

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—to individuals who are 21 years old
6 or older—one ounce or less of marijuana;
- 7 ♦ allow individuals who are 21 years old or older to possess, grow,
8 process, and transport up to six marijuana plants, with certain
9 restrictions;
- 10 ♦ require the state legislature to enact an excise tax on marijuana sales,
11 of which the first \$40 million in revenue raised annually must be credited
12 to a state fund used for constructing public schools. The excise tax
13 must be approved by a separate statewide vote; and
- 14 ♦ require the state legislature to enact legislation concerning the growth,
15 processing, and sale of industrial hemp.

16 **Summary and Analysis**

17 Marijuana is a plant that contains the psychoactive component
18 delta-9 tetrahydrocannabinol (THC). Marijuana can be consumed in various ways,
19 including smoking, inhaling, and in food. Currently, individuals who grow, transfer,
20 manufacture, possess, or sell marijuana violate federal, state, and, in some cases,
21 local laws. However, state penalties for marijuana offenses are not as severe as
22 penalties for many other drug-related offenses. Although the use of marijuana for
23 medical purposes is not authorized under federal law, Colorado and several other
24 states have enacted legislation allowing the use of medical marijuana. To date, state
25 regulation of medical marijuana establishments has generally been allowed to occur,
26 although the federal government has ordered some businesses to close.

27 ***Current federal and state penalties for marijuana offenses.*** Sentences for
28 drug offenses are discretionary, and depend on the law violated and the severity and
29 circumstances of the crime. Under federal law, penalties for marijuana offenses range
30 from up to one year in prison and a fine of \$1,000 for a first offense of possession, to
31 up to life in prison and a fine of \$4 million for the sale of 1,000 kilograms (about
32 2,200 pounds) or more of marijuana. Under state law, individuals accused of
33 possession of two ounces of marijuana or less must appear in court and can be fined
34 up to a maximum of \$100. Other penalties range from no jail time or fine for sharing

1 small amounts of marijuana without payment, to up to 12 years in prison, a fine of
2 \$7,000, or both for knowingly distributing more than 100 pounds of marijuana.

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

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

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

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

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

41 In the event that the DOR does not adopt regulations by July 1, 2013, the measure
42 states that marijuana establishment applicants may apply for an annual license with a

1 local government. Applicants may only apply for a locally issued license after
 2 October 1, 2013, which is the deadline for local governments to identify which local
 3 agency will process marijuana license applications if necessary. Applicants may also
 4 apply for a locally issued license if the DOR adopts regulations but has not issued any
 5 licenses by January 1, 2014. While operating under a locally issued license, the
 6 marijuana establishments are not subject to regulation by the DOR.

7 **Regulation by local governments.** Local governments may enact regulations
 8 concerning the time, place, manner, and number of marijuana establishments in their
 9 community. In addition, local governments may prohibit the operation of marijuana
 10 establishments through an ordinance or a referred ballot measure; citizens may
 11 pursue such a prohibition through an initiated ballot measure. Even if marijuana
 12 establishments are prohibited by a local government, individuals in that community
 13 who are at least 21 years old may still possess, grow, and use marijuana as allowed
 14 by the measure.

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

20 **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. |

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

8 Amendment 64 requires the legislature to enact the state excise tax; however, the
9 Taxpayer's Bill of Rights (TABOR) requires a separate statewide vote to approve the
10 tax and any future tax increases. Under the measure, the excise tax is limited to
11 15 percent until January 1, 2017, when the legislature may set it at any rate. Each
12 year, the first \$40 million in revenue raised by the excise tax will be credited to a state
13 fund used for constructing public schools. Medical marijuana is not subject to the
14 state excise tax required by the measure, or to any existing state excise tax.

