



RETAIL MARIJUANA LAWS

by Kelli Kelty

The regulation of marijuana, both retail and medical, has been the subject of a great deal of public policy debate in recent years at all levels of government. This issue brief examines an overview of retail marijuana regulation in Colorado and summarizes three measures enacted by the General Assembly in the 2013 legislative session addressing the issue. For information on medical marijuana law in Colorado, please see Legislative Council Issue Brief #10-09.

Amendment 64

Amendment 64 passed with approximately 55 percent of the statewide vote at the November 2012 election, and was proclaimed by the Governor as an amendment to Article XVIII of the Colorado Constitution on December 10, 2012. Amendment 64: allows for an adult 21 years or older to consume or possess up to one ounce of marijuana and to cultivate up to six plants; requires that a regulatory structure for retail marijuana be established by July 2013; requires that the cultivation, processing, and retail sale of marijuana in Colorado be allowed by January 1, 2014, except where local governments have prohibited it; and requires the state to set an excise tax for marijuana, subject to voter approval.

Under the measure, marijuana growth, processing, testing, and sales are authorized to be carried out by four types of regulated marijuana establishments: marijuana cultivation facilities; marijuana product manufacturing

facilities; marijuana testing facilities; and retail marijuana stores.

Amendment 64 Task Force

On December 10, 2012, Governor Hickenlooper established a 24-member task force through an executive order to identify legal, policy, and procedural issues concerning Amendment 64. The task force completed its work on February 28, 2013, and issued the "Task Force Report on the Implementation of Amendment 64: Regulation of Marijuana in Colorado" on March 13, 2013. The report made 58 recommendations in 17 categories, including: regulation and licensing; taxation and financing; consumer safety; education and health; and criminal law, including driving under the influence.

Joint Select Committee

On March 7, 2013, the Senate President and the Speaker of the House created a ten-member Joint Select Committee on the Implementation of the Amendment 64 Task Force Recommendations (Joint Select Committee) for the purposes of evaluating the work of the Governor's task force, soliciting public feedback regarding the task force's recommendations, and referring legislation to the General Assembly for consideration. The committee held a series of ten meetings from March 15 through April 8, 2013. At its conclusion, the Joint Select Committee voted to refer three separate bills to the 2013 General Assembly: Senate Bill 13-283

included only the recommendations that passed unanimously; House Bill 13-1317 included only the recommendations that were met with majority approval; and House Bill 13-1318 addressed the tax component of Amendment 64. These bills were enacted and signed into law on May 28, 2013.

Senate Bill 13-283. Implementing the major provisions of Amendment 64, the bill:

- prohibits open containers of marijuana in motor vehicles;
- prohibits marijuana at community residential homes or regional centers;
- makes marijuana subject to the same indoor air quality restrictions as tobacco products;
- allows retail marijuana stores to deduct certain business expenses from their state income taxes that are prohibited by federal tax law;
- requires the Colorado Commission on Criminal and Juvenile Justice to make recommendations on criminal laws; and
- creates the Marijuana Cash Fund.

House Bill 13-1317. This bill creates the Colorado Retail Marijuana Code. It renames the Medical Marijuana Enforcement Division in the Department of Revenue (DOR) as the Marijuana Enforcement Division (MED) and gives the MED the authority to regulate both medical and retail marijuana. The bill creates a regulatory system for retail marijuana under which existing medical marijuana businesses have the option to convert to retail businesses or to operate both medical and retail businesses. Colorado residents may purchase up to one ounce of marijuana in a single transaction; nonresidents are limited to purchases of no more than 1/4 of an ounce in a single transaction.

The bill includes provisions that address common ownership of growers and sellers; state licensing by the DOR; tracking and reporting by the MED; local licensing, testing and certification standards; funding sources for marijuana regulation; and unlawful acts.

House Bill 13-1318. This bill represents the retail marijuana tax scheme recommended by the Joint Select Committee. Subject to voter approval, the bill imposes a state excise tax and special state sales tax to be levied on retail marijuana beginning January 1, 2014, and refers a ballot question to the voters at the 2013 general election for approval to increase taxes by \$70 million per year. The retail marijuana sales tax is in addition to the current 2.9 percent state sales tax.

Proposition AA

With the passage of House Bill 13-1318, Proposition AA was referred to the voters in the November 2013 election. Passed by approximately 65 percent of voters, Proposition AA set a 15 percent excise tax on the average wholesale price of retail marijuana when it is first sold or transferred by a retail marijuana cultivation facility and a 10 percent sales tax on retail marijuana sold to individual consumers. The tax revenues are to be used for the enforcement of regulations on the retail marijuana industry, and the DOR is to have rule-making authority over implementation of these taxes. The measure also directs 15 percent of the revenue collected from the sales tax to cities and counties where retail marijuana sales occur. The General Assembly can raise or lower the retail marijuana sales tax at any time through legislation, but cannot increase it above 15 percent without seeking further voter approval.