



ISSUE BRIEF:

Initiated Measure 26 addresses the legalization of marijuana for medical use.

The Greater Sioux Falls Chamber of Commerce has taken a position to remain neutral for Initiated Measure 26 for the 2020 general election ballot.

Background

In South Dakota, the citizenry can initiate a state law by collecting a minimum of five percent of valid signatures¹ of South Dakota registered voters to qualify for the ballot. Initiated Measure 26 (herein after IM-26) was circulated by New Approach South Dakota-Medical Cannabis (herein after New Approach) with the title “an initiated measure to provide for regulation, access, and compassionate use of cannabis in South Dakota.”

After circulation, the attorney general retitled IM-26 to read, “an initiated measure to legalize marijuana for medical use.” New Approach finance reports indicate signature gathering costs² were \$341,000. In December of 2019, IM-26 qualified³ for the ballot with 16,961 valid signatures.

The Legislative Research Council (herein after LRC) provided a fiscal note⁴ for IM-26 finding the initial cost to the state would be \$677,309. LRC noted that once the medical marijuana program was operational, it would be expected that ongoing program revenues would cover program costs for a net of zero.

Although thirty-three states⁵ have legalized medical marijuana use for patients with certain conditions, South Dakota has only legalized⁶ cannabidiol (CBD) oil and hemp. South Dakota has rejected legalizing medical marijuana in two previous elections 2006⁷ and 2010⁸.

¹ South Dakota Codified Law 2-1-1 requires, all measures proposed by initiative shall be presented by petition. The petition shall be signed by not less than five percent of the qualified electors of the state.

² <https://sdcfr.sdsos.gov/Search/SearchResults.aspx?cid=721&rid=2427> (July 1, 2020).

³ Initiated Measure 26 submitted 25,524 signatures; the Secretary of State’s office found 74.65 percent of the submitted signatures were valid. <https://sdsos.gov/elections-voting/assets/InitiatedMeasure26%20PressRelease.pdf> (June 2020).

⁴ The Legislative Research Council received an initiated measure to provide for regulation, access and compassionate use of cannabis in South Dakota. The fiscal note examines the fiscal impacts associated with the Department of Health, local governments, and prison and jail costs. The initiated measure allows local governments to charge a reasonable fee for a local license, permit, or registration, which may offset any potential costs to local governments. However, the potential costs and revenues to local governments is indeterminable. In addition, the measure is likely to have minimal impact on prison and jail costs. https://sdsos.gov/elections-voting/assets/2020OIM_Legalize_Tax_Regulate_Marijuana_Fiscal_Note.pdf (June 2002).

⁵ <https://www.webmd.com/a-to-z-guides/qa/what-us-states-have-legalized-medical-marijuana> (June 2020).

⁶ In 2019, the [South Dakota State Legislature](https://www.sdsos.gov/elections-voting/assets/2019SB22) passed a SB 22 amending one section of law by adding Epidiolex to its list of controlled substances. The bill also exempted CBD from the state’s definition of marijuana in that section but there was an additional statute that conflicted with the new law. This discrepancy led to confusion that left the legal status of CBD in the state unclear for a year. The 2020 legislative cleared up the confusion with the passage of HB 1014.

⁷ Initiated Measure 4 failed to pass. The vote = 157,953 (47.7%) Yes – to - 173,178 (52.3%) No. <https://sdsos.gov/elections-voting/assets/BallotQuestions.pdf> (June 2020).

⁸ Initiated Measure 13 failed to pass. The vote = 115,667 (36.6%) Yes – to – 199,522 (63.3%) No. <https://sdsos.gov/elections-voting/assets/BallotQuestions.pdf> (June 2020).

Attorney General's explanation⁹ of IM-26:

This measure legalizes medical use of marijuana by qualifying patients, including minors. "Medical use" includes the use, delivery, manufacture—and for State residents, cultivation—of marijuana and marijuana-based products to treat or alleviate debilitating medical conditions certified by the patients' practitioners.

South Dakota patients must obtain a registration card from the State Department of Health. Non-residents may use out-of-state registration cards. Patients may designate caregivers to assist their use of marijuana; the caregivers must register with the Department.

Cardholders may possess three (3) ounces of marijuana and additional amounts of marijuana products. Additionally, if a resident cardholder is allowed to grow marijuana plants the cardholder may possess a minimum of three (3) plants, as well as marijuana and products made from those plants.

