

**MICHIGAN CHAMBER OF COMMERCE  
POLICY  
RELATING TO  
STATUTORY INITIATIVE TO LEGALIZE MARIJUANA  
APPROVED BY  
BOARD OF DIRECTORS  
SEPTEMBER 27, 2017**

The Michigan Chamber reaffirms its opposition to state and local efforts to legalize the adult recreational use of marijuana as it would threaten the ability of employers to maintain a safe and drug-free workplace.

**Background**

A coalition seeking to legalize the recreational use of marijuana in Michigan is circulating petitions in hopes of making the 2018 general election ballot. If approved, Michigan would be the ninth state to legalize marijuana, joining Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon and Washington.

The group pushing the initiative — the Coalition to Regulate Marijuana Like Alcohol (“Coalition”) — has ties to groups pushing this issue nationally, including the Marijuana Policy Project. The Coalition has indicated its intent to raise \$8 to \$10 million to get the issue on the ballot and get the measure passed in November 2018. The ballot proposal would:

- Allow adults 21 and older to possess, use and grow certain amounts of marijuana.
- Tax marijuana sales with a 10 percent excise tax at the retail level and the 6 percent sales tax.
- Split those revenues with 35 percent going to K-12 education, 35 percent to roads, 15 percent to the communities that allow marijuana businesses in their communities and 15 percent to counties where marijuana business are located.
- Allow local governments, or electors via ballot proposal, to limit or ban marijuana businesses.
- Restrict purchases of marijuana for recreational purposes to 2.5 ounces, but allow individuals to keep up to 10 ounces of marijuana in their homes and cultivate up to 12 plants for personal use.
- Require the Michigan Department of Licensing and Regulatory Affairs to regulate and license marijuana businesses, ranging from growers, transporters, testers and dispensaries.

Proponents of the 2018 statutory initiative to legalize the recreational use of marijuana make the following arguments in support of legalization:

- Prohibition has failed — marijuana use is mainstream and widespread.

- Prohibition is an immense waste of public resources, while marijuana taxation would bring in much-needed revenue.
- Arresting and prosecuting marijuana offenders prevents police from focusing on real crime.
- Prohibition sends an incredible number of Americans through the criminal justice system, ruining countless lives.
- There is no evidence that imposing criminal penalties on marijuana use reduces its use.
- Prohibition guarantees that marijuana cannot be inspected for purity and potency, thus creating possible health hazards as a result of contamination by dangerous pesticides, molds, bacteria, or even the lacing of marijuana.
- Unlike legal substances such as prescription opiates, alcohol, Tylenol, and even water, marijuana has never caused a single medically documented overdose death in recorded history.

The Michigan Chamber's opposition to the legalization of marijuana dates back to 2000 when a petition drive was undertaken to qualify a constitutional amendment for the ballot to legalize marijuana. Although the so-called "Personal Responsibility Amendment" failed to qualify for the ballot, the Michigan Chamber's Board of Directors voted to oppose any similar initiative for the following reasons: it creates a conflict with federal law; removes marijuana from the drug approval process within the federal Food and Drug Administration (FDA); raises concerns about the safety and health of employees; and sends a dangerous message to the future of the workplace because legalizing a substance erodes the perceived harm of the drug and its use.

The Michigan Chamber reaffirmed its opposition to legalization in 2016 when two groups were seeking ballot proposals to tax and regulate marijuana for individuals 21 and older. Those groups were unable to gather the required number of signatures in the statutorily mandated timeline to qualify for the ballot.

In March of 2017, the Chamber's Health and Human Resources Committee ("Committee") debated the merits of the proposed 2018 ballot proposal, and although the Committee acknowledged that the Coalition's proposal provides limited protections for employers<sup>1</sup>, they overwhelmingly voted to recommend to the Board of Directors that the Michigan Chamber reaffirm its opposition to legalization.

Put simply, the Committee could not overlook any number of possible adverse consequences legalization could have on employers and the workplace, including:

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<sup>1</sup> Sec. 4.3 of the Coalition's proposal reads: "This act does not require an employer to permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer's property. This act does not prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marihuana. This act does not prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's violation of a workplace drug policy or because that person was working while under the influence of marihuana."

- **No explicit statutory protections for employers.** The proposal raises a host of questions related to drug-free workplace policies and employer rights. Because the proposal lacks specificity on the answers to these questions, courts would be the final arbiter in interpreting how businesses will be affected by legalization. For example, will a Michigan employer be able to:
  - Enforce drug-free workplace policies on and off the job;
  - Terminate an employee who tests positive for marijuana;
  - Define impairment regardless of whether an on-demand definitive test is ever developed;
  - Terminate employees for cause due to a positive drug test without eligibility for unemployment insurance (UI) benefits; and/or
  - Deny workers' compensation (WC) benefits if a workplace injury was caused by the injured employee's use of marijuana?
  
- **Open-ended liability.** Employers have a responsibility to protect all employees. Under the federal Occupational Safety and Health Administration, employers are required to provide their employees with a place of employment that "is free from recognizable hazards that are causing or likely to cause death or serious harm to employees." Failure to do so opens employers to liability and lawsuits. Yet, there is no way to regulate marijuana in the workplace outside of current drug testing protocols. Furthermore, Michigan law does not remove an employer from payment of workers' compensation in instances where a workplace injury was caused by an injured employee's use of drugs or alcohol.
  
