



WASHOE COUNTY

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CM/ACM	<u>✓</u>
Finance	<u>n/a</u>
DA	<u>✓</u>
Risk Mgt.	<u>N/A</u>
HR	<u>N/A</u>
Comptroller	<u>N/A</u>

STAFF REPORT BOARD MEETING DATE: October 25, 2016

DATE: October 22, 2016

TO: Board of County Commissioners

FROM: Kevin Schiller, Assistant County Manager
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THROUGH: John Slaughter, County Manager
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SUBJECT: Update and possible direction to staff on future code changes regarding possible restrictions of adult use/recreational marijuana. Manager. (All Commission Districts.)

SUMMARY

Update and possible direction to staff on future code changes regarding possible restrictions of adult use/recreational marijuana.

BACKGROUND

The Nevada Constitution was amended to legalize medical marijuana based on a vote of the people in 1998 and 2000. Nevada state law was changed in 2001 to allow qualified patients to use medical marijuana. The state program was created following the strict regulatory model used by the state of Arizona. Nevada Constitution Article 4, Section 38, requires the Nevada Legislature to authorize the use of medical marijuana by a patient, upon the advice of his or her physician, for certain chronic or debilitating conditions. Subsequently, the Nevada state law changed in 2013 to authorize the operation of medical marijuana establishments to produce, test and dispense medical marijuana and marijuana-infused products. Nevada Revised Statute further requires the licensing, taxation and regulation of medical marijuana establishments. Per requirements of the State, Washoe County Code was amended in April of 2014 to meet the requirements for licensing and regulating of medical marijuana facilities.

Recreational use of marijuana remains illegal at this time in the State of Nevada. A 2016 ballot measure "Initiative to Regulation and Tax Marijuana" (attached) was initiated as a statewide statutory measure to amend state law. The required signatures for the initiative were obtained and were submitted to the Secretary of State in accordance with requirements on April 23, 2014, with the legislature having 40 days to approve, deny, or take no action.

With no denial or formal action taken, the item now appears on the ballot for the November 8, 2016 election. Twenty-three states and the District of Columbia have laws legalizing marijuana in some form. Of those, the District of Columbia, and four states, Alaska, Colorado, Washington, and Oregon have legalized recreational use of marijuana. Each of these states legalized medical marijuana previous to or with passage of recreational use. The most recent being the State of Oregon which was preceded by the State of Colorado approximately 18 months ago.

Given the pending ballot initiative this November, no legislative action is currently being taken or under consideration. With the passage of Medical Marijuana within the 2013 legislative session, local jurisdictions were given the option to participate under the adopted statutes and regulations. It is currently unclear if passage occurs whether the same framework will be adopted for local jurisdictions. Under the current statewide statutory measure a maximum of 20 licenses will be issued in a county with a population that is less than 700,000 but more than 100,000 with an additional provision allowing the State Department of Public and Behavioral Health to issue additional retail marijuana store licenses per the request of the county government if meeting additional requirements as set forth in the measure.

At the present time the use of recreational marijuana remains illegal with no required action from the BCC, however based on recent concerns and constituent inquires a request was made for possible direction specific to recreational use to include possible options for restrictions within the area of adult/recreational marijuana use. The current ballot initiative does clearly define an opting out for local jurisdictions. It should be noted that any options identified would likely be litigated given lack of precedent within the State of Nevada in the area of Adult/Recreational Marijuana Use. In addition, upon passage regulations would have to be established by the State of Nevada which would define local authority within the area of recreational marijuana establishments. Additional areas include the first 18 months following passage which allow for recreational sales through established medical marijuana establishments.

Restrictions based on a Federal designation as a Scenic Byway Corridor

A corridor management plan is a grassroots-drive document that provides a byway group with a roadmap for action. It addresses issues as diverse as tourism development, roadway safety, highway, signs, or the preservation of historic or natural features. It is a requirement of national scenic byway designation. The Mt. Rose Scenic byway currently has State Scenic Byway status. SR-28 Scenic Byway has National Scenic Byway status. In order to obtain National Scenic Byway status, a State Scenic Byway must complete a Corridor Management Plan that identifies the corridor's most valuable intrinsic qualities, establishes goals to manage and preserve valued qualities, addresses issues related to safety, access, visitor experience, and environmental gain, identifies opportunities for wayfinding and signage, creates marketing and promoting strategies to achieve the goals and vision. The Federal Scenic Byway program currently has not been reauthorized and therefore no funding is available for the program.

In a review at a National level numerous marijuana establishments, both medical and recreational currently exist along State and National Scenic byways. Examples include;

Las Vegas Boulevard, National Scenic Byway-Nevada

Most who live outside of Nevada do not know that businesses located on Las Vegas Boulevard between Washington and Sahara avenues are *required* to have neon or animated signs. The only industry exempt from this requirement on the Boulevard is medical marijuana.

Las Vegas's Scenic Byway Plan mandates that all establishments on that part of the Boulevard have signs with 75% neon to "preserve the road's storied history as a glowing desert landmark." These neon signs have become so iconic and endemic to Vegas culture, that the City can actually request Federal grants to pay for new neon signs to "enhance the street's glowing aesthetic."

Las Vegas is not requiring boulevard dispensaries to have neon or animated signs in part because Las Vegas's own land use code states that a dispensary's sign cannot exceed 30 square feet and must be "internally illuminated, with the use of neon prohibited." The City's reasoning for the neon-opt-out is that pharmacies don't do day-glow signage and, if we are to take medical marijuana seriously, dispensaries should also be ditching the neon. Instead, dispensaries must maintain a "professional" and "medical" appearance, rather than a "Las Vegas appearance," as one planning consultant described it to the Las Vegas Review-Journal. This applies currently to medical dispensaries so this could change with the passage of recreational marijuana.

Peak to Peak Scenic and Historic Byway-Colorado

The Peak to Peak Scenic and Historic Byway runs west along Pearl Street in Downtown Boulder, Colorado. On the street frontage due west is the "Helping Hands" medical marijuana dispensary.

Based on an initial review this option as a potential restriction to recreational marijuana establishments likely would be challenged due to the current existence of facilities within National and State scenic designated byways. Additionally, the primary goal of any scenic byway is to establish or regulate aesthetics and appearance versus the operational components of a business or establishment. Therefore, this option is not viable as a potential restrictive measure.

Establishment of a Regulatory Zone to Include Recreational Marijuana Establishments

The BCC could provide direction to establish code which creates a newly defined regulatory zone to include the allowance of recreational marijuana establishments. This would require defining an approval process for such establishments (e.g., a use or administrative permit) and would require approval through the Planning Commission or Board on each establishment meaning it is not assumed approved merely on the zoning, but would require Commission or Board action for each establishment. Recreational marijuana establishments would be identified as a commercial use type along with other types of commercial uses within the newly established regulatory zone.

