

San Francisco Cannabis State Legalization Task Force  
**Issue Brief #6 – Cannabis Legalization Landscape and California State  
Regulatory and Legislative Updates**

## INTRODUCTION

To prepare for the legalization of adult use cannabis, the San Francisco Board of Supervisors created the Cannabis State Legalization Task Force via Ordinance in July 2015. According to the Ordinance, “the purpose of the Task Force shall be to advise the Board of Supervisors, the Mayor, and other City departments on matters relating to the potential legalization of cannabis so that the City's policymakers are fully prepared to address the policy questions through legislation, administrative actions, and otherwise, following the adoption of a State law.”<sup>1</sup>

In order to fulfill this mandate, the Cannabis State Legalization Task Force will design cannabis legalization recommendations for consideration by San Francisco’s policymakers. The Task Force is currently in Year II of its active period. As was the case in Year I, the Task Force will continue to discuss various policy issues related to adult use cannabis legalization, with a particular focus on implementation in San Francisco now that the Proposition 64 ballot measure legalizing cannabis for adult use is a reality across the State.

To assist the Task Force in its discussions and process, this issue brief tracks research related to the cannabis legalization climate in California, other states that have legalized cannabis for adult use, and nationally since the release of the San Francisco Cannabis State Legalization Task Force Year I Report and Recommendations in December 2016. It also provides California cannabis-related legislative updates and follows the organizational structure of the Year I recommendation categories: (1) Public Safety and Social Environment; (2) Land Use and Social Justice; and (3) Regulation and City Agency Framework.

## SECTION I. NATIONAL CANNABIS LANDSCAPE

### 2016 State Election Update

**While cannabis possession and distribution remains illegal at the federal level, adult use cannabis is now legal in eight states and the District of Columbia (D.C.), and comprehensive medical cannabis programs are allowed in twenty-nine states and D.C.**

In the November 2016 general elections, voters in four states—California, Massachusetts, Nevada, and Maine—passed ballot measures legalizing the adult use of cannabis in their respective states.<sup>2</sup> In Maine, a request for a recount of the legalization measure's votes was issued due to the narrow margin by which it passed. This request was withdrawn after approximately one fifth of ballots had been recounted and did not warrant a reversal of the initial results.<sup>3</sup> The results of Maine's legalization measure were confirmed by Maine's Secretary of State and Governor in late December 2016.<sup>4</sup> In addition, voters in three states—Arkansas, Florida, and North Dakota—also passed ballot measures legalizing cannabis for medical use. In summary, adult use cannabis is now legal in eight states and the District of Columbia, and comprehensive<sup>a</sup> medical cannabis programs are allowed in twenty-nine states and D.C..<sup>5</sup>

### Future States Exploring and/or Preparing for Cannabis Legalization

**As of January 2017, nine states have introduced legislation to legalize adult use of cannabis and six states have introduced legislation to legalize medical use of cannabis.**

As of January 2017, nine states have introduced state bills to legalize the adult use of cannabis: Arizona, Connecticut, Kentucky, Maryland, Missouri, New Jersey, New Hampshire, Rhode Island and Texas.<sup>6,7,8</sup> In Arizona, after an adult use cannabis legalization ballot measure in the November 2016 general election did not pass, State Representative Mark Cardenas introduced House Bill 2003 in the 2017 legislative session, which would allow adults 21 years of age or older to possess limited amounts of cannabis for non-medical purposes.<sup>9, 10</sup>

Additionally, six states have introduced bills in the current legislative session to legalize the use of cannabis for medical purposes: Kentucky, Mississippi, Missouri, South Carolina, Texas, and Indiana. Legislators in Virginia have introduced multiple bills to expand medical uses of

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<sup>a</sup> Per the National Conference of State Legislatures (NCSL), 17 states allow use of "low THC, high cannabidiol (CBD)" products for medical reasons in limited situations or as a legal defense. Those programs are not counted as comprehensive medical marijuana programs. NCSL uses criteria similar to other organizations to determine if a program is "comprehensive": (1) Protection from criminal penalties for using marijuana for a medical purpose; (2) Access to marijuana through home cultivation, dispensaries or some other system that is likely to be implemented; (3) It allows a variety of strains, including those more than "low THC;" and (4) It allows either smoking or vaporization of some kind of marijuana products, plant material or extract. See more at: <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>

cannabis and decriminalize cannabis possession,<sup>11</sup> and media reports that legislators in Vermont are currently discussing the decriminalization of cannabis.<sup>12</sup> Media also reports that legislators in Delaware, New Mexico, and Rhode Island plan to propose ballot measures legalizing adult use cannabis in the future.<sup>13, 14, 15, 16</sup>

## Potential Impact of the New Presidential Administration

**Previous guidance from the Department of Justice regarding its cannabis law enforcement priorities may change under the new Presidential Administration and U.S. Attorney General.**

