



ISSUE BRIEF:

Initiated Measure 27 legalizing the possession, use, and distribution of marijuana.

The Greater Sioux Falls Chamber of Commerce opposes Initiated Measure 27 and urges a “NO” vote on the 2022 General Election.

Background

In November of 2020, the citizens of South Dakota approved Constitutional Amendment A (CA-A) with a vote of 54.18%. This amendment sought to legalize, regulate and tax marijuana; and to require the Legislature to pass laws regarding hemp as well as laws ensuring access to marijuana for medical use for South Dakota citizens 21 years or older. However, a legal challenge was filed contending that Amendment A violated the state constitution’s single subject rule. In November of 2021, the South Dakota Supreme Court ruled¹ CA-A violated the single subject rule and declared the amendment invalid.

After the South Dakota Supreme Court struck down CA-A, a new initiative was drafted and circulated for signatures by the same advocates who placed CA-A on the 2020 ballot. On May 25, 2022, the South Dakota Secretary of State announced the petitions submitted met the requirement of 16,961 valid signatures and the measure would appear on the 2022 General Election ballot as Initiated Measure 27

The Attorney General’s 2022 ballot explanation² of IM-27 states the following:

This initiated measure legalizes the possession, use, and distribution of marijuana and marijuana paraphernalia by people age 21 and older. Individuals may possess one ounce or less of marijuana. They may also distribute one ounce or less of marijuana without payment or other consideration.

Marijuana plants, and the marijuana produced from those plants, may be possessed under specific conditions. Marijuana plants may only be grown, and the marijuana from those plants may only be possessed, in counties or cities where no licensed retail marijuana store is available or where allowed by county or city ordinances.

Certain violations of the restrictions the measure places on the possession, use, and distribution of marijuana and marijuana paraphernalia are subject to various civil penalties. Individuals under age 21 can attend drug education or counseling instead of paying a civil penalty.

The measure legalizes substances considered felony controlled substances under State law. Marijuana remains illegal under Federal law.

Judicial or legislative clarification of the measure may be necessary.

¹ https://ujs.sd.gov/uploads/news/NUZ_RSRC_20211124095253.pdf (September 2022).

² [https://sdsos.gov/elections-voting/assets/2022BrendanJohnsonIMAmendingTitle34\(SixSections\)AGStatement.pdf](https://sdsos.gov/elections-voting/assets/2022BrendanJohnsonIMAmendingTitle34(SixSections)AGStatement.pdf) (September 2022).

The primary difference between CA-A and IM-27 is IM-27 focuses on the legalization of recreational marijuana use for those 21 years and older and does not include language to legalize medical marijuana. In addition, IM-27 does not meddle with the issuance of licenses, taxation and local regulations.

Proponent Rationale

Proponents' argument is three-fold—respecting the will of the people, business and workforce development opportunities, and enacting laws that are consistent and fair.

In 2020, the citizens voted in favor of legalizing recreational marijuana by approving Constitutional Amendment A. Proponents argue that we should respect the opinion of the people and side with what over 54% of the voters approved just two years ago.

In addition, proponents argue there is an exceptional opportunity to send a message that our community is progressive and considerate of issues important to young professionals. Not only would legalizing cannabis bring in additional tax revenue, but it would also attract new businesses and employees that are interested in communities adopting progressive policies.

Lastly, proponents of IM-27 contend that our society must adopt laws that are consistent and fair. They raised concerns of the inconsistency of alcohol use and harm to society versus recreational marijuana use in society. In short, they argue that if we oppose cannabis, we should oppose alcohol as well.

Opponent Rationale

Opponents argue that this measure will have a detrimental impact on our business community's workforce and will put South Dakota youth at risk.

In a study on the effects of Marijuana Legalization on Employment Law, the study states:

In recent years, 26 states³ have legalized marijuana in varying degrees. However, marijuana is still designated as a Schedule 1 substance under the federal Controlled Substance Act, which criminalized the possession, manufacture, distribution, and sale of the drug. The tension between federal and state law has led to confusion and challenges in many industries, including law enforcement, banking, and real estate. Across all industries, employers of individuals who use marijuana are also grappling with the juxtaposition of state and federal law. State legalization of marijuana is of real concern to employers who strive to maintain productivity, ensure workplace safety, and protect workers' rights. As marijuana is legalized, usage increases.

Opponents also raised concerns about testing marijuana for impairment. Marijuana contains a compound known as tetrahydrocannabinol⁴ (THC), which metabolizes quickly into a compound that can

³ [The Effects of Marijuana Legalization on Employment Law - National Association of Attorneys General \(naag.org\)](#) (September 2022).

⁴ [The Effects of Marijuana Legalization on Employment Law - National Association of Attorneys General \(naag.org\)](#). While blood and saliva tests can provide a more accurate impairment reading, blood tests are more invasive and may violate employee privacy rights and the technology surrounding saliva tests is still new. State law regulates when employee drug testing may occur, with a few exceptions. However, However, regardless of

remain in a user's body for weeks after marijuana consumption. Certain tests, such as urinalysis, only detect THC metabolites, meaning that these tests cannot indicate impairment, only the presence of the metabolite.

Opponents refer to a study conducted by the National Institute on Drug Abuse⁵ that states employees who tested positive for marijuana had 55% more industrial accidents, 85% more injuries, and 75% greater absenteeism compared to those who tested negative. Decreased productivity, increased turnover and lawsuits all negatively impact a business's bottom line; therefore, IM-27 should be opposed by the business community.

Lastly, opponents refer to the increased burden legalized marijuana will have on our already strained mental health institutes.

Chamber Position⁶

The Greater Sioux Falls Chamber of Commerce opposes Initiated Measure 27 and urges a "NO" vote on the 2022 General Election.

Rationale

The Greater Sioux Falls Chamber of Commerce's Board of Directors recommends opposing Initiated Measure 27. The state legalization of a drug that remains illegal under federal law has created uncertainty in various areas of law. Employment law is no exception. While courts have begun to provide a framework for analyzing these issues, much is still unclear.

The regular use of marijuana on or near the workplace can lead to a loss of productivity and an increase of workplace accidents. In addition, employers already struggle to retain a reliable workforce and legalizing marijuana would further complicate this issue. Moreover, unlike alcohol, there is no standard of what constitutes impairment, which creates a challenging human resource and legal environment for employers.

jurisdiction, there are more constraints placed on public employers than private employers in this realm. Because drug testing is a "search," public employers must ensure that these searches are reasonable, in accordance with the Fourth Amendment.

⁵ [Marijuana Research Report: How does marijuana use affect school, work, and social life?](#)

⁶ Issues Management Council (IMC) adopted their recommendation to the Board: Sept. 8, 2022. The Chamber Board of Directors adopted its position: Sept. 28, 2022. Both IMC and the Chamber Board of Directors voted to oppose IM-27.