

Understanding Proposition 207, the Smart and Safe Arizona Act

2020 Proposed Constitutional Amendment

Background

The Smart and Safe Arizona Act (Proposition 207) proposes to legalize and regulate the production, sale, possession, and consumption of recreational marijuana. A ballot measure first legalized medical use of marijuana in 1996, but decisions by the state legislature and the governor, in effect, [maintained prohibition](#). Another successful ballot initiative in 2010 established the current medical marijuana program. In 2016, voters rejected a recreational marijuana initiative with 51% against.

Since 2012, 11 states have legalized recreational marijuana. In addition, 16 states have decriminalized the possession of small amounts of marijuana. However, marijuana remains a federally prohibited substance, meaning it is a federal crime to produce, sell, or possess it.

The current initiative responds to criticisms leveled against a similar initiative in 2016, especially by [the Chamber of Commerce](#). The response includes new provisions clarifying that driving under the influence of marijuana remains illegal and allowing employers to prohibit marijuana consumption. The current initiative also more strictly regulates where consumption can happen and how products can be marketed. In particular, it grants wide discretion to the Department of Health and Human Services to determine what kind of products, including their potency, can be sold, and how dispensaries may advertise them.

Key Components

According to [Arizona Legislative Council](#), "Proposition 207 would:

- "Allow a person who is at least 21 years of age to lawfully possess and use one ounce or less of marijuana, including not more than 5 grams of marijuana

concentrate (for example, hashish), as well as up to 6 marijuana plants at that person's primary residence. (Producing, possessing and using marijuana would remain illegal under existing federal law.) [[Arizona Legislative Council](#) also adds, later in its analysis: "Not more than 12 marijuana plants could be produced at a single residence. Marijuana produced by those plants could be cultivated only in an enclosed, locked area within the premises that is not visible from public view. The person could also transfer one ounce or less and up to 6 marijuana plants to another person who is at least 21 years of age if the transfer were without remuneration."]

- "For a person who is under 21 years of age, reduce the penalties for unlawful use of marijuana to a civil penalty for the first violation, a petty offense for a second violation and a class 1 misdemeanor for subsequent violations.
- "In addition to the sales tax, impose a 16% excise tax on the retail sale of marijuana and marijuana products.
- "Transfer \$45,000,000 from the medical marijuana fund for a variety of different programs and purposes, including the Arizona Teachers Academy, public health, traffic enforcement, education relating to legalizing marijuana, expunging certain criminal records and implementing a social equity ownership program.
- "Establish a petition process to expunge law enforcement and court records relating to arrests, charges, adjudications, convictions and sentences for specific marijuana-related drug offenses that occurred before the effective date of the measure.
- "Direct that monies from licensing and renewal fees, application fees, civil penalties, excise taxes and penalties related to selling and testing marijuana be deposited in the Smart and Safe Arizona Fund. Monies in that fund would be used first to pay for the costs of implementing, administering and enforcing the measure. If monies remain in the smart and safe Arizona fund, the monies would be allocated to community college districts and provisional community colleges, municipal police and fire departments, fire districts and county sheriffs' departments, the Arizona highway user revenue fund and various "justice reinvestment programs" including: (a) Public and behavioral health, including substance use prevention and treatment. (b) Restorative justice, jail diversion, workforce development, industry-specific technical assistance or mentoring services for economically disadvantaged persons in communities

disproportionately impacted by high rates of arrest and incarceration. (c) Reducing drug-related arrests and the prison population in this state.”

According to [Arizona Legislative Council](#), Proposition 207 would **not** authorize a person to:

- “Smoke marijuana in a public place or open space.
- “Operate any motorized form of transport while impaired to even the slightest degree by marijuana.
- “Consume marijuana while operating or riding in the passenger compartment of any motorized form of transport.
- “Provide marijuana to a person who is under 21 years of age.

“An employer would not be required to allow a person to possess or consume marijuana in the workplace. (Under the current drug-free workplace laws, an employer may discipline or terminate an employee based on the employee’s positive drug test for marijuana, even if the employee consumed the marijuana outside the workplace.) An employer, school, day care center, adult day care facility, health care facility or corrections facility could prohibit or regulate possessing, smoking, producing, processing, manufacturing or selling marijuana on the property.

