

Medical Marijuana Update

Recent Legislative Efforts &
Court Rulings

California Supreme Court Cases

- The California Supreme Court has granted review in several cases regarding medical marijuana dispensaries
- The Court has not set oral argument
- Expected to receive a decision from the Court sometime next year

Pack v. Superior Court (Long Beach)

- Court of Appeal held that ordinance was preempted by Controlled Substances Act
- On August 22, 2012, the Supreme Court dismissed review of this case
- Stated reasons:
 - Petitioners abandoned their federal preemption argument
 - City of Long Beach repealed the challenged ordinance and enacted a ban on MMDs
- Appellate opinion still remains depublished and not citable precedent

No Preemption of MMD Ban

- City of Riverside v. Inland Empire Patient's Health and Wellness Center, Inc. and People v. G3 Holistic, Inc.
 - Supreme Court to review questions regarding state and federal preemption of ordinances that ban MMDs
 - Both appellate court holdings affirmed local government's constitutional authority to ban MMDs

MMD Ban Preempted by MMPA

- City of Lake Forest v. Evergreen Holistic Collective and County of Los Angeles v. Alternative Medicinal Cannabis Collective
 - Appellate courts found that the MMPA preempted local governments from enacting ordinances banning MMDs
 - MMPA exempts MMDs from liability for violating Health & Safety Code section 11570 (drug den abatement law)
 - Court found that exemption made operation of an MMD lawful conduct that could not be declared a nuisance per se (Civil Code section 3482)
 - Health and Safety Code section 11362.775 and Civil Code section 3482 preempted MMD bans
- Supreme Court has granted review
 - Further action is deferred pending decision in other cases

420 Caregivers, LLC v. City of Los Angeles

- City ordinance limiting the scope of a permissible collective to 3 or less members
- Ordinance challenged on preemption, due process, equal protection, and privacy grounds
- Court of Appeal overturned trial court's preliminary injunction
- Supreme Court granted review on September 19, 2012 with further action deferred until ruling in City of Riverside case.

Traudt v. City of Dana Point

- Court of Appeal held that plaintiff and collective member lacked standing to challenge the City's ban on MMDs
- Supreme Court granted review

Other Litigation

- San Bernardino County (Superior Court)
 - Successfully defended its ban against a CEQA lawsuit because there was no significant impact on the environment
- City of Santa Barbara (Federal Court)
 - Injunction granted based on vested rights argument affirmed by 9th Circuit
 - City had passed revised ordinance granting an extended amortization period
- Kern County (Superior Court)
 - Cultivation ordinance (12 plant limit) declared unconstitutional as-applied to particular defendant
 - Appeal pending
 - County ballot measure restricting MMDs to industrial zones challenged on CEQA and preemption grounds
 - Court granted TRO enjoining enforcement actions

Legislative Action in 2012

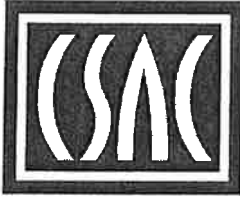
- AB 2312 (Ammiano)
 - For regulation and controlling medical marijuana activities
 - Would establish Board of Medical Marijuana Enforcement in the Dept. of Consumer Affairs
 - Would preempt local laws regarding the regulation and control of medical marijuana
 - Would require cities and counties to permit no fewer than one medical marijuana dispensary per 50,000 residents
 - Cities and counties could opt out if an ordinance was passed by ballot measure
 - Create a Medical Marijuana Fund to implement, enforce, and administer program
 - Would allow cities and counties to levy 5% tax on retail sale of medical marijuana
- Bill passed Assembly, but stalled in Senate and was abandoned by sponsor

Initiatives in 2012

- All initiatives cleared for circulation failed to obtain required amount of signatures to be placed on the ballot
 - Tax and Regulate Medical Marijuana Initiative
 - Turned into AB 2312 with minor revisions
 - 3 legalization initiatives
- But...
 - Colorado and Washington passed legalization measures

Outlook for 2013

- Federal government will need to review its stance on enforcement of Controlled Substances Act due to new legalization laws
 - Will impact enforcement against MMDs in CA
- Supreme Court will finally visit the issue of state preemption of local ordinances regulating or banning MMDs



CSAC Medical Marijuana Working Group

CSAC 118th Annual Conference

Tuesday, November 27, 2012 · 3:00 – 4:30 p.m.

202 A, Second Level, Long Beach Convention Center

Supervisor Susan Adams, Marin County, Co-Chair
Supervisor Mark Lovelace, Humboldt County Co-Chair

AGENDA

- 3:00 -3:10 p.m. I. **Welcome and Introductions**
Supervisor Susan Adams, Marin County, Co-Chair
Supervisor Mark Lovelace, Humboldt County Co-Chair
- 3:10 -3:30 II. **Update & Overview: Recent Legislative Efforts & Court Rulings**
Devin Brown, Deputy County Counsel, Kern County (Invited)
- 3:30 -4:00 III. **Regulation under Prohibition: The Environmental Impacts of Unregulated Marijuana Cultivation**
Scott Greacen, Director of Friends of the Eel River
- 4:00 – 4:30 IV. **Roundtable Discussion**
- 4:30 V. **Closing Comments and Adjournment**

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Be it Enacted by the People of the State of Colorado

Colorado Secretary of State

Article XVIII of the constitution of the state of Colorado is amended BY THE ADDITION OF A NEW SECTION to read:

Section 16. Personal use and regulation of marijuana

(1) Purpose and findings.

(a) IN THE INTEREST OF THE EFFICIENT USE OF LAW ENFORCEMENT RESOURCES, ENHANCING REVENUE FOR PUBLIC PURPOSES, AND INDIVIDUAL FREEDOM, THE PEOPLE OF THE STATE OF COLORADO FIND AND DECLARE THAT THE USE OF MARIJUANA SHOULD BE LEGAL FOR PERSONS TWENTY-ONE YEARS OF AGE OR OLDER AND TAXED IN A MANNER SIMILAR TO ALCOHOL.

