NO. CV-22-482

IN THE ARKANSAS SUPREME COURT
Original Action

EDDIE ARMSTRONG and LANCE HUEY,
Individually and on behalf of
RESPONSIBLE GROWTH ARKANSAS,
A Ballot Question Committee — PETITIONERS

v.

JOHN THURSTON,
Secretary of State, and
STATE BOARD OF
ELECTION COMMISSIONERS — RESPONDENTS

SAVE ARKANSAS FROM EPIDEMIC,
A Ballot Question Committee, and
DAVID BURNETT, Individually and
On behalf of the Ballot Question Committee — INTERVENORS

BRIEF AND SUPPLEMENTAL ADDENDUM OF INTERVENORS SAVE ARKANSAS FROM EPIDEMIC AND DAVID BURNETT

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TABLE OF CONTENTS

ISSUES

I. SBEC made the correct determination that the Ballot Title is legally insufficient because it has a material omission and it misleads voters.

II. The Ballot Title is legally insufficient because it misleads voters, is tinged with partisan coloring, and omits entirely the elimination of federal standards designed to protect children from poison.

III. The Ballot Title is legally insufficient because it omits material information about the elimination of Industrial Hemp where the Measure has no exception for the current legal growth of Industrial Hemp in the State of Arkansas.

IV. Determination of the Constitutionality of Arkansas Code Section 7-9-111 is not necessary to this Court's decision.

TABLE OF AUTHORITIES

Page

CASES

ACTS, STATUTES, AND RULES

JURISDICTIONAL STATEMENT

Petitioners invoke this Court's original jurisdiction pursuant to Arkansas Constitution Amendment 80 § 2(D)(4) to determine the sufficiency of their statewide attempt to amend the Arkansas Constitution pursuant to Amendment 7 (Ark. Const. Art. 5, § 1).

STATEMENT OF THE CASE AND FACTS

Sponsor, Responsible Growth Arkansas ("Sponsor"), seeks to amend the Arkansas Constitution pursuant to Amendment 7 of the Constitution. Sponsor's measure seeks to regulate, and legalize, under state law, the possession and use of Marijuana for recreational and other purposes. Sponsor circulated and submitted to the Secretary of State their proposal, including a Ballot Title and proposed popular name. The Arkansas State Board of Election Commissioners (SBEC), in a unanimous decision on August 3, 2022, voted not to certify the Ballot Title because it failed to meet this Court's standards for sufficiency of a Ballot Title to be submitted to the voters pursuant to Amendment 7. The SBEC issued a written memorandum of its decision on August 4, 2022.

The SBEC "found that the Ballot Title and Popular Name is misleading due to the omission of material information that would give the voter serious grounds for reflection." Add. 15. Specifically, the SBEC

> … found that omitting from the Ballot Title the fact that [the] Measure is repealing Ark. Const. Amend[.] 98 § 8(e)(5)(A)'s limitation on the maximum dosage of 10 mg of 'tetrahydrocannabinol [THC] per portion' … is material information that is not included in the Title…. [The Title] does not include that [§ 8(e)(5)(A)] set a maximum dosage amount of THC per dose, and if a dose could not be ascertained, then by

> weight of the product [in § 8(e)(5)(B)]. Omission of this information from the Title as compared to the Measure causes the Title to be misleading….
>
> The [SBEC] found that removing the concentration limit from edible products is a material omission that voters would need to know when voting For or Against the measure…. By failing to describe or include in the Title that the [Measure] sought to remove the dosage protection for consumable products[] causes the Title to be misleading in the way it describes the Measure.
>
> The [SBEC] also found that the clause which repea[l]ed … § 8(e)(5)(A) described its replacement with 'requirements for child proof packaging and restrictions on advertising that appeals to children. . . .' A voter could well agree that packaging should not appeal to children, but may not agree that the per dose limitation on THC should be removed. By generically describing the repeal of a subsection of Amendment 98 and replacing it with a phrase regarding child-resistant packaging, the Title places emphasis on the new clause in such a way that obscures the removal of a protective measure regarding dosage.
>
> The SBEC found that these reasons … cause the [B]allot [T]itle to be misleading…. [The SBEC] concluded that it was required … to Decline to Certify this Ballot Title … to the Secretary of State for inclusion on the General Election Ballot on November 8, 2022.

Add. 15-16.

Save Arkansas From Epidemic (SAFE), a Ballot Question Committee formed to oppose legalization of recreational marijuana, and David Burnett, Chairman of SAFE, have intervened to support Respondent SBEC's decision. Intervenors will show the Court that there are material omissions from Sponsor's Ballot Title, which would, if included, give voters serious ground for reflection on how to vote, making the Ballot Title fatally deficient. Intervenors will also show the Court that statements in the Ballot Title have a tendency to mislead voters, thwarting a fair understanding of the issues in the Measure, and making the Ballot Title fatally deficient as well.

As Intervenors' evidence shows, marijuana is a harmful drug. Its main psychoactive ingredient, tetrahydrocannabinol (THC), causes mental and physiological problems, especially in children, young adults, and pregnant women. Higher potency THC is associated with psychosis, suicidality, and addiction, among other problems, and exacerbates many of the consequences of marijuana use. Sabet Affidavit, Exhibit A, Intervenors S-B Supp. Add. 1-3. The repeal of the maximum dosage limit of 10 mg of THC is one of the most significant facts contained in the proposed Measure, particularly since the General Assembly will not be able to make any

changes to the Measure. Sabet Affidavit, Exhibit A, Intervenors S-B Supp. Add. 3.

The Court's understanding of the proposed Measure, and the Ballot Title, must be viewed in the context of the current legal landscape concerning "Medical Marijuana" – as authorized under Amendment 98 of the Arkansas Constitution. [Int. S-B Supp. Add. 115-122 (Am. 98, § 8)]. Moreover the Court's understanding should be informed by recent changes to federal law concerning Hemp, Int. S-B Supp. Add. 143, 144, 145, 148; See Int. S-B Supp. Add. 103 (Congr. Research Service Report), and Arkansas 2021 law revising the Arkansas Industrial Hemp Production Act. Int. S-B Supp. Add. 93.

Amendment 98 contains some minimal protections for consumers, patients, caregivers, parents, children, and others. Among other things, Amendment 98, § 8(e)(5) requires the State of Arkansas Alcoholic Beverage Control Division to adopt rules governing the manufacture, processing, packaging, labeling, and dispensing of usable marijuana, including without limitation:

> (A) Before sale, food or drink that has been combined with usable marijuana shall not exceed ten milligrams (10mg) of

> active tetrahydrocannabinol per portion and shall be physically demarked; and
>
> (B) If portions cannot be physically determined, the entirety of the food or drink that has been combined with usable marijuana shall not contain more than ten milligrams (10mg) of active tetrahydrocannabinol….

Amendment 98, §8, Int. S-B Supp. Add. 115-122. The Measure will eliminate these provisions; the Ballot Title states that they will be repealed and replaced (along with other parts of §8) "… with requirements for child-proof packaging and restrictions on advertising that appeals to children." Add. 18.

SBEC found that the elimination of these two protections, repeal with only a legal citation to the provision in the Ballot Title, was both a material omission from the Ballot Title, and misleading to voters.

SBEC staff also flagged the repeal of stringent advertising protections for children in current law, Ark. Const. Am. 98, § 8(e)(8)(A)-(F), Int. S-B Supp. Add. 116, as similarly problematic. Int. S-B Supp. Add. 16-18. Staff highlighted that the elimination of federal Poison Prevention Packaging regulations, set forth at 16 C.F.R. § 1700.20, Int. S-B Suppl. Add. 123-42, was particularly concerning. Int. S-B Supp. Add. 18. The multiple pages of

federal regulations, incorporated by reference in the Arkansas Constitution, would be replaced with the phrase: "Advertising restrictions for dispensaries and cultivation facilities which are narrowly tailored to ensure that advertising is not designed to appeal to children." Add. 22 (Par. §5(e) of Measure). This is set forth in the Ballot Title as: "repealing and replacing Amendment 98 [§] 8(e)(8)(A)-(F) with requirements for child-proof packaging and restrictions on advertising that appeals to children." Nowhere does the Ballot Title indicate that the replacement language is far less protective of children in the Measure than in current law.

Finally, there has been a change in federal law, and in Arkansas, concerning Industrial Hemp. This is significant, because botanically, hemp and marijuana are from the same species of plant, *Cannabis sativa*, but from different varieties or cultivars. Int. S-B Suppl. Add. 104. The only difference is that Hemp is legally defined as *Cannabis sativa* with a THC concentration of not more than 0.3 percent on a dry weight basis; marijuana is all other *Cannabis sativa*, as set forth more fully, below.

Hemp and Marijuana are distinguished by their use and chemical composition as well as by differing cultivation practices in their production.

Id. Hemp and Marijuana also have separate statutory definitions in U.S. federal law.

Marijuana is defined in the Controlled Substances Act, and does not specify a limit for THC or any other cannabinoid, but includes an explicit exemption for Hemp:

> (A) Subject to subparagraph (B), the term "marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.
>
> (B) The term "marihuana" does not include –
>
> (i) hemp, as defined in Section 1639o of Title 7; or
>
> (ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, cake, or the sterilized seed of such plant which is incapable of germination.

21 U.S.C. § 802(16) as amended by Public Law 115-334, Sec. 12619, 132 Stat. 5018 (December 20, 2018).

Industrial Hemp, by definition in federal law, is "the plant *cannabis sativa* L., and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts of isomers, whether

growing or not, **with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis."** 7 U.S.C. Sec. 1639o (emphasis added).

Arkansas has adopted the same definition of Hemp in Ark. Code Ann. § 2-15-503(5) (2021), with an explicit cross-reference to federal law for the concentration of THC:

> "Industrial hemp" means the plant *Cannabis sativa* and any part of the plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, that contains a tetrahydrocannabinol concentration of no more than that adopted by federal law under the Agricultural Marketing Act, 7 U.S.C. § 1639o, as it existed on January 1, 2021.

Ark. Code Ann. § 2-15-503(5).

According to the Arkansas Department of Agriculture, for Fiscal Year 2023 (which began July 1, 2022), there are 22 Active Licensed Growers of Industrial Hemp in Arkansas. [https://www.agriculture.arkansas.gov/plant-industries/feed-and-fertilizer-section/hemp-home/ - indicating a June 2, 2022, last update; accessed on August 30, 2022]. Additionally, there are 8 active licensed Processor/Handler's for Industrial Hemp. [same website]

The Measure at issue makes no distinction between Hemp and Marijuana. There is a definition for marijuana, and its derivatives, in the

Measure, which encompasses both Hemp and Marijuana. The Measure (§3(g)) states:

> "Cannabis" means marijuana and other substances including any parts of the plant *Cannabis sativa*, whether growing or not, its seeds and the resin extracted from any part of the plant; and any compound, manufacture, salt, derivative, mixture, isomer or preparation of the plant, including tetrahydrocannabinol [THC] and all other cannabinol derivatives, whether produced directly or indirectly by extraction.

Add. 20.

In §3(j), the Measure defines "usable cannabis":

> "Usable cannabis" means the stalks, seeds, roots, dried leaves, flowers, oils, vapors, waxes, and other portions of the cannabis plant, and any mixture or preparation thereof, but does not include the weight of any other ingredient that may be combined with cannabis. This term may be used interchangeably with "usable marijuana."

Add. 21.

The two definitions in the Measure encompass all THC concentrations, with no exception for Industrial Hemp.

Unfortunately for current Industrial Hemp growers in Arkansas, §9 (f) of the Measure states:

> Nothing in this amendment permits the cultivation, production, distribution, or sale of cannabis by individuals or entities except as authorized by this amendment or under Amendment 98 [medical marijuana, as revised by the Measure].

Add. 27.

Finally, the Measure "expressly declares null and void" all provisions in the Arkansas Constitution, statutes, regulations, and common law "inconsistent or in conflict with any provision of this amendment." (§10(b)). The Amendment itself states that the General Assembly "may not amend, alter, or repeal this amendment" absent [another] vote of the people. (§12). Add. 28.

The Measure fails to provide any exemption for Hemp, contrary to both current Arkansas and Federal law. Whether by intention, omission, oversight, neglect, or economic imperative, the Measure encompasses Industrial Hemp as currently authorized in Arkansas, prohibits further growing or processing of Industrial Hemp except as authorized by the Measure, and leaves no room for legislative or other adjustments to the Measure.

The Ballot Title fails to identify the Measure's conflict with existing law (legal production of Industrial Hemp), and the Measure's declaration that activities like those authorized by the Arkansas Industrial Hemp

Production Act will be "expressly declared null and void" by the Measure. Add. 28.

Sponsors sought review in this Court, an original action, on August 4, seeking to overturn the SBEC decision not to certify the Ballot Title for the Measure for the 2022 General Election Ballot. This Court granted Intervenors' SAFE and Burnett's Motion to Intervene on August 19. Intervenors filed their Answer and Exhibits on August 22. It is from these proceedings that this matter is before the Court.

ARGUMENT

The Ballot Title is legally insufficient. The Court should dismiss the original action complaint. Material omissions in the Ballot Title would, if included, give voters serious ground for reflection on how to vote. Statements in the Ballot Title have a tendency to mislead voters, thwarting a fair understanding of the issues in the Measure. The Ballot Title fails to identify the elimination of restrictions on THC concentrations. The Title misleads voters concerning the wholesale elimination of child safety precautions in current law, replaced by minimalist protections. Finally, the Title omits entirely the Measure's overinclusive definition of marijuana, which will eliminate the Arkansas Industrial Hemp Industry.

There is no chance for the legislature to correct any errors or omissions, or other problems with the Measure. The Measure explicitly prohibits any legislative changes. The Measure explicitly declares "null and void" every provision in Arkansas law "inconsistent or in conflict with any provision of this amendment." Add. 27. The Court should uphold the unanimous SBEC decision not to certify this Ballot Title to the 2022 General Election Ballot.

STANDARD OF REVIEW

Voters will derive their information about a proposed measure from an inspection of the ballot title immediately before exercising the right of suffrage. *Christian Civil Action Comm. v. McCuen*, 318 Ark. 241, 245, 884 SW.2d 605 (1994). The ballot title must be an impartial summary of the proposed amendment, and it must give voters a fair understanding of the issues presented and the scope and significance of the proposed changes in the law. *Cox v. Daniels*, 374 Ark. 437, 443, 288 S.W.3d 591 (2008) (citations omitted).

Sufficiency of a ballot title is a matter of law to be decided by this Court. *Bailey v. McCuen*, 318 Ark. 277, 284, 884 S.W.2d 938 (1994). Amendment 80 grants "original jurisdiction" to this Court over the sufficiency of state-wide petitions. Ark. Const. Am. 80 § 2(D)(4) ("original jurisdiction to determine sufficiency"); Ark. Sup. Ct. R. 6-5(a); see Ark. Const. Art. 5, § 1; *Bailey, id*.

A ballot title must be free of any misleading tendency that, whether by amplification, omission, or fallacy, thwarts a fair understanding of the issues presented. *Wilson v. Martin*, 2016 Ark. 334, at 7 (citations omitted); *Bailey*, 318 Ark. at 284. It must not be tinged with partisan coloring. *Bailey*, *id*.

(citing, *Plugge v. McCuen*, 310 Ark. 654, 657, 841 S.W.2d 139 (1992); *Ferstl v. McCuen*, 296 Ark. 504, 509, 758 S.W.2d 398 (1988); *Bradley v. Hall*, 220 Ark. 925, 927, 251 S.W.2d 470 (1952)). It cannot omit material information that would give the voters serious ground for reflection. *Wilson*, *id.*; *Bailey*, *id. at* 285 (citations omitted). The title must be complete enough to convey an intelligible idea of the scope and import of the proposed law. *Wilson*, *id.; Bailey, id.* The title must be intelligible, honest, and impartial so that it informs voters with such clarity that they can cast their ballots with a fair understanding of the issues presented. *Id.* The ultimate issue is whether the voter, while inside the voting booth, is able to reach an intelligent and informed decision for or against the proposal and understands the consequences of his or her vote based on the ballot title. *Wilson, id.*

I. SBEC MADE THE CORRECT DETERMINATION THAT THE BALLOT TITLE IS LEGALLY INSUFFICIENT

The SBEC made the correct determination. The Ballot Title is insufficient. This Court should dismiss the Complaint as Petitioners are not entitled to any relief.

The elimination of restrictions on THC content is one of the most significant facts in the proposed Measure. Int. S-B Supp. Add. 3 (Sabet Aff. Par. 24). Kevin Sabet is well-qualified to make this assertion, based upon his knowledge, skills, experience, training, and education. Int. S-B Supp. Add. 1 (par. 2, 3, 4, 5, and 6) ARE 702 and 703 (expert witness testimony); see also, ARE 701. The elimination of restrictions on THC content does not appear in the ballot title, other than by citation to a provision of the constitution.

The Ballot Title says "… repealing and replacing Amendment 98 §§ 8(e)(5)(A)-(B) and 8(e)(8)(A)-(F) with requirements for child-proof packaging and restrictions on advertising that appeals to children…". Add. 18. There is no mention of THC, nor of the significant change in current law concerning THC. Yet, the "repeal … of §8(e)(5)(A)-(B)" in the Measure is elimination of all restrictions on THC content.

The omission of information about THC – other than in a legal citation to the current constitution – would give voters serious ground for reflection if the information were included in the title. THC is the primary psychoactive ingredient in marijuana. Int. S-B Supp. Add 1. Its addictive properties exacerbate its potential harms; increased potency is associated

with the most severe impacts on mental health, including psychosis, suicidality, and addiction. Int. S-B Supp. Add 2. Increased potency is the only reason for repeal of the restriction; higher potency marijuana sells. Int. S-B Supp. Add. 2 (par. 18).

The Court has consistently held that omissions of similar legal information make a Ballot Title insufficient under this Court's standards. In *Bailey v. McCuen, id.,* the Court reviewed a proposed change to Workers' Compensation laws. The ballot title indicated that the measure would "restrict[] legal fees … to 25% of all sums in respect to a claim." The measure itself would have changed existing law which had a specific dollar limit on appeals to the full commission, and to the Court of Appeals. Consequently, the ballot title failed to disclose the elimination of the statutory restriction. As the Court said, the ballot title's failure to reveal the fact that the caps are completely removed on legal fees connected with Workers' Compensation appeals

> … is a material point in that knowledge of this exception to the restriction on fees would give some voters serious ground for reflection on how to cast their ballots…. The clear message sent by the ballot title language *restricting* legal fees to 25% is that *all* legal fees, including legal fees on appeal, will be so limited. In point of fact, just the opposite is the case. The limits are being totally removed on legal fees collectible for appeals…. [W]e are convinced that the

> "restriction" language here has a tendency to mislead with respect to legal fees on appeal.

Bailey, *id.* at 285-87. Sponsor's Title is no different.

The Court has disapproved the use of terms that are technical and not readily understood by voters, such that voters would 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. *Wilson*, *id.* at 9 (citing *Cox v. Daniels*, 374 Ark. 437, 447, 288 S.W.3d 591 (2008); *Kurrus v. Priest*, 342 Ark. 434, 444, 29 S.W.3d 669 (2000) (ballot title insufficient for failure to inform voter what constitutes a "tax increase"); *Christian Civic Action Comm*, *id.* 318 Ark. 248-50 (ballot title misleading by using technical terms in order to avoid using the term "casino-style gambling")). The omission of THC from the ballot title of this measure is no less significant for voters, and no less misleading. A citation to a section of the constitution – which is not going to be with the voter in the voting booth – is the quintessential type of "highly technical" term disfavored in ballot titles. *Wilson*, *id.*, at 9 (citing *Cox v. Daniels, id.*). The SBEC made the correct determination.

The Ballot Title deliberately obfuscates the elimination of restrictions on THC content under current law. Its placement – and obscure legal

citation – is misleading and tinged with partisan coloring because it does not evoke images or thoughts of THC content in any respect. Here, the otherwise undisclosed repeal of limitations on THC content in the Ballot Title itself is associated with the repeal of certain child-safety protections under current law, and the replacement of the safety precautions with other language. This duplicity makes the Ballot Title insufficient. See *Crochet v. Priest*, 326 Ark. 338, 346, 931 S.W.2d 128 (1996) ("video game terminals" is misleading and tinged with partisan coloring because it does not evoke images of slot machines in gambling initiative).

Nor is the elimination of restrictions on THC concentration the type of "minute detail" that need not be included in a ballot title. By contrast, the measure, legalizing marijuana under state law, would undisputedly result in the imposition of enormous social, legal, economic, and other costs in the State of Arkansas. One example "cost" is that all dogs currently used for interdiction of illegal drugs would be rendered useless, and so would have to be replaced. Int. S-B Supp. Add. 79-80 (Burnett Aff.). This is the type of detail that, while true, need not be included in a Ballot Title. *Stiritz v. Martin*, 2018 Ark. 281, at 5-6, 556 S.W.3d 523 (ballot title not required to include every detail or how the law may work when voters not mislead).

But drug dogs are merely ancillary to the operation of this amendment, where the elimination of limits on THC concentrations is "one of the most significant facts" contained in the measure. Int. S-B Supp. Add. 3 (Sabet Aff.).

II. THE BALLOT TITLE IS LEGALLY INSUFFICIENT BECAUSE IT MISLEADS VOTERS, IS TINGED WITH PARTISAN COLORING, AND OMITS ENTIRELY THE ELIMINATION OF FEDERAL STANDARDS DESIGNED TO PROTECT CHILDREN FROM POISON

The Ballot Title is likewise insufficient because it misleads voters concerning the safety protections in current law. It is tinged with partisan coloring concerning the replacement language for safety protections. Finally, it omits entirely the elimination of federal standards designed to protect children from poison. SBEC staff astutely pointed out these problems. Int. S-B Suppl. Add. 16-18.

Current law includes a myriad of protections "to avoid making the product" medical marijuana, "appealing to children…." Am. 98, § 8(e)(8)(A)-(F); Int. S-B Supp. Add. 116. Current protections include the

requirement for "Child-proof packaging that cannot be opened by a child or that prevents ready access to toxic or harmful amount of the product, and that meets testing requirements in accordance with the method described in 16 C.F.R. § 1700.20, as existing on January 1, 2017…." Am. 98, § 8(e)(8)(D); Int. S-B Supp. Add. 116.

The Ballot Title *sub judice* is insufficient because it misleads voters about the elimination of child safety protections, and the substitution of much less stringent language. This is a material omission, i.e., insufficiency, just as the ballot title in *Bailey* was insufficient. *Bailey* concerned proposed changes to Workers' Compensation laws. The Court held that the measure's change in the construction of the Workers' Compensation laws, from "strict construction" under current law (Ark. Code Ann. § 11-9-704(c)(3) (Supp. 1993)) to "liberal construction" under Section 8 of the proposed measure "lies at the core of the proposed amendment, and its inclusion in the ballot title was imperative." *Bailey*, 318 Ark. at 288. "[T]he voting public would see this policy language as a directive to adjudicators to view the workers' compensation statutes expansively so as to provide remedies to those injured on the job…." *Id.* Consequently, the omission was material, and knowledge

of that information would give the voters a serious basis for reflection on how to cast their ballots.

In addition, use of a citation to a section of Amendment 98, and the placement of the language in the Ballot Title is tinged with partisan coloring. The placement misleads voters into voting in favor of "child proof packaging and restrictions on advertising that appeals to children" Add. 18, without realizing that voters are repealing much more significant restrictions in current law, Int. S-B Supp. Add 116 (Am. 98, § 8(e)(8)); Int. S-B Supp. Add 123-142 (16 C.F.R. § 1700.20). *Crochet*, *id.* at 346. SBEC staff correctly flagged this legal insufficiency in the Ballot Title. The Court should dismiss the Complaint.

III. THE BALLOT TITLE IS LEGALLY INSUFFICIENT BECAUSE IT OMITS MATERIAL INFORMATION ABOUT THE ELIMINATION OF INDUSTRIAL HEMP

The Ballot Title is insufficient for its total omission of any discussion concerning Industrial Hemp. The measure fails to include any exemption for Industrial Hemp. The difference between Hemp, and marijuana is only in the concentration of THC permitted. Industrial Hemp, by definition, is

"the plant *cannabis sativa* L., and any part of that plant, including the seeds thereof, and all derivatives, extracts, cannabinoids, isomers, acids, salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." 7 U.S.C. Sec. 1639o; see Ark. Code Ann. § 2-15-503(5) (2021) (same, with cross-reference to federal law for the concentration of THC).

The federal government defines marijuana in the Controlled Substances Act more broadly, and does not specify a limit for THC or any other cannabinoid, but includes an explicit exemption for Hemp:

> (C) Subject to subparagraph (B), the term "marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof, the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.
>
> (D) The term "marihuana" does not include –
>
> (iii) hemp, as defined in Section 1639o of Title 7; or
>
> (iv) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, cake, or the sterilized seed of such plant which is incapable of germination.

21 U.S.C. § 802(16) as amended by Public Law 115-334, Sec. 12619, 132 Stat. 5018 (December 20, 2018).

The Measure, by contrast, has no exception for Cannabis sativa with a tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. There is a definition for marijuana, and its derivatives, in the Measure, which encompasses both Hemp and Marijuana. The Measure (§3(g)) states:

> "Cannabis" means marijuana and other substances including any parts of the plant *Cannabis sativa*, whether growing or not, its seeds and the resin extracted from any part of the plant; and any compound, manufacture, salt, derivative, mixture, isomer or preparation of the plant, including tetrahydrocannabinol [THC] and all other cannabinol derivatives, whether produced directly or indirectly by extraction.

Add. 20. It ties down the definition by stating in §3(j), that:

> "Usable cannabis" means the stalks, seeds, roots, dried leaves, flowers, oils, vapors, waxes, and other portions of the cannabis plant, and any mixture or preparation thereof, but does not include the weight of any other ingredient that may be combined with cannabis. This term may be used interchangeably with "usable marijuana."

Add. 21. This "usable cannabis" definition is the *opposite* of the revised federal definition, 21 U.S.C. § 802(16)(B), above. Rather than defining Hemp-related parts of *Cannabis sativa* plants as "not marihuana" as the federal government does, the Measure seeks to include those things

"federally excluded" as items controlled by the Measure by defining those "federally excluded" items (21 USC § 802(16)(B)) as "usable cannabis" in §3(j).

The two definitions in the Measure encompass all THC concentrations, with no exception for Industrial Hemp. When read next to the revised federal definition of marihuana, it is easier to understand that the Measure eliminates the Industrial Hemp exemption in current state law.

The effect on Industrial Hemp growers in Arkansas, is explicit in §9 (f) of the Measure, which states:

> Nothing in this amendment permits the cultivation, production, distribution, or sale of cannabis by individuals or entities except as authorized by this amendment or under Amendment 98 [medical marijuana, as revised by the Measure].

Add. 27. The Measure "expressly declares null and void" all provisions in the Arkansas Constitution, statutes, regulations, and common law "inconsistent or in conflict with any provision of this amendment." (§10(b)). Add. 28.

