

AMENDMENT 64 IMPLEMENTATION

Joint Select Committee Legislation		
SB 13-283 (<i>Enacted</i>) Implement Amendment 64 Consensus	HB 13-1317 (<i>Enacted</i>) Implement Amendment 64 Majority Recommendation	HB 13-1318 (<i>Enacted</i>) Retail Marijuana Taxes
Other Amendment 64-related Legislation		
SB 13-241 (<i>Enacted</i>) Industrial Hemp Growers Registration Department of Agriculture	SCR 13-003 (<i>Deemed Lost</i>) Marijuana Taxes & Conditional Suspend Regulation	HJR 13-1022 (<i>Deemed Lost</i>) Request Federal Government Input for Amendment 64 Marijuana
Marijuana Driving Under the Influence		
HB 13-1114 (<i>Postponed Indefinitely</i>) Inferences For Marijuana and Driving Offenses	HB 13-1325 (<i>Enacted</i>) Inferences For Marijuana and Driving Offenses	

Background on Joint Select Committee Legislation

In November 2012, Colorado voters passed Amendment 64, which legalizes marijuana possession for adults under state law and requires the state to establish a regulatory structure for retail marijuana. A task force was created by the Governor in December 2012 to determine how to implement the provisions of the amendment. In March 2013, a Joint Select Committee was formed by legislative leadership to consider task force recommendations and refer legislation to the General Assembly.

Amendment 64. Amendment 64 passed by approximately 55 percent of the vote in the November 2012 election, and was proclaimed as an amendment to Article XVIII of the Colorado Constitution on December 10, 2012. Amendment 64 allows for an adult 21 years or older to consume or possess up to one ounce of marijuana and to cultivate up to six plants; requires that a regulatory structure for retail marijuana be established by July 2013; requires that the cultivation, processing, and retail sale of marijuana in Colorado be allowed by January 1, 2014, except where local governments have prohibited it; and requires the state to set an excise tax for marijuana, subject to voter approval.

Task Force. On December 10, 2012, Governor John Hickenlooper established a 24-member task force through Executive Order B2012-004 to identify legal, policy, and procedural issues concerning Amendment 64. The task force completed its work on February 28, 2013. Task force co-chairs Jack Finlaw, the Governor's Office of Legal Counsel, and Barbara Brohl, Colorado Department of Revenue (DOR) Executive Director, issued the "Task Force Report on the Implementation of Amendment 64: Regulation of Marijuana in Colorado" on March 13, 2013. The report made 58 recommendations in 17 categories, including: regulation and licensing; taxation and financing; consumer safety; education and health; and criminal law, including driving under the influence.

Joint Select Committee. On March 7, 2013, the Senate President and the Speaker of the House created a ten-member Joint Select Committee on the Implementation of the Amendment 64 Task Force Recommendations for the purposes of evaluating the work of the Governor's task force, soliciting public feedback regarding the task force's recommendations, and referring legislation to

the General Assembly for consideration based on the task force's recommendations. The committee held a series of ten meetings from March 15 through April 8, 2013.

At its conclusion, the Joint Select Committee on the Implementation of the Amendment 64 Task Force Recommendations voted to refer three separate bills to the 2013 General Assembly: Senate Bill 13-283 included only the recommendations that passed unanimously; House Bill 13-1317 included only the recommendations that were met with majority approval; and House Bill 13-1318 addressed the taxation component of Amendment 64. These bills were signed into law on May 28, 2013.

Joint Select Committee Legislation

Senate Bill 13-283 represents the Joint Select Committee recommendations that were met with unanimous approval. The bill implements the major provisions of Amendment 64. Among the provisions, the bill:

- requires the Colorado Commission on Criminal and Juvenile Justice to make recommendations to the General Assembly regarding criminal laws that need to be revised to ensure statutory compatibility with Amendment 64;
- prohibits open containers of marijuana in motor vehicles;
- allows for license revocation of certain care facilities if marijuana is consumed or cultivated onsite;
- prohibits marijuana at community residential homes or regional centers;
- allows retail marijuana businesses to participate in a responsible vendor program;
- makes marijuana subject to the same indoor air quality restrictions as tobacco products;
- encourages the Peace Officer Standards and Training Board to include advanced roadside impairment driving enforcement training curriculum in the peace officer training academy;
- allows retail marijuana stores to deduct certain business expenses from their state income taxes that are prohibited by federal tax law; and
- authorizes the Governor to designate state agencies to carry out other duties under the bill.