(b) IN THE INTEREST OF THE HEALTH AND PUBLIC SAFETY OF OUR CITIZENRY, THE PEOPLE OF THE STATE OF COLORADO FURTHER FIND AND DECLARE THAT MARIJUANA SHOULD BE REGULATED IN A MANNER SIMILAR TO ALCOHOL SO THAT:

(I) INDIVIDUALS WILL HAVE TO SHOW PROOF OF AGE BEFORE PURCHASING MARIJUANA;

(II) SELLING, DISTRIBUTING, OR TRANSFERRING MARIJUANA TO MINORS AND OTHER INDIVIDUALS UNDER THE AGE OF TWENTY-ONE SHALL REMAIN ILLEGAL;

(III) DRIVING UNDER THE INFLUENCE OF MARIJUANA SHALL REMAIN ILLEGAL;

(IV) LEGITIMATE, TAXPAYING BUSINESS PEOPLE, AND NOT CRIMINAL ACTORS, WILL CONDUCT SALES OF MARIJUANA; AND

(V) MARIJUANA SOLD IN THIS STATE WILL BE LABELED AND SUBJECT TO ADDITIONAL REGULATIONS TO ENSURE THAT CONSUMERS ARE INFORMED AND PROTECTED.

(c) IN THE INTEREST OF ENACTING RATIONAL POLICIES FOR THE TREATMENT OF ALL VARIATIONS OF THE CANNABIS PLANT, THE PEOPLE OF COLORADO FURTHER FIND AND DECLARE THAT INDUSTRIAL HEMP SHOULD BE REGULATED SEPARATELY FROM STRAINS OF CANNABIS WITH HIGHER DELTA-9 TETRAHYDROCANNABINOL (THC) CONCENTRATIONS.

(d) THE PEOPLE OF THE STATE OF COLORADO FURTHER FIND AND DECLARE THAT IT IS NECESSARY TO ENSURE CONSISTENCY AND FAIRNESS IN THE APPLICATION OF THIS SECTION THROUGHOUT THE STATE AND THAT, THEREFORE, THE MATTERS ADDRESSED BY THIS SECTION ARE, EXCEPT AS SPECIFIED HEREIN, MATTERS OF STATEWIDE CONCERN.

(2) Definitions. AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES,

(a) "COLORADO MEDICAL MARIJUANA CODE" MEANS ARTICLE 43.3 OF TITLE 12, COLORADO REVISED STATUTES.

(b) "CONSUMER" MEANS A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO PURCHASES MARIJUANA OR MARIJUANA PRODUCTS FOR PERSONAL USE BY PERSONS TWENTY-ONE YEARS OF AGE OR OLDER, BUT NOT FOR RESALE TO OTHERS.

(c) "DEPARTMENT" MEANS THE DEPARTMENT OF REVENUE OR ITS SUCCESSOR AGENCY.

(d) "INDUSTRIAL HEMP" MEANS THE PLANT OF THE GENUS CANNABIS AND ANY PART OF SUCH PLANT, WHETHER GROWING OR NOT, WITH A DELTA-9 TETRAHYDROCANNABINOL CONCENTRATION THAT DOES NOT EXCEED THREE-TENTHS PERCENT ON A DRY WEIGHT BASIS.

(e) "LOCALITY" MEANS A COUNTY, MUNICIPALITY, OR CITY AND COUNTY.

(f) "MARIJUANA" OR "MARIHUANA" MEANS ALL PARTS OF THE PLANT OF THE GENUS CANNABIS WHETHER GROWING OR NOT, THE SEEDS THEREOF, THE RESIN EXTRACTED FROM ANY PART OF THE PLANT, AND EVERY COMPOUND, MANUFACTURE, SALT, DERIVATIVE, MIXTURE, OR PREPARATION OF THE PLANT, ITS SEEDS, OR ITS RESIN, INCLUDING MARIHUANA CONCENTRATE. "MARIJUANA" OR "MARIHUANA" DOES NOT INCLUDE INDUSTRIAL HEMP, NOR DOES IT INCLUDE FIBER PRODUCED FROM THE STALKS, OIL, OR CAKE MADE FROM THE SEEDS OF THE PLANT, STERILIZED SEED OF THE PLANT WHICH IS INCAPABLE OF GERMINATION, OR THE WEIGHT OF ANY OTHER INGREDIENT COMBINED WITH MARIJUANA TO PREPARE TOPICAL OR ORAL ADMINISTRATIONS, FOOD, DRINK, OR OTHER PRODUCT.

(g) "MARIJUANA ACCESSORIES" MEANS ANY EQUIPMENT, PRODUCTS, OR MATERIALS OF ANY KIND WHICH ARE USED, INTENDED FOR USE, OR DESIGNED FOR USE IN PLANTING, PROPAGATING, CULTIVATING, GROWING, HARVESTING, COMPOSTING, MANUFACTURING, COMPOUNDING, CONVERTING, PRODUCING, PROCESSING, PREPARING, TESTING, ANALYZING, PACKAGING, REPACKAGING, STORING, VAPORIZING, OR CONTAINING MARIJUANA, OR FOR INGESTING, INHALING, OR OTHERWISE INTRODUCING MARIJUANA INTO THE HUMAN BODY.

(h) "MARIJUANA CULTIVATION FACILITY" MEANS AN ENTITY LICENSED TO CULTIVATE, PREPARE, AND PACKAGE MARIJUANA AND SELL MARIJUANA TO RETAIL MARIJUANA STORES, TO MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND TO OTHER MARIJUANA CULTIVATION FACILITIES, BUT NOT TO CONSUMERS.

(i) "MARIJUANA ESTABLISHMENT" MEANS A MARIJUANA CULTIVATION FACILITY, A MARIJUANA TESTING FACILITY, A MARIJUANA PRODUCT MANUFACTURING FACILITY, OR A RETAIL MARIJUANA STORE.