Finally, the Measure itself forecloses any possibility that the General Assembly might "amend, alter, or repeal this amendment" absent [another] vote of the people. (§12). Add. 28.

None of this is mentioned in the Ballot Title. Consequently, the Ballot Title of the Measure omits the essential facts that it will regulate something that is currently legal under federal law; it will eliminate the Arkansas Industrial Hemp Production Act; and it will interfere with all currently-existing Industrial Hemp producers in the State of Arkansas. The ballot title is wholly insufficient for these reasons.

Moreover, the Measure violates federal law; this is not disclosed in the Ballot Title. A ballot title is misleading if it fails to inform voters that its provisions conflict with federal law. *Lange v. Martin*, 2016 Ark. 337, at 9, 500 S.W.3d 154, 159. These are fatal defects in the Ballot Title, which the SBEC did not consider.

A. The Measure Violates the Federal Takings Clause

The Ballot Title fails to disclose this conflict with federal law. The United States Constitution prohibits a State from taking private property for "public use, without just compensation." U.S. Const. Amend. 5 (incorporated into U.S. Const. Am. 14, and applicable to the states, *Chicago B. & O. R.R. v. City of Chicago*, 166 U.S. 226, 233, 236-37 (1897)). "Valid

contracts are property" under the Takings Clause. *Lynch v. U.S.*, 292 U.S. 571, 579 (1934). A license is protectible property where the State limits the reasons the State can eliminate that license. *Stauch v. City of Columbia Heights*, 212 F.3d 425 (8th Cir. 2000).

Act 565 of 2021 re-authorizes the production of industrial hemp in the State of Arkansas (amending a 2019 law). There are 22 active licensed Hemp growers and 8 active licensed Hemp processors/handlers in the State of Arkansas (as of June 2, 2022). Act 565 precludes revocation of a license without notice and a hearing, *inter alia*, Ark. Code Ann. § 2-15-512. The Takings Clause prevents the "Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

Here, the Measure eliminates the statutory authority for Industrial Hemp Production, *Cannabis sativa* with a THC concentration of less than 0.3 percent by weight. The Measure's definitions include all *Cannabis sativa*, without exception for Hemp. Thus, the Measure will eliminate the property interests of every producer of Industrial Hemp in their contracts, license, and property. This will give rise to claims under the Takings Clause by every Industrial Hemp grower, processor, and handler. The value of these

claims will be substantial. Thus, the value of the taking to be effected by the proposed amendment is substantial. Nowhere is this disclosed in the Ballot Title.

Knowing that the proposed measure opens the State to Takings Clause claims with value of all of the current Hemp Producers in an untold dollar amount would likely give a voter serious ground for reflection on the measure. A prudent voter would want to weigh the merits of exposing his or her State to such expensive litigation. The Ballot Title is legally insufficient for this omission.

B. The Measure Violates Hemp Producers' Equal Protection Rights

"Equal Protection under the law is guaranteed by the Fourteenth Amendment to the United States Constitution . . . ." *Ray v. State*, 2017 Ark. App. 574, 4, 533 S.W.3d 587, 590. Equal protection means the State must treat similarly situated persons the same. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). The Measure violates the Equal Protection rights of participants in the Arkansas Industrial Hemp program; this is nowhere disclosed in the Ballot Title.

In the current growing season, there are 22 licensed growers and 8 Processor/Handlers in the Arkansas Industrial Hemp Program, according to the most recent Department of Agriculture website update. The Measure, however, authorizes only eight "Tier One" cultivation facilities (§6(d)), to be given to current medical marijuana licensees, and an additional twelve "Tier Two" cultivation facilities, to be chosen by lottery (§6(g)); these are the only entities "authorized to produce and sell usable cannabis" under the Measure (§6(b)). Add. 20-24. There is absolutely no provision to exclude current Hemp producers from the effects of these limitations; current commercial producers of Industrial Hemp in Arkansas will be eliminated. With the exception of "Tier One and Tier Two" producers of "usable cannabis" authorized by the Measure, no other producers are authorized. Current participants in the Industrial Hemp program have no protection at all. Nowhere does the Ballot Title disclose these issues.

The disparate treatment between current Industrial Hemp producers and the "new" Tier Two and "old" Tier One producers in the Measure has no relationship to a rational governmental objective. Eliminating Hemp Production by one set of legal producers (Industrial Hemp producers), but allowing Hemp to be grown by the 8 "Tier One" current "Medical

Marijuana" producers without any reason does not satisfy the constitutional Equal Protection standard.

Similarly, the proposed amendment imposes disparate treatment by affecting and interfering with contracts of Industrial Hemp producers while doing nothing to contractual relationships of the current medical marijuana producers license holders (who will become "Tier One" producers). Constitutional fiat is not a valid basis for the economic destruction of current businesses. The proposed amendment's disparate treatment has no real purpose and is entirely arbitrary. In other words, the proposed amendment does not express any legitimate governmental objective or rational basis for abrogating Hemp licenses. This comes about merely three years after the State authorized them, in 2019, and renewed the program in 2021. The Measure prospectively proposes to treat them differently – by constitutional imperative - from medical marijuana producers (who will become "Tier One" cannabis producers). This is economic tyranny of the worst sort.

The "chance" of winning the "lottery" for the 12 additional "Tier Two" producers allowed by the Measure does not provide Equal Protection to current Industrial Hemp producers, since there is no rational basis – indeed no basis given at all – for throwing all current Industrial Hemp

producers (growers, processors, and handlers) into an open-ended lottery with at most 12 "winners." These violations of federal constitutional protections are all the more problematic since the Measure and the Ballot Title utterly fail to disclose these violations. The Ballot Title is fatally defective as a result of these omissions.

The exposure of the State to Equal Protection claims of this magnitude would give a voter serious ground for reflection on the measure. But the Ballot Title does nothing to inform voters of the violation of federal law, and the potential sizeable impact of the Measure.

C. The Measure Violates Hemp Producers' Due Process Rights

When the government seeks to take a person's liberty or property, the government must give that person due process, that is, notice and an opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319 (1976). "For more than a century the central meaning of procedural due process has been clear: 'Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be noticed.'" *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). The right to notice and a hearing before

suffering a loss "is a principle basic to our society." *Mathews*, 424 U.S. at 333.

Current Arkansas law recognizes the necessities of Due Process concerning Industrial Hemp Producers. Ark. Code Ann. § 2-15-512 (notice and hearing required for license revocation). The Measure, however, is "self-executing" (§11), Add. 28; effective on November 18, 2022 (§2), Add. 20; "expressly declares null and void" all provisions of the Arkansas Constitution and statutes "inconsistent or in conflict with any provision of this amendment" as to (and do not apply to) any activities allowed under this amendment. (§10(b)), Add. 28. The Measure would eliminate the statutory Due Process protections for Hemp Producers in current law.

To demonstrate a due process violation, a party must show (1) that it possesses a protected liberty or property interest and (2) that the State deprived the party of that interest without due process of law. *Hopkins v. Saunders*, 199 F.3d 968, 975 (8th Cir. 1999). A party has a property interest in a license if the law grants it a "legitimate claim of entitlement" to the license as opposed to "a mere abstract desire or unilateral expectation." *C. Line, Inc. v. City of Davenport*, 957 F.Supp.2d 1012, 1037 (S.D. Iowa 2013). A "legitimate claim of entitlement" arises when state law establishes

"procedural requirements that impose substantive limitations on the exercise of official discretion." *Stauch v. City of Colombia Heights*, 212 F.3d 425, 429 (8th Cir. 2000). In other words, if the State commits that it will only revoke a license for certain reasons, and with notice and hearing, then a person has a property interest in the license. A person's interest in a contract is also protected by procedural due process. *Board of Regents v. Roth*, 408 U.S. 564 (1972).

Current Industrial Hemp Producers, by definition in the Measure, would no longer be allowed to grow "usable cannabis" under the Measure, because there is no exception for Industrial Hemp. The current exception in Arkansas law, set forth in Act 565 of 2021, is eliminated by the Measure, as set forth in its definitional sections.

These facts would give voters serious grounds for reflection, and their omission necessitates invalidation of the ballot title.

Ballot Title Fails to Disclose Repeal of Arkansas Law

The Arkansas Constitution has its own takings clause (Ark. Const. Art. 2 § 22), equal protection clauses (Ark. Const. Art. 2 §§ 2, 3, 18), and due process clause (Ark. Const. Art. 2 § 8). If this proposed amendment has

its intended effect, it will undoubtedly impair the obligation of contracts between Hemp Producers, their vendors, their customers, as well as numerous other persons and entities. It takes private property without just compensation. It likely conflicts with the due process clauses of the Arkansas Constitution by taking property rights without notice or a hearing. And it eliminates one set of producers' rights while leaving the medical marijuana producers rights intact – and enhances those rights by expanding them into recreational marijuana and production of Hemp.

The proposed amendment contains a general clause that provides simply that "All provisions of the Constitution, statutes, regulations, and common law of this state, including without limitation laws forbidding the possession, cultivation, and use of cannabis and cannabis paraphernalia by adults, to the extent inconsistent or in conflict with any provision of this amendment, are expressly declared null and void as to, and do not apply to, any activities allowed under this amendment." (§10(b)). Add. 28. Given the many ambiguities in the proposed amendment explained in this brief, it would be near impossible for a voter to determine the reach of this general nullification [or "repealer"] clause.

For example, the Arkansas Constitution clearly states that "[n]o person shall be taken, or imprisoned, or disseized of his estate, freehold, liberties or privileges; or outlawed, or in any manner destroyed, or deprived of his life, liberty or property; except by the judgment of his peers, or the law of the land; nor shall any person, under any circumstances, be exiled from the State." Ark. Const. Art. 2, § 21. "The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor." Ark. Const. Art. 2, § 22. The Measure purports to deprive Hemp Producers of their property and grants them no due process. If the proposed amendment renders "null and void" the Due Process and Takings Clauses, the electorate is entitled to know, as repeal of long-established constitutional rights is not a light matter. Conversely, if it does not, the electorate must be made aware that adoption of this proposed amendment will require the State, and thus taxpayers, to compensate the current Hemp Producers for taking property – and specifically their Arkansas license to grow Industrial Hemp - that, without question, is valuable. The voter is entitled to know the effect of his or her vote; but the Ballot Title, and proposed amendment, fail to inform voters of the effect of their vote on the Measure.

IV. DETERMINATION OF THE CONSTITUTIONALITY OF ACT 376 OF 2019 IS NOT NECESSARY TO A DECISION IN THIS CASE

The constitutionality of Ark. Code Ann. § 7-9-111, *et seq.*, and Act 376 of 2019, is not necessary to the Court's decision in this case. The Court should not pass upon the constitutionality of Ark. Code Ann. § 7-9-111, *et seq.*, because a decision on that point is not necessary to the determination of Petitioners' cause of action. *Smith v. Garretson*, 176 Ark. 834, 838 (1928). The Ballot Title is legally insufficient under this Court's precedent and Amendment 7; nothing more needs to be decided.

Moreover, this Court has already said that Act 877 of 1999, Ark. Code Ann. § 7-9-501, *et seq.,* setting forth an alternative statutory method for challenging a ballot title, was constitutional. *Stilley v. Priest*, 341 Ark. 329, 337, 16 S.W.3d 251 (2000) (*overruling Finn v. McCuen,* 303 Ark. 418, 798 S.W.2d 34 (1990) *and Scott v. McCuen*, 289 Ark. 41, 709 S.W.2d 77 (1986) "to the extent that they prevent a review of the text of a popular name and ballot title and the validity of the proposed measure prefatory to the gathering of signatures."). Act 376 is no different; there is no need to revisit

an issue this Court long ago considered, albeit with a different Act (subsequently repealed by the legislature, Act 1413 of 2013, § 20).

Petitioners' argument concerning the constitutionality of the procedure used by SBEC in this case is unavailing. Act 376 is presumed constitutional; because it does not impose an "unwarranted restriction" on rights granted under article 5, § 1 of the Arkansas Constitution (Amendment 7), it should be upheld. *McDaniel v. Spencer,* 2015 Ark. 94, 3, 457 S.W.3d 641, 647; *Stilley*, *id.*

CONCLUSION

The Ballot Title omits essential information and is therefore insufficient. The Ballot Title misleads voters, thwarting a fair understanding of the issues in the Measure and is therefore insufficient. The Ballot Title is tinged with partisan coloring, preventing voters from understanding the effect of their vote on the Measure. For these reasons, the Court should deny Petitioners any of the relief they seek; dismiss the Petition; and uphold the SBEC's unanimous vote to withhold certification of the Measure from

the 2022 General Election Ballot; alternatively, the Court should order that any votes on the measure not be counted.

Respectfully submitted,

SAVE ARKANSAS FROM EPIDEMIC,
A Ballot Question Committee, and
DAVID BURNETT, Individually and as
Chairman of the Ballot Question Committee

/s/ A.J. Kelly

_____

By: AJ Kelly (92078)
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Little Rock, AR 72225-1570
(501) 374-0400
ajkiplaw@aol.com
kellylawfedecf@aol.com

Attorney for Intervenors

CERTIFICATE OF SERVICE

I certify that on August 30, 2022, I filed this Brief and Supplemental Addendum using the Court's eFlex filing system, which will serve a copy on all counsel of record.

/s/ A.J. Kelly

_____

AJ Kelly

CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with Administrative Order No. 19 and that it conforms to the word-count limitations in Rule 4-2(d) of this Court's rules on electronic filings. The relevant sections altogether contain 7363 words.

/s/ A.J. Kelly

_____

AJ Kelly

INDEX TO SUPPLEMENTAL ADDENDUM OF SAFE AND BURNETT, INTERVENORS

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

AFFIDAVIT IN SUPPORT OF
SAVE ARKANSAS FROM EPIDEMIC (SAFE)

Comes now Affiant, Kevin A. Sabet, Ph.D., duly deposed upon oath, and states:

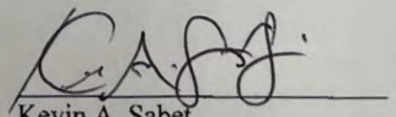
1. My name is Kevin A. Sabet.
2. I am over the age of 18, a citizen and resident of the United States, am competent to make the statements herein, make the statements herein based upon my own personal knowledge, or based upon my own personal research. I know of no reason why I could not make the statements herein.
3. I am the author of several books, including *Refer Sanity: Seven Great Myths About Marijiana* (2013) and *Smoke Screen, What the Marijuana Industry Doesn't Want You to Know* (2021). I am the co-editor of *Marijuana and Contemporary Health* (Oxford University Press). I am an assistant adjunct professor at Yale University.
4. The information set forth herein is taken from my most recent book, *Smoke Screen, What the Marijuana Industry Doesn't Want You to Know,* and is documented therein at pages 207 to 235.
5. I have read, and am familiar with, the Arkansas State Board of Election Commissioners' August 4, 2022, Notice of Non-Certification in the Matter of the Ballot Title for the 2022 proposal to legalize recreational marijuana in the State of Arkansas.
6. I have read, and am familiar with, the Arkansas State Board of Election Commissioners' Staff Memorandum, dated July 27, 2022 concerning the Ballot Title review of the same measure attempting to approve the recreational use and sale of marijuana in the State of Arkansas on the 2022 General Election Ballot.
7. Marijuana is a harmful drug, with the main psychoactive ingredient THC ("tetrahydrocannabinol").
8. The main psychoactive ingredient, THC, causes many different types of mental and physiological health problems, especially in children, young adults, and pregnant women.

INTERVENORS' EXHIBIT A

9. In "recreational use" states, where marijuana has been "legalized," the THC potency of marijuana has skyrocketed in recent years, and its addictive properties exacerbate its potential harms, as marijuana users become dependent on it.
10. Frequency of marijuana use, as well as higher THC potency, is associated with the most severe impacts on mental health, which is evidenced by psychosis, suicidality, reshaping of brain matter, and addiction.
11. The increasing demand for high-potency marijuana products and the coinciding prevalence of marijuana use disorder are indicative of a future maelstrom with unknown consequences for public health, especially as the marijuana industry engages in concerted effort to undermine scientifically proven risks of marijuana use.
12. In the 1970s, "Woodstock Weed" contained roughly 1-3 percent THC, the psychoactive component of marijuana. Since then, marijuana products have become increasingly potent, driven in large part by market demand as well as a shift in consumption methods.
13. THC concentrates such as shatter, budder, and waxes – as well as gummies and edibles – are packed with more THC (in states where marijuana has been legalized) than "Woodstock Weed" joints ever were; for these kinds of reasons, the Arkansas Constitution currently limits THC concentrations to 10 mg for edibles and drink products, Ark. Const. Amend. 98 Section 8(e)(5)(A), as well as limiting the total weight of THC if the portions cannot be physically determined. Ark. Const. Amend. 98 Section 8(e)(5)(B).
14. Now, even the marijuana plant itself is genetically engineered to contain a greater percentage of THC.
15. One study found that the average potency of the marijuana plant increased from 8.9 percent THC in 2008, to 17.1 percent THC in 2017.
16. Marijuana Concentrates, which contained an average potency of 6.7 percent THC in 2008, contained an average potency of 55.7 percent in 2017, in states without limitations like those currently imposed by the Arkansas Constitution (above).
17. The market for the marijuana flower hybrids and concentrates in "legal" recreational states continues to rise with the increase in demand for products with higher THC potency levels.
18. In states where marijuana is legal, retailers increasingly promote higher potency marijuana in order to drive profits: higher potency marijuana sells.

19. The demand for stronger marijuana is dangerous.
20. High potency THC marijuana exacerbates many of the consequences of marijuana use.
21. Frequent marijuana users and users of high potency marijuana are more likely than regular users to develop schizophrenia and psychosis.
22. Users of Butane Hash Oil (BHO), a marijuana concentrate that yields a potency of between 70-99 percent THC, are more likely to have lifetime diagnoses of depression and anxiety while being more likely to report other substance use.
23. Products associated with high amounts of THC proliferate with market demand, and, as such, consequences associated with highly potent marijuana become more apparent.
24. The repeal of the limit on the maximum dosage of 10 mg of THC is one of the most significant facts contained in the proposed petition to make recreational marijuana use legal in the State of Arkansas as a 2022 ballot initiative.
25. Given the problems associated with more potent THC marijuana, as set forth in *Smoke Screen,* and hereinabove, the voting public should be made aware of the removal of the constitutional limit on the maximum dosage of 10 mg of THC from the Arkansas Constitution, when considering the proposed amendment to the Arkansas Constitution.
26. The proposed constitutional amendment prohibits further regulation of THC, and legal changes to the regulatory scheme of THC, thereby precluding the General Assembly, and Arkansas regulatory agencies, from making any adjustments to limit THC concentrations in the future; this is also one of the most significant facts contained in the proposed petition to make recreational use legal in the State of Arkansas as a 2022 ballot initiative.

Further, Affiant sayeth not.



Kevin A. Sabet

VERIFICATION

Subscribed and sworn to before me, a Notary Public, duly authorized and acting, by the person well-known to me, or satisfactorily identified to me, as Kevin A. Sabet, who stated that he made the foregoing Affidavit for the purposes therein stated and acknowledged that he had so

signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this ~~16th~~ 18th day of August, 2022.

REBECCA GUTIERREZ-HOUGARDY
Notary Public
State of Washington
Commission # 21022363
My Comm. Expires Jul 15, 2025

NOTARY PUBLIC

My commission expires:

7/15/2025

[Notary Seal]

STATE BOARD OF ELECTION COMMISSIONERS

501 Woodlane Street – Suite 122 South
Little Rock, Arkansas 72201
(501)682-1834 or (800)411-6996

Secretary of State
John Thurston
Chairman

Wendy Brandon
Sharon Brooks
Jamie Clemmer
Bilenda Harris-Ritter
William Luther
J. Harmon Smith
Commissioners

Daniel J. Shults
Director

Chris Madison
Legal Counsel

Jon Davidson
Educational Services Manager

Tena Arnold
Business Operations Manager

August 15, 2022

Mr. AJ Kelly
ajkiplaw@aol.com

Certified Copy of the Noncertification Documents for Responsible Growth Arkansas

Mr. Kelly:

Enclosed please find certified and authenticated copies of the noncertification letter for the Responsible Growth Arkansas ballot title initiative and the accompanying Staff Report provided to the Board, per your request.

Please let us know if we can be of any further assistance in this matter.

Sincerely,

R. Chris Madison
Legal Counsel

DANIEL SHULTS
Notary Public-Arkansas
Randolph County
My Commission Expires 02-10-2026
Commission # 12696717

Subscribed and Sworn Before me this
15th day of August 2022.

My Commission Expires 2-10-2026

INTERVENORS' EXHIBIT B

STATE BOARD OF ELECTION COMMISSIONERS

501 Woodlane Street - Suite 122 South
Little Rock, Arkansas 72201
(501)682-1834 or (800)411-6996

Secretary of State
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J. Harmon Smith
Commissioners

Daniel J. Shults
Director

Chris Madison
Legal Counsel

Jon Davidson
Educational Services Manager

Tena Arnold
Business Operations Manager

August 4, 2022

Mr. Stephen R. Lancaster
200 West Capitol Ave., Ste. 2300
Little Rock, Arkansas, 72201

Sent Via Email: slancaster@wlj.com

NOTICE OF NON-CERTIFICATION
IN THE MATTER OF THE BALLOT TITLE:

An Amendment to Authorize the Possession, Personal Use, and Consumption of Cannabis by Adults, to Authorize the Cultivation and Sale of Cannabis by Licensed Commercial Facilities, and to Provide for the Regulation of those Facilities.

Sponsor, Responsible Growth Arkansas

This Notice is provided pursuant to Ark. Code Ann. § 7-9-111(i)(4)(A)(ii)(*a*) which requires the State Board of Election Commissioners (SBEC) to "[n]otify the sponsors in writing, through their designated agent, that the ballot title and popular name were not certified and set forth its reasons for so finding." Further, as described by the Arkansas State Board of Election Commissioners' *Rules of Practice and Procedure* § 1112(d)(1)(B), this written statement is provided to explain why the ballot title and popular name were not certified.

At a duly called public meeting of the SBEC on August 3, 2022, the above Title came before the Board for consideration whether to Certify or to Decline to Certify the proposed Popular Name and Ballot Title. The Board voted to Decline to Certify your proposed Ballot Title.

The Board provides the following reasons for its finding:

1. The SBEC found the Ballot Title and Popular Name is misleading due to the omi[ssion] of material information that would give the voter serious ground for reflection." See *Stiritz v. Martin*, 2018 Ark. 281, at 4, 556 S.W.3d 523, 527 (citing *Parker v. Priest*, 326 Ark. 123, 930 S.W.2d 322 (1996)). The Board found that omitting from the Ballot Title the fact that Measure is repealing Ark. Const. Amend 98 § 8(e)(5)(A)'s limitation on the maximum dosage of 10 mg of "tetrahydrocannabinol per portion" (THC) is material information that is not included in the Title.

The Board recognized that the Ballot Title stated the Measure was repealing Amend. 98 § 8(e)(5)(A), but does not include that the section set a maximum dosage amount of THC per dose, and if a dose could not be ascertained, then by weight of the product. Omission of this information from the Title as compared to the Measure causes the Title to be misleading.

2. The Board found that removing the concentration limit from edible products is a material omission that voters would need to know when voting For or Against the measure. The Board reasoned that setting a limitation on concentration per dose or by weight of edible product protects children and others who may unknowingly access consumable products that contain THC. By failing to describe or include in the Title that the Proposal sought to remove the dosage protection for consumable products, causes the Title to be misleading in the way it describes the Measure.

3. The Board also found that the clause which repealed Amend. 98 § 8(e)(5)(A) described its replacement with "requirements for child proof packaging and restrictions on advertising that appeals to children." On the one side, the Title says it is repealing a portion of Amend 98 §(e)(5)(A), without describing what that section did, and replaces it with a sentence regarding "child-resistant packaging and not designed to appeal to children." A voter could well agree that packaging should not appeal to children, but may not agree that the per dose limitation on THC should be removed. By generically describing the repeal of a subsection of Amendment 98 and replacing it with a phrase regarding child-resistant packaging, the Title places emphasis on the new clause in such a way that obscures the removal of a protective measure regarding dosage.

The SBEC found that these reasons, taken together or separately, cause the ballot title to be misleading. Based on this finding, the Board concluded that it was required under A.C.A. §7-9-111 to Decline to Certify this Ballot Title and Popular Name to the Secretary of State for inclusion on the General Election Ballot on November 8, 2022.

If you have any further questions regarding this matter, please contact this office.

Sincerely,

Daniel J. Shults
Director

Encl. Notice to Secretary of State – Decline Certification.

cc: The Honorable John Thurston, Secretary of State

STATE BOARD OF ELECTION COMMISSIONERS
501 Woodlane – Suite 122S
Little Rock, Arkansas 72201
(501) 682-1834 or (800) 411-6996

MEMORANDUM

TO: State Board of Election Commissioners
FROM: State Election Commission Staff
DATE: July 27, 2022
SUBJECT: Ballot Title Review: *An Amendment to Authorize the Possession, Personal Use, and Consumption of Cannabis by Adults, to Authorize the Cultivation and Sale of Cannabis by Licensed Commercial Facilities, and to Provide for the Regulation of those Facilities.*

INTRODUCTION: GUIDING PRINCIPLES OF REVIEW

The following report is an analysis of a popular name and ballot title submitted to the SBEC pursuant to A.C.A. §7-9-111. The purpose of this report is to provide analysis and relevant provisions of law to assist the State Commissioners in their review of the ballot language. The SBEC's identification of potential issues in this report by the SBEC Staff should not be considered a recommendation on how to resolve that issue.

Sponsor proposes an amendment regarding the authorization for possession, use, and consumption of Cannabis (marijuana) for recreational purposes by adults. The amendment would allow for the growth, cultivation, sale, and regulation of facilities involved in the growth, cultivation, sale, and distribution of cannabis for recreational use.

The ballot title and popular name were submitted to the SBEC for certification on July 11, 2022. Act 379 of 2019 amending A.C.A. § 7-9-111(i), delegates to the SBEC the responsibility to review proposed ballot titles and popular names (collectively hereinafter "Title") for certification to be included on the November General Election ballot or to find that the Title is misleading and therefore not certify the Title.

The SBEC ballot title and popular name certification authority and process is described by Ark. Code Ann. § 7-9-111(i)(1)-(4). That section provides:

> (i) (1) ... the Secretary of State shall submit the ballot title and popular name of the proposed measure to the [SBEC] board for certification as required by Arkansas Constitution, Article 5, § 1.
>
> (2) The [SBEC] board shall determine whether to certify the ballot title and popular name submitted for a proposed measure within thirty (30) days after the ballot title and popular name are submitted by the Secretary of State ....
>
> (3) If the board determines that the **ballot title and popular name**, and the **nature of the issue**, is presented in a manner that is not **misleading** and **not designed in such a manner** that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself to be casting a vote for, or, conversely,

that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against, the ballot title and popular name of the statewide initiative petition ... shall be certified to the Secretary of State to be placed upon the ballot....

