

Colorado Department of Revenue Medical Marijuana Enforcement Division Medical Marijuana Code

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PART 1

COLORADO MEDICAL MARIJUANA CODE

12-43.3-101. Short title.

This article shall be known and may be cited as the “Colorado Medical Marijuana Code”.

12-43.3-102. Legislative declaration.

(1) The general assembly hereby declares that this article shall be deemed an exercise of the police powers of the state for the protection of the economic and social welfare and the health, peace, and morals of the people of this state.

(2) The general assembly further declares that it is unlawful under state law to cultivate, manufacture, distribute, or sell medical marijuana, except in compliance with the terms, conditions, limitations, and restrictions in section 14 of article XVIII of the state constitution and this article or when acting as a primary caregiver in compliance with the terms, conditions, limitations, and restrictions of section 25-1.5-106, C.R.S.

12-43.3-103. Applicability.

(1) (a) On July 1, 2010, a person who is operating an established, locally approved business for the purpose of cultivation, manufacture, or sale of medical marijuana or medical marijuana-infused products or a person who has applied to a local government to operate a locally approved business for the purpose of cultivation, manufacture, or sale of medical marijuana or medical marijuana-infused products which is subsequently granted may continue to operate that business in accordance with any applicable state or local laws. “Established”, as used in this paragraph (a), shall mean owning or leasing a space with a storefront and remitting sales taxes in a timely manner on retail sales of the business as required pursuant to section 39-26-105, C.R.S., as well as any applicable local sales taxes.

(b) To continue operating a business or operation as described in paragraph (a) of this subsection (1), the owner shall, on or before August 1, 2010, complete forms as provided by the department of revenue and shall pay a fee, which shall be credited to the medical marijuana license cash fund established pursuant to section 12-43.3-501. The purpose of the fee shall be to pay for the direct and indirect costs of the state licensing authority and the development of application procedures and rules necessary to implement this article. Payment of the fee and completion of the form shall not create a local or state license or a present or future entitlement to receive a license. An owner issued a local license after August 1, 2010, shall complete the forms and pay the fee pursuant to this paragraph (b) within thirty days after issuance of the local license. In addition to any criminal penalties for selling without a license, it shall be unlawful to continue operating a business or operation without filing the forms and paying the fee as

described in this paragraph (b), and any violation of this section shall be prima-facie evidence of unsatisfactory character, record, and reputation for any future application for license under this article.

(c) A county, city and county, or municipality shall provide to the state licensing authority, upon request, a list that includes the name and location of each local center or operation licensed in said county, city and county, or municipality so that the state licensing authority can identify any center or operation operating unlawfully.

(2) (a) Prior to July 1, 2011, a county, city and county, or municipality may adopt and enforce a resolution or ordinance licensing, regulating, or prohibiting the cultivation or sale of medical marijuana. In a county, city and county, or municipality where such an ordinance or resolution has been adopted, a person who is not registered as a patient or primary caregiver pursuant to section 25-1.5-106, C.R.S., and who is cultivating or selling medical marijuana shall not be entitled to an affirmative defense to a criminal prosecution as provided for in section 14 of article XVIII of the state constitution unless the person is in compliance with the applicable county or municipal law.

(b) On or before September 1, 2010, a business or operation shall certify that it is cultivating at least seventy percent of the medical marijuana necessary for its operation.

(c) On and after July 1, 2011, all businesses for the purpose of cultivation, manufacture, or sale of medical marijuana or medical marijuana-infused products, as defined in this article, shall be subject to the terms and conditions of this article and any rules promulgated pursuant to this article; except that a person that has met the deadlines set forth in paragraphs (a) and (b) of subsection (1) of this section that has not had its application acted upon by the state licensing authority may continue to operate until action is taken on the application, unless the person is operating in a jurisdiction that has imposed a prohibition on licensure. While continuing to operate prior to the licensing authority acting on the application, the person shall otherwise be subject to the terms and conditions of this article and all rules promulgated pursuant to this article.

(d) (I) On and after July 1, 2012, persons who did not meet all requirements of paragraph (a) of subsection (1) of this section as of July 1, 2010, may begin to apply for a license pursuant to this article. A business or operation that applies and is approved for its license after July 1, 2012, shall certify to the state licensing authority that it is cultivating at least seventy percent of the medical marijuana necessary for its operation within ninety days after being licensed.

(II) For those persons that are licensed prior to July 1, 2012, the person may apply to the local and state licensing authorities regarding changes to its license and may apply for a new license if the license is for a business that has been licensed and the person is purchasing that business or if the business is changing license type.

(III) For a person who has met the deadlines set forth in paragraphs (a) and (b) of subsection (1) of this section and who has lost his or her location because a city or county has voted pursuant to section 12-43.3-106 to ban his or her operation, the person may apply for a new

license with a local licensing authority and transfer the location of its pending application with the state licensing authority.

(e) This article sets forth the exclusive means by which manufacture, sale, distribution, and dispensing of medical marijuana may occur in the state of Colorado. Licensees shall not be subject to the terms of section 14 of article XVIII of the state constitution, except where specifically referenced in this article.

12-43.3-104. Definitions.

As used in this article, unless the context otherwise requires:

(1) “Good cause”, for purposes of refusing or denying a license renewal, reinstatement, or initial license issuance, means:

(a) The licensee or applicant has violated, does not meet, or has failed to comply with any of the terms, conditions, or provisions of this article, any rules promulgated pursuant to this article, or any supplemental local law, rules, or regulations;

(b) The licensee or applicant has failed to comply with any special terms or conditions that were placed on its license pursuant to an order of the state or local licensing authority;

(c) The licensed premises have been operated in a manner that adversely affects the public health or welfare or the safety of the immediate neighborhood in which the establishment is located.

(1.5) “Immature plant” means a nonflowering medical marijuana plant that is no taller than eight inches and no wider than eight inches produced from a cutting, clipping, or seedling and that is in a growing container that is no larger than two inches wide and two inches tall that is sealed on the sides and bottom.

(2) “License” means to grant a license or registration pursuant to this article.

(3) “Licensed premises” means the premises specified in an application for a license under this article, which are owned or in possession of the licensee and within which the licensee is authorized to cultivate, manufacture, distribute, or sell medical marijuana in accordance with the provisions of this article.

(4) “Licensee” means a person licensed or registered pursuant to this article.

(5) “Local licensing authority” means an authority designated by municipal or county charter, ordinance, or resolution, or the governing body of a municipality, city and county, or the board of county commissioners of a county if no such authority is designated.

(6) “Location” means a particular parcel of land that may be identified by an address or other descriptive means.

(7) “Medical marijuana” means marijuana that is grown and sold pursuant to the provisions of this article and for a purpose authorized by section 14 of article XVIII of the state constitution but shall not be considered a nonprescription drug for purposes of section 12-22-102 (20) or section 39-26-717, C.R.S., or an over-the-counter medication for purposes of section 25.5-5-322, C.R.S.

(8) “Medical marijuana center” means a person licensed pursuant to this article to operate a business as described in section 12-43.3-402 that sells medical marijuana to registered patients or primary caregivers as defined in section 14 of article XVIII of the state constitution, but is not a primary caregiver.

(9) “Medical marijuana-infused product” means a product infused with medical marijuana that is intended for use or consumption other than by smoking, including but not limited to edible products, ointments, and tinctures. These products, when manufactured or sold by a licensed medical marijuana center or a medical marijuana-infused product manufacturer, shall not be considered a food or drug for the purposes of the “Colorado Food and Drug Act”, part 4 of article 5 of title 25, C.R.S.

(10) “Medical marijuana-infused products manufacturer” means a person licensed pursuant to this article to operate a business as described in section 12-43.3-404.

(11) “Optional premises” means the premises specified in an application for a medical marijuana center license with related growing facilities in Colorado for which the licensee is authorized to grow and cultivate marijuana for a purpose authorized by section 14 of article XVIII of the state constitution.

(12) “Optional premises cultivation operation” means a person licensed pursuant to this article to operate a business as described in section 12-43.3-403.

(13) “Person” means a natural person, partnership, association, company, corporation, limited liability company, or organization, or a manager, agent, owner, director, servant, officer, or employee thereof.

(14) “Premises” means a distinct and definite location, which may include a building, a part of a building, a room, or any other definite contiguous area.