(j) "MARIJUANA PRODUCT MANUFACTURING FACILITY" MEANS AN ENTITY LICENSED TO PURCHASE MARIJUANA; MANUFACTURE, PREPARE, AND PACKAGE MARIJUANA PRODUCTS; AND SELL MARIJUANA AND MARIJUANA PRODUCTS TO OTHER MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO RETAIL MARIJUANA STORES, BUT NOT TO CONSUMERS.

(k) "MARIJUANA PRODUCTS" MEANS CONCENTRATED MARIJUANA PRODUCTS AND MARIJUANA PRODUCTS THAT ARE COMPRISED OF MARIJUANA AND OTHER INGREDIENTS AND ARE INTENDED FOR USE OR CONSUMPTION, SUCH AS, BUT NOT LIMITED TO, EDIBLE PRODUCTS, OINTMENTS, AND TINCTURES.

(l) "MARIJUANA TESTING FACILITY" MEANS AN ENTITY LICENSED TO ANALYZE AND CERTIFY THE SAFETY AND POTENCY OF MARIJUANA.

(m) "MEDICAL MARIJUANA CENTER" MEANS AN ENTITY LICENSED BY A STATE AGENCY TO SELL MARIJUANA AND MARIJUANA PRODUCTS PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE.

(n) "RETAIL MARIJUANA STORE" MEANS AN ENTITY LICENSED TO PURCHASE MARIJUANA FROM MARIJUANA CULTIVATION FACILITIES AND MARIJUANA AND MARIJUANA PRODUCTS FROM MARIJUANA PRODUCT MANUFACTURING FACILITIES AND TO SELL MARIJUANA AND MARIJUANA PRODUCTS TO CONSUMERS.

(o) "UNREASONABLY IMPRACTICABLE" MEANS THAT THE MEASURES NECESSARY TO COMPLY WITH THE REGULATIONS REQUIRE SUCH A HIGH INVESTMENT OF RISK, MONEY, TIME, OR ANY OTHER RESOURCE OR ASSET THAT THE OPERATION OF A MARIJUANA

ESTABLISHMENT IS NOT WORTHY OF BEING CARRIED OUT IN PRACTICE BY A REASONABLY PRUDENT BUSINESSPERSON.

(3) Personal use of marijuana. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FOLLOWING ACTS ARE NOT UNLAWFUL AND SHALL NOT BE AN OFFENSE UNDER COLORADO LAW OR THE LAW OF ANY LOCALITY WITHIN COLORADO OR BE A BASIS FOR SEIZURE OR FORFEITURE OF ASSETS UNDER COLORADO LAW FOR PERSONS TWENTY-ONE YEARS OF AGE OR OLDER:

(a) POSSESSING, USING, DISPLAYING, PURCHASING, OR TRANSPORTING MARIJUANA ACCESSORIES OR ONE OUNCE OR LESS OF MARIJUANA.

(b) POSSESSING, GROWING, PROCESSING, OR TRANSPORTING NO MORE THAN SIX MARIJUANA PLANTS, WITH THREE OR FEWER BEING MATURE, FLOWERING PLANTS, AND POSSESSION OF THE MARIJUANA PRODUCED BY THE PLANTS ON THE PREMISES WHERE THE PLANTS WERE GROWN, PROVIDED THAT THE GROWING TAKES PLACE IN AN ENCLOSED, LOCKED SPACE, IS NOT CONDUCTED OPENLY OR PUBLICLY, AND IS NOT MADE AVAILABLE FOR SALE.

(c) TRANSFER OF ONE OUNCE OR LESS OF MARIJUANA WITHOUT REMUNERATION TO A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER.

(d) CONSUMPTION OF MARIJUANA, PROVIDED THAT NOTHING IN THIS SECTION SHALL PERMIT CONSUMPTION THAT IS CONDUCTED OPENLY AND PUBLICLY OR IN A MANNER THAT ENDANGERS OTHERS.

(e) ASSISTING ANOTHER PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER IN ANY OF THE ACTS DESCRIBED IN PARAGRAPHS (a) THROUGH (d) OF THIS SUBSECTION.

(4) Lawful operation of marijuana-related facilities. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE FOLLOWING ACTS ARE NOT UNLAWFUL AND SHALL NOT BE AN OFFENSE UNDER COLORADO LAW OR BE A BASIS FOR SEIZURE OR FORFEITURE OF ASSETS UNDER COLORADO LAW FOR PERSONS TWENTY-ONE YEARS OF AGE OR OLDER:

(a) MANUFACTURE, POSSESSION, OR PURCHASE OF MARIJUANA ACCESSORIES OR THE SALE OF MARIJUANA ACCESSORIES TO A PERSON WHO IS TWENTY-ONE YEARS OF AGE OR OLDER.

(b) POSSESSING, DISPLAYING, OR TRANSPORTING MARIJUANA OR MARIJUANA PRODUCTS; PURCHASE OF MARIJUANA FROM A MARIJUANA CULTIVATION FACILITY; PURCHASE OF MARIJUANA OR MARIJUANA PRODUCTS FROM A MARIJUANA PRODUCT MANUFACTURING FACILITY; OR SALE OF MARIJUANA OR MARIJUANA PRODUCTS TO CONSUMERS, IF THE PERSON CONDUCTING THE ACTIVITIES DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VALID LICENSE TO OPERATE A RETAIL MARIJUANA STORE OR IS ACTING IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE OR AGENT OF A LICENSED RETAIL MARIJUANA STORE.

(c) CULTIVATING, HARVESTING, PROCESSING, PACKAGING, TRANSPORTING, DISPLAYING, OR POSSESSING MARIJUANA; DELIVERY OR TRANSFER OF MARIJUANA TO A MARIJUANA TESTING FACILITY; SELLING MARIJUANA TO A MARIJUANA CULTIVATION FACILITY, A MARIJUANA PRODUCT MANUFACTURING FACILITY, OR A RETAIL MARIJUANA STORE; OR THE PURCHASE OF MARIJUANA FROM A MARIJUANA CULTIVATION FACILITY, IF THE PERSON CONDUCTING THE ACTIVITIES DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VAILD LICENSE TO OPERATE A MARIJUANA CULTIVATION FACILITY OR IS ACTING

IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA CULTIVATION FACILITY.