Similarly, the Board could simply create a new commercial use type for recreational marijuana establishments and then regulate which regulatory zones this use type is allowed (e.g., in general commercial but not neighborhood commercial) and the approval process (e.g., use or administrative permit). It is likely that either approach would be challenged and could also result in litigation if the marijuana establishment treated differently than other established businesses within BCC approved regulatory zoning. In a review with legal this appears to be the most viable options; however the BCC can establish the policy direction they would like to move forward.

FISCAL IMPACT

There is a fiscal impact associated with this staff report.

RECOMMENDATION

It is recommended the Board of County Commissioners provide possible direction to staff on future code changes regarding possible restrictions of adult use/recreational marijuana.

POSSIBLE MOTION

Should the Board agree with staff's recommendation, a possible motion would be:

“Move to possible direction to staff on future code changes regarding possible restrictions of adult use/recreational marijuana.”

STATE QUESTION NO. 2

Amendment to the *Nevada Revised Statutes*

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?

Yes No

EXPLANATION & DIGEST

EXPLANATION—This ballot measure proposes to amend the *Nevada Revised Statutes* to make it lawful for a person 21 years of age or older to purchase and consume one ounce or less of marijuana other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana. It would also make it lawful for a person 21 years of age or older to cultivate not more than six marijuana plants for personal use, as well as obtain and use marijuana paraphernalia.

The ballot measure would also allow for the operation of marijuana establishments, which would be regulated by the Department of Taxation. Regulated marijuana establishments would include marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities, marijuana distributors, and retail marijuana stores. For the first 18 months, the Department of Taxation would only accept license applications for retail marijuana stores, marijuana product manufacturing facilities, and marijuana cultivation facilities from persons holding a medical marijuana establishment registration certificate. Similarly, for the first 18 months, the Department of Taxation would only issue marijuana distributors' licenses to persons holding a Nevada wholesale liquor dealers' license, unless the Department determines an insufficient number of marijuana distributors would result from this limitation.

If the ballot measure is approved, no marijuana establishments would be allowed within 1,000 feet of a public or private K-12 school or 300 feet of a community facility. There would also be limits on the number of retail marijuana store licenses issued in each county by the Department of Taxation. In a county with a population greater than 700,000, up to 80 retail marijuana store licenses would be allowed; in a county with a population greater than 100,000 but less than 700,000, up to 20 retail marijuana store licenses would be allowed; in a county with a population greater than 55,000 but less than 100,000, up to 4 retail marijuana store licenses would be allowed; and in a county with a population less than 55,000, up to 2 retail marijuana store licenses would be allowed. At the request of a county government, the Department of Taxation may issue retail marijuana store licenses in excess of the number otherwise allowed.

In addition to licensing, the Department of Taxation would be charged with adopting regulations necessary to carry out the provisions of this ballot measure. The regulations must address licensing procedures; licensee qualifications; security of marijuana establishments; testing, labeling, and packaging requirements; reasonable restrictions on advertising; and civil penalties for violating any regulation adopted by the Department.

Approval of the ballot measure would not prevent the imposition of civil or criminal penalties for driving under the influence of marijuana; knowingly selling or giving marijuana to a person under 21 years of age; possessing or using marijuana or marijuana paraphernalia in state correctional centers; possessing or using marijuana on school grounds; or undertaking any task under the influence of marijuana that constitutes negligence or professional malpractice. The measure would also not prevent employers from enforcing marijuana bans for their workers; marijuana bans in public buildings or on private property; and localities from adopting control measures pertaining to zoning and land use for marijuana establishments.

Under the provisions of the ballot measure, all applicants for a marijuana establishment license would be required to pay a one-time application fee of \$5,000. Additionally, the Department of Taxation may require the payment of an annual licensing fee ranging from \$3,300 to \$30,000, depending on type of license. The measure would also impose a 15 percent excise tax on wholesale sales of marijuana in Nevada by a marijuana cultivation facility. Revenue from this excise tax, as well as revenue from licensing fees and penalties collected by the Department of Taxation related to the regulation of marijuana, would first go to the Department of Taxation and local governments to cover the costs of carrying out the provisions of this measure. Any remaining revenue would be deposited in the State Distributive School Account.

Lastly, this ballot measure would impose criminal penalties for certain violations related to the possession, use, sale, and cultivation of marijuana and marijuana plants. Criminal offenses would include violations of the marijuana cultivation laws set forth in the measure; public consumption of marijuana; a person falsely representing himself or herself to be 21 years of age or older in order to obtain marijuana; and knowingly giving marijuana to a person under 21 years of age.

A “Yes” vote would amend the *Nevada Revised Statutes* 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.

A “No” vote would retain the provisions of the *Nevada Revised Statutes* in their current form. These provisions prohibit the possession, use, cultivation, and sale or delivery of marijuana in the State of Nevada for non-medical purposes, as well as the possession, use, sale, delivery, or manufacture of marijuana paraphernalia for non-medical purposes.

DIGEST—Chapter 453 of the *Nevada Revised Statutes*, known as the Uniform Controlled Substances Act, concerns the classification, enforcement, regulation, and offenses related to marijuana. Approval of this ballot measure would amend the *Nevada Revised Statutes* to make it lawful for a person 21 years of age or older to purchase and consume one ounce or less of marijuana other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana. It would also make it lawful for a person 21 years of age or older to cultivate not more than six marijuana plants for personal use, as well as obtain and use marijuana paraphernalia. Approval of this ballot measure would increase public revenue due to revenue collections from license fees for marijuana establishments and the 15 percent wholesale marijuana excise tax.

The ballot measure would also allow for the operation of marijuana establishments, which would be regulated by the Department of Taxation. Regulated marijuana establishments would include marijuana cultivation facilities, marijuana testing facilities, marijuana product manufacturing facilities, marijuana distributors, and retail marijuana stores. In addition to licensing, the Department of Taxation would be charged with adopting regulations necessary to carry out the provisions of this ballot measure. The regulations must address licensing procedures; licensee qualifications; security of marijuana establishments; testing, labeling, and packaging requirements; reasonable restrictions on advertising; and civil penalties for violating any regulation adopted by the Department.

Under the provisions of the ballot measure, all applicants for a marijuana establishment license would be required to pay a one-time application fee of \$5,000. Additionally, the Department of Taxation may require the payment of an annual licensing fee ranging from \$3,300 to \$30,000, depending on type of license. The measure would also impose a 15 percent excise tax on wholesale sales of marijuana in Nevada by a marijuana cultivation facility. Revenue from this excise tax, as well as revenue from licensing fees and penalties collected by the Department of Taxation related to the regulation of marijuana, would first go to the Department of Taxation and local governments to cover the costs of carrying out the provisions of this measure. Any remaining revenue would be deposited in the State Distributive School Account.

