



## **CLEARING THE WEEDS: Fact Sheet on Question 2 Initiative to Regulate and Tax Marijuana**

### **Executive Summary**

This Fact Sheet provides information on Ballot Question 2: The Initiative to Regulate and Tax Marijuana, which will be considered by Nevada voters in November 2016. Should it pass, the initiative would allow for the legal production, sale and consumption of marijuana under state law.

It must be strongly emphasized that Ballot Question 2 cannot change the fact that the production, sale and possession of marijuana is still illegal under federal law. While federal law enforcement officials do not appear to have prioritized or regularly arrested individuals for possession or distribution of marijuana consistent with state laws, the fact is that federal agents or local police could arrest customers, suppliers, dispensary employees, or others associated with marijuana distribution and possession for violating federal law. Even if Question 2 was approved by the voters of Nevada and resulted in a change in Nevada law, this result could not change the federal laws regarding marijuana.

The Guinn Center will not take a position on Question 2. Rather, our intent, in the pages that follow, is to summarize the primary arguments for and against the measure and to answer questions voters may have. The following are the questions this Fact Sheet addresses:

- (1) What is the ballot initiative?
- (2) Why is it coming before voters?
- (3) What happens if it passes?
- (4) What happens if it fails to pass?
- (5) What are the primary arguments for legalizing marijuana?
- (6) What are the primary arguments against legalizing marijuana?
- (7) Will local governments in Nevada be able to regulate the use of legalized marijuana?
- (8) Are there any restrictions on where marijuana facilities can be located?
- (9) Who is eligible for a marijuana license?
- (10) Can anyone grow marijuana?
- (11) Can anyone use marijuana at any time?
- (12) Will passage or rejection of Question 2 affect Medical Marijuana laws?
- (13) Who will be responsible for overseeing the legalization of marijuana?
- (14) Has the federal government legalized marijuana?
- (15) How would the passage of Question 2 affect employers?
- (16) Can the State Legislature make changes to Question 2 after it has been approved by voters?



## CLEARING THE WEEDS: Fact Sheet on Question 2 Initiative to Regulate and Tax Marijuana

### 1. What is the ballot initiative?

On November 8, 2016, residents of Nevada will be asked to vote on Question 2: Initiative to Regulate and Tax Marijuana, which would allow for the production, sale and consumption of marijuana.<sup>a</sup>

Question 2 reads: “Shall the Nevada Revised Statutes be amended to allow a person, 21 years old or older, to purchase, cultivate, possess, or consume a certain amount of marijuana or concentrated marijuana, as well as manufacture, possess, use, transport, purchase, distribute, or sell marijuana paraphernalia; impose a 15 percent excise tax on wholesale sales of marijuana; require the regulation and licensing of marijuana cultivators, testing facilities, distributors, suppliers, and retailers; and provide for certain criminal penalties?”<sup>1</sup>

Currently, 25 states have laws legalizing marijuana. Most of these states have laws legalizing the medical use of marijuana, but Alaska, Colorado, Oregon, and Washington have legalized marijuana regardless of purpose.<sup>2</sup> In November, Nevada is one of five states that will have legalized marijuana on the State ballot. The others are Arizona, California, Massachusetts, and Maine.<sup>3</sup> All five states are seeking to legalize marijuana regardless of purpose. Arkansas, Florida, Montana, and North Dakota have ballot initiatives to legalize medical marijuana.<sup>4</sup>

### 2. Why is it coming before voters?

In 2013, Assembly Bill 402 addressing the legalization and taxation of marijuana was introduced but did not receive a vote.<sup>5</sup> In late 2014, the Coalition to Regulate Marijuana Like Alcohol, a political action committee (PAC), which has led and underwritten many marijuana legalization campaigns around the country, circulated an initiative petition to voters and secured sufficient signatures for the measure proposing the legalization of marijuana to be considered by the State Legislature during the 2015 session.<sup>b,6</sup> The Legislature had 40 days to enact or reject the petition without amendment. Because the Legislature took no action and because the measure was circulated originally as an initiative petition, State law requires that issue be placed on the November 8, 2016 ballot for consideration by voters.<sup>c,7</sup>

<sup>a</sup> We acknowledge there is a tendency to refer to legalization for purposes other than medical uses as ‘recreational use.’ However, under Question 2, marijuana could be used for recreational purposes, as well as for religious purposes, commercial purposes, medical purposes, or any other purpose. Thus, in this Fact Sheet, we refer to legalized marijuana as the legalization of marijuana for all uses other than medical.

<sup>b</sup> The Coalition to Regulate Marijuana Like Alcohol is being coordinated by the Marijuana Policy Project, which is supporting ballot initiatives to legalize recreational marijuana in several states, including Arizona, California, Maine, Massachusetts and Ohio. Source: “Ballot Initiative Campaigns.” 2016. <https://www.mpp.org/initiatives/>

<sup>c</sup> The issue of the legalization of recreational marijuana has been brought to Nevada voters and the Nevada State Legislature previously. In 2002, a ballot initiative was presented to the voters that sought to amend sections of the Nevada Constitution that currently authorize the use of marijuana for medical purposes. Specifically, the measure

### 3. What happens if it passes?

If the majority of voters approve Question 2, then any individual in Nevada who is 21 years of age or older would be allowed to purchase, possess, and use one ounce or less of marijuana (or one-eighth of an ounce or less of concentrated marijuana) *without violating State law. But such possession would still be illegal under federal law.*<sup>8</sup> If approved by voters, Question 2 would also allow persons who are 21 years of age or older to possess, cultivate, process, or transport not more than six marijuana plants in certain circumstances. According to the Coalition to Regulate Marijuana Like Alcohol, the legalization of marijuana will have the following impacts.<sup>9</sup>

- (1) Regulation of marijuana production and sales: The initiative details the creation of a regulated “system of licensed marijuana retail stores, distributors, cultivation facilities, product manufacturers, and testing facilities,” which will be overseen by the Nevada Department of Taxation.<sup>10</sup> The Department of Taxation will establish business licensing procedures and security requirements, and adopt and enforce rules regarding the testing, packaging, and tracking of marijuana products.<sup>11</sup> Local governments will have the ability to adopt and enforce local marijuana control measures pertaining to zoning and land use for marijuana establishments.<sup>12</sup>
- (2) Taxation of marijuana: The initiative establishes a 15 percent excise tax (or an indirect tax charged on the sale of a particular good which is usually paid directly by the producer but then passed onto the consumer indirectly in the sales price of the good) on wholesale marijuana sales). Revenues generated from the excise tax required by Question 2 will be used to fund the Nevada Department of Taxation’s and each locality’s implementation and enforcement of regulations. Any *additional* revenue will be used to benefit public education via the State Distributive School Account in the State General Fund, which funds Nevada’s K-12 education. Retail marijuana sales will be subject to standard state and local sales taxes.”<sup>13</sup>

If Question 2 is approved by a majority of voters in November 2016, it will be effective on January 1, 2017.

### 4. What happens if it fails to pass?

If Question 2: The Initiative to Regulate and Tax Marijuana fails to pass, there will be no changes in current laws governing the use and possession of marijuana. Additionally, the failure to pass Question 2 will not impact or change existing laws governing the use and possession of *medical* marijuana.

