERTY. ANY  
8 PRIMARY CAREGIVER WHO CULTIVATES MORE THAN TWELVE MARIJUANA  
9 PLANTS SHALL LOCATE HIS OR HER CULTIVATION OPERATION ON A  
10 PROPERTY, OTHER THAN A RESIDENTIAL PROPERTY, WHERE MARIJUANA  
11 CULTIVATION IS ALLOWED BY LOCAL LAW OR ON A RESIDENTIAL PROPERTY  
12 IF ALLOWED BY LOCAL LAW AND SHALL COMPLY WITH ANY APPLICABLE  
13 LOCAL LAW REQUIRING DISCLOSURE OF THE LOCATION OF THE  
14 CULTIVATION OPERATION. THE CULTIVATION OPERATIONS ARE SUBJECT TO  
15 ANY COUNTY AND MUNICIPAL BUILDING AND PUBLIC HEALTH INSPECTION  
16 REQUIRED BY LOCAL LAW.

17 **SECTION 4. Effective date - applicability.** This act takes effect  
18 July 1, 2017, and section 2 of this act applies to offenses committed on or  
19 after said date.

20 **SECTION 5. Safety clause.** The general assembly hereby finds,  
21 determines, and declares that this act is necessary for the immediate  
22 preservation of the public peace, health, and safety.