Opinion No. 2017-006

January 24, 2017

Mary L. Berry, Sponsor
Post Office Box 511
Summit, AR 72677

Dear Ms. Berry:

I am writing in response to your request for certification, pursuant to Ark. Code Ann. § 7-9-107 (Supp. 2015), of the popular name and ballot title for a proposed initiated measure.

At the outset, I wish to make clear to you that the decision to certify or reject a popular name and ballot title is in no way a reflection of my view of the merits of a particular proposal. I am not authorized to, and do not, consider the merits of the measure when making my determination to certify or reject a popular name and ballot title.

The Attorney General is required, pursuant to Ark. Code Ann. § 7-9-107, to certify the popular name and ballot title of all proposed initiative and referendum acts or amendments before the petitions are circulated for signature. The law provides that the Attorney General may, if practicable, substitute and certify a more suitable and correct popular name and ballot title. Or, if the proposed popular name and ballot title are sufficiently misleading, the Attorney General may reject the entire petition.

Section 7-9-107 neither requires nor authorizes this office to make legal determinations concerning the merits of the act or amendment, or concerning the likelihood that it will accomplish its stated objective. In addition, consistent with Arkansas Supreme Court precedent, unless the measure is “clearly contrary to
law,"¹ this office will not require that a measure’s proponents acknowledge in the ballot title any possible constitutional infirmities.² Consequently, this review has been limited primarily to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, discussed below, of whether the popular name and ballot title you have submitted accurately and impartially summarize the provisions of your proposal.

The purpose of my review and certification is to ensure that the popular name and ballot title honestly, intelligibly, and fairly set forth the purpose of the proposed amendment or act.³

REQUEST

You have requested certification, pursuant to Ark. Code Ann. § 7-9-107, of the following popular name and ballot title for a proposed constitutional amendment:

**Popular Name**

Arkansas Cannabis Hemp and Recreational Marijuana Amendment

**Ballot Title**

An amendment to the Arkansas Constitution concerning the cannabis plant, providing that the cultivation, production, distribution, sale, possession, and use of recreational marijuana and cannabis hemp and products produced therefrom may not be prohibited under State law, but shall be regulated under State law; recognizing that such activities remain unlawful under federal law; providing for the release from incarceration, probation, or parole of all persons whose current and only conviction(s) in which they are

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² As part of my review, however, I may address constitutional concerns for consideration by the measure’s proponents.

serving were of State laws pertaining to the cultivation, production, distribution, sale, and possession of marijuana or possession of marijuana paraphernalia, and the expungement of records relating to such conviction(s); dividing cannabis into cannabis hemp (containing 0.3% or less THC) and marijuana (containing more than 0.3% THC); regulating the cultivation, production, distribution and the sale of cannabis hemp and products produced therefrom; providing that anyone 18 years of age or older may obtain a cannabis hemp license permitting the person to cultivate cannabis hemp; authorizing recreational use of marijuana; providing that anyone 21 years of age or older may obtain a marijuana license permitting the person to cultivate, produce, and sell marijuana and products produced therefrom for recreational purposes; providing that a licensed person may cultivate up to 36 cannabis plants in a location not subject to public view without optical aid; providing that sales of recreational marijuana will be subject to existing sales taxes and an additional 5% recreational marijuana excise tax and a local sales tax not to exceed 2%; permitting any retail store that is 1500 feet away or more from a public or private school, church, or daycare may sell recreational marijuana to any person 21 years of age or older; providing that the recreational marijuana being sold in the form of edibles or drinkables (a) is not designed to appeal to children; (b) shall not exceed 10 milligrams of THC per serving, and (c) labeling or packaging must provide product information to prevent overdosing; providing that the manufacture, possession, purchase, sale, and distribution of marijuana paraphernalia is lawful under State law; and providing that the amendment (a) is not intended to require employers to permit activities relating to recreational marijuana in the workplace, (b) is not intended to permit driving under the influence of marijuana, (c) is not intended to permit the transfer of recreational marijuana to anyone under 21 years of age, (d) nor permit anyone under 21 years of age to cultivate, produce, sell, possess, or use recreational marijuana.

