

**Amendment 64
Use and Regulation of Marijuana**

1 **Amendment 64 proposes amending the Colorado Constitution to:**

- 2 ♦ legalize under state law the cultivation, manufacture, and sale of
3 marijuana in a system of licensed establishments regulated by state and
4 local governments;
- 5 ♦ allow individuals who are 21 years old or older to possess, use, display,
6 purchase, transport, and transfer one ounce or less of marijuana and to
7 possess, cultivate, process, or transport up to six marijuana plants;
- 8 ♦ authorize the state legislature to apply an excise tax to marijuana, of
9 which the first \$40 million in revenue raised each year must be credited
10 to a state fund used for constructing public schools; and
- 11 ♦ require the state legislature to enact legislation concerning the
12 cultivation, processing, and sale of industrial hemp.

13 **Summary and Analysis**

14 Marijuana is a plant that contains the psychoactive component
15 delta-9 tetrahydrocannabinol (THC) and is the most commonly used illegal drug in the
16 United States. Marijuana can be consumed in various ways, including smoking,
17 inhaling, and in food. Federal and state law classify marijuana as a substance with a
18 high potential for abuse that has no currently accepted medical use in the United
19 States. Currently, individuals who cultivate, transfer, manufacture, possess, or sell
20 marijuana violate federal, state, and, in some cases, local laws. However, state
21 penalties for marijuana offenses are not as severe as penalties for offenses involving
22 similarly classified drugs, such as heroin, LSD, and ecstasy. Although the use of
23 marijuana for medical purposes is not authorized under federal law, Colorado and
24 several other states have enacted legislation allowing the use of medical marijuana.
25 To date, state-approved use of medical marijuana has generally been allowed to occur
26 with minimal federal intervention.

27 ***Current federal and state penalties for marijuana offenses.*** An offender's
28 sentence is at the discretion of the court, and depends on the law violated and the
29 severity and circumstances of the crime. Under federal law, penalties for marijuana
30 offenses range from up to one year in prison and a fine of \$1,000 for a first offense of
31 possession, to up to life in prison and a fine of \$4 million for the sale of
32 1,000 kilograms (about 2,200 pounds) or more of marijuana. Under state law, the
33 penalty for possessing two ounces of marijuana or less is a maximum \$100 fine.
34 Other penalties range from no jail time or fine for sharing small amounts of marijuana
35 without payment, to up to 12 years in prison, a fine of \$7,000, or both for knowingly
36 distributing more than 100 pounds of marijuana.

1 **Personal use of marijuana.** Under the measure, individuals who are 21 years old
2 or older (adults) may possess, use, display, purchase, transport, or share up to one
3 ounce of marijuana. Individuals may not sell marijuana, use it in public, or use it in a
4 manner that endangers others. The measure allows adults to grow their own
5 marijuana or to purchase marijuana from a licensed retail marijuana store with proof of
6 age. Adults may possess up to six marijuana plants, of which three or fewer are
7 mature flowering plants, as well as the marijuana harvested from the plants, provided
8 that the plants are kept in an enclosed and locked space and are not grown openly or
9 publicly. The marijuana harvested must remain on the premises where the plants
10 were grown. Adults are also permitted to possess, use, display, purchase, and
11 transport marijuana accessories that are used for the cultivation, manufacture, and
12 consumption of marijuana.

13 Amendment 64 states that its provisions are not intended to:

- 14 • allow driving under the influence of or while impaired by marijuana;
- 15 • permit underage access to or use of marijuana;
- 16 • affect the ability of an employer to restrict the use or possession of
17 marijuana by employees; or
- 18 • prevent a school, hospital, or other property owner from prohibiting or
19 otherwise regulating the use, possession, cultivation, manufacture, or
20 sale of marijuana on the property.

