

Legally Green

The nation is watching closely as Colorado and Washington put new pot laws in place.

BY SUZANNE WEISS

Got pot? Colorado and Washington do. In the wake of last November's election, the two states face an enormous and once-unthinkable challenge. They must transform the marijuana black market into an above-ground, regulated and taxed commercial enterprise.

Ballot measures approved by voters in Colorado and Washington create the most permissive pot laws in the nation. They not only explicitly allow citizens to use cannabis for recreational purposes, but demand state involvement in establishing systems for the drug to be sold much like alcohol.

Officials in both states have a number of months to craft and enact a regulatory framework for commercial marijuana cultivation and distribution—provided the U.S. Justice Department does not block them from doing so.

The federal Controlled Substances Act of 1970 classifies marijuana as a Schedule I drug, meaning that it has a high potential for abuse and no acceptable medical use, and thus it prohibits the possession, use, purchase, sale and/or cultivation of marijuana.

The federal government may choose to stymie implementation of the new laws, but it cannot make the two states recriminalize marijuana possession. And the states have no obligation to enforce federal marijuana laws. At press time, the U.S. Department of Justice was still reviewing the new state laws.

"We have no model for how to deal with this,"



*Representative
Frank
McNulty (R)
Colorado*

says Colorado Representative Frank McNulty (R), who served as House Speaker in the past two sessions. "Even when Prohibition was repealed, it involved a product that had previously been legal. In this case, we're really starting from square one."

In Colorado, Governor John Hickenlooper (D) has pledged to respect the wishes of voters despite his opposition to legalization. Shortly after the election, he appointed a 24-member task force—comprising legislators, cabinet officials, civic leaders, employers, attorneys and marijuana advocates—to work out a variety of policy, legal and procedural issues associated with establishing a commercial marijuana market. The new law includes language requiring the legislature to address some of those issues during the 2013 session, including:

- ◆ Amending current laws regarding the possession, sale, distribution or transfer of marijuana.
- ◆ Clarifying the impact of legalization on workplace drug policies.
- ◆ Establishing new regulations in areas ranging from product labeling to security requirements for wholesale and retail marijuana establishments.
- ◆ Deciding whether to set a standard for marijuana impairment while driving, similar to the blood-alcohol standard for drunken driving.
- ◆ Integrating the existing medical marijuana system into the new commercial market.
- ◆ Submitting a proposal to voters to impose a 15 percent excise tax on wholesale marijuana sales.

McNulty says he and a number of other legislators remain opposed to legalization, but that there likely will be "broad agreement" on implementing the major provisions of Amendment 64. The most contentious issue will be the provision requiring legislators to refer an excise tax proposal to the voters. Many lawmakers on both sides of the aisle question "whether we can be compelled to cast our vote a certain way," he says.

By contrast, Washington's voter-approved marijuana law

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Colorado's Amendment 64

Amendment 64 allows anyone over age 21 to purchase up to one ounce of marijuana from specialty marijuana dispensaries. Selling marijuana without a license, purchasing marijuana from a party who is not licensed and public use of marijuana remains illegal.

Unlike the new Washington law, Amendment 64 also allows residents to grow up to six marijuana plants and keep all of the harvest. The grower may give away as much as an ounce at a time to others “without remuneration.” The measure also allows people to join together to grow marijuana, meaning people could form large-scale cooperatives that produce marijuana by the pound without needing a license as long as none of the marijuana is sold.

The Colorado Department of Revenue, which currently regulates the state's medical marijuana dispensaries, is tasked with writing regulations for marijuana retailers by July 2013, to begin processing license applications by October 2013 and to start issuing licenses by January 2014.

Amendment 64 requires the state to ask voters to approve a 15 percent excise tax on wholesale marijuana sales, with the first \$40 million in revenue every year earmarked for building public schools.

Washington's Initiative 502

Initiative 502 removes criminal sanctions for anyone 21 or older possessing one ounce or less of marijuana for personal use. It also legalizes possession of up to 16 ounces of solid cannabis-infused goods—such as brownies or cookies—and up to 72 ounces of marijuana-infused sodas, teas or juices.

The new law does not allow home growing, and selling marijuana remains illegal. The state has until the end of 2013 to come up with a system of state-licensed growers, processors and retail stores, with the marijuana taxed at 25 percent at each stage (cultivation, processing and sale).

