

Colorado, Washington race to define marijuana market

By: Jennifer Oldham and Alison Vekshin – March 6, 2013

DENVER - Colorado and Washington are racing to meet deadlines for a framework to regulate the sale of marijuana for recreational use, even as federal authorities weigh the future of the new industry.

Colorado has given its Revenue Department until July 1 to draft rules for pot farming, distribution and retailing after voters legalized possession by adults and sales in stores. Washington has set Dec. 1 as its deadline to have regulations in place.

"This is brand new and unprecedented," said Colorado state Rep. Dan Pabon, appointed to Gov. John Hickenlooper's task force to devise how to implement the law. "There's not a lot of evidence we can look to, other than using deductive reasoning, to determine the best course."

Both states are proceeding knowing they could be stopped at any point by the federal government, which deems marijuana a controlled substance and cracked down on state-sanctioned medical-marijuana operations in California in 2011.

"We are considering what the federal response to those new statutes will be," U.S. Attorney General Eric Holder said at a Senate Judiciary Committee hearing Wednesday. "We will have the ability to announce what our policy will be relatively soon."

In a letter to the committee, nine former Drug Enforcement Administration chiefs urged "federal intervention and preemption" to stop legalization in Colorado and Washington to protect the nation's health and safety.

Estimates for the market, if legalized nationwide, vary from \$10 billion to \$120 billion a year, with \$35 billion to \$45 billion being likely, according to data compiled by Bloomberg. Tax collections from such sales could reach \$9 billion to as much as \$20 billion, according to Brad Barker, a Bloomberg Industries analyst, who cited projections by the Cato Institute, a nonprofit research group, and the Congressional Research Service in a March 1 report.

Save prostitution in Nevada, few examples exist of industries that are legal at the state level while restricted by federal law. State officials are without a framework for building a legal industry out of an underground one.

The closest parallel is Prohibition, an era ushered in by the 18th Amendment to the U.S. Constitution, which in 1920 forbid the manufacture, sale and distribution of alcohol. It was repealed in 1933 under the 21st Amendment, which gives states authority to regulate the sale of alcohol within their borders.

One key difference is that infrastructure, such as former bars and breweries, remained in place for use when alcohol was allowed again.

Medical marijuana dispensaries in both states are interested in converting their business into distributors of recreational pot. Colorado is home to about 500 dispensaries. Washington has no estimate, according to Donn Moyer, a spokesman for the state health department.

Shy Sadis, 40, founder and chief executive officer of The Joint, a Seattle-based medical-marijuana dispensary opened in 2010, wants to transform his shop to a retail store once the new rules go into effect.

"We want to be for-profit instead of nonprofit," he said. "It's going to make my sales jump tremendously."

Attorneys, real estate agents, insurers and accountants also are tapping in.

"We predict the market will be four to five times bigger than the current market," said Brian Vicente, a Denver-based lawyer who said he has advised many of Colorado's medical-marijuana dispensary operators. "There are about 500,000 people who admit to using medical marijuana once a month, so quite a few people who are not medical marijuana patients will be going to these new stores."

Vicente, who co-authored Amendment 64, the Colorado initiative that legalized recreational marijuana use, said he tripled his office space in February to deal with an influx of new business when he moved from a cramped third-story walk-up into a brick mansion across the street.

"We're at the dawn of a new industry," Vicente said. "We're looking essentially at going from an annual business of zero to an annual business of hundreds of millions of dollars in just a few years."

In Washington, Robert McVay, a lawyer with Seattle-based Harris & Moure PLLC, which has helped open medical-marijuana dispensaries in the state, said the new law is conservative about retail pot sales and use.

"People want to open things like Amsterdam-style cafes, but frankly it's not allowed under current law," he said. "A lot of these extravagant and unique business ideas that are brought to us - we have to rain on people's parades."

Adults ages 21 and older already can legally possess up to one ounce (28 grams) of marijuana for recreational use in the two states. Marijuana sales remain illegal until the new rules are put in place.

A Colorado task force of state officials and legislators, dispensary representatives and residents completed work last week on plans to recommend that lawmakers draft bills to allow purchases by out-of-state visitors, restrict advertising, include the drug in a ban on smoking at bars and restaurants, and require labels on potency.

Colorado's legislature, which adjourns May 8, is required under the ballot initiative to revise the criminal code so adults 21 and over can possess an ounce of marijuana and consider how to impose a 15 percent excise tax on wholesale marijuana sales.

In Washington, where producers, processors and retailers will each pay a 25 percent tax on their selling price to the state liquor board, licenses for marijuana growers may be available by midyear and at year-end for retailers.

The state liquor board is seeking public input through forums that have been standing room only, said Brian Smith, an agency spokesman.

"There's a lot of passion about this issue," Smith said. "Many would like to see it limited to small growers."

Seattle also favors opportunities for small, locally owned companies over bigger firms, said Mayor Mike McGinn, who backs the measure and spoke at his first marijuana trade association meeting in January.

"This is kind of stock and trade for mayors to go to trade associations and talk to them about what's happening in government and how we can help their business - first time ever for marijuana," McGinn said in a telephone interview. "And what was unusual about it is it was just like all the other trade-association meetings I've been to."

In Denver, the City Council will decide in April whether to opt out of Amendment 64, joining scores of other Colorado communities in forsaking recreational marijuana.

The question of whether the federal government will prevent implementation of the new laws is creating uncertainty for state regulators. Colorado's Hickenlooper, 61, is in contact with the U.S. Attorney's office in Denver on the matter, said Eric Brown, a spokesman. Washington Governor Jay Inslee, 62, met in January with Holder to discuss the issue. Both governors are Democrats.

Other obstacles include a provision in the federal tax code that prevents state-licensed, medical-marijuana businesses from deducting expenses including advertising, rent and payroll costs, said Vicente, the Denver lawyer.

U.S. banks, which are supervised by federal agencies and subject to federal rules, can't offer services to the industry, including business loans.

Some banks "would welcome the opportunity to offer the services but they can't because of the federal government," said Robert Rowe, senior counsel at the American Bankers Association, a Washington, D.C.-based trade group. "They're afraid of what would happen if they tried to do something."

Congress must remove the controlled substance designation from marijuana for banks to work with pot businesses, Rowe said in a telephone interview.

A proposal to make that change was introduced Tuesday in Congress by Rep. Jared Polis, D-Colo.

In Seattle, The Joint's Sadis predicts the city will become the next Amsterdam.

"People are going to be coming here and when they come here they're going to want to get off the plane and experience cannabis," said Sadis, who said he plans to expand his business.

"It's such a great feeling to be one of the pioneers of this industry and seeing where it's going to go in the future," Sadis said.