(4)(A) If the board determines that the **ballot title** or **popular name**, or the **nature of the issue**, is presented in such a manner that the **ballot title** or **popular name** would be **misleading** or **designed in such manner** that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself to be casting a vote for, or, conversely, that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against, the board of shall:

(i) Not certify the ballot title and popular name;

(ii)*(a)* Notify the sponsors in writing, ... that the ballot title and popular name were not certified and set forth its reasons for so finding.

...

(iii) Notify the Secretary of State that the ballot title and popular name were not certified.

REVIEW OF POPULAR NAME AND BALLOT TITLE

The Popular Name, (hereinafter "Name"), Ballot Title, (hereinafter "Title"), Proposed Measure (hereinafter "Measure" and all three documents combined, (hereinafter "Proposal"), attached as an addendum to this memo, is a proposal to authorize the growth, cultivation, distribution, sale, and licensing of adult use cannabis. The Measure would legalize the possession, use, and consumption of cannabis by adults. It would legalize the growth, cultivation, and sale of cannabis by licensed commercial entities at licensed facilities. Lastly, the Measure authorizes the Alcohol Beverage Control Division (ABC) to regulate the adult use cannabis industry licensing, renewal of licenses, and administration and enforcement of the provisions of the Measure. The Measure also repeals and amends portions of Ark. Const. Amend. 98, the Arkansas Medical Marijuana Act.

I. ANALYSIS OF THE POPULAR NAME

> *"An amendment to authorize the possession, personal use, and consumption of cannabis by adults, to authorize the cultivation and sale of cannabis by licensed commercial facilities, and to provide for the regulation of those facilities."*

The Name, reproduced above, is a short statement intended to provide an identifying synopsis of the Title and Measure.

Courts have applied a less stringent standard to review of a Proposal's Name. As described above, a "popular name is primarily a useful legislative device." *Pafford v. Hall,* 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950). The Name "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. *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). Ultimately, the popular name must be reviewed with the ballot title to determine whether the ballot title is sufficient. See *May v. Daniels,* 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004). The SBEC is charged with determining two issues, whether the Name is misleading, or whether a vote FOR would have a different effect than what the voter believes he or she is voting for.

While the statutory provision identifies the test of whether the Name is misleading first, the fact that misleading is a broader inclusive term makes it important to address the FOR or AGAINST analysis first.

A. EFFECT OF A VOTE "FOR OR AGAINST"

Based on the statutory requirements set out in A.C.A. §7-9-111(i)(3), the SBEC must decide whether the characterization of the measure in the Name conveys the effect of the measure so that a voter understands whether a vote "yes" or "no" would be a vote for the outcome the voter desires. Staff notes that the purpose of a popular name is to make the measure easy for the public to identify when being proposed, not to describe the measure in any detail.

In this case, the Name describes the amendment as authorizing various activities relating to marijuana. The text of the Measure provides for modifications in the law governing marijuana. A "yes" vote

will cause the proposed modifications to be adopted and a "no" vote will retain the status quo.

Consequently, it is Staff's assessment that the question before the SBEC is whether the effect of the measure, if adopted, is consistent with the characterization of the Measure's effects in the popular name.

B. DETERMINATION OF WHETHER THE POPULAR NAME IS MISLEADING

The second question the SBEC must answer in regards to the Name is whether the name is misleading. As noted above, the function of a popular name is to identify the measure being proposed.

"The popular name is not held to the same stringent standards and need not be as explicit as a ballot title; however, it *cannot contain catch phrases or slogans that tend to mislead or give partisan coloring to a proposal. May v. Daniels*, 359 Ark. 100, 104, 194 S.W.3d 771, 775–76 (2004)(emphasis added / internal citations omitted). Thus, the popular name must be intelligible, honest, and impartial." *Id.*

The popular name in this case is a sentence which lists 5 activities authorized by the proposed amendment including: 1) possession of cannabis by adults; 2) personal use of cannabis by adults; 3) consumption of cannabis by adults; 4) cultivation of cannabis by licensed commercial facilities; and 5) sale of cannabis by licensed commercial facilities. The final item referenced in the popular name is that the amendment provides for the regulation of those facilities.

Consequently, it is Staff's assessment that the question before the SBEC is whether the popular name identifies the issues raised in the

measure and characterizes the issue in an intelligible, honest, and impartial way which avoids misleading phrases or slogans.

II. ANALYSIS OF THE BALLOT TITLE

A. EFFECT OF A VOTE "FOR OR "AGAINST"

1. Effect as a General Matter

Based on the statutory requirements set out in A.C.A. §7-9-111(i)(3), the SBEC must decide whether the characterization of the Measure in the Title conveys the effect of the Measure so that a voter understands whether a vote "yes" or "no" would be a vote for the outcome the voter desires.

The general purpose of this Measure is to amend, repeal, or enact constitutional provisions relating to marijuana. Staff has separated the 30 separate clauses contained in the Title and linked them to the portion of the Measure which relates to the clause as well as the existing law being modified, if applicable. This reproduction of the Title can be found beginning on page 27 of this report. A "yes" vote will cause the proposed measure to be adopted and a "no" vote will retain the status quo.

Consequently, it is Staff's assessment that the question before the SBEC is whether the effect of the Measure, if adopted, is consistent with the characterization of the Measure's effects in the Title.

2. Effect relating to Clause 4 of the Title – Repeal of maximum amount of THC per edible or drinkable portion.

In Clause 4, the Title provides that the Measure is "repealing and replacing Amendment 98, §§ 8(e)(5)(A)-(B) and 8(e)(8)(A)-(F) with requirements for child-proof packaging and restrictions on advertising that appeals to children."

The portion of Amendment 98 being repealed and replaced regards, among other things, a limitation of "ten milligrams (10 mg) of active tetrahydrocannabinol per portion" of a food or drink product and that it shall be "physically demarked." Ark. Const. Amend. 98 § 8(e)(5)(A). Further Amend. 98 provided that "[i]f portions cannot be physically determined, the entirety of the food or drink that has been combined with usable marijuana shall not contain more than ten milligrams (10 mg) of active tetrahydrocannabinol." *Id.* at §(e)(5)(B).

It is understood that a proposed Amendment changes current provisions of the Constitution. However, in this case, the Title's description of repealing and replacing a section of the Constitution regarding maximum limitations on the concentration of tetrahydrocannabinol per serving, which is not described in the Title or Measure, is linked with the description of a new provision requiring "child-proof packaging and restrictions on advertising that appeals to children."

Staff assesses there is an issue here with regards to a voter who is concerned about the danger posed by edible or drinkable marijuana to children. The limitations on the concentration of THC in an edible product is arguably a protective measure regarding children accidentally

consuming the product. By linking the repeal of these limitations to a provision explicitly designed to protect children, including the child proof container and prohibition of advertising which appeals to children, this clause may cause a person whose viewpoint is to protect children from edible marijuana to vote for the provisions despite the removal of the THC limitation which is a measure arguably designed to protect children.

Consequently, as it relates to Clause 4 of the Title, Staff assesses that the question before the SBEC is whether, for a voter whose viewpoint was a desire to protect children from encountering edible THC, the Title is designed so that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself to be casting a vote for, or, conversely, that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against.

3. Effect relating to Clause 4 of the Title – Child-Proof Packaging and Child Advertising

Clause 4 of the title provides that "repealing and replacing Amendment 98, §§ 8(e)(5)(A)-(B) and (e)(8)(A)-(F) with requirements for child-proof packaging and restrictions on advertising that appeals to children;"

The current version of Amend. 98 §(8)(e)(8)(A)-(F) is a requirement that the Alcoholic Beverage Control Division create rules which provide for the elements articulated in the current law reproduced below:

> (8) Advertising restrictions for dispensaries and cultivation facilities, including without limitation the advertising, marketing, packaging, and promotion of dispensaries and

cultivation facilities with the purpose to avoid making the product of a dispensary or a cultivation facility appealing to children, including without limitation:

(A) Artwork;

(B) Building signage;

(C) Product design, including without limitation shapes and flavors;

(D) Child-proof packaging that cannot be opened by a child or that prevents ready access to toxic or harmful amounts of the product, and that meets the testing requirements in accordance with the method described in 16 C.F.R. § 1700.20, as existing on January 1, 2017;

(E) Indoor displays that can be seen from outside the dispensary or cultivation facility; and

(F) Other forms of marketing related to medical marijuana;

Ark. Const. amend. XCVIII, § 8.

The measure would replace this provision with the text reproduced below:

Advertising restrictions for dispensaries and cultivation facilities which are narrowly tailored to ensure that advertising is not designed to appeal to children."

(Measure p. 5 of 11 – Para Sec. 5(e)).

And

Standards to ensure that marijuana must be sold at retail in child-resistant packaging that is not designed to appeal to children; such standards may not prohibit the sale of any usable cannabis authorized under this amendment or other applicable state laws."
(Measure p. 5 of 11 – Para Sec. 5(d)).

A review of these provisions side by side clearly indicates that the specificity of the current law will be replaced by the proposed measure with a much less precise obligation on the part of the division to promulgate rules with respect to both the advertising and child-resistant packaging components of the constitution. This is perhaps the clearest with the juxtaposition of the detailed regulatory regime provide by 16 C.F.R. § 1700.20 with a generic requirement for "child-resistant packaging."

Consequently, as it relates to Clause 4 of the Title, Staff assesses that the question before the SBEC is also whether, for a voter whose viewpoint was a desire to require effective child-resistant packaging and to prohibit advertising of marijuana to children, the Title is designed so that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself to be casting a vote for, or, conversely, that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against.

B. DETERMINATION OF WHETHER THE TITLE IS MISLEADING

The analysis now turns to the Title's language as to whether it is misleading as it regards the effect of the proposed constitutional amendment. As is normally provided, the proposed Title is written as one sentence and divided into clauses by semicolons. The Title includes thirty (30) separate clauses and consists of 839 words.[1]

1. Length and Complexity of the Ballot Title – Nature of the Issue presented by the Measure and Title

Perhaps the most obvious observation that is made regarding the Title is that it is lengthy. This is no doubt a function of the fact that the proposed measure is complex, running some 8 pages as originally filed. The Title is lengthy and thus complex as a natural consequence of the Measure's length and complexity.

However, as stated by the Arkansas Supreme Court, "neither the length nor the complexity of the ballot title should be a controlling factor, it is a consideration... [C]ommon sense requires that we ask whether the average voter can make an intelligent considerate decision based on the ballot title...." *Christian Civic Action Committee,* 318 Ark. at 244, 884 S.W.2d at 608. The Supreme Court's determination of sufficiency is not the specific standard applied by the Board. The Board must determine whether the nature of the issue reflected in the Title as compared to the

[1] Staff used Microsoft Word's "Word Count" feature to calculate the number of words contained in the Ballot Title language. This calculation matches the number provided by Sponsor's brief *Analyzing the Popular Name and Ballot Title* on page 4.

Measure is "misleading." Ark. Code Ann. § 7-9-111(i)(3)("If the board determines that the ballot title and popular name, and the nature of the issue, is presented in a manner that is not misleading... [then it] shall be certified.")

Merriam Webster defines misleading as "to lead in a wrong direction or into a mistaken action or belief often by deliberate deceit [or] to lead astray [or to] give a wrong impression." See https://www.merriam-webster.com/dictionary/mislead (last visited July 20, 2022). Cambridge online dictionary defines misleading as "causing someone to believe something that is not true." See https://dictionary.cambridge.org/us/dictionary/english/misleading (last visited July 20, 2022).

Staff notes that the sponsors cite authority in their brief in which the supreme court held that a title's length alone is an insufficient basis to find the title misleading. *Walker v. Priest*, 342 Ark. 410, 29 S.W.3d 657 (2000) where the Court approved a ballot title with 994 words. *Walker* cites prior authority for the principle that the ballot title must not be "unduly long." *Gaines v. McCuen*, 296 Ark. 513, 519, 758 S.W.2d 403, 406 (1988).

Taken together, it is Staff's conclusion that, while a ballot title may be lengthy, that length must be justified by the complexity of the measure being proposed. It appears that, for a measure to be misleading due to length, a measure must be longer than is necessary and that this unnecessary complexity tends to obscure some of the ability of the voter to make an intelligent considerate decision based on the ballot title.

Consequently, it is Staff's assessment that the question before the SBEC, as it relates to this issue, is whether the length and complexity of

the ballot title is excessive to the degree it is not justified by the length and complexity of the measure and tends to obscure the ability of the voter to make an intelligent considerate decision based on the ballot title.

2. Definitions in Measure – Not in Title

While many of the Title's clauses represent portions of the Measure, there are portions of the Measure which are not reflected in the Title. The Arkansas Supreme Court has found that a "ballot title need not contain a synopsis of the proposed amendment or cover every detail of it." See *Stiritz v. Martin*, 2018 Ark 281, at 4, 556 S.W.3d 523, 527 (citing *Rose v. Martin*, 2016 Ark. 339, at 4, 500 S.W.3d 148, 151). However, a Title must not "omit material information that would give the voter serious ground for reflection." *Id.* (citing *Parker v. Priest*, 326 Ark. 123, 930 S.W.2d 322 (1996)).

With these parameters in mind, the proposed Measure includes several sections which are not reflected in the Title. First, the Measure provides numerous definitions for terms used in the Measure with those defined terms appearing in the Title. The Measure's definition of those terms is not included in the Title. The Arkansas Supreme Court has "disapproved of undefined terms in a ballot title that are highly technical, obscure, that attempt to mislead voters, or that hide the actual nature of the proposal." *Id.* at 4-5, 930 S.W.2d at 527-528 (citing *Christian Civic Action Comm. V. McCuen*, 318 Ark. 241, 884 S.W.2d 601 (1994)).

i. Tier One and Tier Two phrases.

There are two terms that are defined in the Measure that are not readily defined in normal English.[2] The measure defines the term "Tier One adult use cultivation facility" as "a commercial establishment licensed under this amendment to cultivate, prepare, manufacture, process, package, sell to, and deliver cannabis to another commercial establishment for retail sale by any licensed adult use dispensary." Measure § 3(d). The measure defines the term "Tier Two adult use cultivation facility" as "a commercial establishment licensed under this amendment to cultivate, prepare, manufacture, package, sell to, and deliver cannabis to adult use dispensaries for retail sale, which may grow no more than 250 mature cannabis plants at any one time." Measure § 3(g). The difference between these two terms is that a Tier One facility is not limited to the number of mature cannabis plants that it may grow and harvest for sale, whereas a Tier Two facility is limited to no more than 250 mature cannabis plants.

Title and Measure provide that the ABC is required to issue no more than eight (8) "Tier One adult use cultivation facility licenses to cultivation facility licensees under Amendment 98 as of November 8, 2022, to operate on the same premises as their existing facilities and forbidding issuance of additional Tier One adult use cultivation licenses." Title Clause 17. The Title then requires the ABC to issue, by lottery, no

[2] Staff performed a google search for the term or phrase "Tier One adult use cultivation facility." That search located four responses, one from Ballotpedia referencing this Measure, one from an Arkansas Times article about this Measure, the notice from the Arkansas Democrat Gazette from Pressreader.com, and a link to the Measure from Socialgrep.com (Staff was unable to make this link open). Staff performed a google search for the term or phrase "tier two adult use cultivation facility" with the same four responses. These google searches were conducted on July 20, 2022.

more than "12 Tier Two adult use cultivation facility licenses" "[o]n or before November 8, 2023. Title Clause 19; & Measure § 6(g).

The Title, as described above, does not provide the definition of Tier One or Tier Two, and there is a distinct difference between the two types of licenses. A Tier One facility is a facility in existence and operating by producing medical marijuana as of November 8, 2022 and is unrestricted in the number of plants it may grow and harvest from. Whereas a Tier Two facility is issued its license by lot up to a year later and is limited to no more than 250 mature marijuana plants. Also, the Tier Two facility license issuance deadline of November 8, 2023, is not identified in the Title.

The terms of Tier One and Tier Two have no inherent meaning outside of an order of precedence and can clearly be understood as arbitrary classifications utilized by the measure. The provision of the measure restricting the Tier Two facilities to 250 plants, but omitting such restrictions to the Tier One facilities, is only found in the definitions which are not referenced by the Title.

Consequently, it is Staff's assessment that the question before the SBEC, as it relates to this issue, is whether the omission of the fact that currently licensed marijuana cultivation facilities would not be limited in the number of plants they could grow but new facilities licensed under this amendment would be limited to 250 plaints is an omission that would give "the voter serious ground for reflection" when deciding whether to vote For or Against the Measure. *Stiritz*, supra at 4, 556 S.W.3d at 527.

ii. Definition of Adult: 21 versus 18.

Another term that is given a specific definition in the Measure, but which is not explained in the Title is the term "adult." Section 3 (a) of the Measure defines adult as "a person who is twenty-one (21) years of age or older." Adult is generally defined as "one who has attained maturity or legal age" or "a person who has attained the age of legal majority (18 year for most purposes)." Majority is defined in Arkansas law as "[a]ll persons of the age of eighteen (18) years shall be considered to have reached the age of majority and be of full age for all purposes" and "[u]ntil the age of eighteen (18) years is attained, they shall be considered minors." Ark. Code Ann. § 9-25-101(a). That section of law does establish the requirement that a person must be twenty-one (21) years old to purchase or possess alcohol, tobacco, vapor products, alternative nicotine products, e-liquids, cigarette papers. *Id.* at (b)(2).

Consequently, it is Staff's assessment that the question before the SBEC, as it relates to this issue, is whether the omission of a definition of adult which is used by the measure but which is distinct from the ordinary definition of adult constitutes an omission that would give "the voter serious ground for reflection" when deciding whether to vote For or Against the Measure. *Stiritz*, supra at 4, 556 S.W.3d at 527.

3. Measure §4(b) not referenced in Title

Subsection (b) is not directly referenced in the Title. As referenced above, The Arkansas Supreme Court has found that a "ballot title need not contain a synopsis of the proposed amendment or cover every detail of it." See *Stiritz v. Martin*, 2018 Ark 281, at 4, 556 S.W.3rd 523, 527

(citing *Rose v. Martin*, 2016 Ark. 339, at 4, 500 S.W.3d 148, 151). However, a Title must not "omit material information that would give the voter serious grounds for reflection." *Id.* (citing *Parker v. Priest*, 326 Ark. 123, 930 S.W.2d 322 (1996)). Measure § 4(b) provides:

> Beginning on March 8, 2023, all types of usable cannabis, including the inventory of usable cannabis which was produced pursuant to Amendment 98, shall be authorized for immediate wholesale and retail sale for adult use by commercial establishments licensed under this amendment.

A medical marijuana facility licensed as of November 8, 2022, shall be issued two Adult Use Licenses, with those licenses being issued no later than March 7, 2023. This provision of the Measure thus allows current growers and medical marijuana providers to divert existing production and inventory to "adult use cannabis." This provision of the Measure allows currently produced medical marijuana to be sold and utilized as adult use.

One possible implication of this subsection of the Measure is the potential reduction in available inventory for medical marijuana patients. However, the Title addresses the absence of Measure §4(b) in part, by allowing Adult Use cannabis to not impact or count against the amount of medical marijuana a patient may purchase. See Title Clause 9 ("amending Amendment 98, §§ 10(b)(8)(A) and 10(b)(8)(G) to provide limits on the amount of medical marijuana dispensed shall not include adult use cannabis purchases.")

Consequently, it is Staff's assessment that the question before the SBEC, as it relates to this issue, is whether the failure to reference the

measure's provision allowing marijuana grown under current law for medical use be sold for recreational use is an omission that would give "the voter serious ground for reflection" when deciding whether to vote For or Against the Measure. *Stiritz*, supra at 4, 556 S.W.3d at 527.

4. Measure §§ 10 & 11.

Staff was unable to attribute Measure §§ 10 & 11 to language provided in the Title. Section 10 has two functions. The first is a severability clause which provides that, if a provision of the amendment is held invalid, the remaining provisions of the amendment will remain in effect. The second function of Section 10 is to provide that any laws of the State of Arkansas which conflict with the amendment are repealed. This type of severability and inconsistency clean up language is standard in a proposed amendment.

Section 11 allows the Measure to be self-executing, and that its provisions are treated as mandatory. This section does allow laws to be enacted which facilitate operation of the Measure. This provision continues, as it restricts the ability of the legislature and agencies of the state from enacting laws or regulations which "restrict, hamper, or impair the intent of this amendment." Measure § 11.

Consequently, it is Staff's assessment that the question before the SBEC, as it relates to this issue, is whether the failure to reference the measure's provision in Sections 10 and 11 of the measure would give "the voter serious ground for reflection" when deciding whether to vote For or Against the Measure. *Stiritz*, supra at 4, 556 S.W.3d at 527.

5. Title does not include 1-ounce limitation on possession

Clause 1 of the Title provides, "[a]n amendment to the Arkansas Constitution authorizing possession and use of cannabis (i.e., marijuana) by adults, but acknowledging that possession and sale of cannabis remain illegal under federal law." Title Clause 1. The accompanying language from the Measure provides, "Adults are authorized under Arkansas state law to possess up to 1 ounce of adult use cannabis acknowledging that, as of January 24, 2022, possession and sale of cannabis is illegal under federal law." Measure § 4(a). Title does not include the limiting language of the Measure, regarding the 1-ounce limitation.

The Arkansas Supreme Court has found that whether an omission from the Title as compared to the Measure depends on whether such omission "would give the voter serious ground for reflection." See *Stiritz*, supra at 4, 556 S.W.3d at 527. Further, the Court has stated if information omitted from the ballot title is an "essential fact which would give the voter serious ground for reflection, it must be disclosed." *Bailey v. McCuen,* 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

Consequently, it is Staff's assessment that the question whether the omission of the 1-ounce limitation is an essential fact is dependent on whether its inclusion or omission would give "the voter serious ground for reflection" when deciding whether to vote For or Against the Measure. *Stiritz*, supra at 4, 556 S.W.3d at 527.

6. Near schools, churches, daycares, or facilities serving the developmentally disabled.

Title provides that cultivation facilities and dispensaries are prohibited from being "near schools, churches, daycares, or facilities serving the developmentally disabled that existed before the earlier of the initial license application or license issuance." Title Clause 20. The Measure provides greater detail on what is meant by "near." Measure provides that the marijuana cultivation facilities can be no closer than three thousand (3,000) feet from a school, church, daycare, or facility serving the developmentally disabled. Whereas dispensaries are allowed up to one thousand five hundred (1,500) feet from schools, daycares, churches, and facilities serving the developmentally disabled.

The current law provides these same distance limitations. Ark. Const. Amend. 98 § 8(g)(2)(C)(i)(*a*)-(*b*). The Medical Marijuana Amendment provides detailed descriptions of how the measurement between a facility and a school, etc... is calculated, but neither the Proposed Measure nor Title include that level of detailed information.

Consequently, it is Staff's assessment that the question before the SBEC, as it relates to this issue, is whether a voter would have "serious grounds for reflection" when deciding whether to vote For or Against the Measure, *Stiritz*, supra at 4, 556 S.W.3d at 527, if the voter was informed that the prohibition on new marijuana facilities permitted under this amendment being "near" schools, churches, daycares, or facilities serving the developmentally disabled means a proximity limitation of 3,000 feet for cultivation facilities and 1,500 feet for dispensaries.

7. Residency of Ownership is Repealed

Title provides that this Measure "repeal[s] Amendment 98 § 8(c) regarding residency requirements." Title Clause 3. The Measure provides that "residency of cultivation facility and dispensary owners, is repealed in its entirety." Measure § 5(c). The provision of Amendment 98 which is proposed to be repealed requires that "individuals associated with a dispensary or cultivation facility shall be current residents of Arkansas who have resided in the state for the previous seven (7) consecutive years: (1) individual(s) submitting an application to license a dispensary or cultivation facility; and (2) Sixty percent (60%) of the individuals owning an interest in a dispensary or cultivation facility." Ark. Const. Amend. 98 § 8(c)(1)-(2).

Generally, the public is aware that a proposed Amendment changes existing law, and this provision changes existing law. The Title identifies the section of Amendment 98 that is being repealed and identifies that it is "repealing ... [language] regarding residency requirements." Title Clause 3. The Measure identifies the residency requirements regarding "cultivation facility and dispensary owners." Measure § 5(c).

Whether a statement that "residency requirements" is repealed versus residency of "individuals associated with a dispensary or cultivation facility" is a potential issue. Under current law, a person applying for a medical marijuana license and 60% of the individual owners of a dispensary or cultivation facility must have resided in Arkansas for the 7 years preceding the application or ownership interest. The Title does not describe this significant change in ownership of marijuana businesses in Arkansas if this Measure is approved.

Consequently, it is Staff's assessment that the question before the SBEC, as it relates to this issue, is whether the omission of the detail discussed above would give "the voter serious grounds for reflection" when deciding whether to vote For or Against the Measure. *Stiritz*, supra at 4, 556 S.W.3d at 527.

8. Repeal of limitation on milligrams of tetrahydrocannabinol per portion of edible product.

Title provides that the Measure is "repealing and replacing Amendment 98, §§ 8(e)(5)(A)-(B) and 8(e)(8)(A)-(F) with requirements for child-proof packaging and restrictions on advertising that appeals to children." The portion of Amendment 98 being repealed and replaced regards, among other things, a limitation of "ten milligrams (10 mg) of active tetrahydrocannabinol per portion" and that it shall be "physically demarked." Ark. Const. Amend. 98 § 8(e)(5)(A). Further Amend. 98 provided that "[i]f portions cannot be physically determined, the entirety of the food or drink that has been combined with usable marijuana shall not contain more than ten milligrams (10 mg) of active tetrahydrocannabinol." *Id.* at §(e)(5)(B).

It is understood that a proposed Amendment changes current provisions of the Constitution. The potential problem is that the Title only describes the repeal of the constitutional provision which establishes a maximum limitation on the concentration of tetrahydrocannabinol (THC) per serving, using a reference to a legal citation with no accompanying description. The sponsor chose to combine, in the same clause, the repeal and replacement of a provision requiring "child-proof

packaging and restrictions on advertising that appeals to children." This is despite the existing provision of law already providing for both child proof packaging and prohibitions on advertising geared towards children in greater specificity than the proposed Measure.

Consequently, it is Staff's assessment that the question before the SBEC, as it relates to this issue, is to determine whether a voter would have "serious grounds for reflection" when deciding whether to vote For or Against the Measure, *Stiritz*, supra at 4, 556 S.W.3d at 527, if the voter was informed that the amendment repealed the limitations on the amount of THC that was permitted in a product where cannabis is combined in food or drink.

In addition, it is a further assessment of Staff that the SBEC should also consider whether the Title's treatment of the repeal of the provision limiting the amount of THC in an edible product with only a reference to a legal citation while, in the same clause of the title, the repeal and replacement of a separate provision is described as a requiring child-proof packaging and restricting advertising to children despite the provision being repealed already providing for both requirements constitutes a misleading tendency. See, *Cox v. Martin*, 2012 Ark. 352, 5, 423 S.W.3d 75, 81 (2012) (Providing that the ballot title must be free from "...any misleading tendency, whether of amplification, of omission, or of fallacy.")(internal citations omitted).

