



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-006

February 2, 2016

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 constitutional amendment.

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 proposed amendment.

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 CANNABIS AMENDMENT

Ballot Title

Shall there be an amendment to the Arkansas Constitution concerning the cannabis plant and, in connection therewith, providing for the regulation of recreational marijuana similar to alcoholic beverages and the regulation of industrial hemp similar to corn and cotton; permitting a person 21 years of age or older to purchase and possess recreational marijuana, and to allow for the licensing of persons 21 or older to cultivate and produce limited amounts of marijuana for the personal, recreational, or medical

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).

needs of our citizenry, and allow for the operation of facilities for marijuana cultivation, product manufacturing, product testing, and product retail; and permitting the state to regulate such facilities; requiring the general assembly to enact an excise tax of 5% to be levied upon the sales of recreational marijuana; permitting the use of medical marijuana to assure that patients, including those under 21 years of age, may have safe access to medical marijuana to treat a disease, injury, or illness; requiring the release of non-violent marijuana offenders in this state from incarceration, probation, and parole and expunging such convictions from all criminal records in this state?

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, if information omitted from the ballot title is an "essential fact which would give the voter serious ground for reflection, it must be disclosed."⁸ At the same time, however, a ballot title must be brief and concise;⁹ 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.¹⁰ The ballot title is not required to be perfect,

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

⁵ *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* at note 12.

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

⁹ *See* Ark. Code Ann. § 7-9-107(b).

¹⁰ *Bailey* at 284, 884 S.W.2d at 944.

nor is it reasonable to expect the title to cover or anticipate every possible legal argument the proposed measure might evoke.¹¹ 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.”¹² The ballot title must be honest and impartial,¹³ and it must convey an intelligible idea of the scope and significance of a proposed change in the law.¹⁴

Furthermore, the Court has confirmed that a proposed amendment cannot be approved if “[t]he text of the proposed amendment itself contribute[s] to the confusion and disconnect between the language in the popular name and the ballot title and the language in the proposed measure.”¹⁵ 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.”¹⁶ 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 proposed amendment itself, and (2) conformance of the popular name and ballot title to the newly worded amendment.

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 your proposed

¹¹ *Id.* at 293, 844 S.W.2d at 946-47.

¹² *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)).

¹³ *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

¹⁴ *Christian Civic Action Committee*, 318 Ark. at 245, 884 S.W.2d at 607 (internal quotations omitted).

¹⁵ *Roberts v. Priest*, 341 Ark. 813, 825, 20 S.W.3d 376, 382 (2000).

¹⁶ *Id.*

amendment 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 proposed amendment. I note that all, or practically all, the ambiguities noted below arise from changes made in the proposal after your last submission.

1. Section 9 refers to various entities possessing marijuana licenses. The term “Marijuana License” is, however, defined in section 4 in a way such that licenses may be issued only to individual human beings. The provisions cannot be reconciled as they are drafted.
2. Section 4, in the definition of “Products Produced,” contains the following sentence: “It shall not include an item that may contain Delta-9-THC but whose other ingredient(s) would constitute a substance that is prohibited by this state.” The meaning of this sentence is unclear in several respects. “It” presumably refers to “Products Prohibited” but it does not clearly do so. “Item” generally refers to an article or unit. “Substance” generally refers to a material, which may or may not be formed into “items.” It is not clear whether the exclusion, which expressly addresses only “items,” includes substances. Nor is it clear whether the exclusion applies when the end product is an “item” rather than a mere “substance.” Also unclear is the phrase “*would* constitute a [prohibited] substance.” You may intend that the phrase mean the same thing as “constitutes a [prohibited] substance” but your use of the word “would” casts doubt on that interpretation.
3. Section 4, in the definition of “Marijuana Plant Tag,” provides that the tag is “used for tracking the plants [sic] origin from seed to sale.” Section 6 requires that growing marijuana plants display a tag, but the proposal appears to contain no provision regarding tags and seeds. The definition’s meaning is therefore uncertain and ambiguous.
4. Section 6 provides that medical marijuana *products* “shall not be taxed.” It is not clear whether this provision, which immediately follows a subsection referring to sales and excise taxes, applies to sales taxes, property taxes, or both. Nor it is clear whether the provision applies to marijuana itself, or only to products produced from marijuana.
5. The definition of “Marijuana License” in section 4 provides that the license permits a person to “cultivate, produce, distribute, and sell” marijuana. Section 9 purports to permit persons holding licenses to engage in a much

broader range of activities relating to marijuana. It is accordingly unclear why the term is defined in a more limited manner.

