



COLORADO
Department of Revenue
Marijuana Enforcement Division

2021 Cannabis Legislation Summary
Department of Revenue, Marijuana Enforcement Division

Updated July 20, 2021

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HB21-1301 - Cannabis Outdoor Cultivation Measures (Petition Clause)

Title 35: Colorado Agriculture Code

- ❖ **New Definitions:** Creates New Defined Terms, including but not limited to:
 - "Cross-Pollination"
 - "Licensed Outdoor Marijuana Cultivation"
 - "Outdoor Cultivation"
 - "Registered Outdoor Hemp Cultivation"
 - "Volunteer Cannabis Plant"
- ❖ **Cross-Pollination Work Group:** Requires the CDA Commissioner, in collaboration with the DOR State Licensing Authority, to convene a work group on or before **November 1, 2021**, to study and recommend options for minimizing cross-pollination.
 - **Subjects:** The study shall address the following:
 - How to minimize volunteer cannabis plants growing on areas of land that are not registered or licensed, regardless of its prior status as registered or licensed;
 - How best to share data and the proximity between locations of outdoor hemp and marijuana cultivations, including information for each outdoor cultivation regarding: (a) the potential for cross-pollination and (b) property size;
 - Best practices for preventing cross-pollination including: (a) An examination of the standards developed by agricultural organizations with expertise in industry-wide standards and practices; (b) Recommendations from subject-matter experts; and (c) If available, a review of practices developed by the hemp center of excellence; and
 - The feasibility of conducting and financing field studies to examine cross-pollination between outdoor cultivations and areas of land with volunteer cannabis plants.
 - **Membership:** Requires members to be appointed on or before **October 15, 2021** and efforts to include representation of a diverse cross-section of members.
 - Requires the chairs of the House and Senate Agriculture Committees to jointly appoint the following parties:
 - Two members from affected licensed marijuana cultivations;
 - One geneticist with expertise in cannabis breeding;
 - One scientist or agronomist with expertise in cross-pollination;
 - Two members from software companies that service the agricultural industry;

- Two members from businesses in the state with experience growing hemp from feminized seeds or clones primarily for cannabinoid production;
 - Two members representing companies with expertise in agricultural surveying;
 - Two members from businesses in the state with experience in the development of seed that is certified by the association of official seed certifying agencies; and
 - Two members from businesses in the state with experience in growing hemp grain and fiber varieties.
- Requires the DOR State Licensing Authority to appoint four (4) members:
 - Two with expertise in cultivation regulations; and
 - Two representing an outdoor cultivation with expertise in cannabis genetics.
 - **Report:** Restricts the working group's recommendations from including mandates on the type, location, or timing of any crop planting. Requires submission of a report on or before **November 1, 2022**, to the House and Senate Agriculture committees, informing of the work group's findings and recommendations. Also requires the report to be posted on the Departments' websites.

Title 44: Colorado Marijuana Code

- ❖ **Tax and Wholesale Cultivation Work Group:** Requires the State Licensing Authority, in collaboration with the Governor's special advisor and legal counsel, to convene a work group on or before **November 1, 2021**, to examine existing rules and tax laws that apply to the state's wholesale marijuana cultivation market.
 - **Subjects:** The work group is required to explore options on how the existing rules and tax laws could be amended to better position businesses in the state to be competitive if marijuana is legalized under federal law.
 - **Report:** Requires submission of a report on or before **June 1, 2022**, informing of the work group's findings and recommendations, which may include legislative recommendations.
- ❖ **New Definition:** Creates a new defined term for "**Adverse Weather Event**" - (a) Damaging weather, which involves a drought, a freeze, hail, excessive moisture, excessive wind, or a tornado; (b) An adverse natural occurrence, which involves an earthquake, wildfire, or flood; or (c) Any additional adverse weather event or adverse natural occurrence defined in rule.
- ❖ **Permissive Rulemaking:** Establishes permissive rulemaking authority on the following:
 - **Contingency Plans**, including the definition of outdoor cultivation, adverse weather event, or adverse natural occurrence and the process, procedures, requirements, and restrictions for contingency plans.
 - **Conditional Issuance of an Employee License** at the time of application, for which the State Licensing Authority must base its issuance on the results of an initial investigation that demonstrates the applicant is qualified to hold the license. Establishes that the application remains subject to denial pending the complete results of the applicant's initial fingerprint-based criminal history record check. Upon denial, requires the applicant to return the license within a time period established by rule.
- ❖ **Outdoor Cultivation Contingency Plans**
 - Beginning **January 1, 2022**, allows outdoor Medical or Retail Marijuana Cultivation Facility licensees to file a contingency plan for adverse weather events.