“A person who owns, manages or leases a property could prohibit or regulate possessing, smoking, producing, processing, manufacturing or selling marijuana on the property.

“A person would not be guilty of driving while under the influence (DUI) because of the presence of metabolites or components of marijuana in the person’s body unless the person were also impaired to the slightest degree. (Under current state statute, a person violates the DUI statutes when any drug or its metabolite is present in the person’s body.)”

Regulation of Dispensaries

According to [Arizona Legislative Council](#), “Proposition 207 would require the Department of Health Services (Department) to adopt rules to regulate marijuana, marijuana products, marijuana establishments and marijuana testing in this state,

including licensing marijuana establishments and marijuana testing facilities, licensing and renewal fees, security requirements, cultivating, processing and manufacturing requirements, tracking, testing, labeling and packaging requirements (which would include child-resistant packaging), delivery, acceptable forms of government-issued identification required for purchases, potency of edible marijuana products and to create a social equity ownership program to address ownership and operation by individuals from communities disproportionately impacted by previous marijuana law enforcement.

“Delivery of marijuana would not be allowed until the department adopts rules after January 1, 2023. Delivery would be prohibited to any property owned or leased by the federal, state or local government, including the universities under the control of the Arizona Board of Regents.

“A marijuana establishment would be allowed to sell, cultivate, process and manufacture marijuana and marijuana products in licensed locations. The number of marijuana establishment licenses would be capped at one marijuana establishment license for every 10 pharmacies that have obtained a pharmacy permit and operate in this state.

“Beginning January 19, 2021 through March 9, 2021, the Department would be required to accept early applications for marijuana establishments from only: 1. Currently registered nonprofit medical marijuana dispensaries. 2. Applicants seeking to operate a marijuana establishment in a county with fewer than 2 nonprofit medical marijuana dispensaries. After issuing early applicant marijuana establishment licenses, the Department would be required to issue the remaining marijuana establishment licenses by a random selection process. Notwithstanding the cap, the Department would be required to issue, not later than 6 months after adopting rules, an additional 26 licenses to entities under the social equity ownership program. A city, town or county could enact reasonable ordinances or rules that generally govern the time, place and manner of marijuana establishment and marijuana testing facility operations, except that the city, town or county could not: 1. Restrict or interfere with the ability of an entity to operate a nonprofit medical marijuana dispensary and a marijuana establishment at a shared location. 2. Adopt a more restrictive ordinance or rule than a comparable ordinance or rule that applies to nonprofit medical marijuana dispensaries. A marijuana establishment and a nonprofit medical marijuana dispensary would be allowed to engage in regulated advertising.”

Penalties

According to [Arizona Legislative Council](#), “Proposition 207 would establish penalties or offenses for certain actions, including: 1. Petty offenses punishable by a maximum fine of \$300 and community restitution for: (a) Smoking marijuana in a public place. (b) Possessing more than one ounce but not more than 2.5 ounces of marijuana, including not more than 12.5 grams of marijuana concentrate (for example, hashish). 2. A civil penalty of not more than \$100 for a first violation of underage use. The second violation would be a petty offense. 3. A petty offense for the first violation of unauthorized production (including growing marijuana plants subject to public view without the use of optical aids). The second violation would be a class 3 misdemeanor.”

“The Arizona Constitution limits the ability of the Legislature to amend an approved initiative measure or to appropriate or divert monies created or allocated by an approved initiative measure,” according to [Arizona Legislative Council](#). “Any future legislative changes to the initiative measure may be made only if they are approved by at least three-fourths of the members of each house of the Legislature and the changes further the purposes of the initiative measure, or if they are approved by the voters through referendum or initiative.”

