



## Impact of the Regulation and Taxation of Marijuana Act (“RTMA”)<sup>1</sup> on Businesses, Government, Public Safety & Health and Families<sup>2</sup>

The bottom-line question for Arizona businesses is which of the following will increase under RTMA?

- a) Productivity costs
  - b) Health-care costs
  - c) Liability
  - d) Litigation costs
  - e) Impact on public safety and national security
  - f) **ANSWER: All of the Above**
- 
- There is no “opt-out” provision in RTMA for businesses that have federal contracts or are subject to federal workplace drug-free laws. Businesses must comply with both state *and* federal law.
  - RTMA limits an employer’s ability to prevent employees from working while impaired by marijuana consumed outside the workplace. ***Proposed A.R.S. §§ 36-2860(A)(1); 36-2852(B).***
    - Employers will only be able to take adverse action against a marijuana-using employee if the employee is (1) actually impaired on the job, and (2) “performing” a task that would (3) “constitute negligence or professional malpractice.” ***Proposed A.R.S. § 36-2852(A)(7).***
    - This not only limits an employer’s control over their own business operations, but *increases* their legal liability.
    - Employer discipline stemming from employee negligence or professional malpractice while impaired by marijuana is not only perfectly discoverable in private tort suits but also essentially an admission of vicarious liability on the part of the employer to those harmed by impaired-employees’ acts.
    - Furthermore, it is absurd for an employer to have to wait for disaster before taking adverse action against an employee high on marijuana.
  - Employers would no longer be able to make employment offers conditional on passing a drug test for marijuana and its metabolites. ***Proposed A.R.S. § 36-2860(A)(1).***

---

<sup>1</sup> The RTMA can be viewed in its entirety at:

<http://apps.azsos.gov/election/2016/general/ballotmeasuretext/i-08-2016.pdf>

<sup>2</sup> Analysis of legal impact of RTMA prepared by attorneys from Snell & Wilmer L.L.P.

- An employee whose job offer was rescinded because of a positive marijuana drug test would be entitled to unemployment insurance benefits — contrary to current law. **Proposed A.R.S. § 36-2860(A)(1); A.R.S. §§ 23-776(D); 23-776(D)(1).**
- While RTMA allows an employer to “restrict” an employee’s ability to consume marijuana outside the workplace, it is silent on the content of appropriate restrictions — this silence is an invitation to expensive legal challenges to workplace restrictions attempted by businesses in response to RTMA. **Proposed A.R.S. § 36-2852(B).**
  - After Arizona legalized medical marijuana, employers encountered difficulties receiving discounted insurance policies for employers that maintain a zero-tolerance, drug-free workplace. This problem would worsen under RTMA. <http://www.kpho.com/story/29393273/az-medical-marijuana-law-strong-for-workers-expensive-for-businesses>; **A.R.S. § 23-961(H).**
  - RTMA prohibits the State from penalizing a person “solely because” a person tests positive for marijuana. Thus, agencies that deal with administering and deciding employment-related benefits might not be allowed to decline benefits simply because a person tested positive for marijuana. **Proposed A.R.S. § 36-2860(B).**
- RTMA would hamper military leaders’ ability to ensure that those they lead are military-ready at all times.
  - RTMA could impact the Arizona National Guard’s federal funding, if the Department of Defense determines that the National Guard can no longer follow the Department’s drug-testing policies under Arizona law.
- RTMA would prohibit the state from prosecuting drivers based solely on a positive marijuana test, and would hinder the State Legislature from passing any future THC-DUI *per se* statutes, all of which increases the occurrence of drivers on Arizona roads who are impaired by marijuana. **Proposed A.R.S. § 36-2860(B).**
  - RTMA’s prohibition against *per se* DUI laws is not limited to those over 21 years of age, potentially protecting even underage marijuana users that drive and test positive for marijuana. **Proposed A.R.S. § 36-2860(B).**
- Governments could not prohibit off-duty law enforcement officers, fire personnel, and paramedics from consuming marijuana, making for potentially impaired first-responders in an all-hands emergency. **Proposed A.R.S. §§ 36-2860(A)(1); 36-2852(B).**
- Overall, RTMA presents a general public safety concern by causing increased marijuana use and a decrease in the ability to effectively regulate it through law enforcement.
  - The National Survey on Drug Use and Health (NSDUH), sponsored by DHHS and released December 2015, found that 31% of Colorado young adults ages 18-25 are regular marijuana users. Colorado began to sell marijuana ‘like alcohol’ in 2014.
- A conundrum becoming familiar to family courts will worsen under RTMA: family court judges now face the opposing forces of (1) a parent with a medical marijuana license asking a judge

not to restrict their parenting time based on use and (2) the judge's duty to protect minor children from harm in matters before the court.