(d) PACKAGING, PROCESSING, TRANSPORTING, MANUFACTURING, DISPLAYING, OR POSSESSING MARIJUANA OR MARIJUANA PRODUCTS; DELIVERY OR TRANSFER OF MARIJUANA OR MARIJUANA PRODUCTS TO A MARIJUANA TESTING FACILITY; SELLING MARIJUANA OR MARIJUANA PRODUCTS TO A RETAIL MARIJUANA STORE OR A MARIJUANA PRODUCT MANUFACTURING FACILITY; THE PURCHASE OF MARIJUANA FROM A MARIJUANA CULTIVATION FACILITY; OR THE PURCHASE OF MARIJUANA OR MARIJUANA PRODUCTS FROM A MARIJUANA PRODUCT MANUFACTURING FACILITY, IF THE PERSON CONDUCTING THE ACTIVITIES DESCRIBED IN THIS PARAGRAPH HAS OBTAINED A CURRENT, VALID LICENSE TO OPERATE A MARIJUANA PRODUCT MANUFACTURING FACILITY OR IS ACTING IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA PRODUCT MANUFACTURING FACILITY.

(e) POSSESSING, CULTIVATING, PROCESSING, REPACKAGING, STORING, TRANSPORTING, DISPLAYING, TRANSFERRING OR DELIVERING MARIJUANA OR MARIJUANA PRODUCTS IF THE PERSON HAS OBTAINED A CURRENT, VALID LICENSE TO OPERATE A MARIJUANA TESTING FACILITY OR IS ACTING IN HIS OR HER CAPACITY AS AN OWNER, EMPLOYEE, OR AGENT OF A LICENSED MARIJUANA TESTING FACILITY.

(f) LEASING OR OTHERWISE ALLOWING THE USE OF PROPERTY OWNED, OCCUPIED OR CONTROLLED BY ANY PERSON, CORPORATION OR OTHER ENTITY FOR ANY OF THE ACTIVITIES CONDUCTED LAWFULLY IN ACCORDANCE WITH PARAGRAPHS (a) THROUGH (e) OF THIS SUBSECTION.

(5) Regulation of marijuana.

(a) NOT LATER THAN JULY 1, 2013, THE DEPARTMENT SHALL ADOPT REGULATIONS NECESSARY FOR IMPLEMENTATION OF THIS SECTION. SUCH REGULATIONS SHALL NOT PROHIBIT THE OPERATION OF MARIJUANA ESTABLISHMENTS, EITHER EXPRESSLY OR THROUGH REGULATIONS THAT MAKE THEIR OPERATION UNREASONABLY IMPRACTICABLE. SUCH REGULATIONS SHALL INCLUDE:

(I) PROCEDURES FOR THE ISSUANCE, RENEWAL, SUSPENSION, AND REVOCATION OF A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT, WITH SUCH PROCEDURES SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION;

(II) A SCHEDULE OF APPLICATION, LICENSING AND RENEWAL FEES, PROVIDED, APPLICATION FEES SHALL NOT EXCEED FIVE THOUSAND DOLLARS, WITH THIS UPPER LIMIT ADJUSTED ANNUALLY FOR INFLATION, UNLESS THE DEPARTMENT DETERMINES A GREATER FEE IS NECESSARY TO CARRY OUT ITS RESPONSIBILITIES UNDER THIS SECTION, AND PROVIDED FURTHER, AN ENTITY THAT IS LICENSED UNDER THE COLORADO MEDICAL MARIJUANA CODE TO CULTIVATE OR SELL MARIJUANA OR TO MANUFACTURE MARIJUANA PRODUCTS AT THE TIME THIS SECTION TAKES EFFECT AND THAT CHOOSES TO APPLY FOR A SEPARATE MARIJUANA ESTABLISHMENT LICENSE SHALL NOT BE REQUIRED TO PAY AN APPLICATION FEE GREATER THAN FIVE HUNDRED DOLLARS TO APPLY FOR A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION;

(III) QUALIFICATIONS FOR LICENSURE THAT ARE DIRECTLY AND DEMONSTRABLY RELATED TO THE OPERATION OF A MARIJUANA ESTABLISHMENT;

- (IV) SECURITY REQUIREMENTS FOR MARIJUANA ESTABLISHMENTS;
- (V) REQUIREMENTS TO PREVENT THE SALE OR DIVERSION OF MARIJUANA AND MARIJUANA PRODUCTS TO PERSONS UNDER THE AGE OF TWENTY-ONE;
- (VI) LABELING REQUIREMENTS FOR MARIJUANA AND MARIJUANA PRODUCTS SOLD OR DISTRIBUTED BY A MARIJUANA ESTABLISHMENT;
- (VII) HEALTH AND SAFETY REGULATIONS AND STANDARDS FOR THE MANUFACTURE OF MARIJUANA PRODUCTS AND THE CULTIVATION OF MARIJUANA;
- (VIII) RESTRICTIONS ON THE ADVERTISING AND DISPLAY OF MARIJUANA AND MARIJUANA PRODUCTS; AND
- (IX) CIVIL PENALTIES FOR THE FAILURE TO COMPLY WITH REGULATIONS MADE PURSUANT TO THIS SECTION.

(b) IN ORDER TO ENSURE THE MOST SECURE, RELIABLE, AND ACCOUNTABLE SYSTEM FOR THE PRODUCTION AND DISTRIBUTION OF MARIJUANA AND MARIJUANA PRODUCTS IN ACCORDANCE WITH THIS SUBSECTION, IN ANY COMPETITIVE APPLICATION PROCESS THE DEPARTMENT SHALL HAVE AS A PRIMARY CONSIDERATION WHETHER AN APPLICANT:

(I) HAS PRIOR EXPERIENCE PRODUCING OR DISTRIBUTING MARIJUANA OR MARIJUANA PRODUCTS PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE IN THE LOCALITY IN WHICH THE APPLICANT SEEKS TO OPERATE A MARIJUANA ESTABLISHMENT; AND

(II) HAS, DURING THE EXPERIENCE DESCRIBED IN SUBPARAGRAPH (I), COMPLIED CONSISTANTLY WITH SECTION 14 OF THIS ARTICLE, THE PROVISIONS OF THE COLORADO MEDICAL MARIJUANA CODE AND CONFORMING REGULATIONS.

