



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2017-068

June 7, 2017

Mary L. Berry, BQC Officer
True Grass Ballot Question Committee
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

The Arkansas Adult Recreation of 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 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, and parole of all persons

¹ See *Kurrus v. Priest*, 342 Ark. 434, 445, 29 S.W.3d 669, 675 (2000); *Donovan v. Priest*, 326 Ark. 353, 359, 931 S.W.2d 119, 121 (1996); *Plugge v. McCuen*, 310 Ark. 654, 841 S.W.2d 139 (1992).

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

³ See *Arkansas Women’s Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 846 (1984).

whose current and only conviction(s) in which they are serving were for violating State laws pertaining to marijuana possession, manufacture, distribution, and delivery, possession of marijuana paraphernalia, and or [*sic*] the unlawful use of a communication device as it pertains to the distribution and delivery of marijuana; and the expungement of such marijuana offenses from all living persons [*sic*] criminal record [*sic*] ever convicted of such offenses in the State; authorizing the use of recreational marijuana by persons 21 years of age or older; providing that a business and any resident 21 years of age or older may obtain a marijuana license permitting the business or person to cultivate, produce, and sell marijuana and products produced therefrom for recreational purposes; providing that a licensed person or business may have cultivating up to 36 marijuana 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 of 2%; permitting any person or business with a marijuana license 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) shall [*sic*] not be designed to appeal to children; (b) shall not exceed 10 milligrams of THC per serving, and (c) labeling or packaging must provide product information; 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) does not permit anyone under 21 years of age to cultivate, produce, sell, possess, or use recreational marijuana and; (e) is not intended to limit any privileges or rights of a qualifying patient, caregiver, physician, or, any license entity pursuant to the Arkansas Medical Marijuana Amendment of 2016; providing that if the State fails to begin issuing marijuana licenses, and plant tags by April 19th, 2019[,] such licenses and tags shall not be required to cultivate, produce, and sell recreational marijuana until such licenses and tags are issued by the State and 30 days is given for those engaged in

such activity to obtain such licenses and tags for the activity in which they are engaged.

RESPONSE

The popular name is primarily a useful legislative device.⁴ It need not contain detailed information or include exceptions that might be required of a ballot title, but it must not be misleading or give partisan coloring to the merit of the proposal.⁵ The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.⁶

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.⁷ 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."⁸ 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."⁹ The Court has also disapproved the use of terms that are "technical and not readily understood by voters."¹⁰ Without a definition of such terms in the ballot title, the title may be deemed insufficient.¹¹

⁴ *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

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*.

⁶ *May v. Daniels*, 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

⁷ *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980) (internal citations omitted).

⁸ *Lange v. Martin*, 2016 Ark. 337, 500 S.W.3d 154, at n. 2.

⁹ *Id.* at *9, 500 S.W.3d at 159.

¹⁰ *Wilson v. Martin*, 2016 Ark. 334, *9, 500 S.W.3d 160, 167.

¹¹ *Id.*, 500 S.W.3d at 167.

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.”¹² At the same time, however, a ballot title must be brief and concise,¹³ 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.¹⁴ The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal argument the proposed measure might evoke.¹⁵ 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.”¹⁶ The ballot title must be honest and impartial,¹⁷ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.¹⁸

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.¹⁹ 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.”²⁰ Where the effects of a proposed measure on current law are unclear or ambiguous, it is impossible for me to perform my

¹² *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

¹³ *See* Ark. Code Ann. § 7-9-107(b).

¹⁴ *Bailey*, 318 Ark. at 284, 884 S.W.2d at 944.

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)).

¹⁷ *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

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

¹⁹ *Cf. Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

²⁰ *Id.*

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 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 8 of your proposal, “Non-violent marijuana offenders and criminal record expungement,” provides in subsection (a) that certain “marijuana related offenses convicted under state law *shall be expunged* from all criminal records in this state of all living persons who *have served, or are currently serving, a sentence for being convicted of one or more of such offenses.*” Subsection (a) then lists six marijuana-related crimes.