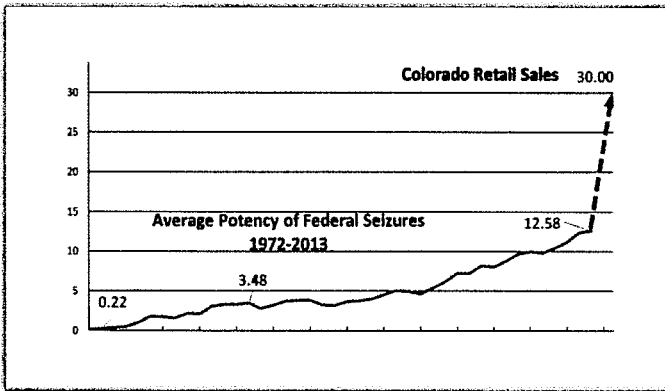
- RTMA makes it *affirmative* that a marijuana user may not be denied custody of, visitation of, or parenting time with a minor child solely because of conduct legalized by RTMA. ***Proposed A.R.S. § 36-2860(D).***
- With few exceptions, landlords, both commercial and residential, will not be able to prohibit the possession or consumption of marijuana on their properties; drug-free zones will become a thing of the past. ***Proposed A.R.S. § 36-2852(C) and (D).***
- Both worker productivity and health care costs will increase for businesses. On the latter, we can expect an increase in ER visits by failed childproofing of marijuana or from the potent marijuana edibles.
- Under RTMA, a locality cannot ban a retail dispensary from opening there if a locality has a "medical marijuana" dispensary. ***Proposed A.R.S. §36-2856(B)(2).***
- The law will allow for marijuana delivery - like pizza - after the year 2020. ***Proposed A.R.S. §36-2854(A)(2).***
- The proposed law will give preference for marijuana retail licenses to those already in the medical marijuana industry. It provides that licenses shall be issued exclusively to those businesses prior to being made available to newcomers to the industry. ***Proposed A.R.S. §36-2854(B) and §36-2851(17).***

Paid for by Arizonans for Responsible Drug Policy. Major funding by the Arizona Lodging and Tourism Association and the Arizona Chamber of Commerce & Industry.

# LEGALIZED MARIJUANA: FAST FACTS on the Harms and Risks

## Today's Marijuana: a Powerful Drug

Today's marijuana is a harmful, psychoactive, addictive substance that is much more potent than ever before—at least five times more powerful than the marijuana of the 1970s. (National Institute of Drug Abuse, NIDA)



## A Look Into the Future

Marijuana use profoundly changes the brain's structure and functioning and negatively impacts memory, attention, and learning skills. It causes paranoia and psychosis in higher doses. Compared with their peers who don't use, students who use marijuana receive lower grades and are more likely to be suspended or drop out of high school. (New England Journal of Medicine; Lancet Psychiatry)

### Drop in Intelligence

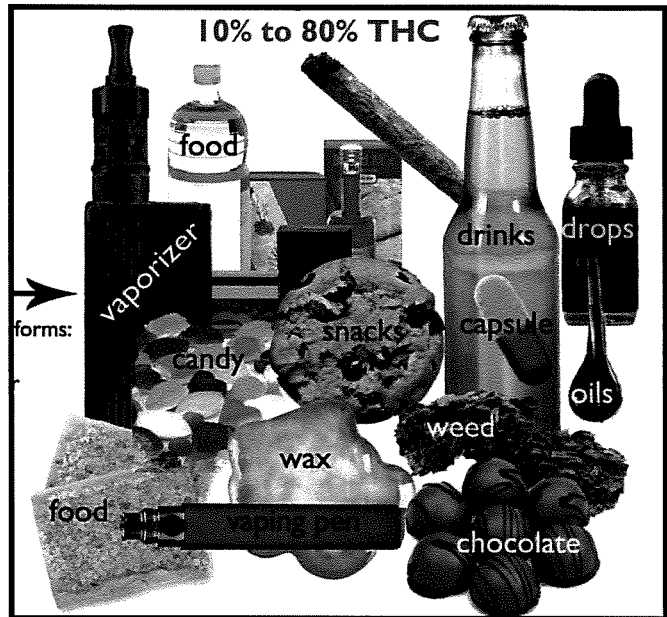
A major study proves marijuana is harmful to the developing brain. Early, long-term use found to lower IQ by 7-8 points. (NIDA)

### Marijuana: An Addictive Drug

17% of youth who start using marijuana in their teens will become dependent upon it. Those who use marijuana daily are 25 to 50% more likely to become dependent/addicted. (NIDA)