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sought to decriminalize possession of three or less ounces of marijuana for persons 21 years and older (Source: Nevada Secretary of State. “Statewide Ballot Initiatives 2002: Question 9: Amendment to Nevada Constitution. 2002. <http://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2002.pdf>). The measure did not pass. In 2006, a ballot initiative was presented to the voters that sought to change existing statutes so as to “allow and regulate the sale, use and possession of one ounce or less of marijuana by persons at least 21 years of age, impose licensing requirements on marijuana retailers and wholesalers, allow for the sale of marijuana by licensed marijuana retailers and wholesalers, impose taxes and restrictions on the wholesale and retail sale of marijuana, and to increase the criminal penalties for causing death or substantial bodily harm when driving while under the influence of drugs or alcohol.” Similarly, the measure failed (Source: Nevada Secretary of State. “Statewide Ballot Initiatives 2006: Question 7: Amendment to Title 32, 40 and 43 of the Nevada Revised Statutes.” 2006). <http://www.leg.state.nv.us/Division/Research/VoteNV/BallotQuestions/2006.pdf>)

## 5. What are the primary arguments for legalizing marijuana?

Supporters of legalized marijuana argue that the goals of the program are: “to use strict, state-based regulation, enforcement, and oversight to move marijuana activity out of the black market [...] and create a safe and consistent marijuana industry.”<sup>14</sup>

### a. Lower incarceration rates for non-violent offenders

One of the primary arguments offered by supporters of this measure is that it will reduce the number of incarcerations for non-violent offenders. Nationally, there were more than 700,000 arrests for marijuana law violations in 2014, and of these, 88 percent were for possession only (a misdemeanor). Twelve percent of the arrests were for marijuana possession with intent to distribute or sell, which is a felony.<sup>15</sup> Nevada has one of the highest arrests rates for marijuana possession at 341 per 100,000 people, according to the American Civil Liberties Union (ACLU).<sup>16</sup>

Research suggests that historically, these incarcerations and criminal offenses have disproportionately impacted communities of color.<sup>17</sup> As the Drug Policy Alliance found: “Although rates of drug use and selling are comparable across racial lines, people of color are far more likely to be stopped, searched, arrested, prosecuted, convicted and incarcerated for drug law violations than are whites.”<sup>18</sup> The Drug Policy Alliance also noted two key statistics that highlight the unequal treatment of people of color under existing drug laws:

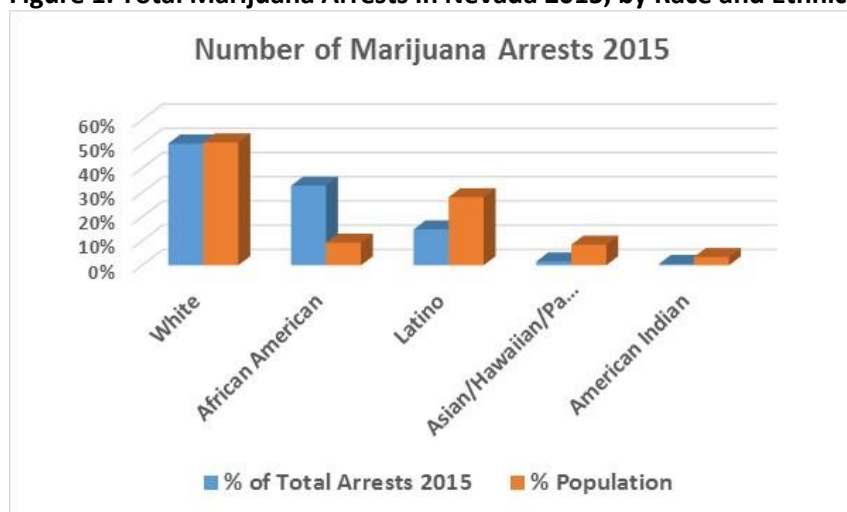
- African Americans comprise 14 percent of regular drug users, but 37 percent of drug offense arrests.
- African Americans serve almost as much time in federal prison for a drug offense as whites do for a violent offense.<sup>19</sup>

The ACLU study also found that “Between 2001 and 2010, a black person was almost four times more likely to be arrested for marijuana possession than a white person was, despite approximately equal rates of use. In some states and counties, blacks are 8, 10, or even 15 times more likely to be arrested.”<sup>20</sup>

According to the study, Nevada has one of the highest arrest rates for marijuana possession for African Americans, with 1,272 arrests per 100,000 people.<sup>21</sup> This is more than four times the white arrest rate, which is only 284 per 100,000.<sup>22</sup> Figure 1 below shows the marijuana arrests by racial and ethnic group and that group’s share of the total population in Nevada. According to the National Survey on Drug Use and Health, the 2013 rate of illicit drug use among whites (ages 12 and older) was 9.5 percent, 10.5 percent for African Americans, 8.8 percent for Latinos, and 3.1 percent for Asians.<sup>23</sup>

Two years after Colorado legalized marijuana, data indicates that marijuana arrests fell 95 percent. Specifically, arrests in Colorado for the possession, cultivation and distribution of marijuana fell from 39,027 in 2011 to 2,036 in 2014.<sup>24</sup> However, the same report also notes that racial disparities in marijuana-related arrests have not have changed: African Americans are still 2.4 times more likely to be arrested for marijuana-related charges than whites, the same rate that existed prior to the legalization of marijuana.<sup>25</sup>

Figure 1. Total Marijuana Arrests in Nevada 2015, by Race and Ethnicity



#### b. Lower public security costs

One consequence—and a related argument—is that the legalization of marijuana could result in lower public security expenditures. The ACLU has described the criminalization of marijuana as “a colossal waste of resources.”<sup>26</sup> As the organization noted in one report, states spend a combined \$3.4 billion enforcing marijuana laws each year.<sup>27</sup> In 2010, Nevada spent a total of \$41.6 million on policing, prosecution, and corrections for violations of marijuana possession laws.<sup>28</sup> This amount ranked Nevada as one of the states with the highest per capita expenditures on marijuana enforcement in the country.<sup>29</sup> Almost one quarter of “male admissions into the Nevada penal system are for drug related offenses.”<sup>30</sup> Supporters of Question 2 argue that by keeping non-violent offenders out of prison, local law enforcement can direct limited resources toward the arrest and conviction of violent offenders.

#### c. Legalization is more effective than decriminalization

Many states and countries have taken steps to decriminalize the possession of drugs, including marijuana. Decriminalization has been understood traditionally as the lessening of criminal penalties, while legalization has meant the elimination of penalties. Nevada took steps to decriminalize marijuana in 2002 (Nevada Revised Statutes 453.336). Possession of one ounce or less of marijuana (not intended for sale) is treated as a misdemeanor. Existing statute (NRS 453.336(4)) states that the first offense may result in a fine of “not more than \$600,” while the second offense may result in a fine of “not more than \$1,000,” or assignment “to a program of treatment and rehabilitation.”<sup>31</sup> The third offense can carry up to a year in jail, and a \$2,000 fine. All subsequent offenses are treated as felonies, and carry a \$5,000 fine and a possible prison sentence. With respect to Question 2, the measure would legalize possession of marijuana of up to one ounce, removing all penalties.