RESPONSE

The popular name is primarily a useful legislative device. It need not contain detailed information or include exceptions that might be required of a ballot title,

4 Pafford v. Hall, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).
but it must not be misleading or give partisan coloring to the merit of the proposal. The popular name is to be considered together with the ballot title in determining the ballot title’s sufficiency.

The ballot title must include an impartial summary of the proposed amendment or act that will give the voter a fair understanding of the issues presented. According to the Court, a ballot title will not be legally sufficient unless it “adequately inform[s]” the voters of the contents of a proposed amendment or act so that they can make a “reasoned decision in the voting booth.” A ballot title’s failure to “honestly and accurately reflect what is contained in the proposed [act or] Amendment” may lead the Court to conclude that the “omission is significant.” The Court has also disapproved the use of terms that are “technical and not readily understood by voters.” Without a definition of such terms in the ballot title, the title may be deemed insufficient.

Additionally, if information omitted from the ballot title is an “essential fact which would give the voter serious ground for reflection, it must be disclosed.” At the same time, however, a ballot title must be brief and concise; otherwise voters could run afoul of Ark. Code Ann. § 7-5-309’s five-minute limit in voting booths when other voters are waiting in line. The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal

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5 See, e.g., Chaney v. Bryant, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976); Moore v. Hall, 229 Ark. 411, 316 S.W.2d 207 (1958). For a better understanding of the term “partisan coloring,” see note 16 infra.


9 Id. at *9.


11 Id.


14 Bailey at 284, 884 S.W.2d at 944.
argument the proposed measure might evoke. The title, however, must be “free of any misleading tendency whether by amplification, omission, or fallacy, and it must not be tinged with partisan coloring.” The ballot title must be honest and impartial, and it must convey an intelligible idea of the scope and significance of a proposed change in the law.

Furthermore, the Court has confirmed that a proposed measure cannot be approved if the text of the proposal itself contributes to confusion and disconnect between the language in the popular name and the ballot title and the language in the proposed measure. The Court concluded that “internal inconsistencies would inevitably lead to confusion in drafting a popular name and ballot title and to confusion in the ballot title itself.” Where the effects of a proposed measure on current law are unclear or ambiguous, it is impossible for me to perform my statutory duty to the satisfaction of the Arkansas Supreme Court without (1) clarification or removal of the ambiguities in the proposal itself, and (2) conformance of the popular name and ballot title to the newly worded proposal.

It is my opinion, based on the above precepts, that a number of additions or changes to your ballot title are necessary in order to more fully and correctly summarize your proposal. I cannot, however, at this time, fairly or completely summarize the effect of your proposed measure to the electorate in a popular name or ballot title without the resolution of the ambiguities in the text of the measure itself. And thus I cannot determine precisely what changes to the ballot title are necessary to fully and correctly summarize your proposal. It is therefore not appropriate, in my opinion, for me to try to substitute and certify a more suitable

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15 Id. at 293, 844 S.W.2d at 946-47.

16 Id. at 284, 884 S.W.2d at 942. Language “tinged with partisan coloring” has been identified by the Arkansas Supreme Court as language that “creates a fatally misleading tendency” (Crochet v. Priest, 326 Ark. 338, 347, 931 S.W.2d 128, 133 (1996)) or that “gives the voter only the impression that the proponents of the proposed amendment wish to convey of the activity represented by the words.” (Christian Civic Action Committee v. McCuen, 318 Ark. 241, 249, 884 S.W.2d 605, 610 (1994)).


18 Christian Civic Action Committee, 318 Ark. at 245, 884 S.W.2d at 607 (internal quotations omitted).


20 Id.
and correct popular name and ballot title pursuant to Ark. Code Ann. § 7-9-107(b). Instead, you may, if you wish, redesign the proposed measure and ballot title, and then resubmit for certification. In order to aid your redesign, I highlight below the more concerning ambiguities in the text of your proposal.

