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## Marijuana

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During the 2017 legislative session, the General Assembly considered measures recommended by an interim committee studying marijuana and measures related to taxes, the gray market, business licensing, the Governor's Office of Marijuana Coordination, crimes, and private consumption clubs.

### Interim Committee

The Cost-benefit Analysis of Legalized Marijuana in Colorado Interim Committee met during the 2016 interim and recommended five bills to the General Assembly, four of which were enacted.

*House Bill 17-1221* created the Gray and Black Market Marijuana Enforcement Grant Program in the Department of Local Affairs. The program is designed to award grants to local law enforcement agencies and district attorneys to cover investigation and prosecution costs associated with unlicensed marijuana cultivation or distribution operations conducted in violation of state law. The bill also created an offense for a person who is not a primary caregiver for possessing a marijuana plant that the person is growing on behalf of another individual.

*Senate Bill 17-015* created a level 2 drug misdemeanor for a person not licensed as a medical or retail marijuana business who attempts to sell marijuana, marijuana concentrate, or a marijuana-infused product by placing an advertisement in print or online. The bill exempted primary caregivers who

advertise their availability to prospective clients.

*Senate Bill 17-017* added post-traumatic stress disorder (PTSD) as a disabling medical condition, creating a statutory right for a patient diagnosed with PTSD to use medical marijuana. The bill created the same rights, limitations, affirmative defense, exceptions from criminal laws, and conditions for use of medical marijuana by a patient for PTSD as the constitutional right to use medical marijuana for other debilitating medical conditions. The bill also established procedures for the use of medical marijuana for PTSD by patients under the age of 18.

*Senate Bill 17-025* required the Department of Education, with assistance from the Department of Public Health and Environment and the Marijuana Educational Oversight Committee, to create and maintain a resource bank of evidence and research-based program materials and curricula pertaining to marijuana. The materials in the resource bank must be made available without charge to school districts, charter schools, and Boards of Cooperative Educational Services. The bill authorized the use of the Marijuana Tax Cash Fund to cover expenses related to developing and maintaining the resource bank and providing technical assistance to schools.

### Taxes

During the 2017 legislative session, the General Assembly considered several pieces

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of legislation related to the taxation of marijuana. *House Bill 17-1203* authorized counties and statutory cities to collect voter-approved special sales taxes on retail marijuana, aligning their authority to tax retail marijuana with that of the state and home rule municipalities provided under *Proposition AA*, passed by voters in 2013. The bill specified that the county special sales tax only applies to retail marijuana sales within a municipality with its own special sales tax on retail marijuana if the county and municipality enter into an intergovernmental agreement regarding the county tax.

The state special sales tax rate on retail marijuana was scheduled to decline from 10 percent to 8 percent starting July 1, 2017. *House Bill 17-1345*, which was recommended by the Joint Budget Committee and postponed indefinitely by the Senate Finance Committee, would have maintained the special sales tax rate of 10 percent on retail marijuana. *Senate Bill 17-267*, in addition to many other changes to state law, increased the state special sales tax rate on retail marijuana to 15 percent – the maximum the General Assembly is allowed to increase the rate without voter approval under Proposition AA. The bill also adjusted the distribution of the special sales tax revenue between the state and local governments, reallocated the special sales tax revenue between the Marijuana Tax Cash Fund, the State Public School Fund, and the General Fund, and exempted retail marijuana sales from the 2.9 percent state sales tax.

*Senate Bill 17-192* made several changes related to the taxation of retail marijuana, specifically involving the 15 percent excise tax that is collected when marijuana is transferred from a cultivation facility to a retail store or product manufacturing facility. The Department of Revenue uses the average market rate (AMR) to calculate the excise tax for these transactions. SB 17-192 made changes to the provisions for calculating the AMR and increased how often the AMR is calculated by the department from two to four times per year. The bill also made several

changes to the regulation of medical and retail marijuana.

### The Gray Market

In addition to HB 17-1221, the General Assembly also passed *House Bill 17-1220* to address issues related to the gray and black marijuana market. The bill limited the number of marijuana plants that may be possessed or grown on a residential property to 12 plants, regardless of whether those plants are for medical or retail use. A medical marijuana patient or primary caregiver with an extended plant count may possess or grow up to 24 plants on a residential property if expressly permitted by local law.

