

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 10-0353.03 Michael Dohr

SENATE BILL 10-109

SENATE SPONSORSHIP

Romer and Spence, Boyd, Bacon, Hodge, Hudak, Johnston, Tapia, Tochtrop

HOUSE SPONSORSHIP

Massey and McCann, Rice, Frangas, McFadyen

Senate Committees

Health and Human Services
Appropriations

House Committees

Judiciary
Appropriations

A BILL FOR AN ACT

101 **CONCERNING REGULATION OF THE PHYSICIAN-PATIENT RELATIONSHIP**
102 **FOR MEDICAL MARIJUANA PATIENTS, AND MAKING**
103 **APPROPRIATIONS IN CONNECTION THEREWITH.**

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://www.leg.state.co.us/billsummaries>.)

Under the bill, the department of public health and environment (department) will promulgate new rules related to standards for issuing registry identification cards, documentation for physicians who prescribe medical marijuana, and sanctions for physicians who violate the bill.

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

HOUSE
Am ended 3rd Reading
March 3, 2010

HOUSE
Am ended 2nd Reading
March 1, 2010

SENATE
3rd Reading Unamended
February 1, 2010

SENATE
Am ended 2nd Reading
January 29, 2010

A physician who certifies that a patient can use medical marijuana shall certify certain information to the department and maintain a separate record-keeping system for his or her medical marijuana patients. A physician who certifies that a patient can use medical marijuana shall not receive remuneration from or offer it to a primary caregiver, distributor, or any other provider of medical marijuana.

The bill creates a medical marijuana review board (board) that will consider requests by nonveteran patients under 21 years of age who want to be registered medical marijuana patients. For a patient who is under 21 years of age to become a registered medical marijuana patient, a majority of the board must determine that the patient has a debilitating medical condition and could benefit from the use of medical marijuana.

The bill adds the medical marijuana program to the list of statutes that involve medical records.

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

2 **SECTION 1.** 25-1.5-106, Colorado Revised Statutes, is amended
3 to read:

4 **25-1.5-106. Medical marijuana program - powers and duties**
5 **of state health agency - medical review board - repeal.**

6 (1) **Definitions.** IN ADDITION TO THE DEFINITIONS SET FORTH IN SECTION
7 14 (1) OF ARTICLE XVIII OF THE STATE CONSTITUTION, AS USED IN THIS
8 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 (a) "BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP", FOR PURPOSES
10 OF THE MEDICAL MARIJUANA PROGRAM, MEANS:

11 (I) A PHYSICIAN AND A PATIENT HAVE A TREATMENT OR
12 COUNSELING RELATIONSHIP, IN THE COURSE OF WHICH THE PHYSICIAN HAS
13 COMPLETED A FULL ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY AND
14 CURRENT MEDICAL CONDITION, INCLUDING A PERSONAL PHYSICAL
15 EXAMINATION;

16 (II) THE PHYSICIAN HAS CONSULTED WITH THE PATIENT WITH
17 RESPECT TO THE PATIENT'S DEBILITATING MEDICAL CONDITION BEFORE

1 THE PATIENT APPLIES FOR A REGISTRY IDENTIFICATION CARD; AND

2 (III) THE PHYSICIAN IS AVAILABLE TO OR OFFERS TO PROVIDE
3 FOLLOW-UP CARE AND TREATMENT TO THE PATIENT, INCLUDING BUT NOT
4 LIMITED TO PATIENT EXAMINATIONS, TO DETERMINE THE EFFICACY OF THE
5 USE OF MEDICAL MARIJUANA AS A TREATMENT OF THE PATIENT'S
6 DEBILITATING MEDICAL CONDITION.

7 (b) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF
8 THE STATE HEALTH AGENCY.

