

Op. Ark. Att'y Gen. No. 2018-138 (Nov. 27, 2018).

Arkansas Attorney General Opinion

Ms. Mary L. Berry

Opinion No. 2018-138

November 27, 2018

Ms. 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. 2017), 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 I do not, consider the merits of the measure when making a decision to certify or reject.

Arkansas Code Annotated § [7-9-107](#) authorizes my office to 1) certify the popular name and ballot title of a proposed measure, 2) substitute and certify the popular name and ballot title, if practicable, or 3) reject the entire submission if "the ballot title, or the nature of the issue, is presented in such manner that the ballot title would be misleading" to voters.¹ The purpose of my review under section [7-9-107](#) is to ensure that the popular name and ballot title honestly, intelligibly, and fairly set forth the purpose of the proposed amendment or act.² In this way, voters will have a fair understanding of the issues presented by reference to the ballot title alone.³

Section [7-9-107](#) neither requires nor authorizes this office to make legal determinations concerning the merits of the proposed 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,"⁴ this office will not require that a measure's proponents acknowledge in the ballot title any possible constitutional infirmities.⁵ 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.

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 Recreational Marijuana Amendment of 2020

Ballot Title

An Amendment to the Arkansas Constitution defining recreational marijuana as any part of the cannabis plant, living or not, that is cultivated to be used as an intoxicant for the reason of enjoyment or pleasure; this Amendment will make the cultivation, production, distribution and sale of recreational marijuana for persons 18 years of age and older legal under State law, but recognizing that the listed activities regarding marijuana is *[sic]* prohibited under federal law; under this Amendment the Arkansas Game and Fish Commission and the Alcoholic Beverage Control Division shall regulate the cultivation and production of recreational marijuana that is sold in the State, the Commission shall issue two types of recreational marijuana licenses to any adult or business who are *[sic]* a resident of the State to cultivate, manufacture, and sell recreational marijuana plants and products produced therefrom; a Class A license which would permit the possession, cultivation, transport, and sale of recreational marijuana plants, and an unlimited quantity of seed to adult residents or Class A or B license holders; A Class B license would permit the cultivation, production, transport, and sale of recreational marijuana plants, and unlimited quantity of seeds, and permits the production and sale of products produced from the plant; providing that a Class A license cost shall not exceed \$250 a year per license holder, and a Class B license cost shall not exceed \$500 a year per license holder; providing that the Commission and the Division may adopt additional rules, regulations, and penalties to prevent the use of recreational marijuana by minors, to increase product safety, and consumer awareness; under this Amendment any adult who is a resident of this State may cultivate, possess, transport, and purchase up to 6 recreational marijuana plants out of public view, may purchase up to 4 ounces of smokeable or vaporizable recreational marijuana a day, and may possess an unlimited quantity of seeds and products produced from the plant; non resident *[sic]* adults in the State may possess and purchase up to one ounce of smokable *[sic]* or vaporizable recreational marijuana a day, and up to 72 ounces of recreational marijuana in the form of food or drink a day; under this Amendment any person serving incarceration, probation, or parole for violating the Arkansas Uniformed *[sic]* Controlled Substances Act as it pertains to marijuana, whose current and only conviction was for a marijuana related offense shall be released and all criminal records shall be expunged of such convictions that occurred *[sic]* prior to the Amendments *[sic]* effective date of November 4th, 2020; under this Amendment the sales of recreational marijuana will be subject to existing sales tax, and an additional 8% recreational marijuana excise tax, and a local sales tax of 5% and the General Assembly shall determine the allocation of the tax revenue received by the State from the sales; under this Amendment recreational marijuana plants and products produced therefrom can only be sold in a location that is 1500 feet away or more from a public or private school, church, or daycare; under this Amendment the recreational marijuana that is sold in the form of food or drink (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) shall not be construed to affect the ability of employers to have policies restricting the use of recreational marijuana by employees, (b) shall not be construed to permit driving under the influence of marijuana, (c) shall not be construed to permit the transfer of recreational marijuana to anyone under 18 years of age, (d) nor permit anyone under 18 years of age to cultivate, produce, sell, distribute, transport, possess, or use recreational marijuana; the provisions of this Amendment shall supersede all conflicting State and local laws, charters, regulations, and any and all other provisions in conflict with this Amendment; this Amendment does not suppress any privileges or rights of a qualifying patient or licensed entity in regards to medical marijuana; marijuana that is cultivated, distributed, and sold for medical purposes will remain under the same regulatory scheme pursuant to the Arkansas Medical Marijuana Amendment of 2016; marijuana that is cultivated, distributed, and sold for adult recreational purposes shall be regulated pursuant to this Amendment.

