

Issue 2 on the November 2023 Ballot

A legal analysis by the Ohio Attorney General

Purpose:

This outline provides a legal analysis of a citizen-initiated proposal to change Ohio law. It does not advocate for or against the proposal. The aim is to provide Ohio voters with a baseline of accurate information. Since this is an outline, not an exhaustive review, the full text of the proposed law can be found at <https://www.ohiosos.gov/globalassets/ballotboard/2022/petitionfull-textandsummary.pdf>.

ISSUE 2: Marijuana Legalization

TYPE OF LEGISLATION:

Issue 2 is an indirect initiated statute. This method of amending Ohio law is one of three methods authorized by the Ohio Constitution.

Using the indirect initiated statute method requires proponents of a measure to gather signatures of support from registered Ohio voters equal to 3 percent of those who cast ballots in the most recent election for governor. The proposed law then is submitted to the Ohio Legislature for approval. If the Legislature fails to act on the proposed legislation, proponents must seek the signatures of an additional 3 percent of registered voters to place it on the ballot. In this case, the Legislature failed to act on the proposal, an additional round of signatures was gathered, and the measure was placed on the general election ballot for Nov. 7.

WHAT THE PROPOSED LEGISLATION WOULD DO:

The full text of the proposal is 52 pages, providing full detail about the proposed law's scope and operation. The following is a general summary of major provisions and their impacts on current Ohio law.

Issue 2 would create a new Revised Code Chapter 3780, which would consist of 38 new sections of the Revised Code. Issue 2 would also require certain state agencies to create new regulations to implement the various new laws. For purposes of this Summary, "marijuana" and "cannabis" mean the same thing.

- A. State regulation of the growing, processing, and selling of adult use marijuana.

Issue 2 would create a "Division of Cannabis Control" within the Ohio Department of Commerce. Those interested in an adult use operator license could apply to the Division for licenses to grow, process, and sell marijuana to adults 21 years and older. The Division would issue four types of adult use operator licenses: adult use cultivator, adult use processor, adult use dispensary, and adult use testing laboratories. Those who currently hold a license to operate a medical marijuana facility could apply for adult use licenses. The Division also would issue licenses to the agents and employees of each licensed operator.

The proposed law does not repeal the existing criminal prohibitions against marijuana cultivation and use under O.R.C. 2925, but does create protections against arrest and prosecution if you follow the new rules it creates. For example, one such rule regulates how many plants (six) a person may grow and possess for personal use at his primary residence. However, if that person grows more than six plants, he would be outside the protections of the proposed law and could be charged with a crime.

The state's current medical marijuana program would remain intact if Issue 2 is passed.

Issue 2 would set an initial limit on the number of licensed adult use operators in Ohio and would limit how much space each facility could use to grow marijuana. In deciding which applicants will receive licenses, the Division would be required to give a preference to applicants who are certified by the "cannabis social equity and jobs program," explained below.

Under the laws created by Issue 2, the Division would oversee all licensed adult use operators. The Division would be required to establish numerous standards, including product labeling, product tracking, product testing, advertising, facility security, and inventory control. Issue 2 would specify what types of marijuana products could be sold and would limit the total tetrahydrocannabinol (THC) content of all marijuana products. Because Issue 2 creates limitations on certain aspects of marijuana, the proposal is not expected to eliminate the black market for marijuana products.

The Division would have the power to inspect a licensed adult use operator's facility without prior notice, and to review all records kept by those licensed operators. The Division would be able to enforce the laws for those operators through fines, suspensions, or revocation of the license of any licensee in violation of the law. An individual who is found to be operating as a marijuana adult use operator or marijuana testing laboratory without a license could be subject to criminal penalties.

B. Marijuana use by adults 21 years or older

Issue 2 would permit adults 21 years and older to use, possess, and transport marijuana that was legally obtained in the State. An adult consumer would be permitted to transfer marijuana to another adult consumer, as long as the transfer is without compensation and is not advertised or promoted to the public.

Issue 2 would limit how much marijuana a consumer could possess. When purchasing adult use marijuana at a licensed dispensary, the purchaser would be required to present a current, valid identification card to verify that he or she is 21 years or older. The Division of Cannabis Control would be prohibited from releasing any records tending to identify these consumers.

