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ATTORNEY GENERAL

May 7, 2025

Speaker John Arch
District 14
Nebraska State Capitol
PO Box 94604
Lincoln, NE 68509-4604

RE: Opposition to AM1251 to LB677

Dear Speaker Arch:

In November of 2024, the voters passed two initiatives in an attempt to legalize and regulate medical marijuana in Nebraska. Whether the initiatives were ever properly in front of the voters in the first instance-the process was beset by wrongdoing-is a question yet to be decided by the Nebraska Supreme Court. Unless and until a court acts, those initiatives are current law. And that law is straightforward: the voters passed their own regulatory system for medical marijuana.

Despite the clearly expressed will of the voters, the General Affairs Committee passed last Thursday (on a divided 5-3 vote) AM1251 to LB677. This 124-page amendment pays only vague lip service to the voters' chosen regulatory structure and instead sets into place an expansive system that provides the framework for recreational use, supercharges the black market, handcuffs law enforcement, empowers law breakers, weakens public safety, and dramatically expands marijuana into nearly every aspect of public life in Nebraska.

As law enforcement leaders charged with keeping Nebraskans safe, and who are faced daily with the negative impacts of drug abuse, dangerous drug dealing, impaired driving, and the growing mental health challenges in our respective communities, we write to express our steadfast opposition to this amendment. While no letter could comprehensively summarize the problems in AM1251-there are numerous fundamental issues with the amendment-we write to provide a brief summary of some of the most egregious examples.

First, AM1251 is nothing more than a recreational marijuana system disguised as a “medicinal” system. For example, AM1251 is explicit that smoking marijuana—which has no medicinal purpose—is prohibited. Yet that prohibition is functionally meaningless as this amendment *also* permits the possession of marijuana flower, which is most commonly used for smoking. Nor does the amendment limit or restrict vaping, which is an electronic form of inhaling marijuana often with high levels of concentrated THC with dubious medicinal purpose. In addition, the amendment clearly contemplates a recreational marketplace because it authorizes every possible use and form of cannabis, including a wide variety of consumer products such as drinks, topicals, and edibles.

The most significant example of the false perception that this is for medicinal use is found in the requirements for receiving a “recommendation” for marijuana. The amendment provides that a recommendation can be issued only if it relates to a set of enumerated health issues. This creates an initial impression that AM1251 is, indeed, limited to medical marijuana. Putting aside the lack of medical grounding for items included within the list in the first instance—and the lack of peer-reviewed support—the structure makes clear that these limitations are weak. To start, the list gives the health care practitioner a level of flexibility that makes the list practically irrelevant. There are at least two “catch-all” provisions—an undefined “serious” medical condition provision, and a chronic pain provision—that would give practitioners interpretive license to simply wave through a request for marijuana even if not strictly tied to one of the other categories. And of note, the practitioner can also issue a recommendation that will be in effect for up to two years, with no required check-ups or ongoing treatment plan reviews.

But even if those issues were addressed, the structure of the bill renders these enumerative restrictions simply advisory. The amendment provides (1) that medical practitioners, whether in-state or out-of-state, have civil and criminal immunity for their recommendations and (2) that there is no legal mechanism or practical process by which a patient’s registration card can be revoked if it was issued improperly based on the lack of a proper diagnosis. The immunity provision concerning recommendations completely sidelines anyone who can hold these professionals accountable—including through criminal prosecutions, civil actions by regulatory authorities and actions by the Attorney General to revoke their licenses. That means an out-of-state practitioner could rubber-stamp thousands of patient complaints for “chronic pain” without a physical examination or any actual medical evaluation. And, because there is no practical revocation process, once an improperly issued registration card is issued to the individual, it would be essentially impossible for the card to be rendered void. These provisions mean that the purported “restrictive” list of medical conditions is simply advisory in nature—it opens the door wide open for recreational use.

The conclusion that this is a recreational marijuana bill is buttressed by a number of the provisions. For example, the amendment would permit that the Executive Director of the Liquor Control Commission—a full-time employee of the State of Nebraska—to moonlight as the Executive Director of the Medical Cannabis Commission. The Liquor

Control Commission's Executive Director indeed has experience in regulating *recreational* substances, but, notably, has no medical background. As an additional note, this proposed dual-employment structure creates a host of ethical issues, not the least of which are potential conflicts of interest with having one person regulate both liquor and marijuana.

Second, this amendment will supercharge the black market for marijuana and create a whole new generation of drug dealers. The provisions of this amendment make law enforcement's job much harder by creating a significant shield against probable cause for searches or arrests of those who carry large amounts of marijuana. This amendment also will make it practically impossible to enforce laws against marijuana possession, as there are vague requirements related to possession and the weight of the products that are allowed. Despite some nominal restrictions on possession for patient use, there is no overall limit which a person can buy in any specific time period. There are also no such restrictions on those who can procure and distribute products; a "registered caregiver" has no limit to what they can hold based on the unlimited number of patients they can handle. Therefore, any one caregiver could buy hundreds of pounds of marijuana a month for distribution to others. Combined with the generous and unnecessary immunity provisions for those carrying registry cards and those within their presence, this would make the loosely defined "registered caregivers" obvious candidates to become distributors within a cartel's illegal distribution chain.