GUIDELINES

The popular name is primarily a useful legislative device.⁶ 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.⁷ The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.⁸

"It has long been regarded as axiomatic that the majority of voters, when called upon to vote for or against a proposed measure, will derive their information about its contents from an inspection of the ballot title immediately before exercising the right of suffrage."⁹ Accordingly, 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.¹⁰ 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."¹¹ 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."¹² The Court has also disapproved the use of terms that are "technical and not readily understood by voters."¹³ Without a definition of such terms in the ballot title, the title may be deemed insufficient.¹⁴

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."¹⁵ At the same time, however, a ballot title must be brief and concise;¹⁶ otherwise voters could run afoul of the statutory five-minute limit in voting booths¹⁷ when other voters are waiting in line.¹⁸ 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.¹⁹ Yet the title must be "free of any misleading tendency whether by amplification, omission, or fallacy, and it must not be tinged with partisan coloring."²⁰ The ballot title must be honest and impartial,²¹ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.²²

Furthermore, the Court has confirmed that a ballot title cannot be approved if the text of the proposed measure itself contributes to confusion and disconnect between the language in the popular name and the ballot title and the language in the measure.²³ 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."²⁴ 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. While I am authorized to substitute and certify a ballot title that is *more* suitable (in terms of affording voters a fair understanding of the issues presented), section [7-9-107](#) does not contemplate that I generate a ballot title when the one submitted is wholly deficient. Nor does the statute require that I modify the proposed measure itself, in order to then summarize its text in a suitable ballot title.²⁵ Instead, crafting and accurately summarizing the measure are the sponsor's responsibilities prior to submission.

RESPONSE

My statutory duty is to certify, substitute and certify, or reject the entire proposal. Your submission has a threshold shortcoming that requires me to reject popular name, the ballot title, and proposed measure as drafted.

Indeed, the measure you have submitted is virtually identical to the measure I rejected in Attorney General Opinion 2018-119. And just as with the proposal under consideration in that opinion,²⁶ this measure has fundamental shortcomings that preclude the drafting of a ballot title that will satisfy the Court's test for ballot-title sufficiency.

CONCLUSION

As stated above, section [7-9-106](#) does not authorize or require me to modify the proposed measure itself in order to then summarize its text in a suitable ballot title. My office is not charged with any role in drafting initiated amendments or acts. Instead, crafting and accurately summarizing the measure are the sponsors' responsibilities prior to submission. Sponsors must vet their proposed measures, popular names, and ballot titles to ensure they meet the criteria established by section [7-9-107](#) and the Arkansas Supreme Court. Your submission falls short of these criteria. I must therefore reject your popular name, ballot title, and proposed measure.