### 1 in 3: Marijuana Use Disorder

Nearly 1 in 3 regular marijuana users suffer from use disorder characterized by inability to quit using and failure at major life goals such as school, home and work. (JAMA Psychiatry 2015)



## What's Happening in States with Legalization?

Colorado now has the highest use rate of marijuana in the nation. Teen illicit use is 74% higher in Colorado than the national average—a 20% increase since 2012. (2015 SAMHSA Report)

Increase in marijuana-related traffic fatalities, hospitalizations, and emergency room visits as well as marijuana-related calls to poison control centers. (Rocky Mountain HIDTA)

In marijuana-friendly states, accidental ingestion by youth is up over 600 percent. (Journal of Clinical Pediatrics)

Black market is thriving, hiding in plain sight in Colorado. A recent AP report says: "Illegal drug traffickers are growing weed among [Colorado's] sanctioned pot warehouses and farms, then covertly shipping it elsewhere and pocketing millions of dollars from the sale." (AP Jan. 2016)

### MEDICAL ASSOCIATIONS OPPOSE LEGALIZATION

- American Medical Association
- American Psychiatric Association
- American Academy of Pediatrics
- American Academy of Child and Adolescent Psychiatry
- American Cancer Society

Paid for by Arizonans for Responsible Drug Policy. Major funding by the Arizona Lodging and Tourism Association and the Arizona Chamber of Commerce & Industry.

**ARIZONANS**  
For Responsible Drug Policy

# EMPLOYERS and BUSINESSES

## FAST FACTS Harms and Risks of MARIJUANA

**Marijuana Use Disorder** Nearly 1 in 3 (30%) of regular marijuana users suffers from diagnosable “use disorder” characterized by failure at major life goals such as work, school and home, the need to use more and more, and problems when they try to quit using.<sup>1</sup>

**Worker Productivity and Safety** Workers who use marijuana are more likely to experience tardiness, accidents, workers’ compensation claims, job turnover and a 75% increase in absenteeism.<sup>2</sup>

**Accidents** Workers who test positive for marijuana use have 55% more industrial accidents and 85% more injuries.<sup>2</sup>

**Drug Impairment** The drug marijuana is addictive, impairs short-term memory, attention, judgment, cognitive functions, coordination and balance, increases heart rate and can cause psychotic episodes.<sup>3</sup>

**How long does marijuana impairment last?** Impairment can last 24 hours or more. In one study nine pilots flew in an aircraft simulator prior to smoking, 15 minutes after using marijuana and again 4, 8 and 24 hours after smoking what was considered to be a moderate dose of marijuana. Seven pilots showed some degree of impairment 24 hours after smoking.<sup>4</sup>

**Health risks** Heavy marijuana abusers self-reported that their use had negative effects on their cognitive abilities, career status, social life and physical and mental health.<sup>5</sup>

**Driving risks** Because marijuana impairs judgment and motor coordination and slows reaction time, drivers with THC in their blood, particularly higher levels, are three to seven times more likely to be responsible for the accident than drivers who had not used drugs or alcohol.<sup>6,7</sup> Fatal car crashes that involved marijuana tripled in the past decade.<sup>8</sup> The 2014 National Roadside Survey of Alcohol and Drug Use by Drivers reports that drivers with marijuana in their system grew by nearly 50%.<sup>9</sup>

### Revenue pales in comparison to costs to society

Anticipated revenue from the taxation of marijuana will not come anywhere close to legal marijuana’s costs to society. While the legalization movement talks only about potential income, it never mentions the costs to society such as treatment, rehabilitation, counseling, accidents, enforcement, criminal violations, school suspensions, drop-outs, and other education deficits.

Consider the economic reality of alcohol where the tax revenue collected pales in comparison to its costs to society. Estimated cost to Arizona taxpayers for alcohol-related lost productivity, health care, and criminal justice is \$2.5 billion/year. <http://www.ajpmonline.org/article/S0749-3797%2815%2900354-2/fulltext>. Published 10/1/15.