6. Section 9 purports to make lawful certain acts by entities holding Marijuana Licenses (which, as noted above, appears to be an impossibility) or by “a person 21 years of age or older who is acting in his or her capacity as an owner, employee or agent” of an entity engaging in marijuana-related activities. There is no express requirement in section 9 that such a human being be licensed to engage in the listed activities, though the proposal seems generally to imply that individuals must be licensed. It is impossible to summarize these provisions in a ballot title without clarification.
7. Section 4, in the definition of “Written Recommendation,” provides that the document may name “an adult or relative” to purchase marijuana for the patient “if needed.” As written, the definition clearly would permit the Written Recommendation to name a *minor* relative as the authorized “adult or relative.” Elsewhere, however, the proposal appears intended to keep marijuana out of the hands of minors. I cannot determine the meaning of this provision. The definition also contains the phrase, “authorizing the use of medical marijuana to a patient.” This phrase may mean “authorizing use by a patient,” but I cannot be sure that is the intent.
8. Section 9 refers to “recreational marijuana stores,” “marijuana testing facilities,” “marijuana cultivation facilities,” “marijuana product manufacturing facilities,” and “medical marijuana stores.” It is not clear whether the proposal is intended to permit a single business to be more than one of these things simultaneously.
9. Section 9 refers to “rules established by . . . local governments pursuant to this amendment [sic].” The provision’s meaning is unclear, as the proposal does not address local rules.
10. The proposal defines a number of terms, but often (apparently) refers to the things defined not by using the defined term but by using other words. For example, the proposal defines “Written Recommendation” in section 4, but section 7 refers to a “*valid* written recommendation letter from any medical doctor licensed in this state.” The definition says nothing about “validity.” As a result, the language in section 7, requiring “validity,” appears to require something more than a Written Recommendation. Additionally, the definition provides that a writing is a Written Recommendation only if it is signed by a medical doctor licensed in the state. Accordingly, the quoted language about licensing contained in section 7 appears to be redundant and prone to cause confusion. Defining terms but not using them (or using them with lower-case first letters and additional modifiers) adds unnecessary uncertainty to the proposal.

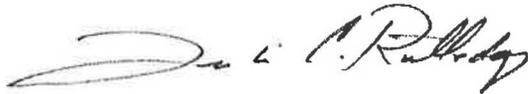
CONCLUSION

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.¹⁷ You may resubmit your proposed act along with a proposed popular name and ballot title at your convenience.

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

¹⁷ Ark. Code Ann. § 7-9-107(c).

Popular Name:

THE ARKANSAS CANNABIS AMENDMENT

Ballot Title:

Shall there be an amendment to the Arkansas Constitution concerning the cannabis plant and, in connection therewith, providing for the regulation of recreational marijuana similar to alcoholic beverages and the regulation of industrial hemp similar to corn and cotton; permitting a person 21 years of age or older to purchase and possess recreational marijuana, and to allow for the licensing of persons 21 or older to cultivate and produce limited amounts of marijuana for the personal, recreational, or medical needs of our citizenry, and allow for the operation of facilities for marijuana cultivation, product manufacturing, product testing, and product retail; and permitting the state to regulate such facilities; requiring the general assembly to enact an excise tax of 5% to be levied upon the sales of recreational marijuana; permitting the use of medical marijuana to assure that patients, including those under 21 years of age, may have safe access to medical marijuana to treat a disease, injury, or illness; requiring the release of non-violent marijuana offenders in this state from incarceration, probation, and parole and expunging such convictions from all criminal records in this state?

Section 1. This is an amendment to the Arkansas Constitution that shall be called "The Arkansas Cannabis Amendment."

Section 2. Effective January 20, 2017 the cultivation, production, distribution, sale, possession, and use of the cannabis plant (genus Cannabis) and products produced from the cannabis plant (genus Cannabis) shall be lawful within the entire geographic area of each and every county of the state of Arkansas.

