Amendment 64 Implementation Task Force Sub-Committee on Tax/Funding and Civil Law

Department of Law 1525 Sherman Street Denver, Room 610

Meeting Minutes
Wednesday, January 16, 2013
11:00 a.m. – 1:00 p.m.

TOPIC: Employment Issues Related to the Legalization of Marijuana

I. Call To Order:

a. Co-Chairs David Blake and Senator Cheri Jahn called the meeting to order at 11:06 a.m.

II. Introduction:

- a. Attendance:
 - <u>Sub-Committee Members Present</u>: Co-Chair David Blake, Co-Chair Cheri Jahn, Bill Callison, Don Childears, Michael Elliott, Holli Hartman, Mary Jo McGuire, John Vecchiarelli, Dan Krug, Adrienne Russman, Kimberlie Ryan, Tamra Ward, Mike Cerbo, Dorinda Floyd
 - ii. Task Force Member Excused: Alexis Senger
 - iii. Other introductions: Kelley Huemoeller, Christian Sederberg
- b. Minutes from the January 9, 2013 were adopted unanimously

III. Discussion and Vote on 3 banking recommendations

- a. Discussion of Banking Recommendation #1
 - i. Michael Elliott's proposed amendments to recommendation #1:
 - 1. Michael had three proposed edits, which recognized President Obama's comments on ABC to Barbara Walters, highlighted the U.S. Treasury as an agency that required a response to the letter, and specifically asked for a modification to the federal Banking Secrecy Act.
 - 2. There was discussion between board members on whether to adopt the amendments. The amendments adopted struck the word "small", moved the first sentence to section 6 of recommendation #1, and included federal banking regulations other than just the Banking Secrecy Act.
 - ii. The vote on Recommendation #1 was postponed until the end of the meeting.
- b. Discussion of Recommendation #2
 - i. Motion to pass. Agreed to unanimously.
- c. Discussion on Recommendation #3
 - i. Tamra Ward suggested adding "other interested parties" under section 11.
 - ii. Motion to pass as amended. Agreed to unanimously.
- d. Public Comment: none

IV. Discussion on Relevant Content of Amendment 64 to Employment

- a. Actual language of Amendment 64, 6(a) discussed:
 - i. There were opposing views of whether or not the plain language of Amendment 64 maintained the status quo for employers and employees.
 - 1. Those board members that agreed that Amendment 64 maintained the status quo also agreed that pre-zero tolerance drug policies and post-zero tolerance drug policies should continue to exist and may be created under Amendment 64. Additionally, there was discussion as to whether the language after the word OR was a separate clause to the clause before.

The majority of board members agreed the OR represents two separate clauses, not to be interpreted together.

- a. Tamra stated that this is the viewpoint of the Mountain States Employers Council, but that businesses are still seeking legislation that provides employers certainty regarding this interpretation.
- b. Holli voiced that the main concerns by employers are workplace safety, fear of litigation in relation to termination, and a new basis for a private right of action for wrongful termination.
- c. There was some consensus to allow this issue to be worked out by itself in marketplace and that it is preemptive to implement legislation or regulations at this time.
- 2. Kimberlie Ryan interprets the amendment differently. She argues that the Amendment specifically uses two different words, intending two different meaning. She stated that to restrict, doesn't allow complete prohibition. She believes employers can't completely prohibit marijuana use off-site. She also notes that she does not read the OR as indicting two separate clauses. Therefore, the Amendment does not maintain the status quo and there should be an exemption to the zero tolerance drug policy for marijuana. She however, does agree you can still be fired for showing up impaired to the workplace.
- ii. An issue brought up throughout the discussion was the word impairment and what should be considered impaired.

V. Public Comment:

a. There were 11 individuals who came forward with comments. Again there was concern about the definition of "impairment" and zero tolerance drug policies. There was also several people from the business community who appreciated the direction the task force was leaning towards maintaining the status quo with employers and employers having the right to enforce pre-zero tolerance drug policies and implement post-zero tolerance drug policies. There was also concern with the drug testing methods and whether urine or blood should be used.

VI. This week's draft recommendation for discussion purposes:

- a. Recommendation #1
 - i. The majority agreed there should be a recommendation to the Governor to refrain from taking action on Amendment 64 regarding employers' rights.
 - ii. There will be a minority dissent drafted by Kimberlie Ryan for next week
 - iii. The task force will vote on this recommendation next week.
- b. Recommendation #2 and #3
 - i. Tabled until next week

VII. Closing

- a. Voted and agreed to the amended banking recommendation #1. Unanimous
- b. Agenda next week will be taxes, starting with excise taxes.
- c. Meeting concluded at 1:15 p.m.