Initiative 502 also sets a new standard for marijuana impairment while driving at 5 nanograms of THC per milliliter of whole blood.

leaves the legislative branch largely out of the loop, and gives the State Liquor Control Board responsibility for coming up with a system for licensing, regulating and taxing marijuana growers, processors and retail stores.

Washington Senate Republican Leader Mark Schoesler says he doesn't expect the issue of marijuana legalization to get much attention during the 2013 session.

Legislative leaders of both parties “have committed ourselves to a narrowly focused agenda—jobs, education and the budget,” Schoesler says. “So we've got a lot of work ahead of us, and can't afford to go off on other issues.”

Besides, he notes, “amending the provisions of an initiative approved by voters requires a



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two-thirds vote of both chambers. That's a huge threshold, and I just don't see it happening.”

Schoesler says the biggest question related to implementation of the new marijuana law “is how much leeway the other Washington is going to give us.”

Groundbreakers

Politically and culturally, Colorado and Washington offered fertile ground for legalization advocates. Both have a history with marijuana law reform; more than a decade ago, they were among the first to approve the use of marijuana for medicinal purposes. Denver was the first major city in the country to legalize adult possession of pot, in 2005, and voters in Seattle several years ago passed a measure urging marijuana cases to be the “lowest law enforcement priority.”

But when it came to full legalization, pro-pot activists had a harder fight. Colorado voters in 2006 rejected a measure to legalize up to an ounce of marijuana. And just two years ago, reform advocates in Washington weren't able to make the ballot with a measure that would have removed criminal penalties for marijuana.

What seemed to make the difference this time around were well-orchestrated campaigns with focused messaging that took advantage of wealthy backers and improbable big-name sup-

A Growing Tolerance for Pot

A survey by Public Policy Polling several weeks after the Nov. 6 election suggests that other states may be ready to follow Washington and Colorado's example. It found that 58 percent of registered voters favor legalizing pot, the highest level of support ever recorded in a national poll. And a strong plurality (47 percent) of respondents said they think the Obama administration should allow Colorado and Washington to establish the ballot measures approved by voters to regulate and tax marijuana like alcohol.

The change in opinion about legalizing marijuana has followed a slow but steady course, rising from 12 percent in a 1969 Gallup poll to a record 50 percent in 2011. While support for legalization dipped a bit during the anti-pot backlash of the "Just Say No" era in the 1980s, it began rising again in the 1990s.

Generational differences in opinions about marijuana legalization reflect generational differences in its use. According to the 2011 National Survey on Drug Use and Health, most Americans between the ages of 12 and 60 have tried marijuana, while most Americans in their 60s or older have not.

Shifts in public opinion are increasingly at odds with the longstanding prohibition on marijuana at the federal and state levels. Of the 1.5 million drug-related arrests in the United States in 2011, 43 percent were for marijuana possession, according to the FBI's annual Uniform Crime Report. The vast majority of those arrested for simple possession end up paying misdemeanor fines or, in some cases, serving a sentence in county jail, the Marijuana Policy Project has reported.

porters, ranging from travel-show host Rick Steves to veteran law enforcement officials to conservative politicians like former Colorado Congressman Tom Tancredo.

Television ads featured a middle-aged mom saying she didn't like marijuana, but that taxing it would bring in much-needed money for schools and health care and free up police resources.

"What we figured out is that your average person doesn't necessarily favor using marijuana, but there's this untapped desire by voters to end the drug war," says Brian Vicente, a Denver lawyer who helped write Colorado's amendment.

Of the \$8.5 million raised by legalization advocates, more than half came from billionaire George Soros, a longtime benefactor of liberal causes, and Peter Lewis, the founder of Progressive Insurance, whose support stems from his use of cannabis for pain relief after the partial amputation of his leg in 1998.

By contrast, opponents of legalization in Washington raised just \$16,000. In Colorado, anti-Amendment 64 forces put up a stronger fight, mounting a \$690,000 campaign with backing from an evangelical Christian group and businessman Mel Sembler, who runs the Drug Free America Foundation. The major arguments put forth by opponents ranged from the adverse health effects of smoking marijuana to the possibility of the two states becoming "drug meccas."