9 (c) "IN GOOD STANDING", WITH RESPECT TO A PHYSICIAN'S
10 LICENSE, MEANS:

11 (I) THE PHYSICIAN HOLDS A DOCTOR OF MEDICINE OR DOCTOR OF
12 OSTEOPATHIC MEDICINE DEGREE FROM AN ACCREDITED MEDICAL SCHOOL;

13 (II) THE PHYSICIAN HOLDS A VALID, UNRESTRICTED LICENSE TO
14 PRACTICE MEDICINE IN COLORADO; AND

15 (III) THE PHYSICIAN HAS A VALID AND UNRESTRICTED UNITED
16 STATES DEPARTMENT OF JUSTICE FEDERAL DRUG ENFORCEMENT
17 ADMINISTRATION CONTROLLED SUBSTANCES REGISTRATION.

18 (d) "MEDICAL MARIJUANA PROGRAM" MEANS THE PROGRAM
19 ESTABLISHED BY SECTION 14 OF ARTICLE XVIII OF THE STATE
20 CONSTITUTION AND THIS SECTION.

21 (e) "REGISTRY IDENTIFICATION CARD" MEANS THE
22 NONTRANSFERABLE CONFIDENTIAL REGISTRY IDENTIFICATION CARD
23 ISSUED BY THE STATE HEALTH AGENCY TO PATIENTS AND PRIMARY
24 CAREGIVERS PURSUANT TO THIS SECTION.

25 (f) "STATE HEALTH AGENCY" MEANS THE PUBLIC HEALTH RELATED
26 ENTITY OF STATE GOVERNMENT DESIGNATED BY THE GOVERNOR BY
27 EXECUTIVE ORDER PURSUANT TO SECTION 14 OF ARTICLE XVIII OF THE

1 STATE CONSTITUTION.

2 (†) (2) **Rulemaking.** The department STATE HEALTH AGENCY
3 shall, pursuant to section 14 of article XVIII of the state constitution,
4 promulgate rules of administration concerning the implementation of the
5 medical marijuana program ~~established by such section and that~~
6 specifically govern the following:

7 (a) The establishment and maintenance of a confidential registry
8 of patients who have applied for and are entitled to receive a registry
9 identification card. == THE CONFIDENTIAL REGISTRY OF PATIENTS MAY
10 BE USED TO DETERMINE WHETHER A PHYSICIAN SHOULD BE REFERRED TO
11 THE COLORADO BOARD OF MEDICAL EXAMINERS FOR A SUSPECTED
12 VIOLATION OF SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION,
13 PARAGRAPH (a), (b), OR (c) OF SUBSECTION (3) OF THIS SECTION, OR THE
14 RULES PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO THIS
15 SUBSECTION (2). ==

16 (b) The development by the department STATE HEALTH AGENCY
17 of an application form and THE PROCESS FOR making ~~such~~ THE form
18 available to residents of this state seeking to be listed on the confidential
19 registry of patients who are entitled to receive a registry identification
20 card;

21 (c) The verification by the department STATE HEALTH AGENCY of
22 medical information concerning patients who have applied for a
23 ~~confidential~~ registry IDENTIFICATION card OR FOR RENEWAL OF A
24 REGISTRY IDENTIFICATION CARD;

25 (d) THE DEVELOPMENT BY THE STATE HEALTH AGENCY OF A FORM
26 THAT CONSTITUTES "WRITTEN DOCUMENTATION" AS DEFINED AND USED
27 IN SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, WHICH

1 FORM A PHYSICIAN SHALL USE WHEN MAKING A MEDICAL MARIJUANA
2 RECOMMENDATION FOR A PATIENT;

3 ~~(d)~~ (e) The CONDITIONS FOR issuance AND RENEWAL, and THE
4 form, of ~~confidential~~ THE registry identification cards ISSUED TO
5 PATIENTS, INCLUDING BUT NOT LIMITED TO STANDARDS FOR ENSURING
6 THAT THE STATE HEALTH AGENCY ISSUES A REGISTRY IDENTIFICATION
7 CARD TO A PATIENT ONLY IF HE OR SHE HAS A BONA FIDE
8 PHYSICIAN-PATIENT RELATIONSHIP WITH A PHYSICIAN IN GOOD STANDING
9 AND LICENSED TO PRACTICE MEDICINE IN THE STATE OF COLORADO;

