



May 11<sup>th</sup>, 2023

Conference Committee on HF 100

Chairs Port, Stephenson, and Members of the Committee:

Americans for Prosperity believes freedom and opportunity are the keys to unleashing prosperity for all. We are a community of millions of concerned citizens advocating for solutions based on proven principles to tackle the country's most critical challenges. We believe Americans are capable of extraordinary things when we have the freedom to do so.

**That is why we urge your support for House File 100: legalizing adult-use cannabis in Minnesota.** Legalizing adult-use cannabis will unleash a new era and a step forward in our state, allowing individuals to take advantage of an emerging market, while smothering a black market that is untaxed, unregulated, and unsafe.

Regarding the criminal justice reform aspects of the bill, AFP believes in second chances and empowering individuals to use their experiences to make a positive impact for themselves and their community. HF 100 is a great example of a transformational measure that will help right long-overdue wrongs of the War on Drugs and create opportunities previously out of reach for many. It is our hope that dismantling prohibition will help reduce the number of individuals who encounter the judicial system and not be plagued with criminal records that could hinder their opportunities.

Dignity will be restored to individuals when applying for housing or a job – thus opening opportunities – because they will not be discriminated against or refused an offer due to a minor infraction on their record. As a matter of fact, I met an individual who said that he was so ashamed of a small cannabis offense on his record when he was 18, he has refrained from applying to jobs in his preferred field because he didn't want his potential employer to think lowly of him.

We are proud to have worked on a bipartisan effort to add increased accountability and transparency to the Office of Cannabis Management, a new government entity that will control who can operate in the market. **We urge your support of the annual market analysis (Article 1, Sec. 17, 342.16) to determine whether the office is fulfilling prescribed requirements and holding public hearings to hear from consumers, market stakeholders, and potential new applicants when determining license needs to ensure a competitive and stable market.** Reporting from other states reveals how rushed and improperly structured cannabis licensing schemes can result in entire state markets being controlled by one or a few large companies.<sup>1</sup> Other states where the power

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<sup>1</sup> See e.g. Izzy Kapnick, "Walgreens of Weed": How Pot Law's Seedy Start Created Florida's Cannabis Oligopoly, Miami New Times (2021), <https://www.miaminewtimes.com/marijuana/marijuana-law-florida-cannabis-oligopoly-13317664>; Jeff Smith, Florida's medical cannabis industry has only one truly dominant player, MJBizDaily (2019), <https://mjbizdaily.com/floridas-medical-cannabis-industry-only-one-dominant-player/>; Sam Wood, Big firms find loophole, skirt Pennsylvania medical



to arbitrarily limit the number of businesses that will be able to operate in the market is too tightly held by a few unelected bureaucrats have seen major corruption scandals and hyper-consolidation in their industries.<sup>2</sup> Minnesota can and should learn from the mistakes of other states and implement this transparency and accountability mechanism for this new government entity.

A point of support *and* concern is the tax rate imposed on cannabis. A crucial component of legalization is establishing an intentional tax rate. **Consumers will continue to purchase products from legacy providers if it can save them substantial sums of money<sup>3</sup>.** Individuals choosing to purchase cannabis should not be deterred from the legal market because of a tax rate that is too high, whether unwilling to pay or unable to afford it. As has been stated many times: legalizing cannabis will not be a cash cow and should not be treated as such.

We want to see Minnesota avoid the failures of other states, like California, which present a clear warning. The illicit market has continued to thrive there given its excessive and complicated tax regimes. It is estimated that 75% of the cannabis sold in the state is still coming from illicit providers<sup>4</sup>. **Studies show that the legal market can only compete up to a taxable threshold of 15% before consumers divert their business to the illicit market.** Michigan chose to impose a more reasonable tax burden on its market and has seen the legal market capture nearly 60% of the market share in just a few years<sup>5</sup>. We urge lawmakers to consider the following tax structure in addition to the state sales tax:

- (1) one percent for any product covered by the tax and sold before January 1, 2025;
- (2) two percent for any product covered by the tax and sold after January 1, 2025, but before January 1, 2026;
- (3) three percent for any product covered by the tax and sold after January 1, 2026, but before January 1, 2027;
- (4) five percent for any product covered by the tax and sold after January 1, 2027, but before January 1, 2028; and
- (4) seven percent for any product covered by the tax and sold after January 1, 2028, but before January 1, 2029.