### *2013 Federal Cannabis Law Enforcement Priorities*

With the increasing number of states legalizing cannabis for medical and/or adult use, it is also important to note that the legal status of medical and nonmedical cannabis in these states represents a conflict between federal and state law, as cannabis remains a Schedule 1 substance<sup>b</sup> under the Controlled Substances Act (CSA). The federal government has the authority to enforce the CSA,<sup>17</sup> and the federal Department of Justice's (DOJ) most recent enforcement guidance for states with cannabis legalization laws prioritizes enforcement of its laws against states that do not build regulatory systems that follow the guidance, as defined in a 2013 memorandum by then Deputy Attorney General James Cole ("Cole Memorandum").<sup>18</sup> The enforcement priorities are as follows:

#### **2013 Department of Justice Memorandum: Federal Enforcement Priorities**

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

<sup>b</sup> The Controlled Substances Act defines Schedule 1 substances as those with "no currently accepted medical use and a high potential for abuse."<sup>17</sup>

*New Presidential Administration and Cannabis Legalization*

The aforementioned DOJ enforcement priorities may change under the new administration of President Donald J. Trump. In media reports from 1990, President Trump expressed broad support for the legalization of drugs in general, without specifying a position on cannabis.<sup>20</sup> During his 2016 presidential campaign, President Trump expressed support for the use of medical cannabis and initial opposition to the legalization of adult use cannabis. Later in his campaign, he expressed support for states' right to legalize adult use cannabis.<sup>21,22,23</sup> As of January 2017, President Trump has not outlined plans regarding his Administration's enforcement of federal law prohibiting cannabis use, distribution and sales.

President Trump's nomination of Senator Jeff Sessions (R-Alabama) for U.S. Attorney General may signal stronger enforcement of federal cannabis laws, as he has consistently opposed cannabis legalization,<sup>24</sup> and in October 2015, criticized the previous Obama Administration's general enforcement approach to cannabis drug offenses.<sup>25</sup> During his January 2017 confirmation hearings, Senator Sessions did not outline specific plans for how his department would treat the conflict between federal and state law regarding medical and/or adult use cannabis.<sup>26</sup>

In written responses to questions from senators as part of the nomination process, Senator Sessions stated that he is committed "to enforcing federal law with respect to marijuana, although the exact balance of enforcement priorities is an ever-changing determination based on the circumstances and the resources available at the time," and indicated that he would review and evaluate the policies detailed in the Cole memorandum along with relevant data to determine whether to follow or alter the priorities for federal cannabis law enforcement.<sup>27</sup>

Given these developments, one media report has outlined several possible scenarios regarding federal treatment of states' medical and adult use cannabis legalization laws under the Trump Administration. For example, the Administration could:

- 1) Maintain the current DOJ enforcement priorities. The Trump Administration may decide to uphold the 2013 Cole Memo and not intervene in states that have passed legislation legalizing cannabis use and build regulatory systems that take the enforcement priorities into account.
- 2) Prosecute businesses in the states with medical and adult use cannabis legalization laws, regardless of whether the states' regulatory structures take the DOJ enforcement priorities into account. Currently, the Rohrbacher-Farr amendment<sup>c</sup> prevents the DOJ from allocating funds from its budget to prosecute medical cannabis businesses, though this amendment is up for renewal by Congress in April 2017.<sup>28</sup>
- 3) Enforce a federal prohibition against adult use cannabis, but not medical cannabis. The federal government could focus its enforcement actions on adult use businesses. In

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<sup>c</sup> Included in federal spending bills since December 2014, the Rohrbacher-Farr amendment applies to 42 states, the District of Columbia, Guam, and Puerto. In a legal case where the DOJ pursued legal action against the cannabis industry, the 9th Circuit Court of Appeals recently issued clarification that "[the amendment] prohibits DOJ from spending funds from relevant appropriations acts for the prosecution of individuals who engaged in conduct permitted by the State Medical Marijuana Laws and who fully complied with such laws."<sup>28</sup>

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response, states could legally attempt to defend the rights of their constituents that chose to legalize adult use cannabis.

- 4) Block cannabis legalization in states not protected by the Rohrbacher-Farr amendment without increasing enforcement activities in states that have already legalized cannabis use.
- 5) Support legalization of medical and/or adult use cannabis across the United States.<sup>30</sup>

### Federal Banking Rules

**Several U.S. senators are attempting to change federal cannabis policy with respect to banking access for the cannabis industry, which may address public safety and tax compliance concerns in states where cannabis is legalized.**

As noted in the Year I Report, according to the Controlled Substances Act and the 2013 Cole Memorandum, it is illegal to aid or abet the commission of a federal crime, such as the production or distribution of cannabis. Therefore, offering financial services to the cannabis industry could expose banks to criminal liability.<sup>31</sup> According to media reports, as a result, cannabis businesses are largely unable to access financial services, and thus many operate on a cash-only basis, facing risk of theft due to the large amount of cash that may be stored on-site.<sup>32</sup> In the past, California Board of Equalization members have noted these public safety considerations, as well as the challenges to accurate tax collection processes posed by a cash-only system.<sup>33</sup>

In response to the November 2016 general election results legalizing adult and medical cannabis use in many states and the potential increase in legal cannabis businesses across the U.S. as a result, ten U.S. Senators sent a letter in December of that year to the Financial Crimes Enforcement Network (FinCEN), asking that FinCEN provide clearer guidelines to financial institutions regarding their ability to serve legal cannabis businesses.<sup>34</sup> The senators note in the letter that guidelines which permit banks to make financial services available to businesses indirectly serving the cannabis industry could help address the safety concerns surrounding cash-only cannabis businesses and spur economic growth across the country. FinCEN has not issued a reply to the letter as of February 1, 2017. The outcome of this process may have nationwide implications for cannabis businesses and regulators.