(c) IN ORDER TO ENSURE THAT INDIVIDUAL PRIVACY IS PROTECTED, NOTWITHSTANDING PARAGRAPH (a), THE DEPARTMENT SHALL NOT REQUIRE A CONSUMER TO PROVIDE A RETAIL MARIJUANA STORE WITH PERSONAL INFORMATION OTHER THAN GOVERNMENT-ISSUED IDENTIFICATION TO DETERMINE THE CONSUMER'S AGE, AND A RETAIL MARIJUANA STORE SHALL NOT BE REQUIRED TO ACQUIRE AND RECORD PERSONAL INFORMATION ABOUT CONSUMERS OTHER THAN INFORMATION TYPICALLY ACQUIRED IN A FINANCIAL TRANSACTION CONDUCTED AT A RETAIL LIQUOR STORE.

(d) THE GENERAL ASSEMBLY SHALL ENACT AN EXCISE TAX TO BE LEVIED UPON MARIJUANA SOLD OR OTHERWISE TRANSFERRED BY A MARIJUANA CULTIVATION FACILITY TO A MARIJUANA PRODUCT MANUFACTURING FACILITY OR TO A RETAIL MARIJUANA STORE AT A RATE NOT TO EXCEED FIFTEEN PERCENT PRIOR TO JANUARY 1, 2017 AND AT A RATE TO BE DETERMINED BY THE GENERAL ASSEMBLY THEREAFTER, AND SHALL DIRECT THE DEPARTMENT TO ESTABLISH PROCEDURES FOR THE COLLECTION OF ALL TAXES LEVIED. PROVIDED, THE FIRST FORTY MILLION DOLLARS IN REVENUE RAISED ANNUALLY FROM ANY SUCH EXCISE TAX SHALL BE CREDITED TO THE PUBLIC SCHOOL CAPITAL CONSTRUCTION ASSISTANCE FUND CREATED BY ARTICLE 43.7 OF TITLE 22, C.R.S., OR ANY SUCCESSOR FUND DEDICATED TO A SIMILAR PURPOSE. PROVIDED FURTHER, NO SUCH EXCISE TAX SHALL BE LEVIED UPON MARIJUANA INTENDED FOR SALE AT MEDICAL MARIJUANA CENTERS PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE.

(e) NOT LATER THAN OCTOBER 1, 2013, EACH LOCALITY SHALL ENACT AN ORDINANCE OR REGULATION SPECIFYING THE ENTITY WITHIN THE LOCALITY THAT IS RESPONSIBLE FOR PROCESSING APPLICATIONS SUBMITTED FOR A LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT WITHIN THE BOUNDARIES OF THE LOCALITY AND FOR THE ISSUANCE OF SUCH LICENSES SHOULD THE ISSUANCE BY THE LOCALITY BECOME NECESSARY BECAUSE OF A FAILURE BY THE DEPARTMENT TO ADOPT REGULATIONS PURSUANT TO PARAGRAPH (a) OR BECAUSE OF A FAILURE BY THE DEPARTMENT TO PROCESS AND ISSUE LICENSES AS REQUIRED BY PARAGRAPH (g).

(f) A LOCALITY MAY ENACT ORDINANCES OR REGULATIONS, NOT IN CONFLICT WITH THIS SECTION OR WITH REGULATIONS OR LEGISLATION ENACTED PURSUANT TO THIS SECTION, GOVERNING THE TIME, PLACE, MANNER AND NUMBER OF MARIJUANA ESTABLISHMENT OPERATIONS; ESTABLISHING PROCEDURES FOR THE ISSUANCE, SUSPENSION, AND REVOCATION OF A LICENSE ISSUED BY THE LOCALITY IN ACCORDANCE WITH PARAGRAPH (h) OR (i), SUCH PROCEDURES TO BE SUBJECT TO ALL REQUIREMENTS OF ARTICLE 4 OF TITLE 24 OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION; ESTABLISHING A SCHEDULE OF ANNUAL OPERATING, LICENSING, AND APPLICATION FEES FOR MARIJUANA ESTABLISHMENTS, PROVIDED, THE APPLICATION FEE SHALL ONLY BE DUE IF AN APPLICATION IS SUBMITTED TO A LOCALITY IN ACCORDANCE WITH PARAGRAPH (i) AND A LICENSING FEE SHALL ONLY BE DUE IF A LICENSE IS ISSUED BY A LOCALITY IN ACCORDANCE WITH PARAGRAPH (h) OR (i); AND ESTABLISHING CIVIL PENALTIES FOR VIOLATION OF AN ORDINANCE OR REGULATION GOVERNING THE TIME, PLACE, AND MANNER OF A MARIJUANA ESTABLISHMENT THAT MAY OPERATE IN SUCH LOCALITY. A LOCALITY MAY PROHIBIT THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES THROUGH THE ENACTMENT OF AN ORDINANCE OR THROUGH AN INITIATED OR REFERRED MEASURE; PROVIDED, ANY INITIATED OR REFERRED MEASURE TO PROHIBIT THE OPERATION OF MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, MARIJUANA TESTING FACILITIES, OR RETAIL MARIJUANA STORES MUST APPEAR ON A GENERAL ELECTION BALLOT DURING AN EVEN NUMBERED YEAR.

