

Issue 2

To Commercialize, Regulate, Legalize, and Tax the Adult Use of Cannabis

Proposed Law

Proposed by Initiative Petition

To enact Chapter 3780 of the Ohio Revised Code

A majority yes vote is necessary for the law to pass.

To enact Chapter 3780 of the Ohio Revised Code, which would:

- Define adult use cannabis to mean marijuana as defined in Section 3719.01 of the Revised Code and establish the Division of Cannabis Control (the "Division") within the Department of Commerce;
- Authorize the Division to regulate, investigate, and penalize adult use cannabis operators, adult use testing laboratories, and individuals required to be licensed;
- Legalize and regulate the cultivation, processing, sale, purchase, possession, home grow, and use of cannabis by adults at least twenty-one years of age;
- Create additional protections for individuals who engage in permitted adult use cannabis conduct;
- Establish the cannabis social equity and jobs program and require the Department of Development to certify program applicants based on social and economic disadvantage;
- Define "social disadvantage" to include membership in a racial or ethnic minority group, disability status, gender, or long-term residence in an area of high unemployment;
- Shield certain confidential information from disclosure to the public, including but not limited to any information reported to or collected by the Division that identifies or would tend to identify any adult use cannabis consumer and prohibit the Department of Development from releasing certain application information as public records;
- Require the Division to provide preferential treatment to applicants who have qualified for the cannabis social equity and jobs program based on social disadvantage when issuing level III adult use cannabis cultivator licenses and dispensary licenses;
- Prohibit certain local government entities from limiting specific research, levying a tax, or charge on adult use operations, their owner, or their property not generally charged on other business, and prohibit certain local government entities from prohibiting or limiting adult use cannabis home grow or prohibiting or restricting an activity authorized by the proposed law;
- Authorize a landlord or an employer to prohibit the adult use of cannabis in certain circumstances, and prohibit the operation of a motor vehicle while using or under the influence of adult use cannabis and from using any other combustible adult use cannabis while a passenger in a motor vehicle;
- Limit criminal liability for certain financial institutions that provide financial services to any lawful adult use cannabis operator or testing laboratory licensed under the proposed law;

- Require the Division to enter into an agreement with the Department of Mental Health and Addiction Services to create a program for cannabis addiction services;
- Provide for the creation of five funds in the state treasury: the adult use tax fund; the cannabis social equity and jobs fund; the host community cannabis fund; the substance abuse and addiction fund; and the division of cannabis control and tax commissioner fund; and
- Provide for taxation of 10 percent on the sale of adult use cannabis by dispensaries in addition to usual sales taxes and require that all monies collected from the 10 percent tax levied to be deposited into the adult use tax fund and quarterly distributed as follows: 36 percent to the cannabis social equity and jobs fund; 36 percent to the host community cannabis facilities fund; 25 percent to the substance abuse and addiction fund; and three percent to the division of cannabis control and tax commissioner fund.

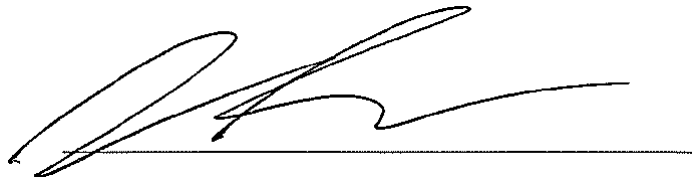
If passed, the law will become effective 30 days after the election.

	YES	SHALL THE PROPOSED LAW BE ADOPTED?
	NO	

CERTIFICATION

Acting in my capacity as the secretary of the Ohio Ballot Board, I hereby certify to the Secretary of the State of Ohio that the foregoing text is the ballot language prescribed by the Ohio Ballot Board, acting pursuant to Article II, Section 1g of the Ohio Constitution and Section 3505.062 of the Revised Code of Ohio, for this initiated law proposed by petition for submission to the Ohio electorate at the election to be held on November 7, 2023.

In testimony whereof, I have subscribed my name in Columbus, Ohio, this 24th day of August, 2023.