10 ~~(e)~~ (f) Communications with law enforcement officials about
11 ~~confidential~~ registry identification cards that have been suspended ~~where~~
12 WHEN a patient is no longer diagnosed as having a debilitating medical
13 condition; ~~and~~

14 ~~(f)~~ (g) The manner in which the ~~department~~ STATE HEALTH
15 AGENCY may consider adding debilitating medical conditions to the list
16 of debilitating medical conditions contained in section 14 of article XVIII
17 of the state constitution.

18 (3) **Physicians.** A PHYSICIAN WHO CERTIFIES A DEBILITATING
19 MEDICAL CONDITION FOR AN APPLICANT TO THE MEDICAL MARIJUANA
20 PROGRAM SHALL COMPLY WITH ALL OF THE FOLLOWING REQUIREMENTS:

21 (a) THE PHYSICIAN SHALL HAVE A VALID, UNRESTRICTED
22 COLORADO LICENSE TO PRACTICE MEDICINE, WHICH LICENSE IS IN GOOD
23 STANDING.

24 (b) AFTER A PHYSICIAN, WHO HAS A BONA FIDE
25 PHYSICIAN-PATIENT RELATIONSHIP WITH THE PATIENT APPLYING FOR THE
26 MEDICAL MARIJUANA PROGRAM, DETERMINES, FOR THE PURPOSES OF
27 MAKING A RECOMMENDATION, THAT THE PATIENT HAS A DEBILITATING

1 CONDITION AND THAT THE PATIENT MAY BENEFIT FROM THE USE OF
2 MEDICAL MARIJUANA, THE PHYSICIAN SHALL CERTIFY TO THE STATE
3 HEALTH AGENCY THAT THE PATIENT HAS A DEBILITATING MEDICAL
4 CONDITION AND THAT THE PATIENT MAY BENEFIT FROM THE USE OF
5 MEDICAL MARIJUANA. IF THE PHYSICIAN CERTIFIES THAT THE PATIENT
6 WOULD BENEFIT FROM THE USE OF MEDICAL MARIJUANA BASED ON A
7 CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION, THE
8 PHYSICIAN SHALL SPECIFY THE CHRONIC OR DEBILITATING DISEASE OR
9 MEDICAL CONDITION AND, IF KNOWN, THE CAUSE OR SOURCE OF THE
10 CHRONIC OR DEBILITATING DISEASE OR MEDICAL CONDITION.

11 (c) THE PHYSICIAN SHALL MAINTAIN A _____ RECORD-KEEPING
12 SYSTEM FOR ALL PATIENTS FOR WHOM THE PHYSICIAN HAS RECOMMENDED
13 THE MEDICAL USE OF MARIJUANA, AND, PURSUANT TO AN INVESTIGATION
14 INITIATED PURSUANT TO SECTION 12-36-118, C.R.S., THE PHYSICIAN
15 SHALL PRODUCE SUCH MEDICAL RECORDS TO THE COLORADO STATE
16 BOARD OF MEDICAL EXAMINERS AFTER REDACTING ANY PATIENT OR
17 PRIMARY CAREGIVER IDENTIFYING INFORMATION.

18 (d) A PHYSICIAN SHALL NOT:

19 (I) ACCEPT, SOLICIT, OR OFFER ANY FORM OF PECUNIARY
20 REMUNERATION FROM OR TO A PRIMARY CAREGIVER, DISTRIBUTOR, OR
21 ANY OTHER PROVIDER OF MEDICAL MARIJUANA;

22 (II) OFFER A DISCOUNT OR ANY OTHER THING OF VALUE TO A
23 PATIENT WHO USES OR AGREES TO USE A PARTICULAR PRIMARY
24 CAREGIVER, DISTRIBUTOR, OR OTHER PROVIDER OF MEDICAL MARIJUANA
25 TO PROCURE MEDICAL MARIJUANA;

