



STATE OF ARKANSAS  
ATTORNEY GENERAL  
LESLIE RUTLEDGE

Opinion No. 2016-107

October 31, 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 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,”<sup>1</sup> this office will not require that a measure’s proponents acknowledge in the ballot title any possible constitutional infirmities.<sup>2</sup> 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.<sup>3</sup>

## 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

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

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<sup>1</sup> 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).

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

<sup>3</sup> See *Arkansas Women’s Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 848 (1984).

State laws pertaining to the cultivation, production, distribution, sale, and possession of marijuana or possession of marijuana paraphernalia, and the expungement of records relating to such conviction(s); dividing cannabis into industrial hemp (containing 0.3% or less THC) and marijuana (containing more than 0.3% THC); regulating the cultivation, production, distribution and the sale of industrial hemp and products produced therefrom; providing that anyone 18 years of age or older may obtain an industrial hemp license permitting the person to cultivate industrial hemp; authorizing both medical and recreational use of marijuana; providing that anyone 21 years of age or older may obtain a marijuana license permitting the person to cultivate, produce, and sell marijuana and products produced therefrom; providing that a licensed person may cultivate up to 36 cannabis plants in a location not subject to public view without optical aid; providing that sales of recreational marijuana will be subject to existing sales taxes and an additional 5% excise tax; providing that the state shall not impose any tax on the retail sale of medical marijuana to patients; permitting medical use of marijuana by a person of any age whose physician has recommended such use in writing; 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 marijuana in the workplace, (B) is not intended to permit driving under the influence of marijuana, (C) is not intended to permit the transfer of recreational marijuana to anyone under 21 years of age, (D) nor permit anyone under 21 years of age to cultivate, produce, sell, possess, or use recreational marijuana.

## **RESPONSE**

The popular name is primarily a useful legislative device.<sup>4</sup> 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

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

proposal.<sup>5</sup> The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.<sup>6</sup>

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

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."<sup>12</sup> At the same time, however, a ballot title must be brief and concise;<sup>13</sup> 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.<sup>14</sup> The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal

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<sup>5</sup> 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*.

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

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

<sup>8</sup> *Lange v. Martin*, 2016 Ark. 337, at n. 2, 2016 WL 5940309, at \*7.

<sup>9</sup> *Id.* at 9, 2016 WL 5949398 at \*4.

<sup>10</sup> *Wilson v. Martin*, 2016 Ark. 334, at 9, 2016 WL 5939735, at \*8.

<sup>11</sup> *Id.*

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

<sup>13</sup> See Ark. Code Ann. § 7-9-107(b).

<sup>14</sup> *Bailey* at 284, 884 S.W.2d at 944.

argument the proposed measure might evoke.<sup>15</sup> 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.”<sup>16</sup> The ballot title must be honest and impartial,<sup>17</sup> and it must convey an intelligible idea of the scope and significance of a proposed change in the law.<sup>18</sup>

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.<sup>19</sup> 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.”<sup>20</sup> Where the effects of a proposed measure on current law are unclear or ambiguous, it is impossible for me to perform my statutory duty to the satisfaction of the Arkansas Supreme Court without (1) clarification or removal of the ambiguities in the proposal itself, and (2) conformance of the popular name and ballot title to the newly worded proposal.

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

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<sup>15</sup> *Id.* at 293, 844 S.W.2d at 946-47.

<sup>16</sup> *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)).