Supporters argue also that legalization is a more effective measure than decriminalization because it has measures to address the billion-dollar criminal enterprises that often are responsible for producing the drug.<sup>32</sup> Specifically, supporters argue that “decriminalization only benefits the black market economy, where products are not tested, no regulations exist, and the selling of marijuana benefits criminals, gangs, and cartels. Regulation places those same revenues into legal businesses and produces public revenues (taxes).”<sup>33</sup>

#### **d. Increased revenues for the State**

Supporters of the legalization of marijuana emphasize the increase in tax revenues that such a measure would generate, referencing the experience of states—like Colorado and Washington—that have implemented marijuana programs. In Colorado, the state earned \$3.5 million in January 2014 alone, the first month the legalization laws went into effect.<sup>34</sup> In 2014, tax revenues amounted to \$56 million. That figure grew to \$113 million in calendar year 2015 and will likely exceed \$140 million in 2016.<sup>35</sup> Similarly, Washington earned \$62 million in taxes from July 2015 through the end of June 2016 and is expected to earn \$134 million in 2016.<sup>36</sup>

In Oregon, the state raised \$3.5 million in tax revenue in January 2016, the first month where retail sales were permitted.<sup>37</sup> The amount of revenue is expected to increase after June 2016, when 426 approved retail establishments began selling edible marijuana products.<sup>38</sup> One study estimated that the passage of marijuana laws in Oregon could generate up to \$436 million in revenue annually for the state.<sup>39</sup> The Tax Foundation reported that the actual tax revenue from marijuana in both Colorado and Washington exceeded initial estimates.<sup>40</sup>

Per Question 2, all wholesale sales of marijuana “other than sales of medical marijuana” in the Nevada would be subject to an excise tax at a rate of 15 percent.<sup>41,d</sup> Additionally, retail sales from legalized marijuana would be subject to the State’s existing sales tax, which is currently 6.85 percent in Nevada, plus local sales tax.<sup>42</sup> (The sales taxes in Clark County, for example, is 8.1 percent.)<sup>43</sup>

The proposed tax rate on legalized marijuana could be higher than the wholesale and retail sales tax on medical marijuana, which is currently around 6 percent.<sup>44</sup> Tax revenues generated from the excise tax required by Question 2 would be directed first to the Nevada Department of Taxation and each locality to offset their costs of implementation and enforcement. Any additional tax revenues would be transferred to the State Treasury and subsequently deposited in the State Distributive School Account in the State General Fund, which funds Nevada’s K-12 education system.<sup>45</sup>

The State and local governments generate funds through licenses and fees for medical marijuana. Local governments are likely to impose similar licensing fees for legalized marijuana. Table 1 outlines the licensing fees from the Nevada Department of Taxation for the five types of legalized marijuana

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<sup>d</sup> The tax rate for legalized marijuana in Colorado is 15 percent on wholesale marijuana price. There is also an additional 10 percent state tax on retail marijuana sales, plus the 2.9 state sales tax, plus local taxes. In Denver, for example, there is a 3.5 percent tax specifically on marijuana retail purchases. Source: Henchman, Joseph; Scarboro, Morgan. “Marijuana Legalization and Taxes: Lessons for Others States from Colorado and Washington.” The Tax Foundation. 05.2016. [http://taxfoundation.org/sites/taxfoundation.org/files/docs/TaxFoundation\\_SR231.pdf](http://taxfoundation.org/sites/taxfoundation.org/files/docs/TaxFoundation_SR231.pdf)

establishments. (Appendix A presents information on the application and licensing fees, and tax rates in the states and Washington D.C., where marijuana is legal).

**Table 1: Nevada Department of Taxation Legalized Marijuana Licensing Fees<sup>46</sup>**

Type of Establishment	Initial License	Renewal
Retail Store	\$20,000	\$6,600
Cultivation Facility	\$30,000	\$10,000
Production Facility	\$10,000	\$3,300
Distributor	\$15,000	\$5,000
Laboratory (Testing)	\$15,000	\$5,000

A July 2016 study authored by RCG Economics and the Marijuana Policy Project for the Coalition to Regulate Marijuana Like Alcohol PAC estimated that legalized marijuana in Nevada would generate \$464.0 million in tax revenues between 2018 and 2024. Sales and uses taxes could bring in \$257.4 million in revenue and excise taxes would generate \$147.1 million. Application fees would generate \$3.5 million and licensing fees another \$47.2 million.<sup>31</sup>

The study, commissioned by the PAC, also estimated that legalized marijuana in Nevada would generate \$7.5 billion in economic activity and support 41,000 jobs in Nevada between 2018 and 2024.<sup>47</sup> In 2018, the first year of the program alone, the market size for the state would be \$393.7 million, according to the authors. Of that, \$247.1 million, or 63.7 percent would come from tourists, and \$146.6 million, or 37 percent, would come from Nevada residents.<sup>31</sup>

The legalization of marijuana in Colorado has also led to the creation of new industry: marijuana tourism. Denver, for example, has seen a rise in tourism since Colorado introduced legalized marijuana. Last year, one million more people visited the city than in 2014.<sup>48</sup> Tourists in Denver spent \$5 billion in fiscal year 2015.<sup>49</sup> Nearly 49 percent of visitors to the state said that legal marijuana influenced their vacation decision.<sup>50</sup>

However, the rise of marijuana tourism may adversely impact other sectors. For example, one safety concern that has arisen since the legalization laws is the use of marijuana at ski resorts, one of Colorado's most popular tourist activities. Travel agents reported that Midwestern and East Coast skiers, especially those traveling with children, were choosing more non-Colorado ski resort destinations than before the State legalized marijuana.<sup>51</sup>

#### **e. Less dangerous than other regulated substances and tobacco**

Another argument in support of legalized marijuana is that the United States has already legalized alcohol, which has serious impacts on health. A number of reports have found that alcohol is the drug with the highest related incidences of violence.<sup>52</sup> Moreover, a recent study concluded that marijuana "reduces likelihood of violence during intoxication."<sup>53</sup> To a related point, proponents challenge the long-held claim that marijuana is a "gateway drug," citing recent research which concludes, "[...] the majority of people who use marijuana do not go on to use other, harder substances."<sup>54</sup>



**f. A regulated industry is safer**

Despite the fact that the sale and possession of marijuana is still illegal under federal law, marijuana remains one of the most commonly used drugs.<sup>55</sup> Given that the current illegality of the drug is not a deterrent, legalization acknowledges this reality, while providing a (fiscal) benefit to the State through the taxation of its production and sale. Moreover, similar to the tobacco industry, a regulated, legalized marijuana industry could help protect users from tainted or “bad” marijuana, potentially lowering health costs.

**6. What are the primary arguments against legalizing marijuana?**

Opponents of the measure emphasize the potential adverse impacts that Nevada would have to address should a majority of voters approve the legalization of marijuana.

**a. Marijuana is a gateway drug**

Opponents of the legalization of marijuana argue that marijuana is a “gateway” drug and that the legalization of marijuana could increase the number of marijuana users who might move on to “harder drugs” like heroin or cocaine.<sup>56</sup> Even in the absence of full legalization, marijuana remains one of the most commonly used drugs. In fact, it is the most widely used illicit drug in the world, according to the World Health Organization.<sup>57</sup>

**b. Marijuana is not harmless**

Opponents of marijuana challenge the claim that marijuana is “less dangerous than alcohol.” As Carnegie Mellon University Professor Jonathan P. Caulkins has written, “Opponents of legalization have (less successfully) countered that responsible scientific reviews in the United States and abroad conclude that marijuana smoke contains known carcinogens; prolonged marijuana use is causally associated with pulmonary problems, dependence, and some mental health problems; and it is correlated in disconcerting ways with a wide variety of other behavioral, mental, and physical health outcomes.”<sup>58</sup> He cautions that marijuana may be less dangerous than alcohol in terms of acute overdose risk, it is a “performance-degrading drug and” has “habituating tendencies.”<sup>59</sup>

**c. Expanded state role**

Opponents of legalize marijuana argue that Question 2 would expand the role of the State. Not only would the State be tasked with the traditional enforcement of laws surrounding possession and sale of marijuana. But, if Question 2 passes, the State would take expand its role in the licensing, regulation, and testing of legalized marijuana. Opponents question whether the State should expend resources on regulating the legalized marijuana industry, particularly when the sale and possession of marijuana is still illegal according to federal law.