Subsection (b) states that “all persons who are serving incarceration, probation, or parole in this state whose *current and only conviction(s)* in which they are now serving were due to one or more of the listed offenses provided in this section 8(a) 1 through 6 *shall be released* from incarceration, probation, or parole.

There is a fundamental ambiguity caused by the differing descriptions of the kind, and number, of convictions that would trigger expungement or release should voters adopt the proposed measure. Subsection (b) appears to state that an individual will be eligible for release from incarceration (or custodial supervision through parole or probation) if that individual *only* has outstanding convictions for one or more of the offenses listed at 8(a)(1 - 6). That is, subsection (b) limits

release from incarceration, parole, or probation to offenders who are *only* serving a sentence (or sentences) for the following: possession of marijuana; possession with the intent to manufacture and deliver marijuana; manufacturing, distributing, and delivering marijuana; distributing or delivering marijuana in proximity of certain facilities; unlawful use of a communication device as it pertains to the distribution of marijuana; or possession of marijuana paraphernalia, as defined by Arkansas law.

Subsection (a), on the other hand, may apply a more expansive definition to the individuals eligible for expungement of marijuana-related convictions. Subsection (a) states that convictions for marijuana-related offenses will be expunged from the criminal records in this state of all living person who “have served, or are currently serving, a sentence” listed in Section 8. In light of subsection (b) and the standard for release from incarceration, it is unclear whether marijuana-related convictions would be expunged if an individual has also served, or is also serving, a conviction for offenses *other* than those listed in Section 8. Such a reading would be consistent with subsection (a) in the sense that individuals with marijuana-related convictions as well as non-marijuana-related convictions are nevertheless individuals who “have served, or are currently serving, a sentence” listed in Section 8. On the other hand, subsection (a) could reasonably be interpreted in conjunction with subsection (b) as limiting expungement to those individuals who are only serving (or who have only served) a sentence for one or more of the offenses listed at 8(a)(1 – 6).

Because the effect of the proposed measure on criminal convictions is a matter of great importance to Arkansas voters, these ambiguities must be clarified before I can accurately summarize the expungement requirements in a ballot title.

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.²¹ You may resubmit your proposed act along with a proposed popular name and ballot title at your convenience.

Sincerely,



LESLIE RUTLEDGE
Attorney General

Enclosure

²¹ Ark. Code Ann. § 7-9-107(c).

THE ARKANSAS ADULT RECREATION OF 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 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, AND PAROLE OF ALL PERSONS WHOSE CURRENT AND ONLY CONVICTION(S) IN WHICH THEY ARE SERVING WERE FOR VIOLATING STATE LAWS PERTAINING TO MARIJUANA POSSESSION, MANUFACTURE, DISTRIBUTION, AND DELIVERY, POSSESSION OF MARIJUANA PARAPHERNALIA, AND OR THE UNLAWFUL USE OF A COMMUNICATION DEVICE AS IT PERTAINS TO THE DISTRIBUTION AND DELIVERY OF MARIJUANA; AND THE EXPUNGEMENT OF SUCH MARIJUANA OFFENSES FROM ALL LIVING PERSONS CRIMINAL RECORD EVER CONVICTED OF SUCH OFFENSES IN THE STATE; AUTHORIZING THE USE OF RECREATIONAL MARIJUANA BY PERSONS 21 YEARS OF AGE OR OLDER; PROVIDING THAT A BUSINESS AND ANY RESIDENT 21 YEARS OF AGE OR OLDER MAY OBTAIN A MARIJUANA LICENSE PERMITTING THE BUSINESS OR PERSON TO CULTIVATE, PRODUCE, AND SELL MARIJUANA AND PRODUCTS PRODUCED THEREFROM FOR RECREATIONAL PURPOSES; PROVIDING THAT A LICENSED PERSON OR BUSINESS MAY HAVE CULTIVATING UP TO 36 MARIJUANA 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 OF 2%; PERMITTING ANY PERSON OR BUSINESS WITH A MARIJUANA LICENSE 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) SHALL NOT BE DESIGNED TO APPEAL TO CHILDREN; (B) SHALL NOT EXCEED 10 MILLIGRAMS OF THC PER SERVING, AND (C) LABELING OR PACKAGING MUST PROVIDE PRODUCT INFORMATION; 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) DOES NOT PERMIT ANYONE UNDER 21 YEARS OF AGE TO CULTIVATE, PRODUCE, SELL, POSSESS, OR USE RECREATIONAL MARIJUANA AND; (E) IS NOT INTENDED TO LIMIT ANY PRIVILEGES OR RIGHTS OF A QUALIFYING PATIENT, CAREGIVER, PHYSICIAN, OR, ANY LICENSE ENTITY PURSUANT TO THE ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016; PROVIDING THAT IF THE STATE FAILS TO BEGIN ISSUING MARIJUANA LICENSES, AND PLANT TAGS BY APRIL 19TH, 2019 SUCH LICENSES AND TAGS SHALL NOT BE REQUIRED TO CULTIVATE, PRODUCE, AND SELL RECREATIONAL MARIJUANA UNTIL SUCH LICENSES AND TAGS ARE ISSUED BY THE STATE AND 30 DAYS IS GIVEN FOR THOSE ENGAGED IN SUCH ACTIVITY TO OBTAIN SUCH LICENSES AND TAGS FOR THE ACTIVITY IN WHICH THEY ARE ENGAGED.