Sincerely,

Leslie Rutledge
LESLIE RUTLEDGE
Attorney General

THE ARKANSAS RECREATIONAL MARIJUANA AMENDMENT OF 2020

AN AMENDMENT TO THE ARKANSAS CONSTITUTION DEFINING RECREATIONAL MARIJUANA AS ANY PART OF THE CANNABIS PLANT, LIVING OR NOT, THAT IS CULTIVATED TO BE USED AS AN INTOXICANT FOR THE REASON OF ENJOYMENT OR PLEASURE; THIS AMENDMENT WILL MAKE THE CULTIVATION, PRODUCTION, DISTRIBUTION AND SALE OF RECREATIONAL MARIJUANA FOR PERSONS 18 YEARS OF AGE AND OLDER LEGAL UNDER STATE LAW, BUT RECOGNIZING THAT THE LISTED ACTIVITIES REGARDING MARIJUANA IS PROHIBITED UNDER FEDERAL LAW; UNDER THIS AMENDMENT THE ARKANSAS GAME AND FISH COMMISSION AND THE ALCOHOLIC BEVERAGE CONTROL DIVISION SHALL REGULATE THE CULTIVATION AND PRODUCTION OF RECREATIONAL MARIJUANA THAT IS SOLD IN THE STATE, THE COMMISSION SHALL ISSUE TWO TYPES OF RECREATIONAL MARIJUANA LICENSES TO ANY ADULT OR BUSINESS WHO ARE A RESIDENT OF THE STATE TO CULTIVATE, MANUFACTURE, AND SELL RECREATIONAL MARIJUANA PLANTS AND PRODUCTS PRODUCED THEREFROM; A CLASS A LICENSE WHICH WOULD PERMIT THE POSSESSION, CULTIVATION, TRANSPORT, AND SALE OF RECREATIONAL MARIJUANA PLANTS, AND AN UNLIMITED QUANTITY OF SEED TO ADULT RESIDENTS OR CLASS A OR B LICENSE HOLDERS; A CLASS B LICENSE WOULD PERMIT THE CULTIVATION, PRODUCTION, TRANSPORT, AND SALE OF RECREATIONAL MARIJUANA PLANTS, AN UNLIMITED QUANTITY OF SEEDS, AND PERMITS THE PRODUCTION AND SALE OF PRODUCTS PRODUCED FROM THE PLANT; PROVIDING THAT A CLASS A LICENSE COST SHALL NOT EXCEED \$250 A YEAR PER LICENSE HOLDER, AND A CLASS B LICENSE COST SHALL NOT EXCEED \$500 A YEAR PER LICENSE HOLDER; PROVIDING THAT THE COMMISSION AND THE DIVISION MAY ADOPT ADDITIONAL RULES, REGULATIONS, AND PENALTIES TO PREVENT THE USE OF RECREATIONAL MARIJUANA BY MINORS, TO INCREASE PRODUCT SAFETY, AND CONSUMER AWARENESS; UNDER THIS AMENDMENT ANY ADULT WHO IS A

RESIDENT OF THIS STATE MAY CULTIVATE, POSSESS, TRANSPORT, AND PURCHASE UP TO 6 RECREATIONAL MARIJUANA PLANTS OUT OF PUBLIC VIEW, MAY PURCHASE UP TO 4 OUNCES OF SMOKEABLE OR VAPORIZABLE RECREATIONAL MARIJUANA A DAY, AND MAY POSSESS AN UNLIMITED QUANTITY OF SEEDS AND PRODUCTS PRODUCED FROM THE PLANT; NON RESIDENT ADULTS IN THE STATE MAY POSSESS AND PURCHASE UP TO ONE OUNCE OF SMOKABLE OR VAPORIZABLE RECREATIONAL MARIJUANA A DAY, AND UP TO 72 OUNCES OF RECREATIONAL MARIJUANA IN THE FORM OF FOOD OR DRINK A DAY; UNDER THIS AMENDMENT ANY PERSON SERVING INCARCERATION, PROBATION, OR PAROLE FOR VIOLATING THE ARKANSAS UNIFORMED CONTROLLED SUBSTANCES ACT AS IT PERTAINS TO MARIJUANA, WHOSE CURRENT AND ONLY CONVICTION WAS FOR A MARIJUANA RELATED OFFENSE SHALL BE RELEASED AND ALL CRIMINAL RECORDS SHALL BE EXPUNGED OF SUCH CONVICTIONS THAT OCCURED PRIOR TO THE AMENDMENTS EFFECTIVE DATE OF NOVEMBER 4TH, 2020; UNDER THIS AMENDMENT THE SALES OF RECREATIONAL MARIJUANA WILL BE SUBJECT TO EXISTING SALES TAX, AND AN ADDITIONAL 8% RECREATIONAL MARIJUANA EXCISE TAX, AND A LOCAL SALES TAX OF 5% AND THE GENERAL ASSEMBLY SHALL DETERMINE THE ALLOCATION OF THE TAX REVENUE RECEIVED BY THE STATE FROM THE SALES; UNDER THIS AMENDMENT RECREATIONAL MARIJUANA PLANTS AND PRODUCTS PRODUCED THEREFROM CAN ONLY BE SOLD IN A LOCATION THAT IS 1500 FEET AWAY OR MORE FROM A PUBLIC OR PRIVATE SCHOOL, CHURCH, OR DAYCARE; UNDER THIS AMENDMENT THE RECREATIONAL MARIJUANA THAT IS SOLD IN THE FORM OF FOOD OR DRINK (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) SHALL NOT BE CONSTRUED TO AFFECT THE ABILITY OF EMPLOYERS TO HAVE POLICIES RESTRICTING THE USE OF RECREATIONAL MARIJUANA BY EMPLOYEES, (B) SHALL NOT BE CONSTRUED TO PERMIT DRIVING UNDER THE INFLUENCE OF MARIJUANA, (C) SHALL NOT BE CONSTRUED TO PERMIT THE TRANSFER OF RECREATIONAL MARIJUANA TO ANYONE UNDER 18 YEARS OF AGE, (D) NOR PERMIT ANYONE UNDER 18 YEARS OF AGE TO CULTIVATE, PRODUCE, SELL, DISTRIBUTE, TRANSPORT, POSSESS, OR USE RECREATIONAL MARIJUANA; THE PROVISIONS OF THIS AMENDMENT SHALL SUPERSEDE ALL CONFLICTING STATE AND LOCAL LAWS, CHARTERS, REGULATIONS, AND ANY AND ALL OTHER PROVISIONS IN CONFLICT WITH THIS AMENDMENT; THIS AMENDMENT DOES NOT SUPPRESS ANY PRIVILEGES OR RIGHTS OF A QUALIFYING PATIENT OR LICENSED ENTITY IN REGARDS TO MEDICAL MARIJUANA; MARIJUANA THAT IS CULTIVATED, DISTRIBUTED, AND SOLD FOR MEDICAL PURPOSES WILL REMAIN UNDER THE SAME REGULATORY SCHEME PURSUANT TO THE ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016; MARIJUANA THAT IS CULTIVATED, DISTRIBUTED, AND SOLD FOR ADULT RECREATIONAL PURPOSES SHALL BE REGULATED PURSUANT TO THIS AMENDMENT.