26 (III) EXAMINE A PATIENT FOR PURPOSES OF DIAGNOSING A
27 DEBILITATING MEDICAL CONDITION AT A LOCATION WHERE MEDICAL

1 MARIJUANA IS SOLD OR DISTRIBUTED; OR

2 (IV) HOLD AN ECONOMIC INTEREST IN AN ENTERPRISE THAT
3 PROVIDES OR DISTRIBUTES MEDICAL MARIJUANA IF THE PHYSICIAN
4 CERTIFIES THE DEBILITATING MEDICAL CONDITION OF A PATIENT FOR
5 PARTICIPATION IN THE MEDICAL MARIJUANA PROGRAM.

6 [REDACTED]

7 (4) **Enforcement.** (a) IF THE STATE HEALTH AGENCY HAS
8 REASONABLE CAUSE TO BELIEVE THAT A PHYSICIAN HAS VIOLATED
9 SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, PARAGRAPH
10 (a), (b), OR (c) OF SUBSECTION (3) OF THIS SECTION, OR THE RULES
11 PROMULGATED BY THE STATE HEALTH AGENCY PURSUANT TO SUBSECTION
12 (2) OF THIS SECTION, THE STATE HEALTH AGENCY MAY REFER THE MATTER
13 TO THE STATE BOARD OF MEDICAL EXAMINERS CREATED IN SECTION
14 12-36-103, C.R.S., FOR AN INVESTIGATION AND DETERMINATION.

15 (b) IF THE STATE HEALTH AGENCY HAS REASONABLE CAUSE TO
16 BELIEVE THAT A PHYSICIAN HAS VIOLATED PARAGRAPH (d) OF SUBSECTION
17 (3) OF THIS SECTION, THE STATE HEALTH AGENCY SHALL CONDUCT A
18 HEARING PURSUANT TO SECTION 24-4-104, C.R.S., TO DETERMINE
19 WHETHER A VIOLATION HAS OCCURRED.

20 (c) UPON A FINDING OF UNPROFESSIONAL CONDUCT PURSUANT TO
21 SECTION 12-36-117 (1) (mm), C.R.S., BY THE STATE BOARD OF MEDICAL
22 EXAMINERS OR A FINDING OF A VIOLATION OF PARAGRAPH (d) OF
23 SUBSECTION (3) OF THIS SECTION BY THE STATE HEALTH AGENCY, THE
24 STATE HEALTH AGENCY SHALL RESTRICT A PHYSICIAN'S AUTHORITY TO
25 RECOMMEND THE USE OF MEDICAL MARIJUANA, WHICH RESTRICTIONS MAY
26 INCLUDE THE REVOCATION OR SUSPENSION OF A PHYSICIAN'S PRIVILEGE TO
27 RECOMMEND MEDICAL MARIJUANA. THE RESTRICTION SHALL BE IN

1 ADDITION TO ANY SANCTION IMPOSED BY THE STATE BOARD OF MEDICAL
2 EXAMINERS.

3 (d) WHEN THE STATE HEALTH AGENCY HAS OBJECTIVE AND
4 REASONABLE GROUNDS TO BELIEVE AND FINDS, UPON A FULL
5 INVESTIGATION, THAT A PHYSICIAN HAS DELIBERATELY AND WILLFULLY
6 VIOLATED SECTION 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION OR
7 THIS SECTION AND THAT THE PUBLIC HEALTH, SAFETY, OR WELFARE
8 IMPERATIVELY REQUIRES EMERGENCY ACTION, AND THE STATE HEALTH
9 AGENCY INCORPORATES THOSE FINDINGS INTO AN ORDER, THE STATE
10 HEALTH AGENCY MAY SUMMARILY SUSPEND THE PHYSICIAN'S AUTHORITY
11 TO RECOMMEND THE USE OF MEDICAL MARIJUANA PENDING THE
12 PROCEEDINGS SET FORTH IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION
13 (5). A HEARING ON THE ORDER OF SUMMARY SUSPENSION SHALL BE HELD
14 NO LATER THAN THIRTY DAYS AFTER THE ISSUANCE OF THE ORDER OF
15 SUMMARY SUSPENSION, UNLESS A LONGER TIME IS AGREED TO BY THE
16 PARTIES, AND AN INITIAL DECISION IN ACCORDANCE WITH SECTION
17 24-4-105 (14), C.R.S., SHALL BE RENDERED NO LATER THAN THIRTY DAYS
18 AFTER THE CONCLUSION OF THE HEARING CONCERNING THE ORDER OF
19 SUMMARY SUSPENSION.

