

## TOP TEN THINGS TO KNOW ABOUT CALIFORNIA'S PROPOSITION 64

### The "Control, Regulate and Tax Adult Use of Marijuana Act;" Nov. 8, 2016 ballot

- 1. The Basics:** Prop. 64 is a voter-initiated statute legalizing nonmedical use/possession of 1 oz. or less of loose marijuana and up to 8 grams of marijuana products for those 21 and older. It also legalizes personal cultivation of up to six marijuana plants indoors or outdoors, so long as the plants are not visible from a public place.
- 2. State Regulation:** Prop 64 creates a Bureau of Marijuana Control (the "Bureau"), which will begin issuing licenses on Jan. 1, 2018. The Bureau will regulate both nonmedical (recreational) and medical marijuana. As drafted, Prop. 64 is missing critical components, including: caps on potency, serving sizes, and numbers of licenses one person/company may obtain; and limits on whether or not the same person/company may grow it, package it and sell it or whether this has to be done separately (vertical or horizontal integration).
- 3. Municipalities and Control:** Local municipalities may establish additional zoning and permitting requirements that are more stringent than state standards in some circumstances, but may ban marijuana businesses only if approved by voters. Prop. 64 does NOT allow municipalities to ban personal cultivation within private residences (but does allow them to ban outdoor cultivation on the property of private residences). However, even if a municipality bans or regulates marijuana, it will still have to deal with the black and "grey" markets. In other words, legalizing marijuana does not mean everyone will play by the rules. Another area of serious concern to municipalities is the dramatic increase in homelessness seen in states like Colorado post-legalization.
- 4. Water Issues:** Prop. 64 states that one goal of the statute is to ensure efficient water use and minimization of water waste. It creates a fund to restore land damaged by illegal marijuana grow operations, but does not delineate who may seek compensation from that fund. Prop. 64 also requires the development of standards for the use of pesticides in marijuana cultivation. Because pesticides are regulated by the federal government, there are no federally approved uses for pesticides on marijuana.
- 5. Public Health and Safety:** Edibles are arguably one of the biggest concerns local governments and employers have to consider when dealing with marijuana legalization. There is a huge misconception among the public, and especially children, that if marijuana is legal then it is safe. Prop. 64 requires marijuana and marijuana products to be placed in re-sealable, child-resistant packaging that "shall not be made to be attractive to children" or easily confused with commercially sold candy or foods. These ambiguous standards will likely result in litigation, as edibles are among the most lucrative areas for the marijuana industry. Additionally, while it creates a 600-foot ban on cultivation and sales licenses around schools/daycares, the state should expect huge legislative activity around this issue by the marijuana industry for the same reasons.
- 6. Criminal Records and Convictions:** Prop. 64 authorizes courts to resentencing certain drug offenders, as long as the person does not pose a public safety risk, which is determined by the court. It also allows courts to re-designate or dismiss certain drug offenses from the criminal records of persons who have completed their sentences. This creates a significant risk for local governments and employers. For example, if a violent offender commits a violent crime and a drug crime, but pleads only to the drug violation in exchange for dismissal of the violent crime, courts could release that individual back into the community. Another risk for increased violent crimes is the lack of a banking mechanism for the marijuana industry. Because the federal government regulates banks, marijuana businesses are forced to keep large amounts of cash on hand, leading to increased risk of violent crimes such as robberies.

7. **Employer Issues:** Prop. 64 states that it does not alter or amend the rights and obligations of public and private employers to maintain a drug- and alcohol-free workplace or require employers to permit or accommodate use of marijuana in the workplace, or affect the ability of employers to have policies prohibiting the use of marijuana by employees and prospective employees. But until California courts address the issue, it is unclear whether an employer may terminate or discipline an employee who uses marijuana off-premises.
8. **Private Property Owners:** Prop. 64 does not alter an individual's or private entity's right to prohibit or restrict consumption, possession, cultivation, etc., on their own privately owned property. Because local governments may not ban personal cultivation in a private residence, it will be incumbent upon private property owners to include restrictions in leases in order to protect themselves.
9. **Local Government Obligations:** Prop. 64 places a burden on local jurisdictions to identify for the state those license applicants who have operated under and complied with the state's medical marijuana laws. This will be a huge burden on local government and is an unfunded mandate.
10. **Marijuana Revenues:** Prop. 64 requires the state controller to allocate certain amounts of marijuana proceeds to the Governor's Office of Business and Economic Development for various programs targeting issues such as job placement, mental health treatment, dropout prevention, and substance abuse treatment. It does not include money for student/youth education, only substance-abuse education programs.

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