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November 28, 2023

The Honorable Mike DeWine
Governor, State of Ohio
77 N. High Street - 30th Floor
Columbus, Ohio 43215

The Honorable Matt Huffman
President, Ohio Senate
Ohio Statehouse
1 Capitol Square - 2nd Floor
Columbus, Ohio 43215

The Honorable Jason Stephens
Speaker, Ohio House of
Representatives
77 S. High Street – 14th Floor
Columbus, Ohio 43215

Dear Governor DeWine, President Huffman and Speaker Stephens,

At the direction of our Board of Directors, and on behalf of our 8,000 member companies statewide, the Ohio Chamber of Commerce (OCC) adopted a stance of opposition to State Issue 2. Ohio voters have since affirmed that recreational marijuana should be legalized in Ohio. While the OCC accepts these results, the outcome does nothing to assuage our concerns that the initiated statute language contains vulnerabilities in workplace protections, complicates the workforce problems associated with filling current and future job openings, and generally will exacerbate Ohio's economic challenges and societal problems.

We applaud your collective public stances that several changes are warranted in the as-written language. The OCC stands ready to assist your efforts to ensure that recreational marijuana only becomes available in a safe and responsible manner. To that end, the OCC convened an internal workgroup of member companies to review the initiated statute, identify its flaws, and offer constructive guidance to policymakers. Although we believe there are many areas for improvement, we wish to focus on three main areas of broadest applicability and highest priority for the statewide business community.

EMPLOYER WORKPLACE PROTECTIONS

The OCC appreciates the inclusion of most of the employer protections already delineated under the medical marijuana statute into the Issue 2 statute language. However, as the use of cannabis becomes even more prevalent, it is paramount for the Ohio General Assembly to protect Ohio's system of at-will employment, which includes assuring that employers can prohibit their employees' use of all forms of marijuana. To protect the rights of employers, the OCC recommends strengthening Ohio's employer protection laws to reinforce employers' abilities to maintain drug-free workplaces, zero tolerance policies, and the flexibility to conduct employee testing.

It is important to clearly state that employers do not have to accommodate the use of any form of marijuana, and that employers can take appropriate action relative to a positive drug test for marijuana, **even if it relates to an employee's off-duty conduct.** Ambiguity in this regard could prevent or limit an employer's ability to take action relative to an employee or applicant's positive drug test for marijuana (or THC). These limitations would have unintended consequences, such as curtailing the ability of employers to set their own employment policies and making workplaces less safe.

To address these issues, we have consulted with and continue to work with other statewide business trade organizations and employment counsel to craft a statutory scheme that addresses off-duty conduct without diminishing any current employer protections.

Similarly, the OCC recommends that the legislature adopts a provision currently found in Ohio's medical marijuana employer protection law that was not included in State Issue 2. This provision – ORC 3796.28(C), which was adopted in the budget during the 134th General Assembly – specifies that employers do not violate any anti-discrimination laws when enforcing drug-free workplace policies. As such, we propose adding this provision from Ohio's medical marijuana statutes to Ohio's new recreational marijuana laws.

Finally, the Issue 2 statute presents an opportune time to re-examine the Ohio Bureau of Workers' Compensation's (BWC's) Drug-Free Safety Program. Greater employer participation and new loss-prevention strategies can be achieved by both streamlining participation requirements and increasing premium rebates. This program should be modernized to reflect that adult-use cannabis will soon become more readily accessible and its usage more prevalent.

We would suggest a revised bonus and rebate incentive level for the Drug-Free Safety Program of 5% for the comparable program, 10% for the basic level, and 15% for the advanced level, unless the BWC Board of Directors determines these discounts will have a significant negative impact on the net position of the State Insurance Fund. We also recommend clarifying that Ohio's current presumption of non-coverage for workplace injuries arising from marijuana use applies to all forms of marijuana use, including recreational, medical, or illicit.

ENSURING PRIVATE PROPERTY RIGHTS

We believe the Issue 2 statute is ambiguous as to what extent private property owners will be able to prohibit people from using, possessing, displaying, or transferring marijuana on their properties, apart from existing bans on smoking. The OCC firmly believes that publicly accessible places such as shopping malls, restaurants and bars, amusement parks, and other large areas under private ownership should be able to limit cannabis use beyond the state's existing smoking ban.

Issue 2 proponents have cited Section 3780.33, Liabilities and Immunities, in the initiated statute, as limitations on public use of recreational marijuana. However, the initiated statute fails to define what constitutes a public place or elaborate on what it means to accommodate an individual's use.