Section 3. Purpose and Findings:

(a) In the interest of allowing law enforcement to focus on crimes where there are victims, and to enhance individual freedom, the people of the state of Arkansas find and declare that the use of recreational marijuana should be legal for persons twenty-one (21) years of age or older.

(b) In the interest of the health and public safety of our citizenry, the people of the state of Arkansas further find and declare that the production and sale of recreational and medical marijuana should be regulated so that:

(1) Individuals will have to show proof of age before purchasing recreational marijuana;

(2) Legitimate, taxpaying business people will conduct sales of recreational and medical marijuana; and

(3) Marijuana sold by businesses will be labeled and subject to regulations to ensure that consumers and patients are informed and protected.

(c) The people of the state of Arkansas further declare that industrial hemp should be regulated similar to corn, cotton, or any other agricultural crop produced in the state.

(d) Nothing in this Amendment proposes or intends to require any individual or entity to engage in any conduct that violates federal law, or exempt any individual or entity from any requirement of federal law, or pose any obstacle to federal enforcement of federal law.

Section 4. Definitions:

(a) "Industrial Hemp" is defined for purposes of this amendment as any part of the cannabis plant (genus Cannabis), living or not, containing one percent (1%) or less, by dry weight, Delta-9-tetrahydrocannabinol (Delta-9-THC).

(b) "Marijuana" is defined for purposes of this amendment as any part of the cannabis plant (genus Cannabis), living or not, containing greater than one percent (1%), by dry weight, Delta-9-tetrahydrocannabinol (Delta-9-THC).

(c) "Marijuana License" is defined for purposes of this amendment as a registration card issued by the state to any person twenty-one (21) years of age or older to lawfully cultivate, produce, distribute, and sell marijuana and products produced containing marijuana for recreational or medical 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.

(d) "Marijuana Paraphernalia" is defined for the purposes of this amendment as any device used to introduce marijuana into the body.

(e) "Marijuana Plant Tag" is defined for purposes of this amendment as a bar-coded label issued by the state that the cultivator attaches to the base or branch of a growing marijuana plant and is used for tracking the plants origin from seed to sale.

(f) "Medical Marijuana" is defined for the purposes of this amendment as marijuana and products produced containing marijuana that is used for the treatment of a disease, illness, or injury.

(g) "Products Produced" is defined for purposes of this amendment as items manufactured from the cannabis plant (genus Cannabis) that may contain Delta-9-tetrahydrocannabinol (Delta-9-THC), whereas marijuana products contain greater than one percent (1%) Delta-9-tetrahydrocannabinol (Delta-9-THC) and hemp products contain one percent (1%) or less Delta-9-THC. Any item whose components may contain a variation in Delta-9-THC content that would span above the one percent (1%) threshold is to be considered marijuana. It shall not include an item that may contain Delta-9-THC but whose other ingredient(s) would constitute a substance that is prohibited by this state.

(h) "Recreational Marijuana" is defined for the purposes of this amendment as marijuana and products produced containing marijuana that is used by adults twenty-one years of age or older as an intoxicant similar to an alcoholic beverage.

(i) "Written Recommendation" is defined for the purposes of this amendment as a document signed by a medical doctor, who is licensed in this state, authorizing the use of medical marijuana to a patient. The document shall contain the patient's name, the doctor's name, type of marijuana product to be used, dosage, a list of dates in which orders may be filled to supply the patients monthly or weekly need, and an expiration date, and a name of an adult or relative who may purchase the monthly or weekly order for the patient if needed.

Section 5. The Regulation of Industrial Hemp.

The cultivation, production, distribution, sale, possession, and use of industrial hemp and products produced comprised of industrial hemp shall be lawful in this state and may be regulated similar to cotton, corn, or any other crops that are currently regulated by this state.

Section 6. The Regulation of Marijuana.

The cultivation, production, distribution, sale, possession and use of recreational and medical marijuana shall be lawful and regulated by the state. Such regulations are subject to the following conditions:

(a) The cost of a license that shall be issued by the state to authorize any person twenty-one (21) years of age or older to cultivate, produce, distribute, and sell marijuana and products containing marijuana for personal, recreational, or medical purposes shall not exceed fifty dollars (\$50.00) per license per year, and any person twenty-one (21) years of age or older shall qualify to obtain such a license, and there shall be no limit to the number of licenses issued in this state.