Approval of this ballot measure would impose criminal penalties for certain violations related to the possession, use, sale, and cultivation of marijuana and marijuana plants. Criminal offenses would include violations of the marijuana cultivation laws set forth in the measure; public consumption of marijuana; a person falsely representing himself or herself to be 21 years of age or older in order to obtain marijuana; and knowingly giving marijuana to a person under 21 years of age.

Current Nevada law, found in Chapter 453 of the *Nevada Revised Statutes*, prohibits various actions related to marijuana. Under current law, possession of marijuana for personal use is prohibited. Current law also prohibits the sale or delivery of marijuana; the cultivation of marijuana plants; and the possession, use, sale, delivery, or manufacture of marijuana paraphernalia for non-medical purposes. Possession and use of hashish and marijuana

concentrates is also prohibited under current Nevada law. Criminal and civil penalties are provided for in current law for violations of the marijuana prohibitions established in Chapter 453 of the *Nevada Revised Statutes*.

ARGUMENT FOR PASSAGE

Initiative to Regulate and Tax Marijuana

Vote Yes On 2! Question 2 will benefit Nevada by regulating marijuana in a manner similar to alcohol:

- It makes possession of small amounts of marijuana legal for adults 21 years of age or older;
- It establishes strict rules for the cultivation, production, distribution, and sale of marijuana in Nevada; and
- It will generate millions of dollars in new tax revenue to support K-12 education.

Question 2 is a sensible change in law for the state.

Marijuana prohibition is a failed policy in every sense of the word. Our government took a substance less harmful than alcohol¹ and made it completely illegal. This resulted in the growth of a multi-billion-dollar underground market driven by drug cartels and criminals operating in our communities. We have forced law enforcement to focus on the sale and use of marijuana instead of on serious, violent, and unsolved crimes.

Question 2 is a better way. We need to eliminate the criminal market by shifting the production and sale of marijuana into the hands of tightly regulated Nevada businesses, who will be required to comply with state and local laws, including environmental standards.

By regulating marijuana like alcohol, marijuana businesses will be required to:

- Test marijuana products to ensure that they are safe and properly labeled;
- Sell marijuana products in child-resistant packaging; and
- Check identification of customers to ensure marijuana is not sold to minors.

None of that occurs in the illegal market.

The initiative provides for a 15% excise tax on marijuana, which will generate an estimated \$20 million annually.² This will cover the cost of enforcing regulations and will also support K-12 education in the state. In addition to this tax, legal marijuana sales will generate more than \$30 million annually in state and local sales tax revenue.³

To enhance public safety, the initiative:

- Leaves in place Nevada's strict laws against driving under the influence of marijuana;
- Allows employers to have policies against the use of marijuana by employees;
- Prohibits the use of marijuana in public; and
- Imposes significant penalties for distribution of marijuana to minors.

It's time to stop punishing adults who use marijuana responsibly. This initiative will accomplish that goal in a manner that protects consumers, enhances public safety, provides for local control, generates tax revenue, and creates thousands of new jobs in the state. Vote Yes on 2!

The above argument was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Amanda Connor (Chair), private citizen; Riana Durrett, Riana Durrett PLLC; and John Ritter, Coalition to Regulate Marijuana Like Alcohol. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

¹ *Marijuana is Less Harmful than Alcohol: It's Time to Treat it that Way*, Regulate Marijuana Like Alcohol in Nevada, <https://www.regulatemarijuanainnevada.org/safer/>.

² *Nevada Adult-Use Marijuana; Economic & Fiscal Benefits Analysis, July 2016*, RCG Economics and Marijuana Policy Group, p. ES-5.

³ *Id.*

REBUTTAL TO ARGUMENT FOR PASSAGE

Question 2 is nothing more than a power grab from mostly out-of-state special interests who want to get rich. It even legalizes pot candies and allows pot advertising.

This initiative lets marijuana businesses line their pockets while the black market thrives. Legalization has done nothing to end the black market in Colorado, and has even allowed Mexican cartels to hide in plain sight.¹ In Denver, drug and narcotics crime rose an average of 13% per year since 2014.²

Question 2 also isn't about personal freedom – instead, it makes it a crime to home-cultivate pot within 25 miles of a retail marijuana store, and it doesn't even allow for local "opt-out" provisions as Colorado did.

Enriching marijuana business executives won't be a boon for K-12 education, either. Projected annual tax revenues from pot sales won't be enough to build even one Nevada middle school.³ Exposing our children to industrially-produced, kid-friendly pot gummy bears is not worth it.

Finally, Nevada taxpayers don't need a new government-run bureaucracy with troubling long-term societal costs.

At the end of the day, Question 2 benefits Big Marijuana at your expense. Vote NO--it's bad for Nevada's children, families, and taxpayers.

The above rebuttal was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee members: Pat Hickey (Chair), Nevadans for Responsible Drug Policy; Pam Graber, private citizen; and Kyle Stephens, Nevadans for Responsible Drug Policy. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact. This argument, with active hyperlinks, can also be found at www.nvsos.gov.

¹ Marijuana grow connected to Mexican cartel dismantled south of Pueblo, The Denver Post, July 7, 2016, <http://www.denverpost.com/2016/07/07/illegal-marijuana-grow-mexican-cartel-confiscated-pueblo/>; Mexican Drug Cartels are taking full advantage of Colorado's marijuana laws, Denver7, April 7, 2016, <http://www.thedenverchannel.com/news/local-news/marijuana/mexican-drug-cartels-are-taking-full-advantage-of-colorados-marijuana-laws>; and Feds worry that drug cartels are moving into Colo, USA Today, February 14, 2014, <http://www.usatoday.com/story/news/nation/2014/02/14/colorado-pot-drug-cartels/5485421/>.

² Crime Reports, City of Denver, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/statistics/2016/Xcitywide_Reported_Offenses_2016.pdf and https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/statistics/2015/Xcitywide_Reported_Offenses_2015.pdf.

³ Email correspondence, Clark County School District, July 25, 2016.

ARGUMENT AGAINST PASSAGE

Vote NO on Question 2. It's bad for Nevada children, bad for Nevada families, and bad for Nevada taxpayers.

Question 2 is about one thing—making out-of-state pot companies rich at your expense. It will bring marijuana stores to your neighborhood allowing kid-friendly, pot gummy bears and candies.¹ It also allows the selling of high-potency pot—today's pot is more than 20 times stronger than the marijuana of the 1960s.² It gives shadowy corporations and Nevada's alcohol industry special monopoly-like powers, at the expense of ordinary Nevadans. Question 2 is funded and supported by special interests in Washington, D.C.³, who simply want to get rich.

More specifically:

- Question 2 would allow marijuana shops in neighborhoods—where your children live—to sell pot-laced edibles that are easily mistaken for ordinary candy. Since Colorado legalized pot, marijuana use by youth is now ranked 56% higher than the national average.⁴ Studies show THC, the psychoactive component in today's marijuana has devastating effects on the developing teenage brain.⁵ So Question 2 isn't about protecting children, and would provide children with easier access to marijuana.