- **Marijuana is still illegal under federal law.** Entities that receive federal funds or are regulated by the US Department of Transportation will still be subject to testing consistent with the federal Drug Free Workplace Act. This Act requires drug-free workplace policies for marijuana and other drug use.
  
- **Higher number of failed drug tests.** According to a September 2014 analysis by Quest Diagnostics, American workers are increasingly testing positive for drugs. Of the 8.5 million analyses of urine drug tests in the United States, marijuana continues to be the most commonly detected illicit drug, up 1.7 percent in 2013 from 1.6 percent in 2012. In comparison, Colorado positive test rates for marijuana were up 20 percent between 2012 and 2013. Washington positive test rates were up 23 percent for the same period. (Colorado and Washington voters legalized marijuana in 2012.) Because many employers rely on drug-free workplace policies and pre-employment drug screening, legalization could create retention and hiring challenges for many employers.
  
- **No impairment test.** Given the lack of an on-demand impairment test for marijuana, employers are forced to rely solely on blood and urine tests, neither of which can reliably provide information about present impairment. The lack of an impairment test will create significant human resources dilemmas for employers if marijuana becomes legal in Michigan.

- **Reputational issues for the state.** Legalization creates uncertainty for businesses. If Michigan becomes the ninth state to legalize marijuana, it will harm the reputation of the state as a destination for business growth.
- **No way to make the language “bulletproof.”** Although the ballot language could be improved by specifying that it does not regulate private employment or employment-related programs and liabilities (e.g., UI, WC, lawsuits, etc.), there is no way to make the language completely secure or protect employers and workplace safety in all scenarios.

Other points to consider:

- **MORE DETAILS ON OTHER STATES** - To date, every state that has considered legalizing recreational marijuana has done so by asking the voters directly to approve its use.
  - 2012 – Washington and Colorado voters approved legalization by a margin of 56 to 44 percent and 55 to 45 percent, respectively.
  - 2014 - Oregon and Alaska voters approved legalization by a margin of 56 to 44 percent and 53 to 47 percent, respectively.
  - 2015 – Ohio voters rejected the legalization of marijuana, voting down a proposal that would have created an oligopoly on marijuana production for a small handful of the initiative's wealthy donors by a margin of 64 to 36 percent.
  - 2016 – California voters approved by a margin of 56 to 44 percent, Maine approved 50.3 to 49.7 percent, Massachusetts approved by 53.5 to 46.5 percent, Nevada approved by 54.5 to 45.5 percent. A legalization measure failed in Arizona, 47.8 to 52.2 percent.
- **CHAMBER SURVEY** - In November 2015, the Michigan Chamber commissioned a survey of its membership on questions related to the legalization of recreational marijuana. Sixty-five percent of Chamber members stated their opposition to the legalization of recreational marijuana use, primarily because of the impact legalization would have on the workplace.
- **PUBLIC OPINION POLLING** - The Pew Research Center has been tracking public opinion on marijuana for over four decades. In 1969, 12 percent favored legalizing marijuana use. By 2015, 53 percent of Americans said the drug should be made legal. Much of that change occurred between 2010 and 2013, when support rose 11 points.<sup>2</sup> Similarly, a March 2016 poll by Lansing-based EPIC/MRA found that 53 percent of Michigan voters would support a ballot proposal that would legalize recreational growing and use of marijuana for adults over 21. That number grew to 57 percent in their 2017 poll.

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<sup>2</sup> <http://www.pewresearch.org/fact-tank/2015/04/14/6-facts-about-marijuana/>

- **MEDICAL MARIJUANA** - Despite the Chamber's previously stated opposition to the legalization of marijuana, the Michigan Chamber's Board of Directors opted to remain neutral on the 2008 ballot initiative to legalize marijuana for medical purposes. The Chamber's decision hinged on language in the ballot proposal which appeared to minimize the impact on the workplace and allow employers to extend their drug-free workplace policies to medical marijuana. However, since 2008, the Medical Marijuana Act (MMMA) has been subject to dozens of legal disputes, with mixed results for employers. On one hand, the courts in Michigan and other states have held that employers are not required to accommodate an employee's use of medical marijuana because the law does not regulate private employment. On the other hand, the Michigan Supreme Court, in refusing to hear an appeal from the State, upheld a decision by the Court of Appeals holding that, although claimants testing positive for marijuana would ordinarily be disqualified for unemployment insurance (UI) benefits under the law, the same does not hold true for employees using marijuana under the MMMA. The case puts employers in a no-win situation: either accommodate medical marijuana users and jeopardize workplace safety or discharge those employees and pay their unemployment benefits and, subsequently, higher unemployment taxes.
- **PROCESS TO QUALIFY FOR THE BALLOT** - To successfully place a statutory initiative on the ballot, proponents need to gather signatures equaling eight percent of the total vote cast for Governor in the 2014 election, or 252,523 signatures. The signatures need to be turned in at least 160 days before the statewide election, or May 30, 2018. The State Board of Canvassers will meet thereafter to certify or deny petitions. If the Board of Canvassers certifies the proposal for the ballot, the Legislature will have 40 days to adopt the proposal as written. If the Legislature adopts the proposal as written it would not need the Governor's signature to become law. If the Legislature refuses or rejects it, the proposal will be placed on the November ballot. The Legislature could also vote to place a competing measure on the ballot. If the Legislature approves a competing alternative, it will be submitted to voters for approval or rejection, along with the statutory initiative. If both proposals are approved, the proposal receiving the most votes would be become law.