The impact on law enforcement is significantly compounded by other parts of the amendment. For instance, law enforcement is saddled with the arduous "driving under the influence" standard for driving while high on THC. Studies have shown that drug-impaired driving has become a major public safety concern in the United States with marijuana as the most detected drug other than alcohol in U.S. drivers. In at least one state with legalized medical marijuana, the prevalence of driving after recent marijuana use is 56.4%, with patients also reporting that they frequently drive under the influence of marijuana. We already have a growing problem with road safety and the enforcement of driving laws. Nebraskans would be far better off with a standard that puts public safety at the forefront rather than recklessly increasing the number of drug-impaired drivers.

Third, this amendment eliminates significant protections for the public. For example, as noted above, a health care practitioner has immunity—from civil or criminal penalties, as well as license revocations—for providing even a careless recommendation for marijuana. That means a practitioner who "recommends" marijuana to a woman who is pregnant and then she miscarries or whose baby incurs severe developmental issues, or a provider who "recommends" marijuana to someone struggling with mental health issues who then commits suicide, cannot be held accountable. In spite of causing egregious harm to patients for failure to fully vet a patient's medical condition, practitioners presumably could continue to write "recommendations" for patients with no consequences, thus putting the public at ongoing risk.

The amendment also allows patients, caregivers, and licensees to buy, sell, and transport marijuana even if those individuals have prior convictions related to controlled substances. While other laws related to parole conditions may prohibit some of these actions, it is clear that the law is open to allowing drug dealers to operate freely within this system.

Fourth, this bill would push marijuana into nearly every nook and cranny of public life in Nebraska. Cities and other political subdivisions are severely restricted in using their zoning authority to keep their cities free from rampant marijuana use and distribution. Schools, too, are significantly impacted in this bill, placing them at risk of claims if they “unreasonably” restrict use or possession on school grounds. And while this bill purports to limit the location of dispensaries away from schools or a handful of other sensitive areas, it then grandfathered in all existing smoke shops. These smoke shops, most of which are fueling our synthetic Delta-8 crisis in the state, are in some cases close to schools and other sensitive facilities. Almost no part of the state is completely off-limits to marijuana, and AM1251 severely ties the hands of responsible regulating parties.

Fifth, AM1251 would unravel two years of work fighting the synthetic Delta-8 crisis in Nebraska. These products are poisoning Nebraskans and have led to mental health breaks and hospitalizations. Inexplicitly, AM1251 provides statutory approval (subject only to an approval from the Medical Cannabis Commission) for the sale of harmful synthetic THC products. Furthermore, AM1251 places no restrictions on the concentration levels of synthetic THC products, which only exacerbates the proliferation of these highly toxic substances. In doing so, AM1251 takes subsequent approval out of the hands of the Legislature, taking a major step forward towards legalization of dangerous and untested products. This would be a serious mistake.

This is not a comprehensive list of issues. If the bill is scheduled for debate on the floor, undoubtedly many more issues will be raised. Yet there are two final provisions that are worth highlighting, as they lay bare the true purpose of the bill. The first is the creation of a “vertical licensing” structure, which gives a company the right to be a part of each aspect of the supply chain. This is the exact *opposite* of what Nebraska does in the alcohol industry, with its trusted three-tiered system that helps regulate the sale of alcohol. The second is a unique scoring system which mandates preferential treatment for companies that have experience in the marijuana space; since marijuana is not legal in Nebraska, that necessarily means that this is a preference to out-of-state companies. These provisions were heavily influenced by, and clearly intended to favor, an out-of-state recreational marijuana vertically integrated company which has heavily lobbied for this amendment. This bill has nothing to do with the intent or will of the voters; it is a systematic legalization regime for recreational marijuana disguised as a medical marijuana bill and incorrectly is touted as being necessary to fulfill the will of the voters.

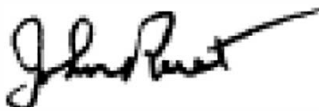
The voters passed a regulatory system for medical marijuana which, if left intact, is self-executing with milestone dates of July 1, 2025, and October 1, 2025. This bill is an extraordinary expansion of marijuana into public life in Nebraska, is only vaguely tied to

the original purpose of the voters, and would severely undermine public safety. We therefore stand in steadfast opposition to the passage of AM1251 to LB677.

Sincerely,



Mike Hilgers
Nebraska Attorney General



Sheriff John Rust
Adams County



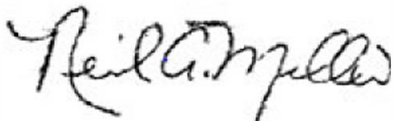
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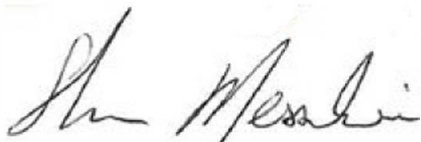
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Clay County

/s/ Colin Caudill

Sheriff Colin Caudill
Otoe County



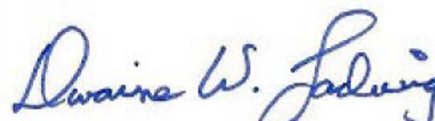
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Sheriff Ed Wemhoff
Platte County



Sheriff Bradley Boyum
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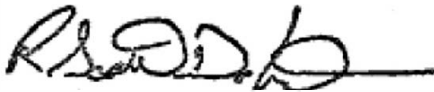
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Chief Kevin Denney
Also on behalf of the Police Chief
Association of Nebraska - President



Sheriff Paul Vrbka
York County
Also on behalf of the Nebraska Sheriffs
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