- Question 2 would permit new pot products with high potency levels. Fatal accidents involving stoned drivers have more than doubled in Washington where pot has been legalized.⁶ Question 2 isn't about public health and safety. It's about marketing a harmful drug to people for profit.
- Studies show teenagers who regularly use marijuana have lower IQs⁷ and higher dropout rates, and do worse on college entrance exams.⁸ Nevada is currently near the bottom of most U.S. rankings in education. At a time when skilled graduates are needed to fill Nevada jobs, we can't afford to fall any further.
- Question 2 would give special treatment and benefits to corporate interests and select alcohol companies involved in recreational marijuana sales. So Question 2 isn't about business opportunities for average Nevadans, but about corporate handouts to a privileged few.

The black market for pot will not go away by legalizing marijuana. "We have plenty of cartel activity in Colorado [and] plenty of illegal activity that has not decreased at all," said Colorado Attorney General, Cynthia Coffman.⁹

Bottom line: Legalizing marijuana will send a message to Nevada's children and teens that drug use is acceptable.

Question 2 is bad for Nevada children, bad for Nevada's families, and bad for Nevada taxpayers. Just say NO, to Question 2.

The above argument was submitted by the Ballot Question Committee composed of citizens opposed to this question as provided for in NRS 293.252. Committee members: Pat Hickey (Chair), Nevadans for Responsible Drug Policy; Pam Graber, private citizen; and Kyle Stephens, Nevadans for Responsible Drug Policy. Pursuant to NRS 293.252(5)(f), the Committee does not believe the measure will have any environmental impact. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

¹ *Reefer Sanity in the Marijuana Debate*, Project SAM Presentation, Kevin A. Sabet. Ph.D.

² *Id.*

³ Coalition to Regulate Marijuana Like Alcohol, Contributions and Expenses Report, Nevada Secretary of State web site available at:

<https://nvsos.gov/SOSCandidateServices/AnonymousAccess/CEFDSearchUU/GroupDetails.aspx?o=Yno8I9PHpIECbJmkeEEJ7w%253d%253d>.

⁴ *The Legalization of Marijuana in Colorado: The Impact*, Volume 3, Rocky Mountain High Intensity Drug Trafficking Area, September 2015, <http://wsnia.org/wp-content/uploads/2015/09/The-Legalization-of-Marijuana-in-Colorado-the-Impact.pdf>.

⁵ *Reefer Sanity in the Marijuana Debate*, Project SAM Presentation, Kevin A. Sabet. Ph.D.

⁶ *Fatal Road Crashes Involving Marijuana Double after State Legalizes Drug*, AAA Newsroom, May 10, 2016, <http://newsroom.aaa.com/2016/05/fatal-road-crashes-involving-marijuana-double-state-legalizes-drug/>.

⁷ *Reefer Sanity in the Marijuana Debate*, Project SAM Presentation, Kevin A. Sabet. Ph.D.

⁸ Cobb-Clark, Deborah A. and Kassenboehmer, Sonja C. and Le, Trinh and McVicar, Duncan and Zhang, Rong, 'High'-School: The Relationship between Early Marijuana Use and Educational Outcomes (October 2013), Melbourne Institute Working Paper No. 38/13, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2359183.

⁹ Special report, 'Clearing the Haze:' Black market is thriving in Colorado, The Gazette, March 20, 2015, <http://gazette.com/special-report-clearing-the-haze-black-market-is-thriving-in-colorado/article/1548305>.

REBUTTAL TO ARGUMENT AGAINST PASSAGE

"Reefer Madness." The term has been used for decades to describe exaggerated claims about marijuana that are designed to scare people into keeping marijuana illegal. We hope you recognize the argument above as modern-day Reefer Madness.

Here are just a few examples:

- The largest and most recent surveys of teen marijuana use showed that Colorado's marijuana use rate among high school students is actually below the national average.¹
- Since Colorado regulated medical marijuana and then adult-use marijuana, high school dropout rates have actually fallen.²
- Regarding things like gummy bears, the argument above fails to mention that the Colorado legislature recently banned marijuana products shaped like animals (or other attractive figures)³ and we expect thoughtful Nevada lawmakers will do the same.
- The argument above suggest that Question 2 would allow marijuana sales "where your children live," despite the fact that the measure gives all localities the ability to ban sales in residential districts.

Don't let opponents of Question 2 scare you into keeping marijuana illegal. That would simply leave the marijuana market in the hands of drug cartels and criminals. Let's put criminals out of business. Let's regulate marijuana and generate tax revenue for schools.

Please vote Yes on Question 2!

The above rebuttal was submitted by the Ballot Question Committee composed of citizens in favor of this question as provided for in NRS 293.252. Committee members: Amanda Connor (Chair), private citizen; Riana Durrett, Riana Durrett PLLC; and John Ritter, Coalition to Regulate Marijuana Like Alcohol. This rebuttal, with active hyperlinks, can also be found at www.nvsos.gov.

¹ Healthy Kids Colorado Survey 2015, *Marijuana Use Among Youth in Colorado*, https://www.colorado.gov/pacific/sites/default/files/PF_Youth_MJ-Infographic-Digital.pdf.

² Colorado Department of Education, *Colorado Dropout Data Dashboard*, <http://www2.cde.state.co.us/cdereval/dropoutdatamap2014.asp>; and *Dropout Data for 2013-14 – Historical Overview*, <http://www.cde.state.co.us/cdereval/dropoutcurrenthistory>.

³ *Ban On Pot Gummy Bears signed into Colorado Law*, CBS Denver 4, June 10, 2016, <http://denver.cbslocal.com/2016/06/10/ban-on-pot-gummy-bears-signed-into-colorado-law/>.

FISCAL NOTE

FINANCIAL IMPACT – CANNOT BE DETERMINED

OVERVIEW

Question 2 proposes to amend the *Nevada Revised Statutes* to add several new sections that would require the Department of Taxation to regulate and administer the operation of facilities that cultivate, produce, and dispense marijuana products in the state. Question 2 additionally requires the Department to collect a 15 percent excise tax upon the wholesale value of marijuana sold by a marijuana cultivation facility in Nevada. The proceeds from the excise tax, less costs incurred by the Department of Taxation and counties, cities, and towns to carry out certain provisions of Question 2, must be deposited in the State Distributive School Account.

Question 2 also decriminalizes the personal use, possession, or cultivation of marijuana under certain circumstances and provides for criminal penalties related to the unlawful cultivation, consumption, manufacture, or distribution of marijuana.

FINANCIAL IMPACT OF QUESTION 2

State and local governments will receive additional revenue from the following provisions of Question 2:

1. The Department of Taxation shall collect a one-time fee of \$5,000 from each applicant for a marijuana establishment license.
2. The Department of Taxation may impose fees for the initial issuance and annual renewal of marijuana establishment licenses for retail stores, cultivation facilities, product manufacturing facilities, distributors, and testing facilities, with the maximum fee that can be imposed for each license specified in Question 2.
3. An excise tax of 15 percent must be collected on the fair market wholesale value of marijuana sold by a marijuana cultivation facility and remitted to the Department of Taxation. The Department must establish regulations to determine the fair market wholesale value for marijuana in the state.
4. Marijuana, marijuana products, and marijuana paraphernalia sold as tangible personal property by a retail marijuana store would be subject to state and local sales and use taxes under current statute.