## SECTION II. RESEARCH UPDATES TO YEAR I REPORT

### STATE IMPLEMENTATION UPDATES<sup>d</sup>

#### Alaska and Washington D.C.

**Alaska and Washington, D.C. have recently implemented major components of their adult use cannabis regulatory systems and their experiences may offer thoughtful considerations for cannabis policy development.**

##### *Alaska*

In Alaska, the first adult use cannabis retail stores opened in October 2016. Since then, Alaska has experienced a cannabis supply shortage due to a lack of cultivators, and also faced challenges addressing perceived gaps in cannabis advertising rules. Specifically, the law does not clearly define what constitutes an advertisement, or whether the requirement for medical or adult use cannabis product advertisements to include health and safety warnings also applies to cannabis retail stores. To provide clarity on these issues, Alaska's Marijuana Control Board is currently reviewing advertising regulations and determining the types of promotion that businesses are permitted to engage in while maintaining compliance with state and federal law.<sup>35,36</sup>

##### *Washington D.C.*

In Washington D.C., voters legalized adult use cannabis in November 2014 through Initiative 71. The initiative has not been fully implemented due to an amendment to the Congressional Appropriations Act of 2015 known as the Harris Rider, renewed in 2016, which prohibits the District from spending any money to enact a law that would reduce penalties associated with the use, possession, or sale of any controlled substance, including cannabis.<sup>37,38,39</sup> On January 10, 2017, Washington D.C. Councilmember David Grosso introduced the Marijuana Legalization and Regulation Act of 2017, a bill which seeks to establish regulations for the sale of cannabis in the District of Columbia.<sup>40</sup> At the moment, it is unclear how the District's local bill will affect the prohibitions outlined in the Harris Rider.

### UPDATES BY RECOMMENDATION CATEGORY

The following sections include research updates to the cannabis landscape across the Task Force's Year I recommendation categories: (1) Public Safety and Social Environment; (2) Land Use and Social Justice; and (3) Regulation and City Agency Framework. The updates focus on recent legalization implementation information from Colorado, Washington and Oregon relevant to the work of the Task Force.

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<sup>d</sup> General state implementation updates are provided here for Alaska and Washington D.C. The updates in the remainder of the issue brief focus primarily on recent legalization implementation information from Colorado and Washington relevant to the work of the Task Force, since more information is readily available for those states.

## 1. PUBLIC SAFETY AND SOCIAL ENVIRONMENT

### PUBLIC SAFETY CONSIDERATIONS

#### Road Safety and Driving Under the Influence (DUI)

**Research findings indicate that cannabis use may impair cognitive functions essential to safe driving, especially when combined with alcohol use, but also that legalization of medical cannabis is associated with a decrease in traffic fatalities in some states. Further research is needed to understand impacts of adult use legalization on risk of motor vehicle injuries.**

#### *Cannabis Use and Driving Impairment Research*

As described in the Year 1 Report, the Blue Ribbon Commission on Marijuana Policy<sup>e</sup> in California asserted that “a person impaired and under the influence of marijuana, whether for medical or adult use, should not get behind the wheel of a car.”<sup>41</sup> There has been prior experimental research to understand the relationship between cannabis use and driving impairment. One such experimental study published in 2013 demonstrated an association between cannabis smoking and increased reaction time, lane weaving in simulated driving performance, and impairment in divided-attention tasks.<sup>42</sup> However, the relationship between cannabis use and motor vehicle accidents at a population level is not fully understood, due to past limitations on conducting population-level studies. The number of states legalizing cannabis has increased over the past few years, so more data is now available for population-level studies, and several recent reports and studies aim to investigate the relationship between cannabis use and driving impairment.

