



Impact of the Regulation and Taxation of Marijuana Act (“RTMA”)¹ on Businesses, Government, Public Safety & Health and Families²

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).***

¹ The RTMA can be viewed in its entirety at:

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

² 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- An employee whose job offer was rescinded because of a positive marijuana drug test would be entitled to unemployment insurance benefits — contrary to current law.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.