AMENDMENT 64
IMPLEMENTATION TASK FORCE

February 5th, 2013

TODAY'S AGENDA

Topic	Start	Finish	Owner
Welcome and Introductions	1:00 PM	1:10 PM	Co-Chairs
Federal Legal Issues	1:10 PM	1:40 PM	Sam Kamin
Legislative Process	1:40 PM	2:00 PM	Co-Chairs
Break	2:00 PM	2:10 PM	N/A
Working Group Reports and Recommendation Reviews	2:10 PM	4:40 PM	Working Group Chairs
Public Comment	4:40 PM	5:00 PM	Public

ACTIVE RECOMMENDATIONS FOR REVIEW TODAY

Working Group	Recommendation Identifier and Title
Regulatory Framework	7 – Hybrid Framework
Regulatory Framework	8 – Local Licensing
Local Authority and Control	9 – Local funding mechanisms
Local Authority and Control	10 – Dual licensing
Tax, Funding and Civil Law	11 – Maintain status quo for employers/employees
Tax, Funding and Civil Law	12 – Joint Resolution for Banking
Criminal Law	13 – Support HB 13-1114
Criminal Law	14 – Juvenile Possession
Executive	15 – Industrial Hemp

MARIJUANA REGULATION AND FEDERALISM

Stages of Marijuana Regulation

- Federal prohibition (1937-present)
  - Marijuana Prohibited by federal law (Controlled Substances Act (1970))
  - Most states pass parallel provisions
- Medical Marijuana (1996-present)
  - Starting in CA in 1996 now includes 18 states plus DC
- Legalization (Nov 2012-present)
  - Colorado and Washington pass legalization
  - Eliminates prohibition on possessing small amounts
  - Requires legislature to regulate recreational sales

Federal Prohibition under the CSA

- Marijuana Is a Schedule I Narcotic
  - Manufacture, sale, distribution, possession are prohibited.
  - No DEA-certified doctor may prescribe the drug
- Legislative and Legal Challenges to Schedule I status consistently fail:
  - *Gonzales v. Raich*, 545 U.S. 1 (2005): Confirmed Congress's power to regulate marijuana under the Commerce Clause.
  - *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001): No defense in a federal prosecution under the CSA that the defendant was in conformance with state law.

Federal Response to MMJ – Mixed Messages

- Ogden Memo – Oct. 2009
  - Interpreted by many to be a green light to medical marijuana in the states
  - Led to the explosion of dispensaries in CO in 2009-10
  - Even at the time this was a pretty suspect reading
- Cole Memo – June 2010
  - The Ogden memo was not meant to be a green light
  - "Persons who are in the business of cultivating. selling, or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law. "

Enforcement of the CSA vis-a-vis MMJ

- Varies across states
  - California – raids and coordination by US Attorneys
  - Montana – entire industry basically shut down
  - Colorado – letters to some dispensary owners, mainly those within 1,000 feet of schools
- Involves more than criminal law enforcement
  - CSA civil provisions
  - Tax (Harborside in CA)
  - Gun Laws (Washington, Montana)
  - Financial Laws (make banking difficult everywhere)

Amendment 64 – Legal Status

- Can't protect Coloradans from federal prosecution, see *US v. OCBC*
- The partial repeal our criminal prohibitions can't be undone by feds
  - CO can't be forced to criminalize any conduct
  - Can't be stopped from decriminalizing it either
  - But of course, they can still arrest those lawfully possessing under state law

Amendment 64 – Legal Status, cont'd

- The regulatory apparatus piece is more complicated
- Feds could claim it's preempted by the CSA
- Congress may preempt inconsistent state laws to the same extent it can regulate
  - Has not chosen to do so with the CSA. A state law is not preempted "unless there is a positive conflict between [the CSA] and that State law so that the two cannot consistently stand together."
  - What is a positive conflict? Either an *impermissible obstacle* or a law that makes it *impossible to comply with both* state and federal law.