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

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

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

<sup>20</sup> *Id.*

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

1. The proposal is unclear and ambiguous with respect to whether a person must be a resident of the State of Arkansas in order to obtain an industrial hemp license or a marijuana license.
2. Section 4(c) refers to “the person(s) lawfully in possession of the property.” The meaning of this phrase is unclear and ambiguous, especially with respect to the meaning of the words “the property” and whether it only describes property the cultivator owns but is in the possession of another person, or whether it describes property owned by any person provided that person gives the cultivator consent.
3. Section 4(d) does not specify a penalty for cultivating hemp without a license. Voters would be materially interested in the extent of punishment that would or could be imposed for violation of this subsection.
4. The proposal implies that hemp cultivators are required to obtain field tags, but Section 4(d) does not refer to field tags with respect to requirements for cultivators. The proposal is ambiguous and uncertain in this regard.
5. The proposal is similarly ambiguous with respect to the extent to which plant tags are required and the extent to which a person will face punishment for failing to obtain plant tags.
6. The proposal, in sections 4 and 5, refers to permanent revocation of a marijuana license or industrial hemp license, but it does not expressly give the State this regulatory power or specify how or when the State could exercise such power if possessed.
7. Section 5(e) of the proposal provides that any person of age may “distribute recreational marijuana without remuneration....” It is unclear whether “remuneration” is intended to refer only to money or to anything of value.
8. Sections 6 and 7 refer to “forfeiture of assets,” a term which is not defined. It is not clear that voters would correctly understand the proposal’s intent in this respect without clarification of the proposal’s language.

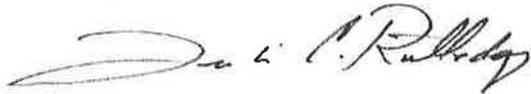
9. Section 7(f) refers to “use” of marijuana paraphernalia. It is uncertain whether the word in this instance is intended to include manufacturing, selling, etc.
10. Section 8(e) uses the term “controlled substances” without definition. It is uncertain and ambiguous whether the term is intended to describe substances controlled under state law, federal law, or both.
11. Section 10(a) provides in essence that sales of recreational marijuana and industrial hemp will be taxed at “the same rate as other goods.” The combination of general sales taxes and targeted sales taxes may result in different total rates on different types of goods (e.g., the mixed drink tax). Particularly because alcohol and marijuana are similar in some ways, the proposal is unclear with respect to the rates applicable to sales of recreational marijuana and industrial hemp.
12. Section 10(a) also provides that “an additional ... excise tax may be imposed on the retail sale of recreational marijuana.” The provision is unclear and ambiguous in omitting to state which taxing unit(s) (e.g., the state, counties, cities) may impose such a tax. It is also unclear in its use of the term “excise tax,” a legal term of art whose meaning likely is unclear to many voters. Finally, the proposal omits to define the term “retail,” a word that may fairly be applied to transactions of varying characteristics.
13. Section 10(b) refers in several places to “paying account[s],” a term of uncertain meaning absent a definition. Additionally, section 10(b)(5) refers to “the general fund,” a term that is also of uncertain meaning absent a definition.
14. Section 10(c) refers to “special taxes,” an undefined term that is of uncertain meaning. Additionally, the word “patient,” used in this section and elsewhere in the proposal, is not defined, leaving uncertainty about the extent of the required relationship between a physician and the person to whom it is prescribed.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Leslie Rutledge".

LESLIE RUTLEDGE  
Attorney General

Enclosure

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<sup>21</sup> Ark. Code Ann. § 7-9-107(c).