The proceeds from the application fee, license fees, and excise tax, less costs incurred by the Department of Taxation and counties, cities, and towns to carry out certain provisions of

Question 2, must be deposited in the State Distributive School Account. The proceeds from the state and local sales and use taxes generated on the retail sales of marijuana, marijuana products, and marijuana paraphernalia would be distributed to the state and local governments, including school districts, in the same manner these taxes are currently distributed.

The Department of Taxation and the Fiscal Analysis Division cannot determine the amount of revenue that will be generated for state and local governments, including school districts and the State Distributive School Account, from the application fee, licensee fees, excise tax, and sales and use taxes, because the following factors cannot be estimated with any reasonable degree of certainty:

1. The number of applications that would be received by the Department for marijuana establishment licenses;
2. The number of initial and annual licenses that would be issued by the Department and the amount of the fee that the Department would charge for each initial and annual license issued, if the Department decides to impose the license fees authorized within Question 2;
3. The quantity of marijuana that will be sold by marijuana cultivation facilities and the fair market value that will be established by the Department through the regulatory process that will be subject to the excise tax;
4. The quantity of marijuana, marijuana products, and marijuana paraphernalia and the price of these items that will be sold by retail marijuana stores that will be subject to state and local sales and use taxes.

Additionally, businesses that receive marijuana establishment licenses from the Department may also be subject to additional taxes and fees imposed by the state of Nevada or by local governments, including, but not limited to, the Modified Business Tax, the Commerce Tax, and state and local business license fees, which would increase revenues from these tax sources dedicated to the state or local government entity imposing the tax or fee. However, because the Fiscal Analysis Division cannot estimate the number of licenses that will be issued, the revenue that may be generated by the marijuana establishments, or the wages that may be paid to persons employed by the establishments, the resultant increase in revenues dedicated to the state and local governments cannot be determined with any reasonable degree of certainty.

The Fiscal Analysis Division has identified the following areas that may affect expenditures for state and local governments as a result of Question 2:

1. The Department of Taxation has indicated that it will incur one-time costs for equipment and programming of its computer system totaling approximately \$600,000. The Department has also indicated that it will need an additional 14 positions to implement and administer these provisions, beginning on January 1, 2017, which, along with associated operating costs, would result in a cost of approximately \$637,000 for the last six months of Fiscal Year 2017 (January 1, 2017–June 30, 2017) and approximately \$1.1 million in each

subsequent fiscal year. The Department has estimated that the total costs for implementation and administration of Question 2 would be approximately \$1.2 million in Fiscal Year 2017 (the first year in which the provisions would become effective), and approximately \$1.1 million per fiscal year thereafter.

The Department has indicated that some expenditures will be required before revenue from the excise tax and fees authorized in Question 2 are collected; however, the Fiscal Analysis Division cannot determine how the Department will choose to implement Question 2, the timing of expenditures that will be incurred by the Department, or the method that will be used to fund these initial costs.

2. Question 2 requires the Department of Taxation to conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant. Question 2 also requires the operator of each marijuana establishment to determine the criminal history of each worker or volunteer for suitability of employment as established in Question 2. The Department of Public Safety has indicated that if it will be required to process the background checks, the caseload increase will require one to two additional positions, which would cost approximately \$50,000 to \$100,000 per fiscal year. However, the Fiscal Analysis Division cannot determine the process that the Department of Taxation will choose to conduct these background checks.
3. The provisions of Question 2 that criminalize and decriminalize certain actions related to marijuana will require changes to the Nevada Offense Codes used in the Central Repository for Nevada Records of Criminal History maintained by the Department of Public Safety. The Department of Public Safety has indicated that an independent contractor may be required to implement the changes to the Nevada Offense Codes, which would result in a financial impact of approximately \$10,000 to \$40,000, based on previous contracts for these types of services. The Fiscal Analysis Division has determined that a financial impact on state government may occur only if an independent contractor is used to make the changes to the Nevada Offense Codes.
4. The provisions of Question 2 that criminalize and decriminalize certain actions related to marijuana may increase or decrease the workload of various state and local government agencies with respect to enforcement, investigation, incarceration, probation, and parole. The Fiscal Analysis Division cannot determine the net effect of these provisions on the workload of these agencies with respect to these functions.

The Fiscal Analysis Division cannot determine what actions may be taken by state and local governments to carry out the provisions of Question 2, the amount of expenditures that may be incurred, or how those expenditures would be funded. However, Question 2 specifies that excise tax revenues, fees, or penalties collected must first be used to defray certain costs incurred by the Department of Taxation and counties, cities, and towns, with the excess revenue to be deposited in the State Distributive School Account. Additionally, state and local governments, including school districts, will receive sales and use tax revenue from the retail

sales of marijuana, marijuana products, and marijuana paraphernalia, as well as from other taxes and fees that may be paid by businesses that receive marijuana establishment licenses. Therefore, the Fiscal Analysis Division cannot determine the financial impact upon state or local governments, including school districts and the State Distributive Account, because the revenues and expenditures resulting from Question 2 cannot be estimated with any reasonable degree of certainty.

Prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau – August 12, 2016

INITIATIVE TO REGULATE AND TAX MARIJUANA

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA DO ENACT AS FOLLOWS:

Section 1. *Sections 1 to 18, inclusive, of this act may be cited as the Regulation and Taxation of Marijuana Act.*

Sec. 2. *In the interest of public health and public safety, and in order to better focus state and local law enforcement resources on crimes involving violence and personal property, the People of the State of Nevada find and declare that the use of marijuana should be legal for persons 21 years of age or older, and its cultivation and sale should be regulated similar to other legal businesses.*

The People of the State of Nevada find and declare that the cultivation and sale of marijuana should be taken from the domain of criminals and be regulated under a controlled system, where businesses will be taxed and the revenue will be dedicated to public education and the enforcement of the regulations of this act.

The People of the State of Nevada proclaim that marijuana should be regulated in a manner similar to alcohol so that:

1. Marijuana may only be purchased from a business that is licensed by the State of Nevada;

2. Business owners are subject to a review by the State of Nevada to confirm that the business owners and the business location are suitable to produce or sell marijuana;

3. Cultivating, manufacturing, testing, transporting, and selling marijuana will be strictly controlled through state licensing and regulation;

4. Selling or giving marijuana to persons under 21 years of age shall remain illegal;

5. Individuals will have to be 21 years of age or older to purchase marijuana;

6. Driving under the influence of marijuana will remain illegal; and

7. Marijuana sold in the state will be tested and labeled.

Sec. 3. *As used in sections 1 to 18, inclusive, of this act, unless the context otherwise requires:*

1. “Community facility” means a facility licensed to provide day care to children, a public park, a public playground, a public swimming pool, a center or facility the primary purpose of which is to provide recreational opportunities or services to children or adolescents, or a church, synagogue, or other building, structure, or place used for religious worship or other religious purpose.