III. CONCLUSION

The Board must determine whether the Popular Name, Ballot Title, and Nature of the Issue presented are provided such that neither the Popular Name, Ballot Title, or the Nature of the Issue are misleading or designed in such manner that a vote "FOR" the issue would be a vote against the matter or viewpoint that the voter believes himself or herself to be casting a vote for, or, conversely, that a vote "AGAINST" an issue would be a vote for a viewpoint that the voter is against

ADDENDUM

I. Popular Name and Ballot Title as Presented to the SBEC

POPULAR NAME:

AN AMENDMENT TO AUTHORIZE THE POSSESSION, PERSONAL USE, AND CONSUMPTION OF CANNABIS BY ADULTS, TO AUTHORIZE THE CULTIVATION AND SALE OF CANNABIS BY LICENSED COMMERCIAL FACILITIES, AND TO PROVIDE FOR THE REGULATION OF THOSE FACILITIES

BALLOT TITLE:

An amendment to the Arkansas Constitution authorizing possession and use of cannabis (i.e., marijuana) by adults, but acknowledging that possession and sale of cannabis remain illegal under federal law; authorizing licensed adult use dispensaries to sell adult use cannabis produced by licensed medical and adult use cultivation facilities, including cannabis produced under Amendment 98, beginning March 8, 2023 and amending Amendment 98 concerning medical marijuana in pertinent part, including: amending Amendment 98, § 3(e) to allow licensed medical or adult use dispensaries to receive, transfer, or sell marijuana to and from medical and adult use cultivation facilities, or other medical or adult use dispensaries, and to accept marijuana seeds from individuals legally authorized to possess them; repealing Amendment 98, § 8(c) regarding residency requirements; repealing and replacing Amendment 98, §§ 8(e)(5)(A)-(B) and 8(e)(8)(A)-(F) with requirements for child-proof packaging and restrictions on advertising that appeals to children; amending Amendment 98, § 8(k) to exempt individuals owning less than 5% of dispensary or cultivation licensees from criminal background checks; amending Amendment 98, § 8(m)(1)(A) to remove a prohibition on dispensaries supplying, possessing, manufacturing, delivering, transferring, or selling paraphernalia that requires the combustion of marijuana; amending Amendment 98, § 8(m)(3)(A)(i) to increase the marijuana plants that a dispensary licensed

under that amendment may grow or possess at one time from 50 to 100 plus seedlings; amending Amendment 98, § 8(m)(4)(A)(ii) to allow cultivation facilities to sell marijuana to dispensaries, adult use dispensaries, processors, or other cultivation facilities; amending Amendment 98, §§ 10(b)(8)(A) and 10(b)(8)(G) to provide that limits on the amount of medical marijuana dispensed shall not include adult use cannabis purchases; amending Amendment 98, §§ 12(a)(1) and 12(b)(1) to provide that dispensaries and dispensary agents may dispense marijuana for adult use; amending Amendment 98, § 13(a) to allow medical and adult use cultivation facilities to sell marijuana to adult use dispensaries; repealing Amendment 98, § 17 and prohibiting state or local taxes on the cultivation, manufacturing, sale, use, or possession of medical marijuana; repealing Amendment 98, § 23 and prohibiting legislative amendment, alteration, or repeal of Amendment 98 without voter approval; amending Amendment 98, § 24(f)(1)(A)(i) to allow transporters or distributors licensed under Amendment 98 to deliver marijuana to adult use dispensaries and cultivation facilities licensed under this amendment; requiring the Alcoholic Beverage Control Division of the Department of Finance and Administration ("ABC") to regulate issuance and renewal of licenses for cultivation facilities and adult use dispensaries and to regulate licensees; requiring adult use dispensaries to purchase cannabis only from licensed medical or adult use cultivation facilities and dispensaries; requiring issuance of Tier One adult use cultivation facility licenses to cultivation facility licensees under Amendment 98 as of November 8, 2022, to operate on the same premises as their existing facilities and forbidding issuance of additional Tier One adult use cultivation licenses; requiring issuance of adult use dispensary licenses to dispensary licensees under Amendment 98 as of November 8, 2022, for dispensaries on their existing premises and at another location licensed only for adult use cannabis sales; requiring issuance by lottery of 40 additional adult use dispensary licenses and 12 Tier Two adult use cultivation facility licenses; prohibiting cultivation facilities and dispensaries near schools, churches, day cares, or facilities serving the developmentally disabled that existed before the earlier of the initial license application or license issuance; requiring all adult use

only dispensaries to be located at least five miles from dispensaries licensed under Amendment 98; prohibiting individuals from holding ownership interests in more than 18 adult use dispensaries; requiring ABC adoption of rules governing licensing, renewal, ownership transfers, location, and operation of cultivation facilities and adult use dispensaries licensed under this amendment, as well as other rules necessary to administer this amendment; prohibiting political subdivisions from using zoning to restrict the location of cultivation facilities and dispensaries in areas not zoned residential-use only when this amendment is adopted; allowing political subdivisions to hold local option elections to prohibit retail sales of cannabis; allowing a state supplemental sales tax of up to 10% on retail cannabis sales for adult use, directing a portion of such tax proceeds to be used for an annual stipend for certified law enforcement officers, the University of Arkansas for Medical Sciences and drug court programs authorized by the Arkansas Drug Court Act, § 16-98-301 with the remainder going into general revenues, and requiring the General Assembly to appropriate funds from licensing fees and sales taxes on cannabis to fund agencies regulating cannabis; providing that cultivation facilities and adult use dispensaries are otherwise subject to the same taxation as other for-profit businesses; prohibiting excise or privilege taxes on retail sales of cannabis for adult use; providing that this amendment does not limit employer cannabis policies, limit restrictions on cannabis combustion on private property, affect existing laws regarding driving under the influence of cannabis, permit minors to buy, possess, or consume cannabis, or permit cultivation, production, distribution, or sale of cannabis not expressly authorized by law; and prohibiting legislative amendment, alteration, or repeal of this amendment without voter approval.

II. Ballot Language Clauses Linked with Measure and Existing Law

The following section of this report restates each clause of the Title and connects that clause with the portion of the measure it addresses. At the end of each reproduced portion of the measure is a citation to where it can be found in the version of the measure filed by the sponsor. Any portion of the measure not addressed by a clause is addressed in the analysis section above. Where applicable, the provision of current law being amended by the measure has also been provided.

POPULAR NAME:

AN AMENDMENT TO AUTHORIZE THE POSSESSION, PERSONAL USE, AND CONSUMPTION OF CANNABIS BY ADULTS, TO AUTHORIZE THE CULTIVATION AND SALE OF CANNABIS BY LICENSED COMMERCIAL FACILITIES, AND TO PROVIDE FOR THE REGULATION OF THOSE FACILITIES

BALLOT TITLE:

CLAUSE 1:

An amendment to the Arkansas Constitution authorizing possession and use of cannabis (i.e., marijuana) by adults, but acknowledging that possession and sale of cannabis remain illegal under federal law;

Portion of Measure Described by Clause 1:

a) Adults are authorized under Arkansas state law to possess up to 1 ounce of adult use cannabis acknowledging that as of January 24, 2022, possession and sale of cannabis is illegal under federal law. (p. 4 of 11 – Para Sec. 4(a)).

CLAUSE 2:

; authorizing licensed adult use dispensaries to sell adult use cannabis produced by licensed medical and adult use cultivation facilities, including cannabis produced under Amendment 98, beginning March 8, 2023 and amending Amendment 98 concerning medical marijuana in pertinent part, including: amending Amendment 98, § 3(e) to allow licensed medical or adult use dispensaries to receive, transfer, or sell marijuana to and from medical and adult use cultivation facilities, or other medical or adult use dispensaries, and to accept marijuana seeds from individuals legally authorized to possess them;

Portion of Measure addressed by Clause 2:

a) §3(e) of Amendment 98 is amended to read: "A medical or adult use dispensary may receive, transfer, or sell marijuana seedlings, plants or usable marijuana to and from medical, Tier One and Tier Two adult use cultivation facilities, or other medical or adult use dispensaries in Arkansas, and may accept marijuana seeds from any individual authorized under applicable state law to possess marijuana seeds." (p. 4 of 11 – Para Sec. 5 (a)).

Excerpt of Current law addressed by Clause 2

Amendment 98 § 3(e):

(e) A dispensary may:
(1) Accept marijuana seedlings, plants, or usable marijuana from:
(A) Cultivation facilities;
(B) Other dispensaries in Arkansas; and
(C) If permissible under federal law, out-of-state dispensaries;
(2) Transfer or sell marijuana seedlings, plants, or usable marijuana to:
(A) Cultivation facilities;
(B) Other dispensaries in Arkansas; and
(C) If permissible under federal law, out-of-state dispensaries; and
(3) Accept marijuana seeds from any individual lawfully entitled to possess marijuana seeds, seedlings, or plants under the laws of the state in which the individual resides.

CLAUSE 3:

; repealing Amendment 98, § 8(c) regarding residency requirements;

Portion of Measure addressed by Clause 3:

c) §8(c) of Amendment 98, concerning residency of cultivation facility and dispensary owners, is repealed in its entirety. (p. 4 of 11 – Para Sec. 5(c)).

Excerpt of Current law addressed by Clause 3

Amendment 98 §8(c):

(c) The following individuals associated with a dispensary or cultivation facility shall be current residents of Arkansas who have resided in the state for the previous seven (7) consecutive years:

(1) The individual(s) submitting an application to license a dispensary or cultivation facility; and,

(2) Sixty percent (60%) of the individuals owning an interest in a dispensary or cultivation facility.

CLAUSE 4:

; repealing and replacing Amendment 98, §§ 8(e)(5)(A)-(B) and 8(e)(8)(A)-(F) with requirements for child-proof packaging and restrictions on advertising that appeals to children;

Portion of Measure addressed by Clause 4:

d) §8(e)(5)(A)-(B) of Amendment 98, regarding the maximum dosage limit per portion, is repealed in its entirety and replaced with the following: "Standards to ensure that marijuana must be sold at retail in child-resistant packaging that is not designed to appeal to children; such standards may not prohibit the sale of any usable cannabis authorized under this amendment or other applicable state laws." (p. 5 of 11 – Para Sec. 5(d)).

e) §8(e)(8)(A)-(F) of Amendment 98, regarding advertising restrictions, is repealed in its entirety and replaced with the following: "Advertising restrictions for dispensaries and cultivation facilities which are narrowly tailored to ensure that advertising is not designed to appeal to children." (p. 5 of 11 – Para Sec. 5(e)).

Excerpt of Current law addressed by Clause 4

Amendment 98 §8(e)(5)(A)-(B):

(e) Not later than one hundred eighty (180) days after the effective date of this amendment, the division shall adopt rules governing:

(1) Oversight requirements for dispensaries and cultivation facilities;

(2) Recordkeeping requirements for dispensaries and cultivation facilities;

(3) Security requirements for dispensaries and cultivation facilities;

(4) Personnel requirements for dispensaries and cultivation facilities;

(5) The manufacture, processing, packaging, labeling, and dispensing of usable marijuana to qualifying patients and designated caregivers, including without limitation:

(A) Before sale, food or drink that has been combined with usable marijuana shall not exceed ten milligrams (10 mg) of active tetrahydrocannabinol per portion and shall be physically demarked; and

(B) If portions cannot be physically determined, the entirety of the food or drink that has been combined with usable marijuana shall not contain more than ten milligrams (10 mg) of active tetrahydrocannabinol;

Excerpt of Current law addressed by Clause 4 CONTINUED

Amendment 98 §8(e)(8)(A)-(F):

(8) Advertising restrictions for dispensaries and cultivation facilities, including without limitation the advertising, marketing, packaging, and promotion of dispensaries and cultivation facilities with the purpose to avoid making the product of a dispensary or a cultivation facility appealing to children, including without limitation:

(A) Artwork;

(B) Building signage;

(C) Product design, including without limitation shapes and flavors;

(D) Child-proof packaging that cannot be opened by a child or that prevents ready access to toxic or harmful amount of the product, and that meets the testing requirements in accordance with the method described in 16 C.F.R. § 1700.20, as existing on January 1, 2017;

(E) Indoor displays that can be seen from outside the dispensary or cultivation facility; and

(F) Other forms of marketing related to medical marijuana

CLAUSE 5:

; amending Amendment 98, § 8(k) to exempt individuals owning less than 5% of dispensary or cultivation licensees from criminal background checks;

Portion of Measure addressed by Clause 5:

f) §8(k) of Amendment 98 is amended to add an additional subsection (6): "Individuals with less than 5% ownership in an entity with a dispensary or cultivation license are exempt from the criminal background check requirements." (p. 5 of 11 – Para Sec. 5(f)).

Excerpt of Current law addressed by Clause 5

Amendment 98 §8(k):

(k) (1) The commission shall conduct a criminal background check in order to carry out this section.
(2) The commission shall require each applicant for a dispensary license or cultivation facility license to apply for or authorize the commission to obtain state and national criminal background checks to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.
(3) The criminal background checks shall conform to the applicable federal standards and shall include the taking of fingerprints.
(4) The applicant shall authorize the release of the criminal background checks to the commission and shall be responsible for the payment of any fee associated with the criminal background checks.
(5) Upon completion of the criminal background checks, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all information obtained concerning the applicant.

CLAUSE 6:

; amending Amendment 98, § 8(m)(1)(A) to remove a prohibition on dispensaries supplying, possessing, manufacturing, delivering, transferring, or selling paraphernalia that requires the combustion of marijuana;

Portion of Measure addressed by Clause 6:

g) §8(m)(l)(A) of Amendment 98 is amended to read: "A dispensary licensed under this section may acquire, possess, manufacture, process, prepare, deliver, transfer, transport, supply, and dispense marijuana, marijuana paraphernalia, and related supplies and educational materials to a qualifying patient or designated caregiver."

Excerpt of Current law addressed by Clause 6

Amendment 98 §8(m)(1)(A):

(m) *(1)(A) A dispensary licensed under this section may acquire, possess, manufacture, process, prepare, deliver, transfer, transport, supply, and dispense marijuana, marijuana paraphernalia, and related supplies and educational materials to a qualifying patient or designated caregiver, but shall not supply, possess, manufacture, deliver, transfer, or sell* ***marijuana paraphernalia*** *that requires the combustion of marijuana to be properly utilized, including pipes, water pipes, bongs, chillums, rolling papers, and roach clips.*

CLAUSE 7:

; amending Amendment 98, § 8(m)(3)(A)(i) to increase the marijuana plants that a dispensary licensed under that amendment may grow or possess at one time from 50 to 100 plus seedlings;

Portion of Measure addressed by Clause 7:

h) §8(m)(3)(A)(i) of Amendment 98 is amended to read: "One hundred (100) mature marijuana plants at any one (1) time plus seedlings; and" (p. 5 of 11 – Para Sec. 5(h)).

Excerpt of Current law addressed by Clause 7

Amendment 98 §8(m)(3)(A)(i):

(3)(A) A dispensary may grow or possess:
(i) Fifty (50) mature marijuana plants at any one (1) time plus seedlings; and

CLAUSE 8:

; amending Amendment 98, § 8(m)(4)(A)(ii) to allow cultivation facilities to sell marijuana to dispensaries, adult use dispensaries, processors, or other cultivation facilities;

Portion of Measure addressed by Clause 8:

i) §8(m)(4)(A)(ii) of Amendment 98 is amended to read: "A medical or Tier One cultivation facility may sell marijuana in any form to a dispensary, adult use dispensary, processor or other cultivation facility." (p. 5 of 11 – Para Sec. 5(i)).

Excerpt of Current law addressed by Clause 8

Amendment 98 §8(m)(4)(A)(ii):

> *(ii) However, a cultivation facility shall not sell marijuana in any form except to a dispensary or other cultivation facility.*

CLAUSE 9:

; amending Amendment 98, §§ 10(b)(8)(A) and 10(b)(8)(G) to provide that limits on the amount of medical marijuana dispensed shall not include adult use cannabis purchases;

Portion of Measure addressed by Clause 9:

j) §10(b)(8)(A) of Amendment 98 is amended to read: "A qualifying patient, designated caregiver acting on behalf of a qualifying patient shall not be dispensed more than a total of two and one-half ounces (2 ½ oz.) of usable medical marijuana during a fourteen-day period; this total shall not include any purchases of adult use cannabis as authorized by state law." (p. 5 of 11 – Para Sec. 5(j)).

k) §l0(b)(8)(G) of Amendment 98 is amended to read: "It is the specific intent of this Amendment that no qualifying patient, designated caregiver acting on behalf of a qualifying patient be dispensed more than a total of two and one-half ounces (2 ½ oz.) of usable marijuana during a fourteen-day period whether the usable marijuana is dispensed from one or any combination of dispensaries; this total shall not include any purchases of adult use cannabis as authorized by state law." (p. 5 of 11 – Para Sec. 5(k)).

Excerpt of Current Law Addressed by Clause 9

Amendment 98 §10(b)(8)(A):

(b)(1) This subsection governs the operations of dispensaries and cultivation facilities.

...

(8)(A) A qualifying patient or designated caregiver acting on behalf of a qualifying patient shall not be dispensed more than a total of two and one-half ounces (2 ½ oz.) of usable marijuana during a fourteen-day period.

Amendment 98 §10(b)(8)(G):

(b)(1) This subsection governs the operations of dispensaries and cultivation facilities.

...

(G) It is the specific intent of this Amendment that no qualifying patient or designated caregiver acting on behalf of a qualifying patient be dispensed more than a total of two and one-half ounces (2 ½ oz.) of usable marijuana during a fourteen-day period whether the usable marijuana is dispensed from one or any combination of dispensaries.

CLAUSE 10:

; amending Amendment 98, §§ 12(a)(1) and 12(b)(1) to provide that dispensaries and dispensary agents may dispense marijuana for adult use;

Portion of Measure addressed by Clause 10:

l) §12(a)(1) of Amendment 98 is amended to read: "Except as provided in §3 of this amendment and subdivision (a)(2) of this section, a dispensary may not dispense, deliver, or otherwise transfer marijuana to a person other than a qualifying patient, designated caregiver or for adult use as authorized by state law." (p. 6 of 11 – Para Sec. 5(l)).

m) §12(b)(1) of Amendment 98 is amended to read: "Except as provided in § 3 of this amendment, the Alcoholic Beverage Control Division shall immediately revoke the registry identification card of a dispensary agent who has dispensed, delivered, or otherwise transferred marijuana to a person other than a qualifying patient, designated caregiver or for adult use as authorized by state law, and that dispensary agent shall be disqualified from serving as a dispensary agent." (p. 6 of 11 – Para Sec. 5(m)).

Excerpt of Current Law Addressed by Clause 10

Amendment 98 §12(a)(1):

(a)(1) Except as provided in § 3 of this amendment and subdivision (a)(2) of this section, a dispensary may not dispense, deliver, or otherwise transfer marijuana to a person other than a qualifying patient or designated caregiver.

...

(b)(1) Except as provided in § 3 of this amendment, the Alcoholic Beverage Control Division shall immediately revoke the registry identification card of a dispensary agent who has dispensed, delivered, or otherwise transferred marijuana to a person other than a qualifying patient or designated caregiver, and that dispensary agent shall be disqualified from serving as a dispensary agent.

CLAUSE 11:

; amending Amendment 98, § 13(a) to allow medical and adult use cultivation facilities to sell marijuana to adult use dispensaries;

Portion of Measure addressed by Clause 11:

n) §13(a) of Amendment 98 is amended to read: "A cultivation facility may sell marijuana plants, seeds, and usable marijuana only to a dispensary, an adult use dispensary, other cultivation facility, or processor."

Excerpt of Current Law Addressed by Clause 10

Amendment 98 §13(a):

(a) A cultivation facility may sell marijuana plants, seeds, and usable marijuana only to a dispensary, other cultivation facility, or processer.

CLAUSE 12:

; repealing Amendment 98, § 17 and prohibiting state or local taxes on the cultivation, manufacturing, sale, use, or possession of medical marijuana;

Portion of Measure addressed by Clause 12:

o) §17 of Amendment 98, concerning sales and special privilege tax and its distribution, is repealed in its entirety and replaced with the following: "No state or political subdivision may impose a sales, use, excise, special privilege or other tax of any kind upon the cultivation, manufacturing, sale, use or possession of medical marijuana." (p. 6 of 11 – Para Sec. 5(o)).

Excerpt of Current Law Addressed by Clause 12

Amendment 98 §17:

(a) (1) The sale of usable marijuana is subject to all state and local sales taxes at the same rate as other tangible personal property.

(2) The sale of usable marijuana is also subject to the Arkansas Medical Marijuana Special Privilege Tax Act of 2017, § 26-57-1501 et seq., or its successor.

(b) The state sales and special privilege tax revenues received by the Department of Finance and Administration from the sale of usable marijuana under this amendment shall be distributed as follows:

(1) All moneys received as part of this amendment are designated as special revenue and the funds collected shall be deposited into the State Treasury and credited to the Arkansas Medical Marijuana Implementation and Operations Fund;

(2) All moneys received as part of this amendment prior to the effective date of this section shall be immediately transferred to the Arkansas Medical Marijuana Implementation and Operations Fund upon the effective date of this section;

(3) In order for the Chief Fiscal Officer of the State to determine the expenses that state agencies incurred due to the passage of this amendment, the following state entities shall submit a report to the Chief Fiscal Officer of the State no later than May 1 of each year of the projected expenses for the next fiscal year, including without limitation expenses as set out in subdivision (b)(4) of this section:

(A) The Alcoholic Beverage Control Division of the Department of Finance and Administration;

(B) The Department of Health;

(C) The Medical Marijuana Commission; and

(D) Any other state agency that incurs implementation, administration, or enforcement expenses related to this amendment; and

(4) (A) From time to time, the Chief Fiscal Officer of the State shall transfer on his or her books and those of the Treasurer of State and the Auditor of State the amounts as set out in subdivision (b)(3) of this section or so much as is available in proportion to the amount identified by each agency in subdivision (b)(3) of this section from the Arkansas Medical Marijuana Implementation and Operations Fund to the Miscellaneous Agencies Fund Account for the Alcoholic Beverage Control Division of the Department of Finance and Administration, the paying account as determined by the Chief Fiscal Officer for the Department of Health, the Medical Marijuana Commission Fund, and any other fund necessary to the implementation, administration, or enforcement of this amendment to pay for or reimburse personal services, operating expenses, professional fees, equipment, monitoring, auditing, and other miscellaneous expenses of this amendment.

(B) At the end of each fiscal year, any unobligated balances of the amounts transferred shall be deducted from the amount transferred in the next fiscal year as authorized in subdivision (b)(4)(A) of this section.

(C) Any unanticipated expenses or expenses over the amount transferred may be added from time to time to the transfer amount authorized in subdivision (b)(4)(A) of this section.

(D) The Department of Finance and Administration shall report at the end of the fiscal year to the Legislative Council, or to the Joint Budget Committee if during a legislative session, the following information:

(i) The total annual amount received as a result of this amendment;

(ii) The amount transferred to each agency; and

(iii) Copies of the report submitted to the Chief Fiscal Officer of the State identifying estimated expenses as set out in subdivision (b)(3) of this section.

(c) After the transfer described in subsection (b) of this section, the amounts remaining in the Arkansas Medical Marijuana Implementation and Operations Fund shall be distributed one hundred percent (100%) to the General Revenue Fund Account.

(d) An entity receiving a grant of state sales tax revenue under subsection (b) of this section may make one (1) or more successive grant applications for the same project or projects.

CLAUSE 13:

; repealing Amendment 98, § 23 and prohibiting legislative amendment, alteration, or repeal of Amendment 98 without voter approval;

Portion of Measure addressed by Clause 13:

p) §23 of Amendment 98, concerning amendment by the General Assembly, is repealed in its entirety and replaced with the following: "Absent a vote of the people, the General Assembly may not amend, alter, or repeal this amendment." (p. 6 of 11 – Para Sec. 5(p)).

Excerpt of Current Law Addressed by Clause 13

Amendment 98 § 23:

(a) Except as provided in subsection (b) of this section, the General Assembly, in the same manner as required for amendment of laws initiated by the people, may amend the sections of this amendment so long as the amendments are germane to this section and consistent with its policy and purposes.

(b) The General Assembly shall not amend the following provisions of this amendment:

(1) Subsections (a), (b), and (c) of § 3;

(2) Subsection (h), (i), and (j) of § 8; and

(3) Section 23.

CLAUSE 14:

; amending Amendment 98, § 24(f)(1)(A)(i) to allow transporters or distributors licensed under Amendment 98 to deliver marijuana to adult use dispensaries and cultivation facilities licensed under this amendment;

Portion of Measure addressed by Clause 14:

q) §24(f)(l)(A)(i) of Amendment 98 is hereby amended to read: "A transporter or distributor licensed under this section may: (i) Acquire, possess, deliver, transfer, transport, or distribute marijuana to a dispensary, adult use dispensary, medical, Tier One or Tier Two adult use cultivation facility, or processor; and". (p. 6 of 11 – Para Sec. 5(q)).

Excerpt of Current Law Addressed by Clause 14

Amendment 98 § 24(f)(1)(A)(i):

(f)(1)(A) A transporter or distributer licensed under this section may:
(i) Acquire, possess, deliver, transfer, transport, or distribute marijuana to a dispensary, cultivation facility, or processor; and

CLAUSE 15:

; requiring the Alcoholic Beverage Control Division of the Department of Finance and Administration ("ABC") to regulate issuance and renewal of licenses for cultivation facilities and adult use dispensaries and to regulate licensees;

Portion of Measure addressed by Clause 15:

a) ABC shall administer and regulate Tier One adult use cultivation facility, Tier Two adult use cultivation facility, and adult use dispensary licenses, including their issuance and renewal, and shall administer and enforce the provisions of this amendment relating to all licensees. (p. 6 of 11 – Part Sec. 6(a)).

CLAUSE 16:

; requiring adult use dispensaries to purchase cannabis only from licensed medical or adult use cultivation facilities and dispensaries;

Portion of Measure addressed by Clause 16:

b) A Tier One adult use cultivation facility license or a Tier Two adult use cultivation facility license is authorized to produce and sell usable cannabis as provided in §3(d) and §3(i). (p. 7 of 11 – Para Sec. 6(b)).

c) An adult use dispensary is authorized to purchase cannabis from a commercial facility licensed under this amendment or from a cultivation facility or dispensary licensed under Amendment 98 and to package, sell and deliver cannabis for adult use. (p. 7 of 11 – Para Sec. 6(c)).

CLAUSE 17:

; requiring issuance of Tier One adult use cultivation facility licenses to cultivation facility licensees under Amendment 98 as of November 8, 2022, to operate on the same premises as their existing facilities and forbidding issuance of additional Tier One adult use cultivation licenses;

Portion of Measure addressed by Clause 17:

d) On or before March 7, 2023, ABC shall issue a Tier One adult use cultivation facility license to each entity or individual holding a cultivation facility license under Amendment 98 on November 8, 2022. The Tier One license will be issued for the same premises as the facility licensed under Amendment 98 and the two licenses must be maintained on the same premises. No more than eight (8) Tier One adult use cultivation licenses shall be issued. (p. 7 of 11 – Para Sec. 6(d)).