20 (5) **Renewal of patient identification card upon criminal**
21 **conviction.** ANY PATIENT WHO IS CONVICTED OF A CRIMINAL OFFENSE
22 UNDER ARTICLE 18 OF TITLE 18, C.R.S., SENTENCED OR ORDERED BY A
23 COURT TO DRUG OR SUBSTANCE ABUSE TREATMENT, OR SENTENCED TO
24 THE DIVISION OF YOUTH CORRECTIONS, SHALL BE SUBJECT TO IMMEDIATE
25 RENEWAL OF HIS OR HER PATIENT REGISTRY IDENTIFICATION CARD, AND
26 THE PATIENT SHALL APPLY FOR THE RENEWAL BASED UPON A
27 RECOMMENDATION FROM A PHYSICIAN WITH WHOM THE PATIENT HAS A

1 BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP.

2 (6) A PARENT WHO SUBMITS A MEDICAL MARIJUANA REGISTRY
3 APPLICATION FOR HIS OR HER CHILD SHALL HAVE HIS OR HER SIGNATURE
4 NOTARIZED ON THE APPLICATION.

5 (2) (7) The department STATE HEALTH AGENCY may collect fees
6 from patients who, pursuant to section 14 of article XVIII of the state
7 constitution, apply to the medical marijuana program established by such
8 section for a marijuana registry identification CARD for the purpose of
9 offsetting the department's STATE HEALTH AGENCY'S direct and indirect
10 costs of administering the program. The amount of such THE fees shall
11 be set by rule of the state board of health STATE HEALTH AGENCY. All
12 fees collected by the department STATE HEALTH AGENCY through the
13 medical marijuana program shall be transferred to the state treasurer who
14 shall credit the same to the medical marijuana program cash fund, which
15 fund is hereby created.

16 (3) (8) **Cash fund.** (a) The medical marijuana program cash
17 fund shall be subject to annual appropriation by the general assembly to
18 the department STATE HEALTH AGENCY for the purpose of establishing,
19 operating, and maintaining the medical marijuana program. established
20 by section 14 of article XVIII of the state constitution. All
21 moneys credited to the medical marijuana program cash fund and all
22 interest derived from the deposit of such moneys that are not expended
23 during the fiscal year shall be retained in the fund for future use and shall
24 not be credited or transferred to the general fund or any other fund.

25 (b) Notwithstanding any provision of paragraph (a) of this
26 subsection (3) (8) to the contrary, on April 20, 2009, the state treasurer
27 shall deduct two hundred fifty-eight thousand seven hundred thirty-five

1 dollars from the medical marijuana program cash fund and transfer such
2 sum to the general fund.

3 ==
4 ==

5 **SECTION 2.** 25-1-1202 (1), Colorado Revised Statutes, is
6 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

7 **25-1-1202. Index of statutory sections regarding medical**
8 **record confidentiality and health information.** (1) Statutory
9 provisions concerning policies, procedures, and references to the release,
10 sharing, and use of medical records and health information include the
11 following:

12 (vv.5) SECTION 25-1.5-106, CONCERNING THE MEDICAL
13 MARIJUANA PROGRAM;

14 **SECTION 3.** 12-36-117 (1), Colorado Revised Statutes, is
15 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

16 **12-36-117. Unprofessional conduct - repeal.**

17 (1) "Unprofessional conduct" as used in this article means:

18 (mm) FAILURE TO COMPLY WITH THE REQUIREMENTS OF SECTION
19 14 OF ARTICLE XVIII OF THE STATE CONSTITUTION, SECTION 25-1.5-106,
20 C.R.S., OR THE RULES PROMULGATED BY THE STATE HEALTH AGENCY
21 PURSUANT TO SECTION 25-1.5-106 (2), C.R.S.