#### *2017 National Academy of Sciences Analysis and Other Research*

The National Academies of Sciences, Engineering, and Medicine released a report in January 2017 that synthesizes known research and information about the health effects of cannabis use. The section of the report on cannabis use and driving impairment relied on meta-analysis of studies from 1982 to 2015, which found moderately increased odds of a motor vehicle collision associated with self-reported cannabis use or detected THC metabolite in the driver’s blood, urine, or saliva. In the study, some but not all of this relationship was accounted for by simultaneous alcohol intoxication. The National Academies report was not able to determine the dose of cannabis that renders driving unsafe, and, as a result, the report also emphasized the need to conduct additional population-level studies and adjust results for alcohol intoxication.<sup>43</sup>

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<sup>e</sup> In anticipation of adult use legalization, California Lieutenant Governor Gavin Newsom and other policy experts formed the Blue Ribbon Commission on Marijuana Policy in 2013. The Commission has engaged in an effort to examine various cannabis policy options and its most recent 2015 report, “Policy Options for Regulating Marijuana in California,” provides a blueprint for the State and local jurisdictions to consider in preparation for legalization. More information available at <https://www.safeandsmartpolicy.org/>.

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Another 2017 study examined the possible connection between traffic fatalities and medical cannabis legalization. This study found that states which enacted medical cannabis laws during the study period (1985-2014) had lower rates of traffic fatalities compared to states that did not enact medical marijuana laws during that time. The authors note that this difference may be influenced by other unmeasured differences between the states.

The aforementioned 2017 study also found that, on average, among those states that enacted medical cannabis laws during the study period, traffic fatality rates decreased in the years after enacting medical cannabis laws. These results differed by state; seven states (California, Oregon, Washington, Colorado, Nevada, New Mexico, and Arizona) experienced reduction in traffic fatalities after the law was enacted. Two states (Rhode Island and Connecticut) experienced an increase in traffic fatalities after the law was enacted.<sup>44</sup>

### *Colorado's Experience with Cannabis Legalization and Driving Impairment*

Colorado legalized the adult use of cannabis in 2012. In a report published two years later, the Colorado Department of Public Health and Environment found “substantial evidence that (i) the risk of motor vehicle crash doubles among drivers with recent marijuana use; (ii) combined use of marijuana and alcohol increases motor vehicle crash risk more than use of either substance alone, and (iii) [there exists] a positive relationship between [delta-9-tetrahydrocannabinol] THC<sup>f</sup> blood level and motor vehicle crash risk, meaning the higher the level of THC in blood, the higher the crash risk.” Researchers noted in the report that further investigation is needed to understand the relationship between cannabis use and driving impairment in individuals who may have developed a tolerance to the substance.<sup>45</sup>

## SOCIAL ENVIRONMENT CONSIDERATIONS

### A. PUBLIC CONSUMPTION

Research for this Issue Brief did not reveal updated information on this topic as of February 1, 2017.

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<sup>f</sup> Delta-9-tetrahydrocannabinol (THC) is cannabis' main psychoactive element.

## B. YOUTH ACCESS AND EXPOSURE

**Recent research findings indicate that cannabis legalization may be associated with an increase pediatric cannabis exposures. Research from Colorado and Washington indicate generally stable cannabis use trends among youth post-legalization, with a decrease in perception of risk in that population.**

### *Unintentional Pediatric Exposure*

A report released by the National Academies of Sciences, Engineering, and Medicine in January 2017 reviewed and synthesized available evidence related to the health effects of medical and adult use cannabis use legalization. According to one study in the report, legalization of adult use cannabis use in Colorado was associated with an increase in unintentional pediatric cannabis exposure. Another study in the report analyzed calls to poison control centers over the 2005 to 2011 time period among three groups: a) states where adult use cannabis was illegal for the whole time period, b) states where adult use became legal in that time period, and c) states where adult use was legal for the whole time period. The study found that rates of calls to poison control centers for unintentional pediatric cannabis exposure did not increase from 2005 to 2011 in states where adult use cannabis was illegal for the whole time period. In states where adult use cannabis became legal during the time period, rates of calls increased by 11.5 percent. In states where cannabis was legal for the whole time period, rates of calls increased by 30.3 percent.<sup>46</sup> These research findings indicate that adult use cannabis legalization may be associated with an increase in pediatric cannabis exposure.

### *Colorado – Youth Access and Use*

As described in the Year 1 Report, Colorado’s medical cannabis program began in 2000, and the state legalized cannabis for adult use in 2012. According to the most recent available data from the biannual Healthy Kids Colorado Survey, cannabis use rates among middle and high school students from 2009 to 2015 remained relatively stable, and from 2013 to 2015, the percentage of middle and high school students who perceived regular cannabis use as risky behavior decreased from 54 percent to 48 percent.<sup>48</sup> A newly released Monitoring the Future study using data from an annual national survey of students was published in the Journal of the American Medical Association (JAMA) Pediatrics in December 2016. Findings from this study support the aforementioned Healthy Kids Colorado Survey findings: Colorado cannabis use among eighth, tenth and twelfth grade students remained stable before and after the legalization of adult use cannabis. The study also found that the reduction in percentage of eighth, tenth and twelfth grade students who perceive cannabis as risky in Colorado is consistent with reductions in risk perception in states that have not legalized adult use cannabis.<sup>49</sup>

### *Washington – Youth Access and Use*

Washington State legalized adult use of cannabis in 2012. As described in the Year 1 Report, findings from the 2014 Washington State Healthy Youth Survey (HYS) indicated a small but gradual increase in youth cannabis use over the past decade, but no significant trends in youth