**ARKANSAS CANNABIS 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 THE CANNABIS PLANT AND PRODUCTS PRODUCED THEREFROM MAY NOT BE PROHIBITED UNDER STATE LAW, BUT SHALL BE REGULATED UNDER STATE LAW; RECOGNIZING THAT SUCH ACTIVITIES REMAIN UNLAWFUL UNDER FEDERAL LAW; PROVIDING FOR THE RELEASE FROM INCARCERATION, PROBATION, OR PAROLE OF ALL PERSONS WHOSE CURRENT AND ONLY CONVICTION(S) IN WHICH THEY ARE SERVING WERE OF STATE LAWS PERTAINING TO THE CULTIVATION, PRODUCTION, DISTRIBUTION, SALE, AND POSSESSION OF MARIJUANA OR POSSESSION OF MARIJUANA PARAPHERNALIA, AND THE EXPUNGEMENT OF RECORDS RELATING TO SUCH CONVICTION(S); DIVIDING CANNABIS INTO INDUSTRIAL HEMP (CONTAINING 0.3% OR LESS THC) AND MARIJUANA (CONTAINING MORE THAN 0.3% THC); REGULATING THE CULTIVATION, PRODUCTION, DISTRIBUTION AND THE SALE OF INDUSTRIAL HEMP AND PRODUCTS PRODUCED THEREFROM; PROVIDING THAT ANYONE 18 YEARS OF AGE OR OLDER MAY OBTAIN AN INDUSTRIAL HEMP LICENSE PERMITTING THE PERSON TO CULTIVATE INDUSTRIAL HEMP; AUTHORIZING BOTH MEDICAL AND RECREATIONAL USE OF MARIJUANA; PROVIDING THAT ANYONE 21 YEARS OF AGE OR OLDER MAY OBTAIN A MARIJUANA LICENSE PERMITTING THE PERSON TO CULTIVATE, PRODUCE, AND SELL MARIJUANA AND PRODUCTS PRODUCED THEREFROM; PROVIDING THAT A LICENSED PERSON MAY CULTIVATE UP TO 36 CANNABIS PLANTS IN A LOCATION NOT SUBJECT TO PUBLIC VIEW WITHOUT OPTICAL AID; PROVIDING THAT SALES OF RECREATIONAL MARIJUANA WILL BE SUBJECT TO EXISTING SALES TAXES AND AN ADDITIONAL 5% EXCISE TAX; PROVIDING THAT THE STATE SHALL NOT IMPOSE ANY TAX ON THE RETAIL SALE OF MEDICAL MARIJUANA TO PATIENTS; PERMITTING MEDICAL USE OF MARIJUANA BY A PERSON OF ANY AGE WHOSE PHYSICIAN HAS RECOMMENDED SUCH USE IN WRITING; 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 MARIJUANA IN THE WORKPLACE, (B) IS NOT INTENDED TO PERMIT DRIVING UNDER THE INFLUENCE OF MARIJUANA, (C) IS NOT INTENDED TO PERMIT THE TRANSFER OF RECREATIONAL MARIJUANA TO ANYONE UNDER 21 YEARS OF AGE, (D) NOR PERMIT ANYONE UNDER 21 YEARS OF AGE TO CULTIVATE, PRODUCE, SELL, POSSESS, OR USE RECREATIONAL MARIJUANA.

**Section 1. Popular Name.**

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

**Section 2. Effective Date.**

Effective January 20 , 2019 the cultivation, production, distribution, sale, possession, and use of the cannabis plant (genus Cannabis) and the products produced therefrom shall be regulated pursuant to the provisions of this amendment, and made lawful in every geographic area of every county of this state under Arkansas law, but acknowledging that the listed activities with respect to the cannabis plant remain illegal under federal law and that the amendment shall have no effect on federal law.

