



2018 Legislative Ag
Chairs Summit
January 5-7
Kansas City, MO

Breakout ID: Marijuana Regulation

Kristi Lee Kelly, Executive Director, Marijuana Industry Group

Marijuana Industry Group is Colorado's oldest, largest, most impactful and diverse trade association for Colorado's medical marijuana businesses. MIG is the first and only organization to develop the world's first legal and regulatory model. It also works with clients in other states.

Kelly referred to an [MIG chart](#) throughout her remarks.

"Cannabis" is an umbrella term that is used to describe both marijuana and hemp. Marijuana was bred for its medicinal properties. Hemp was bred for fiber. The main difference for regulatory purposes is that anything over .3 percent THC is categorized as marijuana.

Commercial cultivation can occur both indoors and outdoors. Methodology is largest based on the state in which it is grown, climate and economic potential.

Colorado was the first state to build a regulatory framework around marijuana. Colorado has the most tightly regulated marijuana economy and system in the world.

Colorado's policy objectives fulfill two programs – medical and adult use recreational. Both were adopted through constitutional ballot initiatives. They are not intended to have the same impact. They work side by side at times and in complete opposition at other times.

US Attorney General Jeff Sessions recently rescinded the Department of Justice guidance on marijuana. From MIG's understanding and legal analysis of the issue, state attorneys general will have greater autonomy to interpret and develop the enforcement priorities based on their own state's needs

Kristi Kelly concentrated on the **commonalities between the medical and recreational use models**. It is a very complex system but MIG strives for harmonization of the programs. Unlike other states, Colorado's laws are codified in its constitution. It doesn't have the ability to pass a law to retrofit a program. It is required to work under the confines of what is defined in the constitution for both medical and adult use recreational laws. From the beginning state leadership adopted multi-discipline, interdepartmental and stakeholder groups to address a number of issues so as not to become "the next Amsterdam."

Marijuana taxes are the eleventh largest source of tax revenue. Marijuana tax dollars fund advocacy research, public awareness and safety programs in the departments of health, transportation and addiction services counseling. Marijuana businesses cannot take federal standard tax deductions. They pay effective tax rates, in some cases, of about 80 percent. Colorado eased that burden by easing state deductions but it is unresolved at the federal level.

Colorado's marijuana programs have many **challenges**:

Pesticides – how to have an on-label listing for a product that isn't allowed to be on the label for safe levels of application.

Banking – how does a business that does not have access to merchant, financial and traditional banking services pay its taxes and its employees. Transactions may have to be conducted in cash. Banks that have chosen to work with the industry follow the federal Financial Crimes Enforcement guidance, but it comes at a huge compliance burden whose cost to have a bank account is passed on to the businesses.

Public health and environmental oversight - participating teams make decisions without bias. Public health departments are conducting public education programs that acknowledge medical efficacy research and are communicating without fear-based messaging. They are also producing materials in multiple languages.

Testing labs - are working on health and safety oversight issues using food, tobacco and location (indoor/outdoor) guidelines to establish what is acceptable. A stat- run seeds and sales program involves state oversight in every stage of the plant life cycle. Packaging, labeling and advertising restrictions make it materially difficult for kids to access products.

Limits on recreational purchases - (one ounce per customer per day) have been problematic due to ambiguities in constitutional language that complicated codification and the keeping of data on purchases. MIG is collaborating with companies to put guardrails around this issue and give businesses options that don't violate the constitution while allowing them to monitor how much a customer purchases.

Exceptions to prohibited sales to minors - for seriously ill children have had some problems in terms of identifying the parental caregiver, access to them and control over those purchases. Child protective services and child welfare have targeted parents of children, some of whom may have moved to Colorado, and have exhausted all other treatment options and financial resources.

Home cultivation - is permitted but has been an enforcement challenge. It is not practical to inspect every home grower to see that they are staying within the six plant limit or for building inspectors to check electrical upgrades and other up to code requirements to grow plants as well as that environmental controls such as humidity levels are appropriate. Many of the regulatory abuses occur in private home cultivation settings including hidden non-compliance, diversion and black market activity.

Kelly responded to questions from attendees on a number of issues:

Air quality and odor control for growers. Denver convened an odor control advisory body that recommended base guidelines for businesses, especially indoor growers. An [odor control plan](#) is part of the grower's application and applies retroactively to existing businesses

Data collection on the medical benefits of cannabis. The Colorado Health Department convened a [Health Retail Marijuana](#) advisory commission that is required, every two years, to [survey](#) all the new available data on specific condition sets and determine whether marijuana has a positive or negative impact on them. That information is publicly available.

Sharing with other states. Interstate commerce is a hindrance to state collaboration on growing and manufacturing but there are some regulatory collaborations. The Colorado Marijuana Enforcement Division has started to formalize an ongoing dialogue with other states on recreational marijuana.

Impaired driver rates, testing and equipment. Prior to legalization there was a task force for drunk driving. It added a seat to the task force for marijuana that Kristi occupies. On a monthly basis the [Task Force on Drunk and Impaired Driving](#) reviews traffic and fatality data recommends specific actions to address issues raised by the data. There are increases in fatalities and driver impairment but have not been attributed to marijuana use. Colorado's roadways were not designed to accommodate the state's exploding population. However, there are education barriers such as with people who think consuming marijuana makes them better drivers because it slows them down. Unfortunately, it also slows reaction times.

Drug recognition experts are being educated about testing procedures. There is a side by side test that the transportation department is using to compare how roadside sobriety tests identify impairment from marijuana versus other substances.

Banking and licensing. Banks and credit union transactions have to be done on a cash basis. A marijuana license in Michigan, for example, costs \$6000 that has to be paid in cash. This is an issue where the industry may have gotten ahead of policy. For five straight years there have been banking in Congress that that have been held up in committee.

Most bills have statutorily mandated start dates. There are votes on the floor to pass them if they could get out of committee.

The role of higher education. The National Institutes of Health has recently issued a strong request to loosen restrictions on research so as to address the opioid crisis. Universities in California, Colorado and Michigan have programs in their law and business schools that are studying marijuana.

Employer liability issues and workers compensation. Colorado is an at-will state. Employers can create their own drug policies.

Home cultivation. A home grower has to be in possession of the premises. The landlord would have to grant permission for a renter. There is no disclosure requirement for home growers. Six plants is the limit for each adult up to twelve plants per household.

Second-hand smoke. The incineration of marijuana continues to be an area of concern as a cause of cancer. Many people prefer to use other methods of consumption such as tinctures or personal vaporization pens (similar to e-cigarettes) or edibles. Colorado is considering the designation of safe and probably outdoor “consumption areas” for tourists and other travelers. Denver passed a consumption ordinance that requires all businesses to conform to the indoor clean air act where no combustible consumption is permitted.

Implementation costs compared to revenues. The Colorado medical marijuana program is entirely self-funded. License fees are set at a level to cover costs. Colorado is not allowed to take in more than is needed to fund the program. The addition of retail marijuana has created the ability to fund all these programs from tax revenue.