

Amendment 64

Implications for Business

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Colorado Concern

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Ballot Title and Submission Clause

- Shall there be an amendment to the Colorado Constitution concerning marijuana, and, in connection therewith, providing for the regulation of marijuana; permitting a person twenty-one years of age or older to consume or possess limited amounts of marijuana; providing for the licensing of cultivation facilities, product manufacturing facilities, testing facilities, and retail stores; permitting local governments to regulate or prohibit such facilities; requiring the General Assembly to enact an excise tax to be levied upon wholesale sales of marijuana; requiring that the first \$40 million in revenue raised annually by such tax be credited to the public school capital construction assistance fund; and requiring the General Assembly to enact legislation governing the cultivation, processing, and sale of industrial hemp?

2012 Election Results

- Amendment 64:
 - 55 percent – YES
 - 44 percent – NO
- The pro adult use marijuana measure garnered more votes (1,383,139) than the President of the United States (1,323,101)

Timelines included in Am. 64

- July 1, 2013 – Department of Revenue adopts regulations
- October 1, 2013 – Department begins accepting/processing license applications
- January 1, 2014 – Department must begin issuing licenses
- July 1, 2014 – Deadline to enact legislation on industrial hemp

Response

- Governor Hickenlooper establishes Amendment 64 Implementation Task Force via Executive Order
- 24 members
 - Elected officials
 - Local and county government
 - Law enforcement, public defenders, district attorneys, juvenile justice
 - Attorney General's Office
 - Public health, public safety
 - Medical marijuana industry
 - Campaign representative
 - Treatment expertise
 - Employers/employees

The Charge

- “...identify the legal, policy and procedural issues that need to be resolved, and offer suggestions and proposals for legislative, regulatory and executive actions...”
 -by February 28, 2013

Task Force Structure

- Amendment 64 Task Force
 - Five work groups
 - Regulatory Framework
 - Criminal Law
 - Civil Law/Tax
 - Consumer Safety/Social Issues
 - Local Authority

Task Force Principles

- **Develop rules and guidance for certain relationships, such as employers and employees, landlords and tenants, students and professors, that are clear and transparent.**
- Be responsive to consumer needs and issues.
- Establish tools that are clear and practical, so that the interactions between law enforcement, consumers and licensees are predictable and understandable.
- Propose efficient and effective regulation that is clear and reasonable, and not unduly burdensome.
- Ensure that our streets, schools and communities remain safe.
- Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- Create a balanced regulatory scheme that is complementary, not duplicative, and clearly defined between state and local licensing authorities.
- Promote the health, safety and well-being of Colorado's youth.

The Issues

- **Financial:**
 - Vote of the people required to collect excise tax
 - Cost of implementation, short and long term (staffing, fee structure, etc.)
 - Current staffing for medical marijuana is 15 FTE; fully staffed would be 55 FTE
 - Full funding of MMED would be \$7.5 million; currently \$2.1 million
 - General Fund allocation for five years - \$7.7 million
- **Legal:**
 - Regulatory structure
 - Fees (must have nexus)
 - Employment, property and contract law
 - Banking (federal prohibition on use of payment system)

The Issues

- **Statutory Changes**

- Driving laws – DUID standards
- Possession – up to one ounce legal for over 21
- Cultivation – up to six plants legal
- Codify allowable acts around testing, product manufacturing and retail establishments
- Codify consumption restrictions – not in public, or in a manner to endanger others
- Refer excise tax to the voters
- Enact industrial hemp cultivation guidelines

The Issues

- **Department of Revenue**
 - Procedures around licensing, qualifications
 - Fee structure
 - Security requirements for establishments
 - Guidelines to restrict sale to those under 21
 - Labeling
 - Health and safety standards for manufacturing, cultivation
 - Restrictions on advertising
 - Civil penalties for non-compliance

The Issues

- **Local Government**

- Ordinances must be in place by Oct. 1, 2013
- Licensing system, should state fail to act
- Ordinances around time, place, manner and number of operations
- Ordinances around issuing, suspending and revoking licenses
- Fee schedule

Recommended Operating Model

- Vertical Integration – “Seed to Sale”
 - Mirror medical marijuana operations structure for three years
 - One-year monopoly for current license holders to migrate to recreational sales (request of DOR)
 - Pros/Cons – closed loop system, known players and process, less initial revenue to the state

Who can purchase?

The Amendment 64 Task Force recommends that the General Assembly **not enact a Colorado residency requirement for purchasing marijuana for personal use for individuals 21 years of age or older.**

However, the General Assembly should **impose reasonable limits on the amount of marijuana and marijuana-infused products that can be sold, in a single transaction, to an individual who does not present a government-issued ID that demonstrates Colorado residency.**

Key Issues for Employers

- The plain language of Amendment 64 Section 6(a) makes it clear that the intent of the voters was to **maintain the status quo for employers and employees, and that employers may maintain, create new or modify existing policies in response to the passage of the measure.** The Amendment 64 Implementation Task Force recommends that employers should be encouraged to review current drug-free workplace policies, including but not limited to hiring, sanctioning, termination and drug testing, in response to passage of the measure

Key Issues for Employers

- The plain language of Amendment 64 Section 6(d) makes it clear that the intent of the voters was to maintain the ***status quo* for Colorado property owners**. The Amendment 64 Task Force recommends the General Assembly adopt no new statutes or regulations modifying existing Colorado property law. The Task Force also recommends that violations of real property owners' policies regarding possession or consumption of marijuana on said property be treated similar to the violation for possession or consumption of alcohol on the premises, including any civil or criminal consequences.

Key Issues for Employers

- The Amendment 64 Task Force recommends the General Assembly clarify in statute that it is the public policy of Colorado that **contracts shall not be void or voidable on the basis that the subject matter of the contract pertains to, or the parties are, or are associated with, individuals or businesses that are operating pursuant to Colorado's marijuana laws.**

What is outstanding?

- Public Safety
 - Labeling, packaging
 - Adjacent premises
- Criminal Law Issues
 - Disposal of plants (evidence)
 - Definitions (publicly, openly, consumption)

How do we pay for this?

- Application and license fees (state and local)
- Excise Tax
- Sales Tax
- Ballot issue required, as Am. 64 did not comply with TABOR language requirements.
- Estimated cost per year: \$7.7 million (regulatory and enforcement)

What is next?

- Task Force completes its work by February 28. Report to Governor, Attorney General and General Assembly by mid-March.
 - Omnibus bill?
 - Referred tax measure?
 - Special Session?

Questions?