2. “Concentrated marijuana” means the separated resin, whether crude or purified, obtained from marijuana.

3. “Consumer” means a person who is 21 years of age or older who purchases marijuana or marijuana products for use by persons 21 years of age or older, but not for resale to others.

4. “Department” means the Department of Taxation.

5. “Dual Licensee” means a person or group of persons who possess a current, valid registration certificate to operate a medical marijuana establishment pursuant to chapter 453A of NRS and a license to operate a marijuana establishment under sections 1 to 18, inclusive, of this act.

6. “Excluded felony offense” means a conviction of an offense that would constitute a category A felony if committed in Nevada or convictions for two or more offenses that would constitute felonies if committed in Nevada. “Excluded felony offense” does not include:

(a) A criminal offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed more than 10 years ago; or

(b) An offense involving conduct that would be immune from arrest, prosecution, or penalty pursuant to chapter 453A of NRS, except that the conduct occurred before the effective date of chapter 453A of NRS, or was prosecuted by an authority other than the State of Nevada.

7. *“Locality” means a city or town, or, in reference to a location outside the boundaries of a city or town, a county.*

8. *“Marijuana” means all parts of any 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 resin. “Marijuana” does not include:*

(a) The mature stems of the plant, fiber produced from the stems, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stems (except the resin extracted therefrom), fiber, oil, or cake, the sterilized seed of the plant which is incapable of germination; or

(b) The weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

9. *“Marijuana cultivation facility” means an entity licensed to cultivate, process, and package marijuana, to have marijuana tested by a marijuana testing facility, and to sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers.*

10. *“Marijuana distributor” means an entity licensed to transport marijuana from a marijuana establishment to another marijuana establishment.*

11. *“Marijuana establishment” means a marijuana cultivation facility, a marijuana testing facility, a marijuana product manufacturing facility, a marijuana distributor, or a retail marijuana store.*

12. *“Marijuana product manufacturing facility” means an entity licensed to purchase marijuana, manufacture, process, and package marijuana and marijuana products, and sell marijuana and marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.*

13. *“Marijuana products” means products comprised of marijuana or concentrated marijuana and other ingredients that are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.*

14. *“Marijuana paraphernalia” means any equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, preparing, testing, analyzing, packaging, repacking, storing, or containing marijuana, or for ingesting, inhaling, or otherwise introducing marijuana into the human body.*

15. *“Marijuana testing facility” means an entity licensed to test marijuana and marijuana products, including for potency and contaminants.*

16. *“Process” means to harvest, dry, cure, trim, and separate parts of the marijuana plant by manual or mechanical means, such as sieving or ice water separation, but not by chemical extraction or chemical synthesis.*

17. *“Public place” means an area to which the public is invited or in which the public is permitted regardless of age. “Public place” does not include a retail marijuana store.*

18. *“Retail marijuana store” means an entity licensed to purchase marijuana from marijuana cultivation facilities, to purchase marijuana and marijuana products from marijuana product manufacturing facilities and retail marijuana stores, and to sell marijuana and marijuana products to consumers.*

19. *“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.*

Sec. 4. 1. Sections 1 to 18 do not permit any person to engage in and do not prevent the imposition of any civil, criminal, or other penalty for:

(a) *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;*

(b) *Knowingly delivering, giving, selling, administering, or offering to sell, administer, give, or deliver marijuana to a person under 21 years of age, unless:*

(1) *The recipient is permitted to possess marijuana pursuant to chapter 453A of NRS; or*

(2) *The person demanded and was shown bona fide documentary evidence of the majority and identity of the recipient issued by a federal, state, county, or municipal government, or subdivision or agency thereof;*

(c) *Possession or use of marijuana or marijuana paraphernalia on the grounds of, or within, any facility or institution under the jurisdiction of the Nevada Department of Corrections;*

(d) *Possession or use of marijuana on the grounds of, or within, a school providing instruction in preschool, kindergarten, or any grades 1 through 12; or*

(e) *Undertaking any task under the influence of marijuana that constitutes negligence or professional malpractice.*

2. *Sections 1 to 18 do not prohibit:*

(a) *A public or private employer from maintaining, enacting, and enforcing a workplace policy prohibiting or restricting actions or conduct otherwise permitted under sections 1 to 18, inclusive, of this act;*

(b) *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;*

(c) *A person who occupies, owns, or controls a privately owned property from prohibiting or otherwise restricting the smoking, cultivation, processing, manufacture, sale, delivery, or transfer of marijuana on that property; or*

(d) *A locality from adopting and enforcing local marijuana control measures pertaining to zoning and land use for marijuana establishments.*

3. *Nothing in the provisions of sections 1 to 18, inclusive, of this act shall be construed as in any manner affecting the provisions of chapter 453A of NRS relating to the medical use of marijuana.*

Sec. 5. 1. *Not later than 12 months after the effective date of this act, the Department shall adopt all regulations necessary or convenient to carry out the provisions of sections 1 to 18, inclusive, of this act. The regulations must not prohibit the operation of marijuana establishments, either expressly or through regulations that make their operation unreasonably impracticable. The regulations shall include:*

(a) *Procedures for the issuance, renewal, suspension, and revocation of a license to operate a marijuana establishment;*

(b) *Qualifications for licensure that are directly and demonstrably related to the operation of a marijuana establishment;*

(c) *Requirements for the security of marijuana establishments;*

(d) *Requirements to prevent the sale or diversion of marijuana and marijuana products to persons under 21 years of age;*

(e) *Requirements for the packaging of marijuana and marijuana products, including requirements for child-resistant packaging;*

(f) *Requirements for the testing and labeling of marijuana and marijuana products sold by marijuana establishments including a numerical indication of potency based on the ratio of THC to the weight of a product intended for oral consumption;*

(g) *Requirements for record keeping by marijuana establishments;*

(h) *Reasonable restrictions on signage, marketing, display, and advertising;*

(i) *Procedures for the collection of taxes, fees, and penalties imposed by sections 1 to 18, inclusive, of this act;*

(j) *Procedures and requirements to enable the transfer of a license for a marijuana establishment to another qualified person and to enable a licensee to move the location of its establishment to another suitable location;*

(k) Procedures and requirements to enable a dual licensee to operate medical marijuana establishments and marijuana establishments at the same location;

(l) Procedures to establish the fair market value at wholesale of marijuana; and

(m) Civil penalties for the failure to comply with any regulation adopted pursuant to this section or for any violation of the provisions of section 13 of this act.