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

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

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

1 *For information on those issue committees that support or oppose the*
2 *measures on the ballot at the November 6, 2012, election, go to the*
3 *Colorado Secretary of State's elections center web site hyperlink for*
4 *ballot and initiative information:*
5 www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html

6 **Arguments For**

7 1) Current state policies that criminalize marijuana fail to prevent its use and
8 availability and have contributed to the growth of an underground market. By creating
9 a framework for marijuana to be legal, taxed, and regulated under state law,
10 Amendment 64 provides a new, more logical direction for the state. The use of
11 marijuana by adults may be less harmful than the use of alcohol or tobacco, both of
12 which are already legal for adults to use and are regulated by the state. Furthermore,
13 marijuana may be beneficial for individuals with certain debilitating conditions. The
14 consequences of burdening adults with a criminal record for the possession of small
15 amounts of marijuana are too severe, and there are better uses for state resources
16 than prosecuting such low-level crimes.

17 2) It is preferable for adults who choose to use marijuana to grow it themselves or
18 purchase it from licensed businesses that have tested and labeled it, rather than
19 purchasing untested products of unknown origin from individuals involved in the
20 underground market. A regulated market will provide a safer environment for adults
21 who purchase marijuana and, by requiring age verification, will restrict underage
22 access to marijuana. The measure will also add needed tax revenue and job
23 opportunities to the state economy.

24 3) The adoption of Amendment 64 will send a message to the federal government
25 and other states that marijuana should be legal and regulated and that industrial hemp
26 should be treated differently than marijuana. Adults should have the choice to use
27 marijuana, just as they have that choice with other substances such as alcohol and
28 tobacco. Further, because of its commercial applications in fuel, building materials,
29 clothing, and food, industrial hemp should be allowed to be grown, processed, and
30 sold domestically.

31 **Arguments Against**

32 1) Even if Amendment 64 is adopted, the possession, manufacture, and sale of
33 marijuana remain illegal under current federal law, so the adoption of the measure
34 may expose Colorado consumers, businesses, and governments to federal criminal
35 charges and other risks. People who invest time and money to open marijuana
36 establishments have no protections against federal seizure of their money and
37 property. In addition, enhanced federal scrutiny and competition from retail marijuana
38 establishments could jeopardize the existing medical marijuana system. The efforts of

1 individuals who feel that marijuana use should be legal for all adults are more
2 appropriately directed at changing federal law.

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

10 3) Amendment 64 asks voters to approve a regulatory structure for the sale of
11 marijuana, but does not specify critical details about what the regulations will entail.
12 Furthermore, because the provisions of Amendment 64 will be in the state constitution
13 and not in the state statutes, where most other business regulations appear, there
14 may be unintended consequences that cannot be easily remedied. For example, the
15 state legislature cannot adjust the deadlines, fees, and other details regarding the
16 implementation of the measure. In addition, by constitutionally permitting marijuana
17 use, the measure, despite its stated intent, could create conflicts with existing
18 employment, housing, and other laws and policies that ban the use of illegal drugs.

19 **Estimate of Fiscal Impact**

20 Amendment 64 is expected to increase revenue and spending at both the state
21 and local level. The exact amount of each will depend on the value of marijuana sold,
22 the regulations and fees adopted by the Department of Revenue (DOR) and local
23 governments, and future actions taken by the state legislature. The fiscal impact
24 assumes that the DOR will regulate marijuana under this measure in the same way it
25 regulates medical marijuana under current law.

26 **State revenue.** State revenue from sales taxes and licensing fees is expected to
27 increase between approximately \$4.0 million and \$22.0 million per year. The measure
28 also allows a separate excise tax to be levied on wholesale marijuana sales, but that
29 tax has not been included in this analysis because the tax rate must first be set by the
30 state legislature and then be approved by voters in a statewide election.

31 **State spending.** State spending for licensing, regulation, and enforcement will
32 increase an estimated \$1.4 million in the first year and \$0.9 million annually thereafter,
33 and will likely be paid from fees assessed on marijuana establishments.

34 **Local revenue and spending.** Sales tax revenue for local governments will
35 increase along with spending for regulation and enforcement. Due to differences in
36 local tax rates and regulations, the impact to local governments cannot be determined.