Growing Support

"Something is happening, and it's not just happening in Washington and Colorado," Andy Ko, who leads the Open Soci-

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WASHINGTON SENATOR MARK SCHOESLER (R)

ety Foundation’s Campaign for a New Drug Policy, told the Associated Press. “Marijuana reform is going to happen in this country as older voters fade away and younger voters show up.”

Another national advocacy group, the Marijuana Policy Project, recently predicted that legalization proposals will be taken up by state lawmakers or placed on the ballot through petition drives in a half-dozen states over the next two years.

First out of the block will be Maine, where Representative Diane Russell (D) is leading the charge to place a proposal on the November ballot that would legalize and tax the sale of marijuana.



Representative
Diane Russell (D)
Maine

“I think the people are way ahead of the politicians on this issue,” Russell says. “Legislators can choose to bury their heads in the sand, or they can do the smart thing and recognize that [legalization] is inevitable.”

Russell believes that one way or the other—through legislative action or citizens’ initiative—Maine voters will have the opportunity to decide the issue in the fall. The chief advantage of having the Legislature take the lead, she says, “is that would give us the opportunity to hold public hearings, to work out the details in a responsible and rational way, and put a well-thought-out proposal on the ballot.”

In addition to their victories in Colorado and Washington last Nov. 6, pro-marijuana advocates prevailed in Massachusetts, where 63 percent of voters approved eliminating criminal and civil penalties related to the possession and use of up to a 60-day supply of cannabis for medical purposes. It also requires the state to create and regulate up to 35 facilities to produce and dispense marijuana to approved patients. Massachusetts became the

The Million-Dollar Revenue Question

A key selling point for marijuana legalization in Colorado and Washington was the potential for a major new stream of revenue in the form of licensing fees and taxes on the cultivation, processing and sale of cannabis. But estimates of the revenues likely to flow into state and local government coffers vary widely.

In Colorado, estimates range from between \$5 million and \$20 million a year (according to the nonpartisan voter guide prepared by the Colorado Legislative Council) to a high of between \$40 million and \$60 million (according to a study done by the Colorado Center on Law and Policy, a Denver think tank).

Those revenues would come from two sources: state and local sales taxes that patrons of marijuana stores would pay on their purchases, and a 15 percent excise tax that store owners would pay when buying marijuana from licensed wholesale growers.

Under the provisions of Amendment 64, the first \$40 million collected each year from the excise tax would be put toward public-school construction. Any revenues above that would go into the state’s general fund.

Revenue projections are considerably higher in Washington, where marijuana will be subject to a hefty 25 percent tax at every stage—cultivation, processing and sale. A study by legalization advocates during the campaign estimated those taxes would generate up to \$500 million a year. The new Washington law calls for 40 percent of the revenues to go to the state general fund and local budgets, and the remainder to education, health care and substance-abuse programs.

But how much revenue will be generated in the two states depends on a variety of factors, says Beau Kilmer, co-director of the Rand Drug Policy Research Center: the demand for legal marijuana; the price of marijuana, which could plummet with legalization; the number of people who choose to stay in the two states’ medical-marijuana system, where cannabis isn’t taxed at such high rates; and the number of marijuana dealers who decide to stay underground and avoid taxes.

“If the taxes are set too high, you still have to worry about a black market,” Kilmer says.

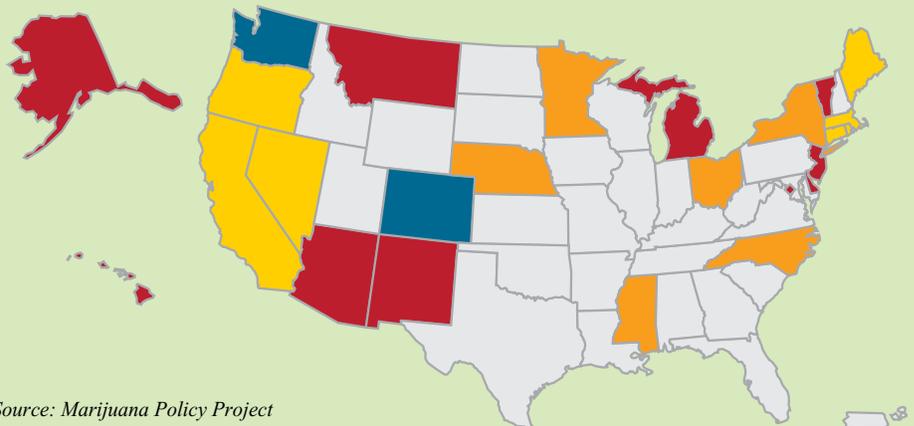
On the other hand, some factors could boost revenue numbers, according to Carnegie Mellon professor and drug-policy expert Jonathan Caulkins. For instance, if Colorado and Washington become hubs for marijuana tourism, demand at marijuana stores would not only increase, but those tourists would also spend money on hotels, restaurants and rental cars.