Section 1. Short Title.

This is an amendment to the Arkansas Constitution that may be cited as "The Arkansas Recreational Marijuana Amendment of 2020".

Section 2. Effective Date.

This Amendment shall be Effective on and after November 04, 2020.

Section 3. Definitions.

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

- (a) "Adult" means a person who is eighteen years of age or older.
- (b) "Business" or "business entity" means a person or group of persons, who are eighteen (18) years of age or older, performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit.
- (c) "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).
- (d) "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).
- (e) "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.
- (f) "Marijuana related offense(s)" means a violation of the Uniformed Controlled Substances Act that occurred prior to the effective date of this amendment for one or more of the following:
- 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.
- (g) "Minor" means a person who is under the age of eighteen (18) years of age.
- (h) "Non Resident Adult" means a person who is 18 years of age or older who presents an out of state identification.
- (i) "Products produced from recreational marijuana", "products produced therefrom", or "products therefrom" means items and substances manufactured from recreational marijuana, containing more than three tenths of one percent (0.3%) delta-9-tetrahydrocannabinol (Δ^9 THC) and is used as an intoxicant for recreational purposes, and is consumed into the human body in the form of food, drink, vapor, or smoke.

(j) "Recreational marijuana excise tax" means a tax that is imposed upon the purchase of recreational marijuana plants and products produced therefrom..

(k) "Recreational marijuana license" means a registration card issued by the Arkansas Game and Fish Commission to an adult or business entity, such cards shall be available in two class types A or B. Each card will supply the name, date of birth, address, and a license account number of the holder.

(l) "Recreational marijuana plant" means a cannabis plant with leaves, stems, and stalk intact, and cultivated to be used as an intoxicant for recreational purposes.

(m) "Recreational marijuana plant tag" or "plant tag" means a label issued by the Arkansas Game and Fish Commission that the cultivator attaches to the base or branch of a marijuana plant, and is used for tracking the plants origin from cultivation to sale. 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 cultivators marijuana license.

(n) "Recreational Marijuana" means any part of the cannabis plant, living or not, that is used as an intoxicant for the reason of enjoyment or pleasure.

(o) "Remuneration" means an act in which money is being paid to purchase recreational marijuana and or products produced therefrom for recreational purposes.