(15) “School” means a public or private preschool or a public or private elementary, middle, junior high, or high school.

(16) “State licensing authority” means the authority created for the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of medical marijuana in this state, pursuant to section 12-43.3-201.

12-43.3-105. Limited access areas.

Subject to the provisions of section 12-43.3-701, a limited access area shall be a building, room, or other contiguous area upon the licensed premises where medical marijuana is grown, cultivated, stored, weighed, displayed, packaged, sold, or possessed for sale, under control of the licensee, with limited access to only those persons 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.

12-43.3-106. Local option.

The operation of this article shall be statewide unless a municipality, county, city, or city and county, by either a majority of the registered electors of the municipality, county, city, or city and county voting at a regular election or special election called in accordance with the “Colorado Municipal Election Code of 1965”, article 10 of title 31, C.R.S., or the “Uniform Election Code of 1992”, articles 1 to 13 of title 1, C.R.S., as applicable, or a majority of the members of the governing board for the municipality, county, city, or city and county, vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers’ licenses.

PART 2 STATE LICENSING AUTHORITY

12-43.3-201. State licensing authority — creation.

(1) For the purpose of regulating and controlling the licensing of the cultivation, manufacture, distribution, and sale of medical marijuana in this state, there is hereby created the state licensing authority, which shall be the executive director of the department of revenue or the deputy director of the department of revenue if the executive director so designates.

(2) The executive director of the department of revenue shall be the chief administrative officer of the state licensing authority and may employ, pursuant to section 13 of article XII of the state constitution, such officers and employees as may be determined to be necessary, which officers and employees shall be part of the department of revenue. The state licensing authority shall, at its discretion, based upon workload, employ no more than one full-time equivalent employee for each ten medical marijuana centers licensed by or making application with the authority. No moneys shall be appropriated to the state licensing authority from the general fund for the operation of this article, nor shall the state licensing authority expend any general fund moneys for the operation of this article.

(3) Repealed.

12-43.3-202. Powers and duties of state licensing authority.

(1) The state licensing authority shall:

(a) Grant or refuse state licenses for the cultivation, manufacture, distribution, and sale of medical marijuana as provided by law; suspend, fine, restrict, or revoke such licenses upon a violation of this article, or a rule promulgated pursuant to this article; and impose any penalty authorized by this article or any rule promulgated pursuant to this article. The state licensing authority may take any action with respect to a registration pursuant to this article as it may with respect to a license pursuant to this article, in accordance with the procedures established pursuant to this article.

(b) (I) Promulgate such rules and such special rulings and findings as necessary for the proper regulation and control of the cultivation, manufacture, distribution, and sale of medical marijuana and for the enforcement of this article. A county, municipality, or city and county that has adopted a temporary moratorium regarding the subject matter of this article shall be specifically authorized to extend the moratorium until June 30, 2012.

(II) Repealed.

(c) Hear and determine at a public hearing any contested state license denial and any complaints against a licensee and administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing so held, all in accordance with article 4 of title 24, C.R.S. The state licensing authority may, at its discretion, delegate to the department of revenue hearing officers the authority to conduct licensing, disciplinary, and rule-making hearings under section 24-4-105, C.R.S. When conducting such hearings, the hearing officers shall be employees of the state licensing authority under the direction and supervision of the executive director and the state licensing authority.

(d) Maintain the confidentiality of reports or other information obtained from a licensee showing the sales volume or quantity of medical marijuana sold, or revealing any patient 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 information released related to patients may be used only for a purpose authorized by this article or to verify that a person who presented a registry identification card to a state or local law enforcement official is lawfully in possession of such card.

(e) Develop such forms, licenses, identification cards, and applications as are necessary or convenient in the discretion of the state licensing authority for the administration of this article or any of the rules promulgated under this article;

(f) Prepare and transmit annually, in the form and manner prescribed by the heads of the principal departments pursuant to section 24-1-136, C.R.S., a report accounting to the governor for the efficient discharge of all responsibilities assigned by law or directive to the state licensing authority; and

(g) In recognition of the potential medicinal value of medical marijuana, make a request by January 1, 2012, to the federal drug enforcement administration to consider rescheduling, for pharmaceutical purposes, medical marijuana from a schedule I controlled substance to a schedule II controlled substance.

(2) (a) Rules promulgated pursuant to paragraph (b) of subsection (1) of this section may include, but need not be limited to, the following subjects:

(I) 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;

(II) Specifications of duties of officers and employees of the state licensing authority;

(III) Instructions for local licensing authorities and law enforcement officers;

(IV) Requirements for inspections, investigations, searches, seizures, forfeitures, and such additional activities as may become necessary from time to time;

(V) Creation of a range of penalties for use by the state licensing authority;

(VI) Prohibition of misrepresentation and unfair practices;

(VII) Control of informational and product displays on licensed premises;

(VIII) Development of individual identification cards for owners, officers, managers, contractors, employees, and other support staff of entities licensed pursuant to this article, including a fingerprint-based criminal history record check as may be required by the state licensing authority prior to issuing a card;

(IX) Identification of state licensees and their owners, officers, managers, and employees;

(X) Security requirements for any premises licensed pursuant to this article, including, at a minimum, lighting, physical security, video, alarm requirements, and other minimum procedures for internal control as deemed necessary by the state licensing authority to properly administer and enforce the provisions of this article, including reporting requirements for changes, alterations, or modifications to the premises;

(XI) Regulation of the storage of, warehouses for, and transportation of medical marijuana;

(XII) Sanitary requirements for medical marijuana centers, including but not limited to sanitary requirements for the preparation of medical marijuana-infused products;

(XIII) The specification of acceptable forms of picture identification that a medical marijuana center may accept when verifying a sale;

(XIV) Labeling standards;

(XIV.5) Prohibiting the sale of medical marijuana-infused products unless the product is packaged:

(A) In special packaging that is designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly and that does not allow the product to be seen without opening the packaging material; or

(B) In packaging that is labeled “Medicinal product — keep out of reach of children”;

(XV) Records to be kept by licensees and the required availability of the records;

(XVI) State licensing procedures, including procedures for renewals, reinstatements, initial licenses, and the payment of licensing fees;

(XVII) The reporting and transmittal of monthly sales tax payments by medical marijuana centers;

(XVIII) Authorization for the department of revenue to have access to licensing information to ensure sales and income tax payment and the effective administration of this article;

(XIX) Authorization for the department of revenue to issue administrative citations and procedures for issuing, appealing, and creating a citation violation list and schedule of penalties; and

(XX) Such other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of this article.

(b) Nothing in this article shall be construed as delegating to the state licensing authority the power to fix prices for medical marijuana.

(c) Nothing in this article shall be construed to limit a law enforcement agency’s ability to investigate unlawful activity in relation to a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer. A law enforcement agency shall have the authority to run a Colorado crime information center criminal history record check of a primary caregiver, licensee, or employee of a licensee during an investigation of unlawful activity related to medical marijuana.

PART 3 STATE AND LOCAL LICENSING

12-43.3-301. Local licensing authority — applications — licenses.

(1) A local licensing authority may issue only the following medical marijuana licenses upon payment of the fee and compliance with all local licensing requirements to be determined by the local licensing authority:

- (a) A medical marijuana center license;
- (b) An optional premises cultivation license;
- (c) A medical marijuana-infused products manufacturing license.

(2) (a) A local licensing authority shall not issue a local license within a municipality, city and county, or the unincorporated portion of a county unless the governing body of the municipality or city and county has adopted an ordinance, or the governing body of the county has adopted a resolution, containing specific standards for license issuance, or if no such ordinance or resolution is adopted prior to July 1, 2012, then a local licensing authority shall consider the minimum licensing requirements of this part 3 when issuing a license.

(b) In addition to all other standards applicable to the issuance of licenses under this article, the local governing body may adopt additional standards for the issuance of medical marijuana center, optional premises cultivation, or medical marijuana-infused products manufacturer licenses consistent with the intent of this article that may include, but need not be limited to:

- (I) Distance restrictions between premises for which local licenses are issued;
- (II) Reasonable restrictions on the size of an applicant's licensed premises;
and
- (III) Any other requirements necessary to ensure the control of the premises and the ease of enforcement of the terms and conditions of the license.

