

Amendment 64 Blue Book Analysis

Amendment 64 proposes amending the Colorado Constitution to:

- regulate the growth, manufacture, and sale of marijuana in a system of licensed establishments overseen by state and local governments;
- allow individuals who are 21 years old or older to possess, use, display, purchase, transport, and transfer—to individuals who are 21 years old or older—one ounce or less of marijuana;
- allow individuals who are 21 years old or older to possess, grow, process, and transport up to six marijuana plants, with certain restrictions;
- require the state legislature to enact an excise tax on marijuana sales, of which the first \$40 million in revenue raised annually must be credited to a state fund used for constructing public schools. The excise tax must be approved by a separate statewide vote; and
- require the state legislature to enact legislation concerning the growth, processing, and sale of industrial hemp.

Summary and Analysis

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

Current federal and state penalties for marijuana offenses.

Sentences for drug offenses are discretionary, and depend on the law violated and the severity and circumstances of the crime. Under federal law, penalties for marijuana offenses range from up to one year in prison and a fine of \$1,000 for a first offense of possession, to up to life in prison and a fine of \$4 million for the sale of 1,000 kilograms (about 2,200 pounds) or more of marijuana.

Under current state law, marijuana offenses range from a class 2 petty offense to a class 3 felony. For example, individuals accused of possession of two ounces of marijuana or less may be required to appear in court and, if convicted, can be fined up to a maximum of \$100. Other penalties range from no jail time or fine for sharing small amounts of marijuana without payment, to up to 12 years in prison, a fine of \$750,000, or both for transferring any amount of marijuana to a person under 15 years old, provided that the offender is at least 18 years old, or for knowingly distributing more than 100 pounds of marijuana. Individuals convicted of marijuana offenses are also required to pay a drug offender surcharge, which may range from \$200 to \$3,000, depending on the severity of the crime. It is not clear how the state's current criminal laws would be changed in response to Amendment 64.

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

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

Amendment 64 states that its provisions are not intended to:

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

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

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

In the event that the DOR does not adopt regulations by July 1, 2013, the measure states that marijuana establishment applicants may apply for an annual license with a local government. Applicants may only apply for a locally issued license after October 1, 2013, which is the deadline for local governments to identify which local agency will process marijuana license applications if necessary. Applicants may also apply for a locally issued license if the DOR adopts regulations but has not issued any licenses by January 1, 2014. While operating under a locally issued license, the marijuana establishments are not subject to regulation by the DOR.

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

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

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.

Taxes. This measure requires that the state legislature enact an excise tax. The current Colorado Constitution forbids a member of the state legislature to be bound to vote for or against any bill or measure pending or proposed to the state legislature. Because of this inherent conflict, the excise tax outlined in the measure might not be imposed. Additionally, this issue may result in significant litigation.

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

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

Effect on medical marijuana laws. Amendment 64 does not change existing state medical marijuana laws, which allow Colorado citizens who have certain debilitating medical conditions to use medical marijuana. Medical marijuana patients and primary caregivers register with the state health agency, and businesses that grow, manufacture, and sell medical marijuana are regulated by the DOR and by local licensing authorities throughout the state. Medical marijuana patients

are permitted to possess up to two ounces of marijuana and to grow up to six marijuana plants, with three or fewer being mature, flowering plants. Caregivers are subject to the same possession and growth limitations as patients and may serve up to five patients.

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

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

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

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

Arguments For

1) Current state policies that criminalize marijuana fail to prevent its use and availability and have contributed to an underground market. By creating a framework for marijuana to be legal, taxed, and regulated under state law, Amendment 64 provides a new direction for the state.

2) It is preferable for adults who choose to use marijuana to grow it themselves or purchase it from licensed businesses that are required to follow health and safety standards, rather than purchasing products of unknown origin from individuals involved in the underground market. A regulated market will provide a safer environment for adults who purchase marijuana and, by requiring age verification, will restrict underage access to marijuana. The measure will also add sales tax revenue and may add job opportunities to the state economy.

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

Arguments Against

1) Even if Amendment 64 is adopted, the possession, manufacture, and sale of marijuana remain illegal under current federal law, so the adoption of the measure may expose Colorado consumers, businesses, and governments to federal criminal charges and other risks. People who invest time and money to open marijuana establishments have no protections against federal seizure of their money and property. Because federal banking laws do not allow banks to accept the proceeds of, or loan money for, activities that are illegal under federal law, marijuana businesses will likely need to be cash-only businesses. In addition, enhanced federal scrutiny and competition from retail marijuana establishments could jeopardize the existing medical marijuana

system. The efforts of individuals who feel that marijuana use should be legal for all adults are more appropriately directed at changing federal law.

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

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

Estimate of Fiscal Impact

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

State revenue. State revenue from sales taxes and licensing fees is expected to increase between approximately \$5.0 million and \$22.0 million per year. The measure also allows a separate excise tax to be levied on wholesale marijuana sales, but that tax has not been included in this analysis because the tax rate must first be set by the state legislature and then be approved by voters in a statewide election.

State spending. Currently, the DOR is allocated \$5.7 million per year for licensing, regulation, and enforcement costs related to medical marijuana. These costs will increase by an estimated \$1.3 million in the first year and by \$0.7 million annually thereafter in order to expand DOR regulation to marijuana establishments authorized by the measure. These new costs will likely be paid from fees assessed on marijuana establishments. Although it is not clear how the state's criminal laws would be changed in response to Amendment 64, if the number of prison sentences for marijuana offenses decreases, prison costs will be reduced.

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