(p) "Resident Adult" or "Adult Resident" means a person who is 18 years of age or older who lives in Arkansas and presents an official valid Arkansas Identification or Arkansas Drivers license.

(q) "Use recreational marijuana and products produced therefrom", "use of recreational marijuana", or "consume recreational marijuana" means to ingest, inhale, or otherwise introduce recreational marijuana into the human body.

Section 4. The regulation of recreational marijuana.

The cultivation, production, distribution, sale, transport, possession, and use of marijuana and products produced from marijuana for adult recreational purposes are lawful under state law, and shall be regulated, and such regulations shall include the following provisions, but do not preclude the imposition of additional rules and regulations that the Arkansas Game and Fish Commission and the Alcoholic Beverage Control Division may adopt and impose to prevent the use of recreational marijuana by minors, increase product safety, and consumer awareness.

- (a) **Recreational Marijuana Licenses** The Arkansas Game and Fish Commission shall issue two types of recreational marijuana licenses to regulate the cultivation and production of recreational marijuana sold in the state.
- 1. Class A Recreational Marijuana License:
 - I. A Class A license cost shall not exceed two hundred and fifty dollars (\$250) per year per adult or business.
 - II. Any Adult or Business who are a resident of the state shall qualify to obtain such a license.
 - III. Permits the cultivation, possession, and transport of 50 marijuana plants or less out of public view.
 - IV. Permits the sale of the following in a location that is 1500 feet away or more of a public or private school, church, or daycare:
 - A. 6 recreational marijuana plants or less to any adult who is a resident of the state.
 - B. 50 recreational marijuana plants or less to a Class A or B license holder.

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- 2. Class B Recreational Marijuana License:
 - I. A Class B License cost shall not exceed five-hundred dollars (\$500) per year per adult or business.
 - II. Any Adult or Business who are a resident of the state shall qualify to obtain such a license.
 - III. Permits the cultivation, possession, and transport of 100 recreational marijuana plants or less out of public view.
 - IV. Permits the manufacturing, labeling, and packaging of products produced from recreational marijuana plants that can be sold in the state.
 - V. Permits the sale of the following in a location that is 1500 feet away or more of a public or private school, church, or daycare:
 - A. 6 recreational marijuana plants or less to any adult who is a resident of the state.
 - B. 50 recreational marijuana plants or less to a Class A license holder.
 - C. 100 recreational marijuana plants or less to a Class B license holder.
 - D. Unlimited quantity of recreational marijuana seed to any adult resident of the state.
 - E. Up to 4 ounces of smokable or vaporizable recreational marijuana per resident adult per day.
 - F. Up to 1 ounce of smokable or vaporizable recreational marijuana per non resident adult per day.
 - G. An unlimited quantity of smokable and vaporizable recreational marijuana to any Class B recreational marijuana license holder.
 - H. Up to 72 ounces of recreational marijuana in the form of food or drink per non resident adult per day.
 - I. An unlimited quantity of recreational marijuana in the form of food or drink to an adult resident.

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- (b) **Adult Rights to Possess, Purchase, and Transport Recreational Marijuana**
 - 1. The following acts by any adult who is a resident of the state shall not be an offense under Arkansas law:
 - I. He or she may cultivate, possess, purchase, and transport up to six (6) recreational marijuana plants out of public view.
 - II. He or she may purchase from a class B license holder not more than four ounces (4oz) of smokable or vaporizable recreational marijuana a day.
 - III. He or she may possess any quantity of smokable or vaporizable recreational marijuana out of public view.
 - IV. He or she may purchase and possess any quantity of Marijuana plant seeds.
 - V. He or she may purchase and possess any quantity of food or drink products produced from recreational marijuana.
 - VI. He or she may manufacture products produced from recreational marijuana plants.

- 2. The following acts by any non resident adult shall not be an offense under Arkansas law:
 - I He or she may purchase and possess not more than one ounce (1 oz.) of smokable or vaporizable recreational marijuana a day from a Class B recreational marijuana license holder.
 - II He or she may purchase and possess not more than Seventy-two ounces (72 oz.) of food or drink products produced from recreational marijuana a day from a Class B recreational marijuana license holder.

(c) Recreational marijuana product design, packaging and labeling.