### Business Licensing

*House Bill 17-1034* made several changes to the Medical Marijuana Code to mirror the Retail Marijuana Code, including creating a Medical Marijuana Business Operator license, giving licensees the opportunity to remediate a product that tests positive for the presence of a microbial, and allowing medical marijuana licensees to relocate anywhere in Colorado if state and local permission is granted. The bill also allowed medical marijuana-infused products manufacturers to buy marijuana from and sell marijuana to another medical marijuana-infused products manufacturer.

*House Bill 17-1197* excluded marijuana from the definition of farm products in the Colorado Farm Products Act, thereby exempting marijuana businesses from the requirement that they be licensed and bonded by the Department of Agriculture for purchasing and storing agricultural products.

*House Bill 17-1367* created two new medical marijuana licenses – a Marijuana Research and Development License, which allows the licensee to possess marijuana for specific limited research purposes, and a Marijuana Research and Development Cultivation License, which allows the licensee to grow,

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cultivate, possess, and transfer marijuana for specific limited research purposes. The bill also allowed medical research facilities to obtain marijuana from licensed marijuana cultivation facilities and marijuana product manufacturers for use in research studies funded by the Medical Marijuana Health Research Grant Program. The bill directed the Department of Revenue to promulgate rules that authorize pesticide manufacturers to conduct research to establish safe and effective protocols for the use of pesticides on medical and retail marijuana.

*Senate Bill 17-187* authorized the Department of Revenue to exempt from the medical or retail marijuana occupational license residency requirement for up to two years someone enrolled in a marijuana-based workforce development or training program that will require access or employment within a licensed medical or retail marijuana business.

Under current law, a medical marijuana licensee may purchase up to 30 percent of its total on-hand inventory of medical marijuana from another licensed medical marijuana center. *Senate Bill 17-111*, which was vetoed by the Governor, would have allowed the Department of Revenue to set this percentage in rule at a percentage not lower than 30 percent. The bill would have allowed medical marijuana to be transferred from a medical marijuana center to another medical marijuana center or medical marijuana-infused product manufacturer if all direct beneficial owners of the licensed businesses were the same without this percentage limit applying.

### Governor's Office of Marijuana Coordination

The Governor's Office of Marijuana Coordination was created by the General Assembly in 2014 to coordinate all state agencies that provide information or education on marijuana, or promulgate rules regarding marijuana use, sale, and regulation to maximize efficiency and ensure coordinated strategies in the government's response to the

legalization of marijuana. *House Bill 17-1295* repealed the office.

### Crimes

*House Bill 17-1266* created the ability for defendants convicted of a misdemeanor offense for the use or possession of marijuana to petition to seal their criminal records if the same act would not have been a criminal offense if the act occurred on or after December 10, 2012. *House Bill 17-1333*, which was postponed indefinitely by the House Judiciary Committee, would have also allowed individuals convicted of marijuana cultivation offenses to seal their records.

*Senate Bill 17-178* prohibited a court from requiring, as a condition of bond, that a person who possesses a valid medical marijuana registry identification card abstain from using medical marijuana.

### Private Consumption Clubs

The General Assembly considered two bills, both of which were lost, related to the operation of marijuana consumption clubs. *Senate Bill 17-063*, which was postponed indefinitely by the Senate Business, Labor, and Technology Committee, would have created a Marijuana Consumption Club License to allow marijuana consumption clubs to operate in local jurisdictions that obtained voter approval. A licensed marijuana consumption club would have been able to allow its patrons to purchase and consume retail marijuana and retail marijuana products on-site. The rerevised version of *Senate Bill 17-184*, which was deemed lost after the conference committee report failed to pass in both chambers, would have defined "open and public" consumption of marijuana. The bill also would have allowed the governing body of a local jurisdiction to adopt an ordinance or resolution authorizing marijuana consumption locations or circumstances that were exceptions to the prohibition on open and public consumption of marijuana under certain circumstances.