Going Forward

- Can't make Amendment 64 bullet proof – if the feds want to shut it down, they can
- There's a reason CO was largely exempt from previous crackdowns, though
  - Better regulatory regime than anywhere else
    - Closed-loop system
    - Background checks
    - Seed-to-sale surveillance
  - Proved we could keep negative externalities under control – Holder has hinted this is key

Takeaway

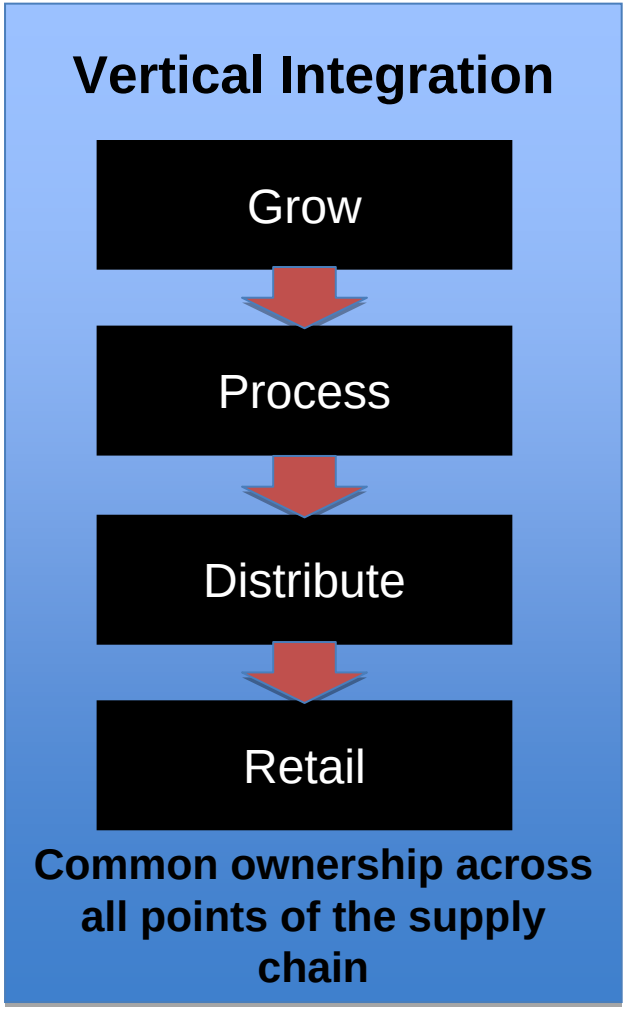
- There’s a tension between full implementation of Amendment 64 and creating a policy that the feds will deem acceptable.
- The legislature will ultimately have to decide where to come down along this continuum

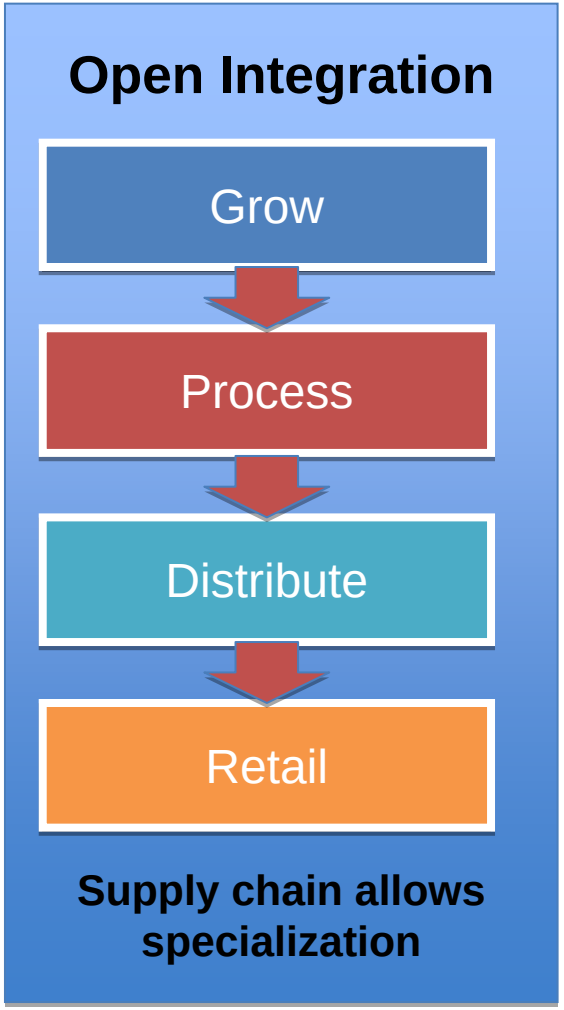
WORKING GROUP RECOMMENDATIONS

REGULATORY FRAMEWORK (RECOMMENDATION 7)

The Amendment 64 Task Force recommends that the General Assembly adopt a “hybrid” regulatory framework for the regulation of recreational marijuana in Colorado that includes strict inventory control, surveillance requirements and seed-to-sale tracking. Under this regulatory model, vertical integration would not be required or prohibited.

