

**Amendment 64
Use and Regulation of Marijuana**

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

- 2 ♦ regulate the growth, manufacture, and sale of marijuana in a system of
3 licensed establishments overseen by state and local governments;
- 4 ♦ allow individuals who are 21 years old or older to possess, use, display,
5 purchase, transport, and transfer one ounce or less of marijuana and to
6 possess, grow, process, or transport up to six marijuana plants;
- 7 ♦ require the state legislature to enact an excise tax on marijuana sales,
8 of which the first \$40 million in revenue raised annually must be credited
9 to a state fund used for constructing public schools. The excise tax
10 must be approved by a separate statewide vote; and
- 11 ♦ require the state legislature to enact legislation concerning the growth,
12 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). Marijuana can be consumed in various ways,
16 including smoking, inhaling, and in food. Currently, individuals who grow, transfer,
17 manufacture, possess, or sell marijuana violate federal, state, and, in some cases,
18 local laws. However, state penalties for marijuana offenses are not as severe as
19 penalties for many other drug-related offenses. Although the use of marijuana for
20 medical purposes is not authorized under federal law, Colorado and several other
21 states have enacted legislation allowing the use of medical marijuana. To date, state
22 regulation of medical marijuana establishments has generally been allowed to occur,
23 although the federal government has ordered some businesses to close.

24 ***Current federal and state penalties for marijuana offenses.*** Sentences for
25 drug offenses are discretionary, and depend on the law violated and the severity and
26 circumstances of the crime. Under federal law, penalties for marijuana offenses range
27 from up to one year in prison and a fine of \$1,000 for a first offense of possession, to
28 up to life in prison and a fine of \$4 million for the sale of 1,000 kilograms (about
29 2,200 pounds) or more of marijuana. Under state law, individuals accused of
30 possession of two ounces of marijuana or less must appear in court and can be fined
31 up to a maximum of \$100. Other penalties range from no jail time or fine for sharing
32 small amounts of marijuana without payment, to up to 12 years in prison, a fine of
33 \$7,000, or both for knowingly distributing more than 100 pounds of marijuana.

34 ***Personal use of marijuana.*** Under the measure, individuals who are 21 years old
35 or older (adults) may possess, use, display, purchase, or transport up to one ounce of

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

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

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

20 **Regulation by the state.** Amendment 64 requires the Colorado Department of
21 Revenue (DOR) to adopt regulations by July 1, 2013, concerning licensing and
22 security requirements for marijuana establishments, the prevention of marijuana sales
23 to underage individuals, labeling requirements for marijuana products, health and
24 safety standards for marijuana manufacturing, advertising restrictions, and civil
25 penalties for violations. The measure specifies that the regulations may not prohibit
26 marijuana establishments or make the operation of such establishments unreasonably
27 impracticable.

28 The DOR must also develop a schedule of application, licensing, and renewal
29 fees. The application fees may not exceed \$5,000, adjusted annually for inflation,
30 unless the DOR determines that a greater fee is necessary. If a licensed medical
31 marijuana business applies for a separate license created by the measure, the
32 application fee may not exceed \$500. After the DOR receives a license application
33 from a prospective marijuana establishment, it must forward the application and half of
34 the application fee to the local government involved. The DOR must issue or deny the
35 license within 90 days. If the DOR denies the license, it must notify the applicant in
36 writing of its reason for doing so.

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

1 **Regulation by local governments.** Local governments may enact regulations
 2 concerning the time, place, manner, and number of marijuana establishments in their
 3 community. In addition, local governments may prohibit the operation of marijuana
 4 establishments through an ordinance or a referred ballot measure; citizens may
 5 pursue such a prohibition through an initiated ballot measure. Even if marijuana
 6 establishments are prohibited by a local government, adults in the community may still
 7 possess, grow, and use marijuana as allowed by the measure.

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

13 **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.

32 **Taxes.** Under the measure, marijuana is subject to existing state and local sales
 33 taxes and a new state excise tax to be set by the legislature. An excise tax is a tax on
 34 the use or consumption of certain products such as gasoline, alcohol, or cigarettes.
 35 The tax is generally collected at the wholesale level and passed on to consumers in
 36 the retail price. Marijuana cultivation facilities will pay the excise tax when selling
 37 marijuana to either marijuana product manufacturing facilities or to retail marijuana
 38 stores.

