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MEMORANDUM

August 7, 2014

TO: Use of Recreational Marijuana Tax Revenues Interim Study Committee

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SUBJECT: Background on Prior Marijuana-Related Committees, Work Groups, and Legislation

Summary

Since 2012, several committees and task forces have met to make recommendations concerning marijuana legalization, regulation, and taxation. Various bills have also addressed marijuana taxes and revenue; the regulation of retail marijuana businesses; and background on banking, health, and criminal justice issues. This memorandum provides a background on these prior committees and legislation.

Previous Marijuana Committees and Work Groups

Various committees and task forces, created by both the legislature and the executive branch, have met to study and make recommendations concerning marijuana policy in Colorado. Their purposes, compositions, and results are described below.

Amendment 64 Implementation Task Force. The task force was created through an executive order in December 2012, and published a report of its recommendations in March 2013. Participants on the task force included the Governor's Office, members of the General Assembly, state agencies, local governments, persons with expertise in the treatment of marijuana addiction, and representatives of employers, employees, the Amendment 64 campaign, the medical marijuana industry, and marijuana consumers. This task force identified legal, policy, and procedural issues concerning Amendment 64 and made recommendations on the regulatory structure for retail marijuana businesses. The recommendations of the task force led to House Bill 13-1317, House Bill 13-1318, and Senate Bill 13-283.

Joint Select Committee on the Implementation of the Amendment 64 Task Force Recommendations. The committee met during the 2013 legislative session to evaluate the work of the Amendment 64 Task Force, solicit public feedback regarding its recommendations, and refer legislation to the General Assembly for consideration based on the task force's recommendations.

Retail Marijuana Product Potency and Serving Size Working Group. The Department of Revenue created this working group to discuss the amount of 9-tetrahydrocannabinol (THC) in retail marijuana products in proportion to product serving size. The working group was created to advise the department and receive stakeholder feedback prior to the formal rulemaking process on product potency and serving size. This working group, comprised of representatives from the Marijuana Enforcement Division, state and local government agencies, the marijuana industry, and various stakeholders, has been meeting in the spring and summer of 2014.

Stakeholder working groups. The Department of Revenue has also engaged several stakeholder working groups during previous rounds of rulemaking. Topics addressed prior to the 2013 rulemaking included: licensing, transportation, and storage; inventory tracking; record-keeping, enforcement, and discipline; labeling, packing, product safety, and marketing; and differentiation of retail and medical marijuana.

Marijuana-Related Legislation

Since the passage of Amendment 64 in 2012, several marijuana-related bills have been enacted into law. These bills are summarized below by subject area.

Marijuana Taxes and Use of Revenue

Senate Bill 14-215 - Disposition of Legal Marijuana Related Revenue. This bill, recommended by the Joint Budget Committee, created the Marijuana Tax Cash Fund (MTCF), which is funded with the revenue from the 2.9 percent state sales tax on medical and retail marijuana, the state's share of the 10 percent sales tax on retail marijuana, and any excise tax revenue over \$40 million. All tax revenue remaining in the Marijuana Cash Fund (MCF) was transferred to the MTCF on July 1, 2014, along with spending authority for certain non-licensing related programs. The MCF will continue to be used for licensing and enforcement activities in the Department of Revenue's Marijuana Enforcement Division (MED), which is funded with license and application fees.

Under SB 14-215, funds in the MTCF cannot be appropriated until the year after they are received, except for funding related to the Department of Revenue's direct and indirect costs of regulating medical and retail marijuana. For FY 2014-15, the bill appropriates \$24.9 million in anticipated marijuana tax revenue from FY 2013-14 to various prevention, treatment, and education programs related to marijuana use. The bill also identifies the purposes for which future moneys may be appropriated.

House Bill 13-1318 - Retail Marijuana Taxes (Proposition AA). This bill referred Proposition AA to the voters, which was passed at the 2013 general election. By approving Proposition AA, the voters authorized an excise tax and a special sales tax on retail marijuana. The excise tax rate was set at 15 percent of the wholesale value of marijuana and the special sales tax rate was set at 10 percent of the retail price. Proposition AA further specified that the General Assembly could raise or lower the tax rates on retail marijuana without additional voter approval, but the rates could not exceed 15 percent. For the special sales tax on retail marijuana, 85 percent of it is allocated to the state and 15 percent is transferred to local governments allowing retail marijuana sales. The percentage distributed is based upon sales in each local jurisdiction.