1. Section 5 initially states that “[t]he cultivation, production, distribution, sale, possession, and use of marijuana and products produced from marijuana for recreational purposes shall be lawful in every geographic area of every county of this state under Arkansas law, and shall be regulated by the state....” Subsections (a) and (b) then address the issuance of a “marijuana license” and “marijuana plant tag,” and provide that “any person who is a resident of this state and is twenty-one (21) years of age or older” qualifies to obtain the license and plant tag. Although “person” is not defined, it seems clear from the “21 years of age” limit that it means a natural person, i.e., an individual human being. There is no express requirement, however, that a non-natural person, e.g., a business entity, must be licensed in order to engage in the marijuana-related activities that would be legalized under your proposed constitutional amendment. It is also unclear whether a non-natural person could be licensed pursuant to the amendment, or whether, by referring only to a natural person, the proposed amendment prohibits business entities and other non-natural persons from consideration for a license.

The proposal’s position on these issues is undoubtedly a significant matter for voters’ consideration. Without clarification regarding what, if any, requirements or opportunities apply to non-natural persons in connection with the “cultivation, distribution, sale, [etc.],” this significant point cannot be accurately summarized for voters in a ballot title.

2. An ambiguity related to the above point involves the state’s regulatory authority. Sections 2 and 5 state that the activities with respect to marijuana “shall be regulated.” But given the uncertainty above regarding the amendment’s application to non-natural persons, it is unclear to what extent the state’s regulatory authority extends to such entities under your proposal.

3. Section 3 defines “marijuana” and “marijuana products,” respectively, as follows:
(e) “Marijuana” means any part of the cannabis plant... containing greater than [.3% THC].... [Emphasis added.]

(i) “Products produced” means items and substances manufactured from the cannabis plant... that may contain [THC], whereas products produced from marijuana contain greater than [.3% THC], and products produced from cannabis hemp contain [.3%] or less [THC]. Any item whose components may contain a variation in [THC] content that would span above the [.3%] threshold is to be considered a product produced from marijuana. [Emphasis added.]

It is unclear which parts of, and which products derived from, a cannabis plant meet the definition of “marijuana,” such that they would be subject to regulation for recreational purposes. Subsection 3(e) defines regulated “marijuana” as only that part of a cannabis plant that contains .3% or more of THC. This definition would lead a reasonable voter to believe that any part of a cannabis plant containing less than .3% of THC is not subject to the measure’s recreational-use regulations.

However, the proposed amendment goes on to define marijuana-related “products” in such a way that confuses the significance of the products’ THC content. A generic “product produced” is a product derived from a cannabis plant that may contain Delta-9 THC at any concentration. A specific “product produced from marijuana” must contain .3% THC content or greater—and would for this reason be regulated. But “any item whose components may contain” .3% of THC or greater falls within the definition of “marijuana product.” Presumably, items that “may contain” the threshold amount of THC are subject to the regulations for recreational use.

Based on these definitions, it would be unclear to a voter which marijuana products are to be regulated as recreational, and which products (such as cannabis hemp) are not. For example, a cultivator growing a cannabis plant in order to produce hemp might believe the plant need not comply with the recreational-use regulations because it does not contain .3% or more of THC. But the same cultivator might believe the hemp plant is subject to recreational-use regulations as a cannabis “item whose components may contain” .3% of THC content or greater. Whether the proposed amendment would limit this cultivator to a certain number of $6.00 plant tags (as a grower of marijuana for recreational use) or whether the cultivator could
obtain an unlimited number of $10.00 field tags (as a grower of cannabis for non-recreational use) is unclear.

4. Subsection 5(g) is ambiguous regarding the penalties that may be imposed on a person who “cultivates, produces, and/or sells recreational marijuana.” The subsection provides that any such person “shall be required to have a marijuana license and each plant growing must have a plant tag, [sic] failure to do so may result in” the stated penalties. The phrase “failure to do so” is ambiguous because it is unclear whether this refers to the person’s failure to obtain a license or the failure of a plant to have a plant tag. As a result, it is unclear and ambiguous whether the failure of one or more of the conditions would subject a person to the prescribed penalties.

5. Subsection 6(a)(5) states that “edible or drinkable products containing marijuana” shall:

... provide information on the packaging or label to enable the informed consumption of such product, including the potential effects of such product, and directions as to how to consume the product, as necessary to prevent overdosing.