21 **Regulation by the state.** Amendment 64 requires the Colorado Department of
22 Revenue (DOR) to adopt regulations by July 1, 2013, concerning licensing and
23 security requirements for marijuana establishments, the prevention of marijuana sales
24 to underage individuals, labeling requirements for marijuana products, health and
25 safety standards for marijuana manufacturing, advertising restrictions, and civil
26 penalties for violations. The measure specifies that the regulations may not prohibit
27 marijuana establishments or make the operation of such establishments unreasonably
28 impracticable. The DOR must also develop a schedule of application, licensing, and
29 renewal fees. After the DOR receives a license application from a prospective
30 marijuana establishment, it must forward the application and half of the application fee
31 to the local government involved. The DOR must issue or deny the license within
32 90 days. If the DOR denies the license, it must notify the applicant in writing of its
33 reason for doing so.

34 In the event that the DOR does not adopt regulations by October 1, 2013, or the
35 DOR adopts regulations but has not issued any licenses by January 1, 2014, the
36 measure states that marijuana establishment applicants may apply for an annual
37 license with a local government. While operating under a locally issued license, the
38 establishment is not subject to regulation by the DOR. The measure requires local
39 governments to identify, by October 1, 2013, which local agency will process
40 marijuana license applications if necessary.

41 **Regulation by local governments.** Local governments may enact regulations
42 concerning the time, place, manner, and number of marijuana establishments in their
43 community. In addition, local governments may prohibit the operation of marijuana

1 establishments through an ordinance or a referred ballot measure; citizens may
 2 pursue such a prohibition through an initiated ballot measure. Even if marijuana
 3 establishments are prohibited by a local government, adults in the community may still
 4 possess, cultivate, and use marijuana as allowed by the measure.

5 **Types of licenses.** Under Amendment 64, marijuana cultivation, processing,
 6 testing, and sales are authorized to be carried out by four types of marijuana
 7 establishments, which are described in Table 1. The measure directs the DOR to
 8 implement procedures for issuing, renewing, suspending, and revoking licenses for
 9 the establishments.

10 **Table 1. Types of Licensed Marijuana Establishments Under Amendment 64**

Type of Establishment	Activities	Sale of Marijuana
Marijuana Cultivation Facility	Grows, prepares, and packages marijuana.	May sell marijuana to other cultivation facilities, manufacturing facilities, or retail marijuana stores.
Marijuana Product Manufacturing Facility	Purchases, manufactures, prepares, and packages marijuana and marijuana products.	May sell marijuana and marijuana products to retail stores or other marijuana product manufacturing facilities.
Marijuana Testing Facility	Analyzes and certifies the safety and potency of marijuana.	Not permitted to sell marijuana.
Retail Marijuana Store	Purchases and sells marijuana and marijuana products from cultivation and product manufacturing facilities.	May sell marijuana to consumers who are 21 years old or older.

17 **Taxes.** Under the measure, marijuana is subject to existing state and local sales
 18 taxes and an excise tax set by the legislature. An excise tax is a tax on the use or
 19 consumption of certain products such as gasoline, alcohol, or cigarettes. The tax is
 20 generally collected at the wholesale level and passed on to consumers in the retail
 21 price. Marijuana cultivation facilities will pay the excise tax when selling marijuana to
 22 either marijuana product manufacturing facilities or to retail marijuana stores. The
 23 excise tax is limited to 15 percent until January 1, 2017, when the legislature may set it
 24 at any rate. Each year, the first \$40 million in revenue raised by the excise tax will be
 25 credited to a state fund used for constructing public schools. Medical marijuana is not
 26 subject to the excise tax.

1 **Effect on medical marijuana laws.** Amendment 64 does not change existing
2 state medical marijuana laws, which allow Colorado citizens who have certain
3 debilitating medical conditions to use medical marijuana. Medical marijuana patients
4 and primary caregivers register with the state health agency, and businesses that
5 cultivate, manufacture, and sell medical marijuana are regulated by the DOR and by
6 local licensing authorities throughout the state. Medical marijuana patients are
7 permitted to possess up to two ounces of medical marijuana and to cultivate up to six
8 marijuana plants with three or fewer being mature, flowering plants. Caregivers are
9 subject to the same possession and cultivation limitations as patients and may serve
10 up to five patients.