(g) EACH APPLICATION FOR AN ANNUAL LICENSE TO OPERATE A MARIJUANA ESTABLISHMENT SHALL BE SUBMITTED TO THE DEPARTMENT. THE DEPARTMENT SHALL:

- (I) BEGIN ACCEPTING AND PROCESSING APPLICATIONS ON OCTOBER 1, 2013;
- (II) IMMEDIATELY FORWARD A COPY OF EACH APPLICATION AND HALF OF THE LICENSE APPLICATION FEE TO THE LOCALITY IN WHICH THE APPLICANT DESIRES TO OPERATE THE MARIJUANA ESTABLISHMENT;
- (III) ISSUE AN ANNUAL LICENSE TO THE APPLICANT BETWEEN FORTY-FIVE AND NINETY DAYS AFTER RECEIPT OF AN APPLICATION UNLESS THE DEPARTMENT FINDS THE APPLICANT IS NOT IN COMPLIANCE WITH REGULATIONS ENACTED PURSUANT TO PARAGRAPH (a) OR THE DEPARTMENT IS NOTIFIED BY THE RELEVANT LOCALITY THAT THE APPLICANT IS NOT IN COMPLIANCE WITH ORDINANCES AND REGULATIONS MADE PURSUANT TO PARAGRAPH (f) AND IN EFFECT AT THE TIME OF APPLICATION, PROVIDED, WHERE A LOCALITY HAS ENACTED A NUMERICAL LIMIT ON THE NUMBER OF MARIJUANA ESTABLISHMENTS AND A GREATER NUMBER OF APPLICANTS SEEK LICENSES, THE

DEPARTMENT SHALL SOLICIT AND CONSIDER INPUT FROM THE LOCALITY AS TO THE LOCALITY'S PREFERENCE OR PREFERENCES FOR LICENSURE; AND

(IV) UPON DENIAL OF AN APPLICATION, NOTIFY THE APPLICANT IN WRITING OF THE SPECIFIC REASON FOR ITS DENIAL.

(h) IF THE DEPARTMENT DOES NOT ISSUE A LICENSE TO AN APPLICANT WITHIN NINETY DAYS OF RECEIPT OF THE APPLICATION FILED IN ACCORDANCE WITH PARAGRAPH (g) AND DOES NOT NOTIFY THE APPLICANT OF THE SPECIFIC REASON FOR ITS DENIAL, IN WRITING AND WITHIN SUCH TIME PERIOD, OR IF THE DEPARTMENT HAS ADOPTED REGULATIONS PURSUANT TO PARAGRAPH (a) AND HAS ACCEPTED APPLICATIONS PURSUANT TO PARAGRAPH (g) BUT HAS NOT ISSUED ANY LICENSES BY JANUARY 1, 2014, THE APPLICANT MAY RESUBMIT ITS APPLICATION DIRECTLY TO THE LOCALITY, PURSUANT TO PARAGRAPH (e), AND THE LOCALITY MAY ISSUE AN ANNUAL LICENSE TO THE APPLICANT. A LOCALITY ISSUING A LICENSE TO AN APPLICANT SHALL DO SO WITHIN NINETY DAYS OF RECEIPT OF THE RESUBMITTED APPLICATION UNLESS THE LOCALITY FINDS AND NOTIFIES THE APPLICANT THAT THE APPLICANT IS NOT IN COMPLIANCE WITH ORDINANCES AND REGULATIONS MADE PURSUANT TO PARAGRAPH (f) IN EFFECT AT THE TIME THE APPLICATION IS RESUBMITTED AND THE LOCALITY SHALL NOTIFY THE DEPARTMENT IF AN ANNUAL LICENSE HAS BEEN ISSUED TO THE APPLICANT. IF AN APPLICATION IS SUBMITTED TO A LOCALITY UNDER THIS PARAGRAPH, THE DEPARTMENT SHALL FORWARD TO THE LOCALITY THE APPLICATION FEE PAID BY THE APPLICANT TO THE DEPARTMENT UPON REQUEST BY THE LOCALITY. A LICENSE ISSUED BY A LOCALITY IN ACCORDANCE WITH THIS PARAGRAPH SHALL HAVE THE SAME FORCE AND EFFECT AS A LICENSE ISSUED BY THE DEPARTMENT IN ACCORDANCE WITH PARAGRAPH (g) AND THE HOLDER OF SUCH LICENSE SHALL NOT BE SUBJECT TO REGULATION OR ENFORCEMENT BY THE DEPARTMENT DURING THE TERM OF THAT LICENSE. A SUBSEQUENT OR RENEWED LICENSE MAY BE ISSUED UNDER THIS PARAGRAPH ON AN ANNUAL BASIS ONLY UPON RESUBMISSION TO THE LOCALITY OF A NEW APPLICATION SUBMITTED TO THE DEPARTMENT PURSUANT TO PARAGRAPH (g). NOTHING IN THIS PARAGRAPH SHALL LIMIT SUCH RELIEF AS MAY BE AVAILABLE TO AN AGGRIEVED PARTY UNDER SECTION 24-4-104, C.R.S., OF THE COLORADO ADMINISTRATIVE PROCEDURE ACT OR ANY SUCCESSOR PROVISION.

(i) IF THE DEPARTMENT DOES NOT ADOPT REGULATIONS REQUIRED BY PARAGRAPH (a), AN APPLICANT MAY SUBMIT AN APPLICATION DIRECTLY TO A LOCALITY AFTER OCTOBER 1, 2013 AND THE LOCALITY MAY ISSUE AN ANNUAL LICENSE TO THE APPLICANT. A LOCALITY ISSUING A LICENSE TO AN APPLICANT SHALL DO SO WITHIN NINETY DAYS OF RECEIPT OF THE APPLICATION UNLESS IT FINDS AND NOTIFIES THE APPLICANT THAT THE APPLICANT IS NOT IN COMPLIANCE WITH ORDINANCES AND REGULATIONS MADE PURSUANT TO PARAGRAPH (f) IN EFFECT AT THE TIME OF APPLICATION AND SHALL NOTIFY THE DEPARTMENT IF AN ANNUAL LICENSE HAS BEEN ISSUED TO THE APPLICANT. A LICENSE ISSUED BY A LOCALITY IN ACCORDANCE WITH THIS PARAGRAPH SHALL HAVE THE SAME FORCE AND EFFECT AS A LICENSE ISSUED BY THE DEPARTMENT IN ACCORDANCE WITH PARAGRAPH (g) AND THE HOLDER OF SUCH LICENSE SHALL NOT BE SUBJECT TO REGULATION OR ENFORCEMENT BY THE DEPARTMENT DURING THE TERM OF THAT LICENSE. A SUBSEQUENT OR RENEWED LICENSE MAY BE ISSUED UNDER THIS PARAGRAPH ON AN ANNUAL BASIS IF THE DEPARTMENT HAS NOT ADOPTED REGULATIONS REQUIRED BY