Issue 2 also would allow an adult 21 years and older to grow and possess no more than six cannabis plants at the individual's primary residence. There would be a limitation of no more than 12 cannabis plants per residence where two or more people 21 years and older reside at one time.

Adult consumers would be prohibited from operating vehicles while under the influence of marijuana. They would also be prohibited from transferring marijuana (with or without compensation) to any individual under the age of 21. Individuals would be prohibited from purchasing adult use marijuana if the individual is under the age of 21 and would also be prohibited from soliciting a person 21 years or older from purchasing marijuana on behalf of the individual. Individuals also would be prohibited from presenting false identification in order to purchase adult use marijuana. The prohibitions carry criminal penalties.

C. New programs created

Issue 2 would create a “cannabis social equity and jobs program.” Under the language of Issue 2, the program’s goal is to “remedy the harms resulting from the disproportionate enforcement of marijuana-related laws and to provide financial assistance and license application support to individuals most directly and adversely impacted by the enforcement of marijuana-related laws who are interested in starting or working in cannabis business enterprises.”

The Ohio Department of Development would be responsible for implementing the new program. The program would create a certification process for interested applicants. In certifying applicants, consideration would be given to factors such as “wealth of the business seeking certification as well as the personal wealth of the owner or owners of the business”; “social disadvantage” based on race, color, ethnic origin, gender, physical disability, long-term residence in an area of high employment, or previous marijuana-related criminal offenses; and “economic disadvantage based on economic and business size thresholds and eligibility criteria aimed at stimulating development in qualified census tracts.”

The new program would also implement an outreach initiative to educate potential participants about the program; provide financial assistance, loans, grants, and technical assistance to certified participants; encourage employment practices that focus on hiring and educating minorities, women, veterans, and persons with disabilities; fund various studies; and propose policy changes.

Issue 2 would create a program for cannabis addiction services to be implemented by the Ohio Department of Mental Health and Addiction Services. The program would include best practices for education and treatment of individuals with addiction issues related to marijuana or other controlled substances, including opioids, as well as a toll-free telephone number Ohio residents could call to obtain basic information about addiction services available, and options for an addicted consumer to obtain help.

D. Employers, Landlords and Local Governments

Under Issue 2, an employer would be able to create hiring and employment policies related to marijuana use. An employer could terminate an employee who uses or possesses marijuana and could

refuse to hire an individual who uses or possesses marijuana. In addition, an employer can prohibit an employee from using marijuana, based on O.R.C. 3780.35, which is part of Issue 2.

Under Issue 2, a landlord could prohibit a tenant from growing or smoking marijuana, as long as the prohibition is included in the lease agreement.

Under Issue 2, local governments could not prevent an existing medical marijuana cultivator or processor from producing marijuana. However, a local government could prohibit an adult use dispensary from selling marijuana. If a local government passes a law prohibiting a medical marijuana dispensary from selling products, the operator could petition to put the issue before local voters in the next general election. If the issue passes, the local government would be required to allow the sale of marijuana.

E. How would the law be paid for?

Issue 2 would set a sales tax rate of 10% on marijuana purchases, in addition to any existing sales taxes. Tax revenue generated from the tax would be divided into separate funds. Funds would be used to pay for the cannabis social equity and jobs program to be implemented by the Ohio Department of Development; the substance abuse and addiction program to be implemented by the Ohio Department of Mental Health and Addiction Services; the operations of the Division of Cannabis Control; and for approved purposes to municipalities or townships that have adult use dispensaries within their jurisdictions.

The new laws created by Issue 2 would generate some funding for State agencies that would implement the laws, through a combination of licensing fees paid by operators and the 10% adult use tax paid when purchasing products.

F. Interaction with federal law

Issue 2 does not address the interplay between the proposed state law and existing federal laws. Currently, under federal law, marijuana is classified as a Schedule I drug with a high potential for abuse and little to no medical benefit. Issue 2 would not change that classification and cannot override federal law. If Issue 2 passes, the possession and distribution of marijuana would still be prohibited by federal law. The federal government could still choose to criminally prosecute individuals who violate federal marijuana laws, even if the individual was abiding by Ohio marijuana laws.