- Requires licensees to also submit a copy of the plan to the local licensing authority. The local licensing authority may enforce local land use and zoning laws and regulations regarding the contingency plan and may develop internal regulatory processes to evaluate contingency plans. On and after **January 1, 2023**, allows a local licensing authority to require that an applicant for a Retail or Medical Cultivation include a contingency plan with the application for the local licensing authority's review and approval.
 - Requires the State Licensing Authority to notify the local licensing authority of the approval.
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HB21-1216 - Marijuana Licensees Ability To Change Designation (Safety Clause)

Title 44: Colorado Marijuana Code

- ❖ **Cultivation Change in Designation from “Retail” to Medical**: Allows a Medical Marijuana Cultivation Facility to receive Transfers of Retail Marijuana from a Retail Marijuana Cultivation Facility in order to change its designation from “Retail” to “Medical” and subject to the following requirements and limitations:
 - The Medical Cultivation may only accept Retail Marijuana that has passed all required testing.
 - The Medical and Retail Cultivation must be co-located.
 - The Medical and Retail Cultivation must share at least one identical Controlling Beneficial Owner.
 - The Medical Cultivation must enter the designation change into METRC.
 - After the designation change, the Regulated Marijuana cannot be Transferred to the originating or any other Retail Marijuana Business or otherwise treated as Retail Marijuana.
 - Both the Medical and Retail Cultivation must remain at or under their respective inventory (plant count) limits before and after the designation change.
 - The designation change does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer/change. *See also 39-28.8-302(2)(b), C.R.S.*
- ❖ **Concentrate Change in Designation from “Retail” to Medical**: Allows a Medical Marijuana Products Manufacturer to receive Transfers of Retail Marijuana that has been extracted and is in a concentrated form from a Retail Marijuana Products Manufacturer in order to change its designation from “Retail” to “Medical” and subject to the following requirements and limitations:
 - The Medical Manufacturer may only accept Retail Marijuana Concentrate that has passed all required testing.
 - The Medical and Retail Manufacturer must be co-located.
 - The Medical and Retail Manufacturer must share at least one identical Controlling Beneficial Owner.
 - The Medical Manufacturer must enter the designation change into METRC.
 - After the designation change, the Regulated Marijuana cannot be Transferred to the originating or any other Retail Marijuana Business or otherwise treated as Retail Marijuana.
 - The designation change does not create a right to a refund of any Retail Marijuana excise tax incurred or paid prior to the Transfer/change. *See also 39-28.8-302(2)(b), C.R.S.*

- ❖ **Required Report on Change in Designation from “Medical” to “Retail”:** Requires the Department of Revenue’s State Licensing Authority to submit a report to the Colorado General Assembly on or before **January 3, 2022**. The report must analyze the feasibility of allowing changes in designation for regulated marijuana from “Medical” to “Retail.” The report must include the following:
 - Potential economic impacts, including potential impacts on Regulated Marijuana Businesses and on statewide and regional revenue;
 - Potential production management impacts;
 - Potential impacts on wholesale, patient, and consumer prices for the Medical and Retail Marijuana Markets;
 - Stakeholder perspectives, including support or opposition to future statutory changes to allow for changes in designation from “Medical” to “Retail”;
 - Potential impacts or challenges for local governments; and
 - Potential alternatives to allowing for changes in designation from “Medical” to “Retail.”
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HB21-1317 - Regulating Marijuana Concentrates

Title 23: Postsecondary Education Code

- ❖ **Colorado School of Public Health Research:** Directs the Colorado School of Public Health to Conduct a systematic review of all available scientific evidence-based research regarding the possible physical and mental health effects of high-potency THC marijuana and marijuana.
 - Must study the effect of high-potency THC marijuana on the developing brain and the effect of marijuana concentrates on physical and mental health.
 - Must systematically curate and synthesize existing research, identify evidence gaps, and identify new research that is needed to better understand the health implications of high-potency THC marijuana products and the specific THC potency levels and amounts at which various health concerns arise.
 - The research must be conducted independently without any predetermined outcomes or undue influence from any party.
 - Directs the Colorado School of Public Health to issue a report to the Colorado General Assembly by January 31, 2022 (an initial report of its findings must be provided by July 1, 2022).
 - Appropriates one-million dollars from the Marijuana Tax Cash Fund in FY 21-22, FY 22-23, and FY 23-24 to the School of Public Health for required research. See *also 39-28.8-501, C.R.S.*

Title 25: Colorado Public Health - Medical Marijuana Program

- ❖ **Amended Definition:** Changes the definition of “**Bona Fide Physician-Patient Relationship**” as follows:
 - Requires an in-person assessment of the patient’s medical and mental health history to determine whether the patient has a medical or mental health issue that could be exacerbated by the use of medical marijuana.
 - Requires the recommending physician to review records of the diagnosing physician or a licensed mental health provider if the recommending physician is not the patient’s primary care physician (does not require a mental health examination prior to making a recommendation).