PARAGRAPH (a) AT LEAST NINETY DAYS PRIOR TO THE DATE UPON WHICH SUCH SUBSEQUENT OR RENEWED LICENSE WOULD BE EFFECTIVE OR IF THE DEPARTMENT HAS ADOPTED REGULATIONS PURSUANT TO PARAGRAPH (a) BUT HAS NOT, AT LEAST NINETY DAYS AFTER THE ADOPTION OF SUCH REGULATIONS, ISSUED LICENSES PURSUANT TO PARAGRAPH (g).

(j) NOT LATER THAN JULY 1, 2014, THE GENERAL ASSEMBLY SHALL ENACT LEGISLATION GOVERNING THE CULTIVATION, PROCESSING AND SALE OF INDUSTRIAL HEMP.

(6) Employers, driving, minors and control of property.

(a) NOTHING IN THIS SECTION IS INTENDED TO REQUIRE AN EMPLOYER TO PERMIT OR ACCOMMODATE THE USE, CONSUMPTION, POSSESSION, TRANSFER, DISPLAY, TRANSPORTATION, SALE OR GROWING OF MARIJUANA IN THE WORKPLACE OR TO AFFECT THE ABILITY OF EMPLOYERS TO HAVE POLICIES RESTRICTING THE USE OF MARIJUANA BY EMPLOYEES.

(b) NOTHING IN THIS SECTION IS INTENDED TO ALLOW DRIVING UNDER THE INFLUENCE OF MARIJUANA OR DRIVING WHILE IMPAIRED BY MARIJUANA OR TO SUPERSEDE STATUTORY LAWS RELATED TO DRIVING UNDER THE INFLUENCE OF MARIJUANA OR DRIVING WHILE IMPAIRED BY MARIJUANA, NOR SHALL THIS SECTION PREVENT THE STATE FROM ENACTING AND IMPOSING PENALTIES FOR DRIVING UNDER THE INFLUENCE OF OR WHILE IMPAIRED BY MARIJUANA.

(c) NOTHING IN THIS SECTION IS INTENDED TO PERMIT THE TRANSFER OF MARIJUANA, WITH OR WITHOUT REMUNERATION, TO A PERSON UNDER THE AGE OF TWENTY-ONE OR TO ALLOW A PERSON UNDER THE AGE OF TWENTY-ONE TO PURCHASE, POSSESS, USE, TRANSPORT, GROW, OR CONSUME MARIJUANA.

(d) NOTHING IN THIS SECTION SHALL PROHIBIT A PERSON, EMPLOYER, SCHOOL, HOSPITAL, DETENTION FACILITY, CORPORATION OR ANY OTHER ENTITY WHO OCCUPIES, OWNS OR CONTROLS A PROPERTY FROM PROHIBITING OR OTHERWISE REGULATING THE POSSESSION, CONSUMPTION, USE, DISPLAY, TRANSFER, DISTRIBUTION, SALE, TRANSPORTATION, OR GROWING OF MARIJUANA ON OR IN THAT PROPERTY.

(7) Medical marijuana provisions unaffected. NOTHING IN THIS SECTION SHALL BE CONSTRUED:

(a) TO LIMIT ANY PRIVILEGES OR RIGHTS OF A MEDICAL MARIJUANA PATIENT, PRIMARY CAREGIVER, OR LICENSED ENTITY AS PROVIDED IN SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE;

(b) TO PERMIT A MEDICAL MARIJUANA CENTER TO DISTRIBUTE MARIJUANA TO A PERSON WHO IS NOT A MEDICAL MARIJUANA PATIENT;

(c) TO PERMIT A MEDICAL MARIJUANA CENTER TO PURCHASE MARIJUANA OR MARIJUANA PRODUCTS IN A MANNER OR FROM A SOURCE NOT AUTHORIZED UNDER THE COLORADO MEDICAL MARIJUANA CODE;

(d) TO PERMIT ANY MEDICAL MARIJUANA CENTER LICENSED PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE TO OPERATE ON THE SAME PREMISES AS A RETAIL MARIJUANA STORE.; OR

(e) TO DISCHARGE THE DEPARTMENT, THE COLORADO BOARD OF HEALTH, OR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT FROM THEIR STATUTORY AND CONSTITUTIONAL DUTIES TO REGULATE MEDICAL MARIJUANA PURSUANT TO SECTION 14 OF THIS ARTICLE AND THE COLORADO MEDICAL MARIJUANA CODE.

(8) Self-executing, severability, conflicting provisions. ALL PROVISIONS OF THIS SECTION ARE SELF-EXECUTING EXCEPT AS SPECIFIED HEREIN, ARE SEVERABLE, AND, EXCEPT WHERE OTHERWISE INDICATED IN THE TEXT, SHALL SUPERSEDE CONFLICTING STATE STATUTORY, LOCAL CHARTER, ORDINANCE, OR RESOLUTION, AND OTHER STATE AND LOCAL PROVISIONS.

(9) Effective date. UNLESS OTHERWISE PROVIDED BY THIS SECTION, ALL PROVISIONS OF THIS SECTION SHALL BECOME EFFECTIVE UPON OFFICIAL DECLARATION OF THE VOTE HEREON BY PROCLAMATION OF THE GOVERNOR, PURSUANT TO SECTION 1(4) OF ARTICLE V.