1 Amendment 64 requires the legislature to enact the state excise tax; however, the
2 Taxpayer's Bill of Rights (TABOR) requires a separate statewide vote to approve the
3 tax and any future tax increases. Under the measure, the excise tax is limited to
4 15 percent until January 1, 2017, when the legislature may set it at any rate. Each
5 year, the first \$40 million in revenue raised by the excise tax will be credited to a state
6 fund used for constructing public schools. Medical marijuana is not subject to the
7 state excise tax required by the measure, or to any existing state excise tax.

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

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

24 **Industrial hemp.** The measure requires the state legislature to enact, by
25 July 1, 2014, legislation concerning the growth, processing, and sale of industrial
26 hemp, but does not specify what provisions must be included. The measure defines
27 industrial hemp as the same plant as marijuana, but with a THC concentration of no
28 more than three-tenths percent. THC is the primary psychoactive component of
29 marijuana. Federal law currently prohibits the growth of industrial hemp, although it is
30 legal to sell imported hemp and hemp products in the United States. Hemp seeds are
31 sold as food, and hemp fibers are used to manufacture rope, clothing, and building
32 materials.

33 *For information on those issue committees that support or oppose the*
34 *measures on the ballot at the November 6, 2012, election, go to the*
35 *Colorado Secretary of State's elections center web site hyperlink for*
36 *ballot and initiative information:*

37 www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

1 **Arguments For**

2 1) The use of marijuana by adults may be less harmful than the use of alcohol or
3 tobacco, both of which are already legal for adults to use and are regulated by the
4 state. In addition, Colorado and other states recognize that marijuana can have
5 medical benefits for individuals with certain debilitating conditions. Penalties for the
6 personal possession of small amounts of marijuana are already minimal. Rather than
7 using state resources to prosecute adults for possession and use of small amounts of
8 marijuana, Amendment 64 creates a framework for marijuana to be legal, taxed, and
9 regulated under state law.

10 2) It is preferable for adults who choose to use marijuana as a recreational drug
11 to grow it themselves or purchase it from licensed businesses that have tested and
12 labeled it, rather than purchasing untested products of unknown origin from individuals
13 involved in the underground market. A regulated market will provide a safer
14 environment for purchasing marijuana and could help restrict underage access to
15 marijuana. The measure may also add needed tax revenue and job opportunities to
16 the state economy.

17 3) The adoption of Amendment 64 would send a message to the federal
18 government and other states that marijuana should be legal and regulated and that
19 industrial hemp should be treated differently than marijuana. Adults should have the
20 choice to use marijuana, just as they have that choice with other substances such as
21 alcohol and tobacco. Further, because of its commercial applications in fuel, building,
22 materials, clothing, and food, industrial hemp should be allowed to be grown,
23 processed, and sold domestically.

24 **Arguments Against**

25 1) Even if Amendment 64 is adopted, the use, manufacture, and sale of
26 marijuana remains illegal under current federal law, so the adoption of the measure
27 may expose Colorado consumers, businesses, and governments to federal criminal
28 charges and other risks. People who invest time and money to open marijuana
29 establishments have no protections against federal seizure of their money and
30 property. In addition, enhanced federal scrutiny and competition from retail marijuana
31 establishments could jeopardize the existing medical marijuana system. The efforts of
32 individuals who feel that marijuana use should be legal for all adults are more
33 appropriately directed at changing federal law.

34 2) Marijuana impairs users' coordination and reasoning and can lead to addiction.
35 Allowing state-regulated stores to sell marijuana will make it more accessible, which is
36 likely to increase use and may give the impression that there are no health risks or
37 negative consequences to marijuana use. Greater accessibility and acceptance of
38 marijuana may increase the number of children and young adults who use the drug.
39 Furthermore, because more people are likely to use marijuana, the number of those
40 who drive while under the influence of or while impaired by the drug may increase.

1 3) Because the provisions of Amendment 64 will be in the state constitution and
2 not in the state statutes, where most other business regulations appear, there may be
3 unintended consequences that cannot be easily remedied. For example, the state
4 legislature cannot adjust the deadlines, fees, and other details regarding the
5 implementation of the measure. In addition, by constitutionally permitting marijuana
6 use, the measure, despite its stated intent, could create conflicts with existing
7 employment, housing, and other laws and policies that ban the use of illegal drugs.

8 **Estimate of Fiscal Impact**

9 *[A summary of the fiscal impact will be provided in the third draft.]*