(3) An application for a license specified in subsection (1) of this section shall be filed with the appropriate local licensing authority on forms provided by the state licensing authority and shall contain such information as the state licensing authority may require and any forms as the local licensing authority may require. Each application shall be verified by the oath or affirmation of the persons prescribed by the state licensing authority.

(4) An applicant shall file, at the time of application for a local license, plans and specifications for the interior of the building if the building to be occupied is in existence at the time. If the building is not in existence, the applicant shall file a plot plan and a detailed sketch for the interior and submit an architect's drawing of the building to be constructed. In its discretion, the

local or state licensing authority may impose additional requirements necessary for the approval of the application.

12-43.3-302. Public hearing notice — posting and publication.

(1) Upon receipt of an application for a local license, except an application for renewal or for transfer of ownership, a local licensing authority may schedule a public hearing upon the application to be held not less than thirty days after the date of the application. If the local licensing authority schedules a hearing for a license application, it shall post and publish public notice thereof not less than ten days prior to the hearing. The local licensing authority shall give public notice by posting a sign in a conspicuous place on the license applicant's premises for which license application has been made and by publication in a newspaper of general circulation in the county in which the applicant's premises are located.

(2) Public notice given by posting shall include a sign of suitable material, not less than twenty-two inches wide and twenty-six inches high, composed of letters not less than one inch in height and stating the type of license applied for, the date of the application, the date of the hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. The sign shall contain the names and addresses of the officers, directors, or manager of the facility to be licensed.

(3) Public notice given by publication shall contain the same information as that required for signs.

(4) If the building in which medical marijuana is to be cultivated, manufactured, or distributed is in existence at the time of the application, a sign posted as required in subsections (1) and (2) of this section shall be placed so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post a sign at the premises upon which the building is to be constructed in such a manner that the notice shall be conspicuous and plainly visible to the general public.

(5) (a) A local licensing authority, or a license applicant with local licensing authority approval, may request that the state licensing authority conduct a concurrent review of a new license application prior to the local licensing authority's final approval of the license application. Local licensing authorities who permit a concurrent review will continue to independently review the applicant's license application.

(b) When conducting a concurrent application review, the state licensing authority may advise the local licensing authority of any items that it finds that could result in the denial of the license application. Upon correction of the noted discrepancies, if the correction is permitted by the state licensing authority, the state licensing authority shall notify the local licensing authority of its conditional approval of the license application subject to the final approval by the local licensing authority. The state licensing authority shall then issue the applicant's state license upon receiving evidence of final approval by the local licensing authority.

(c) All applications submitted for concurrent review shall be accompanied by all applicable state license and application fees. Any applications that are later denied or withdrawn may allow for a refund of license fees only. All application fees provided by an applicant shall be retained by the respective licensing authority.

12-43.3-303. Results of investigation — decision of authorities.

(1) Not less than five days prior to the date of the public hearing authorized in section 12-43.3-302, the local licensing authority shall make known its findings, based on its investigation, in writing to the applicant and other parties of interest. The local licensing authority has authority to refuse to issue a license provided for in this section for good cause, subject to judicial review.

(2) Before entering a decision approving or denying the application for a local license, the local licensing authority may consider, except where this article specifically provides otherwise, the facts and evidence adduced as a result of its investigation, as well as any other facts pertinent to the type of license for which application has been made, including the number, type, and availability of medical marijuana centers, optional premises cultivation operations, or medical marijuana-infused products manufacturers located in or near the premises under consideration, and any other pertinent matters affecting the qualifications of the applicant for the conduct of the type of business proposed.

(3) Within thirty days after the public hearing or completion of the application investigation, a local licensing authority shall issue its decision approving or denying an application for local licensure. The decision shall be in writing and shall state the reasons for the decision. The local licensing authority shall send a copy of the decision by certified mail to the applicant at the address shown in the application.

(4) After approval of an application, a local licensing authority shall not issue a local license until the building in which the business to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with the applicable provisions of this article, and then only after the local licensing authority has inspected the premises to determine that the applicant has complied with the architect's drawing and the plot plan and detailed sketch for the interior of the building submitted with the application.

(5) After approval of an application for local licensure, the local licensing authority shall notify the state licensing authority of such approval, who shall investigate and either approve or disapprove the application for state licensure.

12-43.3-304. Medical marijuana license bond.

(1) Before the state licensing authority issues a state license to an applicant, the applicant shall procure and file with the state licensing authority evidence of a good and sufficient bond in the amount of five thousand dollars with corporate surety thereon duly licensed to do business with the state, approved as to form by the attorney general of the state, and conditioned that the

applicant shall report and pay all sales and use taxes due to the state, or for which the state is the collector or collecting agent, in a timely manner, as provided in law.

(2) A corporate surety shall not be required to make payments to the state claiming under such bond until a final determination of failure to pay taxes due to the state has been made by the state licensing authority or a court of competent jurisdiction.

(3) All bonds required pursuant to this section shall be renewed at such time as the bondholder's license is renewed. The renewal may be accomplished through a continuation certificate issued by the surety.

12-43.3-305. State licensing authority — application and issuance procedures.

(1) Applications for a state license under the provisions of this article shall be made to the state licensing authority on forms prepared and furnished by the state licensing authority and shall set forth such information as the state licensing authority may require to enable the state licensing authority to determine whether a state license should be granted. The information shall include the name and address of the applicant, the names and addresses of the officers, directors, or managers, and all other information deemed necessary by the state licensing authority. Each application shall be verified by the oath or affirmation of such person or persons as the state licensing authority may prescribe.

(2) The state licensing authority shall not issue a state license pursuant to this section until the local licensing authority has approved the application for a local license and issued a local license as provided for in sections 12-43.3-301 to 12-43.3-303.

(3) Nothing in this article shall preempt or otherwise impair the power of a local government to enact ordinances or resolutions concerning matters authorized to local governments.

12-43.3-306. Denial of application.

(1) The state licensing authority shall deny a state license if the premises on which the applicant proposes to conduct its business do not meet the requirements of this article or for reasons set forth in section 12-43.3-104 (1) (c) or 12-43.3-305, and the state licensing authority may deny a license for good cause as defined by section 12-43.3-104 (1) (a) or (1) (b).

(2) If the state licensing authority denies a state license pursuant to subsection (1) of this section, the applicant shall be entitled to a hearing pursuant to section 24-4-104 (9), C.R.S., and judicial review pursuant to section 24-4-106, C.R.S. The state licensing authority shall provide written notice of the grounds for denial of the state license to the applicant and to the local licensing authority at least fifteen days prior to the hearing.

12-43.3-307. Persons prohibited as licensees — repeal.

- (1) A license provided by this article shall not be issued to or held by:
 - (a) A person until the annual fee therefore has been paid;
 - (b) A person whose criminal history indicates that he or she is not of good moral character;
 - (c) A corporation, if the criminal history of any of its officers, directors, or stockholders indicates that the officer, director, or stockholder is not of good moral character;
 - (d) A licensed physician making patient recommendations;
 - (e) A person employing, assisted by, or financed in whole or in part by any other person whose criminal history indicates he or she is not of good character and reputation satisfactory to the respective licensing authority;
 - (f) A person under twenty-one years of age;
 - (g) 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 with a taxing agency;
 - (II) Pay any taxes, interest, or penalties due;
 - (III) Pay any judgments due to a government agency;
 - (IV) Stay out of default on a government-issued student loan;
 - (V) Pay child support; or
 - (VI) Remedy an outstanding delinquency for taxes owed, an outstanding delinquency for judgments owed to a government agency, or an outstanding delinquency for child support;
 - (h) A person who has discharged a sentence in the five years immediately preceding the application date for a conviction of a felony or a person who at any time has been convicted of a felony pursuant to any state or federal law regarding the possession, distribution, manufacturing, cultivation, or use of a controlled substance; except that the licensing authority may grant a license to an employee if the employee has a state felony conviction based on possession or use of a controlled substance that would not be a felony if the person were convicted of the offense on the date he or she applied for licensure;
 - (i) A person who employs another person at a medical marijuana facility who has not passed a criminal history record check;

(j) A sheriff, deputy sheriff, police officer, or prosecuting officer, or an officer or employee of the state licensing authority or a local licensing authority;

(k) A person whose authority to be a primary caregiver as defined in section 25-1.5-106 (2), C.R.S., has been revoked by the state health agency;

(l) A person for a license for a location that is currently licensed as a retail food establishment or wholesale food registrant; or

(m) An owner, as defined by rule of the state licensing authority, who has not been a resident of Colorado for at least two years prior to the date of the owner's application; except that:

(I) (A) For an owner who submits an application for licensure pursuant to this article by December 15, 2010, this requirement shall not apply to that owner if he or she was a resident of the state of Colorado on December 15, 2009.