“It’s possible that could have a bigger impact than excise and sales taxes,” Caulkins says.

Pot Policies

- Has legalized medical marijuana
- Has eliminated jail time for possessing small amounts of marijuana
- Has legalized medical marijuana and eliminated jail time for possessing small amounts of marijuana
- Has legalized medical marijuana and marijuana for adults

Note: Maryland has a limited medical marijuana defense for possession only. Courts in Alaska have ruled the state constitution’s right to privacy covers possession of a modest amount of marijuana in one’s home.



Source: Marijuana Policy Project



18th state since 1996 to authorize the physician-recommended use of cannabis. (The District of Columbia also has a medical marijuana law.)

In Arkansas, a statewide ballot measure to legalize the therapeutic use of cannabis failed, but only by a narrow margin, 49 percent to 51 percent. And in Oregon, where pro-pot activists didn't wage on much of a campaign, a proposal that would have allowed the state-licensed production and retail sale of cannabis to adults garnered 47 percent of the vote.

The Medical Marijuana Model

As more and more states take up the issue of marijuana reform, the prevailing view among legalization advocates is that Colorado will be the leader in developing model policies and practices.

"The thing that Colorado really has going for it is that there is already a high level of comfort and familiarity with the state licensing, taxing and regulating the above-ground distribution of marijuana," says Ethan Nadelmann, executive director of the Drug Policy Alliance. "People have become accustomed to the notion that this can be a source of tax revenue, and that police can play a role in ensuring effective regulation rather than just arresting anyone they can."

Vicente, who helped write Amendment 64, says he is hopeful that the federal government will hold off and allow Colorado to build on its existing medical marijuana regulations. "The state has a very strict level of oversight that we call seed-to-sale tracking, and this system has worked quite well," he says.

Currently, nearly 110,000 Coloradans are enrolled in the state's medical-marijuana registry, which issues "red cards" to qualified patients. The vast majority of enrollees list severe pain, nausea or muscle spasms as their primary ailment. Men account for about 68 percent of the registry, with the average age hovering around 41.

Over the past several years, more than 500 medical-marijuana dispensaries—which are required to obtain both state and local licenses—have sprung up across Colorado, along with dozens of authorized growers.

Under current regulations, every step in the growing process is rigorously overseen and continuously filmed by video cameras monitored by the state's Medical Marijuana Enforcement Division. No video blind spots are allowed, and truck shipments must detail the total weight of all marijuana products, as well as the times of their arrivals and departures. In addition, every marijuana worker must be licensed.

Vicente doesn't think legalization will lead to an explosion of new businesses selling pot.

"Probably the only retail marijuana shops will be pre-existing dispensaries that decide to opt in to this new system," he says. "What we've found is that communities across Colorado have strictly limited the number of dispensaries through zoning and other regulations, and they're not likely to expand much beyond that."

To date, 86 Colorado communities have banned pot dispensaries, either by popular vote or city council ordinances. But in a dozen other communities, ranging from Denver to Grand Junction to the tiny mountain town of Nederland, commercial strips are dotted with neon green crosses signifying medical marijuana businesses.

On a recent segment of "60 Minutes," correspondent Steve Kroft visited several of Denver's 204 medical marijuana dispensaries, noting that they "outnumber Starbucks and McDonald's combined by nearly threefold."

With two states blazing the trail by legalizing marijuana, and public acceptance of the drug on an upward trajectory, it's clear state lawmakers will be grappling with the social, economic and political ramifications of cannabis for some time.