

LAW SUMMARY

Office of Legislative Legal Services



RETAIL MARIJUANA¹

History

In 2012, Colorado voters adopted [Section 16 of Article XVIII](#) of the state Constitution ("constitutional amendment") regulating the sale and use of marijuana by persons 21 years of age and older in the same manner as the sale and use of alcohol. The constitutional amendment permits persons 21 years of age and older to possess up to one ounce of marijuana and up to six plants, only three of which may be flowering. The constitutional amendment specifically states that it does not affect the legal provisions regarding medical marijuana.

Cultivation, sale, and possession of marijuana for adults age 21 and older is still illegal under federal law. As a result, prosecution of marijuana crimes may shift to the Colorado federal courts within the available resources of the U.S. Attorney's office. That prosecution could include possession or use of marijuana and operating marijuana businesses made legal by Amendment 64.

Regulatory Framework

The medical marijuana enforcement division in the department of revenue was changed to the marijuana enforcement division (division) and now regulates both medical marijuana and retail marijuana. The division is supported by application and licensing fees; sales, excise, and special marijuana sales taxes from retail and medical marijuana; and any necessary supplementary general fund appropriations. The division may set the fee amounts for the various types of licenses it issues.

The following businesses must be licensed to operate a retail marijuana establishment: Retail marijuana stores; retail marijuana products manufacturers; retail marijuana cultivation facilities; retail marijuana testing facilities; retail marijuana transporters; and retail marijuana business operators. The state licensing authority must act on applications within 45 days to 90 days after receipt.

¹ This summary contains information commonly requested from the Office of Legislative Legal Services. It does not represent an official legal opinion of the General Assembly or the state of Colorado and does not bind the members of the General Assembly. It is intended to provide a general overview of Colorado law as of the date of its preparation. Any person needing legal advice should consult his or her own lawyer and should not rely on the information in this memorandum.

A license applicant must undergo a criminal background check and a license can be denied based on certain previous criminal convictions. All officers, managers, and employees of a retail marijuana business must be residents of Colorado, and all owners must be residents of Colorado for at least two years prior to applying for licensure.

The General Assembly also imposed some unique requirements on retail marijuana stores. A retail marijuana store may not sell any retail marijuana product that contains nicotine or alcohol. And a retail marijuana store must place each sold item in a sealed non-transparent container at the point of sale.

A local government may prohibit the operation of retail marijuana establishments within its jurisdiction through an ordinance or an initiated or referred measure. Any initiated or referred measure must appear on a general election ballot during an even-numbered year.

If a local government does not prohibit the operation, a local government may enact regulatory ordinances or regulations that do not conflict with the constitutional amendment or with regulations or legislation enacted by the General Assembly. The ordinances or regulations may govern:

- The time, place, manner, and number of marijuana establishment operations;
- Procedures for the issuance, suspension, and revocation of a local license;
- A schedule of annual operating, licensing, and application fees for marijuana establishments; and
- Civil penalties for violation of an ordinance or regulation governing the time, place, and manner of operation of a local marijuana establishment.

A cannabis credit co-op is a financial services entity, membership in which is restricted to entities that own or operate a licensed marijuana business or industrial hemp business or that provide goods or services to a licensed marijuana business. Cannabis credit co-ops are subject to regulation by the state commissioner of financial services in a manner similar to that of credit unions.

Taxation

Based upon voter approval at the statewide election in November 2013, there is a 10% sales tax and a 15% excise tax on the sale of retail marijuana. The sales tax is in addition to the 2.9% state sales tax and any local government sales tax. The taxes do not apply to medical marijuana. In future years, the General Assembly may lower the rate below the respective 10% and 15% tax rates and then may subsequently raise the rate to 15% for either the sales or excise tax or both without further voter approval, so long as the rate does not go above 15%.

Of the marijuana sales tax collected, 15% will be distributed to each local government that is home to one or more retail marijuana stores. Each local government's share is apportioned according to the percentage of retail marijuana sales tax revenues collected in the local

jurisdiction compared to the total retail marijuana sales tax collections in the state. The remaining revenues are deposited in the marijuana cash fund for regulatory enforcement and other purposes determined by the General Assembly. As required by the constitutional amendment, the first \$40 million received and collected in excise tax revenue is transferred to the public school capital construction assistance fund. Any amount remaining after the transfer is deposited in the marijuana cash fund.

Miscellaneous

The constitutional amendment specifically states that employers do not have to accommodate marijuana use or possession at the workplace. Amendment 64 also permits employers to enforce policies regarding marijuana use by employees.

The constitutional amendment specifically states that driving under the influence of marijuana is still a crime.

The constitutional amendment gives a property owner the right to prohibit or regulate all marijuana activity on his or her property.

LAST REVISED: 8/8/2016

S:\Public\Lls\MEMOS\Law Summaries\retail-marijuana.docx