### COLORADO REVENUE FY15

Marijuana tax revenue (medical and recreational) for FY2015 comprises 0.7% of Colorado’s total general fund revenue. *Rocky Mountain HIDTA p. 143 (Colorado Office of State Planning and Budgeting, June 2015 Forecast 11 months of data).*

1 <http://www.nih.gov/news-events/news-releases/prevalence-marijuana-use-among-us-adults-doubles-over-past-decade>

2 Zwerling C, Ryan J, Orav EJ. “The efficacy of pre-employment drug screening for marijuana and cocaine in predicting employment outcome.” *Journal of the American Medical Association* 264(20): 2639-2643, 1990

3 <http://www.drugabuse.gov/publications/drugfacts/marijuana>

4 Leirer VO1, Yesavage JA, Morrow DG. Marijuana carry-over effects on aircraft pilot performance. *Aviat Space Environ Med.* 1991 Mar;62(3):221-7

5 Gruber AJ, Pope HG, Hudson JI, et al. Attributes of long-term heavy cannabis users: A case control study. *Psychological Medicine* 33(8): 1415-1422, 2003

6 <https://www.drugabuse.gov/publications/research-reports/marijuana/does-marijuana-use-affect-driving>

7 Richer, I., and Bergeron, J. Driving under the influence of cannabis: Links with dangerous driving, psychological predictors, and accident involvement. *Accid Anal Prev* 41(2):299-307, 2009

8 Brady, Joanne E. and Li, Guohua. Trends in Alcohol and Other Drugs Detected in Fatally Injured Drivers in the United States, 1999-2010. *Am. J. Epidemiol.* (2014) 179 (6): 692-699. doi: 10.1093/aje/kwt327

9 <http://www.nhtsa.gov/Driving+Safety/Research+&+Evaluation/Alcohol+and+Drug+Use+By+Drivers>

## Drug use a problem for employers

By: The Gazette Op/Ed

March 24, 2015 at 5:45 am



Two families with deep Colorado roots — the Johnsons of Colorado Springs and the Haseldens of Centennial — have built rival commercial construction companies, each employing hundreds of people and reporting hundreds of millions of dollars in annual revenue. In business, they are practically sworn enemies.

See also: Teen: Colorado voters were duped

But there is at least one issue where the Haseldens and the Johnsons are in agreement and encourage key members of their staffs to collaborate: construction safety. It is of paramount importance, and all of their employees must be drug-free.

“I’ll get straight to the bottom line,” said Rick Reubelt, Haselden Construction’s director of environmental health and safety. “If you’re in the construction industry, marijuana use is not acceptable at any time, under any circumstance or condition.”

“He couldn’t have said it better,” said Jim Johnson, GE Johnson’s chief executive officer. “We endorse that stance, and this is one thing we absolutely unite on.”

Company hires out of state

Johnson said his company has encountered so many job candidates who have failed pre-employment drug tests because of their THC use that it is actively recruiting construction workers from other states.

The dwindling candidate pool especially affected GE Johnson during its trumpeted, \$57 million renovation of the luxurious Broadmoor hotel's West Tower in late 2013. The company had such a tough time staffing required shifts that Johnson said his team decided to abandon local job-recruitment efforts, pay current workers plenty of overtime wages and look outside Colorado for drug-free employees.

"This is a very troublesome issue for our industry, but I do not see us bending or lowering our hiring standards," Johnson said. "Our workplaces are too dangerous and too dynamic to tolerate drug use. And marijuana? In many ways, this is worse than alcohol. I'm still in shock at how we (Colorado) voted. Everyone was asleep at the wheel."

Since Colorado's 2009 boom in medical marijuana dispensaries and 2012 vote sanctioning the psychoactive drug's recreational use, many of the state's employers have had to confront marijuana's growing impact on their budgets, operations and staffing.

So far, the prevailing interpretations of Colorado's state amendments sanctioning marijuana use have sided with the rights of employers to terminate employees who use the drug even if their use is off the clock and premises and/or part of a healthcare regimen.

Marijuana-using workers are challenging those restrictions, claiming their employers have no right to regulate what they do during their free time. Though the U.S. Food and Drug Administration has not approved THC as a safe and effective drug for any condition, employees are using arguments of medical necessity against employers who don't tolerate marijuana use.

Hard to test lingering effect

Legal skirmishes also center on employee drug testing. Marijuana-using workers and lawyers representing the marijuana industry argue that a positive test showing low levels of THC does not meet the burden for proving impairment on the job. Unlike alcohol, marijuana can remain in a user's system for weeks. A heavy user who stops using can test positive for the next 60 days or more.

Therein lies a dilemma for workplace safety professionals like Reubelt. An employee who drinks over the weekend can be sober and safe to work on Monday. In the event of a workplace incident, it is relatively easy to determine whether alcohol was a factor.

Not so with marijuana. If an employee tests positive for low levels of THC, Reubelt said, it is nearly impossible to rule out impairment as a cause.

The company maintains a 100-vehicle fleet that travels the Rocky Mountain region, and Reubelt said he must be able to determine whether drivers are working under the influence.

