

## TOP TEN THINGS TO KNOW ABOUT NEVADA'S QUESTION 2 "Regulation and Taxation of Marijuana Act" November 8, 2016, Ballot

1. **The Basics:** Question 2 is an indirect initiated state statute (the "Act"). Question 2 legalizes the possession, purchase, transportation and consumption of one ounce or less of marijuana (and one-eighth of an ounce or less of concentrated marijuana) for those 21 years of age and older. Additionally, the Act legalizes the cultivation of up to six marijuana plants for personal use and possession (and up to 12 plants at a single residence at one time) so long as the personal cultivation of marijuana does not occur within 25 miles of a retail marijuana store.
2. **State Regulation:** The measure establishes the Department of Taxation (DOT) as the regulatory agency in charge of all facets of recreational marijuana implementation. Question 2 requires the DOT to complete rulemaking not later than 12 months after the effective date of the Act, which is defined as Jan. 1, 2017. Therefore, the DOT must complete all rulemaking "necessary or convenient" to carry out the Act. This includes, among other things, all regulations controlling the manner in which licenses are approved, renewed, suspended or revoked; regulations controlling packaging and labeling of marijuana and marijuana products; regulations related to marketing, record keeping, and collection of taxes; regulations establishing the fair market value of marijuana; and the establishment of civil penalties for violation of any regulation passed by the DOT. This is an incredible burden for one agency to handle within 12 months.
3. **State Licensure:** Question 2 establishes an 18-month period, commencing on Jan. 1, 2017, during which only those who currently hold a medical marijuana establishment registration may apply for a retail marijuana store license, a marijuana product manufacturing facility license, or a marijuana cultivation facility license. However, if the DOT determines that an "insufficient number of marijuana distributors" will result from this limitation, it may issue licenses to other applicants. Question 2 does not define how the DOT should interpret what constitutes an "insufficient" number of distributors.
4. **Local Government Authority:** Question 2 allows local governments to adopt and enforce local marijuana control measures in the form of zoning and land use regulations, but only so far as these measures relate to marijuana establishments. However, it does not give an "opt-out" to local governments who do not wish to have recreational marijuana sales within their jurisdictions.
5. **Caps on Retail Licenses:** Question 2 caps the number of retail marijuana stores that may be located in each county according to the county's population. If the population is greater than 700,000, retail licenses are capped at 80. For counties with a population between 100,000 and 700,000, retail licenses are capped at 20. Four licenses may be issued in counties with a population between 55,000 and 100,000. Two licenses may be issued in those counties with a population below 55,000. However, the Act does allow a county that desires a greater number of retail marijuana establishments than allowed under the pre-established caps to request the DOT issue more licenses.
7. **Employer Issues:** Question 2 does not restrict a public or private employer's right to adopt workplace policies that restrict actions or conduct of employees that is otherwise permitted under the Act. However, the language is silent about off-premise use where an employee arrives to work under the influence of marijuana. Until Nevada courts address this issue, it is unclear whether an employer may terminate or discipline an employee who uses marijuana off-premises.

8. **Health and Safety:** Question 2 includes zero guidance to the DOT about packaging and labeling regulations for edibles. Edibles have been shown to cause the greatest risk to children, who often mistake them for cookies and/or candies. Further, Question 2 does not provide a mechanism whereby the state’s Department of Health and Human Services or other relevant agencies may weigh in on the DOT’s rulemaking.
  
9. **Financial Impact to the State and Local Governments:** Question 2 imposes a 15 percent excise tax and the typical sales tax rates apply to recreational sales of marijuana. The text of the initiative prioritizes repayment from net revenues to the DOT and each locality for costs incurred in carrying out the statute’s implementation. While Question 2 allocates the net revenue generated to the state’s Distributive School Account, those dollars are limited to “support of K-12 education,” though this phrase is not defined within the initiative.
  
10. **Federal Law:** Regardless of the passage of Question 2, marijuana remains illegal under federal law. This means that universities cannot conduct research on marijuana without fear of losing their federal funding, that banks cannot take money from marijuana proceeds without fear of federal seizure or enforcement action, and that interstate transportation of marijuana products is subject to federal trafficking enforcement.

Communities and public and private entities are facing significant legal and practical challenges related to the use of cannabis, powdered alcohol, e-cigarettes and other new, but quickly expanding, industries that have high consumer demand. Brownstein Hyatt Farber Schreck’s Emerging Regulated Industries (ERI) practice group is made up of seasoned attorneys and policy advisors with extensive knowledge in this unique arena. ERI’s clients are not marijuana industry companies. Rather, our clients include hospitality companies such as theme parks, hotels, cruise lines, casinos and dining venues, as well as universities, hospitals, health care companies, pharmaceutical conglomerates, state and city governments and law enforcement agencies. We assist these entities when they are facing legal uncertainty about how marijuana-permissive laws apply to their operations, the rapid pace of changing laws and regulations at the state and federal level and implementing or complying with current regulations while still meeting strategic goals in an often contentious and time-sensitive environment.



**Melissa Kuipers Blake**  
*Senior Policy Advisor and  
Counsel*  
mkblake@bhfs.com  
303.223.1164



**Bill C. Berger**  
*Shareholder*  
bberger@bhfs.com  
303.223.1178



**Gina L. Tincher**  
*Associate*  
gtincher@bhfs.com  
303.223.1255



**William E. Moschella**  
*Shareholder*  
wmoschella@bhfs.com  
202.652.2346