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cannabis use since legalization.<sup>50</sup> According to the survey data, the percentage of twelfth grade students who consider there to be no/low risk to regularly using cannabis increased between 2012 and 2014, from 37 percent to 45 percent.<sup>35</sup>

The newly released Monitoring the Future study from December 2016 provides further insight into youth access and exposure trends for youth in Washington State. The study confirmed trends from the HYS, noting that rates of cannabis use among twelfth graders remained stable. For other age groups, the study found that Washington State eighth and tenth graders increased their cannabis usage by 2 percent and 4.1 percent, respectively, after adult use cannabis was legalized.<sup>51</sup> It also noted that perceived harmfulness of regular cannabis use among twelfth grade students decreased. As described in the Year 1 Report, Washington State Liquor and Cannabis Board (WSLCB) cautions that a decrease in perceived harm of cannabis use could lead to increased youth use in the future.<sup>52</sup>

### C. TOURISM AND HOSPITALITY

Research for this Issue Brief did not reveal updated information on this topic as of February 1, 2017.

## 2. LAND USE AND SOCIAL JUSTICE

### LAND USE

Research for this Issue Brief did not reveal updated information on this topic as of February 1, 2017.

### SOCIAL JUSTICE

#### Colorado – Using Tax Revenue to Support Social Justice Goals

**Referencing a correlation between homelessness, a need for affordable housing, and substance abuse, Colorado Governor John Hickenlooper introduced a proposal to allocate cannabis tax revenue towards building affordable housing and reducing homelessness.**

As described in the Year 1 Report, adult use cannabis tax revenue and fees at the state and local levels will generate revenue streams that could be allocated to support targeted policies and programs, in addition to covering administrative, implementation and regulatory costs. The Blue Ribbon Commission suggests that tax revenue allocation be aligned with the priorities of voters and policymakers, which may include social justice goals.<sup>53</sup>

For fiscal year 17-18, Colorado Governor John Hickenlooper introduced a proposal to the state legislature to allocate funds from the Marijuana Tax Cash Fund towards affordable housing and reducing homelessness.<sup>54,55</sup> In the proposal, Governor Hickenlooper referenced a correlation between homelessness, a need for affordable housing, and substance abuse. As such, he requested that \$16.3 million from the \$134 million collected in cannabis taxes during the first nine months of 2016 be allocated for affordable housing, housing for those with behavioral health needs, and to address chronic homelessness across the State.

### 3. REGULATION AND CITY AGENCY FRAMEWORK

#### Licensing

**The City of Portland, Oregon passed an ordinance in 2016 to permit delivery-only adult use cannabis businesses. Colorado is considering reducing the number of plants allowed in private homes and making other adjustments to its licensing structure in an attempt to constrain the illicit market.**

#### *Oregon - Cannabis Delivery Services*

As described in the Year 1 Report, cannabis delivery services are an emerging business model within the cannabis industry. Proposition 64 defines delivery services as “commercial transfer of cannabis or cannabis products to a customer and the use by a retailer of any technology platforms that enables customer to arrange commercial transfer.”<sup>56</sup> The Year 1 Report also described the Oregon Liquor Commission’s regulations that allow cannabis delivery services for what they define as “bona fide orders” received from an individual 21 years of age or older before a certain time on the request date.<sup>57</sup>

According media reports, in December 2016, the Portland City Council passed an ordinance to add a license type for delivery-only adult use cannabis businesses, in large part to provide opportunities for microbusinesses that are not able to finance rental or ownership of retail property. The ordinance refers to licensees as “marijuana retail couriers,” which would have regulations for hours of operation and location of headquarters that are similar to brick and mortar dispensaries. Although dispensaries are not allowed to be located within 1,000 feet of schools in Portland, the marijuana retail couriers would be permitted to deliver cannabis and cannabis products to residences within this radius.<sup>58,59</sup> The implementation of cannabis delivery in Oregon may be important to monitor, particularly in regards to aforementioned public safety concerns arising from the cash-only nature of most cannabis businesses.

### *Colorado – Cannabis Licensing Adjustments*

Media reports that in an attempt to reduce the illicit market across the State, Colorado Governor John Hickenlooper plans to institute a limit of six cannabis plants per person and 12 per residence for adult or personal medical use, to prohibit collective adult use cultivation facilities, and to require caregivers to register with the state in order to grow more than six cannabis plants for medical use.<sup>60</sup> Currently, Colorado allows medical cannabis patients to grow up to 99 plants and permits adult use cannabis users to group the six plants they are allotted into large cooperatives which, the Office of the Governor notes, are difficult to track, regulate, and tax. The proposed changes are meant to address concerns from the Office of the Governor that medical cannabis patients and caregivers and collective adult use cultivation facilities divert cannabis to the illicit market. Some of Colorado's largest local jurisdictions, including Colorado Springs and Denver, have already passed ordinances limiting residents to a 12-plant cultivation limit in their homes.<sup>61</sup>