“I don’t think it’s right to expect employers to deal with ticking-time-bomb situations like these,” Reubelt said. “The science is not available to show exactly how someone is affected by the marijuana they’ve used . . . marijuana isn’t voided from the body like alcohol... .”

Reubelt also worries about employees easily concealing their use of THC. A powerful concentration of the drug can be infused into brownies, cookies, candies and other food products that can be openly consumed without raising a red flag.

Reubelt said it’s all a threat to the bottom line. If an employee causes injury or death and then tests positive for THC, he believes the employer will pay.

“It’ll be a company owner long before it’s an individual employee,” he said.

While numbers show marijuana use is on the rise in Colorado, the state has not reported the drug’s impact on dynamics important to employers, such as absenteeism, accidents and worker’s compensation claims.

However, the number of workers nationwide who tested positive for marijuana jumped 6.2 percent from 2012 to 2013, according to the Quest Diagnostics Drug Testing Index. And the number of positive tests was dramatically higher among workers in Colorado (up 20 percent) and Washington state (up 23 percent). It was the first national spike in positive drug test rates recorded in 10 years — and one attributed largely to the use of marijuana and amphetamines.

Substance-abusing workers are more costly for companies than their drug-free colleagues.

A U.S. Postal Service study found that absenteeism is 66 percent higher among substance-abusing workers. The U.S. Department of Labor cites multiple studies showing higher use of health benefits among substance-abusing employees. It also found lower turnover among companies with substance abuse programs that include drug testing.

Small business especially hurt

Small businesses bear the brunt of workplace drug problems, the Department of Labor reports.

“I see it all the time,” said Jo McGuire, a Colorado Springs-based consultant who helps employers promote and maintain drug-free work environments and serves on the national board of the Drug and Alcohol Testing Industry Association.

“Small businesses often feel as if they don’t have the money to conduct regular, random drug testing programs, and they’re willing to gamble that they won’t need them,” McGuire said. “But



they really do need them because they're losing a lot more productivity and wasting far many more resources than they often realize. And if an accident happens, they're likely to be financially destroyed."

Even without data from the state, Leona Wellener, owner of Front Range Staffing in Colorado Springs, said marijuana use has compromised the state's workforce. In February, Wellener said, more than half the applicants who came to her company looking for work failed the required drug tests because of THC use.

Wellener said she's also seeing more people trying to cheat drug tests by passing off substances that are not their urine. Her firm has started asking people to take drug tests soon after walking in the company's door for the first time.

"I'm not wasting my time and money or my clients' time and money on people who use marijuana," she said. "If you can't pass a drug test right away, then we don't even want to interview you."

Chuck Marting, owner of Fort Morgan-based Colorado Mobile Drug Testing, urges his clients — and all Colorado business owners — to adopt clearly defined rules like Wellener's and apply them consistently.

Doing so, he explained, can preclude charges of discrimination. In the event of a workplace accident, evidence of clearly communicated and consistently enforced drug policies and testing could help employers defend themselves and mitigate financial damages, he said.

Marting also urges employers to avoid the misperception that everyone is using marijuana. He points to the 2013 National Survey on Drug Use and Health, which shows that a minority of American workers report illicit drug use.

"It's obviously not everyone, but those numbers will grow if employers don't set firm limits and stick to them," said Marting, who worked in law enforcement as a drug recognition expert for 17 years.

Marting said employees who do not use drugs urged one of his clients to begin administering drug tests. They were concerned about continual "screw-ups" by stoned co-workers.

"All of this is going to catch up with Colorado — and our country," Marting said.

### Day 3: YOUTHFUL ADDICTION

Protecting our children was a priority as the public headed to the polls to vote on Amendment 64. The most recent research on adolescent brain development and related addiction studies indicates this is more important than ever thought before. Adolescent exposure to marijuana is most troubling because young users are more vulnerable to addiction throughout their lives.

Post-legalization trends in Colorado raise concerns because regulation has fallen short of the promises made by the state. The increasing rate of pot use also is a concern of employers.

The reporting team: editorial board members Pula Davis and Wayne Laugesen and local reporter Christine Tatum.

After the first year of recreational pot sales, The Gazette takes a comprehensive look at the unintended consequences of legalizing sales and use of recreational marijuana.

Day 1: Colorado has a fragile scheme for regulating legal marijuana and implementing a state drug prevention strategy.

Day 2: One of the suppositions about legalizing pot was that underground sales would be curtailed, but officials say there is evidence of a thriving black market.

Day 3: One teen's struggle to overcome his marijuana addiction shows how devastating the effects of the drug can be for younger, more vulnerable users.

Day 4: Amid the hoopla about recreational marijuana sales, the medical marijuana industry is flourishing and has its own set of complicated concerns.