(B) This subparagraph (I) is repealed, effective July 1, 2012.

(2) (a) In investigating the qualifications of an applicant or a licensee, the state and local licensing authorities may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the state or local licensing authority considers the applicant's criminal history record, the state or local licensing authority shall also consider any information provided by the applicant regarding such criminal history record, including but not limited to evidence of rehabilitation, character references, and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a state license.

(b) As used in paragraph (a) of this subsection (2), "criminal justice agency" means any federal, state, or municipal court or any governmental agency or subunit of such agency that administers criminal justice pursuant to a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice.

(c) At the time of filing an application for issuance or renewal of a state medical marijuana center license, medical marijuana-infused product manufacturer license, or optional premises cultivation license, an applicant shall submit a set of his or her fingerprints and file personal history information concerning the applicant's qualifications for a state license on forms prepared by the state licensing authority. The state or local licensing authority shall submit the fingerprints to the Colorado bureau of investigation for the purpose of conducting fingerprint-based criminal history record checks. The Colorado bureau of investigation shall forward the fingerprints to the federal bureau of investigation for the purpose of conducting fingerprint-based criminal history record checks. The state or local licensing authority may acquire a name-based criminal history record check for an applicant or a license holder who has twice submitted to a fingerprint-based criminal history record check and whose fingerprints are unclassifiable. An applicant who has previously submitted fingerprints for state licensing purposes may request that the fingerprints on file be used. The state or local licensing authority shall use the information

resulting from the fingerprint-based criminal history record check to investigate and determine whether an applicant is qualified to hold a state license pursuant to this article. The state or local licensing authority may verify any of the information an applicant is required to submit.

12-43.3-308. Restrictions for applications for new licenses.

(1) The state or a local licensing authority shall not receive or act upon an application for the issuance of a state or local license pursuant to this article:

(a) If the application for a state or local 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 or a local 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;

(b) Until it is established that the applicant is, or will be, entitled to possession of the premises for which application is made under a lease, rental agreement, or other arrangement for possession of the premises or by virtue of ownership of the premises;

(c) For a location in an area where the cultivation, manufacture, and sale of medical marijuana as contemplated is not permitted under the applicable zoning laws of the municipality, city and county, or county;

(d) (I) If the building in which medical marijuana is to be sold is located within one thousand feet of a school, an alcohol or drug treatment facility, the principal campus of a college, university, or seminary, or a residential child care facility. The provisions of this section shall not affect the renewal or reissuance of a license once granted or apply to licensed premises located or to be located on land owned by a municipality, nor shall the provisions of this section apply to an existing licensed premises on land owned by the state, or apply to a license in effect and actively doing business before said principal campus was constructed. The local licensing authority of a city and county, by rule or regulation, the governing body of a municipality, by ordinance, and the governing body of a county, by resolution, may vary the distance restrictions imposed by this subparagraph (I) for a license or may eliminate one or more types of schools, campuses, or facilities from the application of a distance restriction established by or pursuant to this subparagraph (I).

(II) The distances referred to in this paragraph (d) are to be computed by direct measurement from the nearest property line of the land used for a school or campus to the nearest portion of the building in which medical marijuana is to be sold, using a route of direct pedestrian access.

(III) In addition to the requirements of section 12-43.3-303 (2), the local licensing authority shall consider the evidence and make a specific finding of fact as to whether the building in which the medical marijuana is to be sold is located within any distance restrictions established by or pursuant to this paragraph (d).

12-43.3-309. Transfer of ownership.

(1) A state or local license granted under the provisions of this article shall not be transferable except as provided in this section, but this section shall not prevent a change of location as provided in section 12-43.3-310 (13).

(2) For a transfer of ownership, a license holder shall apply to the state and local licensing authorities on forms prepared and furnished by the state licensing authority. In determining whether to permit a transfer of ownership, the state and local licensing authorities shall consider only the requirements of this article, any rules promulgated by the state licensing authority, and any other local restrictions. The local licensing authority may hold a hearing on the application for transfer of ownership. The local licensing authority shall not hold a hearing pursuant to this subsection (2) until the local licensing authority has posted a notice of hearing in the manner described in section 12-43.3-302 (2) on the licensed medical marijuana center premises for a period of ten days and has provided notice of the hearing to the applicant at least ten days prior to the hearing. Any transfer of ownership hearing by the state licensing authority shall be held in compliance with the requirements specified in section 12-43.3-302.

12-43.3-310. Licensing in general.

(1) This article authorizes a county, municipality, or city and county to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses and to enact reasonable regulations or other restrictions applicable to medical marijuana centers, optional premises cultivation licenses, and medical marijuana-infused products manufacturers' licenses based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana that are more restrictive than this article.

(2) A medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer may not operate until it has been licensed by the local licensing authority and the state licensing authority pursuant to this article. In connection with a license, the applicant shall provide a complete and accurate list of all owners, officers, and employees who work at, manage, own, or are otherwise associated with the operation and shall provide a complete and accurate application as required by the state licensing authority.

(3) A medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer shall notify the state licensing authority in writing within ten days after an owner, officer, or employee ceases to work at, manage, own, or otherwise be associated with the operation. The owner, officer, or employee shall surrender his or her identification card to the state licensing authority on or before the date of the notification.

(4) A medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer shall notify the state licensing authority in writing of the name, address, and date of birth of an owner, officer, manager, or employee before the new owner, officer, or employee begins working at, managing, owning, or being associated with the

operation. The owner, officer, manager, or employee shall pass a fingerprint-based criminal history record check as required by the state licensing authority and obtain the required identification prior to being associated with, managing, owning, or working at the operation.

(5) A medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer shall not acquire, possess, cultivate, deliver, transfer, transport, supply, or dispense marijuana for any purpose except to assist patients, as defined by section 14 (1) of article XVIII of the state constitution.

(6) All officers, managers, and employees of a medical marijuana center, optional premises cultivation operation, or medical marijuana-infused products manufacturer shall be residents of Colorado upon the date of their license application. An owner shall meet the residency requirements in section 12-43.3-307 (1) (m). A local licensing authority shall not issue a license provided for in this article until that share of the license application fee due to the state has been received by the department of revenue. All licenses granted pursuant to this article shall be valid for a period not to exceed two years after the date of issuance unless revoked or suspended pursuant to this article or the rules promulgated pursuant to this article.

(7) Before granting a local or state license, the respective licensing authority may consider, except where this article specifically provides otherwise, the requirements of this article and any rules promulgated pursuant to this article, and all other reasonable restrictions that are or may be placed upon the licensee by the licensing authority. With respect to a second or additional license for the same licensee or the same owner of another licensed business pursuant to this article, each licensing authority shall consider the effect on competition of granting or denying the additional licenses to such licensee and shall not approve an application for a second or additional license that would have the effect of restraining competition.

(8) (a) Each license issued under this article is separate and distinct. It is unlawful for a person to exercise any of the privileges granted under a license other than the license that the person holds or for a licensee to allow any other person to exercise the privileges granted under the licensee's license. A separate license shall be required for each specific business or business entity and each geographical location.

(b) At all times, a licensee shall possess and maintain possession of the premises or optional premises for which the license is issued by ownership, lease, rental, or other arrangement for possession of the premises.

(9) (a) The licenses provided pursuant to this article shall specify the date of issuance, the period of licensure, the name of the licensee, and the premises or optional premises licensed. The licensee shall conspicuously place the license at all times on the licensed premises or optional premises.

(b) A local licensing authority shall not transfer location of or renew a license to sell medical marijuana until the applicant for the license produces a license issued and granted by the state licensing authority covering the whole period for which a license or license renewal is sought.