### **Taxation and Revenue**

**In January 2017, Colorado Governor John Hickenlooper proposed an increase in the retail sales tax for adult use cannabis from 10 percent to 12 percent in order to fund educational goals.**

### *Colorado – Proposed Increase in Cannabis Tax Rate*

In January 2017, Colorado Governor Hickenlooper proposed plans to increase the taxation rate on retail sales of adult use cannabis to fund educational goals.<sup>62,63</sup> Currently, there is a 10 percent sales tax on retail sales of cannabis for adult use, in addition to the standard 2.9 percent sales tax. The 10 percent sales tax rate was scheduled to decrease to 8 percent in July 2017 per Colorado General Assembly House Bill 15-1367 to address stakeholder concerns that the tax rate was too high to effectively compete with the illicit market.<sup>64,65</sup> The Governor's proposal would instead increase the tax from 10 percent to 12 percent in the fiscal year beginning July 2017.<sup>66</sup> Media reports that this increase may divert sales to the illicit market, echoing cautions from the Blue Ribbon Commission noted in the Year I Report that over-taxation of the cannabis industry may discourage legal compliance and bolster the illicit market.<sup>67, 68</sup>

### **Agency Oversight**

Research for this Issue Brief did not reveal updated information on this topic as of February 1, 2017.

## **SECTION III. CALIFORNIA STATE REGULATORY AND LEGISLATIVE CANNABIS UPDATES**

The information presented below is current as of February 1, 2017, and will be updated as bills are introduced in the California State Legislature for the 2017 session. The bills are also summarized in the Appendix Table included in this document.

### **STATE REGULATORY UPDATES**

On January 10, 2017, California Governor Jerry Brown released his proposed budget for the 2017-2018 fiscal year which allocated \$52.2 million for the State regulation of medical and adult use cannabis. As detailed in the Budget Summary, the Governor's budget proposal aims to reduce the duplicative costs of regulating separate medical and adult use regulatory structures by consolidating the two systems. To achieve this, the budgeted funds will specifically go towards agencies regulating both adult use and medical cannabis activities, such as the Department of Consumer Affairs, the Department of Public Health, the Department of Food and Agriculture, the Board of Equalization, and the Department of Health Care Services.<sup>69</sup>

As detailed in the Year I Report, the Department of Consumer Affairs (DCA) is in the early stages of establishing the Bureau of Medical Cannabis Regulation (renamed the Bureau of Marijuana Control under Proposition 64) which will regulate the transportation, storage, distribution, and sale of cannabis within the State. The Bureau will also be responsible for investigating, enforcing, and coordinating cannabis regulation with local governments. The California State General Fund has provided the Bureau with loans to support the initial implementation and regulatory costs for cannabis-related regulatory activities. The Bureau, led by Lori Ajax (appointed in February 2016), is in the process of crafting regulations.<sup>70</sup>

### **STATE LEGISLATIVE UPDATES**

#### **1. PUBLIC SAFETY AND SOCIAL ENVIRONMENT**

##### **PUBLIC SAFETY**

- ***Senate Bill 65 – Road Safety and Driving Under the Influence (DUI)***

Senate Bill 65 would make the operation of a boat, vehicle, or aircraft while smoking or under the influence of cannabis a punishable offense. Similar to the guidelines on the operation of a boat, vehicle, or aircraft while under the influence of any alcoholic beverage, any violation of this law would be punishable as an infraction or misdemeanor. While the current guidelines set forth by Proposition 64 make it illegal to operate a vehicle under the influence of cannabis and to have an open container of cannabis in a car, if passed, Senate Bill 65 would further clarify that the consumption of cannabis while operating a vehicle is illegal.<sup>71</sup>

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- ***Assembly Bill 175 – Adult Use Cannabis Packaging and Labeling***  
Assembly Bill 175 would require cannabis product manufacturers to submit adult use cannabis packaging to the Bureau of Marijuana Control for approval and requires the Bureau to determine whether the packaging and labels are in compliance with Proposition 64 provisions.
- ***State Cannabis Banking Working Group***  
As described in the Year 1 Report, federal cannabis policy bars cannabis businesses from accessing banking services. As a result, media reports that cannabis businesses instead operate as cash-only entities and that large quantities of cash may therefore be stored on-site, making cannabis businesses susceptible to theft and burglary and posing safety risks to employees and patrons.<sup>72</sup> On December 19, 2016, State Treasurer John Chiang convened a 16-member working group to address the banking challenges facing businesses in the cannabis industry.<sup>73</sup> The working group, known as the Cannabis Banking Working Group, is comprised of representatives from various sectors, including cannabis law, banking, credit unions, taxation, and business, and seeks to address the discrepancy between State and federal law on the banking guidelines for the cannabis industry. Its mission is “to develop actionable steps and recommendations designed to open access to the banking system to cannabis-related industries to allow an industry that is now legal in California to fully and effectively participate in commerce.”<sup>74</sup> In addition to its inaugural December 2016 meeting, the working group is currently scheduled to meet four additional times in 2017 to discuss this issue further.