REGULATORY FRAMEWORK (RECOMMENDATION 7) OVERVIEW





The Hybrid recommendation integration model will allow BOTH of these supply chain models.

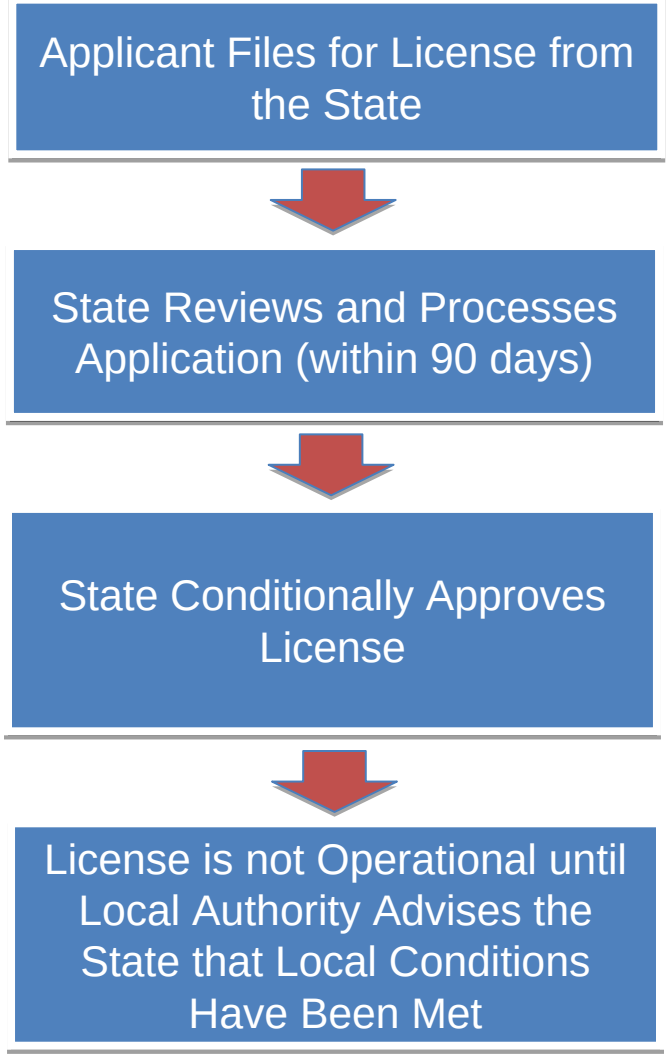
This allows for existing industry flexibility and also enables additional specialization within the market.

Both models include strict inventory control, surveillance requirements and seed-to-sale tracking.

REGULATORY FRAMEWORK (RECOMMENDATION 8)

- That a state law be adopted recognizing the authority of local governments to require a local license for any marijuana establishment as a legitimate type of “time, place, manner and number” regulation at the local level.
- State law shall provide that a state license for a marijuana establishment shall be issued conditionally and shall not become operational unless and until a local license is granted, in those jurisdictions that have elected to enact a local licensing requirement.
- If a local government authority chooses not to enact a local licensing requirement, a state issued conditional license shall not become operational unless and until the local government authority affirmatively authorizes the activity for which the state license was issued.

REGULATORY FRAMEWORK (RECOMMENDATION 8) OVERVIEW



- This allows statewide licensing as outlined in the amendment but also empowers both local controls and flexibility.
- This establishes a consistent approach to licensing and ensures compliance with local terms and conditions.