It is unclear what the labeling requirement for edible/drinkable products entails. The subsection seems to apply one labeling requirement to two types of disclosures. On the one hand, a reasonable voter could read the clause “as necessary to prevent overdosing” to govern the entire subsection—meaning that all information on the label might need to address the risk of an overdose through improper consumption. On the other hand, the subsection might suggest that the label must include both overdose-specific information and information disclosing “potential effects” of consumption short of accidental overdose.

6. There is also an ambiguity under subsection, 6(b), which applies to the packaging and labeling of “smokable or vaporizable products.” This subsection requires a label that “provide[s] information ... to enable the informed consumption of such product, including ... potential effects of the product, and directions as to how to consume the product.” There is no reference here to the potential for overdosing. But a reasonable voter may nevertheless be uncertain whether the labeling standards for smokable/vaporizable products encompass information meant to prevent overdoses, as with the standards for edible/drinkable products. On the other hand, one might infer from the absence of “overdosing” language in
subsection 6(b) that there is no appreciable risk of overdose as the result of smoking or vaporizing marijuana products. In any event, however, the import of the labeling requirements is unclear and the ambiguity must be clarified so that this aspect of the proposed amendment can be properly summarized in a ballot title.

7. Section 10(a) states in part that “[t]he sale of recreational marijuana shall not be subject to any local sales tax that exceeds two percent (2%).” Your proposed ballot title summarizes this provision by stating that “sales of recreational marijuana will be subject to ... a local sales tax not to exceed 2%.” (Emphasis added). This ballot title language indicates that if voters approve the amendment, local sales taxes that are set at or below 2% will apply to recreational marijuana sales. This is difficult to reconcile with the actual text of section 10(a), which might be read as only imposing a local sales tax limit. This possible disconnect between the text of your proposed measure and your proposed ballot title must be clarified for proper reflection in the ballot title.

8. Section 12, regarding “conflicting laws,” states that the proposal will supersede “conflicting statutes, local charter, ordinance, or resolution, and other state and local provisions.” (Emphasis added). Read literally, this dispenses with the requirement that other “provisions” conflict with your proposed amendment in order to be superseded. This non-standard conflicts language is of uncertain meaning and impossible to summarize in a ballot title without clarification.

CONCLUSION

The ambiguities noted above are not necessarily all the ambiguities contained in your proposal, but they are sufficiently serious to require me to reject your popular name and ballot title. I am unable to substitute language in a ballot title for your measure due to these ambiguities. Further, additional ambiguities may come to light on review of any revisions of your proposal.

My office, in the certification of ballot titles and popular names, does not address the merits, philosophy, or ideology of proposed measures. I have no constitutional role in the shaping or drafting of such measures. My statutory mandate is embodied only in Ark. Code Ann. § 7-9-107, and my duty is to the electorate.
Based on what has been submitted, my statutory duty is to reject your proposed ballot title for the foregoing reasons and instruct you to redesign the proposed measure and ballot title. You may resubmit your proposed act along with a proposed popular name and ballot title at your convenience.

Sincerely,

LESLIE RUTLEDGE
Attorney General

Enclosure

ARKANSAS CANNABIS HEMP AND RECREATIONAL MARIJUANA AMENDMENT
(Popular Name)

(Ballot Title)