## SOCIAL ENVIRONMENT

### A. Public Consumption

- Research for this Issue Brief did not reveal legislative updates on this topic as of February 1, 2017.

### B. Youth Access and Exposure

- ***Assembly Bill 76 – Prohibition of Marketing Adult Use Cannabis to Children***  
Assembly Bill 76 states that it is the intent of the Legislature to introduce legislation relating to the prohibition of the marketing of adult use cannabis to children.<sup>75</sup> Additional details were not available at the time of this update.

### C. Tourism and Hospitality

- Research for this Issue Brief did not reveal legislative updates on this topic as of February 1, 2017.

## 2. LAND USE AND SOCIAL JUSTICE

- Research for this Issue Brief did not reveal legislative updates on this topic as of February 1, 2017.

## 3. REGULATION AND CITY AGENCY FRAMEWORK

### Licensing

- ***Assembly Bill 64 – Medical and Adult Use Cannabis Regulation and Advertising***  
Assembly Bill 64 is largely aimed at aligning the Medical Cannabis Regulation and Safety Act (MCRSA)<sup>9</sup> and Proposition 64 and has five key components. The bill would:
  1. Extend a provision in Proposition 64 (which prohibits adult use cannabis advertisements on interstate highways) to additionally prohibit both medical and adult use cannabis advertising along any stretch of interstate or State highway in California.
  2. Specify that a dispensary, producing dispensary or retail license may be issued to businesses with “non-storefront locations” for businesses that do not allow direct public access. These non-storefront locations could operate delivery services, but would not be mobile dispensaries as they would still require a physical location to operate.
  3. Clarifies that medical cannabis businesses may operate for profit or not for profit.
  4. Extends the Model State Trademark Law, which provides for the registration of trademarks and service marks, to legal medical and nonmedical cannabis products and services.
  5. Advance a \$3 million loan to the California Highway Patrol to begin work on developing driving under the influence standards and protocols.<sup>76</sup>
- ***Assembly Bill 171 – Medical Cannabis Licensure Reporting***  
The Medical Cannabis Regulation and Safety Act (MCRSA) requires each State licensing authority to prepare an annual report on the authority’s activities, submit it to the Legislature, and to post on the authority’s Internet website. The licensing authority is required to include various information in that report, including the number of state licenses issued by that authority, and Assembly Bill 171 adds a requirement for licensing authorities to also annually report the number of conditional licenses issued.<sup>77</sup>
- ***Assembly Bill 238 – Medical Cannabis Employment Regulation***  
Assembly Bill 238 would prohibit a distributor Type 11 licensee from denying employment to any individual on the basis that the applicant employs individuals who are or are not party to a collective bargaining agreement.<sup>78</sup>

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<sup>9</sup> In October of 2015, California Governor Jerry Brown signed three bills into law that are collectively known as the Medical Cannabis Regulation and Safety Act (MCRSA). Taken together, MCRSA gives the State more regulatory control over the medical cannabis industry, from cultivation to sale.

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- ***Humboldt County, California - Pilot Track and Trace System***

As noted in the Year 1 Report, Proposition 64 would authorize the Department of Food and Agriculture, the Bureau of Marijuana Control and the Board of Equalization to expand the track and trace system for medical cannabis to include adult use cannabis.

Under the track and trace system, each cannabis plant would possess a unique identifier to enable regulatory agencies to monitor its movement within the supply chain.<sup>79</sup> The first local pilot track and trace project under MCRSA was launched in Humboldt County to monitor medical cannabis at every step in the cannabis supply chain from the young plant to the processing, transport, and sale with the goals of protecting tax revenue and helping to prevent illicit sales. Other counties considering implementing similar projects include Mendocino and Yolo counties.<sup>80</sup> It is unclear how these local track and trace systems will interact with the State's proposed system.

### Taxation and Revenue

- ***Senate Bill 148 – Cannabis State Payment Collection Law***

Senate Bill 148 would increase the number of locations that accept cash tax and fee payments from cannabis businesses.<sup>81</sup> Currently, taxes paid in cash are only accepted at the 22 Board of Equalization offices in California, and many cash-only cannabis businesses must deliver cannabis related state fees to Sacramento. The bill states that, pending approval from the county board of supervisors and local tax collectors, local governments could grant approval for cannabis businesses to make their state tax and fee payments at local branches of state agencies.<sup>h</sup> According to media reports, this could reduce the risks associated with driving long distances to Sacramento or other BOE offices with large sums.<sup>82</sup>

### Agency Oversight

- Research for this Issue Brief did not reveal legislative updates on this topic as of February 1, 2017.