In addition, once the Marijuana Cash Fund created by the bill has sufficient revenue to fully fund appropriations to the Department of Revenue (DOR) under HB 13-1317 (which is described in the next section), the bill requires the Department of Public Safety (DPS) to study law enforcement activities related to retail marijuana and requires the Department of Public Health and Environment (CDPHE) to monitor the health the effects of marijuana.

House Bill 13-1317 implements major provisions of Amendment 64 by creating the Colorado Retail Marijuana Code. It renames the Medical Marijuana Enforcement Division (MMED) in the DOR as the Marijuana Enforcement Division (MED) and gives the MED the authority to regulate both medical and retail marijuana. It creates a regulatory system for retail marijuana under which existing medical marijuana businesses have the option to convert to retail businesses or to operate both medical and retail businesses. Colorado residents may purchase up to one ounce of marijuana in a single transaction but nonresidents are limited to purchases of no more than 1/4 of an ounce in a single transaction.

The bill includes a severability clause that allows the bill to be implemented even if certain provisions are found to be unconstitutional as long as those provisions are not essential to fulfilling the legislative intent of the bill. The Colorado Retail Marijuana Code is scheduled to repeal July 1, 2016, after a sunset review.

State licensing. As required by Amendment 64, House Bill 13-1317 requires the DOR to adopt rules regarding retail marijuana by July 1, 2013, and begin taking license applications no later than October 1, 2013. The MED must act on a license application between 45 and 90 days after receipt of the application. Until September 30, 2014, only medical marijuana businesses in good standing may apply for a retail license. Prior to this date, beginning January 1, 2014, other interested persons may submit a notice of intent to apply for licensure. The MED will create the notice of intent form and may collect a filing fee to be deducted from the licensing fee. The MED will begin accepting applications, on July 1, 2014, and give preference to those applicants who submitted a notice of intent.

New license types are created for retail marijuana stores, products manufacturers, cultivation facilities, and testing facilities. All owners, officers, managers, and employees of a retail marijuana business must meet certain requirements, including Colorado residency, and pass a fingerprint-based criminal history check. The bill includes limitations for licensing of individuals with certain felony convictions. Law enforcement personnel are prohibited from being licensed by the MED as are locations currently licensed as retail food or wholesale food businesses. A licensed retail marijuana store is prohibited from selling retail marijuana or retail marijuana products over the Internet or to a person not physically present in the retail marijuana store's licensed premises. Licensed retail marijuana testing facilities are prohibited from having an interest in any other type of medical or retail marijuana business. All licensed retail marijuana businesses must procure a \$5,000 surety bond as a guarantee that the business will pay its sales and excise taxes.

Testing of retail marijuana by licensed laboratories is required to verify potency and to ensure that products sold for human consumption do not contain harmful contaminants. No transfers of retail marijuana from cultivation or production facilities can be made without proof that the excise tax has been paid on the product. The bill gives the DOR rulemaking authority over a variety of issues including licensing, fees, security, labeling, health and safety standards, advertising, enforcement, penalties, inspection procedures, and audits. DOR may limit the number of licenses that it issues as well as limit the amount of production permitted by a retail marijuana cultivation licensee. Any limits on licenses and production may be changed by DOR in the future.

Retail marijuana cannot contain nicotine or alcohol and retail stores must put each item sold in a sealed, opaque container. Retail stores may not sell any products that do not contain marijuana such as soda, candies, baked goods, or cigarettes.