Secretary, Ohio Ballot Board

Questions Raised by Ohio Issue 2

To Commercialize, Regulate, Legalize, and Tax the Adult Use of Cannabis

“To Commercialize, Regulate, Legalize, and Tax the Adult Use of Cannabis.” This title states the purpose, intent, and effect of the ballot initiative.

“To. . .Legalize.” We know that marijuana activity is illegal under federal law. What is its status in state law? How can a state legalize drug use that is illegal under federal law, given that federal law is the supreme law of the land? U.S. Const. art. 6, cl. 2. To legalize marijuana in a state, why doesn’t it suffice to repeal state laws criminalizing marijuana, rather than enacting a lengthy statute, such as Chapter 3780?

“To. . .Regulate.” Ohio will go beyond mere legalization to add an entire apparatus of laws to control marijuana activity: regulation. What part of the cannabis plant constitutes marijuana? What is the difference between medical and recreational use? In what form and manner can marijuana be consumed? Are possession amounts limited, so as to distinguish between marijuana for personal use, and drug trafficking, however defined? What rules govern how marijuana can be acquired, cultivated, distributed?

“To Commercialize. . .” And the Ohio initiative goes one step further, beyond legalizing and regulating: commercialization. Without being bound by the exact meaning of the term, the ballot title does suggest that Ohio Chapter 3780 extends beyond permitting adults the personal liberty of whether to consume marijuana, to share it with friends, to cultivate it in their homes, to have such activity regulated for personal safety and public health. A focus of the law will be marijuana as a commercial enterprise—manufacturing of marijuana on a large scale, dispensaries selling at a profit, advertising, marketing, and labeling marijuana, entrepreneurial opportunities, expanding practices for lawyers, health practitioners, and accountants in this field, and the like.

“To. . .Tax.” And here comes—inevitably—a strong state interest in commercialization—taxing marijuana. How will marijuana be taxed? What revenues can a state anticipate and to what expenditures applied? Are there different tax rates for medical vs. adult use; for strains of marijuana, for potency? Are there social harms from legalization whose costs outweigh tax revenue?

To enact Chapter 3780 of the Ohio Revised Code, which would:

- **Define adult use cannabis to mean marijuana as defined in Section 3719.01 of the Revised Code and establish the Division of Cannabis Control (the “Division”) within the Department of Commerce;**

What is the definition of marijuana under state and federal law? (And why does Ohio choose to refer to the drug as cannabis?) The federal government and each state define marijuana according to their own lights. In terms of measuring the quantity of the plant—important for many laws—is the plant defined by its use in ordinary language or by botanical classifications? Does the definition of marijuana include the entire cannabis plant or only certain parts? Does it matter which parts of the plant are intoxicating? What about extracts from the plant? Synthesized forms of marijuana? Species of the cannabis plant? What light does the history of marijuana law throw on its current status? Does the definition of marijuana include

hemp—a non-intoxicating variety of the plant used for industrial purposes and the source of CBD (Cannabidiol) products, widely marketed? Is marijuana defined by amount of THC (delta-9-tetrahydrocannabinol), the main ingredient of the cannabis plant that produces the psychoactive effect?

- **Authorize the Division to regulate, investigate, and penalize adult use cannabis operators, adult use testing laboratories, and individuals required to be licensed;**
- **“Establish the Division of Cannabis Control. . .Authorize the Division to regulate cannabis operators, adult use testing laboratories, and individuals required to be licensed.”**

With state legalization of marijuana comes an entire regulatory scheme—for both medical and adult use purposes. How are cannabis operators, dispensaries, and laboratories to be licensed? How to regulate the manufacturing, transporting, preparing, packaging, purchasing, marketing, and consumption of marijuana? How to certify health care practitioners and register patients? What quality and safety controls to implement?

How to choose a business organization and what is the life cycle of a typical business, as they relate to marijuana operations?

