

NJ Voters to Decide on Legalizing Adult-Use Cannabis in November Election

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By **Lisa Gora and Michael F. Schaff** | September 18, 2020

In addition to casting a ballot in the U.S. presidential election in November, New Jersey voters will have an opportunity to vote in a referendum to pass adult-use cannabis legislation. This referendum, if passed, will amend the New Jersey Constitution to legalize adult-use cannabis for personal, non-medical use.

Instead of taking on this issue directly, on Dec. 16, 2019, the New Jersey legislature voted to take the issue to the public when it approved submitting the following question to the voters on the State's November ballot:

Do you approve amending the Constitution to legalize a controlled form of marijuana called “cannabis”? Only adults at least 21 years of age could use cannabis. The State's commission created to oversee the State's medical cannabis program would also oversee the new, personal use cannabis market. Cannabis products would be subject to the State sales tax. If authorized by the Legislature, a municipality may pass a local ordinance to charge a local tax on cannabis products. (SCR183 at page 4)

If approved by voters, Article IV, Section VII of the New Jersey Constitution would be amended by adding a new paragraph 13 that would most notably permit the retail purchase and consumption of cannabis, and/or products created from cannabis, by persons 21 years of age or older, for recreational and not just for medicinal purposes. If the referendum passes, New Jersey will become the twelfth state, along with the District of Columbia, to legalize recreational cannabis.

The amendment also (a) imbues the Cannabis Regulatory Commission (Commission), which was created pursuant to N.J.S.A. 24:6-I et al., with the responsibility to oversee and regulate New Jersey's cannabis program; and (b) permits the legislature to enact a law to enable the Commission to have the State charge sales tax on adult-use cannabis under the Sales and Use Tax Act, and municipalities to charge municipal taxes on such sales (Senate Concurrent Resolution No. 183 (SCR183) at Section 13). If approved, the amendment will take effect on Jan. 1, 2021, with the legislature implementing and taking “anticipatory legislative action as may be necessary to effectuate the provisions of the amendment” (SCR183), i.e., the legislature will still have to go through the process of developing enabling language to carry out the actions of the amendment. For instance, as referenced in an earlier article of this column published on Feb. 21, 2020, co-authored by Lisa Gora and Seth Tipton, titled: “How Amending the New Jersey

Constitution May Seed Adult Use Cannabis in New Jersey,” the definition of “cannabis” set forth in the Jake Honig Law, the New Jersey Criminal Code, Title 2C and the New Jersey Controlled Substances Act, would have to be amended to exclude from the definition “cannabis” that is grown, manufactured and possessed in accordance with the Constitutional amendment. The governor and legislature leadership will also need to appoint members to the Commission.

Although there has not yet been much “anticipatory legislative action” in New Jersey to effectuate the amendment, some Alternative Treatment Centers (ATCs) are taking steps to meet the expected surge in demand for cannabis in anticipation of adult-use legalization. Recently, a pharmacist and dispensary manager told *Marijuana Business Daily* that his dispensary is in the process of a major expansion of cultivation capacity, (see <https://mjbizdaily.com/new-jersey-marijuana-companies-invest-in-infrastructure-ahead-of-recreational-vote/>, last visited Sept. 9, 2020). Additionally, in June 2020, a multistate operator acquired a New Jersey ATC and it expects to triple its cultivation capacity in New Jersey to 21,000 square feet, according to its Chief Operating Officer. (<https://mjbizdaily.com/new-jersey-marijuana-companies-invest-in-infrastructure-ahead-of-recreational-vote/>, last visited Sept. 9, 2020).

Polling data collected by the Monmouth University Polling Institute by telephone on registered New Jersey Voters in April 2020 suggested that the ballot measure will be approved. Specifically, the poll data indicated that 61% would vote in favor of cannabis legalization to amend the state Constitution in November, while 34% would vote against the ballot measure (https://www.monmouth.edu/polling-institute/documents/monmouthpoll_nj_042320.pdf/). It should be noted that pursuant to the poll, support of the referendum comes from 74% of Democrats, 64% of Independents and 40% of Republicans (Id.). Ironically, according to the same Monmouth University Poll, legalization is more popular in New Jersey than either presidential candidate, Democrat Joe Biden (54%) or Republican Donald Trump (38%). (Id.) Those interested in entering New Jersey’s potential recreational market should look to previous versions of the recreational bill, Senate Bill 2703 (S2703), sponsored by Senate President Stephen Sweeney and Senator Nicholas Scutari, and review the application process and forms to obtain a license to operate medicinal alternative treatment centers, to get positioned if voters pass the referendum.

If the amendment is not approved by the voters, New Jersey will have to wait to see how the legislature reacts.

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