

CANNABIS CONFUSION

WHILE CANDID ABOUT ITS OPPOSITION to legalizing marijuana, the Delaware State Chamber of Commerce has worked hard to offer constructive feedback regarding HB 110, the Delaware Marijuana Control Act. If passed, recreational marijuana use would be legal in Delaware, subject to not-yet-known regulation. The State Chamber's Employer Advocacy and Education Committee (EAEC) was called to serve on the Adult Use Cannabis Task Force per House Concurrent Resolution No. 52. As chair of the EAEC, I filled that seat.

At the Task Force's first meeting in September, co-chairs, Representative Helene Keeley and Senate Majority Leader Margaret Rose Henry, outlined specific issues to be addressed during meetings: local authority and control; consumer safety and substance abuse prevention; packaging and labeling requirements; impaired driving and other criminal law concerns; and taxation, revenue, and banking issues. A report for the General Assembly was the end goal of the Task Force, though it was not to be about HB 110 specifically.

Assigned to the group for local authority and control, the EAEC offered more general language revisions to HB 110 that addressed issues raised by Delaware businesses, and offered feedback about the impact marijuana legalization would have on the business community.

Several concerns were raised, including, but not limited to, the impact on workers' compensation and unemployment compensation. The EAEC's primary suggestion was that legislation clearly keep Delaware businesses from shouldering any greater risk, legal or otherwise, than any other citizen, should legalization occur. Furthermore, any legislation should not prohibit employers from making decisions, including adoption and enforcement of policy, based on marijuana-related issues. For example, an employer may enforce total prohibition (e.g., a "zero tolerance policy"), at least for as long as it remains a federally illegal drug, without repercussion. The EAEC advocates that employers should retain the choice to make such decisions, and not face ambiguity, on the matter in any new law which can often translate to time consuming and costly litigation.

Although the EAEC was not invited to weigh in on Delaware's medical marijuana use statute, it recommended that it, too, be reconsidered. Two of several suggestions were to clearly define the terms "under the influence" and "impaired by," assuming they are intended to carry different meanings; and to address that there is no identified valid and reliable means of testing for either state, a defect HB 110 also carries.

In February, as the Taskforce's work was coming to an end, multiple drafts of the Taskforce report were circulated for review and input. A revised draft was circulated but remained unsatisfactory to many members. The draft implied that "actionable solutions" within the report were those of the Task Force. From EAEC's perspective, this was not only inaccurate, but the "solutions" themselves were inadequate. Also, the entire record was not yet fully compiled, or available for review.

The EAEC shared its terms for a "yes" vote:

- Definitions necessary to implement the terms "impaired by" and "under the influence";
- A study performed that would produce or provide a statistically valid and reliable test for assessing "impaired by" and "under the influence" as it relates to marijuana, in a manner that identifies each in a distinguishable way;
- Specific clarification of employment provisions for employers;
- Clear statement of what the report is meant to be, or not to be; and
- A draft of the report in its intended final form, provided prior to voting, that includes all information to be linked to and referenced, to ensure completeness and accuracy.

On February 28, a vote was called despite many members identifying problems with the report that would render any vote meaningless. The report was declared passed, though its purpose and outcome remained unclear. It was later confirmed that it did not pass due to a counting error.

The Task Force reconvened in March, following the counting error, though the report to be voted on remained defective. Even if the "yes" requirements from the EAEC were not met, the EAEC would still have voted affirmatively if the report clearly stated at its start that: (1) it is only a summary of meetings held by the Task Force, and some, but not all, of the material submitted during meetings would be available at a provided location; (2) nothing in the appendix of the report should be considered as proposed amendments to HB 110; (3) no "actionable solution" contained therein was approved by the Task Force, as the Task Force did not examine "actionable solutions"; and (4) a Task Force member's vote for the report did not represent support of marijuana legalization.

Ultimately, these terms were not met, and the EAEC believes a majority of its fellow Task Force members were equally disappointed that the draft was considered suitable for release.

It may seem upon review that the work of the Task Force has been underwhelming. But the Taskforce at least provided the opportunity for advocates and opponents of legalized recreational marijuana to provide input on the issues surrounding legalization, and to alert members of the General Assembly of the pitfalls they will encounter on any path to legalization. There remains significant work to be done and the EAEC, and the State Chamber, will continue to weigh in on any efforts to legalize marijuana to make sure employer concerns are addressed – or at least heard. ■



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