Regulation of Retail Marijuana Businesses

House Bill 14-1122. The bill requires that medical marijuana be sold in packaging that meets MED requirements similar to those under the federal "Poison Prevention Packaging Act of

1970", or be placed in opaque, resealable packaging at the point of sale. The bill also allows employees at retail marijuana businesses to confiscate fraudulent proof-of-age identification from persons attempting to purchase retail marijuana and strengthens the penalty for selling retail marijuana to a person under the age of 21.

House Bill 14-1229 - Retail Marijuana Fingerprint Check Local Authority. This bill conforms the fingerprint requirements under retail marijuana licensing law with medical marijuana law by allowing a local jurisdiction to submit fingerprints to the Colorado Bureau of Investigation for the purpose of conducting a criminal records check.

House Bill 14-1361 - Regulation of Marijuana Concentrates. This bill requires the Department of Revenue to promulgate rules establishing the equivalency of one ounce of retail marijuana flower in various marijuana products, including marijuana concentrates, by January 1, 2016. The department may contract for a scientific study to determine such equivalency.

House Bill 14-1366 - Sale of Edible Marijuana Products. The bill modifies the MED rules on retail marijuana packaging so that only sales of edible marijuana products must conform with the federal "Poison Prevention Packaging Act of 1970." The bill also strengthens existing rules on adding marijuana to trademarked food products and prohibits adding marijuana to a product that is marketed primarily to children. By January 1, 2016, the Department of Revenue must adopt rules requiring edible marijuana products to be shaped, stamped, colored, or otherwise marked with a standard symbol indicating that the product contains marijuana.

House Bill 13-1317 - Implement Amendment 64 Majority Recommendations. This bill enacted the Retail Marijuana Code and created a combined enforcement division in the Department of Revenue for both medical and retail marijuana (the Marijuana Enforcement Division). Major provisions of the bill include: creating the state licensing system; limiting retail licenses to existing medical marijuana business in good standing and requiring vertical integration of cultivation and retail sales through September 30, 2014; setting requirements for local licensing; requiring the Department of Public Health and Environment to establish testing and certification standards; and specifying funding sources for marijuana regulation.

Senate Bill 13-283 - Implement Amendment 64 Consensus Recommendations. This bill implements several consensus recommendations of the Amendment 64 Implementation Task Force, including having the Colorado Commission of Criminal and Juvenile Justice examine the need for criminal laws to be revised in light of Amendment 64, prohibiting open containers of marijuana in vehicles, applying the same indoor air quality standards to marijuana as for tobacco products, and allowing retail marijuana businesses to participate in a responsible vendor program, among other provisions.

Banking

House Bill 14-1398 - Authorize Marijuana Financial Service Cooperatives. This bill allows for the creation and regulation of marijuana financial services cooperatives (cannabis credit co-ops, or CCCs) by the Division of Financial Services in the Department of Regulatory Agencies (DORA). After a CCC receives approval from the Federal Reserve System Board of Governors, DORA must convene a stakeholder group to examine any legal conflicts that may exist and recommend changes to the General Assembly. After federal approval and implementation of stakeholder recommendations, the regulation and operation of CCCs may begin.

Health

Senate Bill 14-155 - Medical Marijuana Health Effects Grant Program. This bill creates a grant program to fund scientific research on the use of marijuana, its component parts, and industrial hemp as part of medical treatment. Up to \$10.0 million dollars per year from FY 2014 to FY 2019 may be transferred to a subaccount of the Medical Marijuana Program Cash Fund to fund grants and pay the administrative costs of the program.

Criminal Penalties

Senate Bill 14-129 - Marijuana Criminal Provision Clean Up. The bill adds marijuana possession, consumption, and the possession of marijuana paraphernalia by persons under the age of 21 to an existing statute concerning possession or consumption of alcohol by minors. It also modifies the procedures for sealing records of these marijuana offenses, if certain conditions are met. The bill modifies the standard for open marijuana container violations to require a broken seal on the container, removal of marijuana product, and evidence of use within the vehicle.

House Bill 13-1325 - Inferences for Marijuana and Driving Offenses. The bill creates a permissible inference that a driver is under the influence of one or more drugs if a driver's blood contains five nanograms or more of 9-tetrahydrocannabinol (THC, the primary psychoactive component of marijuana) per milliliter of whole blood (5 ng/mL). In considering this evidence at trial, a jury may, but is not required, to conclude that a driver above the 5 ng/mL limit was driving under the influence. The bill includes limits on how a driver's valid medical marijuana registry identification card may be used as evidence by prosecutors at trial or by police in determining probable cause for requiring a blood test.