AN AMENDMENT TO THE ARKANSAS CONSTITUTION CONCERNING THE CANNABIS PLANT, PROVIDING THAT THE CULTIVATION, PRODUCTION, DISTRIBUTION, SALE, POSSESSION, AND USE OF RECREATIONAL MARIJUANA AND CANNABIS HEMP AND PRODUCTS PRODUCED THEREFROM MAY NOT BE PROHIBITED UNDER STATE LAW, BUT SHALL BE REGULATED UNDER STATE LAW; RECOGNIZING THAT SUCH ACTIVITIES REMAIN UNLAWFUL UNDER FEDERAL LAW; PROVIDING FOR THE RELEASE FROM INCARCERATION, PROBATION, OR PAROLE OF ALL PERSONS WHOSE CURRENT AND ONLY CONVICTION(S) IN WHICH THEY ARE SERVING WERE OF STATE LAWS PERTAINING TO THE CULTIVATION, PRODUCTION, DISTRIBUTION, SALE, AND POSSESSION OF MARIJUANA OR POSSESSION OF MARIJUANA PARAPHERNALIA, AND THE EXPUNGEMENT OF RECORDS RELATING TO SUCH CONVICTION(S); DIVIDING CANNABIS IN TO CANNABIS HEMP (CONTAINING 0.3% OR LESS THC) AND MARIJUANA (CONTAINING MORE THAN 0.3% THC); REGULATING THE CULTIVATION, PRODUCTION, DISTRIBUTION AND THE SALE OF CANNABIS HEMP AND PRODUCTS PRODUCED THEREFROM; PROVIDING THAT ANYONE 18 YEARS OF AGE OR OLDER MAY OBTAIN A CANNABIS HEMP LICENSE PERMITTING THE PERSON TO CULTIVATE CANNABIS HEMP; AUTHORIZING RECREATIONAL USE OF MARIJUANA; PROVIDING THAT ANYONE 21 YEARS OF AGE OR OLDER MAY OBTAIN A MARIJUANA LICENSE PERMITTING THE PERSON TO CULTIVATE, PRODUCE, AND SELL MARIJUANA AND PRODUCTS PRODUCED THEREFROM FOR RECREATIONAL PURPOSES; PROVIDING THAT A LICENSED PERSON MAY CULTIVATE UP TO 36 CANNABIS PLANTS IN A LOCATION NOT SUBJECT TO PUBLIC VIEW WITHOUT OPTICAL AID; PROVIDING THAT SALES OF RECREATIONAL MARIJUANA WILL BE SUBJECT TO EXISTING SALES TAXES AND AN ADDITIONAL 5% RECREATIONAL MARIJUANA EXCISE TAX AND A LOCAL SALES TAX NOT TO EXCEED 2%; PERMITTING ANY RETAIL STORE THAT IS 1500 FEET AWAY OR MORE FROM A PUBLIC OR PRIVATE SCHOOL, CHURCH, OR DAYCARE MAY SELL RECREATIONAL MARIJUANA TO ANY PERSON 21 YEARS OF AGE OR OLDER; PROVIDING THAT THE RECREATIONAL MARIJUANA BEING SOLD IN THE FORM OF EDIBLES OR DRINKABLES (A) IS NOT DESIGNED TO APPEAL TO CHILDREN; (B) SHALL NOT EXCEED 10 MILLIGRAMS OF THC PER SERVING, AND (C) LABELING OR PACKAGING MUST PROVIDE PRODUCT INFORMATION TO PREVENT OVERDOsing; PROVIDING THAT THE MANUFACTURE, POSSESSION, PURCHASE, SALE, AND DISTRIBUTION OF MARIJUANA PARAPHERNALIA IS LAWFUL UNDER STATE LAW; AND PROVIDING THAT THE AMENDMENT (A) IS NOT INTENDED TO REQUIRE EMPLOYERS TO PERMIT ACTIVITIES RELATING TO RECREATIONAL MARIJUANA IN THE WORKPLACE, (B) IS NOT INTENDED TO PERMIT DRIVING UNDER THE INFLUENCE OF MARIJUANA, (C) IS NOT INTENDED TO PERMIT THE TRANSFER OF RECREATIONAL MARIJUANA TO ANYONE UNDER 21 YEARS OF AGE, (D) NOR PERMIT ANYONE UNDER 21 YEARS OF AGE TO CULTIVATE, PRODUCE, SELL, POSSESS, OR USE RECREATIONAL MARIJUANA.

Section 1. Short Title.
This is an amendment to the Arkansas Constitution that shall be called "The Arkansas Cannabis Hemp and Recreational Marijuana Amendment"

Section 2. Effective Date.
Effective on and after December 07, 2018 the cultivation, production, distribution, sale, possession, and use of the cannabis plant (genus Cannabis) as it pertains to cannabis hemp and recreational marijuana and the
products produced therefrom shall be regulated pursuant to the provision of this amendment and made lawful in every geographic area of every county of this state under Arkansas law, but acknowledging that the listed activities with respect to the cannabis plant remain illegal under federal law and that the amendment shall have no effect on federal law.