Section 1. Short Title.

This is an amendment to the Arkansas Constitution that shall be called "The Arkansas Adult Recreation Of Marijuana Amendment"

Section 2. Effective Date.

Effective on and after November 07, 2018 the cultivation, production, distribution, sale, possession, and use of the cannabis plant (genus Cannabis) as it pertains to marijuana and the products produced therefrom for recreational purposes 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.

Section 3. Definitions.

The following terms are defined for the purposes of this amendment:

(a) "Driving under the influence of marijuana" means operating a motorized vehicle on any public road, highway, or street when the Delta-9-tetrahydrocannabinol (Δ 9THC) content of the operator's blood exceeds fourteen nanograms per milliliter (14ng/mL).

(b) "Marijuana" means any part of the cannabis plant (genus Cannabis), living or not, and when harvested in its mature plant stage contains greater than three tenths of one percent (0.3%), by dry weight, Delta-9-tetrahydrocannabinol (Δ 9THC) and is cultivated to be used as an intoxicant for recreational purposes.

(c) "Marijuana license" means a registration card issued by the state to a business or 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 therefrom for recreational purposes. Each license shall display a license account number, an expiration date, and the photo, name or business name, date of birth, and current address of the person or business.

(d) "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.

(e) "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.

(f) "Products produced from marijuana" or "products produced therefrom" means items and substances manufactured from marijuana, containing more than three tenths of one percent delta-9-tetrahydrocannabinol (Δ 9THC) and is used as an intoxicant for recreational purposes that is consumed into the human body in the form of food, drink, vapor, or smoke.

(g) "Recreational marijuana" means marijuana and products produced from marijuana that is used as an intoxicant for recreational purposes.

(h) "Recreational marijuana excise tax" means a tax that is imposed upon the purchase of recreational marijuana.

(i) "Remuneration" means an act in which money is being paid to purchase recreational marijuana.

Section 4. 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 business or 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 such a business or person 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 or business who has a marijuana license as defined in Section 3(c) shall qualify to obtain such tags, and there shall be a limit of thirty-six (36) plant tags allowed per year per licensed person or business. Marijuana plant tags may be purchased in any quantity, but not to exceed thirty-six (36) tags per licensed person or business 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 or business who has a marijuana license, but the quantity of the products produced from marijuana shall not be limited.

(d) Any person or business 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 owned by the business or person, or with the consent of the business or 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 business or person with a marijuana license as defined in section 3(c) 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

identification card prior to the purchase.

(2) The location 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 5 of this amendment.

(g) Any business or person who violates the provision of this section the following penalties may be imposed:

(1) First offense: upon conviction is guilty of a violation, a penalty not greater than two-hundred dollars (\$200) shall be imposed and a suspension to obtain a marijuana license for six (6) months.

(2) Second 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 days (30) 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 5. Recreational marijuana product design, serving size, labeling and packaging.