(b) The cost of a marijuana plant tag that shall be issued by the state to regulate the cultivation of marijuana plants produced in this state, shall not exceed five dollars (\$5.00) per tag, and any person with a valid marijuana license as defined in section 4(c) shall qualify to purchase such tags, and there shall be a limit of thirty-six (36) tags allowed per year per licensed person. Each tag shall

- display the marijuana license account number and an expiration date that corresponds with the cultivators marijuana license. Marijuana plant tags may be purchased in any quantity, but not to exceed thirty-six (36) tags per licensed person per year.
- (e) The quantity of plants cultivated and displaying a state issued marijuana plant tag shall be limited to thirty-six (36) growing plants per person with a valid marijuana license, but the quantity of the products produced shall not be limited.
- (f) Marijuana plants may be cultivated in a location where the plants are not subject to public view without the use of binoculars, aircraft, or other optical aids on property lawfully in possession of the person with a marijuana license or with the consent of the person(s) lawfully in possession of the property.
- (g) All marijuana plants legally growing in this state shall display a state issued marijuana plant tag.
- (h) In addition to the regular sales tax imposed upon the sale of recreational marijuana and products produced containing marijuana the state shall also impose an excise tax of five percent (5%).
- (i) Medical marijuana products sold in this state shall not be taxed.

Section 7. Medical marijuana authorized

Notwithstanding any other provision of law, the following acts regarding the use of medical marijuana are lawful and shall not be an offense under Arkansas law, or be a basis for seizure or forfeiture of assets under Arkansas law:

- (a) Any parent or guardian may provide medical marijuana to their minor child providing that they have valid proof of their child's participation in any state medical marijuana program, or have a valid written recommendation letter from any medical doctor licensed in this state authorizing the child's use.
- (b) Any medical doctor who is licensed in this state may authorize the use of medical marijuana to a patient by written recommendation for the purpose of treating an illness, injury, or disease.
- (c) Any person eighteen (18) years of age or older may purchase medical marijuana providing that they have valid proof of their participation in any state medical marijuana program or have a valid written recommendation from any medical doctor licensed in this state. This shall also include any adult designated by the written recommendation to purchase on behalf of a patient.
- (d) Any patient with valid proof of their participation in any state medical marijuana program or have a valid written recommendation from any medical doctor licensed in this state may possess and use medical marijuana.

Section 8. Marijuana paraphernalia authorized

Notwithstanding any other provision of law, it is lawful and shall not be an offense under Arkansas law or be a basis for seizure or forfeiture of assets under Arkansas law for persons twenty-one (21) years of age or older to manufacture, possess, or purchase marijuana paraphernalia, or to distribute or sell marijuana paraphernalia to a person who is twenty-one (21) years of age or older.

Section 9. Lawful operation of marijuana-related facilities.

(a) Notwithstanding any other provision of law, the following acts, when performed by a recreational marijuana store with a current valid marijuana license, or a person 21 years of age or older who is acting in his or her capacity as an owner, employee or agent of a the store, are lawful and shall not be an offense under Arkansas law or be a basis for seizure or forfeiture of assets under Arkansas law:

- (1) Possessing, displaying, storing, or transporting marijuana or marijuana products, except that marijuana and marijuana products may not be displayed in a manner that is visible to the general public from a public right-of-way;
- (2) Delivering or transferring marijuana or marijuana products to a marijuana testing facility;
- (3) Receiving marijuana or marijuana products from a marijuana testing facility;
- (4) Purchasing marijuana from a marijuana cultivation facility;
- (5) Purchasing marijuana or marijuana products from a marijuana product manufacturing facility; and
- (6) Delivering, distributing, or selling marijuana or marijuana products to person 21 years of age or older.

(b) Notwithstanding any other provision of law, the following acts, when performed by a medical marijuana store with a current valid marijuana license, or a person 21 years of age or older who is acting in his or her capacity as an owner, employee or agent of a the store, are lawful and shall not be an offense under Arkansas law or be a basis for seizure or forfeiture of assets under Arkansas law:

- (1) Possessing, displaying, storing, or transporting marijuana or marijuana products, except that marijuana and marijuana products may not be displayed in a manner that is visible to the general public from a public right-of-way;
- (2) Delivering or transferring medical marijuana or medical marijuana products to a marijuana testing facility;
- (3) Receiving medical marijuana or medical marijuana products from a marijuana testing facility;
- (4) Purchasing medical marijuana from a marijuana cultivation facility;
- (5) Purchasing medical marijuana or medical marijuana products from a marijuana product manufacturing facility; and
- (6) Delivering, distributing, or selling medical marijuana to a person eighteen (18) years of age or older that have valid proof of

their participation in any state medical marijuana program or have a valid written recommendation from any medical doctor licensed in this state. This shall also include any adult designated by the written recommendation to purchase on behalf of a patient.