### Section 3. Definitions.

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

- (a) "Industrial hemp" means any part of the cannabis plant (genus *Cannabis*), living or not, containing three tenths of one percent (0.3%) or less, by dry weight, Delta-9-tetrahydrocannabinol (Delta-9-THC).
- (b) "Industrial hemp field tag or field tag" means a label issued by the state that a cultivator attaches to any post or fencing where industrial hemp is being grown, and is used for identifying ten (10) acres or less of industrial hemp plants. Each tag shall display the industrial hemp license account number and an expiration date that corresponds with the cultivator's industrial hemp license. Each field tag may be bar-coded or embedded with radio frequency identification (RFID) smart chip.
- (c) "Industrial hemp license" means a registration card issued by the state to a person who is eighteen (18) years of age or older to lawfully cultivate industrial hemp. 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" means any part of the cannabis plant (genus *Cannabis*), living or not, containing greater than three tenths of one percent (0.3%), by dry weight, Delta-9-tetrahydrocannabinol (Delta-9-THC).
- (e) "Marijuana license" means a registration card issued by the state to a person who is twenty-one (21) years of age or older to lawfully cultivate, produce, and sell marijuana and products produced from marijuana for recreational and 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.
- (f) "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 or medical marijuana, or for ingesting, inhaling or otherwise introducing recreational or medical marijuana into the human body.
- (g) "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.
- (h) "Medical marijuana" means marijuana and products produced from marijuana that is used for the treatment of any disease, illness, or injury.
- (i) "Physician" means a doctor of medicine or doctor of osteopathic medicine who holds a valid, unrestricted, and existing license to practice in the state of Arkansas and is registered with the United States Drug Enforcement Administration to prescribe controlled substances.
- (j) "Products produced" means items and substances manufactured from the cannabis plant (genus *Cannabis*) that may contain Delta-9-tetrahydrocannabinol (Delta-9-THC), whereas products produced from marijuana contain greater than three tenths of one percent (0.3%) Delta-9-tetrahydrocannabinol (Delta-9-THC) and products produced from industrial hemp contain three tenths of one percent (0.3%) or less Delta-9-THC. Any item whose components may contain a variation in Delta-9-THC content that would span above the three tenths of one percent (0.3%) threshold is to be considered a product produced from marijuana.
- (k) "Recreational marijuana" means marijuana and products produced from marijuana that is used as an intoxicant.
- (l) "Written recommendation" means a document provided to a patient by a physician, authorizing the patient's use of medical marijuana. The document shall contain the patient's name, the physician's name, type of medical marijuana to be used, dosage, a list of dates in which orders may be filled to supply the patient's monthly or weekly need, an expiration date, and if germane to the patient's need, the name of an adult (18 years of age or older) who is lawfully responsible for making medical decisions for the patient that he or she may procure the medical marijuana for the patient.

#### **Section 4. The regulation of industrial hemp.**

The cultivation, production, distribution, sale, possession, and use of industrial hemp and products produced from industrial hemp shall be lawful in every geographic area of every county of this state under Arkansas law, and shall be regulated by the state, and such regulations shall include the following provisions, but do not preclude the imposition of additional rules and regulations that the state may adopt and impose:

(a) The cost of an industrial hemp license that shall be issued and required by the state to authorize any person who is eighteen (18) years of age or older to cultivate industrial hemp shall not exceed thirty dollars (\$30.00) a year, and there shall be no limit to the number of licenses issued in this state, and any person who is eighteen years of age or older shall qualify to obtain such a license, providing that he or she has not had such a license permanently revoked by the state.

(b) The cost of an industrial hemp field tag that shall be issued and required by the state to regulate the cultivation of industrial hemp shall not exceed ten dollars (\$10.00) per field tag per year, and any person with an industrial hemp license as defined in Section 3(c) may obtain such tags, and there shall be no limit to the number of field tags allowed per licensed person per year.

(c) Any person issued an industrial hemp license and field tag(s) may cultivate industrial hemp on property lawfully in his or her possession, or with the consent of the person(s) lawfully in possession of the property.

(d) Any person who cultivates industrial hemp in Arkansas shall be required to have an industrial hemp license.

#### **Section 5. The regulation of marijuana.**

The cultivation, production, distribution, sale, possession, and use of marijuana and products produced from marijuana for recreational and medical 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 and regulations that the state may adopt and impose:

(a) The cost of a marijuana license that shall be issued and required by the state to authorize any person who is twenty-one (21) years of age or older to cultivate, produce, and sell marijuana and products produced from marijuana for recreational and medical purposes shall not exceed thirty dollars (\$30.00) per license per year, and there shall be no limit to the number of licenses issued in this state, and any person who is twenty-one (21) years of age or older shall qualify to obtain such a license, providing that he or she has not had such a license permanently revoked by the state.

(b) The cost of a marijuana plant tag that shall be issued and required by the state to regulate the cultivation of marijuana produced in this state, shall not exceed six dollars (\$6.00) per plant tag, and any person who has a marijuana license as defined in Section 3(e) shall qualify to obtain such tags, and there shall be a limit of thirty-six (36) plant tags allowed per year per licensed person. Marijuana plant tags may be purchased in any quantity, but not to exceed thirty-six (36) tags per licensed person per year.