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Initiative Measure No. 502 concerns marijuana.

The Law as it Presently Exists

It is a crime under both Washington and federal law to grow, distribute, or possess marijuana, or to involve a minor in a marijuana-related offense.

State law generally makes these crimes felonies. People convicted of felonies can serve time in state prison. People who possess 40 grams or less of marijuana, however, commit a misdemeanor. It is also a misdemeanor to make, possess, or deliver any paraphernalia used to grow, store, conceal, or use marijuana. Those convicted of misdemeanors can serve up to 90 days in a local jail. Minors who grow, distribute, or possess marijuana can be punished through juvenile court.

It is not a state law crime, however, to grow, distribute or possess marijuana with respect to certain medical uses or with respect to medical research, under certain conditions.

Washington law also makes it illegal to drive under the influence of intoxicating liquor or any drug. State law provides that every person who drives in Washington has consented to a test to find out whether he or she has alcohol or any drug in his or her blood. The results of these tests can be used in criminal trials, and in proceedings to suspend, revoke, or deny a driver's license. The state can also suspend, revoke, or deny the driver's license of a person who refuses the test.

Like state law, federal law also makes it a crime to grow, distribute, or possess marijuana. People also commit a federal crime if they provide places for growing, distributing, or storing marijuana. It is also a federal crime to use a telephone to buy or sell marijuana. Federal law makes all of these crimes felonies, except that it makes possessing marijuana a misdemeanor. Like state law, federal law allows limited use of marijuana for medical research, but does not allow medical use of marijuana.

State law cannot modify the federal laws making it a crime to grow, distribute, or possess marijuana.

The Effect of the Proposed Measure, if Approved

For persons over age 21, this measure would remove state law criminal and civil prohibitions with respect to growing, manufacturing, distributing, and possessing marijuana consistent with a state marijuana licensing and regulatory system.

Without violating state law, people over age 21 could grow, distribute, or possess marijuana, as authorized under various types of licenses. People could only buy limited amounts of marijuana at a time, and possession of marijuana by people over age 21 in amounts that do not exceed that limit would not violate state law. It would still be a crime to grow, distribute, or possess marijuana except by following the licensing and other requirements of this measure.

A license to produce marijuana would make it legal under state law to grow marijuana. A license to process marijuana would make it legal under state law to process and package marijuana. It would also make it legal under state law to make products that contain marijuana. Licensed producers and processors could sell marijuana at wholesale, but could not sell marijuana at retail directly to consumers. Licensed retailers could sell marijuana, and products containing marijuana, to consumers at retail. Licensed retailers could also sell paraphernalia items used to store or use marijuana.

It would cost \$250 to apply for a license. It would also cost \$1,000 every year to get and keep a license. A separate license would be required for each location. Locations could not be within 1,000 feet of any school, playground, recreation centers, child care center, park, transit center, library, or game arcade. Producers and processors could not have any financial interest in any licensed marijuana retailer.

It would still be a state law crime for a person under age 21 to grow, sell, or possess marijuana. It also would remain illegal under state law for anybody, including people who have licenses under this measure, to sell marijuana or products containing marijuana to people under 21 years old.

Licensed marijuana retailers could not sell any products other than marijuana and items used to store or use marijuana. Licensed marijuana retailers could not allow people under age 21 on their premises. Signs posted by licensed marijuana retailers that are visible to the public would be limited in size and content. No marijuana could be displayed in a way that is visible from a public place. It would be illegal to open or consume any marijuana product on the premises. Licensed marijuana retailers could be fined for violations. This measure would prohibit any person from opening a package containing marijuana in public view.

This measure would limit advertising of marijuana. Advertisements would need to be at least 1,000 feet away from any school, playground, recreation center, child care center, park, transit center, library, or game arcade. Advertisements would be banned from buses and light rail, and from government property.

The state could deny, suspend, or cancel licenses. Local governments could submit objections for the state to consider in determining whether to grant or renew a license. The state could inspect the premises of any license holder. Prior criminal conduct could be considered for purposes of granting, renewing, denying, suspending or revoking a license. The state could not issue a license to anybody under age 21. The state could adopt further rules to implement this measure.

This measure would require licensed producers and processors to submit marijuana samples to an independent lab for regular testing. The state would receive test results. Marijuana that does not satisfy state standards would be destroyed.

Sales of marijuana would be taxed. Marijuana excise taxes, in the amount of 25% of the selling price, would be collected on all sales of marijuana, at each level of production and distribution. Sale by a marijuana producer to a marijuana processor would be subject to a 25% tax. A sale by the processor to a retailer would be subject to an additional 25% tax. Sales of marijuana by a retailer would be subject to an additional 25% tax. State and local sales taxes would also apply to retail sales of marijuana.

The measure directs the state to spend designated amounts from the marijuana excise taxes, license fees, penalties, and forfeitures for certain purposes. Those purposes include spending fixed dollar amounts on: administration of this measure; a survey of youth regarding substance use and other information; a cost-benefit evaluation of the implementation of this measure; and web-based public education materials about health and safety risks posed by marijuana use. Remaining money would be distributed as follows: 50% for the state basic health plan; 15% for programs and practices aimed at prevention or reduction of substance abuse; 10% for marijuana education; 5% for other health services; 1% for research on short-term and long-term effects of marijuana use; and .75% for a program that seeks to prevent school dropouts. The remaining 18.25% would be distributed to the state general fund.

This measure would also amend the law that prohibits driving under the influence. It would specifically prohibit driving under the influence of marijuana. Consent to testing to determine whether a driver's blood contains alcohol or any drug would specifically apply to marijuana as well. State law that currently specifies a level of blood alcohol concentration for driving under the influence would be amended to also specify a level of the active ingredient in marijuana. A person who drives with a higher blood concentration of that active ingredient, or who is otherwise under the influence of marijuana, would be guilty of driving under the influence. For persons under 21, any level of the active ingredient of marijuana would be prohibited.

Federal marijuana laws could still be enforced in Washington.