Section 3. Definitions.
The following terms are defined for the purposes of this amendment:

(a) "Cannabis hemp" means any part of the cannabis plant (genus Cannabis), living or not, containing three tenths of one percent (0.3%) or less, by dry weight, Delta-9-tetrahydrocannabinol (Δ9THC).
(b) "Cannabis hemp field tag or field tag" means a label issued by the state that a cultivator attaches to any post or fencing where cannabis hemp is being grown, and is used for identifying ten (10) acres or less of cannabis hemp plants. Each field tag shall display the cannabis hemp license account number and an expiration date that corresponds with the cultivator's cannabis hemp license. Each field tag may be bar-coded or embedded with radio frequency identification (RFID) smart chip.
(c) "Cannabis hemp license" means a registration card issued by the state to a person who is a resident of the state and is eighteen (18) years of age or older to lawfully cultivate, produce and sell cannabis hemp and products produced from cannabis hemp that is cultivated in this state. Each license shall display a license account number, an expiration date, and the photo, name, date of birth, and current address of the holder.
(d) "Driving under the influence of marijuana" means operating a motorized vehicle on any public road, highway, or street when the Delta-9-tetrahydrocannabinol (Δ9THC) content of the operator's blood exceeds thirteen micrograms per liter (13µg/L).
(e) "Marijuana" means any part of the cannabis plant (genus Cannabis), living or not, containing greater than three tenths of one percent (0.3%), by dry weight, Delta-9-tetrahydrocannabinol (Δ9THC).
(f) "Marijuana license" means a registration card issued by the state to a person who is a resident of the state and is twenty-one (21) years of age or older to lawfully cultivate, produce, and sell marijuana and products produced from marijuana for recreational purposes. Each license shall display a license account number, an expiration date, and the photo, name, date of birth, and current address of the holder.
(g) "Marijuana paraphernalia" means any equipment, utensils, products, and materials which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, containing, or concealing recreational marijuana, or for ingesting, inhaling or otherwise introducing recreational marijuana into the human body.
(h) "Marijuana plant tag or plant tag" means a label issued by the state that the cultivator attaches to the base or branch of a growing marijuana plant. Such a label may be bar-coded or be embedded with a radio frequency identification (RFID) smart chip. Each tag shall display the marijuana license account number and an expiration date that corresponds with the cultivator's marijuana license.
(i) "Products produced" means items and substances manufactured from the cannabis plant (genus Cannabis) that may contain Delta-9-tetrahydrocannabinol (Δ9THC), whereas products produced from marijuana contain greater than three tenths of one percent (0.3%) Delta-9-tetrahydrocannabinol (Δ9THC) and products produced from cannabis hemp contain three tenths of one percent (0.3%) or less Δ9THC. Any item whose components may contain a variation in Δ9THC content that would span above the three tenths of one percent (0.3%) threshold is to be considered a product produced from marijuana.
(j) "Recreational marijuana" means marijuana and products produced from marijuana that is used as an intoxicant.
(k) "Recreational marijuana excise tax" means a tax that is imposed upon the purchase of recreational marijuana.
(l) "Remuneration" means an act in which money is being paid to purchase recreational marijuana.
Section 4. The regulation of cannabis hemp.
The cultivation, production, distribution, sale, possession, and use of cannabis hemp and products produced from cannabis hemp shall be lawful in every geographic area of every county of this state under Arkansas law, and shall be regulated by the state, and such regulations shall include the following provisions, but do not preclude the imposition of additional rules, regulations, and penalties that the state may adopt and impose.
(a) The cost of a cannabis hemp license that shall be issued and required by the state shall not exceed thirty dollars ($30.00) a year, and there shall be no limit to the number of licenses issued in this state, and any person who is a resident of this state, and is eighteen years of age or older shall qualify to obtain such a license, providing that he or she has not had such a license permanently revoked by the state for violating the provisions pursuant to this amendment.
(b) The cost of a cannabis hemp field tag that shall be issued and required by the state to regulate the cultivation of cannabis hemp shall not exceed ten dollars ($10.00) per field tag per year, and any person with a cannabis hemp license as defined in Section 3(c) may obtain such field tags, and there shall be no limit to the number of field tags allowed per licensed person per year.
(c) Any person issued an cannabis hemp license and field tag(s) may cultivate cannabis hemp on property he or she owns, or with the consent of the person(s) who owns the property.
(d) Any person who cultivates cannabis hemp and manufactures a product produced from cannabis hemp that is grown in Arkansas shall be required to have a cannabis hemp license and all cannabis hemp fields must have field tags failure to do so may result in the following:
   (1.) First offense: Upon conviction is guilty of a Class C misdemeanor, a penalty no greater than five-hundred dollars ($500) shall be imposed, up to thirty (30) days in jail, and a suspension to obtain a cannabis hemp license for one year.
   (2.) Second offense: Upon conviction is guilty of a Class C misdemeanor, a penalty no greater than five-hundred dollars ($500) shall be imposed, up to thirty (30) days in jail, and a suspension to obtain a cannabis hemp license for five years.
   (3.) Third offense: upon conviction is guilty of a Class B misdemeanor, a penalty no greater than one-thousand dollars ($1,000) shall be imposed, and up to ninety (90) days in jail, and a permanent revocation of a cannabis hemp license.