To address this ambiguity, the OCC recommends going beyond merely applying the existing smoking ban to marijuana. Instead, private property owners should have complete discretion to ban individuals from vaping or otherwise consuming any non-combustible forms of cannabis such as edibles or beverages. The OCC believes that the best way to achieve this outcome is to adopt Colorado's approach of **making all public use illegal**. Colorado was one of the very first states to legalize recreational marijuana, and marijuana use there in any form is prohibited in all public places, including outdoor and indoor areas.

Furthermore, rental property owners and hotels in Colorado have the right to ban the possession and use of marijuana products on their properties. This is an especially important caveat worth enacting in Ohio, as our state prepares to administer several measures created in the state operating budget to grow our single and multi-family housing stock.

AMENDING THE TAX DISTRIBUTION

As it stands, the Issue 2 initiated statute establishes an adult use tax rate of 10% with annual tax revenues estimated (per a study by The Ohio State University Drug Enforcement and Policy Center) to range from \$276 million to \$403 million in the fifth year of an operational cannabis market. As comparison, adult use cannabis revenues for fiscal year 2022 range from \$152,334,798 in Nevada to \$511,123,712 in Washington State. Our neighboring state of Michigan saw \$281,415,241 in revenues in 2022.

Ohio's Issue 2 statute would disburse these new annual tax revenues among a cannabis social equity and jobs program (36%), a host fund benefitting only those municipal corporations or townships that have adult use dispensaries (36%), a fund to fight substance abuse (25%), and a fund for the Ohio Department of Commerce and the Ohio Department of Taxation to administer the new law (3%). Under this tax distribution, over one-third of these revenues will flow right back into the industry, with the remainder going to remediate issues resulting from legalization of recreational marijuana.

Even though proponents and opponents of Issue 2 support applying enforcement measures to combat marijuana-impaired driving, not a single dollar of new revenue is dedicated to law enforcement. There is no revenue for the Ohio State Highway Patrol, whose vigilance and uniform, statewide enforcement of traffic laws keeps our roadways safe. Moreover, the "host community cannabis fund" excludes counties from receiving any funds, yet Sheriff's Departments commonly provide protection and enforcement in many communities.


In the interest of providing the broadest public benefit from this new income stream, the OCC would suggest the following amended tax disbursement:

- One-third of revenues to the state's General Revenue Fund, with a dedicated set-aside of funds for the Ohio State Highway Patrol, and a portion to be allocated to the Ohio Department of Commerce and the Ohio Department of Taxation to offset administration costs associated with this new law.
- One-third of revenues to the Local Government Fund, with language to ensure a portion of these funds will flow to county sheriff departments, local law enforcement agencies, county EMS agencies, and local fire/EMS departments.
- One-third of revenues to the OneOhio Recovery Foundation to support substance abuse treatment, recovery, and prevention efforts. Within this provision, the OCC also recommends standing up a loan repayment assistance program to encourage individuals to pursue vocations in the fields of behavioral health and recovery services. Ohio faces a crisis in behavioral health, with nearly two million adults in Ohio having a mental health condition. This problem is compounded by our severe shortage of behavioral health and recovery services professionals. According to NAMI Ohio, there is only one psychiatrist for every 10,000 Ohioans and just 11 psychiatrists for every 100,000 Ohio children. This program could help remedy the dearth of such healthcare professionals in Ohio and could be modeled after the existing Ohio Physician Loan Repayment Program, the Ohio Dentist and Dental Hygienist Loan Repayment Programs, and the Ohio Chiropractic Loan Repayment Program.

We understand that this is new ground for everyone, with a statute that is complex and full of nuanced policy measures. Please know that the Ohio Chamber of Commerce and our members stand ready to assist your efforts to both honor the vote of the people and administer this new program in the most socially

responsible manner. Upon request, we are happy to supply you with specific language regarding any of the above points. Thank you for your time and attention in this critical matter.

Respectfully,

A handwritten signature in black ink, reading "Rick Carfagna". The signature is fluid and cursive, with the first name "Rick" and last name "Carfagna" clearly distinguishable.

Rick Carfagna
Senior Vice President, Government Affairs
Ohio Chamber of Commerce

Cc: House Majority and Minority Leadership
Senate Majority and Minority Leadership
Sheryl Maxfield, Director, Ohio Department of Commerce
Patricia Harris, Tax Commissioner, Ohio Department of Taxation
John Logue, Administrator/CEO, Ohio Bureau of Workers' Compensation