(c) The quantity of marijuana plants cultivated and displaying a marijuana plant tag shall be limited to thirty-six (36) growing plants per person who has a marijuana license, but the quantity of the products produced from marijuana shall not be limited.

(d) Any person who is issued a marijuana license and plant tag(s) may cultivate marijuana in a location where the plant(s) is (are) not subject to public view without the use of binoculars, aircraft, or other optical aids on property lawfully in his or her possession, or with the consent of the person(s) lawfully in possession of 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.

### **Section 6. Medical marijuana authorized.**

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

- (a) Any physician as defined in section 3(i) may authorize the use of medical marijuana by written recommendation to a patient for the purpose of treating an illness, injury, or disease.
- (b) Any adult (18 years of age or older) who is lawfully responsible for making medical decisions for another person, may provide medical marijuana to that person, providing that the person has a written recommendation authorizing the use.
- (c) Any person who is eighteen (18) years of age or older may purchase medical marijuana providing that he or she has a written recommendation authorizing the use. This shall also include an adult (18 years of age or older) who is designated by the written recommendation to purchase on behalf of a patient.

### **Section 7. Marijuana paraphernalia authorized.**

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

- (a) Any person twenty-one (21) years of age or older may manufacture, possess, and purchase marijuana paraphernalia, or may sell marijuana paraphernalia, providing that marijuana paraphernalia being sold does not contain marijuana or products produced from marijuana, unless the seller of such paraphernalia has a marijuana license.
- (b) Any person who is issued a marijuana license may use marijuana paraphernalia for all purposes as defined in Section 3(f)
- (c) Any person twenty-one (21) years of age or older may use marijuana paraphernalia for the purpose of containing, or concealing recreational marijuana, or for ingesting, inhaling, or otherwise introducing recreational marijuana into his or her own body.
- (d) Any person with a written recommendation in his or her name may use marijuana paraphernalia for the purpose of containing, or concealing medical marijuana, or for ingesting, inhaling, or otherwise introducing medical marijuana into his or her own body.
- (e) Any adult (18 years of age or older) who is designated by the written recommendation to procure medical marijuana for a patient may purchase and possess for that patient the type of marijuana paraphernalia used for containing, or concealing medical marijuana, or for ingesting, inhaling, or otherwise introducing medical marijuana into the human body.
- (f) Nothing in this section permits a person to use marijuana paraphernalia in conjunction with an illegal substance or item that is prohibited by the state.

### **Section 8. Employers, driving, and minors.**

- (a) Nothing in this amendment is intended to require an employer to permit or accommodate the cultivation, production, distribution, sale, possession, or use of marijuana or products produced from marijuana in the workplace or to affect the ability of employers to have policies restricting the use of recreational or medical 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 cultivation, production, distribution, sale, possession, or use of other controlled substances that are prohibited or regulated by the state, nor repeal the laws pursuant to them.

**Section 9. Non-violent marijuana offenders and criminal record expungement.**

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

**Section 10. Taxation and distribution of proceeds from the retail sale of recreational marijuana and industrial hemp.**

(a) The sale of recreational marijuana and industrial hemp is subject to all state and local sales taxes at the same rate as other goods, and an additional five percent (5%) excise tax may be imposed on the retail sale of recreational marijuana.

(b) The tax revenues received by the Department of Finance and Administration from the sale of recreational marijuana and industrial hemp under this amendment shall be distributed as follows:

- (1) Thirty-five percent (35%) to the Arkansas Department of Education paying account or its successor fund or fund account;
- (2) Fifteen percent (15%) to the Arkansas Agriculture Department paying account or its successor fund or fund account;
- (3) Twenty-Five percent (25%) to the Arkansas Department of Parks and Tourism paying account or its successor fund or fund account;
- (4) Fifteen percent (15%) to the Arkansas Department of Highways and Transportation paying account or its successor fund or fund account; and
- (5) The remaining ten percent (10%) to the general fund.

(c) No state or local sales tax or special taxes shall be imposed upon the retail sale of medical marijuana to patients.

**Section 11. Conflicting Laws.**

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