2. The Department shall approve or deny applications for licenses pursuant to section 9 of this act.

3. The Department may by motion or on complaint, after investigation, notice of the specific violation, and an opportunity for a hearing, pursuant to the provisions of chapter 233B of NRS, suspend, revoke, or fine a licensee for the violation of sections 1 to 18, inclusive, of this act or for a violation of a regulation adopted by the Department pursuant to this section.

4. The Department may immediately suspend the license of any marijuana establishment if the marijuana establishment knowingly sells, delivers, or otherwise transfers marijuana in violation of sections 1 to 18, inclusive, of this act, or knowingly purchases marijuana from any person not licensed pursuant to sections 1 to 18, inclusive, of this act or to chapter 453A of NRS. The Department must provide an opportunity for a hearing pursuant to the provisions of NRS 233B.121 within a reasonable time from a suspension pursuant to this subsection.

5. To ensure that individual privacy is protected:

(a) The Department shall not require a consumer to provide a retail marijuana store with identifying information other than government-issued identification to determine the consumer's age; and

(b) A retail marijuana store must 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.

6. The Department shall conduct a background check of each prospective owner, officer, and board member of a marijuana establishment license applicant.

7. The Department shall inspect marijuana establishments as necessary to enforce sections 1 to 18, inclusive, of this act or the regulations adopted pursuant to this section.

Sec. 6. 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, 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;

2. Possess, cultivate, process, or transport not more than six marijuana plants for personal use and possess the marijuana produced by the plants on the premises where the plants were grown, provided that:

(a) Cultivation takes place within a closet, room, greenhouse, or other enclosed area that is equipped with a lock or other security device that allows access only to persons authorized to access the area; and

(b) No more than 12 plants are possessed, cultivated, or processed at a single residence, or upon the grounds of that residence, at one time;

3. Give or otherwise deliver one ounce or less of marijuana, other than concentrated marijuana, or one-eighth of an ounce or less of concentrated marijuana without remuneration to a person provided that the transaction is not advertised or promoted to the public; or

4. Assist another person who is 21 years of age or older in any of the acts described in this section.

Sec. 7. Notwithstanding any other provision of Nevada law and the law of any political subdivision of Nevada, it is not unlawful and shall not be an offense or be a basis for seizure or forfeiture of assets for persons 21 years of age or older to manufacture, possess, use,

transport, or purchase marijuana paraphernalia, or to distribute or sell marijuana paraphernalia to a person who is 21 years of age or older.

Sec. 8. 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, or the regulations adopted pursuant to section 5 of this act, it is lawful and must not, in this State, 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 marijuana and marijuana products, purchase marijuana from a marijuana cultivation facility, purchase marijuana and marijuana products from a marijuana product manufacturing facility, return marijuana or marijuana products to a facility from which they were purchased, transport marijuana and marijuana products to or from a marijuana testing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, or sell marijuana and marijuana products to consumers, if the person conducting the activities described in this subsection has a current, valid license to operate a retail marijuana store or is acting in the person's capacity as an agent of a retail marijuana store.

2. Cultivate, harvest, process, package, or possess marijuana, sell marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility, or a retail marijuana store, transport marijuana to or from a marijuana cultivation facility, a marijuana product manufacturing facility, or a marijuana testing facility, use the services of a marijuana distributor to transport marijuana to or from marijuana establishments, or purchase marijuana from a marijuana cultivation facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana cultivation facility or is acting in his or her capacity as an agent of a marijuana cultivation facility.

3. Package, process, manufacture, or possess marijuana and marijuana products, transport marijuana and marijuana products to or from a marijuana testing facility, a marijuana cultivation facility, or a marijuana product manufacturing facility, use the services of a marijuana distributor to transport marijuana or marijuana products to or from marijuana establishments, sell marijuana and marijuana products to a retail marijuana store or a marijuana product manufacturing facility, purchase marijuana from a marijuana cultivation facility, or purchase marijuana and marijuana products from a marijuana product manufacturing facility, if the person conducting the activities described in this paragraph has a current, valid license to operate a marijuana product manufacturing facility or is acting in his or her capacity as an agent of a marijuana product manufacturing facility.

4. Possess marijuana and marijuana products and transfer and transport marijuana and marijuana products between marijuana establishments, if the person transporting the marijuana and marijuana products has a current, valid license to operate as a marijuana distributor or is acting in his or her capacity as an agent of a marijuana distributor.

5. Possess, process, repack, transport, or test marijuana and marijuana products if the person has a current, valid license to operate a marijuana testing facility or is acting in his or her capacity as an agent of a marijuana testing facility.

6. Lease or otherwise allow property owned, occupied, or controlled by any person, corporation, or other entity to be used for any of the activities conducted lawfully in accordance with this section.

Sec. 9. It is the public policy of the People of the State of Nevada that contracts related to the operation of marijuana establishments under sections 1 to 18, inclusive, of this act should be enforceable, and no contract entered into by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, or by those who allow property to be used by a licensee, its employees, or its agents as permitted pursuant to a valid license issued by the Department, shall be deemed unenforceable on the basis that the actions or conduct permitted pursuant to the license are prohibited by federal law.

Sec. 10. 1. No later than 12 months after the effective date of this act, the Department shall begin receiving applications for marijuana establishments.

2. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall only accept applications for licenses for retail marijuana stores, marijuana product manufacturing facilities, and marijuana cultivation facilities pursuant to sections 1 to 18, inclusive, of this act, from persons holding a medical marijuana establishment registration certificate pursuant to chapter 453A of NRS.

3. For 18 months after the Department begins to receive applications for marijuana establishments, the Department shall issue licenses for marijuana distributors pursuant to sections 1 to 18, inclusive, of this act, only to persons holding a wholesale dealer license pursuant to chapter 369 of NRS, unless the Department determines that an insufficient number of marijuana distributors will result from this limitation.

4. Upon receipt of a complete marijuana establishment license application, the Department shall, within 90 days:

(a) Issue the appropriate license if the license application is approved; or

(b) Send a notice of rejection setting forth the reasons why the Department did not approve the license application.

5. The Department shall approve a license application if:

(a) The prospective marijuana establishment has submitted an application in compliance with regulations adopted by the Department and the application fee required pursuant to section 12;

(b) The physical address where the proposed marijuana establishment will operate is owned by the applicant or the applicant has the written permission of the property owner to operate the proposed marijuana establishment on that property;

(c) The property is not located within:

(1) 1,000 feet of a public or private school that provides formal education traditionally associated with preschool or kindergarten through grade 12 and that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department; or

(2) 300 feet of a community facility that existed on the date on which the application for the proposed marijuana establishment was submitted to the Department;

(d) The proposed marijuana establishment is a proposed retail marijuana store and there are not more than:

(1) 80 licenses already issued in a county with a population greater than 700,000;

(2) 20 licenses already issued in a county with a population that is less than 700,000 but more than 100,000;

(3) 4 licenses already issued in a county with a population that is less than 100,000 but more than 55,000;

(4) 2 licenses already issued in a county with a population that is less than 55,000;

(5) Upon request of a county government, the Department may issue retail marijuana store licenses in that county in addition to the number otherwise allowed pursuant to this paragraph;

(e) The locality in which the proposed marijuana establishment will be located does not affirm to the Department that the proposed marijuana establishment will be in violation of zoning or land use rules adopted by the locality; and

(f) The persons who are proposed to be owners, officers, or board members of the proposed marijuana establishment:

(1) Have not been convicted of an excluded felony offense; and

(2) Have not served as an owner, officer, or board member for a medical marijuana establishment or a marijuana establishment that has had its registration certificate or license revoked.