CLAUSE 18:

; requiring issuance of adult use dispensary licenses to dispensary licensees under Amendment 98 as of November 8, 2022, for dispensaries on their existing premises and at another location licensed only for adult use cannabis sales;

Portion of Measure addressed by Clause 18:

e) On or before March 7, 2023, ABC shall issue an adult use dispensary license to each entity or individual holding a dispensary license under Amendment 98 on November 8, 2022 for an establishment to be located on the same premises as the facility licensed under Amendment 98 and the two licenses must be maintained on the same premises.

On or before March 7, 2023, ABC shall issue a second adult use dispensary license to each entity or individual holding a dispensary license under Amendment 98 on November 8, 2022, for an establishment located at least 5 miles from a dispensary licensed under Amendment 98, which shall be licensed only for sales of adult use cannabis under this amendment. (p. 7 of 11 – Para Sec. 6(e)).

CLAUSE 19:

; requiring issuance by lottery of 40 additional adult use dispensary licenses and 12 Tier Two adult use cultivation facility licenses;

Portion of Measure addressed by Clause 19:

f) On or before July 5, 2023, ABC shall issue 40 additional adult use dispensary licenses which shall be chosen by lottery in compliance with procedures established by rules enacted under section 60) of this amendment and shall be located at least 5 miles from a dispensary licensed under Amendment 98. No more than one hundred twenty (120) adult use dispensary licenses shall be issued. (p. 7 of 11 – Para Sec. 6 (f)).

g) On or before November 8, 2023, ABC shall issue 12 Tier Two adult use cultivation facility licenses. All of the licenses issued pursuant to this section be shall be chosen by lottery in compliance with procedures established by rules enacted under section 60) of this amendment. No more than twelve (12) Tier Two adult use cultivation licenses shall be issued.

CLAUSE 20:

; prohibiting cultivation facilities and dispensaries near schools, churches, day cares, or facilities serving the developmentally disabled that existed before the earlier of the initial license application or license issuance;

Portion of Measure addressed by Clause 20:

h) All Tier One and Tier Two adult use cultivation facilities licensed under this amendment must be located at least three thousand (3,000) feet from a public or private school, church, daycare center, or facility for individuals with developmental disabilities pre-existing the facility's date of initial application or licensure under this amendment or Amendment 98, whichever is earliest. All adult use dispensaries licensed under this amendment must be located at least one thousand five hundred (1,500) feet from a public or private school, church, daycare center, or facility for individuals with developmental disabilities pre-existing the earliest of the facility's date of initial application or licensure. (p 7/8 of 11 – Para Sec. 6(h)).

CLAUSE 21:

; requiring all adult use only dispensaries to be located at least five miles from dispensaries licensed under Amendment 98;

Portion of Measure addressed by Clause 21:

e) On or before March 7, 2023, ABC shall issue an adult use dispensary license to each entity or individual holding a dispensary license under Amendment 98 on November 8, 2022 for an establishment to be located on the same premises as the facility licensed under Amendment 98 and the two licenses must be maintained on the same premises.

On or before March 7, 2023, ABC shall issue a second adult use dispensary license to each entity or individual holding a dispensary license under Amendment 98 on November 8, 2022, for an establishment located at least 5 miles from a dispensary licensed under Amendment 98, which shall be licensed only for sales of adult use cannabis under this amendment. (p. 7 of 11 – Para Sec. 6(e)-6(f)).

f) On or before July 5, 2023, ABC shall issue 40 additional adult use dispensary licenses which shall be chosen by lottery in compliance with procedures established by rules enacted under section 60) of this amendment and shall be located at least 5 miles from a dispensary licensed under Amendment 98. No more than one hundred twenty (120) adult use dispensary licenses shall be issued. (p. 7 of 11 – Para Sec. 6(e)-6(f)).

CLAUSE 22:

; prohibiting individuals from holding ownership interests in more than 18 adult use dispensaries;

Portion of Measure addressed by Clause 22:

i) No individual or entity may have an ownership interest in more than 18 adult use dispensaries. (p. 8 of 11 – Para Sec. 6(i)).

CLAUSE 23:

; requiring ABC adoption of rules governing licensing, renewal, ownership transfers, location, and operation of cultivation facilities and adult use dispensaries licensed under this amendment, as well as other rules necessary to administer this amendment;

Portion of Measure addressed by Clause 23:

j) On or before March 7, 2023, the Arkansas Beverage Control Board shall enact rules establishing the following:

1) Security and inventory requirements for cannabis on the premises of licensed Tier One and Tier Two adult use cultivation facilities and adult use dispensaries, including procedures for management of Amendment 98 and adult use inventory by a Tier One adult use cultivation facility and dispensaries licensed under Amendment 98 and this amendment, which shall not require separate physical or electronic inventories;

2) Standards and procedures for packaging and labeling of cannabis for retail sale;

3) Licensing, renewal, and ownership transfer procedures for Tier One and Tier Two adult use cultivation facility licenses and adult use dispensary licenses, which shall not include residency requirements or criminal background checks for individuals holding less than 5% ownership interest;

4) Standards and procedures for the location of each new commercial establishment license and for transfer of the license to a different location;

5) Standards to ensure that cannabis for adult use must be sold at retail in child-resistant packaging that is not designed to appeal to children; such standards may not prohibit the sale of any usable cannabis authorized under this amendment;

6) Oversight requirements for commercial establishments;

7) Record keeping requirements for commercial establishments;

8) Personnel requirements for commercial establishments;

9) Procedures for suspending or terminating licenses for commercial establishments that violate the provisions of this amendment or the rules adopted under this amendment;

10) A schedule of penalties and procedures for appealing penalties;

11) Procedures for inspection and investigations of commercial establishments; and

12) Other rules necessary for the stringent and impartial administration of the intent of this amendment.

CLAUSE 24:

; prohibiting political subdivisions from using zoning to restrict the location of cultivation facilities and dispensaries in areas not zoned residential-use only when this amendment is adopted;

Portion of Measure addressed by Clause 24:

a) Political subdivisions of this state are prohibited from creating or modifying existing zoning ordinances to restrict or impede commercial establishments from locating in any area not zoned for residential-use only on the date of the passage of this amendment. (p. 9 of 11 – Para Sec. 7(a)).

CLAUSE 25:

; allowing political subdivisions to hold local option elections to prohibit retail sales of cannabis;

Portion of Measure addressed by Clause 24:

b) A political subdivision may prohibit cannabis retail sales for adult use by a majority vote in accordance with Article 5, § 1 of the Arkansas Constitution. (p. 9 of 11 – Para Sec. 7(b)).

CLAUSE 26:

; allowing a state supplemental sales tax of up to 10% on retail cannabis sales for adult use, directing a portion of such tax proceeds to be used for an annual stipend for certified law enforcement officers, the University of Arkansas for Medical Sciences and drug court programs authorized by the Arkansas Drug Court Act, § 16-98-301 with the remainder going into general revenues, and requiring the General Assembly to appropriate funds from licensing fees and sales taxes on cannabis to fund agencies regulating cannabis;

Portion of Measure addressed by Clause 26:

a) In addition to the state and local sales taxes levied upon tangible personal property, the state of Arkansas shall levy a 10% supplemental sales tax on retail sales of cannabis for adult use under this amendment. No excise or privilege taxes may be levied on sales of cannabis for adult use.

b) Except as provided in section 8(a), each commercial establishment shall be subject to the same income, property, sales, gross receipts, use, employment, and other taxation as any for-profit business located in the county and city or town in which the commercial establishment is located.

c) 15% of the revenues derived from the supplemental sales tax on adult use sales shall be used to fund an annual stipend to all full-time law enforcement officers certified by the Commission on Law Enforcement Standards and Training and in good standing. The General Assembly shall appropriate the revenue for this purpose to a fund administered by the Department of Finance and Administration, which shall enact rules establishing eligibility and distribute available funds annually in equal shares to all eligible officers.

d) 10% of the revenues derived from the supplemental sales tax on adult use sales shall be used to fund the operations of the University of Arkansas for Medical Sciences and 5% of the revenues shall be used to fund drug court programs authorized by the Arkansas Drug Court Act, § 16-98-301 et seq or a successor program.

e) Effective January 1, 2023, the General Assembly shall appropriate sufficient funds from the licensing fees paid by commercial facilities and the revenue from sales taxes for the personnel and operating expenses necessary for the cannabis regulatory responsibilities of ABC, the Department of Health and the Medical Marijuana Commission or their successor agencies.

f) Remaining revenue shall be directed to general revenue.

(p. 9-10 of 11 – Para Secs. 8(a) -(f)).

CLAUSE 27:

; providing that cultivation facilities and adult use dispensaries are otherwise subject to the same taxation as other for-profit businesses;

Portion of Measure addressed by Clause 27:

b) Except as provided in section 8(a), each commercial establishment shall be subject to the same income, property, sales, gross receipts, use, employment, and other taxation as any for-profit business located in the county and city or town in which the commercial establishment is located. (p. 9 of 11 – Para Sec. 8(b)

CLAUSE 28:

; prohibiting excise or privilege taxes on retail sales of cannabis for adult use;

Portion of Measure addressed by Clause 28:

a) In addition to the state and local sales taxes levied upon tangible personal property, the state of Arkansas shall levy a 10% supplemental sales tax on retail sales of cannabis for adult use under this amendment. No excise or privilege taxes may be levied on sales of cannabis for adult use. (p. 9 of 11 – Para Sec. 8(a)(second clause, emphasis added)).

CLAUSE 29:

; providing that this amendment does not limit employer cannabis policies, limit restrictions on cannabis combustion on private property, affect existing laws regarding driving under the influence of cannabis, permit minors to buy, possess, or consume cannabis, or permit cultivation, production, distribution, or sale of cannabis not expressly authorized by law;

Portion of Measure addressed by Clause 29:

a) Nothing m this amendment shall limit the ability of employers to establish drug-free workplace policies restricting the adult use of cannabis.

b) Nothing in this amendment shall limit the ability of property owners to restrict or prohibit the combustion of cannabis on private property.

c) Nothing in this amendment affects existing laws regarding operation of a motorized vehicle while under the influence of cannabis.

d) Nothing in this amendment permits the transfer of adult use cannabis to minors.

e) Nothing in this amendment permits a minor to buy, possess or consume adult use cannabis.

f) Nothing m this amendment permits the cultivation, production, distribution, or sale of cannabis by individuals or entities except as authorized under this amendment or under Amendment 98.

(p. 10 of 11 – Para Sec. 9(a)-(f)).

CLAUSE 30:

; and prohibiting legislative amendment, alteration, or repeal of this amendment without voter approval;

Portion of Measure addressed by Clause 30:

Absent a vote of the people, the General Assembly may not amend, alter, or repeal this amendment. (p. 11 of 11 – Para Sec. 12).

III. Full Text of the Measure:

BE IT ENACTED BY THE PEOPLE OF THE STATE OF ARKANSAS.

§1 Short Title

This amendment to the Arkansas Constitution shall be known as the "Arkansas Adult Use Cannabis Amendment."

§2 Effective Date; Intent

This amendment shall be effective on and after November 18, 2022. The intent of this amendment is to authorize the possession, personal use, and consumption of cannabis by adults and to authorize the cultivation and sale of cannabis by licensed commercial facilities under the limitations provided in this amendment.

§3 Definitions

a) "Adult" means a person who is twenty-one (21) years of age or older.

b) "Adult use cannabis" means usable cannabis authorized for possession, personal use, and consumption by adults under this amendment, without regard to any possession and use of medical cannabis that may be authorized by Amendment 98.

c) "ABC" means the Alcoholic Beverage Control Division of the Arkansas Department of Finance and Administration, the Alcoholic Beverage Control Board, or a successor agency of state government.

d) "Tier One adult use cultivation facility" means a commercial establishment licensed under this amendment to cultivate, prepare, manufacture, process, package, sell to and deliver cannabis to another commercial establishment for retail sale by any licensed adult use dispensary.

e) "Adult use dispensary" means a commercial establishment licensed under this amendment to purchase, package, sell, and deliver cannabis for adult use.

f) "Amendment 98" means the Arkansas Medical Marijuana Amendment of 2016, Amendment 98 to the Arkansas Constitution.

g) "Cannabis" means marijuana and other substances including any parts of the plant *Cannabis sativa,* whether growing or not, its seeds and the resin extracted from any part of the plant; and any compound, manufacture, salt, derivative, mixture, isomer or preparation of the plant, including tetrahydrocannabinol and all other cannabinol derivatives, whether produced directly or indirectly by extraction.

h) "Commercial establishment" means a Tier One cultivation facility, Tier Two cultivation facility, or adult use dispensary licensed under this amendment.

i) "Tier Two adult use cultivation facility" means a commercial establishment licensed under this amendment to cultivate, prepare, manufacture, package, sell to and deliver cannabis to adult use dispensaries for retail sale, which may grow no more than 250 mature cannabis plants at any one time.

j) "Usable cannabis" means the stalks, seeds, roots, dried leaves, flowers, oils, vapors, waxes, and other portions of the cannabis plant, and any mixture or preparation thereof, but does not include the weight of any other ingredient that may be combined with cannabis. This term may be used interchangeably with "usable marijuana."

§4 Possession; Retail Sales

a) Adults are authorized under Arkansas state law to possess up to 1 ounce of adult use cannabis acknowledging that as of January 24, 2022, possession and sale of cannabis is illegal under federal law.

b) Beginning on March 8, 2023, all types of usable cannabis, including the inventory of usable cannabis which was produced pursuant to

Amendment 98, shall be authorized for immediate wholesale and retail sale for adult use by commercial establishments licensed under this amendment.

§5 Effect on Amendment 98

This amendment shall amend Amendment 98 as follows:

a) §3(e) of Amendment 98 is amended to read: "A medical or adult use dispensary may receive, transfer, or sell marijuana seedlings, plants or usable marijuana to and from medical, Tier One and Tier Two adult use cultivation facilities, or other medical or adult use dispensaries in Arkansas, and may accept marijuana seeds from any individual authorized under applicable state law to possess marijuana seeds."

b) §4(b)(2) of Amendment 98 is amended to read: "Testing standards for marijuana distributed to qualifying patients. Labeling standards shall be established and enforced by the Alcoholic Beverage Control Board; and"

c) §8(c) of Amendment 98, concerning residency of cultivation facility and dispensary owners, is repealed in its entirety.

d) §8(e)(5)(A)-(B) of Amendment 98, regarding the maximum dosage limit per portion, is repealed in its entirety and replaced with the following: "Standards to ensure that marijuana must be sold at retail in child resistant packaging that is not designed to appeal to children; such standards may not prohibit the sale of any usable cannabis authorized under this amendment or other applicable state laws."

e) §8(e)(8)(A)-(F) of Amendment 98, regarding advertising restrictions, is repealed in its entirety and replaced with the following: "Advertising restrictions for dispensaries and cultivation facilities which are narrowly tailored to ensure that advertising is not designed to appeal to children."

f) §8(k) of Amendment 98 is amended to add an additional subsection (6): "Individuals with less than 5% ownership in an entity with a dispensary

or cultivation license are exempt from the criminal background check requirements."

g) §8(m)(l)(A) of Amendment 98 is amended to read: "A dispensary licensed under this section may acquire, possess, manufacture, process, prepare, deliver, transfer, transport, supply, and dispense marijuana, marijuana paraphernalia, and related supplies and educational materials to a qualifying patient or designated caregiver."

h) §8(m)(3)(A)(i) of Amendment 98 is amended to read: "One hundred (100) mature marijuana plants at any one (1) time plus seedlings; and"

i) §8(m)(4)(A)(ii) of Amendment 98 is amended to read: "A medical or Tier One cultivation facility may sell marijuana in any form to a dispensary, adult use dispensary, processor or other cultivation facility."

j) §10(b)(8)(A) of Amendment 98 is amended to read: "A qualifying patient, designated caregiver acting on behalf of a qualifying patient shall not be dispensed more than a total of two and one-half ounces (2 ½ oz.) of usable medical marijuana during a fourteen -day period; this total shall not include any purchases of adult use cannabis as authorized by state Jaw."

k) §10(b)(8)(G) of Amendment 98 is amended to read: "It is the specific intent of this Amendment that no qualifying patient, designated caregiver acting on behalf of a qualifying patient be dispensed more than a total of two and one-half ounces (2 ½ oz.) of usable marijuana during a fourteen-day period whether the usable marijuana is dispensed from one or any combination of dispensaries; this total shall not include any purchases of adult use cannabis as authorized by state law."

l) §12(a)(l) of Amendment 98 is amended to read: "Except as provided in §3 of this amendment and subdivision (a)(2) of this section, a dispensary may not dispense, deliver, or otherwise transfer marijuana to a person other than a qualifying patient, designated caregiver or for adult use as authorized by state law."

m) §12(b)(l) of Amendment 98 is amended to read: "Except as provided in§3 of this amendment, the Alcoholic Beverage Control Division shall immediately revoke the registry identification card of a dispensary agent who has dispensed, delivered, or otherwise transferred marijuana to a person other than a qualifying patient, designated caregiver or for adult use as authorized by state law, and that dispensary agent shall be disqualified from serving as a dispensary agent."

n) §13(a) of Amendment 98 is amended to read: "A cultivation facility may sell marijuana plants, seeds, and usable marijuana only to a dispensary, an adult use dispensary, other cultivation facility, or processor."

o) §17 of Amendment 98, concerning sales and special privilege tax and its distribution, is repealed in its entirety and replaced with the following: "No state or political subdivision may impose a sales, use, excise, special privilege or other tax of any kind upon the cultivation, manufacturing, sale, use or possession of medical marijuana."

p) §23 of Amendment 98, concerning amendment by the General Assembly, is repealed in its entirety and replaced with the following: "Absent a vote of the people, the General Assembly may not amend, alter, or repeal this amendment."

q) §24(f)(l)(A)(i) of Amendment 98 is hereby amended to read: "A transporter or distributor licensed under this section may: (i) Acquire, possess, deliver, transfer, transport, or distribute marijuana to a dispensary, adult use dispensary, medical, Tier One or Tier Two adult use cultivation facility, or processor; and".

§6 Tier One and Tier Two Cultivation Facility and Adult Use Dispensary Licensing and Regulation

a) ABC shall administer and regulate Tier One adult use cultivation facility, Tier Two adult use cultivation facility, and adult use dispensary licenses, including their issuance and renewal, and shall administer and enforce the provisions of this amendment relating to all licensees.

b) A Tier One adult use cultivation facility license or a Tier Two adult use cultivation facility license is authorized to produce and sell usable cannabis as provided in §3(d) and §3(i).

c) An adult use dispensary 1s authorized to purchase cannabis from a commercial facility licensed under this amendment or from a cultivation facility or dispensary licensed under Amendment 98 and to package, sell and deliver cannabis for adult use.

d) On or before March 7, 2023, ABC shall issue a Tier One adult use cultivation facility license to each entity or individual holding a cultivation facility license under Amendment 98 on November 8, 2022. The Tier One license will be issued for the same premises as the facility licensed under Amendment 98 and the two licenses must be maintained on the same premises. No more than eight (8) Tier One adult use cultivation licenses shall be issued.

e) On or before March 7, 2023, ABC shall issue an adult use dispensary license to each entity or individual holding a dispensary license under Amendment 98 on November 8, 2022 for an establishment to be located on the same premises as the facility licensed under Amendment 98 and the two licenses must be maintained on the same premises. On or before March 7, 2023, ABC shall issue a second adult use dispensary license to each entity or individual holding a dispensary license under Amendment 98 on November 8, 2022, for an establishment located at least 5 miles from a dispensary licensed under Amendment 98, which shall be licensed only for sales of adult use cannabis under this amendment.

f) On or before July 5, 2023, ABC shall issue 40 additional adult use dispensary licenses which shall be chosen by lottery in compliance with procedures established by rules enacted under section 6(j) of this amendment and shall be located at least 5 miles from a dispensary licensed under Amendment 98. No more than one hundred twenty (120) adult use dispensary licenses shall be issued.

g) On or before November 8, 2023, ABC shall issue 12 Tier Two adult use cultivation facility licenses. All of the licenses issued pursuant to this section be shall be chosen by lottery in compliance with procedures established by rules enacted under section 6(j) of this amendment. No more than twelve (12) Tier Two adult use cultivation licenses shall be issued.

h) All Tier One and Tier Two adult use cultivation facilities licensed under this amendment must be located at least three thousand (3,000) feet from a public or private school, church, daycare center, or facility for individuals with developmental disabilities pre-existing the facility's date of initial application or licensure under this amendment or Amendment 98, whichever is earliest. All adult use dispensaries licensed under this amendment must be located at least one thousand five hundred (1,500) feet from a public or private school, church, daycare center, or facility for individuals with developmental disabilities pre-existing the earliest of the facility's date of initial application or licensure.

i) No individual or entity may have an ownership interest in more than 18 adult use dispensaries.

j) On or before March 7, 2023, the Arkansas Beverage Control Board shall enact rules establishing the following:

1) Security and inventory requirements for cannabis on the premises of licensed Tier One and Tier Two adult use cultivation facilities and adult use dispensaries, including procedures for management of Amendment 98 and adult use inventory by a Tier One adult use cultivation facility and dispensaries licensed under Amendment 98 and this amendment, which shall not require separate physical or electronic inventories;
2) Standards and procedures for packaging and labeling of cannabis for retail sale
3) Licensing, renewal, and ownership transfer procedures for Tier One and Tier Two adult use cultivation facility licenses and adult use dispensary licenses, which shall not include residency requirements or criminal background checks for individuals holding less than 5% ownership interest;

4) Standards and procedures for the location of each new commercial establishment license and for transfer of the license to a different location;
5) Standards to ensure that cannabis for adult use must be sold at retail in child-resistant packaging that is not designed to appeal to children; such standards may not prohibit the sale of any usable cannabis authorized under this amendment;
6) Oversight requirements for commercial establishments;
7) Record keeping requirements for commercial establishments;
8) Personnel requirements for commercial establishments;
9) Procedures for suspending or terminating licenses for commercial establishments that violate the provisions of this amendment or the rules adopted under this amendment;
10) A schedule of penalties and procedures for appealing penalties;
11) Procedures for inspection and investigations of commercial establishments; and
12) Other rules necessary for the stringent and impartial administration of the intent of this amendment.

§7 Local Option Elections

a) Political subdivisions of this state are prohibited from creating or modifying existing zoning ordinances to restrict or impede commercial establishments from locating in any area not zoned for residential-use only on the date of the passage of this amendment.

b) A political subdivision may prohibit cannabis retail sales for adult use by a majority vote in accordance with Article 5, §1 of the Arkansas Constitution.

§8 Tax Revenue

a) In addition to the state and local sales taxes levied upon tangible personal property, the state of Arkansas shall levy a 10% supplemental sales tax on retail sales of cannabis for adult use under this amendment. No excise or privilege taxes may be levied on sales of cannabis for adult use.

b) Except as provided in section 8(a), each commercial establishment shall be subject to the same income, property, sales, gross receipts, use, employment, and other taxation as any for-profit business located in the county and city or town in which the commercial establishment is located.

c) 15% of the revenues derived from the supplemental sales tax on adult use sales shall be used to fund an annual stipend to all full-time law enforcement officers certified by the Commission on Law Enforcement Standards and Training and in good standing. The General Assembly shall appropriate the revenue for this purpose to a fund administered by the Department of Finance and Administration, which shall enact rules establishing eligibility and distribute available funds annually in equal shares to all eligible officers.

d) 10% of the revenues derived from the supplemental sales tax on adult use sales shall be used to fund the operations of the University of Arkansas for Medical Sciences and 5% of the revenues shall be used to fund drug court programs authorized by the Arkansas Drug Court Act, § 16-98-301 *et seq* or a successor program.

e) Effective January 1, 2023, the General Assembly shall appropriate sufficient funds from the licensing fees paid by commercial facilities and the revenue from sales taxes for the personnel and operating expenses necessary for the cannabis regulatory responsibilities of ABC, the Department of Health and the Medical Marijuana Commission or their successor agencies.

f) Remaining revenue shall be directed to general revenue.

§9 Limitations

a) Nothing m this amendment shall limit the ability of employers to establish drug-free workplace policies restricting the adult use of cannabis.

b) Nothing in this amendment shall limit the ability of property owners to restrict or prohibit the combustion of cannabis on private property.

c) Nothing in this amendment affects existing laws regarding operation of a motorized vehicle while under the influence of cannabis.

d) Nothing in this amendment permits the transfer of adult use cannabis to minors.

e) Nothing in this amendment permits a minor to buy, possess or consume adult use cannabis.

f) Nothing in this amendment permits the cultivation, production, distribution, or sale of cannabis by individuals or entities except as authorized under this amendment or under Amendment 98.

§10 Severability; Inconsistent Provisions Inapplicable

a) If any part or subpart of this amendment or the application to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or application of the amendment that can be given effect without the invalid provisions or applications, and to this end the provisions of this amendment are declared to be severable.

b) All provisions of the Constitution, statutes, regulations, and common law of this state, including without limitation laws forbidding the possession, cultivation, and use of cannabis and cannabis paraphernalia by adults, to the extent inconsistent or in conflict with any provision of this amendment, are expressly declared null and void as to, and do not apply to, any activities allowed under this amendment.

§11 Self-Executing.

This amendment shall be self-executing, and all its provisions shall be treated as mandatory, but laws may be enacted to facilitate its operation. No legislation shall be enacted, nor rules promulgated to restrict, hamper, or impair the intent of this amendment.

§12 No Amendments.

Absent a vote of the people, the General Assembly may not amend, alter, or repeal this amendment.

STATE OF ARKANSAS)
) ss.
COUNTY OF VAN BUREN)

AFFIDAVIT IN SUPPORT OF
SAVE ARKANSAS FROM EPIDEMIC (SAFE)

Comes now Affiant, David Burnett, duly deposed upon oath, and states:

1. My name is David Burnett.
2. I am over the age of 18, a citizen and resident of the State of Arkansas, am competent to make the statements herein, make the statements herein based upon my own personal knowledge, or based upon my own personal experience. I know of no reason why I could not make the statements herein.
3. I am the Chair of the Save Arkansas From Epidemic Ballot Question Committee.
4. I am a certified law enforcement official in the State of Arkansas, currently serving as the Chief of Police of a small municipal jurisdiction. I have been a certified law enforcement officer for more than twenty-eight (28) years.
5. I have used, and have been associated with police departments (and Sheriff's Departments) that have used dogs for the purpose of identifying illegal narcotics, illegal marijuana, and other illegal substances.
6. Generally, "drug dogs" are trained across multiple illegal substances at the same time, to maximize their utility, and to minimize training costs.
7. In Arkansas, it can take at least $5,000 to train a dog to help interdict illegal drugs, including the associated training for the dog's handler.
8. If marijuana is "legalized" with the proposed constitutional amendment, all of the dogs used to interdict drugs in the State of Arkansas would be rendered useless, because they cannot be "untrained" to recognize marijuana; consequently new drug dogs would have to be acquired, trained, and used to replace existing dogs.
9. Assuming at least 100 drug dogs in use in various jurisdictions in the State of Arkansas, the cost of replacements, including training, would be at least $500,000.00, if the proposed amendment to legalize recreational marijuana passes.