(a) All edible and drinkable recreational marijuana that is sold to any person twenty-one (21) years of age or older, by a person or business with a marijuana license as defined in Section 3(c) 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 (Δ 9THC) 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 (Δ 9THC) throughout the product.

(5) Shall provide information on the packaging or labeling to enable the informed consumption of such product, including the potential effects of the product, and directions as to how to consume the product.

(b) All smokable and vaporizable recreational marijuana that is sold to any person twenty-one (21) years of age or older, by a person or business with a marijuana license as defined in Section 3(c) shall:

(1) Shall provide information on the packaging or labeling to enable the informed consumption of such product, including the delta-9-tetrahydrocannabinol (Δ 9THC) content, potential effects of the product, and directions as to how to consume the product.

(c) Recreational marijuana that is distributed without remuneration to any person twenty-one (21) years of age or older by any business or person twenty-one (21) years of age or older, with or without a marijuana license, shall be exempt from the design, packaging, and labeling requirements of this section.

Section 6. 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 business or person twenty-one (21) years of age or older may manufacture, possess, and purchase marijuana paraphernalia, or may sell marijuana paraphernalia to another business or person who is twenty-one (21) years of age or older, providing that the marijuana paraphernalia being sold does not contain recreational marijuana unless the seller of such paraphernalia has a marijuana license, and the recreational marijuana being sold in that paraphernalia is designed, packaged, and labeled pursuant to section 5 of this amendment.

Section 7. Employers, driving, minors, controlled substances, and medical marijuana

(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.

(f) Nothing in this amendment is intended to limit any privileges or rights of a qualifying patient, caregiver, physician, or licensed entity in regards to medical marijuana pursuant to the Arkansas Medical Marijuana Amendment of 2016.

Section 8. Non-violent marijuana offenders and criminal record expungement.

(a) The following marijuana related offenses convicted under state law shall be expunged from all criminal records in this state of all living persons who have served, or are currently serving a sentence for being convicted of one or more of such offenses:

(1) possession of marijuana;

(2) possession with the intent to manufacture and deliver marijuana;

(3) manufacturing, distributing, and delivering marijuana;

- (4) distributing or delivering marijuana in proximity of certain facilities;
- (5) the unlawful use of a communication device as it pertains to the distribution of marijuana;
- (6) possession of marijuana paraphernalia.

(b) Furthermore, all persons who are serving incarceration, probation, or parole in this state whose current and only conviction(s) in which they are now serving were due to one or more of the listed offenses provided in this section 8(a)1 through 6 shall be released from incarceration, probation, or parole.

(c) Nothing in this section permits the release of persons currently serving a conviction for other offenses not provided in this section, nor provides for the expungement thereof.

Section 9. Taxation and distribution of proceeds from the sale of recreational marijuana.

(a) The following taxes shall be imposed upon the purchase of recreational marijuana sold in Arkansas:

1. The Arkansas State Sales and Use Tax,
2. a five percent (5%) recreational marijuana excise tax, and
3. a two percent (2%) local sales tax.

(b) The distribution of tax revenues received by the Department of Finance and Administration from the sale of recreational marijuana under this amendment may be determined by the general assembly.

Section 10. Marijuana licenses and plant tags.

The state shall begin issuing marijuana licenses and plant tags by April 19th, 2019. If the state fails to begin issuing such licenses and tags by April 19th, 2019 the provisions of this amendment requiring such licenses and tags shall not be enforced, and the state shall not prohibit or penalize any business or person twenty-one years of age or older, engaged in the cultivation, production, and sale of recreational marijuana until such licenses and tags are issued by the state, and thirty days is given in order for those engaged in such activity to obtain such licenses and plant tags.

Section 11. Conflicting Laws.

The provisions of this Amendment are hereby declared to be severable and self-executing, and except where otherwise indicated in this Amendment, shall supersede all conflicting state and local laws, charters, regulations, and any and all other provisions in conflict with this Amendment. If any provision of this Amendment, or the application of such provision to any person or circumstance is declared invalid by any court for any reason, such declaration shall not affect the validity of the remaining portions of this Amendment.