11 Under the measure, licensed medical marijuana cultivators, manufacturers, and
12 dispensaries may apply for a separate marijuana establishment license under the
13 measure, and are eligible for a reduced application fee. However, medical marijuana
14 dispensaries may not sell marijuana to retail customers or operate on the same
15 premises as retail marijuana stores. If competition for licenses exists, applicants with
16 prior experience producing or distributing medical marijuana and who have complied
17 with state medical marijuana regulations are granted preference in licensing.

18 **Industrial hemp.** The measure requires the state legislature to enact, by
19 July 1, 2014, legislation concerning the cultivation, processing, and sale of industrial
20 hemp. Industrial hemp is a plant related to marijuana, but it has a lower concentration
21 of THC, the psychoactive component of marijuana. Federal law prohibits the
22 cultivation of industrial hemp, although it is legal to sell imported hemp and hemp
23 products in the United States. Hemp seeds are sold as food, and hemp fibers are
24 used to manufacture rope, clothing, and building materials.

25 **Arguments For**

26 1) The use of marijuana by adults may be less harmful than the use of alcohol or
27 tobacco, both of which are already legal for adults to use and are regulated by the
28 state. In addition, Colorado and other states recognize that marijuana can have
29 medical benefits for individuals with certain debilitating conditions. Penalties for the
30 personal possession of small amounts of marijuana are already minimal. Rather than
31 continuing to criminalize adult possession and use of marijuana, Amendment 64
32 creates a common-sense framework for marijuana to be legal, taxed, and regulated
33 under state law.

34 2) It is preferable for adults who choose to use marijuana as a recreational drug
35 to grow it themselves or purchase it from licensed businesses that have tested and
36 labeled it, rather than purchasing untested products from individuals involved in
37 criminal drug trafficking. A regulated market will provide a safer environment for
38 purchasing marijuana and could help restrict underage access to marijuana. The
39 measure will also add needed tax revenue and job opportunities to the state economy.

40 3) The adoption of Amendment 64 would send a message to the federal
41 government and governments in other states that marijuana use should be legal and

1 regulated like alcohol and tobacco and that industrial hemp should be cultivated,
2 processed, and sold domestically.

3 **Arguments Against**

4 1) Even if Amendment 64 is adopted, the use, manufacture, and sale of
5 marijuana will remain illegal under federal law, so the adoption of the measure may
6 expose Colorado consumers, businesses, and governments to federal criminal
7 charges and other risks. People who invest time and money to open marijuana
8 establishments have no protections against federal seizure of their money and
9 property. In addition, enhanced federal scrutiny may jeopardize the existing medical
10 marijuana industry and the rights of medical marijuana patients. The efforts of
11 individuals who feel that marijuana use should be legal for all adults are more
12 appropriately directed at changing federal law.

13 2) Marijuana can be an addictive drug that impairs users' coordination and
14 reasoning. Decriminalizing and regulating marijuana is likely to lead more people to
15 use it, and may give the impression that it is safe to use. Greater accessibility and
16 acceptance of marijuana may increase the number of children and young adults who
17 use the drug. Furthermore, because more people are likely to use marijuana, the
18 number of those who drive while under the influence of or while impaired by the drug
19 may increase.

20 3) Because the provisions of Amendment 64 will be in the state constitution and
21 not in the state statutes, where other business regulations appear, there may be
22 unintended consequences that cannot be easily remedied. For example, the measure
23 may be interpreted, regardless of its stated intent, as giving Colorado citizens a
24 constitutional right to use marijuana, which could conflict with existing employment,
25 housing, and other laws and policies that ban the use of illegal drugs.