Further, Affiant sayeth not.

INTERVENORS' EXHIBIT C

David Burnett

VERIFICATION

Subscribed and sworn to before me, a Notary Public, duly authorized and acting, by the person well-known to me, or satisfactorily identified to me, as David Burnett, who stated that he made the foregoing Affidavit for the purposes therein stated and acknowledged that he had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 16th day of August, 2022.

NOTARY PUBLIC

My commission expires:

2/5/2025

[Notary seal]

KIMBERLY L. MANVILLE
MY COMMISSION # 12402767
EXPIRES: February 5, 2025
Van Buren County

State of Arkansas *As Engrossed: H3/18/21*
93rd General Assembly **A Bill**
Regular Session, 2021 HOUSE BILL 1640

By: Representatives Hillman, F. Allen, K. Ferguson

For An Act To Be Entitled

AN ACT TO AMEND THE LAW REGARDING INDUSTRIAL HEMP PRODUCTION; TO REPEAL THE ARKANSAS INDUSTRIAL HEMP ACT; TO ESTABLISH THE ARKANSAS INDUSTRIAL HEMP PRODUCTION ACT; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW REGARDING INDUSTRIAL HEMP PRODUCTION; TO REPEAL THE ARKANSAS INDUSTRIAL HEMP ACT; AND TO ESTABLISH THE ARKANSAS INDUSTRIAL HEMP PRODUCTION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 2, Chapter 15, Subchapter 4, is repealed.

~~Subchapter 4 — Arkansas Industrial Hemp Act~~

~~2-15-401. Title.~~

~~This act shall be known and may be cited as the "Arkansas Industrial Hemp Act".~~

~~2-15-402. Legislative intent.~~

~~This subchapter is intended to assist the state in moving to the forefront of industrial hemp production, development, and commercialization of hemp products in agribusiness, alternative fuel production, and other business sectors, both nationally and globally, and to the greatest extent possible.~~

~~2-15-403. Definitions.~~

~~As used in this subchapter:~~

~~(1) "Agribusiness" means the processing of raw agricultural products, including without limitation timber and industrial hemp, or the performance of value-added functions with regard to raw agricultural products;~~

~~(2) "Certified seed" means industrial hemp seed that has been certified as having no more tetrahydrocannabinol concentration than that adopted by federal law under the Controlled Substances Act, 21 U.S.C. § 801 et seq.;~~

~~(3) "Grower" means a person licensed to grow industrial hemp by the State Plant Board;~~

~~(4) "Hemp product" means a product made from industrial hemp, including without limitation:~~

~~(A) Certified seed for cultivation if the seeds originate from industrial hemp varieties;~~

~~(B) Cloth;~~

~~(C) Cordage;~~

~~(D) Fiber;~~

~~(E) Food;~~

~~(F) Fuel;~~

~~(G) Paint;~~

~~(H) Paper;~~

~~(I) Particleboard;~~

~~(J) Plastics; and~~

~~(K) Seed, seed meal, and seed oil for consumption;~~

~~(5) "Industrial hemp" means all parts and varieties of the plant Cannabis sativa, cultivated or possessed by a licensed grower, whether growing or not, that contain a tetrahydrocannabinol concentration of no more than that adopted by federal law in the Controlled Substances Act, 21 U.S.C. § 801 et seq.;~~

~~(6) "Seed research" means research conducted to develop or recreate better strains of industrial hemp, particularly for the purposes of seed production; and~~

~~(7) "Tetrahydrocannabinol" means the natural or synthetic~~

~~equivalents of the substances contained in the plant, or in the resinous extractives of, Cannabis sativa, or any synthetic substances, compounds, salts, or derivatives of the plant or chemicals and their isomers with similar chemical structure and pharmacological activity.~~

~~2-15-404. State Plant Board — Research program.~~

~~(a)(1) The State Plant Board may adopt rules to administer the industrial hemp research program and to license persons to grow industrial hemp under this subchapter.~~

~~(2) The board may include as part of its rules the establishment of industrial hemp testing criteria and protocols.~~

~~(b)(1) The board shall promote research and development concerning industrial hemp and commercial markets for Arkansas industrial hemp and hemp products.~~

~~(2) The board may work in conjunction with the Division of Agriculture of the University of Arkansas and the University of Arkansas Cooperative Extension Service regarding industrial hemp research programs.~~

~~(3)(A) The board may undertake research concerning industrial hemp production through the establishment and oversight of a ten-year industrial hemp research program.~~

~~(B) In conjunction with the Division of Agriculture of the University of Arkansas, the board may create a program consisting primarily of demonstration plots planted and cultivated in this state by growers licensed under this subchapter.~~

~~(C) The board may determine the location, and the total number and acreage, of each demonstration plot.~~

~~(D)(i) In conducting research under this subchapter, higher tetrahydrocannabinol concentration varieties of industrial hemp may be grown to provide breeding strains to revitalize the production of industrial hemp.~~

~~(ii) However, tetrahydrocannabinol levels shall not exceed three-tenths of one percent (0.3%).~~

~~(4) The board may seek permits or waivers from the United States Drug Enforcement Administration or the appropriate federal agency that are necessary for the advancement of the industrial hemp research program.~~

~~(5) In conjunction with the Division of Agriculture of the~~

~~University of Arkansas, the board may:~~

~~(A) Oversee and analyze the growth of industrial hemp by selected and licensed growers for agronomy research and analysis of required soils, growing conditions, and harvest methods relating to the production of industrial hemp that may be suitable for various commercial hemp products, including without limitation industrial hemp seed, paper, clothing, and oils;~~

~~(B) Conduct seed research on various types of industrial hemp that are best suited to be grown in Arkansas, including without limitation:~~

~~(i) Creation of Arkansas hybrid types of industrial hemp;~~

~~(ii) Industrial hemp seed availability; and~~

~~(iii) In the ground variety trials and seed production;~~

~~(C) Establish a program to recognize certain industrial hemp seed as being Arkansas heritage hemp seed;~~

~~(D) Study the economic feasibility of developing an industrial hemp market in various types of industrial hemp that can be grown in the state;~~

~~(E) Report on the estimated value-added benefits, including environmental benefits, that Arkansas businesses could reap by having an industrial hemp market of Arkansas-grown industrial hemp varieties in the state;~~

~~(F) Study the agronomy research being conducted worldwide relating to industrial hemp varieties, production, and utilization;~~

~~(G) Research and promote Arkansas industrial hemp and hemp seed on the world market that can be grown on farms in the state; and~~

~~(H) Study the feasibility of attracting federal and private funding for the Arkansas industrial hemp research program.~~

~~(6) The board may:~~

~~(A) Coordinate with the Arkansas Energy Office of the Division of Environmental Quality to study the use of industrial hemp in new energy technologies, including without limitation:~~

~~(i) Evaluation of the use of industrial hemp to generate electricity, and to produce biofuels and other forms of energy resources;~~

~~(ii) Growth of industrial hemp on reclaimed mine sites;~~

~~(iii) Use of hemp seed oil in the production of fuels; and~~

~~(iv) Assessment of the production costs, environmental issues, and costs and benefits involved with the use of industrial hemp for energy; and~~

~~(B) Promote awareness of the financial incentives that may be available to agribusiness and manufacturing companies that manufacture industrial hemp into hemp products to:~~

~~(i) Attract new businesses to the state;~~

~~(ii) Create a commercial market for industrial hemp;~~

~~(iii) Create new job opportunities for Arkansas residents; and~~

~~(iv) Diversify the agricultural economy of the state.~~

~~(7) The research activities under this subchapter shall not:~~

~~(A)(i) Subject the industrial hemp research program to criminal liability under the controlled substances laws of the state.~~

~~(ii) The exemption from criminal liability under subdivision (b)(7)(A)(i) of this section is a limited exemption that shall be strictly construed and that shall not apply to an activity of the industrial hemp research program that is not expressly permitted under this subchapter; or~~

~~(B) Amend or repeal by implication a provision of the Uniform Controlled Substances Act, § 5-64-101 et seq.~~

~~(8) The board shall notify the Division of Arkansas State Police and each local law enforcement agency with jurisdiction of the duration, size, and location of all industrial hemp demonstration plots.~~

~~(9) The board may cooperatively seek funds from both public and private sources to implement the industrial hemp research program created in this subchapter.~~

~~(10) By December 31, 2018, and annually thereafter, the board shall report on the status and progress of the industrial hemp research program to the Governor and to the Department of Agriculture.~~

~~(11) The board may establish and collect fees to administer the~~

~~industrial hemp research program.~~

~~2-15-405. Interagency cooperation.~~

~~(a) The Division of Agriculture of the University of Arkansas may provide research and development related services under this subchapter for the State Plant Board, including without limitation:~~

~~(1) Testing of industrial hemp;~~

~~(2) Processing of documents relating to the program of licensure;~~

~~(3) Financial accounting and recordkeeping, and other budgetary functions; and~~

~~(4) Meeting coordination and staffing.~~

~~(b)(1) The Arkansas Economic Development Commission may work in conjunction with the board to promote:~~

~~(A) The development of industrial hemp production in the state; and~~

~~(B) The commercialization of hemp products in agribusiness, alternative fuel production, and other business sectors, to the greatest extent possible.~~

~~(2) The commission may promote the availability of financial incentives offered by state government for the processing and manufacture of industrial hemp into hemp products in the state, including without limitation incentives offered to interested parties both within and without this state.~~

~~(c) Administrative expenses under this section shall be paid from the Arkansas Industrial Hemp Program Fund.~~

~~2-15-406. State Plant Board -- Reports.~~

~~The State Plant Board may report to the Department of Agriculture concerning industrial hemp policies and practices that may result in the proper legal growing, management, use, and marketing of the state's potential industrial hemp industry, including without limitation:~~

~~(1) Federal laws and regulatory constraints;~~

~~(2) The economic and financial feasibility of an industrial hemp market in Arkansas;~~

~~(3) Arkansas businesses that might use industrial hemp;~~

~~(4) Examination of research on industrial hemp production and~~

~~use;~~

~~(5) The potential for globally marketing Arkansas industrial hemp;~~

~~(6) A feasibility study of private funding for the Arkansas industrial hemp research program;~~

~~(7) Enforcement concerns;~~

~~(8) Statutory and regulatory schemes for growing of industrial hemp by private producers; and~~

~~(9) Technical support and education about industrial hemp.~~

~~2-15-407. Federal regulations regarding industrial hemp.~~

~~(a) The State Plant Board shall adopt the federal rules and regulations that are currently enacted regarding industrial hemp as in effect on January 1, 2017.~~

~~(b) This subchapter does not authorize a person to violate any federal rules or regulations.~~

~~(c) If any part of this subchapter conflicts with a provision of federal law relating to industrial hemp, the federal provision shall control to the extent of the conflict.~~

~~2-15-408. Industrial hemp licenses.~~

~~(a) The State Plant Board may establish a program of annual licensure to allow persons to grow industrial hemp in the state.~~

~~(b)(1) The industrial hemp licensure program shall include the following forms of license:~~

~~(A)(i) An industrial hemp research program grower license, to allow a person to grow industrial hemp in this state in a controlled fashion solely and exclusively as part of the industrial hemp research program overseen by the board.~~

~~(ii) A license under subdivision (b)(1)(A)(i) of this section is subject to the receipt of necessary permissions, waivers, or other forms of authentication by the United States Drug Enforcement Administration or another appropriate federal agency under applicable federal laws relating to industrial hemp; and~~

~~(B)(i) An industrial hemp grower license to allow a person to grow industrial hemp in this state.~~

~~(ii) A license under subdivision (b)(1)(B)(i) of this section is subject to the authorization of legal industrial hemp growth and production in the United States under applicable federal laws relating to industrial hemp.~~

~~(2) A license issued under this section shall authorize industrial hemp propagation only on the land areas specified in the license.~~

~~(c)(1) A person seeking an application to grow industrial hemp, whether as part of the industrial hemp research program or otherwise, shall apply to the board for the appropriate license on a form provided by the board.~~

~~(2) The board shall require the applicant to include on the form provided by the board under subdivision (c)(1) of this section the following information, including without limitation:~~

~~(A) The name and mailing address of the applicant;~~

~~(B) The legal description and global positioning coordinates of the production fields to be used to grow industrial hemp; and~~

~~(C)(i) Written consent allowing the board, if a license is ultimately issued to the applicant, to enter onto the premises on which the industrial hemp is grown to conduct physical inspections of industrial hemp planted and grown by the applicant to ensure compliance with this subchapter and rules adopted under this subchapter.~~

~~(ii) Unless a deficiency is found, the board shall make no more than two (2) physical inspections of the production fields of an industrial hemp licensee.~~

~~(iii) Tetrahydrocannabinol levels shall be tested as provided in this subchapter.~~

~~(d) Each application shall be accompanied by a nonrefundable fee of fifty dollars ($50.00).~~

~~(e) The board shall establish a fee not to exceed two hundred dollars ($200) for an:~~

~~(1) Initial license; and~~

~~(2) Annual renewal license.~~

~~(f)(1) For an industrial hemp research program grower licensee, the board may approve licenses for only those growers whose demonstration plots the board determines will advance the goals of the industrial hemp research program.~~

~~(2) The board shall base a determination under subdivision (f)(1) of this section on:~~

~~(A) Growing conditions;~~

~~(B) Location;~~

~~(C) Soil type;~~

~~(D) Various varieties of industrial hemp that may be suitable for various hemp products; and~~

~~(E) Other relevant factors.~~

~~(g) The board shall determine the number of acres to be planted under each license.~~

~~(h) A copy of or an electronic record of a license issued by the board under this section shall be forwarded immediately to the sheriff of the county in which the industrial hemp location is licensed.~~

~~(i) Records, data, and information filed in support of a license application is proprietary and subject to inspection only upon the order of a court of competent jurisdiction.~~

~~(j) At the expense of the license holder, the board shall:~~

~~(1) Monitor the industrial hemp grown by each license holder;~~

~~(2) Provide for random testing of the industrial hemp for compliance with tetrahydrocannabinol levels; and~~

~~(3) Provide for other oversight required by the board.~~

~~2-15-409. License required -- Records.~~

~~(a)(1) A person shall obtain an industrial hemp grower license under this subchapter before planting or growing industrial hemp in this state.~~

~~(2) An industrial hemp grower license holder who has planted and grown industrial hemp in this state may sell the industrial hemp to a person engaged in agribusiness or other manufacturing for the purpose of research, processing, or manufacturing that industrial hemp into hemp products.~~

~~(b) An industrial hemp grower shall:~~

~~(1) Maintain records that reflect compliance with this subchapter and all other state laws regulating the planting and cultivation of industrial hemp;~~

~~(2) Retain all industrial hemp production records for at least three (3) years;~~

~~(3) Allow industrial hemp crops, throughout sowing, growing, and~~

~~harvesting, to be inspected by and at the discretion of the State Plant Board or its agents;~~

~~(4) File with the board documentation indicating that the industrial hemp seeds planted were of a type and variety certified to have no more tetrahydrocannabinol concentration than that adopted in the federal Controlled Substances Act, 21 U.S.C. § 801 et seq.;~~

~~(5) Notify the board of the sale of industrial hemp grown under the license and the names and addresses of the persons to whom the industrial hemp was sold; and~~

~~(6) Provide the board with copies of each contract between the licensee and a person to whom industrial hemp was sold.~~

~~(c) A person licensed to grow industrial hemp under this subchapter may import and resell industrial hemp seed that has been certified as having no more tetrahydrocannabinol concentration than that adopted in the federal Controlled Substances Act, 21 U.S.C. § 801 et seq.~~

~~2-15-410. Transportation of industrial hemp.~~

~~(a)(1) Only an industrial hemp grower licensee or his or her designees or agents may transport industrial hemp off the premises of the licensee.~~

~~(2) When transporting industrial hemp off the premises of an industrial hemp grower licensee, the licensee or a designee or agent of the licensee shall carry the licensing documents from the State Plant Board, evidencing that the industrial hemp:~~

~~(A) Was grown by a licensee; and~~

~~(B) Is from certified seed.~~

~~(b) Industrial hemp that is found in this state at any location off the premises of an industrial hemp grower licensee is contraband and subject to seizure by any law enforcement officer, unless the person in possession of the industrial hemp has in his or her possession either:~~

~~(1) The proper licensing documents under this subchapter; or~~

~~(2) A bill of lading or other proper documentation demonstrating that the industrial hemp was legally imported or is otherwise legally present in this state under applicable state and federal laws relating to industrial hemp.~~

~~2-15-411. License revocation.~~

~~(a)(1) The State Plant Board shall revoke the license of an industrial hemp grower licensee who fails to comply with this subchapter or the rules adopted under this subchapter.~~

~~(2) An industrial hemp grower licensee whose license is revoked under subdivision (a)(1) of this section is ineligible for licensure under this subchapter for up to five (5) years after the revocation.~~

~~(b)(1) Before revocation of an industrial hemp grower license, the board shall provide the industrial hemp grower licensee notice and an informal hearing before the board to show cause why the license should not be revoked and the licensee's right to grow forfeited.~~

~~(2) If a license is revoked and a licensee's right to grow is forfeited as the result of an informal hearing under subdivision (b)(1) of this section, the industrial hemp grower licensee may request a formal administrative hearing before the board.~~

~~(c) An industrial hemp grower licensee whose license is revoked may appeal the final order of the board by filing an appeal in the circuit court of the district in which the licensee resides.~~

~~2-15-412. Grant funds.~~

~~(a) An industrial hemp grower licensed under this subchapter may receive funds received by the state under the Arkansas Industrial Hemp Program Fund.~~

~~(b) The State Plant Board shall adopt rules for applications for grants under this section.~~

SECTION 2. Arkansas Code Title 2, Chapter 15, is amended to add an additional subchapter to read as follows:

Subchapter 5 — Arkansas Industrial Hemp Production Act

2-15-501. Title.

This subchapter shall be known and may be cited as the "Arkansas Industrial Hemp Production Act".

2-15-502. Purpose.

(a) The purpose of this subchapter is to:

(1) Recognize industrial hemp as an agricultural product;

(2) Recognize the cultivation, processing, and transportation of industrial hemp as an agricultural activity in this state; and

(3) Ensure that this state has primary regulatory authority over *the production of industrial hemp in this state.*

(b) This subchapter shall not be construed to grant the Department of Agriculture the authority to regulate hemp processing practices or methodologies.

2-15-503. Definitions.

As used in this subchapter:

(1) “Certified seed” means industrial hemp seed that has been certified as having no more tetrahydrocannabinol concentration than that adopted by federal law under the Agricultural Marketing Act, 7 U.S.C. § 1639o, as it existed on January 1, 2021;

(2) "Geospatial location" means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object;

(3) "Grower" means a person licensed to grow and produce industrial hemp by the State Plant Board under this subchapter;

(4) “Hemp product” means a product made from industrial hemp, including without limitation:

(A) Certified seed for cultivation if the certified seed originates from industrial hemp varieties;

(B) Cloth;

(C) Cordage;

(D) Fiber;

(E) Food;

(F) Fuel;

(G) Paint;

(H) Paper;

(I) Particleboard;

(J) Plastics; and

(K) Seed, seed meal, and seed oil for consumption;

(5) "Industrial hemp" means the plant Cannabis sativa and any part of the plant, including the seeds of the plant and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether

growing or not, that contains a tetrahydrocannabinol concentration of no more than that adopted by federal law under the Agricultural Marketing Act, 7 U.S.C. § 1639o, as it existed on January 1, 2021;

(6) "Lot" means a contiguous field, greenhouse, or indoor growing structure containing the same variety or strain of Cannabis sativa throughout the area;

(7) "Measurement of uncertainty" means the parameter associated with the result of a measurement that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement;

(8) "Produce" means to grow industrial hemp for market or for cultivation for market;

(9) “Representative sample” means a portion of the submitted sample that is prepared for laboratory analysis in such a way that it accurately and completely reflects the composition of the originally submitted sample from which it was taken;

(10) “Tetrahydrocannabinol” means the natural or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of, Cannabis sativa, or any synthetic substances, compounds, salts, or derivatives of the plant or chemicals and their isomers with similar chemical structure and pharmacological activity; and

(11) “Total available tetrahydrocannabinol” means the sum of concentrations of:

(A) Tetrahydrocannabinol in the original sample submitted for analysis; and

(B) Tetrahydrocannabinol derived from tetrahydrocannabinolic acid in the sample through the laboratory procedure of post-decarboxylation.

2-15-504. State plan for monitoring and regulating production of industrial hemp.

(a) The Department of Agriculture, in consultation with the Governor, shall develop a plan to monitor and regulate the industrial hemp production program in this state.

(b) The Department of Agriculture shall submit the plan developed under subsection (a) of this section to the United States Secretary of

Agriculture as this state's plan for monitoring and regulating the production of industrial hemp as provided by 7 U.S.C. 1639p, as it existed on January 1, 2021.

(c) The Department of Agriculture shall submit an amended state plan to the United States Department of Agriculture if the Department of Agriculture makes substantive revisions to the state plan or the laws and rules related to the state plan.

2-15-505. Regulation of subchapter by State Plant Board and Department of Agriculture.

(a) The State Plant Board shall adopt rules to implement and administer this subchapter.

(b) Rules adopted by the board shall:

(1) Prescribe the sampling, inspection, and testing procedures to ensure that the tetrahydrocannabinol concentration of industrial hemp planted, grown, or harvested in this state is not more than the acceptable hemp tetrahydrocannabinol level as defined by federal law; and

(2) Provide due process for growers, including an appeals process.

(c) The Department of Agriculture shall, upon request, provide the Division of State Police and each local law enforcement agency information regarding the industrial hemp production program under this subchapter.

(d) The board may establish and collect fees to administer the program.

2-15-506. Federal laws regarding industrial hemp.

If any part of this subchapter conflicts with a provision of federal law relating to industrial hemp, the federal provision shall control to the extent of the conflict.

2-15-507. Grower licenses.

(a) The State Plant Board may establish a procedure for annual licensure to allow persons to grow industrial hemp in the state.

(b) A license issued under this section shall authorize industrial hemp propagation only on the land areas specified in the license.

(c)(1) A person seeking an application to grow industrial hemp,

whether as part of the industrial hemp research program or otherwise, shall apply to the Department of Agriculture for the appropriate license on a form provided by the department.

(2) The rules adopted by the board shall require the applicant to include, at a minimum, the following information on the form provided by the department under subdivision (c)(1) of this section:

(A) The name and mailing address of the applicant;

(B) The legal description and global positioning coordinates of the production fields to be used to grow industrial hemp; and

(C)(i) Written consent allowing the department, if a license is ultimately issued to the applicant, to enter onto the premises on which the industrial hemp is grown to conduct physical inspections of industrial hemp planted and grown by the applicant to ensure compliance with this subchapter and rules adopted under this subchapter; and

(ii) Tetrahydrocannabinol levels shall be tested as provided in this subchapter.

(d) Each application shall be accompanied by a nonrefundable fee.

(e) The board shall establish a fee for an:

(1) Initial license; and

(2) Annual renewal license.

(f) Except as provided in § 2-15-505(c), records, data, and information filed in support of a license application is proprietary and subject to inspection only upon the order of a court of competent jurisdiction.

(g) At the expense of the license holder, the department shall:

(1) Monitor the industrial hemp grown by each license holder;

(2) Provide for random testing of the industrial hemp for compliance with tetrahydrocannabinol levels; and

(3) Provide for other oversight required by board rules.

(h) The board may establish and collect fees to administer the provisions of this subchapter.

(i) Fees collected by the board under this subchapter are not refundable and may be used by the department to administer this subchapter.

2-15-508. Licenses required — Records.

(a) A person shall obtain a grower license under this subchapter

before planting or growing industrial hemp in this state.

(b) A grower shall:

(1) Maintain records that reflect compliance with this subchapter and all other state laws regulating the planting and cultivation of industrial hemp;

(2) Retain all industrial hemp production records for at least three (3) years;

(3) Allow industrial hemp crops, throughout sowing, growing, and harvesting, to be inspected by and at the discretion of the Department of Agriculture or its agents;

(4) File with the department documentation indicating that the industrial hemp seeds planted were of a type and variety certified to have no more tetrahydrocannabinol concentration than that adopted in 7 U.S.C. § 1639o, as it existed on January 1, 2021;

(5) Notify the department of the sale of industrial hemp grown under the license and the names and addresses of the persons to whom the industrial hemp was sold; and

(6) Upon request, provide the department with copies of each contract between the licensee and a person to whom industrial hemp was sold.

(c) A grower under this subchapter may import and resell industrial hemp seed that has been certified as having no more tetrahydrocannabinol concentration than that adopted in 7 U.S.C. § 1639o, as it existed on January 1, 2021.

2-15-509. Inspections and sampling.

(a) The Department of Agriculture may enter onto land described by the grower to conduct inspections and collect and test samples.

(b) The grower shall pay the cost of inspections under this section.

(c) The department may inspect, collect samples from, or test plants from any portion of a lot to ensure compliance with this subchapter.

(d) A grower shall allow the department to access the lot and the property on which the lot is located for purposes of this section.

(e) The department may establish a sampling, testing, and remediation program published as annual policy guidelines in order to implement the industrial hemp production program.

(f) During a scheduled sample collection, the grower or an authorized

representative of the grower shall be present at the lot.

(g) A representative of the sampling agency shall be provided with complete and unrestricted access during business hours to all industrial hemp and other cannabis plants, whether growing or harvested, and to all land, buildings, and other structures used for the cultivation, handling, and storage of all industrial hemp and other cannabis plants, and all locations listed in the grower license.

(h) A grower shall not harvest the industrial hemp or other cannabis plants prior to samples being taken.

2-15-510. Testing.

(a)(1) Chemical analysis shall be conducted in accordance with methods validated for use by ongoing documentation or internal or interlaboratory performance using known reference standards for the analyte or analytical specimens of interest and meeting one (1) of more of the following criteria:

(A) Endorsement or publication by reputable technical organizations;

(B) Publication in a peer-reviewed journal with sufficient documentation to establish analytical performance and interpretation of results; or

(C) Documentation of internal or interlaboratory comparison to an accepted methodology or protocol.

(2) The testing methodology shall report total available tetrahydrocannabinol.

(b)(1) Any test with corresponding measurement of uncertainty exceeding the maximum permissible total available tetrahydrocannabinol concentration is conclusive evidence that the lot represented by the sample is not in compliance with this subchapter.

(2)(A) Noncompliant hemp plants are subject to seizure or disposal, or both, by the Department of Agriculture or any law enforcement officer.

(B) The department may also require the grower to destroy noncompliant plants in compliance with this subchapter.

(c) Samples of industrial hemp plant material from one (1) lot shall not be commingled with industrial hemp plant material from other lots.