- ❖ **New Physician Certification Requirements:** Requires a physician's certification for medical marijuana to include:
 - Date of issuance and effective date of the recommendation;
 - Patient name and address;
 - Authorizing physician's name, address, and federal DEA number;
 - Maximum THC potency level of medical marijuana recommended;
 - Recommended product, if any;
 - Patient's daily authorized quantity (if such quantity exceeds the maximum statutorily allowed amount for the patient's age);
 - Directions for use; and
 - Authorizing physician's signature.
- ❖ **New Physician Requirements & Restrictions:**
 - Directs physicians to maintain the medical records of a medical marijuana patient's visit, including a copy of the certification.
 - Requires physicians to respond to a treating physician's request for medical records to treat the patient with the patient's permission.
 - Prohibits physicians from charging a patient an additional fee to recommend an extended plant count for a recommendation, if it provides an exception to statutory restrictions.
 - Requires a physician who makes medical marijuana recommendations to complete continuing education regarding medical marijuana (at least five hours every two years).
- ❖ **Annual CDPHE Reporting Requirement - Medical Marijuana Recommendations:** Requires the Colorado Department of Public Health and Environment to report the following on or before January 31 of each year: the number of physicians making Medical Marijuana recommendations in the previous year and, without identifying the physician, the number of recommendations each physician made and the aggregate number of homebound patients ages 18 to 20 in the registry.
- ❖ **New Restrictions & Exemptions for Patients 18-20 Years of Age:** Provides that unless a patient possessed a registry card prior to age 18, patients age 18-20 are not eligible for the Medical Marijuana Program unless the following requirements are met:
 - A patient 18 - 20 years of age must receive certification from two physicians from separate medical practices that have diagnosed the patient as having a debilitating or disabling medical condition after an in-person consultation, and concluded that the patient might benefit from the medical use of marijuana;
 - Exception: The two physicians do **not** need to be from separate medical practices if the patient is homebound **or** if the patient had a medical marijuana card before age 18.
 - One of the physicians must explain the possible risks and benefits of the medical use of marijuana to the patient;
 - The physician must provide the patient with the written documentation specifying the patient's diagnosis and concluding that the patient might benefit from the medical use of marijuana; and
 - The patient attends follow-up appointments with one of the physicians every six months after the initial appointment.
- ❖ **Annual CDPHE Reporting Requirement - Emergency Room Data:** Directs the Department of Public Health and Environment to create a de-identified report from hospital and emergency room discharge data of patients, including demographic information regarding patients' age, race, ethnicity, gender, and geographic location,

presenting with conditions or a diagnosis that reflect marijuana use, including and identifying if the marijuana use was in conjunction with alcohol or other drugs.

Title 30: Government - County Code

- ❖ **Coroners Working Group:** Requires the association representing coroners to establish a working group to study methods to test for all scheduled drugs and the presence and quantity of THC, including and identifying how long ago the THC was consumed, if the presence of THC was in conjunction with alcohol and scheduled drugs, and its metabolite in each case of a non-natural death, excluding homicide, of a person under twenty-five years of age. Requires recommendations to be completed by July 1, 2022, except methodology to identify prescription drugs and other federally scheduled substances must be completed by November 1, 2022.
- ❖ **Toxicology Screening Requirements:** Beginning January 1, 2022, requires coroners to complete a full toxicology screen, including testing for the presence of THC, alcohol, and scheduled drugs, in each case of a non-natural death, excluding homicide, of a Colorado resident under 25 years of age.
 - Requires the CDPHE to reimburse a coroner for the toxicology costs.
 - Provides that at the request of a county, the CDPHE or the local health department may provide training and supplies for toxicology draws.
 - Requires coroners to share information with the CDPHE for inclusion into the violent death reporting system.
- ❖ **Annual CDPHE Reporting Requirement:** Directs the CDPHE to produce an annual report of toxicology information beginning January 2, 2023.