Ohio establishes a Division of Cannabis Control. What agencies in federal law are authorized to regulate and enforce marijuana law, and how is authority divided between them? How much discretion do they have in carrying out congressional legislation?

- **Legalize and regulate the cultivation, processing, sale, purchase, possession, home grow, and use of cannabis by adults at least twenty-one years of age;**

This is the central provision of the ballot initiative as it transforms recreational use of marijuana from an illegal to a legal activity, although not unrestricted. Ohio sets the age limit at 21. Is that the right age, given studies of the impact marijuana has on cognitive functions? How much marijuana may an individual possess for personal use? What rules should be instituted as to cultivation, processing, sale, purchase, possession, home grow, and use of cannabis? Are limits set to prevent illegal sales by traffickers or criminal organizations?

How have individual states decriminalized marijuana? How have states legalized marijuana for medical and/or adult use purposes? How far can legalization and regulation go before transgressing federal law which strictly prohibits marijuana activity? This raises central questions of federalism. To begin with, how can Congress criminalize marijuana when, unlike states, it is not given “police powers” over crimes and health care? (Remember that Congress had to be given explicit authority by the Eighteenth Amendment to prohibit the manufacture, sale, and transportation of intoxicating liquors.) Can the federal government compel states to enforce the federal ban? Can legalizing states prevent federal enforcement of its ban within state boundaries? Are state police subject to federal penalties if they handle marijuana according to state legalization?

How does the federal government classify marijuana in its comprehensive control of drugs, licit and illicit? Has Congress passed any legislation to ameliorate its enforcement of marijuana laws? Besides Congress, can departments of the federal government change marijuana’s illegal classification; and if so how? What are the medical criteria that go to assessing federal classification?

As marijuana activity is still criminal under federal law, and beyond specified limits is still criminal in every state, what are the penalties for marijuana use? How is possession defined and what are the required elements of a possession charge? A distribution charge? What are the collateral consequences of a marijuana conviction? What defenses can be used against drug charges?

Do other constitutional provisions erect limits to prosecution for marijuana activity? For example, is there a medical necessity defense under criminal law for persons who claim to suffer debilitating pain without marijuana treatment? First Amendment? Can high school students be disciplined for advocating marijuana use? Can marijuana advertising be limited? Are religious groups free to use marijuana in their ceremonies? Can the 2d Amendment right to bear arms be restricted for marijuana users?

Given that marijuana is the most commonly used illicit drug in the world—the United Nations Office on Drugs and Crime (UNODC) estimates about 200 million users worldwide—are there international treaties banning marijuana? Is the United States bound by these treaties? Are individual states like Ohio also bound? Is the United States already in violation?

Can self-governing Native American Tribes make their own laws as to marijuana use in Indian Country?

On the local level, can communities and municipalities diverge from state laws on marijuana? Can they opt in or out of state legalization schemes?

- **Create additional protections for individuals who engage in permitted adult use cannabis conduct;**

Marijuana, whether legal or not, has given rise to new questions of individual protections from prosecution, such as Fourth Amendment rights against search and seizure and police surveillance. Does the distinctive smell of marijuana still give probable cause for arrest? With changing views on marijuana, do harsh penalties raise questions of Eighth Amendment cruel and unusual punishments, or against asset forfeiture connected to an arrest? Do state medical marijuana laws create immunity for physicians and patients?

- **Establish the cannabis social equity and jobs program and require the Department of Development to certify program applicants based on social and economic disadvantage;**
- **Define “social disadvantage” to include membership in a racial or ethnic minority group, disability status, gender, or long-term residence in an area of high unemployment;**

What social justice concerns have become part of the debate over cannabis legalization, both at the state and federal levels? What are the most commonly proposed remedies to repair the harms caused by the so-called War on Drugs and damage to minority neighborhoods? Ohio makes social-justice efforts a vital part of legalization efforts. How does it define social disadvantage?

- **Shield certain confidential information from disclosure to the public, including but not limited to any information reported to or collected by the Division that identifies or would tend to identify any adult use cannabis consumer and prohibit the Department of Development from releasing certain application information as public records;**

What constitutes certain confidential information and certain application information? Why should it be shielded from disclosure?