2-15-511. Grower reporting.

(a) A grower shall report industrial hemp crop acreage with the United States Farm Service Agency and shall provide the following information:

(1) The street address for each lot or greenhouse where industrial hemp will be produced;

(2) To the extent practicable, the geospatial location for each lot or greenhouse where industrial hemp will be produced;

(3) The acreage dedicated to the production of industrial hemp or greenhouse or indoor square footage dedicated to the production of industrial hemp; and

(4) The license identifier.

(b) If a grower operates in more than one (1) location, the information required under this section shall be provided for all production sites.

2-15-512. License revocation.

(a)(1) The State Plant Board shall revoke the license of a grower who fails to comply with this subchapter or the rules adopted under this subchapter.

(2) A grower license revoked under subdivision (a)(1) of this section is ineligible for licensure under this subchapter for up to five (5) years after the revocation.

(b)(1) Before revocation of a grower's license, the board shall provide the grower notice and an informal hearing to show cause why the license should not be revoked and the grower's right to grow forfeited.

(2) If a license is revoked and a grower's right to grow is forfeited as the result of an informal hearing under subdivision (b)(1) of this section, the grower may request a formal administrative hearing before the board or committee of the board, as provided in board rules.

(c) A grower whose license is revoked may appeal the final order of the board by filing an appeal in the circuit court of the district in which the grower resides.

2-15-513. Ineligibility — Fingerprinting and release of information.

(a) An individual who has been convicted of a felony related to a controlled substance under federal or state law is ineligible, during the

ten-year period following the date of the conviction, to participate in the industrial hemp production program under this subchapter.

(b) An individual who materially falsifies any information contained in an application to participate in the program is ineligible to participate in the program under this subchapter.

(c)(1)(A) All individuals desiring to participate in the program shall be fingerprinted, and the fingerprints shall be forwarded for a criminal background check through the Department of Public Safety.

(B) After the completion of the criminal background check through the department under subdivision (c)(1)(A) of this section, the fingerprints shall be forwarded by the department to the Federal Bureau of Investigation for a national criminal history record check.

(2) The applicant shall sign a release that allows the department to disclose:

(A) An Arkansas noncriminal-justice background check to the State Plant Board as evidence in an administrative hearing conducted under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.; and

(B) A fingerprint card of the applicant to the Federal Bureau of Investigation to allow a federal fingerprint-based background check to be performed.

2-15-514. Transportation of industrial hemp.

(a) Industrial hemp found off the premises of a licensee is contraband and subject to seizure by any law enforcement officer unless the individual has in his or her possession the documents required by subsection (b) of this section.

(b) An individual transporting or having in his or her possession industrial hemp shall also have in his or her possession either:

(1) A grower license issued under this subchapter; or

(2) A bill of lading or other proper documentation demonstrating that the industrial hemp was legally imported or is otherwise legally present in this state under applicable state and federal laws relating to industrial hemp.

2-15-515. Violations.

(a) A grower has committed a negligent violation of this subchapter if

the grower negligently:

(1) Fails to provide a legal description of land on which the grower produces industrial hemp;

(2) Fails to obtain a license from the State Plant Board; or

(3) Produces Cannabis sativa with a tetrahydrocannabinol concentration exceeding the tetrahydrocannabinol level threshold of a negligent violation as defined by federal rule.

(b)(1) The board may promulgate rules establishing additional negligent violations.

(2) The board shall not establish additional negligent violations that conflict with any Arkansas law governing criminal offenses.

(c) If the Department of Agriculture determines that a grower has committed a negligent violation of this subchapter or a rule adopted under this subchapter, the grower shall comply with a corrective action plan established by the department that includes without limitation a:

(A) Reasonable date by which the grower shall correct the negligent violation; and

(B) Requirement that the grower shall periodically report to the department on the compliance of the grower with the state plan for a period of not less than two (2) calendar years.

(d) A grower that negligently violates this subchapter three (3) times in a five-year period is ineligible to produce industrial hemp for a period of five (5) years beginning on the date of the third violation.

(e) If the board determines that a grower has violated this subchapter with a culpable mental state greater than negligence, the board may revoke or suspend the grower's license as provided in § 2-15-512 and shall report the grower to the Attorney General and to law enforcement.

(f) In addition to the enforcement remedies described in this section, the board may:

(1) Assess a civil penalty in an amount not to exceed five thousand dollars ($5,000) per violation; and

(2) Place the grower on probation with a corrective action plan.

2-15-516. Prohibited acts.

(a) It shall be unlawful for a grower to:

(1) Grow, process, sell or transfer, or permit the sale or

transfer of living industrial hemp plants, viable hemp seed, leaf, or floral material to any person in a manner inconsistent with this subchapter or State Plant Board rule;

(2) Hinder or obstruct in any way an authorized agent of the Department of Agriculture or any law enforcement entity in the performance of his or her duties;

(3) Provide false, misleading, or incorrect information to the department pertaining to the licensee's cultivation, processing, or transportation of industrial hemp, including without limitation information provided in any application, report, record, or inspection required or maintained in accordance with this subchapter and board rule;

(4) Commingle harvested industrial hemp material, including without limitation harvested leaf or floral material, from one plot with harvested industrial hemp material from another plot except by written consent from the department; and

(5) Violate any provision of this subchapter, or of any rule or order adopted by the board under this subchapter, or any terms and conditions of a license issued by the department.

(b) The department may issue stop orders for industrial hemp that is grown, harvested, or distributed in violation of this subchapter.

SECTION 3. Arkansas Code § 19-6-301(257), concerning special revenues, is amended to read as follows:

(257) Permit fees paid under the ~~Arkansas Industrial Hemp Act, § 2-15-401 et seq.~~ Arkansas Industrial Hemp Production Act, § 2-15-501 et seq.;

SECTION 4. Arkansas Code § 19-6-835(b) and (c), concerning the funding and use of funds of the Arkansas Industrial Hemp Program Fund, are amended to read as follows:

(b) The fund shall consist of:

(1) Fees collected under the ~~Arkansas Industrial Hemp Act, § 2-15-401 et seq.~~ Arkansas Industrial Hemp Production Act, § 2-15-501 et seq.;

(2) Gifts, grants, and other funds both public and private; and

(3) Other revenues as may be authorized by law.

(c) Any unallocated or unencumbered balances in the fund shall be invested in the fund, and any interest or other income earned from the

investments, along with the unallotted or unencumbered balances in the fund, shall not lapse but shall be carried forward for purposes of the fund and made available solely for the purposes and benefits of the industrial hemp ~~research~~ production program under the ~~Arkansas Industrial Hemp Act, § 2-15-401 et seq~~ Arkansas Industrial Hemp Production Act, § 2-15-501 et seq.

/s/Hillman

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Defining *Hemp*: A Fact Sheet

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CRS REPORT
Prepared for Members and Committees of Congress

Botanically, hemp and marijuana are from the same species of plant, *Cannabis sativa*,[1] but from different varieties or cultivars.[2] However, hemp and marijuana are genetically distinct forms of cannabis that are distinguished by their use and chemical composition as well as by differing cultivation practices in their production. While marijuana generally refers to the cultivated plant used as a psychotropic drug (whether used for medicinal or recreational purposes), hemp is cultivated for use in the production of a wide range of products, including foods and beverages, personal care products, nutritional supplements, fabrics and textiles, paper, construction materials, and other manufactured and industrial goods. *Hemp* and *marijuana* also have separate statutory definitions in U.S. law.

Despite these differences, growing hemp has been restricted in the United States until recently, and the U.S. market has been largely dependent on imports for finished products and as an ingredient for use in further processing. Hemp's association with marijuana placed its production under U.S. drug laws wherein all cannabis varieties, including hemp, were considered Schedule I controlled substances under the Controlled Substances Act (CSA).[3] Since the late 1950s, the U.S. Drug Enforcement Administration (DEA) has strictly controlled and regulated hemp production. Prior to the late 1950s, hemp in the United States was considered an agricultural commodity, and the U.S. Department of Agriculture (USDA) supported its production.[4]

Restrictions on U.S. hemp production and marketing were relaxed by changes enacted in the 2014 farm bill (Agricultural Act of 2014, P.L. 113-79) and were further relaxed in the 2018 farm bill (Agriculture Improvement Act of 2018, P.L. 115-334). These changes provide further differentiation between hemp and marijuana in terms of farm policy and federal regulatory oversight.

The Food and Drug Administration (FDA) maintains oversight of hemp-derived consumer products under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §§ 301 *et seq.*). FDA's jurisdiction includes hemp and hemp-derived products as a food and food ingredient, as well as an ingredient for use in body products, cosmetics, dietary supplements, and therapeutic products.

Hemp and marijuana are distinct in several key ways: (1) statutory definitions and regulatory oversight, (2) chemical and genetic compositions, and (3) production practices and use. This fact sheet describes these differences, which are summarized in **Figure 1**.

[1] In this report, *cannabis* refers to the plant species *Cannabis sativa* and all of its industrial, medicinal, and recreational varieties. The terms *industrial hemp* and *hemp* are used interchangeably, and the term *marijuana* refers to the plant used as a medicinal or recreational drug unless otherwise specified. The terms *Cannabis sativa* L denote use of the Linnean system of taxonomy.

[2] *Plant varieties* and *cultivars* both refer to unique characteristic of a particular plant, but they differ overall: Varieties often occur in nature, and most varieties are true to type, meaning that seedlings grown from a variety will also have the same unique characteristic of the parent plant. Cultivars are cultivated varieties and not necessarily true to type, since certain traits have been selected by growers. See Cindy Haynes, "Cultivar versus Variety," Iowa State University, February 6, 2008, https://hortnews.extension.iastate.edu/2008/2-6/CultivarOrVariety.html.

[3] 21 U.S.C. §§801 *et seq.*; Title 21 C.F.R. Part 1308.11.

[4] Strictly speaking, the CSA does not make growing hemp illegal, but makes it illegal to grow without a DEA permit.

Figure 1. Differences Between Hemp and Marijuana

	Hemp	Marijuana
Botanical Name	*Cannabis sativa*	*Cannabis sativa*
Statutory Definition	"the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol [delta-9 THC] concentration of not more than 0.3 percent on a dry weight basis" (Section 297A of the Agricultural Marketing Act of 1946 (AMA)). (7 U.S.C. 1639o).	"all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin... "marihuana" does not include — (i) hemp, as defined in section 1639o of title 7; or (ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination." (21 U.S.C. §802(16)).
Content Threshold for Psychoactive Compounds	No more than 0.3% delta-9 THC on a dry weight basis (THC is one of the leading psychoactive cannabinoids in cannabis)	No THC threshold specified
Other Cannabinoids	Reportedly more than 60 cannabinoids (including CBD and other nonpsychoactive compounds)	Reportedly more than 60 cannabinoids (including CBD and other nonpsychoactive compounds)
Psychoactive Properties	Nonpsychoactive	Psychoactive
Primary U.S. Laws	Agricultural Marketing Act of 1946 (AMA, 7 U.S.C. 1621 et seq.) Federal Food, Drug, and Cosmetic Act (FFDCA; 21 U.S.C. §§ 301 et seq.)	Controlled Substances Act (CSA, 21 U.S.C. §§801 et seq.) Federal Food, Drug, and Cosmetic Act (FFDCA; 21 U.S.C. §§ 301 et seq.)
Primary Federal Agencies with Regulatory Oversight	U.S. Department of Agriculture (USDA) Food and Drug Administration (FDA) (U.S. Department of Health and Human Services (HHS))	U.S. Drug Enforcement Administration (DEA) (U.S. Department of Justice (DOJ)) Food and Drug Administration (FDA) (U.S. Department of Health and Human Services (HHS))
Plant Part Used	Fiber, seed, and flower	Flower
Types of Products	Food and food ingredient; ingredient for body products, cosmetics, dietary supplements and therapeutic products; textiles and fabrics; other manufactured and industrial products	Recreational and medicinal products
Plant Height at Harvest	10-15 feet (fiber), 6-9 feet (seed), 4-8 feet (flower)	4-8 feet (flower)

Source: CRS from various governmental and industry sources.

Statutory Definition and Regulatory Oversight

Congress expanded the definition for *hemp* in the 2018 farm bill (amending the 2014 farm bill definition of *industrial hemp*), further distinguishing hemp and marijuana under U.S. law. *Hemp* is codified in Section 297A of the Agricultural Marketing Act of 1946 (AMA, 7 U.S.C. 1621 *et seq.*) as follows:[5]

> the plant *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

As defined in statute, hemp must contain no more than a 0.3% concentration of delta-9 tetrahydrocannabinol (delta-9 THC)—marijuana's primary psychoactive chemical. In general, a level of about 1% THC is considered the threshold for cannabis to have a psychotropic effect or an intoxicating potential.[6] Some suggest that cannabis with a THC level of greater than 1% be considered a drug varietal (e.g., marijuana),[7] with some suggesting that marijuana plants often have a THC level of 5% or more.[8] In the United States, hemp varieties or cultivars having less than 0.3% THC may be cultivated under USDA-approved license as hemp, while plant varieties or cultivars having higher amounts of THC may not be cultivated as they are considered to have too high a potential for drug use.[9]

By contrast, *marijuana* (or "marihuana," as it is spelled in the older statutes) is more broadly defined in the CSA and does not specify a permissible limit for THC or any other cannabinoid:

> (16) The term "marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.[10]

Marijuana is a Schedule I controlled substance under federal law, and, as such, the unauthorized manufacture, distribution, dispensation, and possession of marijuana is prohibited.[11] Cannabis

[5] A definition of *hemp* was originally established in the 2014 farm bill and amended by the 2018 farm bill (P.L. 115-334, §10113). The 2014 farm bill defined *industrial hemp* to mean "the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis" (7 U.S.C. §5940(b)(2)).

[6] See, for example, E. Small and D. Marcus, "Hemp: A New Crop with New Uses for North America," in *Trends in New Crops and New Uses*, ed. J. Janick and A. Whipkey (Alexandria, VA: American Society for Horticultural Science Press, 2002).

[7] F. Grotenhermen and M. Karus, "Industrial Hemp Is Not Marijuana: Comments on the Drug Potential of Fiber Cannabis," nova-Institute, http://www.internationalhempassociation.org/jiha/jiha5210.html.

[8] See, for example, M. Shipman, "Is Hemp the Same Thing as Marijuana?," North Carolina State University, February 15, 2019, https://phys.org/news/2019-02-hemp-marijuana.html; and D. Donnon, A. T. Kearney, "The New Green Rush," presented at a Food Institute webinar, January 31, 2019.

[9] E. Small and D. Marcus, "Tetrahydrocannabinol Levels in Hemp (*Cannabis sativa*) Germplasm Resources," *Economic Botany*, vol. 57, no. 4 (October 2003); and G. Leson, "Evaluating Interference of THC Levels in Hemp Food Products with Employee Drug Testing" (prepared for the province of Manitoba, Canada), July 2000.

[10] 21 U.S.C. §802(16).

[11] Generally, all cannabis varieties are commonly considered to be of a single species. However, not all researchers

that exceeds the 0.3% delta-9 THC concentration limit falls under the definition of *marijuana* and the CSA. THC levels in marijuana reportedly average about 10%, with a high of 30% concentration.[12] However, advancements in cannabis breeding have introduced plant varieties with even higher levels of THC and other cannabinoids.[13]

The definition of *industrial hemp* enacted in the 2014 farm bill allowed for hemp cultivation under certain narrowly prescribed circumstances—namely, for research purposes by research institutions and state departments of agriculture in states with laws allowing for hemp production. Although hemp production was allowed in accordance with the requirements of the 2014 farm bill provision, other aspects of production were still subject to CSA regulations and DEA oversight, including the importation of viable seeds, which still required DEA registration according to the Controlled Substances Import and Export Act (21 U.S.C. §§951-971). This and other requirements were reinforced in a 2016 joint Statement of Principles on Industrial Hemp issued by DEA, USDA, and FDA.[14] The 2016 guidance also clarified DEA's contention that the commercial sale or interstate transfer of hemp continued to be restricted. A May 2018 internal directive by the DEA later clarified that certain "products and materials that are made from the cannabis plant and which fall outside the CSA definition of marijuana (such as sterilized seeds, oil or cake made from the seeds, and mature stalks) are not controlled under the CSA."[15] Accordingly, such products may be sold and distributed throughout the United States without restriction under the CSA or its implementing regulations. The 2018 directive, however, does not apply to cannabis extracts and resins.[16]

The 2018 farm bill further expanded upon hemp policies in the 2014 farm bill by amending the CSA and removing *hemp* from the CSA definition of *marijuana* (21 U.S.C. §802(16)).[17] Removing *hemp* (as defined in AMA Section 297A) from the CSA—and thus removing it from being considered a controlled substance—effectively permits the cultivation, processing, marketing, and sale of hemp and any cannabinoid derived from hemp that is produced by an authorized grower in accordance with the 2018 farm bill, associated federal USDA regulations, and applicable state regulations. The 2018 farm bill also excludes THCs in hemp (as defined) from Schedule I of the CSA.[18] All other cannabis and cannabis-derived products remain a Schedule I substance under federal law and are thus subject to CSA regulations and DEA oversight, except for certain drug products approved by FDA. Regardless of whether a substance is hemp-derived, it is FDA's view that it is unlawful to market food or dietary supplements

agree on a single taxonomy. Other cannabis species may include *Cannabis indica* (meaning from India) and its known subspecies. See, for example, R. C. Clarke and M. D. Merlin, "Cannabis Taxonomy: The 'Sativa' versus 'Indica' Debate," *HerbalGram*, vol. 13, no. 4 (April 2016).

[12] Based on sample tests of illegal cannabis seizures from December 2007 through March 2008. National Institute of Drug Abuse, "Quarterly Report, Potency Monitoring Project," University of Mississippi, 2008.

[13] See, for example, M. A. ElSohly et al., "Changes in Cannabis Potency over the Last Two Decades (1995-2014): Analysis of Current Data in the United States," *Biological Psychiatry*, vol. 79, no. 7 (April 1, 2016): pp. 613-619.

[14] 81 *Federal Register* 156: 53395-53396, August 12, 2016; also DEA/USDA/FDA joint "Statement of Principles on Industrial Hemp," August 2016.

[15] DEA, "DEA Internal Directive Regarding the Presence of Cannabinoids in Products and Materials Made from the Cannabis Plant," May 22, 2018.

[16] 81 *Federal Register* 240: 90194-90196, December 14, 2016. See also DEA, "Clarification of the New Drug Code (7350) for Marijuana Extract," https://www.deadiversion.usdoj.gov/schedules/marijuana/m_extract_7350.html.

[17] P.L. 115-334, §12619(a).

[18] P.L. 115-334, §12619(b).

containing cannabidiol (CBD) or other cannabinoids, as well as any products making therapeutic claims without FDA approval.[19]

The 2018 farm bill also established a new regulatory framework to monitor compliance and regulate production under USDA's jurisdiction.[20] The 2018 farm bill also contains an "interstate commerce" provision that prohibits states and Indian tribes from interfering with the transport of hemp or hemp products produced in accordance with the new USDA requirements through their jurisdictions.[21] Hemp is now also eligible for federal crop insurance programs, as well as USDA research and development programs.[22] These changes returned U.S. hemp production to the status of an agricultural commodity and thus eligible for USDA-supported farm programs, similar to the status it had in the United States before the late 1950s.

Chemical and Genetic Makeup

There are many different varieties of cannabis. Although industrial hemp and marijuana are both varieties of cannabis, they have been bred for different uses and can be distinguished by their chemical and genetic compositions.[23]

Differences in Chemical Composition

The term *industrial hemp* dates back to the 1960s and generally refers to cannabis varieties that are grown primarily as an agricultural crop, such as seeds and fiber, and byproducts, such as oil, seed cake, and hurds.[24] Hemp is generally characterized by plants that are low in delta-9 THC, the dominant psychotrophic compound in *Cannabis sativa*.[25] In addition to its low THC content, hemp generally has high levels of CBD, the primary nonpsychotropic compound in *Cannabis sativa*.[26] Accordingly, a high ratio of CBD to THC might also be a metric used to differentiate hemp from other cannabis varieties.[27]

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[19] FDA, "Statement from FDA Commissioner Scott Gottlieb, M.D., on the Signing of the Agriculture Improvement Act and the Agency's Regulation of Products Containing Cannabis and Cannabis-Derived Compounds," press release, December 20, 2018.

[20] P.L. 115-334, §10114.

[21] P.L. 115-334, §10113.

[22] For more information, see CRS In Focus IF11088, *2018 Farm Bill Primer: Hemp Cultivation and Processing*.

[23] See, for example, S. L. Datwyler and G. D. Weiblen, "Genetic Variation in Hemp and Marijuana (*Cannabis sativa* L.) According to Amplified Fragment Length Polymorphisms," *Journal of Forensic Sciences*, vol. 51, no. 2 (2006).

[24] See L. Grlic, "A Combined Spectrophotometric Differentiation of Samples of Cannabis," United Nations Office on Drugs and Crime, January 1968. Hurds are soft inner core fiber of the hemp stalk. Hurds are woody in texture and mostly used in nonwoven items, including hempcrete and animal bedding.

[25] R. C. Clarke and M. D. Merlin, *Cannabis: Evolution and Ethnobotany* (University of California Press, 2013), p. 255. A psychotrophic drug is capable of affecting mental activity, behavior, or perception and may be mood-altering.

[26] U. R. Avico et al., "Variations of Tetrahydrocannabinol Content in Cannabis Plants to Distinguish the Fibre-Type from Drug-Type Plants," *UNODC Bulletin on Narcotics*, January 1985; C. W. Waller, "Chemistry of Marihuana," *Pharmacological Reviews*, vol. 23 (December 1971); K. W. Hillig and P. G. Mahlberg, "A Chemotaxonomic Analysis of Cannabinoid Variation in Cannabis (Cannabaceae)," *American Journal of Botany*, vol. 91, no. 6 (June 2004); and A. W. Zuardi et al., "Cannabidiol, a Cannabis sativa Constituent, as an Antipsychotic Drug," *Brazilian Journal of Medical and Biological Research*, vol. 39 (2006).

[27] Continued advancement in breeding and plant genetics, however, are resulting in cannabis varieties or cultivars that have more equal parts THC and CBD, making previous generalizations about the inverse relationship between THC and CBD concentration less relevant.

THC and CBD are among the subclasses of cannabinoids and their 66 known variants in *Cannabis sativa* (see **text box**).[28] *Cannabinoids* refer to the unique chemical compounds produced in the plant, which are known to exhibit a range of psychological and physiological effects.[29] These compounds exist in both hemp and marijuana in varying amounts. THC is the primary psychoactive compound in cannabis; however, the plant contains multiple THC isomers and variants.[30] While some cannabinoids are psychoactive, others, such as CBD, are not considered to be psychoactive.[31] THC and CBD are considered to be among the most abundant cannabinoids in cannabis, and some consider both to be medically valuable. THC and CBD are also the most well-known and researched cannabinoids. Among the isomers of THC, properties may vary and not all have been well characterized.[32] The interaction between THC and other cannabinoids in the cannabis plant is also not well known.

Cannabinoids

More than 480 natural components are found within the *Cannabis sativa* plant, of which 66 are classified as cannabinoids. Cannabinoids are separated into the following subclasses.

Delta-9 tetrahydrocannabinol (delta-9 THC)	Number of known variants: 9
Delta-8 tetrahydrocannabinol (delta-8 THC)	Number of known variants: 2
Cannabigerol (CBG)	Number of known variants: 6
Cannabichromene (CBC)	Number of known variants: 5
Cannabidiol (CBD)	Number of known variants: 7
Cannabinol (CBN)	Number of known variants: 7
Cannabinodiol (CBND or CBDL)	Number of known variants: 2
Cannabicyclol (CBL)	Number of known variants: 3
Cannabielsoin (CBE)	Number of known variants: 5
Cannabitriol (CBT)	Number of known variants: 9
Other miscellaneous types of cannabinoids	Number of known variants: 11

Source: J. E. Joy et al., eds., *Marijuana and Medicine: Assessing the Science Base*, Institute of Medicine, 1999; and University of Washington, Alcohol and Drug Abuse Institute, "Cannabinoids," June 2013.

[28] More than 540 phytochemicals have been described in hemp (see J. Gould, "The Cannabis Crop," *Nature*, vol. 525, no. S2–S3 [September 24, 2015]). Other present compounds include certain terpenes and phenolic compounds, including flavonoids. See footnote 49.

[29] Clarke and Merlin, *Cannabis: Evolution and Ethnobotany*, p. 255.

[30] Isomers are molecules with the same chemical formula but distinct atomic structures.

[31] Clarke and Merlin, *Cannabis: Evolution and Ethnobotany*. For example, cannabigerol, cannabichromene, and cannabidivarin are reported to be nonpsychotrophic.

[32] See, for example, E. A. Carlini, "The Good and the Bad Effects of (-) Trans-Delta-9-Tetrahydrocannabinol (Δ9-THC) on Humans," *Toxicon*, vol. 44 (July 2004), pp. 461-467. Other identified isomers of THC, such as delta-1 THC and delta-6 THC, may be related to delta-9 THC and delta-8 THC, respectively.

Differences in Genetic Composition

Scientific and genome research indicate that hemp and marijuana are neither genetically identical nor genetically similar. Although hemp and marijuana are from the same cannabis plant, available research supports the conclusion that selective breeding has resulted in two separate strains.

A 2015 study by Canadian researchers reports that "marijuana and hemp are significantly differentiated at a genome-wide level, demonstrating that the distinction between these populations is not limited to genes underlying THC production."[33]

A 2015 University of Minnesota study notes that marijuana and hemp "can be readily distinguished by the relative yield" of tetrahydrocannabinolic acid (THCA) in marijuana and cannabidiolic acid (CBDA) in hemp.[34] The study observed a "diversity of THCA and CBDA synthase sequences observed in the mapping population, the position of enzyme coding loci on the map, and patterns of expression suggest multiple linked loci." The study also found that marijuana is distinguished from hemp by compounds that appear to have been "positively selected to enhance psychoactivity."[35]

The discovery of a single gene distinguishing two plant varieties suggests that the two plants are distinct. A 2011 Canadian study further concluded that "single nucleotide variant analysis uncovered a relatively high level of variation among four cannabis types, and supported a separation of marijuana and hemp."[36] These studies find that available research and genome mapping suggest that hemp and marijuana are genetically separate and distinct plant varieties.

Genomic research in Canada supports the notion that over thousands of years of cultivation, cannabis farmers have "selectively bred *Cannabis sativa* into two distinct strains—one for fiber and seed, and one for medicine."[37]

Production Practices and Use

In general, hemp is grown and harvested differently from marijuana. Production practices among cannabis varieties vary with respect to cultivation, including plant height, density, and timing of their harvest. While marijuana is cultivated to promote the development of flowering tops and leaves of psychoactive cannabis plant varieties with elevated concentrations of THC, hemp is cultivated depending on its intended use across three different crops: fiber, seeds, and flower (**Table 1**).