Section 5. The regulation of recreational marijuana.
The cultivation, production, distribution, sale, possession, and use of marijuana and products produced from marijuana for recreational purposes shall be lawful in every geographic area of every county of this state under Arkansas law, and shall be regulated by the state, and such regulations shall include the following provisions, but do not preclude the imposition of additional rules, regulations, and penalties that the state may adopt and impose:
(a) The cost of a marijuana license that shall be issued and required by the state shall not exceed thirty dollars ($30.00) per license per year, and there shall be no limit to the number of licenses issued in this state, and any person who is a resident of this state and is twenty-one (21) years of age or older shall qualify to obtain such a license, providing that he or she has not had such a license permanently revoked by the state for violating the provision pursuant to this amendment.
(b) The cost of a marijuana plant tag that shall be issued and required by the state to regulate the cultivation of recreational marijuana produced in this state, shall not exceed six dollars ($6.00) per plant tag, and any person who has a marijuana license as defined in Section 3(f) shall qualify to obtain such tags, and there shall be a limit of thirty-six (36) plant tags allowed per year per licensed person. Marijuana plant tags may be purchased in any quantity, but not to exceed thirty-six (36) tags per licensed person per year.
(c) The quantity of marijuana plants cultivated and displaying a marijuana plant tag shall be limited to thirty-six (36) growing plants per person who has a marijuana license, but the quantity of the products produced from marijuana shall not be limited.
(d) Any person who is issued a marijuana license and plant tag(s) may cultivate marijuana in a location where the plant(s) is (are) not subject to public view without the use of binoculars, aircraft, or other optical aids on property he or she owns, or with the consent of the person(s) who owns the property.

(e) Any person who is twenty-one (21) years of age or older may purchase, possess, and use recreational marijuana, and may distribute recreational marijuana without remuneration to another person who is twenty-one (21) years of age or older.

(f) Any retail store whose owner(s) and employee(s) all have marijuana license(s) as defined in section 3(f) may sell recreational marijuana to any person who is twenty-one years of age or older providing:
   
   1. All buyers of recreational marijuana must first show proof of age with a valid driver's license or valid state identification card prior to the purchase.
   
   2. The retail store where recreational marijuana is being sold is not located within one thousand five hundred feet (1,500') of a public or private school, church, or daycare center, and;
   
   3. All recreational marijuana being sold is designed, packaged, and labeled pursuant to section 6 of this amendment.

(g) Any person who purchases and possesses recreational marijuana must be twenty-one (21) years of age or older, and any person who cultivates, produces, and/or sells recreational marijuana in Arkansas shall be required to have a marijuana license and each plant growing must have a plant tag, failure to do so may result in the following:

   1. First offense: upon conviction is guilty of a Class C misdemeanor, a penalty not greater than five-hundred dollars ($500) shall be imposed, up to thirty 30 days in jail, and a suspension to obtain a marijuana license for one year.
   
   2. Second offense: upon conviction is guilty of a Class B misdemeanor, a penalty of one-thousand dollars ($1,000) shall be imposed, up to ninety days (90) days in jail, and a suspension to obtain a marijuana license for five years.
   
   3. Third offense: upon conviction is guilty of a Class B misdemeanor, a penalty not greater than one thousand dollars ($1,000) shall be imposed, up to ninety (90) days in jail, and a permanent revocation of a marijuana license.