Additionally, addressing the claim that an expanded State role is necessary to prevent the proliferation of black (and gray) markets, opponents point to Colorado's struggle to completely eradicate black markets. There, law enforcement agencies "report widespread unregulated grows, and large quantities of marijuana stashed in homes."<sup>60</sup> Legalization can undercut the black market business, but it has yet to be eradicated completely in states with legalized marijuana programs.

#### **d. Current decriminalization policies are working**

As stated previously, Nevada began taking steps to decriminalize marijuana in 2002. Opponents argue that current decriminalization policies are working. For example, in 2007, there were 7,201 arrests for marijuana possession in Nevada and 749 arrests for marijuana sales.<sup>61</sup> In 2015, there were only 4,393 arrests for marijuana possession (reflecting a 39 percent decline over the period 2007-2015), and 546 arrests for marijuana sales (reflecting a 29 percent decline over the same period).<sup>62</sup> Policy makers interested in further reducing incarceration rates for non-violent offenders could consider further steps to decriminalize the possession of marijuana (e.g. reducing fines, etc.) or could explore additional criminal justice reforms.

#### **e. Legalization of marijuana has not reduced racial disparities**

Opponents of Question 2 reference recent data indicating that efforts to legalize marijuana have not, in fact, reduced racial disparities in the application of the law. Recent data from Colorado's experience found that following the decision to legalize marijuana, "disparities in arrest rates for black and white marijuana offenders still remain."<sup>63</sup> "[W]hile the number of marijuana possession arrests has dropped, the law enforcement practices that produce racial disparities in such arrests have not changed."<sup>64</sup>

#### **f. Health concerns and social impacts**

Opponents argue that legalization of marijuana will lead to more substance abuse and higher rates of addiction. One study of Colorado youth ages 12 to 17 found that 11 percent reported using marijuana, 56 percent higher than the national average.<sup>65</sup> In addition, schools across the state have reported a 40 percent increase in drug-related suspensions and expulsions, with the vast majority from marijuana.<sup>66</sup>

In an effort to deter youth consumption, Colorado has passed explicit packaging requirements for marijuana and marijuana products, including that the package must be opaque and child-resistant, and "may not be designed to appeal to children."<sup>67</sup> The packaging must also be labeled with warnings about the effects of marijuana consumption. However, despite these efforts, Colorado health officials have reported a rise in the number of accidental poisonings of young children. The state first noted the rise in the number of hospitalizations for children with poisoning after medical marijuana was legalized in 2000.<sup>68</sup> In 2014, after the law passed, the Children's Hospital of Colorado reported an increase in the number of accidental poisonings from the previous year.<sup>69</sup>

The other states with legalized marijuana programs—Alaska, Oregon and Washington—all require opaque and child-resistant packaging and warnings about the side effects of the product.<sup>70</sup> The Nevada Revised Statute governing medical marijuana currently only requires the packaging of edible medical marijuana and related products “not be presented in packaging that is appealing to children.”<sup>71</sup> Subsequently, critics argue that Nevada’s laws regulating medical marijuana, and potentially marijuana for other uses, are weaker than other states.

Additionally, the number of adults with marijuana-related poisonings, through consumption of a contaminated product or through overconsumption, has also increased since marijuana became legal. During the initial period of regulation, poisoning through overconsumption was also a problem and led to three high-profile deaths in the state.<sup>72</sup>

Furthermore, a growing number of reports have suggested that the legalization of marijuana is associated with an increase in the homeless population. Although homelessness has been a persistent problem in Denver, police have seen an increase in the number of 18- to 26-year-olds seeking homeless shelters. “Interviews with people at homeless shelters in Denver and other Colorado cities suggest that since Colorado launched its legalized cannabis system in 2014, the percentage of newcomers to the [homeless] facilities who are there in part because of the lure of marijuana has swollen to 20 to 30 percent.”<sup>73</sup>

Consequently, opponents argue that any savings resulting from the reallocation of law enforcement resources will be outweighed by increased health costs similar to those resulting from tobacco use. Public health officials in Colorado recently noted: “The issues related to the legalization of marijuana require a robust regulatory and public health framework consistent with the core public health functions of assessment, policy development, and assurance. Because of the lack of a federal infrastructure for regulating marijuana, state health departments often find themselves in new roles with little resources or support.”<sup>74</sup>

Local critics of Question 2 in Nevada have expressed concerns over the failure of the measure to allocate “one penny of anticipated tax revenue to the establishment and maintenance of a public health framework needed to restrict youth access, enforce clean indoor air statutes and reduce exposure to secondhand smoke, and address workplace and motor vehicle safety issues.”<sup>75</sup> Some policy experts argue that new revenue may not cover all of the costs legalization creates.<sup>76</sup> Similarly, local critics also argue the increased tax revenues for the Silver State will be outweighed by the costs required to run an expanded state agency tasked to regulate the cultivation, sale, taxation, and distribution of marijuana to authorized persons.

#### **g. Marijuana corporate interests are driving reforms**

Critics of the ballot initiative in Nevada also point out that the measure is primarily supported by big businesses that stand to make substantial profits if the measure passes. Opponents argue that “the initiative is a special interest ‘business plan’ crafted by and for large marijuana industry donors. Passage will give monopoly powers to existing medical marijuana retailers and liquor wholesalers, while criminalizing Nevada citizens growing marijuana within 25 miles of the proponents’ pot shops.”<sup>77</sup> Critics

caution that special interest groups—not the general public—will benefit from the introduction of this new industry in the state.

#### **h. Increased Driving Under the Influence (DUI) citations**

Another concern about legalizing marijuana is that it could lead to an increase in DUIs and accidents on Nevada’s roads. As written, the ballot initiative in Nevada states that a person cannot drive under the influence of marijuana, as is the case in Alaska and Oregon. However, it does not specify what type of testing procedure will be used or whether the penalties will be the same as those for an alcohol violation. The ballot initiative sets forth limitations for persons who choose to engage with legalized marijuana. The first limitation is on “driving, operating or being in actual physical control of a vehicle, aircraft or vessel under power or sail while under the influence of marijuana or while impaired by marijuana.”<sup>78</sup> Several studies have found that marijuana can affect a driver’s reaction time, attention, tracking, hand-eye coordination, and concentration.<sup>79</sup>

The AAA Foundation for Traffic Safety reported in 2016 that the number of fatal car crashes doubled from 8 percent to 17 percent after legalized marijuana became available in Washington.<sup>80</sup> One in six drivers involved in a fatal car accident in the state were found to have recently used marijuana.<sup>81</sup>

Recent data from Colorado and Washington, two of the states where legalization laws have been in effect, suggest that driving under the influence is a public safety issue. A survey of nearly 1,000 drivers who reported using marijuana in the last 30 days in Colorado and Washington found that almost 44 percent of respondents admitted to driving under the influence of marijuana in the past year.<sup>82</sup> And almost 25 percent of respondents reported that they had driven within one hour of using marijuana at least five times in the last month.<sup>83</sup> According to policy analysts, establishing fair guidelines for testing marijuana impairment for drivers is much more difficult than testing for alcohol.<sup>84</sup> Clark County officials have commented that policy makers need to explore further this issue.