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*marijuana laws with corporate sleight of hand*, The Morning Call (2019), <https://www.mcall.com/news/pennsylvania/mc-nws-pa-medical-marijuana-big-firms-loophole-20190604-rwvbjedqz5d3dkmom2kzwwggjj4-story.html>.

<sup>2</sup> Mona Zhang, *How state marijuana legalization became a boon for corruption*, Politico (2020), <https://www.politico.com/news/2020/12/27/marijuana-legalization-corruption-450529>; Geoffrey Lawrence, *Nevada's Flawed Marijuana Licensing Process Leads to Corruption and Lawsuits*, Reason Foundation (2019), <https://reason.org/commentary/nevadas-flawed-marijuana-legalization-process-leads-to-corruption-and-lawsuits/>.

<sup>3</sup> Geoff Lawrence and Spence Purnell, *Marijuana Taxation and Black Market Crowd-Out*, Reason Foundation (2020), <https://reason.org/wp-content/uploads/marijuana-taxation-black-market-crowd-out.pdf> (“As demonstrated by alcohol and cigarettes, excessive taxation can influence consumers’ decisions to patronize the black market.”)

<sup>4</sup> Tom Adams, et al., *California: Lessons from the World's Largest Cannabis Market*, arcview Market Research (2020), [https://bdsa.com/wp-content/uploads/2019/08/2019\\_BDS\\_California\\_CIB\\_Exec\\_Summ\\_Final\\_With\\_A.pdf](https://bdsa.com/wp-content/uploads/2019/08/2019_BDS_California_CIB_Exec_Summ_Final_With_A.pdf); *See also* Los Angeles Times Editorial Board, *Californians overwhelmingly supported legalizing marijuana. Why is it still a mess?*, Los Angeles Times (2021), <https://www.latimes.com/opinion/story/2021-12-26/editorial-californians-overwhelmingly-supported-legalizing-marijuana-so-why-is-it-still-a-mess-five-years-later>.

<sup>5</sup> Roni Kane, *Michigan pot sales skyrocket to all time high as prices keep dropping*, Bridge Michigan (2022), <https://www.bridgemi.com/business-watch/michigan-pot-sales-skyrocket-all-time-high-prices-keep-dropping>.



We have consistently called for a low initial tax rate and phase-in to allow new entrepreneurs to effectively establish themselves against illicit providers. While we appreciate the idea of lowering the tax rate in subsequent years as written in the companion bill, we have strong concerns that frontloading the tax burden will prolong the legacy market. Plus, there is not a guarantee that the tax rate will be ratcheted down – the cost of government rarely decreases. **We pose the question: can the Office of Cannabis Management and the other affected agencies operate under decreasing revenue for this self-sustaining industry?**

Finally, we urge legislators to avoid being overly prescriptive in the regulatory regime. Overregulating in this market's infancy, while presumably well-intended, will have adverse effects on the new market's ability to compete with the black market, thus negating the goal of the latter's eradication. Businesses and individuals that opt to enter the market should be able to do so without overly zealous requirements that inhibit growth and innovation. We should not legislate what we do not know yet. I want to make clear that this is not to say we do not believe in structured legalization that imposes guidelines and safety measures for this new market. What we do oppose is erecting unnecessary barriers and additional hoops to jump through for businesses and individuals.

Our chapter is proud to have worked tirelessly in a bipartisan manner to help make this legislation a gold star standard for other states looking to legalize adult-use cannabis. While this bill is not perfect, we can confidently say that Minnesota is on the right track to legalize adult-use cannabis. We look forward to continuing the conversation on cannabis, learning what works and pursuing common-sense reforms as we embark on this new endeavor.

We sincerely thank the authors for shepherding this legislation, and respectfully urge your support of this bill.

Sincerely,

*RaeAnna K. Buchholz*

RaeAnna K. Buchholz  
Legislative & Coalitions Director, Minnesota  
Americans for Prosperity