6. Competing applications. When competing applications are submitted for a proposed retail marijuana store within a single county, the Department shall sue an impartial and numerically scored competitive bidding process to determine which application or applications among those competing will be approved.

Sec. 11. 1. *All licenses expire one year after the date of issue.*

2. *The department shall issue a renewal license within 10 days of receipt of the prescribed renewal application and renewal fee from a marijuana establishment if its license is not under suspension or has not been revoked.*

Sec. 12. 1. *The Department shall require each applicant for a marijuana establishment license to pay a one-time application fee of \$5,000.*

2. *The Department may require payment of an annual licensing fee not to exceed:*

<i>For the initial issuance of a license for a retail marijuana store.....</i>	<i>\$20,000</i>
<i>For a renewal license for a retail marijuana store</i>	<i>\$6,600</i>
<i>For the initial issuance of a license for a marijuana cultivation facility.....</i>	<i>\$30,000</i>
<i>For a renewal license for a marijuana cultivation facility.....</i>	<i>\$10,000</i>
<i>For the initial issuance of a license for a marijuana product manufacturing facility.....</i>	<i>\$10,000</i>
<i>For a renewal license for a marijuana product manufacturing facility.....</i>	<i>\$3,300</i>
<i>For the initial issuance of a license for a marijuana distributor</i>	<i>\$15,000</i>
<i>For a renewal license for a marijuana distributor.....</i>	<i>\$5,000</i>
<i>For the initial issuance of a license for a marijuana testing facility</i>	<i>\$15,000</i>
<i>For a renewal license for a marijuana testing facility.....</i>	<i>\$5,000</i>

Sec. 13. *In addition to requirements established by rule pursuant to section 5 of this act:*

1. *Marijuana establishments shall:*

(a) *Secure every entrance to the establishment so that access to areas containing marijuana is restricted to persons authorized to possess marijuana;*

(b) *Secure the inventory and equipment of the marijuana establishment during and after operating hours to deter and prevent theft of marijuana;*

(c) *Determine the criminal history of any person before the person works or volunteers at the marijuana establishment and prevent any person who has been convicted of an excluded felony offense or who is not 21 years of age or older from working or volunteering for the marijuana establishment.*

2. *All cultivation, processing, and manufacture of marijuana must take place at a physical address approved by the Department and within an area that is enclosed and locked in a manner that restricts access only to persons authorized to access the area. The area may be uncovered only if it is enclosed with security fencing that is designed to prevent unauthorized entry and that is at least 8 feet high.*

3. *All cultivation, processing, and manufacture of marijuana must not be visible from a public place by normal unaided vision.*

4. *All cultivation, processing, and manufacture of marijuana must take place on property in the marijuana establishment's lawful possession or with the consent of the person in lawful physical possession of the property.*

5. *A marijuana establishment is subject to reasonable inspection by the Department, and a person who holds a marijuana establishment license must make himself or herself, or an agent thereof, available and present for any inspection required by the Department. The Department shall make reasonable accommodations so that ordinary business is not interrupted and safety and security procedures are not compromised by the inspection.*

Sec. 14. 1. *Restrictions on personal cultivation.*

(a) *Except as otherwise provided in chapter 453A of NRS, any person who:*

(1) *Cultivates marijuana within 25 miles of a retail marijuana store licensed pursuant to sections 1 to 18, inclusive, of this act, unless the person is a marijuana cultivation facility or a person acting in his or her capacity as an agent of a marijuana cultivation facility;*

(2) *Cultivates marijuana plants where they are visible from a public place by normal unaided vision; or*

(3) *Cultivates marijuana on property not in the cultivator's lawful possession or without the consent of the person in lawful physical possession of the property;*

(b) Is guilty of:

- (1) For a first violation, a misdemeanor punished by a fine of not more than \$600.*
- (2) For a second violation, a misdemeanor punished by a fine of not more than \$1,000.*
- (3) For a third violation, a gross misdemeanor.*
- (4) For a fourth or subsequent violation, a category E felony.*

2. 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.

3. A person under 21 years of age who falsely represents himself or herself to be 21 years of age or older to obtain marijuana is guilty of a misdemeanor.

4. A person under 21 years of age who knowingly enters, loiters, or remains on the premises of a marijuana establishment shall be punished by a fine of not more than \$500 unless the person is authorized to possess marijuana pursuant to chapter 453A of NRS and the marijuana establishment is a dual licensee.

5. A person who manufactures marijuana by chemical extraction or chemical synthesis, unless done pursuant to a marijuana product manufacturing license issued by the Department or authorized by chapter 453A of NRS, is guilty of a category E felony.

6. A person who knowingly gives marijuana to any person under 21 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 21 years of age is guilty of a misdemeanor.

7. A person who knowingly gives marijuana to any person under 18 years of age, or who knowingly leaves or deposits any marijuana in any place with the intent that it will be procured by any person under 18 years of age is guilty of a gross misdemeanor.

8. Notwithstanding the provisions of sections 1 to 18, inclusive, of this act, after the effective date of this act, the legislature may amend provisions of this act to provide for the conditions in which a locality may permit consumption of marijuana in a retail marijuana store.

Sec. 15. An excise tax is hereby imposed and must be collected by the State respecting wholesale sales of marijuana in this State by a marijuana cultivation facility at a rate of 15 percent of the fair market value at wholesale of the marijuana. The tax imposed pursuant to this subsection:

- 1. Is the obligation of the marijuana cultivation facility; and*
- 2. Is separate from and in addition to any general state and local sales and use taxes that apply to retail sales of tangible personal property.*

Sec. 16. Any tax revenues, fees, or penalties collected pursuant to sections 1 to 18, inclusive, of this act, first must be expended to pay the costs of the Department and of each locality in carrying out sections 1 to 8, inclusive, of this act and the regulations adopted pursuant thereto. The Department shall remit any remaining money to the State Treasurer to be deposited to the credit of the State Distributive School Account in the State General Fund.

Sec. 17. If any provision of this act, or the application thereof to any person, thing, or circumstance is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of this act as a whole or any provision or application of this act which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 18. This act shall become effective on October 1, 2015, if approved by the legislature, or on January 1, 2017, if approved by the voters.