#### **i. Regulatory Gaps**

The initiative in Nevada as it is written does not include provisions for the regulation of edible marijuana products. Poisoning through the overconsumption of edibles led to three high-profile deaths in Colorado.<sup>85</sup> In addition to the need to address packaging requirements, Nevada will need to provide clarity around advertising for marijuana businesses. Currently, the advertising laws are regulated by a variety of government bodies. First, the Federal Communications Commission (FCC), a federal government agency, is responsible for all broadcasting advertisements on radio and television. Thus far, the agency has not taken a position on advertisements for marijuana in states that have legalized programs.<sup>86</sup> However, broadcasters have expressed concerns about the possibility of losing their broadcasting license if they show marijuana ads, since the Federal Controlled Substances Act declares it illegal for a communications facility to show advertisements for the sale of illegal drugs, which marijuana is in the eyes of the Federal Government.<sup>87</sup> (See Question 14 for a discussion of the federal government’s position on marijuana.)

However, the Coalition to Regulate Marijuana Like Alcohol has reportedly purchased \$800,000 worth of advertisement time on Las Vegas area television channels during primetime to show commercials in support of Question 2. These ads will not specifically sell marijuana, but rather seek to sell viewers on the issue.<sup>88</sup> The line between the two is becoming increasingly blurry and could expose children and the public to misinformation, opponents say.<sup>80</sup>

The Nevada Division of Behavioral and Public Health currently governs how medical marijuana businesses are allowed to develop their names, logos, signs and advertisements, and the Division Administrator must approve all such items for a brand.<sup>89</sup> The Nevada Revised Statutes state that medical marijuana businesses must “have discreet and professional signage that is consistent with the traditional style of signage for pharmacies and medical offices,” which prohibits the use of images appealing to minors, cartoons, perceptions of fun or recreation, or gimmicky fonts.<sup>90</sup> While the medical marijuana advertising regulations in Nevada emphasize the professional and medical nature of the medical marijuana establishments, such regulations are not applicable to the legalized marijuana, and no language in the ballot initiative prevents businesses in engaging in names, logos, signs and advertisements that engage in any of the above behaviors.

#### **j. Burdens on law enforcement**

Although supporters argue that the measure would redirect police efforts toward violent offenders, the legalization of marijuana can create some unintended new challenges and even responsibilities for law enforcement.

Specifically, a failure to properly train and equip law enforcement agencies to handle legalization can result in the continuation of the black and gray marijuana markets, characterized by widespread unregulated grows, and large quantities of marijuana secretly stored.<sup>91</sup>

Another unexpected consequence of legalization of marijuana is an increase in burglaries at these establishments. Due to federal regulations, most marijuana establishments deal primarily in cash—a practice that business owners say is dangerous, leaving them vulnerable to shoplifting and burglaries.<sup>92</sup> As a report from the Pew Charitable Trusts noted, more than 200 burglaries of marijuana businesses were reported to the Denver police in one month in 2014.<sup>93</sup> Moreover, if passed by a majority of voters, the Nevada Department of Taxation would now also begin receiving large sums of cash from marijuana establishments, potentially requiring an increase in security at their offices.

### **7. Will local governments in Nevada be able to regulate the use of legalized marijuana?**

As written, local governments cannot prohibit the legal use of marijuana, but they do have some discretion around zoning and land use measures related to legalized marijuana. Section 6 expressly overrules any action of a local government to prohibit the possession or use of marijuana. The

“Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, except as otherwise provided in sections 1 to 18, inclusive, of this act, it is lawful [for persons 21 or older to possess or use marijuana] in this State, and must

not be used as the basis for prosecution or penalty by this State or a political subdivision of this State, and must not, in this State, be a basis for seizure or forfeiture of assets for persons 21 years of age or older to: 1. Possess, use, consume, purchase, obtain, process, or transport marijuana paraphernalia, one ounce or less of marijuana other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana.”<sup>94</sup>

The lack of local control in Nevada is similar to Alaska, where local governments cannot ban legalized marijuana cultivation and use. In contrast, both Colorado and Oregon grant local jurisdictions greater authority to determine policies around the sale, use, and possession of legalized marijuana. In Oregon, 86 cities and 19 counties in the state have submitted “Local Option Opt Out” forms. In Colorado, local governments have the right to ban the sale and use of legalized marijuana, which allows them to set their own retail caps or ban marijuana establishments altogether. Only 23 of 64 counties in Colorado have opted to allow for legalized marijuana businesses. In June 2016, residents of Pueblo, Colorado submitted a petition to include a reversal of the law as a ballot initiative in November after reported increases in homelessness, unemployment and marijuana use among children in the city.

However, Question 2 does give local governments in Nevada significant discretion to adopt and enforce zoning and land use measures related to marijuana. As written (in Section 4.2), the initiative states that it does not prohibit:

- (1) A state or local government agency that occupies, owns, or controls a building from prohibiting or otherwise restricting the consumption, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana in that building; or
- (2) A locality from adopting and enforcing local marijuana control measures pertaining to zoning and land use for marijuana establishments.

## 8. Are there any restrictions on where legalized marijuana facilities can be located?

Provisions in Question 2: The Initiative to Tax and Regulate Marijuana do provide some regulations for new businesses to limit the exposure and access to marijuana. Specifically, the ballot initiative states that licenses for marijuana establishments will not be granted if the proposed establishment would violate zoning or land use rules adopted by the local government.<sup>95</sup> In addition, new businesses are prohibited from being established in locations within 1,000 feet of a public or private school or 300 feet of a community facility, defined as child care facilities, parks, playgrounds, and churches.<sup>96</sup> All new businesses are also subject to local zoning and land rules of the localities in which they are established.<sup>97</sup> Moreover, the ballot initiative has set caps on the number of retail licenses that will be allowed in a given county based on the population size.

- No more than 80 stores in counties with a populations greater than 700,000;
- No more than 20 stores in counties with populations between 700,000 and 100,000;
- Four in counties with populations between 100,00 and 55,000;
- Two in counties with populations less than 55,000.

Counties are given the option to request individual licenses beyond the cap, and localities can adopt zoning and land use rules that determine the specific locations of marijuana businesses.<sup>98</sup> Table 2 shows the projected maximum number of retail marijuana licenses a county could have according to the proposed caps in the initiative.

**Table 2: Proposed Maximum Retail Marijuana Licenses Per County by Population<sup>99</sup>**

County	Population	Square Miles	Licenses
Carson City	55,274	144.66	4
Churchill	24,877	4,930.46	2
Clark	1,951,269	7,891.43	80
Douglas	46,997	709.72	2
Elko	48,818	17,169.83	2
Esmeralda	783	3,581.88	2
Eureka	1,987	4,175.68	2
Humboldt	16,528	9,640.76	2
Lander	5,775	5,490.11	2
Lincoln	5,345	10,633.20	2
Lyon	51,9180	2,001.19	2
Mineral	4,772	3,752.84	2
Nye	43,946	18,181.92	2
Pershing	6,753	6,036.96	2
Storey	4,010	262.92	2
Washoe	421,407	6,302.37	20
White Pine	10,030	8,875.65	2

## 9. Who is eligible for a legalized marijuana license?

Should a majority of voters approve Question 2, the Nevada Department of Taxation would **only** issue licenses to existing medical marijuana establishments and licensed wholesale liquor dealers (under N.R.S. 369) in the State for the first 18 months.<sup>100</sup> Specifically, the existing 109 medical marijuana establishments statewide and wholesale liquor dealers would be the sole entities eligible to apply for legalized marijuana licenses for the first 18 months after the Department of Taxation begins receiving them. Additionally, the measure also allows the Department of Taxation to issue licenses for marijuana distributors to persons other than wholesale dealer licensees should the Department “determine that an insufficient number of marijuana distributors will result from this limitation.”<sup>101</sup>

Table 3 presents information on the number of each type of license by county issued the Nevada Division of Public and Behavioral Health as of June 2016. In addition to the medical marijuana licensing fees these businesses have already paid to the state and local governments, they would also be responsible for any fees associated with legalized marijuana that local governments may charge.