1. All food and drink products produced from recreational marijuana that is sold in this state by a Class B recreational marijuana license holder shall;

- I. Shall not be designed to be appealing to children or easily confused with commercially sold candy or foods that do not contain marijuana.
- II. Shall be produced and sold with a standardized dosage not to exceed ten (10) milligrams of delta-9-tetrahydrocannabinol (Δ^9 THC) per serving.
- III. Shall be delineated or scored into standardized serving sizes if the product contains more than one serving and is in solid form.
- IV. Shall be homogenized to ensure uniform disbursement of delta-9-tetrahydrocannabinol (Δ^9 THC) throughout the product.
- V. 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.

2. All smokable and vaporizable products produced from recreational marijuana that is sold by a Class B recreational marijuana license holder;

- I. 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.

3. All products produced from recreational marijuana that is distributed by any adult or business entity without remuneration to any adult or business entity shall be exempt from the design, packaging, and labeling requirements of this section.

Section 5. Administration, Rules, and Recreational Marijuana Licensing

(a)1. Adults and Businesses shall be licensed by the Arkansas Game and Fish Commission (referenced hereafter as the Commission).

2. The commission shall administer and regulate the licensing of Adults and Businesses.

3. The Alcoholic Beverage Control Division (referenced hereafter as the Division) shall administer and enforce the provisions of this amendment concerning the location in which recreational marijuana plants and products produced therefrom are sold.

(b)1. The Commission and Division shall each adopt rules necessary to:

- I. Carry out the purposes of this amendment; and
- II. Perform its duties under this amendment.

2. Rules adopted under this section are rules as defined in the Arkansas Administrative Procedure Act, § [25-15-201](#) et seq.

(c) Not later than ninety (90) days after the effective date of this amendment, the commission shall adopt rules governing;

1 .The manner in which the commission considers applications and renewals for recreational marijuana licenses, and plant tags;

2. The form and content of registration and renewal applications for recreational marijuana licenses and plant tags; and

3. Any other matters necessary for the commission's fair, impartial, stringent, and comprehensive administration of its duties under this amendment.

(d) Not later than ninety (90) days after the effective date of this amendment, the division shall adopt rules governing:

- 1. Oversight requirements for those licensed to cultivate, produce, and sell recreational marijuana;
- 2. Recordkeeping requirements for those licensed to cultivate, produce, and sell recreational marijuana;
- 3. Security requirements for those places where recreational marijuana products are produced and sold;
- 4. Personnel requirements for those licensed to sale, produce, and distribute recreational marijuana;
- 5. The manufacture, processing, packaging, and dispensing of recreational marijuana;
- 6. Procedures for suspending the licenses of Adults or Businesses that violate the provisions of this amendment or the rules adopted under this amendment, procedures for appealing penalties, and a schedule of penalties;
- 7. Procedures for inspections and investigations of Adults or businesses that are licensed to produce and sell recreational marijuana;
- 8. Advertising restrictions;
- 9. Any other matters necessary for the division's fair, impartial, stringent, and comprehensive administration of its duties under this amendment.

Section 6. Marijuana paraphernalia

Any adult or business entity may manufacture, possess, and purchase marijuana paraphernalia, or may sell marijuana paraphernalia to another adult or business entity, providing that such paraphernalia sold that contains products produced from recreational marijuana is designed, packaged, and labeled pursuant to section 4 (c) of this amendment, and sold only by a Class B recreational marijuana license holder.

Section 7. Employers, driving, and minors:

(a) Nothing in this Amendment shall be construed to affect the ability of employers to have policies restricting the use of recreational marijuana by employees.

(b) Nothing in this Amendment permits driving under the influence of recreational marijuana.

(c) Nothing in this Amendment permits the transfer of recreational marijuana, with or without remuneration, to a minor.

(d) Nothing in this Amendment permits a minor to cultivate, produce, sell, possess, or use recreational marijuana.

(e) Nothing in this Amendment shall be construed to permit the cultivation, production, distribution, or sale, of any other substance that is controlled or prohibited by the state pursuant to the Arkansas Uniform Controlled Substances Act.

Section 8. Expungement of Prior Convictions for Marijuana Related Offenses.

(a) All convictions for a marijuana related offense, as defined in Section 3(f) of this amendment, shall be expunged from all criminal records in this state.