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<sup>h</sup> A “state agency” would include state entities that administer any fee, fine, penalty or charge payable by a cannabis related business, including the Bureau of Marijuana Control, Department of Consumer Affairs, Department of Fish and Wildlife, Department of Food and Agriculture, Department of Pesticide Regulation, Employment Development Department, Franchise Tax Board, State Department of Public Health, and State Water Resources Control Board.<sup>80</sup>

## OTHER UPDATES

### San Francisco Mayoral Executive Directive

**San Francisco's Mayor Lee has directed the Departments of Planning and Public Health to draft ordinances to address land use, local licensing, safety, and youth access as they pertain to the legalization of adult use cannabis.**

Mayor Ed Lee of San Francisco issued an Executive Directive in November 2016 directing the Director of Planning and the Director of Public Health to draft ordinances by September 1, 2017, to address implementation of Proposition 64, with a particular focus on the following policy areas:<sup>84</sup>

- 1) Land Use: where will cultivation, manufacturing, and sales of cannabis be allowed and disallowed, and under what conditions?
- 2) Local Licensing: how should the City's local licensing process be structured?
- 3) Safety: should the City change any laws regarding where or how cannabis may be consumed in public places?
- 4) Youth Access: how can the City prevent diversion and sales to under-age youth?

Mayor Lee outlined a collaborative process for the Directors of Planning and Public Health that includes consultation with other departments—specifically the Office of Economic and Workforce Development, the San Francisco Police Department, and the San Francisco Unified School District—and outside experts as necessary, as well as coordination with the San Francisco Cannabis State Legalization Task Force.

## CONCLUSION

As is evident from the updates presented in this Issue Brief, the adult use cannabis landscape is dynamic and fast-moving. The Task Force will continue to closely monitor Proposition 64 implementation, including related legislative actions in California, as well as the experiences of states with legalized adult use cannabis laws prior to the November 2016 elections and the progress of the states that have more recently legalized adult use cannabis in their jurisdictions.

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Appendix: Summary Table of California Legislative Updates

House/ Type	Number	Author(s)	Subject	Status	Summary
<b>AB</b>	64	Bonta, Cooley, Jones- Sawyer, Lackey, and Wood	Cannabis: medical and nonmedical: regulation and advertising	Assembly - Floor  Introduced 12/12/2016	This bill specifies that: <ul style="list-style-type: none"> <li>• Licenses under the MCRSA may operate for profit or not for profit;</li> <li>• A dispensary, a “producing dispensary” that is a dispensary with cultivation/cultivator and/or manufacturing facilities, or retailer license may be issued for non-storefront locations with no direct physical access for the public</li> <li>• A prohibition applies to advertising or marketing of medical and nonmedical cannabis and cannabis products on all interstate and state highways.</li> <li>• The Model State Trademark Law, which provides for the registration of trademarks and service marks, extends to legal medical and nonmedical cannabis products.</li> <li>• The State will advance a \$3 million loan to the California Highway Patrol to begin work on developing protocols to determine when a drivers is operating a vehicle while impaired</li> </ul>
<b>AB</b>	76	Chau	Adult-use marijuana: marketing	Assembly - Floor  Introduced 1/4/2017	This bill states the intent of the Legislature to introduce legislation relating to the prohibition of the marketing of adult-use marijuana to children. No further details provided.

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House/ Type	Number	Author(s)	Subject	Status	Summary
<b>AB</b>	171	Lackey	Medical Cannabis Regulation and Safety Act: licensure: reporting	Assembly - Floor  Introduced 1/17/2017	This bill would require a licensing authority to include in its annual report the number of conditional licenses issued.
<b>AB</b>	175	Chau	Adult-use marijuana: marketing: packaging and labeling	Assembly - Floor  Introduced 1/17/2017	This bill would require the cannabis product manufacturer to submit the packaging for adult use cannabis to the Bureau of Marijuana Control for approval and requires the bureau to determine whether the packaging and labels are in compliance with the provisions under Proposition 64.
<b>AB</b>	238	Steinorth	Medical cannabis: distributors: employment	Assembly- Floor  Introduced 1/30/2017	This bill would prohibit a distributor Type 11 licensee from denying employment to any individual on the basis that the applicant employs individuals who are or are not party to a collective bargaining agreement.
<b>SB</b>	65	Hill	Vehicles: alcohol and marijuana: penalties	Senate - Transportation and Housing Committee  Introduced 12/29/2016	This bill would make drinking or smoking/ingesting cannabis or marijuana products while operating a boat, vessel, or aircraft an infraction or misdemeanor. The court may order a defendant convicted of a misdemeanor and sentenced to a term of imprisonment in a county jail to be imprisoned and order the defendant to attend alcohol education and counseling classes.

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House/ Type	Number	Author(s)	Subject	Status	Summary
<b>SB</b>	148	Wiener and Atkins	State Board of Equalization: counties: state agencies: collection of cash payments: cannabis- related businesses	Senate-  Introduced 1/17/2017	This bill would enact the Cannabis State Payment Collection Law and would authorize the State Board of Equalization or a county to collect cash payments from cannabis-related businesses for a state agency that administers any fees and charges payable by a cannabis-related business if that state agency has entered into an agreement with the county.

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