Title 44: Colorado Marijuana Code

- ❖ **New Definitions:** Creates a new defined term for “**Medical Marijuana Concentrate**” and “**Retail Marijuana Concentrate**” as a subset of marijuana that is separated from the marijuana plant and results in matter with a higher concentration of cannabinoids that naturally occur in the plant. The definition also provides the following regarding Medical and Retail Marijuana Concentrate:
 - May contain terpenes and other chemicals that are naturally occurring in the plants that have been separated from the marijuana;
 - May include residual amounts of solvents permitted by rule;
 - The State Licensing Authority may further define by rule subcategories of “Medical Marijuana Concentrate” and “Retail Marijuana Concentrate” and may authorize limited ingredients based on the method of production; and
 - Unless the context otherwise requires, concentrate is included when Article 10 refers to Medical Marijuana Product and Retail Marijuana Product.
- ❖ **Mandatory Rulemaking:** Requires the State Licensing Authority to promulgate rules on the following subjects:
 - Inventory tracking system requirements that include the ability to determine the amount of Medical Marijuana a patient has purchased that day in real time by searching a patient registration number.
 - The circumstances that constitute a significant physical or geographical hardship as used in Section 44-10-501(13), C.R.S.
 - Effective **January 1, 2023**, requirements for Medical and Retail Concentrate to promote consumer health and awareness, which shall include:
 - A recommended serving size;
 - Visual representation of one recommended serving;
 - Labeling requirements; and

- May include a measuring device that can be used to measure one recommended serving.
- Prohibiting advertising and marketing by a Medical Marijuana Business that is specifically directed at persons under 21 years of age; and
- Requirements that any advertising or marketing specific to Medical Marijuana Concentrate or Retail Marijuana Concentrate include a notice regarding the potential risks of Medical and Retail Marijuana Concentrate overconsumption.
- ❖ **Medical Marijuana Store Inventory Tracking Requirements:** Establishes the following requirements for Medical Marijuana Stores:
 - Requires Medical Marijuana Stores to immediately record each patient sales transaction in the inventory tracking system in order to allow the seed-to-sale inventory tracking system to:
 - Continuously monitor entry of patient data to identify discrepancies with daily authorized quantity limits and THC potency authorizations;
 - Access and retrieve real-time sales data based on patient identification number;
 - Respond with a user error message if a sale exceeds the patient's daily authorized limit for that business day or THC potency authorization.
 - Provides that in the event of a temporary outage of the inventory tracking system, a Medical Store can rely upon the physician's certification and is not responsible for any unintentional sale in excess of the authorized quantity limit that occurs during the outage, provided that the Store uploads its sales data into the tracking system as soon as reasonably practicable after the outage.
 - Reiterates that all data collected pursuant to the tracking requirement, including any personal identifying patient information, is subject to the confidentiality requirements of section 44-10-204.
- ❖ **Medical Marijuana Stores - Concentrate Sales Limits:** Establishes the following requirements for concentrate sales:
 - **Patients 18-20 Years of Age:** Restricts Medical Marijuana Stores from selling more than **two grams** of Medical Marijuana Concentrate to patients age 18-20.
 - **Patients 21 Years of Age and Older:** Restricts Medical Marijuana Stores from selling any more than **eight grams** of Medical Marijuana Concentrate to patients 21 and over.
 - **Exceptions to Sales Limitations:** Establishes the following exceptions to the above sale limitations:
 - The patient is homebound;
 - The physician's certification specifically states that the patient needs more than two/eight grams of Medical Marijuana Concentrate;
 - It would be a significant physical or geographic hardship for the patient to make a daily purchase; or
 - The patient had a registry identification card prior to 18 years of age.
 - Requires patients who seek to purchase more than the statutory limit to present their certification at the time of purchase.
- ❖ **Retail Marijuana Stores - Concentrate Sales Limits:** Restricts Retail Marijuana Stores from selling any more than **eight grams** of retail marijuana concentrate to a person in a single day.
- ❖ **Medical & Retail Marijuana Stores - Tangible Educational Resource Requirement:** Requires Stores to provide patients with a tangible educational resource (created by the State Licensing Authority) at the time of sale of Medical Marijuana Concentrate.

- ❖ **DOR Work Group - Uniform Certification & Tangible Educational Resource:** Directs The State Licensing Authority to convene a stakeholder work group to develop:
 - A **uniform certification form** to be used by recommending physicians when authorizing the patient to purchase more than the statutorily allowed quantities;
 - A **tangible educational resource** regarding the use of regulated marijuana concentrate.
 - The educational resource must be completed by **January 1, 2022**.
 - The educational resource must provide information as determined by rule and education, including but not limited to:
 - Examples of visual representation of a serving size recommended for each type of concentrate;
 - Risks and precautions;
 - Other statutory and regulatory labeling requirements mandated on marijuana products; and
 - A notice describing the penalties associated with diversion.
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[HB21-1178](#) - Correcting Errors in the Colorado Marijuana Code (Petition Clause)

Title 44: Colorado Marijuana Code

- ❖ Makes non-substantive changes to citations in the Marijuana Code.