Following the initial period of 18 months, the Nevada Department of Taxation could issue additional legalized marijuana licenses. However, as Table 3 illustrated, the total cap on legalized marijuana licenses is 132. After the initial 18-month period, the only barriers to entry would be the start-up costs, though these are not insignificant. On average, medical marijuana businesses in Nevada are required by law to have \$250,000 in capital for each license (dispensary, cultivation, production facility, laboratory) they possess.<sup>102</sup>

**Table 3: Medical Marijuana Licenses by County<sup>103</sup>**

County	Dispensary	Cultivation	Production	Laboratory	Total
Carson City	0	1	0	0	1
Clark	27	33	15	6	81
Nye	1	3	0	0	4
Washoe	4	10	7	2	23
Statewide	32	47	22	8	109

## 10. Can anyone grow legalized marijuana?

As stated in Question 2, a Nevada resident would be allowed to possess six plants and the marijuana produced from those plants at a time. The individual would be allowed to give or deliver no more than one ounce to another individual, provided the second individual is 21 years of age or older.<sup>104</sup> A maximum of twelve plants is allowed in a given household.<sup>105</sup> All at-home cultivation must take place in an enclosed area with a lock or security measures to keep unwanted persons from entering the area.<sup>106</sup> However, in order to be able to legally grow legalized marijuana for personal use, an individual must live further than 25 miles from a licensed marijuana store.<sup>107</sup> While this will likely have little effect on Nevada's rural counties, it may significantly prohibit individuals in more urban areas from being able to cultivate at home.

## 11. Can anyone use legalized marijuana at any time?

### a. Consumption

Following the model of other states, Question 2 does prohibit consumption of marijuana in public places, which includes commercial establishments. Section 14 of the ballot initiative reads, "A person who smokes or otherwise consumes marijuana in a public place, in a retail marijuana store, or in a moving vehicle is guilty of a misdemeanor punished by a fine of not more than \$600."<sup>108</sup> However, it is unclear how legalized marijuana smoking policies will impact private residences, including multi-family dwellings that share ventilation systems.

### b. Possession

Under state law, any individual in Nevada who is 21 years of age or older would be allowed to purchase, possess and use marijuana one ounce or less of marijuana (one-eighth of an ounce or less of concentrated marijuana).<sup>109</sup> (However, this would still be a criminal violation of federal law.) The law strictly prohibits a person from selling or giving marijuana to a minor, even if the marijuana was obtained from a legal retail store. An individual found to have done so is subject to civil and criminal penalties.<sup>110</sup> At a given time, a Nevada resident would be allowed to possess six plants and the marijuana produced from those plants at a time. The individual would be allowed to give or deliver no more than one ounce to another individual, provided the second individual is 21 years of age or older.<sup>111</sup>



A maximum of twelve plants is allowed in a given household.<sup>112</sup> Should Question 2 pass, Table 3 shows the penalties a person may face if they are found to be in violation of these laws. The proposed penalties for legalized marijuana are similar to Nevada laws governing alcohol.

**Table 3. Penalties for Legalized Marijuana<sup>113</sup>**

Violation	Penalty
A person who uses marijuana in a public place, a retail marijuana store, or in a moving vehicle	Misdemeanor; fine of no more than \$600
A person under 21 who falsely represents himself as over 21	Misdemeanor
A person under 21 who enters, loiters or remains on the premises of a marijuana establishment (except if the person has a medical marijuana card and the establishment has a dual license.)	\$500 fine
A person who manufactures marijuana without a license	Category E Felony (Fine plus 1-4 years prison) <sup>114</sup>
A person who gives marijuana to someone under 21	Misdemeanor
A person who gives marijuana to someone under the age of 18	Gross misdemeanor
A person who cultivates marijuana within 25 miles of a retail store, in an area visible from a public place, on property that is not in his or her physical possession, or on private property without possessor's permission	<b>1<sup>st</sup> Offense:</b> Misdemeanor, fine of not more than \$600 <b>2<sup>nd</sup> Offense:</b> Misdemeanor, fine of not more than \$1,000 <b>3<sup>rd</sup> Offense:</b> Gross misdemeanor <b>4<sup>th</sup> Offense:</b> Category E felony

### c. Operating a vehicle

Question 2 sets forth limitations for persons who use legalized marijuana. The first limitation is on “driving, operating or being in actual physical control of a vehicle, aircraft or vessel under power or sail while under the influence of marijuana or while impaired by marijuana.”<sup>115</sup> Several studies have found that marijuana can affect a driver’s reaction time, attention, tracking, hand-eye coordination, and concentration.<sup>116</sup>

## 12. Will passage or rejection of Question 2 affect Medical Marijuana laws?

Successful passage or rejection of Question 2: The Initiative to Regulate and Tax Marijuana would not change the existing medical marijuana laws in Nevada. In fact, should a majority of voters approve Question 2, two separate governmental agencies would each be responsible for overseeing the use of marijuana.<sup>117</sup> The Nevada Division of Behavioral Health currently oversees medical marijuana, whereas, the Department of Taxation would oversee legalized marijuana in the state.<sup>118</sup>

Under Chapter 453A of Nevada Revised Statutes (NRS), a medical marijuana cardholder can possess two and one-half ounces of marijuana.<sup>119</sup> The cardholder may also be in possession of no more than twelve marijuana plants at a time, irrespective of the plants’ individual maturity.<sup>120</sup>

### 13. Who will be responsible for overseeing legalized marijuana?

Question 2: The Initiative to Tax and Regulate Marijuana identifies a single agency – the Nevada Department of Taxation – that will be responsible for oversight and regulation of all aspects of licensing, testing and taxation of legalized marijuana.<sup>121</sup> The Nevada Department of Taxation will be tasked with issuing five different types of licenses: (1) Marijuana Cultivation Facility, (2) Marijuana Distributor, (3) Marijuana Product Manufacturing Facility, (4) Marijuana Testing Facility, and a (5) Retail Marijuana Store.<sup>122</sup>

In contrast, several other states that have legalized marijuana distribute the responsibility across several agencies. Typically, the business aspects, such as licensing, operations and taxation, are the duties of a state's department of taxation.<sup>123</sup> However, growth and production considerations, including the use of pesticides on cannabis, fall under the jurisdiction of the Department of Agriculture in those states.<sup>124</sup> Additionally, public health concerns, including testing and labeling of marijuana and marijuana products based on the potency of THC (tetrahydrocannabinol, the chemical responsible for the effects of marijuana<sup>125</sup>) are usually given to the public health department in a state. Such is the case in Colorado, where the Department of Revenue and Taxation, the Department of Public Health and Environment, and the Department of Agriculture all regulate and support the implementation of legalized marijuana.<sup>126</sup> In contrast, in Washington, a single agency, the Washington State Liquor and Cannabis Board (WSLCB) will have begun controlling marijuana for medical and all other uses (e.g., recreational, etc.) of July 1, 2016.<sup>127</sup>