Section 6. Recreational marijuana product design, serving size, labeling and packaging.

(a) Edible or drinkable products produced containing marijuana that are sold for recreational purposes shall;

   1. Shall not be designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain marijuana.

   2. Shall be produced and sold with a standardized dosage not to exceed ten (10) milligrams of delta-9-tetrahydrocannabinol (Δ9THC) per serving.

   3. Shall be delineated or scored into standardized serving sizes if the product contains more than one serving and is in solid form.

   4. Shall be homogenized to ensure uniform disbursement of delta-9-tetrahydrocannabinol (Δ9THC) throughout the product.

   5. Shall provide information on the packaging or label to enable the informed consumption of such product, including the potential effects of the product, and directions as to how to consume the product, as necessary to prevent overdosing.

(b) Smokable or Vaporizable products produced containing marijuana that are sold for recreational purposes shall;

   1. Shall provide information on the packaging or label to enable the informed consumption of such product, including the delta-9-tetrahydrocannabinol (Δ9THC) content, potential effects of the product, and directions as to how to consume the product.
Section 7. Marijuana paraphernalia authorized.
Notwithstanding any other provision of law, the following acts regarding marijuana paraphernalia shall not be an offense under Arkansas law, or be a basis for seizure or forfeiture of assets pursuant to The Uniform Controlled Substances Act §5-64-505:
(a) Any person twenty-one (21) years of age or older may manufacture, possess, and purchase marijuana paraphernalia, or may sell marijuana paraphernalia to another person who is twenty-one years of age or older, providing that marijuana paraphernalia being sold does not contain recreational marijuana, unless the seller of such paraphernalia has a marijuana license.

Section 8. Employers, driving, and minors.
(a) Nothing in this amendment is intended to require an employer to permit or accommodate the cultivation, production, distribution, sale, possession, or use of recreational marijuana in the workplace or to affect the ability of employers to have policies restricting the use of recreational marijuana by employees.
(b) Nothing in this amendment is intended to permit driving under the influence of marijuana.
(c) Nothing in this amendment is intended to permit the transfer of recreational marijuana, with or without remuneration, to a person under the age of twenty-one (21).
(d) Nothing in this amendment is intended to permit a person under the age of twenty-one (21) to cultivate, produce, sell, possess, or use recreational marijuana.
(e) Nothing in this amendment is intended to permit the unauthorized cultivation, production, distribution, or sale, of any substance that is controlled or prohibited by the state pursuant to the Arkansas Uniform Controlled Substances Act.

Section 9. Non-violent marijuana offenders and criminal record expungement.
All persons currently serving incarceration, probation, or parole in this state, whose current and only conviction(s) to which they are now serving were due to violating state laws as they pertain to the cultivation, production, distribution, sale, and possession of marijuana, and or possession of marijuana paraphernalia, and whose violation(s) occurred prior to the effective date of this amendment shall be released, and all criminal records in this state shall be expunged of such convictions that occurred prior to the effective date of this amendment.

Section 10. Taxation and distribution of proceeds from the sale of recreational marijuana and cannabis hemp.
(a) The sale of recreational marijuana is subject to the State Sales and Use Tax, and an additional five percent (5%) recreational marijuana excise tax shall be imposed upon the purchase. The sale of recreational marijuana shall not be subject to any local sales tax that exceeds two percent (2%).
(b) The sale of cannabis hemp cultivated in Arkansas is subject to the State Sales and Use Tax, and no additional tax shall be imposed upon the purchase. The sales tax that are currently imposed upon the sale of products produced from cannabis hemp shall not be affected by this amendment.
(c) The distribution of tax revenues received by the Department of Finance and Administration from the sale of recreational marijuana and cannabis hemp under this amendment may be determined by the general assembly.

Section 11. Conflicting Laws.
The provisions of this amendment are independent and severable, and, except where otherwise indicated in the text, shall supersede conflicting statutes, local charter, ordinance, or resolution, and other state and local provisions. If any provision of this amendment, or the application thereof to any person or circumstance, is
found to be invalid or unconstitutional, the remainder of this amendment shall not be affected and shall be given effect to the fullest extent possible.