The measure legalizes marijuana testing, manufacturing, and cultivation facilities, as well as marijuana dispensaries. These establishments must register with the Department of Health. The measure legalizes some substances that are considered felony-controlled substances under current State law. Marijuana remains illegal under Federal law. The measure limits State and local law enforcement's ability to assist Federal law enforcement authorities.

The 95-section measure contains numerous other provisions not described here. It will likely require judicial or legislative clarification.

Proponent Rationale

Proponents assert IM-26 would establish a medical marijuana program for patients diagnosed with serious health conditions. If medical marijuana becomes legalized a patient would be able to access the drug, but only with a physician's approval. IM-26 would also establish a system of dispensaries overseen by the Department of Health (herein after Department) and require laboratory testing to ensure product safety.

Proponents provide scientific studies¹⁰ that indicate using medical marijuana can alleviate severe pain and other symptoms of serious health conditions. Researchers have also found states with safe, legal access to marijuana see lower usage rates of more addictive and harmful drugs such as prescription opioids.

Proponents also assert, Colorado¹¹ and Washington have raised nearly \$3 billion in new revenue from marijuana without raising taxes on most residents within five years. If IM-26 become law, proponents believe South Dakota's economy would increase by tens of millions of dollars in new revenue to help close budget gaps.

Lastly, proponents believe IM-26 provides safeguards for patients, physicians, employers, landlords/property owners, law enforcement and provide local control with time, place and manner restrictions.

⁹ https://sdsos.gov/elections-voting/assets/2020IM_Legalize_Marijuana_Medical_Use_AG_Statement.pdf

¹⁰ <https://journals.sagepub.com/doi/abs/10.1177/1098611118786255?journalCode=pqxa> (June 2020).

¹¹ <https://www.cnbc.com/2019/06/12/colorado-passes-1-billion-in-marijuana-state-revenue.html> (June 2020).

Opponent Rationale

SAM¹², Smart Approaches to Marijuana, asserted the move to legalize marijuana is really a move to commercialize marijuana for profit. It is today's version of Big Tobacco. SAM believes states consider the costs associated legalizing medical marijuana.

Opponents dispute New Approach assertions that marijuana is a solution for the opioid epidemic. SAM asserts that a deeper look at credible scientific studies reveals those who use marijuana are at much higher risk for developing opioid use disorders.

In addition, opponents assert today's marijuana is much more potent than in the past. Potency of marijuana has on average doubled worldwide in the past 40 years. For example, marijuana edibles contain up to 99 percent tetrahydrocannabinol (THC). Compare that to the five percent THC of the Woodstock Days back in the late 1960s.

Lastly, opponents believe South Dakota should not legalize medical marijuana in order to reform the criminal justice system. Rather South Dakota can remove criminal penalties, expunge records, and offer justice without commercializing today's THC products.

Chamber Position¹³

The Greater Sioux Falls Chamber of Commerce has taken a position to remain neutral on the legalization of medical marijuana for IM-26.

Rationale

The Greater Sioux Falls Chamber of Commerce's Board of Directors voted to remain neutral on the legalization of medical marijuana for two primary reasons.

First, IM-26 provides a balance between employer rights¹⁴ for drug-free workplaces. The Board of Directors believed IM-26 contained employer protections to prohibit medical marijuana in the workplace and allowed for terminating an employee who tested positive for medical marijuana.

Secondly, the Board of Directors communicated their belief that medical decisions should be between physicians and patients as medical care is private and personal.

Additional reasons for supporting IM-26 is protections for landlords allowing them to prohibit medical marijuana on their property and reciprocity protections for patients who are legally prescribed medical marijuana in their state but are traveling through South Dakota with medical marijuana in their possession.

¹² <https://learnaboutsam.org/> (June 2020).

¹³ Issues Management Council (IMC) adopted their recommendation to the Board: June 11, 2020. The Chamber Board of Directors adopted their position: July 22, 2020. Both IMC and the Chamber Board of Directors voted stay neutral on IM-26.

¹⁴ Sections 22-24 provide language for employers. https://sdsos.gov/elections-voting/assets/2020IM_Legalize_Marijuana_Medical_Use_AG_Statement.pdf (June 2020).