(10) In computing any period of time prescribed by this article, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Saturdays, Sundays, and legal holidays shall be counted as any other day.

(11) A licensee shall report each transfer or change of financial interest in the license to the state and local licensing authorities thirty days prior to any transfer or change pursuant to section 12-43.3-309. A report shall be required for transfers of capital stock of any corporation regardless of size.

(12) Each licensee shall manage the licensed premises himself or herself or employ a separate and distinct manager on the premises and shall report the name of the manager to the state and local licensing authorities. The licensee shall report any change in manager to the state and local licensing authorities thirty days prior to the change pursuant to section 12-43.3-309.

(13) (a) A licensee may move his or her permanent location to any other place in the same municipality or city and county for which the license was originally granted, or in the same county if the license was granted for a place outside the corporate limits of a municipality or city and county, but it shall be unlawful to cultivate, manufacture, distribute, or sell medical marijuana at any such place until permission to do so is granted by the state and local licensing authorities provided for in this article.

(b) In permitting a change of location, the state and local licensing authorities shall consider all reasonable restrictions that are or may be placed upon the new location by the governing board or local licensing authority of the municipality, city and county, or county and any such change in location shall be in accordance with all requirements of this article and rules promulgated pursuant to this article.

(14) Repealed.

12-43.3-311. License renewal.

(1) Ninety days prior to the expiration date of an existing license, the state licensing authority shall notify the licensee of the expiration date by first class mail at the licensee's address of record with the state licensing authority. A licensee shall apply for the renewal of an existing license to the local licensing authority not less than forty-five days and to the state licensing authority not less than thirty days prior to the date of expiration. A local licensing authority shall not accept an application for renewal of a license after the date of expiration, except as provided in subsection (2) of this section. The state licensing authority may extend the expiration date of the license and accept a late application for renewal of a license provided that the applicant has filed a timely renewal application with the local licensing authority. All renewals filed with the local licensing authority and subsequently approved by the local licensing authority shall next be processed by the state licensing authority. The state or the local licensing authority, in its discretion, subject to the requirements of this subsection (1) and subsection (2) of this section and based upon reasonable grounds, may waive the forty-five-day or thirty-day time requirements set forth in this subsection (1). The local licensing authority may hold a hearing on

the application for renewal only if the licensee has had complaints filed against it, has a history of violations, or there are allegations against the licensee that would constitute good cause. The local licensing authority shall not hold a renewal hearing provided for by this subsection (1) for a medical marijuana center until it has posted a notice of hearing on the licensed medical marijuana center premises in the manner described in section 12-43.3-302 (2) for a period of ten days and provided notice to the applicant at least ten days prior to the hearing. The local licensing authority may refuse to renew any license for good cause, subject to judicial review.

(2) (a) Notwithstanding the provisions of subsection (1) of this section, a licensee whose license has been expired for not more than ninety days may file a late renewal application upon the payment of a nonrefundable late application fee of five hundred dollars to the local licensing authority. A licensee who files a late renewal application and pays the requisite fees may continue to operate until both the state and local licensing authorities have taken final action to approve or deny the licensee's late renewal application unless the state or local licensing authority summarily suspends the license pursuant to article 4 of title 24, C.R.S., this article, and rules promulgated pursuant to this article.

(b) The state and local licensing authorities may not accept a late renewal application more than ninety days after the expiration of a licensee's permanent annual license. A licensee whose permanent annual license has been expired for more than ninety days shall not cultivate, manufacture, distribute, or sell any medical marijuana until all required licenses have been obtained.

(c) Notwithstanding the amount specified for the late application fee in paragraph (a) of this subsection (2), the state licensing authority by rule or as otherwise provided by law may reduce the amount of the fee if necessary pursuant to section 24-75-402 (3), C.R.S., by reducing the uncommitted reserves of the fund to which all or any portion of the fee is credited. After the uncommitted reserves of the fund are sufficiently reduced, the state licensing authority by rule or as otherwise provided by law may increase the amount of the fee as provided in section 24-75-402 (4), C.R.S.

12-43.3-312. Inactive licenses.

The state or local licensing authority, in its discretion, may revoke or elect not to renew any license if it determines that the licensed premises have been inactive, without good cause, for at least one year.

12-43.3-313. Unlawful financial assistance.

(1) The state licensing authority, by rule and regulation, shall require a complete disclosure of all persons having a direct or indirect financial interest, and the extent of such interest, in each license issued under this article.

(2) A person shall not have an unreported financial interest in a license pursuant to this article unless that person has undergone a fingerprint-based criminal history record check as provided for by the state licensing authority in its rules; except that this subsection (2) shall not apply to banks, savings and loan associations, or industrial banks supervised and regulated by an agency of the state or federal government, or to FHA-approved mortgagees, or to stockholders, directors, or officers thereof.

(3) This section is intended to prohibit and prevent the control of the outlets for the sale of medical marijuana by a person or party other than the persons licensed pursuant to the provisions of this article.

PART 4 LICENSE TYPES

12-43.3-401. Classes of licenses.

(1) For the purpose of regulating the cultivation, manufacture, distribution, and sale of medical marijuana, the state licensing authority in its discretion, upon application in the prescribed form made to it, 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:

- (a) Medical marijuana center license;
- (b) Optional premises cultivation license;
- (c) Medical marijuana-infused products manufacturing license; and

(d) Occupational licenses and registrations for owners, managers, operators, employees, contractors, and other support staff employed by, working in, or having access to restricted areas of the licensed premises, as determined by the state licensing authority. The state licensing authority may take any action with respect to a registration pursuant to this article as it may with respect to a license pursuant to this article, in accordance with the procedures established pursuant to this article.

(2) All persons licensed pursuant to this article shall collect sales tax on all sales made pursuant to the licensing activities.

(3) A state chartered bank or a credit union may loan money to any person licensed pursuant to this article for the operation of a licensed business.

12-43.3-402. Medical marijuana center license.

(1) A medical marijuana center license shall be issued only to a person selling medical marijuana pursuant to the terms and conditions of this article.

(2) (a) Notwithstanding the provisions of this section, a medical marijuana center licensee may also sell medical marijuana-infused products that are prepackaged and labeled so as to clearly indicate all of the following:

(I) That the product contains medical marijuana;

(II) That the product is manufactured without any regulatory oversight for health, safety, or efficacy; and

(III) That there may be health risks associated with the consumption or use of the product.

(b) A medical marijuana licensee may contract with a medical marijuana-infused products manufacturing licensee for the manufacture of medical marijuana-infused products upon a medical marijuana-infused products manufacturing licensee's licensed premises.

(3) Every person selling medical marijuana as provided for in this article shall sell only medical marijuana grown in its medical marijuana optional premises licensed pursuant to this article. In addition to medical marijuana, a medical marijuana center may sell no more than six immature plants to a patient; except that a medical marijuana center may sell more than six immature plants, but may not exceed half the recommended plant count, to a patient who has been recommended an expanded plant count by his or her recommending physician. A medical marijuana center may sell immature plants to a primary caregiver, another medical marijuana center, or a medical marijuana-infused product manufacturer pursuant to rules promulgated by the state licensing authority. The provisions of this subsection (3) shall not apply to medical marijuana-infused products.

(4) Notwithstanding the requirements of subsection (3) of this section to the contrary, a medical marijuana licensee may purchase not more than thirty percent of its total on-hand inventory of medical marijuana from another licensed medical marijuana center in Colorado. A medical marijuana center may sell no more than thirty percent of its total on-hand inventory to another Colorado licensed medical marijuana licensee; except that the director of the division that regulates medical marijuana may grant a temporary waiver:

(a) To a medical marijuana center or applicant if the medical marijuana center or applicant suffers a catastrophic event related to its inventory; or

(b) To a new medical marijuana center licensee for a period not to exceed ninety days so the new licensee can cultivate the necessary medical marijuana to comply with this subsection (4).