(b) The State shall release from incarceration, probation, and parole all persons whose current and only conviction(s) in which they are serving was for a marijuana related offense as defined in Section 3(f) of this amendment.

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 in Arkansas:

- 1. The Arkansas State Sales and Use Tax,
- 2. a eight percent (8%) recreational marijuana excise tax, and
- 3. a five percent (5%) 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. Conflicting Laws.

(a) 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.

(b) This amendment does not suppress any privileges or rights of a qualifying patient or licensed entity in regards to medical marijuana; Marijuana that is cultivated, distributed, and sold for medical purposes will remain under the same regulatory scheme pursuant to the Arkansas Medical Marijuana Amendment of 2016. Marijuana that is cultivated, distributed, and sold for adult recreational purposes shall be regulated pursuant to this amendment.

^{fn} 1 Ark. Code Ann. § [7-9-107\(c\)](#) (Supp. 2017).

^{fn} 2 See *Arkansas Women's Political Caucus v. Riviere*, [283 Ark. 463, 466](#), [677 S.W.2d 846, 848](#) (1948).

^{fn} 3 *Becker v. Riviere*, [270 Ark. 219, 226](#), [604 S.W.2d 555, 558](#) (1980) (internal citations omitted).

^{fn} 4 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).

^{fn} 5 As part of my review, however, I may address constitutional concerns for consideration by the measure's proponents.

^{fn} 6 *Pafford v. Hall*, [217 Ark. 734, 739](#), [233 S.W.2d 72, 75](#) (1950).

^{fn} 7 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 *infra* n.20.

^{fn} 8 *May v. Daniels*, [359 Ark. 100, 105](#), [194 S.W.3d 771, 776](#) (2004).

^{fn} 9 *Wilson v. Martin*, [2016 Ark. 334](#), *7, [500 S.W.3d 160, 166](#) (citing *Christian Civic Action Comm. v. McCuen*, [318 Ark. 241](#), [884 S.W.2d 605](#) (1994)).

- ^{fn} 10 *Becker*, [270 Ark. at 226](#) , [604 S.W.2d at 558](#) .
- ^{fn} 11 *Lange v. Martin*, [2016 Ark. 337](#) , [500 S.W.3d 154](#) , at n. 2.
- ^{fn} 12 *Id.* at *9, [500 S.W.3d at 159](#) .
- ^{fn} 13 *Wilson*, [2016 Ark. 334](#) at *9, [500 S.W.3d at 167](#) (stating that "voters [should not] be placed in a position of either having to be an expert in the subject or having to guess as to the effect his or her vote would have").
- ^{fn} 14 *Id.* , [500 S.W.3d at 167](#) .
- ^{fn} 15 *Bailey v. McCuen*, [318 Ark. 277, 285](#) , [884 S.W.2d 938, 942](#) (1994).
- ^{fn} 16 *See* Ark. Code Ann. § [7-9-107\(b\)](#) .
- ^{fn} 17 Ark Code Ann. § [7-5-309](#) (Supp. 2017).
- ^{fn} 18 *Bailey*, [318 Ark. at 284](#) , [884 S.W.2d at 944](#) .
- ^{fn} 19 *Id.* at [293](#) , [884 S.W.2d at 946-47](#) .
- ^{fn} 20 *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 Comm.*, [318 Ark. at 249](#) , [884 S.W.2d at 610](#) (1994).
- ^{fn} 21 *Becker v. McCuen*, [303 Ark. 482, 489](#) , [798 S.W.2d 71, 74](#) (1990).
- ^{fn} 22 *Christian Civic Action Comm.*, [318 Ark. at 245](#) , [884 S.W.2d at 607](#) (internal quotations omitted).
- ^{fn} 23 *Roberts v. Priest*, [341 Ark. 813, 825](#) , [20 S.W.3d 376, 382](#) (2000).
- ^{fn} 24 *Id.*
- ^{fn} 25 *See* Op. Att'y Gen. 2017-032 (citing Ark. Code Ann. § [25-16-701](#) , which prohibits the Attorney General from engaging in the private practice of law).
- ^{fn} 26 Available at www.arkansasag.gov/opinions.

Source: Arkansas Attorney General