



Ohio Legislative Service Commission

Final Analysis

Emily E. Wendel

Sub. H.J.R. 4

131st General Assembly
(As Adopted by the General Assembly)

Reps. R. Smith and Curtin, Brown, Buchy, Derickson, Green, McColley, Amstutz, Anielski, Blessing, Boose, Burkley, Butler, Conditt, Dever, Dovilla, Ginter, Grossman, Hackett, Hagan, Hall, Hayes, Henne, Hill, Huffman, T. Johnson, Koehler, Kraus, Landis, Maag, Manning, McClain, Perales, Reineke, Retherford, Rezabek, Ryan, Schaffer, Scherer, Schuring, Sears, Slaby, Sprague, Terhar, Thompson, Rosenberger

Sens. Faber, Bacon, Balderson, Burke, Hite, Hottinger, Lehner, Peterson, Uecker, Widener

Adopted: June 30, 2015; approved by the voters on November 3, 2015, and effective November 3, 2015

RESOLUTION SUMMARY

- Prohibits the electors from using an initiative petition to propose a constitutional amendment that would grant or create a monopoly, oligopoly, or cartel, specify or determine a tax rate, or confer a commercial interest, commercial right, or commercial license to any person or nonpublic entity that is not available to other similarly situated persons or nonpublic entities.
- Requires the Ohio Ballot Board, if the Board believes that a proposed constitutional amendment would conflict with that prohibition, to prescribe two separate ballot questions for the proposal, both of which must be approved in order for the amendment to take effect.
- Specifies that if, at the election at which the anti-monopoly proposal appears on the ballot, the electors approve an initiated constitutional amendment that creates a monopoly, oligopoly or cartel for the sale, distribution, or other use of any federal Schedule 1 controlled substance, the entire amendment that creates the monopoly must not take effect.

* This update notes the approval by voters and the effective date.

- Provides that if, at a later election, the electors approve a constitutional amendment that creates a monopoly and that was proposed by an initiative petition that was not subject to the Ohio Ballot Board procedure described above, then that entire amendment must not take effect.
- Gives the Ohio Supreme Court original, exclusive jurisdiction in any action that relates to the provisions described above.
- Exempts the current provisions of the Ohio Constitution from the prohibition against constitutional monopolies.

CONTENT AND OPERATION

The joint resolution proposes an amendment to the Ohio Constitution to appear on the ballot at the November 3, 2015, general election.

The proposal prohibits the electors from proposing a constitutional amendment by initiative petition that would grant or create a monopoly, oligopoly, or cartel, specify or determine a tax rate, or confer a commercial interest, commercial right, or commercial license to any person, nonpublic entity, or group of persons or nonpublic entities, or any combination of those, however organized, that is not then available to other similarly situated persons or nonpublic entities.

Under the resolution, if a constitutional amendment proposed by initiative petition is certified to appear on the ballot and, in the opinion of the Ohio Ballot Board, the amendment would conflict with the prohibition against creating a constitutional monopoly, the Board must prescribe two separate questions to appear on the ballot. The first question must be as follows:

Shall the petitioner, in violation of division (B)(1) of Section 1e of Article II of the Ohio Constitution, be authorized to initiate a constitutional amendment that grants or creates a monopoly, oligopoly, or cartel, specifies or determines a tax rate, or confers a commercial interest, commercial right, or commercial license that is not available to other similarly situated persons?

The second question must describe the proposed constitutional amendment. In order for the proposed amendment to take effect, both questions must be approved or affirmed by a majority of the electors voting on them.



The proposal specifies that if, at the election at which the amendment prohibiting constitutional monopolies appears on the ballot, the electors approve another constitutional amendment that conflicts with that prohibition with regard to the creation of a monopoly, oligopoly, or cartel for the sale, distribution, or other use of any federal Schedule I controlled substance, then the entire proposed amendment that conflicts with that prohibition must not take effect (see **COMMENT**).¹ Further, if the electors approve a constitutional amendment at a later election that conflicts with the prohibition against constitutional monopolies and the amendment was not subject to the Ohio Ballot Board procedure described above, then the entire proposed amendment creating a monopoly must not take effect.

The resolution gives the Ohio Supreme Court original, exclusive jurisdiction in any action that relates to the proposal or to the continuing provision of the Constitution that prohibits the electors from using the initiative or the referendum to pass certain types of tax laws.²

Under the resolution, the prohibition against constitutional monopolies does not apply to any current provision of the Ohio Constitution.³

COMMENT

The Ohio Constitution specifies that if conflicting proposed amendments are approved at the same election, the amendment receiving the highest number of affirmative votes must be the amendment to the Constitution.⁴ But, the resolution states that if such a conflict occurs in November 2015, the amendment proposed by the resolution entirely supersedes an amendment that creates a monopoly involving a Schedule I controlled substance. A reviewing court might not enforce this language in the resolution because it was not part of the Constitution at the time the amendments were adopted.

It is not clear how a court might resolve an apparent conflict between the amendment proposed by the resolution and an amendment that creates such a monopoly. In deciding whether and to what extent the two amendments conflict, the

¹ Art. II, Sec. 1e. The federal Controlled Substances Act divides controlled substances into five categories called schedules. Schedule I includes, for example, heroin, LSD, marijuana, and peyote. 21 U.S.C. 812(b) and (c).

² Art. II, Sec. 1e.

³ Schedule.

⁴ Art. II, Sec. 1b, not in the resolution.



court might find that parts of one or both amendments must take effect, while other parts must not. In that case, practical issues could result from the enforcement of only a portion of a constitutional amendment.

HISTORY

| ACTION | DATE |
|---|----------|
| Introduced | 06-16-15 |
| Reported, H. Gov't Accountability & Oversight | 06-24-15 |
| Adopted House (81-12) | 06-24-15 |
| Reported, S. Rules & Reference | 06-30-15 |
| Adopted Senate (20-9) | 06-30-15 |
| House concurred in Senate amendments (72-15) | 06-30-15 |

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