LOCAL AUTHORITY AND CONTROL (RECOMMENDATION 9)

Adopt legislation that clarifies the availability and limitations of funding mechanisms for local jurisdictions licensing recreational marijuana businesses. Clarity is needed as to the meaning of operational fees in Section 5(f) and the limitations, if any, on the same. Additional clarification is needed on whether the State may raise fees to offset additional costs to local jurisdictions. Finally, clarification is needed on whether the State's 50% share provided to local jurisdictions is limited to the $5000/$500 caps set forth in 5(a)(II) or would include 50% of all additional amounts that may be charged by the State if a greater amount is determined necessary by the Department.

LOCAL AUTHORITY AND CONTROL (RECOMMENDATION 10)

Adopt a dual licensing system similar to 12-43.3-301 where a local jurisdiction may allow recreational marijuana businesses by deferring to State licensing standards. Avoid dual licensing (similar to liquor) that mandates a local county or municipality to have its own licensing standards and conduct its own hearings prior to allowing recreational marijuana businesses in its jurisdiction. Like medical marijuana, allow local counties or municipalities to either ban, choose to adopt their own additional standards, or defer to State-adopted standards.

TAX, FUNDING AND CIVIL LAW (RECOMMENDATION 11)

The plain language of Amendment 64 Section 6(a) makes it clear that the intent of the voters was to maintain the status quo for employers and employees, and that employers may maintain, create new, or modify existing policies in response to the passage of the measure. The Amendment 64 Implementation Task Force recommends that employers should be encouraged to review current drug free workplace policies, including but not limited to hiring, sanctioning, termination and drug testing, in response to passage of the measure

TAX, FUNDING AND CIVIL LAW (RECOMMENDATION 12)

If no substantive reply from the Federal Government is received by March 31, 2013, in response to the Governor's letter (and other efforts) the Amendment 64 Task Force recommends that the General Assembly consider any other lawful alternatives to assist marijuana businesses efforts to access the banking system. One such alternative would be to consider a Joint Resolution calling on the Federal Government to take action by excepting marijuana businesses in states with legalized marijuana industries from relevant Federal regulations. Another alternative, because the Task Force cannot suggest state legislation that resolves the issue, would be to authorize and fund a study by an independent policy institute with experience in banking laws and regulations to develop a proposal for a financial institution not subject to Federal regulation. An independent policy institute could also be authorized to survey the other states for alternative models that would avoid to the greatest extent possible any Federal regulatory or criminal nexus.

CRIMINAL LAW TASKFORCE (RECOMMENDATION 13)

The Amendment 64 Implementation Task Force should recommend that the Colorado General Assembly enact House Bill 13-1114, Concerning Penalties For Persons Who Drive While Under The Influence Of Alcohol Or Drugs.

CRIMINAL LAW TASKFORCE (RECOMMENDATION 14)

Establish consequences for Juveniles (under 18) for possession of less than one ounce of marijuana first offense.

- C.R.S. 18-13-122 Minor in Possession of Alcohol be amended to add C.R.S. 18-13-122.1 Minor in Possession of Marijuana.
- C.R.S. 18-18-406(1) Possession of less than two ounces of marijuana be amended to add a new statute – Possession of less than one ounce of marijuana first offense by a juvenile.
- Amend both of these two statutes to provide for education and treatment for juveniles in possession of less than one ounce of marijuana first offense without the consequences of a conviction in municipal court because of a petty offense (current law) or an adjudication under juvenile law which could eventually result in detention or commitment to the Division of Youth Corrections. While Amendment 64 made it legal for those 21 and over to possess small amounts of marijuana for personal use it did not address the concerns of juveniles in possession of small amounts of marijuana. This recommendation does not attempt to address the issue of possession of small amounts of marijuana by those ages 18 to 20.

EXECUTIVE RECOMMENDATION (RECOMMENDATION 15)

The General Assembly should adopt legislation during the 2013 session authorizing the cultivation, processing, and sale of industrial hemp. Such legislation should delegate to the Commissioner of Agriculture authority to establish regulatory requirements for registration and inspection for those wanting to grow or process industrial hemp. The Commissioner should work with stakeholders to address relevant issues, and should promulgate a final rule no later than December 31, 2013.

PUBLIC COMMENT

- Each person will have approximately 2 minutes. We will be keeping strict time keeping to ensure everyone who wishes may have a chance to speak
- Please be polite and do not interrupt others.
- We ask people to hold applause or dissent- please show respect all opinions.
- Please note that you may not give your 2 minutes to another person.