(5) Prior to initiating a sale, the employee of the medical marijuana center making the sale shall verify that the purchaser has a valid registration card issued pursuant to section 25-1.5-106,

C.R.S., or a copy of a current and complete new application for the medical marijuana registry administered by the department of public health and environment that is documented by a certified mail return receipt as having been submitted to the department of public health and environment within the preceding thirty-five days, and a valid picture identification card that matches the name on the registration card. A purchaser may not provide a copy of a renewal application in order to make a purchase at a medical marijuana center. A purchaser may only make a purchase using a copy of his or her application from 8 a.m. to 5 p.m., Monday through Friday. If the purchaser presents a copy of his or her application at the time of purchase, the employee must contact the department of public health and environment to determine whether the purchaser's application has been denied. The employee shall not complete the transaction if the purchaser's application has been denied. If the purchaser's application has been denied, the employee shall be authorized to confiscate the purchaser's copy of the application and the documentation of the certified mail return receipt, if possible, and shall, within seventy-two hours after the confiscation, turn it over to the department of public health and environment or local law enforcement agency. The failure to confiscate the copy of the application and document of the certified mail return receipt or to turn it over to the state health department or a state or local law enforcement agency within seventy-two hours after the confiscation shall not constitute a criminal offense.

(5.5) Transactions for the sale of medical marijuana or a medical marijuana-infused product at a medical marijuana center may be completed by using an automated machine that is in a restricted access area of the center if the machine complies with the rules promulgated by the state licensing authority regarding the transaction of sale of product at a medical marijuana center and the transaction complies with subsection (5) of this section.

(6) A medical marijuana center may provide a sample of its products to a laboratory that has an occupational license from the state licensing authority for testing and research purposes. The laboratory may develop, test, and produce medical marijuana-based products. The laboratory may contract method or product development with a licensed medical marijuana center or licensed medical marijuana infused-product manufacturer. The state licensing authority shall promulgate rules pursuant to its authority in section 12-43.3-202 (1) (b), C.R.S., related to acceptable testing and research practices, including but not limited to testing, standards, quality control analysis, equipment certification and calibration, and chemical identification and other substances used in bona fide research methods. A laboratory that has an occupational license from the state licensing authority for testing purposes shall not have any interest in a licensed medical marijuana center or a licensed medical marijuana-infused products manufacturer.

(7) All medical marijuana sold at a licensed medical marijuana center shall be labeled with a list of all chemical additives, including but not limited to nonorganic pesticides, herbicides, and fertilizers, that were used in the cultivation and the production of the medical marijuana.

(8) A licensed medical marijuana center shall comply with all provisions of article 34 of title 24, C.R.S., as the provisions relate to persons with disabilities.

(9) Notwithstanding the provisions of section 12-43.3-901 (4) (m), a medical marijuana center may sell below cost or donate to a patient who has been designated indigent by the state health agency or who is in hospice care:

(a) Medical marijuana; or

(b) No more than six immature plants; except that a medical marijuana center may sell or donate more than six immature plants, but may not exceed half the recommended plant count, to a patient who has been recommended an expanded plant count by his or her recommending physician; or

(c) Medical marijuana-infused products to patients.

12-43.3-403. Optional premises cultivation license.

(1) An optional premises cultivation license may be issued only to a person licensed pursuant to section 12-43.3-402 (1) or 12-43.3-404 (1) who grows and cultivates medical marijuana at an additional Colorado licensed premises contiguous or not contiguous with the licensed premises of the person's medical marijuana center license or the person's medical marijuana-infused products manufacturing license.

(2) Optional premises cultivation licenses may be combined in a common area solely for the purposes of growing and cultivating medical marijuana and used to provide medical marijuana to more than one licensed medical marijuana center or licensed medical marijuana-infused product manufacturer so long as the holder of the optional premise cultivation license is also a common owner of each licensed medical marijuana center or licensed medical marijuana-infused product manufacturer to which medical marijuana is provided. In accordance with promulgated rules relating to plant and product tracking requirements, each optional premises cultivation licensee shall supply medical marijuana only to its associated licensed medical marijuana centers or licensed medical marijuana-infused product manufacturers.

12-43.3-404. Medical marijuana-infused products manufacturing license.

(1) A medical marijuana-infused products manufacturing license may be issued to a person who manufactures medical marijuana-infused products, pursuant to the terms and conditions of this article.

(2) Medical marijuana-infused products shall be prepared on a licensed premises that is used exclusively for the manufacture and preparation of medical marijuana-infused products and using equipment that is used exclusively for the manufacture and preparation of medical marijuana-infused products.

(3) A medical marijuana-infused products licensee shall have a written agreement or contract with a medical marijuana center licensee, which contract shall at a minimum set forth the total

amount of medical marijuana obtained from a medical marijuana center licensee to be used in the manufacturing process, and the total amount of medical marijuana-infused products to be manufactured from the medical marijuana obtained from the medical marijuana center. A medical marijuana-infused products licensee shall not use medical marijuana from more than five different medical marijuana centers in the production of one medical marijuana-infused product. The medical marijuana-infused products manufacturing licensee may sell its products to any licensed medical marijuana center.

(4) All licensed premises on which medical marijuana-infused products are manufactured shall meet the sanitary standards for medical marijuana-infused product preparation promulgated pursuant to section 12-43.3-202 (2) (a) (XII).

(5) The medical marijuana-infused product shall be sealed and conspicuously labeled in compliance with this article and any rules promulgated pursuant to this article. The labeling of medical marijuana-infused products is a matter of statewide concern.

(6) Medical marijuana-infused products may not be consumed on a premises licensed pursuant to this article.

(7) Notwithstanding any other provision of state law, sales of medical marijuana-infused products shall not be exempt from state or local sales tax.

(8) A medical marijuana-infused products licensee that has an optional premises cultivation license shall not sell any of the medical marijuana that it cultivates except for the medical marijuana that is contained in medical marijuana-infused products.

(9) (a) A medical marijuana-infused products licensee may not have more than five hundred medical marijuana plants on its premises or at its optional premises cultivation operation; except that the director of the division that regulates medical marijuana may grant a waiver in excess of five hundred marijuana plants based on the consideration of the factors in paragraph (b) of this subsection (9).

(b) The director of the division that regulates medical marijuana shall consider the following factors in determining whether to grant the waiver described in paragraph (a) of this subsection (9):

(I) The nature of the products manufactured;

(II) The business need;

(III) Existing business contracts with licensed medical marijuana centers for the production of medical marijuana-infused products; and

(IV) The ability to contract with licensed medical marijuana centers for the production of medical marijuana-infused products.

(10) A medical marijuana-infused products manufacturer may provide a sample of its products to a laboratory that has an occupational license from the state licensing authority for testing and research purposes. The state licensing authority shall promulgate rules pursuant to its authority in section 12-43.3-202 (1) (b), C.R.S., related to acceptable testing and research practices. A laboratory that has an occupational license from the state licensing authority for testing purposes shall not have any interest in a licensed medical marijuana center or a licensed medical marijuana-infused products manufacturer.

PART 5 FEES

12-43.3-501. Medical marijuana license cash fund.

(1) All moneys collected by the state licensing authority pursuant to this article shall be transmitted to the state treasurer, who shall credit the same to the medical marijuana license cash fund, which fund is hereby created and referred to in this section as the “fund”. The moneys in the fund shall be subject to annual appropriation by the general assembly to the department of revenue for the direct and indirect costs associated with implementing this article. Any moneys in the fund not expended for the purpose of this article may be invested by the state treasurer as provided by law. All interest and income derived from the investment and deposit of moneys in the fund shall be credited to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year shall remain in the fund and shall not be credited or transferred to the general fund or another fund.

(2) The executive director of the department of revenue by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the executive director by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

(3) (a) The state licensing authority shall establish fees for processing the following types of applications, licenses, notices, or reports required to be submitted to the state licensing authority:

(I) Applications for licenses listed in section 12-43.3-401 and rules promulgated pursuant to that section;

(II) Applications to change location pursuant to section 12-43.3-310 and rules promulgated pursuant to that section;

(III) Applications for transfer of ownership pursuant to section 12-43.3-310 and rules promulgated pursuant to that section;

(IV) License renewal and expired license renewal applications pursuant to section 12-43.3-311; and

(V) Licenses as listed in section 12-43.3-401.

(b) The amounts of such fees, when added to the other fees transferred to the fund pursuant to this section, shall reflect the actual direct and indirect costs of the state licensing authority in the administration and enforcement of this article so that the fees avoid exceeding the statutory limit on uncommitted reserves in administrative agency cash funds as set forth in section 24-75-402 (3), C.R.S.