(c) Notwithstanding any other provision of law, the following acts, when performed by a marijuana cultivation facility with current, valid marijuana license holders, or a person 21 years of age or older who is acting in his or her capacity as an owner, employee or agent of a marijuana cultivation facility, are lawful and shall not be an offense under Arkansas law or be a basis for seizure or forfeiture of assets under Arkansas law:

- (1) Cultivating, harvesting, processing, packaging, transporting, displaying, storing, or possessing marijuana;
- (2) Delivering or transferring marijuana to a marijuana testing facility;
- (3) Receiving marijuana from a marijuana testing facility;
- (4) Delivering, distributing, or selling marijuana to a marijuana product manufacturing facility, or a medical or recreational marijuana store; and
- (5) Renting cultivation space and providing cultivation services to others with a marijuana license and plant tags.

(d) Notwithstanding any other provision of law, the following acts, when performed by a marijuana product manufacturing facility with a current, valid marijuana license, or a person 21 years of age or older who is acting in his or her capacity as an owner, employee or agent of a marijuana product manufacturing facility, are lawful and shall not be an offense under Arkansas law or be a basis for seizure or forfeiture of assets under Arkansas law:

- (1) Packaging, processing, transporting, manufacturing, displaying, or possessing marijuana or marijuana products;
- (2) Delivering or transferring marijuana or marijuana products to a marijuana testing facility;
- (3) Receiving marijuana or marijuana products from a marijuana testing facility;
- (4) Delivering or selling marijuana or marijuana products to a medical or recreational marijuana store or a marijuana product manufacturing facility;
- (5) Purchasing marijuana from a marijuana cultivation facility; and
- (6) Purchasing of marijuana or marijuana products from a marijuana product manufacturing facility.

(e) Notwithstanding any other provision of law, the following acts, when performed by a marijuana testing facility with a current, valid marijuana license, or a person 21 years of age or older who is acting in his or her capacity as an owner, employee, or agent of a marijuana testing facility, are lawful and shall not be an offense under Arkansas law or be a basis for seizure or forfeiture of assets

under Arkansas law:

- (1) Possessing, cultivating, processing, repackaging, storing, transporting, displaying, transferring or delivering marijuana;
 - (2) Receiving marijuana or marijuana products from a marijuana cultivation facility, a medical or recreational marijuana store, a marijuana products manufacturer, or a person with a marijuana license; and
 - (3) Returning marijuana or marijuana products to a marijuana cultivation facility, recreational or medical marijuana store, marijuana products manufacturer, or a person with a marijuana license.
- (f) Notwithstanding any other provision of law, it is lawful and shall not be an offense under Arkansas law or be a basis for seizure or forfeiture of assets under Arkansas law to lease or otherwise allow the use of property owned, occupied or controlled by any person, corporation or other entity for any of the activities conducted lawfully in accordance with paragraphs (a) through (e) of this section.
- (g) Nothing in this section prevents the imposition of penalties upon marijuana establishments for violating this section or rules established by the state or local governments pursuant to this amendment.

Section 10. Employers, driving, minors, public use, and control of property.

- (a) Nothing in this amendment is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.
- (b) Nothing in this amendment is intended to allow driving under the influence of marijuana or to supersede laws related to 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 21.
- (d) Nothing in this amendment is intended to permit a person under the age of 21 to cultivate, produce, sell, possess, or use recreational marijuana.
- (e) Nothing in this amendment is intended to permit the consumption of marijuana or products containing marijuana in public.
- (f) Nothing in this amendment shall prohibit a person, employer, school, hospital, recreation or youth center, correction facility, corporation or any other entity who occupies, owns or controls private property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.

Section 11. Non-violent marijuana offenders and criminal record expungement

All persons who are serving incarceration, probation, and parole in this state whose only conviction(s) 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 violations 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 12. 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.