



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2017-084

August 4, 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.

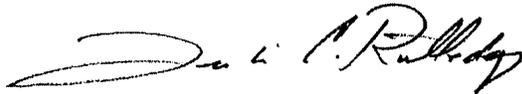
In the course of reviewing a sponsor's submission, my office determines, based on a close reading of the materials provided, whether the ballot title and popular name would be misleading to voters. I have engaged in this statutory review many times with respect to your proposed measures. I have also reviewed proposals submitted by individuals with whom you are cooperating, such as Larry Morris, Jason Berry, and Avalon Romane. And I have cautioned Mr. Morris and you that because your proposed measures are substantively identical, I cannot discharge my duty under Ark. Code Ann. § 7-9-107 unless your submissions are consolidated. When two or more identical proposals are submitted for certification, a statewide election might well put voters to a choice between measures having the same ballot titles and popular names.

Mr. Morris most recently submitted a proposal that I rejected in Opinion No. 2017-081. The opinion was released to him at approximately 3:08 p.m. on July 21, 2017. Later that afternoon, at approximately 4:50 p.m., you submitted a proposal under your name. You indicated that "Larry Morris and I are working together," and said you "know that [your submissions] are somewhat similar." You added that you "do not expect to collect signatures for two certified amendments" but are nevertheless "hoping we can get at least one certified."

The pending submission is a slightly revised version of the submission I rejected on July 7, 2017 in Opinion No. 2017-076. The submission analyzed in Opinion No. 2017-076 (bearing your name) was itself virtually identical to the submission rejected in Opinion No. 2017-081 (bearing Mr. Morris's name). Therefore, the proposal currently before me is substantively identical to the latest proposal submitted by Mr. Morris. Because the proposal you submitted on July 21, 2017 is so similar to the proposals rejected in Op. No. 2017-076 and 2017-081, I must reject it without further comment.

I encourage you again to choose between the proposals drafted by you and Mr. Morris and submit *only one* going forward. This will allow my office to consider and respond to a single ballot title, popular name, and draft amendment. It will likewise allow you and Mr. Morris to revise, as needed, a single proposal in an effort to obtain certification.

Sincerely,

A handwritten signature in black ink, appearing to read "Leslie Rutledge". The signature is fluid and cursive, with a large initial "L" and "R".

LESLIE RUTLEDGE
Attorney General

Enclosure

THE ARKANSAS 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 MARIJUANA AND PRODUCTS PRODUCED THEREFROM FOR RECREATIONAL PURPOSES MAY NOT BE PROHIBITED UNDER STATE LAW, BUT SHALL BE REGULATED UNDER STATE LAW; RECOGNIZING THAT SUCH ACTIVITIES REMAIN UNLAWFUL UNDER FEDERAL LAW; PROVIDING EXPUNGEMENT OF RECORDS AND COMPLETION OF SENTENCING FOR PERSONS CONVICTED OF MARIJUANA RELATED OFFENSES UNDER STATE LAW; AUTHORIZING THE USE OF RECREATIONAL MARIJUANA BY PERSONS 18 YEARS OF AGE OR OLDER; PROVIDING THAT A BUSINESS AND ANY RESIDENT 18 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 18 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 18 YEARS OF AGE, (D) DOES NOT PERMIT ANYONE UNDER 18 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 THE STATE ISSUES MARIJUANA LICENSES, AND PLANT TAGS AND 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 may be called "The Arkansas Recreational Marijuana Amendment"

Section 2. Effective Date.

Effective 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^9 THC) 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^9 THC) 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 eighteen (18) 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^9 THC) 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 eighteen (18) 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.

(e) Any person who is eighteen (18) years of age or older may purchase, possess, and use recreational marijuana, and may distribute recreational marijuana without remuneration to another person who is eighteen (18) 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 eighteen (18) 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^9 THC) 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^9 THC) 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 eighteen (18) 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^9 THC) 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 eighteen (18) years of age or older by any business or person eighteen (18) 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 eighteen (18) years of age or older may manufacture, possess, and purchase marijuana paraphernalia, or may sell marijuana paraphernalia to another business or person who is eighteen (18) 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 eighteen (18).

(d) Nothing in this amendment is intended to permit a person under the age of eighteen (18) 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 offenses and criminal record expungement.

(a) Upon petition to the sentencing Court by any person convicted under the Uniform Controlled Substances Act, for one or more of the following marijuana related offenses, all sentences imposed upon the petitioner by that Court for such offenses shall be considered legally served, and all convictions for such offenses expunged from the petitioner's record.

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) Nothing in this section permits the expungement of records for other offenses not provided in this section, nor provides for the completion of sentencing 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 provisions of this amendment requiring marijuana licenses and plant tags shall not be enforced 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 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.