(c) The state licensing authority may charge applicants licensed under this article a fee for the cost of each fingerprint analysis and background investigation undertaken to qualify new officers, directors, managers, or employees.

(d) At least annually, the state licensing authority shall review the amounts of the fees and, if necessary, adjust the amounts to reflect the direct and indirect costs of the state licensing authority.

(4) Except as provided in subsection (5) of this section, the state licensing authority shall establish a basic fee that shall be paid at the time of service of any subpoena upon the state licensing authority, plus a fee for meals and a fee for mileage at the rate prescribed for state officers and employees in section 24-9-104, C.R.S., for each mile actually and necessarily traveled in going to and returning from the place named in the subpoena. If the person named in the subpoena is required to attend the place named in the subpoena for more than one day, there shall be paid, in advance, a sum to be established by the state licensing authority for each day of attendance to cover the expenses of the person named in the subpoena.

(5) The subpoena fee established pursuant to subsection (4) of this section shall not be applicable to any federal, state or local governmental agency.

12-43.3-502. Fees — allocation.

(1) Except as otherwise provided, all fees and fines provided for by this article shall be paid to the department of revenue, which shall transmit the fees to the state treasurer. The state treasurer shall credit the fees to the medical marijuana license cash fund created in section 12-43.3-501.

(2) The expenditures of the state licensing authority shall be paid out of appropriations from the medical marijuana license cash fund created in section 12-43.3-501.

12-43.3-503. Local license fees.

(1) Each application for a local license provided for in this article filed with a local licensing authority shall be accompanied by an application fee in an amount determined by the local licensing authority.

(2) License fees as determined by the local licensing authority shall be paid to the treasurer of the municipality, city and county, or county where the licensed premises is located in advance of the approval, denial, or renewal of the license.

PART 6 DISCIPLINARY ACTIONS

12-43.3-601. Suspension — revocation — fines.

(1) In addition to any other sanctions prescribed by this article or rules promulgated pursuant to this article, the state licensing authority or a local licensing authority has the power, on its own motion or on complaint, after investigation and opportunity for a public hearing at which the licensee shall be afforded an opportunity to be heard, to suspend or revoke a license issued by the respective authority for a violation by the licensee or by any of the agents or employees of the licensee of the provisions of this article, or any of the rules promulgated pursuant to this article, or of any of the terms, conditions, or provisions of the license issued by the state or local licensing authority. The state licensing authority or a local licensing authority has the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of a hearing that the state or local licensing authority is authorized to conduct.

(2) The state or local licensing authority shall provide notice of suspension, revocation, fine, or other sanction, as well as the required notice of the hearing pursuant to subsection (1) of this section, by mailing the same in writing to the licensee at the address contained in the license. Except in the case of a summary suspension, a suspension shall not be for a longer period than six months. If a license is suspended or revoked, a part of the fees paid therefore shall not be returned to the licensee. Any license or permit may be summarily suspended by the issuing licensing authority without notice pending any prosecution, investigation, or public hearing pursuant to the terms of section 24-4-104 (4), C.R.S. Nothing in this section shall prevent the summary suspension of a license pursuant to section 24-4-104 (4), C.R.S. Each patient registered with a medical marijuana center that has had its license summarily suspended may immediately transfer his or her primary center to another licensed medical marijuana center.

(3) (a) Whenever a decision of the state licensing authority or a local licensing authority suspending a license for fourteen days or less becomes final, the licensee may, before the operative date of the suspension, petition for permission to pay a fine in lieu of having the license

suspended for all or part of the suspension period. Upon the receipt of the petition, the state or local licensing authority may, in its sole discretion, stay the proposed suspension and cause any investigation to be made which it deems desirable and may, in its sole discretion, grant the petition if the state or local licensing authority is satisfied that:

(I) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and that the payment of the fine will achieve the desired disciplinary purposes;

(II) The books and records of the licensee are kept in such a manner that the loss of sales that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy; and

(III) The licensee has not had his or her license suspended or revoked, nor had any suspension stayed by payment of a fine, during the two years immediately preceding the date of the motion or complaint that resulted in a final decision to suspend the license or permit.

(b) The fine accepted shall be not less than five hundred dollars nor more than one hundred thousand dollars.

(c) Payment of a fine pursuant to the provisions of this subsection (3) shall be in the form of cash or in the form of a certified check or cashier's check made payable to the state or local licensing authority, whichever is appropriate.

(4) Upon payment of the fine pursuant to subsection (3) of this section, the state or local licensing authority shall enter its further order permanently staying the imposition of the suspension. If the fine is paid to a local licensing authority, the governing body of the authority shall cause the moneys to be paid into the general fund of the local licensing authority. Fines paid to the state licensing authority pursuant to subsection (3) of this section shall be transmitted to the state treasurer, who shall credit the same to the medical marijuana license cash fund created in section 12-43.3-501.

(5) In connection with a petition pursuant to subsection (3) of this section, the authority of the state or local licensing authority is limited to the granting of such stays as are necessary for the authority to complete its investigation and make its findings and, if the authority makes such findings, to the granting of an order permanently staying the imposition of the entire suspension or that portion of the suspension not otherwise conditionally stayed.

(6) If the state or local licensing authority does not make the findings required in paragraph (a) of subsection (3) of this section and does not order the suspension permanently stayed, the suspension shall go into effect on the operative date finally set by the state or local licensing authority.

(7) Each local licensing authority shall report all actions taken to impose fines, suspensions, and revocations to the state licensing authority in a manner required by the state licensing authority. No later than January 15 of each year, the state licensing authority shall compile a

report of the preceding year's actions in which fines, suspensions, or revocations were imposed by local licensing authorities and by the state licensing authority. The state licensing authority shall file one copy of the report with the chief clerk of the house of representatives, one copy with the secretary of the senate, and six copies in the joint legislative library.

12-43.3-602. Disposition of unauthorized marijuana or marijuana-infused products and related materials.

(1) The provisions of this section shall apply in addition to any criminal, civil, or administrative penalties and in addition to any other penalties prescribed by this article or any rules promulgated pursuant to this article. Any provisions in this article related to law enforcement shall be considered a cumulative right of the people in the enforcement of the criminal laws.

(2) Every licensee licensed under this article shall be deemed, by virtue of applying for, holding, or renewing such person's license, to have expressly consented to the procedures set forth in this section.

(3) A state or local agency shall not be required to cultivate or care for any marijuana or marijuana-infused product belonging to or seized from a licensee. A state or local agency shall not be authorized to sell marijuana, medical or otherwise.

(4) If the state or local licensing authority issues a final agency order imposing a disciplinary action against a licensee pursuant to section 12-43.3-601, then, in addition to any other remedies, the licensing authority's final agency order may specify that some or all of the licensee's marijuana or marijuana-infused product is not medical marijuana or a medical marijuana-infused product and is an illegal controlled substance. The order may further specify that the licensee shall lose any interest in any of the marijuana or marijuana-infused product even if the marijuana or marijuana-infused product previously qualified as medical marijuana or a medical marijuana-infused product. The final agency order may direct the destruction of any such marijuana and marijuana-infused products, except as provided in subsections (5) and (6) of this section. The authorized destruction may include the incidental destruction of any containers, equipment, supplies, and other property associated with the marijuana or marijuana-infused product.

(5) Following the issuance of a final agency order by the licensing authority imposing a disciplinary action against a licensee and ordering destruction authorized by subsection (4) of this section, a licensee shall have fifteen days within which to file a petition for stay of agency action with the district court. The action shall be filed in the city and county of Denver, which shall be deemed to be the residence of the state licensing authority for purposes of this section. The licensee shall serve the petition in accordance with the rules of civil procedure. The district court shall promptly rule upon the petition and shall determine whether the licensee has a substantial likelihood of success on judicial review so as to warrant delay of the destruction authorized by subsection (4) of this section or whether other circumstances, including but not limited to the need for preservation of evidence, warrant delay of such destruction. If destruction is so delayed pursuant to judicial order, the court shall issue an order setting forth terms and conditions pursuant to which the licensee may maintain the marijuana and marijuana-infused

product pending judicial review, and prohibiting the licensee from using or distributing the marijuana or marijuana-infused product pending the review. The licensing authority shall not carry out the destruction authorized by subsection (4) of this section until fifteen days have passed without the filing of a petition for stay of agency action, or until the court has issued an order denying stay of agency action pursuant to this subsection (5).