Vertical integration. Until September 30, 2014, the bill requires a retail marijuana store to only sell marijuana grown in its own retail marijuana cultivation facility with some exceptions. Beginning October 1, 2014, a licensed retail marijuana store or products manufacturer may either grow its marijuana at its own retail marijuana cultivation facility or purchase it from a facility with which it does not share common ownership.

Tracking and reporting. The MED is required to develop and maintain a tracking system to track retail marijuana from the immature plant stage until the marijuana is sold to a customer at a retail store. Beginning April 1, 2014, and annually thereafter, the MED is required to report to the House and Senate Finance Committees on licensing activities as well as an overview of the retail marijuana market that includes actual and anticipated market supply and demand.

Retail marijuana stores must track all retail marijuana and marijuana product sales from when the items are transferred from a retail marijuana cultivation facility or retail marijuana products manufacturer to the consumer.

Testing and certification standards. The CDPHE is required to provide the MED with standards for licensing the laboratories that will be responsible for the testing and certification of marijuana.

Local licensing. Unlike the state and local licensing requirements for medical marijuana businesses, local jurisdictions are not required to set up a licensing program for retail marijuana businesses. The MED will forward all applications for original or renewal licenses to the applicable local jurisdiction to determine whether the application complies with local restrictions on the time, place, manner, and number of retail marijuana businesses allowed. The local jurisdiction will notify the MED if the application is compliant. Public hearings may be held for all new license applications. Local jurisdictions are also permitted to prohibit such businesses entirely. If a local jurisdiction does choose to license retail marijuana businesses, new businesses will not be permitted to operate until both the state and local licenses are issued. If the local license is not issued within one year of the conditional state license being issued, the conditional state license expires; if the local application is denied, the conditional state license is revoked. Local jurisdictions are permitted to charge operational fees for inspection, administration, and enforcement of retail marijuana businesses.

Funding sources for marijuana regulation. House Bill 13-1317 requires that all sales taxes from medical and retail marijuana sales, plus application and licensing fees from marijuana businesses, be used to fund the MED in the DOR. This includes the existing 2.9 percent state sales tax that would otherwise be credited to the General Fund. The application fee for existing medical marijuana businesses that want to apply for a retail marijuana licence is set at \$500. All other applicants are required to pay a \$5,000 application fee. The MED must remit 50 percent of any application fee to the local jurisdiction where the business will be located within seven days of receipt.

The bill appropriates the balance of the Medical Marijuana License Cash Fund as of July 1, 2013, to the MED and allows the MED to receive moneys from the General Fund if revenues from other sources are insufficient. If the MED receives a General Fund appropriation, the MED will repay that amount when it becomes self-sufficient and generates excess revenue. Beginning September 30, 2014, and annually thereafter, the DOR must report to the Joint Budget Committee and the House and Senate Finance Committees detailing the amount of state revenue generated by medical and retail marijuana, including excise taxes, sales taxes, application and license fees, and any other fees. The report must also discuss the progress in establishing the regulatory environment for marijuana in Colorado.

Unlawful acts. The bill identifies a number of unlawful acts including consuming marijuana in a licensed retail marijuana business, buying or selling marijuana outside of the regulated system, selling to a person under 21, distributing marijuana using a mobile distribution center, and failing to pay the lawful excise tax if it is established. A person who commits any of these acts commits a Class 2 misdemeanor. In addition, state and local agencies are not required to care for any retail marijuana or retail marijuana product belonging to or seized from a licensed business.

House Bill 13-1318 represents the retail marijuana tax scheme recommended by the Joint Select Committee. The bill creates a state excise tax and special state sales tax to be levied on retail marijuana beginning January 1, 2014, and refers a ballot question to the voters at the 2013 general election for approval to increase taxes by \$70,000,000 per year. These taxes, if approved, are not subject to the limitations on revenue, spending, or appropriations contained in Section 20 of Article X of the State Constitution (TABOR). The tax revenues are to be used for the enforcement of regulations on the retail marijuana industry and the DOR has rulemaking authority over implementation of these taxes. Marijuana businesses are required to post a surety bond equal to two months of anticipated tax liability. Retail marijuana licensees that fail to remit sales and excise taxes, or unlicensed individuals who sell or transfer marijuana, are subject to criminal penalties.