22 **SECTION 4.** 12-36-118 (5) (g), Colorado Revised Statutes, is
23 amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

24 **12-36-118. Disciplinary action by board - immunity.**

25 (5) (g) (X) IN ALL CASES INVOLVING ALLEGED VIOLATIONS OF SECTION
26 12-36-117(1)(mm), THE BOARD SHALL PROMPTLY NOTIFY THE EXECUTIVE
27 DIRECTOR OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT OF

1 ITS FINDINGS, INCLUDING WHETHER IT FOUND THAT THE PHYSICIAN
2 VIOLATED SECTION 12-36-117(1)(mm) AND ANY RESTRICTIONS IT PLACED
3 ON THE PHYSICIAN WITH RESPECT TO RECOMMENDING THE USE OF
4 MEDICAL MARIJUANA.

5 **SECTION 5. Appropriation.** (1) In addition to any other
6 appropriation, there is hereby appropriated, out of any moneys in the
7 medical marijuana program cash fund created in section 25-1.5-106 (8),
8 Colorado Revised Statutes, not otherwise appropriated, to the department
9 of public health and environment, for the fiscal year beginning July 1,
10 2010, the sum of eight hundred fifteen thousand two hundred twenty-four
11 dollars (\$815,224) cash funds and 2.1 FTE, or so much thereof as may be
12 necessary, for the implementation of this act. Of said appropriation,
13 ninety-nine thousand eight hundred seventy-nine dollars (\$99,879) shall
14 be allocated to the administration and support division and seven hundred
15 fifteen thousand three hundred forty-five dollars (\$715,345) and 2.1 FTE
16 shall be allocated to the center for health and environmental information.

17 (2) In addition to any other appropriation, there is hereby
18 appropriated to the department of regulatory agencies, for the fiscal year
19 beginning July 1, 2010, the sum of five hundred ninety-three thousand
20 three hundred thirty-three dollars (\$593,333) and 1.2 FTE, for the
21 investigation and prosecution of physicians referred to the board of
22 medical examiners pursuant to section 25-1.5-106 (5), Colorado Revised
23 Statutes, or so much thereof as may be necessary for the implementation
24 of this act. Said appropriation shall be from reappropriated funds
25 received from the department of public health and environment out of the
26 appropriation made in subsection (1) of this section to the center for
27 health and environmental information. Of said appropriation, five

1 hundred twelve thousand five hundred eighty-four dollars (\$512,584)
2 shall be allocated to the executive director's office and eighty thousand
3 seven hundred forty-nine dollars (\$80,749) and 1.2 FTE shall be allocated
4 to the division of registrations.

5 (3) In addition to any other appropriation, there is hereby
6 appropriated to the department of law, for the fiscal year beginning July
7 1, 2010, the sum of six hundred twelve thousand four hundred sixty-three
8 dollars (\$612,463) and 5.2 FTE, or so much thereof as may be necessary,
9 for the provision of legal services to the department of public health and
10 environment and the department of regulatory agencies related to the
11 implementation of this act. Of said appropriation, ninety-nine thousand
12 eight hundred seventy-nine dollars (\$99,879) shall be from reappropriated
13 funds received from the department of public health and environment out
14 of the appropriation made in subsection (1) of this section to the
15 administration and support division and five hundred twelve thousand
16 five hundred eighty-four dollars (\$512,584) shall be from reappropriated
17 funds received from the department of regulatory agencies out of the
18 appropriation made in subsection (2) of this section to the executive
19 director's office.

20 **SECTION 6. 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.