(6) The licensing authority shall not carry out the destruction authorized by subsection (4) of this section until it has notified the district attorney for the judicial district in which the marijuana is located to determine whether the marijuana or product constitutes evidence in a criminal proceeding such that it should not be destroyed, and until fifteen days have passed from the date of the issuance of such notice.

(7) On or before January 1, 2012, the state licensing authority shall promulgate rules governing the implementation of this section.

PART 7

INSPECTION OF BOOKS AND RECORDS

12-43.3-701. Inspection procedures.

(1) Each licensee shall keep a complete set of all records necessary to show fully the business transactions of the licensee, all of which shall be open at all times during business hours for the inspection and examination of the state licensing authority or its duly authorized representatives. The state licensing authority may require any licensee to furnish such information as it considers necessary for the proper administration of this article and may require an audit to be made of the books of account and records on such occasions as it may consider necessary by an auditor to be selected by the state licensing authority who shall likewise have access to all books and records of the licensee, and the expense thereof shall be paid by the licensee.

(2) The licensed premises, including any places of storage where medical marijuana is grown, stored, cultivated, sold, or dispensed, shall be subject to inspection by the state or local licensing authorities and their investigators, during all business hours and other times of apparent activity, for the purpose of inspection or investigation. For examination of any inventory or books and records required to be kept by the licensees, access shall be required during business hours. Where any part of the licensed premises consists of a locked area, upon demand to the licensee, such area shall be made available for inspection without delay, and, upon request by authorized representatives of the state or local licensing authority, the licensee shall open the area for inspection.

(3) Each licensee shall retain all books and records necessary to show fully the business transactions of the licensee for a period of the current tax year and the three immediately prior tax years.

PART 8 JUDICIAL REVIEW

12-43.3-801. Judicial review.

Decisions by the state licensing authority or a local licensing authority shall be subject to judicial review pursuant to section 24-4-106, C.R.S.

PART 9 UNLAWFUL ACTS — ENFORCEMENT

12-43.3-901. Unlawful acts — exceptions.

(1) Except as otherwise provided in this article, it is unlawful for a person:

(a) To consume medical marijuana in a licensed medical marijuana center, and it shall be unlawful for a medical marijuana licensee to allow medical marijuana to be consumed upon its licensed premises;

(b) With knowledge, to permit or fail to prevent the use of his or her registry identification by any other person for the unlawful purchasing of medical marijuana;

(c) and (d) (Deleted by amendment, L. 2011, (HB 11-1043), ch. 266, p. 1210, 16, effective July 1, 2011.)

(2) It is unlawful for a person to buy, sell, transfer, give away, or acquire medical marijuana except as allowed pursuant to this article.

(3) It is unlawful for a person licensed pursuant to this article:

(a) To be within a limited-access area unless the person's license badge is displayed as required by this article, except as provided in section 12-43.3-701;

(b) To fail to designate areas of ingress and egress for limited-access areas and post signs in conspicuous locations as required by this article;

(c) To fail to report a transfer required by section 12-43.3-310 (11); or

(d) To fail to report the name of or a change in managers as required by section 12-43.3-310 (12).

(4) It is unlawful for any person licensed to sell medical marijuana pursuant to this article:

(a) To display any signs that are inconsistent with local laws or regulations;

(b) To use advertising material that is misleading, deceptive, or false, or that is designed to appeal to minors;

(c) To provide public premises, or any portion thereof, for the purpose of consumption of medical marijuana in any form;

(d) (I) To sell medical marijuana to a person not licensed pursuant to this article or to a person not able to produce a valid patient registry identification card, unless the person has a copy of a current and complete new application for the medical marijuana registry administered by the department of public health and environment that is documented by a certified mail return receipt as having been submitted to the department of public health and environment within the preceding thirty-five days and the employee assisting the person has contacted the department of public health and environment and, as a result, determined the person's application has not been denied. Notwithstanding any provision in this subparagraph (I) to the contrary, a person under twenty-one years of age shall not be employed to sell or dispense medical marijuana at a medical marijuana center or grow or cultivate medical marijuana at an optional premises cultivation operation.

(II) If a licensee or a licensee's employee has reasonable cause to believe that a person is exhibiting a fraudulent patient registry identification card in an attempt to obtain medical marijuana, the licensee or employee shall be authorized to confiscate the fraudulent patient registry identification card, if possible, and shall, within seventy-two hours after the confiscation, turn it over to the state health department or local law enforcement agency. The failure to confiscate the fraudulent patient registry identification card or to turn it over to the state health department or a state or local law enforcement agency within seventy-two hours after the confiscation shall not constitute a criminal offense.

(e) To possess more than six medical marijuana plants and two ounces of medical marijuana for each patient who has registered the center as his or her primary center pursuant to section 25-1.5-106 (8) (f), C.R.S.; except that a medical marijuana center may have an amount that exceeds the six-plant and two-ounce product per patient limit if the center sells to patients that are authorized to have more than six plants and two ounces of product. In the case of a patient authorized to exceed the six-plant and two-ounce limit, the center shall obtain documentation from the patient's physician that the patient needs more than six plants and two ounces of product.

- (f) To offer for sale or solicit an order for medical marijuana in person except within the licensed premises;
- (g) To have in possession or upon the licensed premises any medical marijuana, the sale of which is not permitted by the license;
- (h) To buy medical marijuana from a person not licensed to sell as provided by this article;
- (i) To sell medical marijuana except in the permanent location specifically designated in the license for sale;
- (j) To have on the licensed premises any medical marijuana or marijuana paraphernalia that shows evidence of the medical marijuana having been consumed or partially consumed;
- (k) To require a medical marijuana center or medical marijuana center with an optional premises cultivation license to make delivery to any premises other than the specific licensed premises where the medical marijuana is to be sold;
- (l) To sell, serve, or distribute medical marijuana at any time other than between the hours of 8 a.m. and 7 p.m. Monday through Sunday;
- (m) To violate the provisions of section 6-2-103 or 6-2-105, C.R.S.;
- (n) To burn or otherwise destroy marijuana or any substance containing marijuana for the purpose of evading an investigation or preventing seizure; or
- (o) To abandon a licensed premises or otherwise cease operation without notifying the state and local licensing authorities at least forty-eight hours in advance and without accounting for and forfeiting to the state licensing authority for destruction all marijuana or products containing marijuana.
- (5) Except as provided in sections 12-43.3-402 (4), 12-43.3-403, and 12-43.3-404, it is unlawful for a medical marijuana center, medical marijuana-infused products manufacturing operation with an optional premises cultivation license, or medical marijuana center with an optional premises cultivation license to sell, deliver, or cause to be delivered to a licensee any medical marijuana not grown upon its licensed premises, or for a licensee or medical marijuana center with an optional premises cultivation license or medical marijuana-infused products manufacturing operation with an optional premises cultivation license to sell, possess, or permit sale of medical marijuana not grown upon its licensed premises. A violation of the provisions of this subsection (5) by a licensee shall be grounds for the immediate revocation of the license granted under this article.
- (6) It shall be unlawful for a physician who makes patient referrals to a licensed medical marijuana center to receive anything of value from the medical marijuana center licensee or its agents, servants, officers, or owners or anyone financially interested in the licensee, and it shall

be unlawful for a licensee licensed pursuant to this article to offer anything of value to a physician for making patient referrals to the licensed medical marijuana center.

(6.5) A peace officer or a law enforcement agency shall not use any patient information to make traffic stops pursuant to section 42-4-1302, C.R.S.

(7) A person who commits any acts that are unlawful pursuant to this article or the rules authorized and adopted pursuant to this article commits a class 2 misdemeanor and shall be punished as provided in section 18-1.3-501, C.R.S., except for violations that would also constitute a violation of title 18, C.R.S., which violation shall be charged and prosecuted pursuant to title 18, C.R.S.

PART 10 SUNSET REVIEW

12-43.3-1001. Sunset review — article repeal.

(1) This article is repealed, effective July 1, 2015.

(2) Prior to the repeal of this article, the department of regulatory agencies shall conduct a sunset review as described in section 24-34-104 (8), C.R.S.