Fiscal Impact

According to the [Joint Legislative Budget Committee](#), the initiative “establishes a 16.0% tax on the sale of recreational marijuana and recreational marijuana products. Marijuana establishments would also pay licensing fees. The tax and the licensing fees are projected to generate \$166 million in annual revenue after the program becomes more fully operational in the next several years. These monies would be deposited into the Smart and Safe Arizona Fund (SSAF). SSAF monies would first be used to pay administrative costs of certain agencies. The remainder of these monies would then be distributed as follows:

- 33.0% to community colleges
- 31.4% to local law enforcement and fire departments
- 25.4% to the state and local transportation programs
- 10.0% to public health and criminal justice programs
- 0.2% to the Attorney General for enforcement

“The regular sales tax would apply to recreational marijuana purchases. Annual state and local sales tax collections on these purchases may reach \$88 million in the next

several years. These monies would be available for general use. Due to uncertainty about the level of marijuana sales, the revenue estimates are speculative and subject to change. The initiative also requires a one-time transfer from the Medical Marijuana Fund of \$45 million for the Department of Health Services, a university tuition program, and an impaired driving program. There could be fiscal costs from increased emergency room visits, hospitalizations, and substance abuse treatment, as well as savings from reduced arrests, prosecutions, and punishment of marijuana offenses. The magnitude of such costs or savings would depend on subsequent funding decisions made by the state government.”

Supporters

Endorsers of this initiative include Arizona Attorneys for Criminal Justice, the Arizona Dispensaries Association, former Gov. J. Fife Symington III, the ACLU of Arizona, the American Friends Service Committee, Professional Firefighters of Arizona, former state Sen. Alfredo Gutierrez, and former state Rep. Chad Campbell.

[Proponents make four main arguments.](#) They hold that marijuana is a relatively safe substance that adults can responsibly consume. Therefore, criminalization is not only less safe, since adults have to buy it from illegal, unregulated sources, but also it is an unnecessary restriction of individual liberty. According to proponents, Arizona currently holds too many people in prison or restricts their opportunities with criminal conviction records on the sole basis of consuming marijuana. This is unjust and inefficient because these people have not caused any harm to society. Additionally, proponents argue, the best way to encourage responsible use and keep marijuana away from children is to properly regulate it and openly talk about it, instead of criminalizing it. Lastly, proponents claim that this is a low-risk way to raise an estimated \$300 million annually to support essential public services in safety, education, health, and transportation.

Opponents

Opponents of this initiative include Gov. Doug Ducey, the Pima and Yavapai County attorneys, the Arizona Chapter of the American Academy of Pediatrics, the Arizona Hospital and Healthcare Association, the Arizona Catholic Conference, and the Arizona Chamber of Commerce and Industry.

[Opponents argue that marijuana is generally unsafe and hence there is no “responsible” use of it.](#) While opponents say that an increase in use among adults would be bad, they mostly worry about the effect of legalization on children. These worries are threefold:

legalization suggests to children that marijuana is safer than it is; legalization makes marijuana more widely available, increasing the chances it might land in the hands of children; and legalization will lead to a greater presence of edible marijuana products that might be more attractive to children. Additionally, opponents point to potential public health consequences of increased adult use, from increasing needs for drug treatment to marijuana-related traffic accidents. According to opponents, these harms more than justify the prohibition of marijuana despite its interference with personal liberty. In particular, opponents claim criminal penalties are much more effective in reducing use than education or promotion of responsible use. Opponents are also skeptical of the economic benefits of legalization, arguing that tax revenue will fall short of projections. Lastly, they think that criminal justice implications of legalization are overblown, since only a small share of people are imprisoned exclusively for the possession of marijuana.

Additional Information

Given the various claims by proponents and opponents, it is important to note that the experience from other states suggests minor [impacts from legalization](#). Neither the dramatic negative consequence on [health and safety](#), as claimed by opponents, nor strong positive consequences, like a large [reduction in prison population](#), as claimed by proponents, have been realized. Legalization has been shown to lead to a [modest increase in consumption among adults](#). Legalizing marijuana has caused an increase in state tax revenues, even though they remain a small part of a state's [overall tax base](#). Additionally, legalizations has led to a [decrease in law enforcement activity](#) (i.e. arrests) related to production and possession of marijuana.