Experience suggests the need for agencies to work closely together. Public health officials in Colorado observed that, "The breadth of public health issues associated with marijuana requires close collaboration among state agencies responsible for marijuana (and often liquor) enforcement, public safety, agriculture, and behavioral health."<sup>128</sup> Colorado's Governor Hickenlooper instituted the Implementation Task Force after voters approved the amendment.<sup>129</sup> The task force is responsible for working on "specific, relevant topics" to ensure the implementation process adhered the timeline set for by the new law.<sup>130</sup> Among the Task Force's recommendations was the establishment of the Marijuana Enforcement Division, which is responsible for regulating marijuana for medical and all other uses in the state.<sup>131</sup> The Task Force was established to facilitate unprecedented collaboration among state and local agencies in Colorado and to navigate the complex and "the unique patchwork of federal, state, and local laws on marijuana."<sup>132</sup>

The administrative burdens of setting up a new system governing all aspects of the implementation of legalized marijuana should be taken into consideration. Currently, the Nevada Department of Taxation employs 365 people and has an operating budget of slightly less than \$28 million for Fiscal Year 2016.<sup>133</sup> The Department of Taxation collects approximately \$5 billion in revenue annually from twenty different taxes. As a point of comparison, the Gaming Control Board is one of the largest state agencies in Nevada, with five operating divisions and one administrative division. It has 419 full-time employees, and an operating budget of more than \$44 million.<sup>134</sup> Revenues generated from legalized marijuana will be directed to expand the capacity of the Nevada Department of Taxation. All remaining revenues will be directed to the Distributive State Account to fund K-12 education.

## 14. Has the federal government legalized marijuana?

No, the federal government has not legalized marijuana for medical or other purposes (e.g., recreational, etc.). Even if the initiative passes, any person possessing, distributing or assisting others with distributing marijuana is in violation of federal law and can be arrested. One of biggest hurdles for implementation of legalized marijuana laws in any state is the fact that state laws cannot change federal laws that make marijuana distribution and possession illegal (Appendix B lists penalties for marijuana possession under federal law). Federal law mandates that the possession of marijuana in any amount is illegal and the Controlled Substances Act (CSA) classifies marijuana as a Schedule I substance and upheld this classification in August 2016).<sup>135</sup> Other drugs and substances receiving this classification including, but not limited to heroin, ecstasy, Quaaludes, and peyote.<sup>136</sup> The Drug Enforcement Agency defines this classification as “drugs with no currently accepted medical use and a high potential for abuse. Schedule I drugs are the most dangerous drugs of all the drug schedules with potentially severe psychological or physical dependence.”<sup>137</sup>

### Federal Response to State Marijuana Programs

#### **a. Nonbinding guidance to federal prosecutors**

Since states began passing marijuana laws for medical and all other uses, the U.S. Department of Justice has responded with a series of public memos outlining its guidance to local Federal prosecutors regarding the enforcement of Federal laws regarding marijuana. These memos, however, do not legally prevent any Federal prosecutor from initiating a Federal criminal case against an individual or organization or business which violates Federal marijuana laws.

In 2009, Deputy Attorney General David W. Ogden issued the first such marijuana memo to all U.S. Attorneys and stated, “The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug, and the illegal distribution and sale of marijuana is a serious crime and provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department is also committed to making efficient and rational use of its limited investigative and prosecutorial resources.”<sup>138</sup> In short, Ogden advised that prosecutors should direct their efforts toward large-scale criminal drug operations rather than on individuals whose actions were in compliance with state laws.<sup>139</sup> As a result of this memo, states that allow medical marijuana saw significant increases in the number of related business license applications.<sup>140</sup>

In 2011, as the medical marijuana programs continued to grow across the country, the U.S. Department of Justice issued a second memo responding to the industry, especially the large-scale, privately owned industrial cultivation facilities emerging in some states. It stated: “*State laws or local ordinances are not a defense to civil or criminal enforcement of federal law with respect to such conduct, including enforcement of the CSA.*”<sup>141</sup>

Federal attorneys were advised to use their discretion and consider their resources when choosing whether to pursue action against individuals or businesses engaging in marijuana.<sup>142</sup> Some did choose to move forward with legal action. As noted in a *UCLA Law Review* article, “[F]our U.S. Attorneys in California combined forces in a concerted action against California’s medical marijuana industry.

Montana's industry was essentially shut down by law enforcement actions; and Colorado dispensaries within a thousand feet of a school were told they must either relocate or close their doors."<sup>143</sup>

Furthermore, the memo also reiterated that *marijuana businesses are barred from using the U.S. banking system*. Cole wrote, "Those who engage in transactions involving the proceeds of [marijuana] activity may also be in violation of Federal money laundering statutes and other Federal financial laws."<sup>144</sup> Until early 2016, under the Federal Deposit Insurance Corporation (FDIC) regulations and the CSA, any bank found to be involved in a marijuana business transaction is subject to asset seizure. In addition, major credit card companies are barred from giving accounts to marijuana businesses under the current Federal laws.<sup>145</sup>

Following the legalization of marijuana in Colorado and Washington, the U.S. Justice Department once again released a memo reaffirming the Federal government's position on marijuana and offering guidelines for the U.S. attorneys dealing with marijuana in their jurisdictions. The memo stated that the U.S. government's interests in pursuing marijuana-related cases are as follows:

- Preventing the sale of marijuana to minors.
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs and cartels.
- Preventing the diversion of marijuana from states where it is legal under state law in some other form to other states.
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity.
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana.
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use.
- Preventing the growth of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands.
- Preventing marijuana possession or use on Federal property.<sup>146</sup>

The Federal government, however, has not involved itself in lower level drug crime or possession, leaving the enforcement and prosecution up to state and local law enforcement. This position will not change, provided "states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health and other law enforcement interests."<sup>147</sup>

Prosecutors are still expected to review each marijuana case on a case-by-case basis to determine whether the operation is "demonstrably in compliance with a strong and effective state regulatory system" and whether its fiscal operation are in compliance with Federal regulations.<sup>148</sup>

#### **b. Business Practices and Federal Law**

In February 2014, the U.S. Justice Department issued a memo stating that financial institutions are allowed to begin accepting business from marijuana companies but are expected to closely monitor the actions of the companies for any illegal activity.<sup>149</sup> That same year, the U.S. Treasury Department's

Financial Crimes Enforcement Network (FinCEN) released guidelines for the banking industry to work with marijuana businesses in the states where it has been legalized, provided the banks closely monitored those customers.<sup>150</sup> However, the amount of scrutiny and documentation required for a bank to serve a marijuana customer is time-consuming and expensive.<sup>151</sup> Because the Federal government took the position that it would not come after banks that deal with the marijuana industry but did not specifically change the Federal laws on marijuana, many banks and major financial institutions have chosen not to engage with the industry.