- **Require the Division to provide preferential treatment to applicants who have qualified for the cannabis social equity and jobs program based on social disadvantage when issuing level III adult use cannabis cultivator licenses and dispensary licenses;**

What is the basis for preferential treatment? Is such treatment good public policy?

- **Prohibit certain local government entities from limiting specific research, levying a tax, or charge on adult use operations, their owner, or their property not generally charged on other business, and prohibit certain local government entities from prohibiting or limiting adult use cannabis home grow or prohibiting or restricting an activity authorized by the proposed law;**

Has research into the effects of marijuana been hampered by its illegality? What new laws encourage research into the health benefits and risks of marijuana?

- **Authorize a landlord or an employer to prohibit the adult use of cannabis in certain circumstances, and prohibit the operation of a motor vehicle while using or under the influence of adult use cannabis and from using any other combustible adult use cannabis while a passenger in a motor vehicle;**

Can commercial landlords void leases with marijuana businesses on the grounds that they are engaged in federally prohibited activities? Can residential landlords evict tenants if they find them smoking or cultivating marijuana? What issues arise in state zoning for marijuana-related businesses?

Can employers continue policies in the workplace that prohibit marijuana consumption? Do employees have protection for medical use of marijuana?

How to prevent impaired driving resulting from marijuana consumption? How to test impairment, when there are no marijuana tests available to highway officers as accurate as alcohol breathalyzer tests?

- **Limit criminal liability for certain financial institutions that provide financial services to any lawful adult use cannabis operator or testing laboratory licensed under the proposed law; Require the Division to enter into an agreement with the Department of Mental Health and Addiction Services to create a program for cannabis addiction services;**

Needless to say, the federal government interacts with almost every economic and social aspect of modern United States. Given that most banks are federally chartered, can they provide financial services to licensed marijuana businesses? Will federal courts enforce contracts that involve marijuana activity? Can marijuana businesses take advantage of federal bankruptcy laws? Insurance coverage? As to intellectual property, can federal trademarks be issued and can patents be enforced for marijuana-related brands and inventions? Given federal law and state codes of professional responsibility, can lawyers represent licensed marijuana businesses? Can they invest in such businesses or consume marijuana themselves?

- **Provide for the creation of five funds in the state treasury: the adult use tax fund; the cannabis social equity and jobs fund; the host community cannabis fund; the substance abuse and addiction fund; and the division of cannabis control and tax commissioner fund; and**

Is marijuana a drug that is likely to be abused? To cause addictions? Are these factors in determining its legality? What do scientific studies say about the alleged benefits and harms of marijuana use? How does

marijuana compare to other illegal drugs? To psychoactive prescribed drugs? To highly regulated but legal drugs like tobacco and alcohol?

- **Provide for taxation of 10 percent on the sale of adult use cannabis by dispensaries in addition to usual sales taxes and require that all monies collected from the 10 percent tax levied to be deposited into the adult use tax fund and quarterly distributed as follows: 36 percent to the cannabis social equity and jobs fund; 36 percent to the host community cannabis facilities fund; 25 percent to the substance abuse and addiction fund; and three percent to the division of cannabis control and tax commission fund.**

How should marijuana taxes be assessed? Are they different for medical and recreational? Should excise taxes (taxes on specified goods), be applied in addition to sales and use taxes. A cultivation tax on harvested marijuana? How do taxes account for value, weight, and potency? Note that the majority of tax money Ohio expects to raise from marijuana sales is designated for the social justice and jobs fund (36 percent) and to the substance abuse and addiction fund (25 percent). Does that designation best accomplish social goals? How about Federal taxes? Do illegal businesses pay taxes? If so, can they deduct expenses like other businesses? Can they deduct cost of goods? Do special tax laws apply to marijuana? If so, for a multifaceted business, how to distinguish for tax purposes, marijuana activity from legal enterprises?