Excise tax. The bill creates an excise tax of up to 15 percent of the average market rate of the unprocessed retail marijuana on its first sale or transfer from a cultivation facility to a retail store, products manufacturing facility, or other cultivation facility. The DOR will set the average market rate twice a year. Retail marijuana businesses are required to keep detailed electronic records on all transactions of retail marijuana. As required by Amendment 64, the first \$40 million collected annually in excise tax goes to the Public School Capital Construction Assistance Fund. Any amount remaining will be deposited into the Marijuana Cash Fund.

Retail marijuana sales tax. The bill authorizes a state sales tax of up to 15 percent, which is initially set at 10 percent. The retail marijuana sales tax is in addition to the current 2.9 percent state sales tax. Local jurisdictions will receive 15 percent of the proceeds of the retail marijuana sales tax apportioned according to the percentage of retail marijuana sales in their areas, distributed monthly. Local governments may also apply local sales taxes to retail marijuana. Retail marijuana businesses are prohibited from maintaining any portion of the retail marijuana sales tax to cover the expenses of collecting and remitting the tax. The General Assembly can raise or lower the retail marijuana sales tax at any time through legislation, but cannot increase it above 15 percent. Beginning April 1, 2014, and annually through April 1, 2016, the House and Senate Finance Committees are required to review the percent of revenue allocated to local governments.

Other Amendment 64-related Legislation

The following bills and resolutions did not originate in the Joint Select Committee on the Implementation of the Amendment 64 Task Force Recommendations, but were related to the implementation of Amendment 64.

Amendment 64 required the state legislature to enact legislation concerning the growth, processing, and sale of industrial hemp. **Senate Bill 13-241** establishes a registration program in the Department of Agriculture for persons who grow industrial hemp either commercially or for research and development purposes. The bill establishes the Industrial Hemp Committee and specifies the qualifications for the nine members to be appointed by the committee chairs of the House and Senate Agriculture Committees.

The department and committee will determine the qualifications and other criteria for persons who want to grow industrial hemp. A person wanting to cultivate industrial hemp must register annually. The department is required to charge a registration fee sufficient to cover the costs of regulation based on the size of the land area on which the applicant will conduct operations. The commissioner and committee are required to establish a system for registrants to test their products to verify that they do not exceed the delta 9-tetrahydrocannabinol (THC) concentration limit of no more than 0.3 percent on a dry weight basis. Registrants growing for commercial purposes must enter into a purchase agreement with an in-state industrial hemp processor and provide that information to the department. The Agriculture Commissioner has the authority to deny, revoke, or suspend a registration and may impose a civil penalty not to exceed \$2,500 per violation of this bill or any rule adopted pursuant to the bill. If the federal government authorizes the U.S. Department of Agriculture to regulate the cultivation, research, and development of industrial hemp and the commissioner subsequently determines that state regulation is no longer necessary, state regulation will be repealed.

Two resolutions were lost in the Senate. **Senate Concurrent Resolution 13-003** would have suspended the regulatory provisions of Amendment 64 if certain taxes were not approved by Colorado voters in November 2013. **House Joint Resolution 13-1022** would have requested input from the federal government on the implementation of Amendment 64.

Marijuana Driving Under the Influence (DUI)

House Bill 13-1325 states that if a driver's blood contains five nanograms or more of delta 9-tetrahydrocannabinol (THC) per milliliter in whole blood at the time of the offense or within a reasonable time thereafter, this fact gives rise to a permissible inference that the defendant was under the influence of one or more drugs. THC is the primary psychoactive component of marijuana. Prior to the passage of House Bill 13-1325, the legislature postponed indefinitely **House Bill 13-1114**, which was identical to House Bill 13-1325.