Under federal law, producers, processors and retailers of marijuana in states where use is legal (for medical and other purposes) are still subject to Federal prosecution and forfeiture of assets.<sup>152</sup> Several statutes address the oversight an accredited financial institution needs to understand when working with a licensed marijuana establishment:

- The Money Laundering Control Act (18 U.S.C. § 1956 and 18 U.S.C. § 1957): The first section of this act bans engaging in a financial transaction with proceeds that were generated from certain specific crimes, known as specified unlawful activities.<sup>153</sup> The second part of the Act prohibits spending in excess of \$10,000 derived from criminal activity.
- The Illegal Money Transmitting Business Act of 1992 (18 U.S.C § 1960): This law bans money-transmitting businesses without a state license in any state where a license was required.<sup>154</sup> (This would apply to marijuana businesses that divert products across state lines into a state where marijuana is not legal).
- The Banking Secrecy Act (BSA): As the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of the Treasury explains, this act “requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. Specifically, the act requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities.”<sup>155</sup>

Despite generating approximately \$6.7 billion revenue in marijuana sales annually, an estimated 60 to 70 percent of all legally registered marijuana companies currently do not have a bank account.<sup>156</sup> Some reports have attributed the banks’ reluctance to working with marijuana businesses to the additional work required to ensure that a marijuana company is compliant with the above Federal statutes as well as state laws.<sup>157</sup>

For example, one of the largest and most well-known marijuana businesses in Colorado, the Colorado Harvest Company, has gone through 14 checking accounts in six years, and the owner even said his personal accounts have been shut down before as well.<sup>158</sup> The founders of Hypur, a software start-up company that assists marijuana establishments with financial compliance, have noted that “it can take up to 20 hours for a banker to do a single marijuana business’s paperwork, while other businesses can get a bank account set up within an hour.”<sup>159</sup>

Many of the largest banks and financial institutions in the U.S. refuse to deal with marijuana businesses altogether.<sup>160</sup> In Colorado, community financial institutions and newly established credit co-operatives

have attempted to fill the role, but the latter is likely to never maintain insurance through the Federal Reserve.<sup>161</sup> As a result, most marijuana establishments deal primarily in cash, and many retail establishments have taken to having an ATM on their premises to allow customers to get cash to make purchases. However, marijuana business owners say this is a dangerous practice that leaves them vulnerable to shoplifting and burglaries.<sup>162</sup> The departments of revenue and taxations at the state level in states with marijuana businesses have also increased security at their offices, since they now deal with large amounts of cash from the taxes from marijuana businesses.<sup>163</sup>

## 15. How would the passage of Question 2 affect employers?

Question 2: The Initiative to Tax and Regulate Marijuana states that employers are not prohibited from “maintaining, enacting and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under the initiative.”<sup>164</sup> This means that employers in Nevada can still ban their workers from using or engaging with marijuana in any way.

Moreover, the initiative also stipulates that possession or use of marijuana in a school or prison facility would be against the law. Finally, any worker that performs a task under the influence of marijuana that could constitute “negligence or professional malpractice,” regardless of the employer’s drug policies, could face penalties, including criminal charges.<sup>165</sup>

In 2002, the estimated national cost of lost worker productivity including absenteeism and poor job performance due to illicit drug use was \$129 billion.<sup>166</sup> Marijuana remains one of the most commonly used drugs. Currently, many employers require drug testing as part of the hiring and post-employment process, and they would still be allowed to terminate workers who test positive for marijuana.<sup>167</sup> Drug tests are Federally mandated for individuals in safety-sensitive jobs, such as commercial drivers, airline pilots, flight attendants, railroad engineers and conductors and workers in nuclear power plants.<sup>168</sup> Moreover, any program or business in the state that receives Federal funding must comply with the Drug Free Workplace Act, which also prohibits marijuana use, although it does not mandate drug testing.<sup>169</sup>

## 16. Can the State Legislature make changes to Question 2 after it has been approved by voters?

An initiative approved by the voters cannot be amended, annulled, repealed, set aside, or suspended by the Legislature within three years from the date it takes effect. However, the Department of Taxation would have the authority to adopt regulations to interpret, administer, and enforce any taxation related issues. And the Legislature can pass additional legislation that addresses the implementation or impacts of legalized marijuana.

### Appendix A: State Licensing Fees, Tax Rates and Retail Caps in States with Legal Marijuana

State	Application Fee	Initial Licensing Fee	Annual Licensing Fee	Excise Tax	Retail Tax
Alaska	\$600	\$1,000	\$1,000	\$50 per ounce	0%
Colorado				15%	12.9%
--Existing Medical Adding Retail	\$250	\$3,000	\$3,300		
--Retail	\$2,500	\$3,000	\$3,300		
--Cultivation			\$3,800 –\$10,800		
--Product Manufacturing	\$2,500	\$2,200	\$2,500		
--Testing	\$500	\$2,200	\$2,500		
Oregon*	\$250	\$3,750 - \$5,750	\$3,750 - \$5,750	25%	17%
Washington	\$250	\$1000	\$1000	37%	8.9%
Washington,DC**	N/A	N/A	N/A	0%	15%

Notes:

\*Depending on type of establishment. Small cultivation facilities in Oregon are only charged \$3,750 for a license and large facilities are charged \$5,750. Manufacturers, retailers, and laboratories are charged \$4,750 for a license.<sup>170</sup>

\*\*Federal legislation includes a provision prohibiting the uses of Federal funds toward programs funding marijuana or any other Schedule I substance. Therefore, although marijuana is legal, Washington, D.C. is barred from enacting any regulatory, taxation or licensing structures.<sup>171</sup>

### Appendix B: Penalties for Marijuana Possession under Federal Law

Violations of the marijuana provisions of the CSA carry criminal penalties, such as jail time and fines.<sup>172</sup>

Appendix B shows the fines and sentences for marijuana possession under Federal law.

#### Penalties for Marijuana Possession under Federal Law<sup>173</sup>

Offense	Sentence	Fine
1 <sup>st</sup>	Up to one year	\$1,000
2 <sup>nd</sup>	Mandatory 15 days and up to two years	\$2,500
3 <sup>rd</sup>	Mandatory 90 days and up to three years	\$5,000





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The Kenny C. Guinn Center for Policy Priorities is a 501(c)(3) nonprofit, bipartisan, independent research center focused on providing fact-based, relevant, nonpartisan, and well-reasoned analysis of critical policy issues facing Nevada and the Intermountain West. The Guinn Center engages policy-makers, experts, and the public with innovative, data-driven research and analysis to advance policy solutions, inform the public debate, and expand public engagement.

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<http://nvsos.gov/Modules/ShowDocument.aspx?documentid=3294>; Here we note that the proposed limitations in the Nevada ballot initiative are different from measures taken in other states. Oregon officials did not propose a cap (and recent data indicates that there are currently 281 stores). (Source: Brosious, Emily Gray. "Marijuana shops now outnumber McDonald's and Starbucks in Oregon." The Sun Times Network. 11.08.2016. <http://extract.suntimes.com/news/10/153/7281/more-marijuana-shops-oregon-than-mcdonalds-starbucks>) Washington imposed an initial cap (of 334 stores) but raised the cap to 556 in January 2016 (source: Washington State Legislature. "Cannabis Patient Protection Act." SB 5052. 07.24.2015. <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5052>). Closer to home, Denver imposed a two-year moratorium on the number of marijuana stores allowed within city and county limits. The initial moratorium, which lasted from January 2014 to May 2016, only grafted recreational licenses to existing medical marijuana retail stores (source: Mitchell, Thomas. "Could Retail Pot Shop Moratorium in Denver Be Extended Two More Years." Westword. 02.08.2016. <http://www.westword.com/news/could-retail-pot-shop-moratorium-in-denver-be-extended-for-two-more-years-7572218>). As of May 1, 2016, a new city ordinance declared that all new applications for retail marijuana stores and facilities would be entered into a lottery (Source: Denver Business Licensing Center. "Retail Marijuana Licenses." Denver Gov. 05.01.2016. <https://www.denvergov.org/content/denvergov/en/denver-business-licensing-center/marijuana-licenses/retail-marijuana.html>)
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