[33] J. Sawler et al., "The Genetic Structure of Marijuana and Hemp," August 2015, PLoS ONE, vol. 10, no. 8, https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0133292.

[34] G. D. Weiblen et al., "Gene Duplication and Divergence Affecting Drug Content in Cannabis Sativa," *New Phytologist*, July 17, 2015, https://doi.org/10.1111/nph.13562.

[35] Weiblen et al., "Gene Duplication and Divergence."

[36] H. van Bakel et al., "The Draft Genome and Transcriptome of Cannabis Sativa," *Genome Biology*, vol. 12, no. 10 (October 20, 2011), https://doi.org/10.1186/gb-2011-12-10-r102.

[37] *ScienceDaily*, "How Hemp Got High: Cannabis Genome Mapped," October 24, 2011, citing vanBakel et al., "The Draft Genome and Transcriptome of *Cannabis Sativa*."

Table 1. Primary Hemp Crops: Fiber, Seeds, and Flowers

	Fiber	Seed/Grains	Flower
Desired Plant Material	Stalks (bast fibers and hurd/core fibers)	Dried (high in oil and protein)	Dried and cut (flower bud and floral material)
Planting Density	Dense spacing to discourage branching and flowering (35-50 plants/ft²)	Dense spacing to discourage branching and flowering (35-50 plants/ft²)	Well spaced (typically planted 3-4 feet apart on a 3-5 foot center)
Physical Characteristics	Tall plants with small stalks and less leafy material	Plants with small stalks and less leafy material	Bushy plant with wide branching to promote flowers/buds (selecting female plants is ideal)
Harvest Height	10-15 feet	6-9 feet	4-8 feet
Harvesting Considerations	Typically using hay equipment (mow, field retting 2-3 weeks, then roll balling)	Must be harvested within a short window due to seed scatter issues	Harvesting is highly labor intensive, in part given possible degradation of plant material related to efforts to preserve the chemical properties of the plant's flowering heads; also requires drying down to 10% moisture
Yields	1.0-5.5 tons per acre of dry matter (whole dry stems)	Avg: 800-1,000 lbs./acre (up to 1,600 lbs./acres)	NA (varies widely); one plant yields about one pound of dried material
Price (2017)	$70-$135 per ton	$0.65-$0.75 per pound	$25-$200 per pound
Forward Contracting	About 8¢/lb. ($160/ton).	NA	NA
Return per Acre	Up to $700 per acre	Up to $1,200 per acre	NA
Common Uses	Bast fibers used for paper, insulation, composites, and textiles; core fibers used for animal bedding, concrete, fiberboard, and oil absorbents	Foods and body products Shelled seed and fines Oil and seed cake	Extractions of plant resin (CBD, other cannabinoids) Nutraceuticals and wellness products
Postproduction Process	Decortication, removing the tough woody interior (hurd) from the softer, fibrous exterior of the stalk (separating the bast and the hurd/core fibers)	Dehulling and pressing of dried hemp seed/grains	Requires extraction using a variety of methods, including lipid or alcohol/ethanol infusions, CO_2 extraction, or extraction using other types of chemical solvents (hexane, butane), as well as solvent-free extractions; extraction may or may not involve heat decarboxylation

Source: CRS from various sources, including K. Pularski, "Hemp Industry Overview," presentation at hemp conference hosted by the Greater Peoria Economic Development Council, Illinois, January 18, 2019.

Notes: Most figures are based on 2017 Kentucky crop data. Production data for other producing regions may vary. NA = Not available.

Cannabis is dioecious, meaning that there are separate male and female plants, each with distinctive growth characteristics. For drug production, the female flowers are more valuable, whereas male plants are used to produce hemp fibers. When cannabis is grown to produce marijuana, it is cultivated from varieties where the female flowers are specifically selected to prevent the return of separate male and female plants.[38] When cultivating marijuana, the female

[38] Van Bakel et al., "The Draft Genome and Transcriptome of *Cannabis Sativa*." In botany, *dioecious* describes plant varieties that possess male and female flowers or other reproductive organs on separate, individual plants.

flowers are short and tightly clustered. In marijuana cultivation, growers remove all the male plants to prevent pollination and seed set. Some growers will hand-pollinate a female plant to get seed. This is done in isolation from the rest of the female plants. Encouraging monoecism (female-only plants) in marijuana cultivation requires the skill of a competent plant breeder and rarely occurs under noncultivated conditions. By contrast, when cannabis is grown to produce hemp fiber and seeds (using only male plants), the plant is discouraged from flowering, forcing it to grow taller with less branching.

Cannabis seeds generally fall into one of three categories: regular, feminized, or autoflowering.[39] Regular seeds produce both male and female plants at about a 50/50 ratio, but often male plants may be identified to avoid the fertilization of the female plants. Feminized seeds are specially treated plants to produce only female plants, generally by stressing a female plant to produce viable, genetically identical seeds without being fertilized by a male plant, resulting in female offspring only. Autoflowering seeds are crossbred hybrids that generally result in all female plants that often contain less THC.[40] Some seeds are being genetically and/or selectively bred to produce strains that have zero THC.[41]

Preserving the genetic composition of each variety requires careful attention to the prevention of cross-pollination. Cross-pollination among the different varieties is a concern because cannabis plants are open (e.g., wind and/or insect pollinated), and thus cross-pollination is possible if the crops are grown in close proximity. Cross-pollination would result in unwanted characteristics in both industrial hemp and marijuana. For growers of marijuana, cross-pollination with hemp could significantly lower the THC content and thus degrade the value of the marijuana crop. Likewise, growers of hemp would seek to avoid cross-pollination with marijuana plants, especially given the illegal status of marijuana. If hemp varieties are grown in or around marijuana, the hemp would pollinate the female marijuana plant. Likewise, marijuana growers would not want to plant near hemp fields, because this could result in harvests that are seedy and lower in THC and thus degrade the value of their marijuana crops. Plants grown for oilseed are also marketed according to the purity of the oilseed, and the mixing of other genotypes would degrade the value of the crop.[42]

Differences in the cultivation practices between marijuana and hemp generally result in different observable traits under field conditions.[43] Visual plant differences between hemp and marijuana generally include **plant height** (hemp is often encouraged to grow tall, whereas marijuana is selected to grow short and tightly clustered); **cultivation** (hemp is often grown as a single main stalk with few leaves and branches, whereas marijuana is encouraged to become bushy with many leaves and branches to promote flowers and buds); and **planting density** (hemp is often densely planted to discourage branching and flowering, whereas marijuana plants are well spaced).

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[39] I. Zeiler and C. Bussink, "The Cannabis Seeds Business," draft report by researchers at the United Nations Office on Drugs and Crime, 2012.

[40] Zeiler and Bussink, "The Cannabis Seeds Business."

[41] See, for example, *BusinessWire*, "GenCanna Announces First Patentable Non-GMO Hemp Genetics with 0.0% THC," January 28, 2019.

[42] An example of another plant whereby different crops are cultivated by selecting for different traits is sweet corn and field corn (or corn for grain). Corn may also naturally cross-pollinate and requires early selection and removal of plants before pollination based on certain plant traits. Intermixing plants of the two types of corn may result in cross-pollination and degradation of each crop.

[43] G. D. Weiblen, University of Minnesota, presentation at the 2013 Annual HIA Conference, Washington, DC, November 17, 2013.

In general, the period of seeding to harvest ranges from 70 to 140 days depending on its intended purpose, the cultivar or variety planted, and climatic conditions. Different cannabis varieties or cultivars may be harvested at different times depending on the growing area.

Recent advances in cannabis research and development, as well as plant breeding and the creation of new cultivars and hybrids, are resulting in plants that do not always precisely present these distinctive observable characteristics.[44] Specifically, some hemp plants are being grown to be short and bushy, encouraging larger flowers, often from high-CBD, low-THC hemp seed. Hemp plants grown for flower are planted less densely—about 3 to 5 feet apart—to encourage the plant to become bushy with many leaves with wide branching to promote flowers and buds. Similarly, marijuana's high THC content is concentrated primarily in the flowers and to a lesser extent in the leaves.

The cannabis plant's cannabinoids (e.g., CBD, THC) are generally concentrated not in the plant's seeds but in the flowering head of the plant.[45] Specifically, the heads of the mature cannabis flowers and leaves contain the trichomes—a term that refers to the small resin-like hairs/glands of the flowering buds but may also cover the leaves, bracts, and stems of plants.[46] Trichomes—the plant hairs—are among the primary source of the plant's cannabinoids. Cannabinoids may be present in other parts of the plant, including the seeds, but in lower quantities.[47] Cannabinoid concentration in hemp may also vary depending on the types of trichomes and secretory structures present.[48] Besides cannabinoids, cannabis trichomes produce other secondary metabolites, including terpenes and certain phenolic compounds, such as flavonoids.[49]

In general, each cannabis plant yields approximately one pound of dried floral material available for extraction by chemical process (**Table 1**). However, the percentage of extract generated per pound of dried material, as well as the quality and level of cannabinoids extracted, varies widely. Still, the flowers of the hemp and marijuana plant differ. Drug-grade cannabis also contains high resin concentrations, whereas fiber-grade cannabis generally has low levels of resin.

Hemp plants grown for fiber or oilseed are planted more densely—about 35-50 plants per square foot to discourage branching and flowering—than hemp plants grown for flower. For fiber and oilseed, the plant's stalk and seed are the harvested products.[50] Available 2017 production statistics for Kentucky indicate that 1 acre of hemp yields between 800 and 1,000 pounds of seed, or between 1 and more than 5 tons of dry matter (**Table 1**).[51]

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[44] CRS communication with Duane Sinning, Colorado Department of Agriculture, February 2, 2016.

[45] J. E. Joy et al., eds., *Marijuana and Medicine: Assessing the Science Base*, Institute of Medicine, 1999.

[46] C. M. Andre et al., "*Cannabis sativa*: The Plant of the Thousand and One Molecules," *Frontiers in Plant Science*, vol. 7, no. 19 (2016).

[47] See, for example, S. A. Ross et al., "GC-MS Analysis of the Total Delta9-THC Content of Both Drug- and Fiber-Type Cannabis Seeds," *Journal of Analytical Toxicology*, vol. 24, no. 8 (November-December 2000), pp. 715-717.

[48] Hemp trichome types include unicellular nonglandular trichome, cystolythic trichomes, capitate sessile trichome, capitate-stalked trichome, simple bulbous trichome, and complex bulbous trichome.

[49] Ross et al., "GC-MS Analysis." *Terpenes* refers to certain phytochemicals (or biologically active compounds) found in plants, generally associated with a plant's aromatic organic compounds. *Phenolic compounds* refers to a large class of secondary metabolites found in most plants.

[50] The stalk provides two types of fibers: (1) the interior or core short woody fibers (or hurds) and (2) the outer portion of the stem, which contains the long bast fibers (referring to the cellulosic fibers that grow on the outside of the hemp plant's stalk, which are used for animal bedding and oil absorbents, among other uses).

[51] Previous estimates from Agriculture and Agri-Food Canada suggest that about 700 pounds of seed can be pressed into about 50 gallons of oil and 530 pounds of meal, whereas 5,300 pounds of hemp straw can be transformed into about 1,300 pounds of fiber.

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AR - Arkansas Constitution Constitution Of The State Of Arkansas Of 1874 AMENDMENTS TO THE CONSTITUTION OF ARKANSAS OF 1874 AMEND. 98. ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016.

§ 8. Licensing of dispensaries and cultivation facilities.

(a)

(1) Dispensaries and cultivation facilities shall be licensed by the Medical Marijuana Commission.

(2) The commission shall administer and regulate the licensing of dispensaries and cultivation facilities, including the issuance of a:

(i) License to operate a dispensary; and

(ii) License to operate a cultivation facility.

(3) The Alcoholic Beverage Control Division shall administer and enforce the provisions of this amendment concerning dispensaries and cultivation facilities.

(b)

(1) The commission and division shall each adopt rules necessary to:

(A) Carry out the purposes of this amendment; and

(B) 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) The following individuals associated with a dispensary or cultivation facility shall be current residents of Arkansas who have resided in the state for the previous seven (7) consecutive years:

(1) The individual(s) submitting an application to license a dispensary or cultivation facility; and,

(2) Sixty percent (60%) of the individuals owning an interest in a dispensary or cultivation facility.

(d) Not later than one hundred eighty (180) days after the effective date of this amendment, the commission shall adopt rules governing:
(1) The manner in which the commission considers applications for and renewals of licenses for dispensaries and cultivation facilities;
(2) The form and content of registration and renewal applications for dispensaries and cultivation facilities; and
(3) Any other matters necessary for the commission's fair, impartial, stringent, and comprehensive administration of this amendment.
(e) Not later than one hundred eighty (180) days after the effective date of this amendment, the division shall adopt rules governing:
(1) Oversight requirements for dispensaries and cultivation facilities;
(2) Recordkeeping requirements for dispensaries and cultivation facilities;
(3) Security requirements for dispensaries and cultivation facilities;
(4) Personnel requirements for dispensaries and cultivation facilities;
(5) The manufacture, processing, packaging, labeling, and dispensing of usable marijuana to qualifying patients and designated caregivers, including without limitation:
(A) Before sale, food or drink that has been combined with usable marijuana shall not exceed ten milligrams (10 mg) of active tetrahydrocannabinol per portion and shall be physically demarked; and
(B) If portions cannot be physically determined, the entirety of the food or drink that has been combined with usable marijuana shall not contain more than ten milligrams (10 mg) of active tetrahydrocannabinol;
(6) Procedures for suspending or terminating the licenses of dispensaries and cultivation facilities 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 dispensaries and cultivation facilities;
(8) Advertising restrictions for dispensaries and cultivation facilities, including without limitation the advertising, marketing, packaging, and promotion of dispensaries and cultivation facilities with the purpose to avoid making the product of a dispensary or a cultivation facility appealing to children, including without limitation:
(A) Artwork;
(B) Building signage;
(C) Product design, including without limitation shapes and flavors;
(D) Child-proof packaging that cannot be opened by a child or that prevents ready access to toxic or harmful amount of the product, and that meets the testing requirements in accordance with the method described in 16 C.F.R. § 1700.20, as existing on January 1, 2017;
(E) Indoor displays that can be seen from outside the dispensary or cultivation facility; and
(F) Other forms of marketing related to medical marijuana;
(9) Procedures for the disposal or other use of marijuana not dispensed to a qualifying patient; and
(10) Any other matters necessary to the division's fair, impartial, stringent, and comprehensive administration of its duties under this amendment.
(f)

(1) Not later than one hundred eighty (180) days after the effective date of this amendment, the commission shall adopt rules establishing license application and license renewal fees for dispensary and cultivation facility licenses.

(2)

(A) The initial dispensary application fee shall be a maximum of seven thousand five hundred dollars ($7,500).

(B) The initial cultivation facility application fee shall be a maximum of fifteen thousand dollars ($15,000).

(C) A license that is initially issued between January 1 and July 1 may have the licensing fees up to fifty percent (50%) prorated and refunded as determined by the commission.

(g)

(1) Not later than July 1, 2017, the commission shall begin accepting applications for licenses to operate a dispensary and cultivation facility.

(2) The application shall include without limitation the following:

(A) The application fee;

(B) The legal name of the dispensary or cultivation facility;

(C) The physical address of the:

(i)

(a) Dispensary, the location of which may not be within one thousand five hundred feet (1,500') of a public or private school, church, daycare center, or facility for individuals with developmental disabilities, existing before the date of the dispensary application, which shall be calculated from the primary entrance of the dispensary to the nearest property boundary of a public or private school, church, daycare center, or facility for individuals with developmental disabilities.

(b) Subdivision (g)(2)(C)(i)*(a)* of this section does not apply to or impact existing locations of dispensaries issued a license before the effective date of this subdivision (g)(2)(C)(i)*(b)* that may be located within one thousand five hundred feet (1,500') of a facility for individuals with developmental disabilities; or

(ii) Cultivation facility, the location of which may not be within three thousand feet (3,000') of a public or private school, church, or daycare center existing before the date of the cultivation facility application, which shall be calculated from the primary entrance of the cultivation facility to the nearest property boundary of a public or private school, church, or daycare center;

(D) The name, address, and date of birth of each dispensary agent or cultivation facility agent; and

(E) If the city, town, or county in which the dispensary or cultivation facility would be located has enacted zoning restrictions, a sworn statement certifying that the dispensary or cultivation facility will operate in compliance with the restrictions.

(2) None of the owners, board members, or officers of the dispensary or cultivation facility:

(A) Shall have been convicted of an excluded felony offense;

(B) Shall have previously been an owner of a dispensary or cultivation facility that has had its license revoked; and

(C) Shall be under twenty-one (21) years of age.

(4)

(A) The commission may issue a temporary license to a another natural person in conjunction with a dispensary or a cultivation facility when the natural person whose name is on the license for the dispensary or cultivation facility ceases to be in actual control of the dispensary or cultivation facility.

(B) The commission shall adopt rules as necessary to provide temporary licenses.

(h) The commission shall issue at least twenty (20) but no more than forty (40) dispensary licenses.

(i) There shall be no more than four (4) dispensaries in any one (1) county.

(j) The commission shall issue at least four (4) but no more than eight (8) cultivation facility licenses.

(k)

(1) The commission shall conduct a criminal background check in order to carry out this section.

(2) The commission shall require each applicant for a dispensary license or cultivation facility license to apply for or authorize the commission to obtain state and national criminal background checks to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(3) The criminal background checks shall conform to the applicable federal standards and shall include the taking of fingerprints.

(4) The applicant shall authorize the release of the criminal background checks to the commission and shall be responsible for the payment of any fee associated with the criminal background checks.

(5) Upon completion of the criminal background checks, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all information obtained concerning the applicant.

(l)

(1) No individual shall own an interest in more than:

(1) One (1) cultivation facility; and,

(2) One (1) dispensary.

(m)

(1)

(A) A dispensary licensed under this section may acquire, possess, manufacture, process, prepare, deliver, transfer, transport, supply, and dispense marijuana, marijuana paraphernalia, and related supplies and educational materials to a qualifying patient or designated caregiver, but shall not supply, possess, manufacture, deliver, transfer, or sell marijuana paraphernalia that requires the combustion of marijuana to be properly utilized, including pipes, water pipes, bongs, chillums, rolling papers, and roach clips.

(B) A dispensary licensed under this section shall:

(i) Make marijuana vaporizers available for sale to qualifying patients; and

(ii) Provide educational materials about medical marijuana methods of ingestion to qualifying patients and designated caregivers, including without limitation:

(a) Warnings on the potential health risks of smoking or combusting marijuana; and

(b) Information on potential health benefits of vaporizing marijuana compared to smoking or combusting.

(2)

(A) A dispensary may receive compensation for providing the goods and services allowed by this section.

(B) A dispensary may contract with a transporter, distributer, or processer to extent of the license of the transporter, distributer, or processer.

(3)

(A) A dispensary may grow or possess:

(i) Fifty (50) mature marijuana plants at any one (1) time plus seedlings; and

(ii) All usable marijuana derived from the plants under subdivision (m)(3)(A)(i) of this section or predecessor plants.

(B) A dispensary may contract with a cultivation facility to cultivate one (1) or more mature marijuana plants the dispensary is permitted to grow.

(4)

(A)

(i) A cultivation facility may cultivate and possess usable marijuana in an amount reasonably necessary to meet the demand for the needs of qualifying patients as determined by the commission with the assistance of the Department of Health.

(ii) However, a cultivation facility shall not sell marijuana in any form except to a dispensary or other cultivation facility.

(B) A cultivation facility may also possess marijuana seeds.

(C) The commission with the assistance of the Department of Health shall promulgate rules determining the amount of marijuana reasonably necessary under subdivision (m)(4)(A) of this section.

(5)

(A) A cultivation facility may receive compensation for providing goods and services allowed by this section.

(B) A cultivation facility may contract with a transporter, distributer, or processer to extent of the license of the transporter, distributer, or processer.

(n)

(1) A dispensary license and cultivation facility license shall expire on June 30 of each calendar year and are renewable on or before June 30 of each calendar year for the fiscal year beginning July 1.

(2) The commission shall issue a renewal dispensary license or a renewal cultivation facility license within ten (10) days to any entity who complies with the requirements contained in this amendment, including without limitation the payment of a renewal fee.

(o) The commission may charge a reasonable fee as established by rule for the issuance of a renewal license.

(p) The commission and the division may collect fines or fees for any violation of a rule adopted under this section.

(q)

(1) A license for a dispensary or cultivation facility shall only be issued to a natural person.

(2) A license issued for a dispensary or cultivation facility shall be transferable only to a natural person upon approval of the commission.

(r) Data or records submitted to the division or commission under rules adopted under this amendment may be shared with the Department of Health and the State Insurance

Department for purposes of the Arkansas all-payer claims database established under the Arkansas Healthcare Transparency Initiative Act of 2015, § 23-61-901 et seq.

(s)

(1) A dispensary shall appoint a pharmacist consultant who is a pharmacist licensed with the Arkansas State Board of Pharmacy.

(2) A pharmacist consultant shall:

(A) Register as a dispensary agent under this amendment and follow all procedures;

(B) Develop and provide training to other dispensary agents at least one (1) time every twelve (12) months from the initial date of the opening of the dispensary on the following subjects:

(i) Guidelines for providing information to qualifying patients related to risks, benefits, and side effects associated with medical marijuana;

(ii) Recognizing the signs and symptoms of substance abuse; and

(iii) Guidelines for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana;

(C) Assist in the development and implementation of review and improvement processes for patient education and support provided by the dispensary;

(D) Provide oversight for the development and dissemination of:

(i) Education materials for qualifying patients and designated caregivers that include:

(a) Information about possible side effects and contraindications of medical marijuana;

(b) Guidelines for notifying the physician who provided the written certification for medical marijuana if side effects or contraindications occur;

(c) A description of the potential effects of differing strengths of medical marijuana strains and products;

(d) Information about potential drug-to-drug interactions, including interactions with alcohol, prescription drugs, nonprescription drugs, and supplements;

(e) Techniques for the use of medical marijuana and marijuana paraphernalia; and

(f) Information about different methods, forms, and routes of medical marijuana administration;

(ii) Systems for documentation by a qualifying patient or designated caregiver of the symptoms of a qualifying patient that includes a logbook, rating scale for pain and symptoms, and guidelines for a patient's self-assessment; and

(iii) Policies and procedures for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana; and

(E) Be accessible to the dispensary or dispensary agent through:

(i) Telephonic means at all times during operating hours; and

(ii) Telephone or video conference for a patient consultation during operating hours.

(3) A dispensary shall:

(A) Post signage at the check-in station of the dispensary notifying the qualifying patient of the availability of a pharmacist consultant;

(B) Provide to the new qualifying patient of the dispensary a card containing language about a consultation with a pharmacist consultant and the contact information of the pharmacist consultant; and

(C) Post information on the website of the dispensary regarding a consultation with a pharmacist consultant, the availability of the pharmacist consultant, and the contact

information of the pharmacist consultant.

(t)

(1) A cultivation facility shall meet the following security requirements:

(A)

(i) The physical security controls set forth in 21 C.F.R. § 1301.72 — 1301.74, as existing on January 1, 2017.

(ii) The division shall adopt rules to implement subdivision (t)(1)(A)(i) of this section;

(B) All cultivation of marijuana occurs within a building, greenhouse, or other structure that:

(i) Has a complete roof enclosure supported by connecting walls that are constructed of solid material extending from the ground to the roof;

(ii) Is secure against unauthorized entry;

(iii) Has a foundation, slab, or equivalent base to which the floor is securely attached;

(iv) Meets performance standards ensuring that cultivation and processing activities cannot be and are not perceptible from the structure in terms of:

(a) Common visual observation;

(b) Odors, smells, fragrances, or other olfactory stimuli;

(c) Light pollution, glare, or brightness;

(d) Adequate ventilation to prevent mold; and

(e) Noise;

(v) Provides complete visual screening; and

(vi) Is accessible only through one (1) or more lockable doors;

(C) Current detailed plans and elevation drawings of all operational areas involved with the production of medical marijuana are maintained on the premises of the cultivation facility, including:

(i) All storage areas, ventilation systems, and equipment used for production;

(ii) All entrances and exits to the cultivation facility;

(iii) All windows, skylights, and retractable mechanisms built into the roof;

(iv) The location of all required security cameras;

(v) The location of all alarm inputs, detectors, and sirens;

(vi) All video and alarm system surveillance areas;

(vii) All production areas labeled according to the specific activity occurring within the area;

(viii) All restricted and limited access areas identified; and

(ix) All nonproduction areas labeled according to purpose;

(D) Access to areas where marijuana is grown, harvested, processed, and stored is limited to authorized personnel and:

(i) Designated by clearly marked signage; and

(ii) Locked and accessible only by authorized personnel on a current roster of authorized personnel;

(E)

(i) Written policies regarding any nonregistered agent who may visit the premises and a log of all visitors to the premises are developed and maintained.

(ii) The log shall consist of the visitor's name, purpose of visit, time of arrival, and time of departure.

(iii) Visitors to a cultivation facility shall be:

(a) Issued a visitor identification tag containing the visitor's name that shall be worn for the duration of the visit on the premises; and

(b) Escorted by a cultivation facility agent at all times while present on the premises.

(iv)

(a) However, contractors conducting repairs, maintenance, or other specific duties may be escorted to their work site and left unaccompanied while completing a job.

(b) Cultivation facility agents shall ensure that the contractor and area under repair are under video surveillance for the duration of the time spent on the premises by the contractor; and

(F)

(i) An alarm system is equipped that upon attempted unauthorized entry, transmits a signal directly to a central protection company for a local or state police agency and a designated cultivation facility agent.

(ii) The alarm system shall:

(a) Provide coverage for all points of ingress and egress to the cultivation facility, including without limitation doorways, windows, loading bays, skylights, and retractable roof mechanisms;

(b) Provide coverage of any room with an exterior wall, any room containing a safe, and any room used to grow or store medical marijuana;

(c) Be equipped with a panic drive that upon activation will not only sound any audible alarm components but will also notify law enforcement;

(d) Have duress and hold up features to enable a cultivation facility agent to activate a silent alarm notifying law enforcement of an emergency;

(e) Be equipped with failure notification systems to notify cultivation facilities and law enforcement of any failure in the alarm system; and

(f) Have the ability to remain operational during a power outage.

(2) A cultivation facility shall maintain compliance with applicable city or county building or structure rules, regulations, or ordinances and any other applicable state laws or rules regarding buildings or structures. [As amended by Acts 2017, No. 4, §§ 4-6; 2017, No. 545, § 2; 2017, No. 587, § 1; 2017, No. 594, §§ 1, 2; 2017, No. 639, § 2; 2017, No. 640, § 1; 2017, No. 641, § 1; 2017, No. 642, § 1; 2017, No. 948, § 2; 2017, No. 1023, § 3; 2017, No. 1024, §§ 2, 3; 2017, No. 1100, § 1, 2; 2017 (1st Ex. Sess.), No. 1, § 6; 2017 (1st Ex. Sess.), No. 8, § 6; 2019, No. 1004, § 1; 2021, No. 666, § 2.]

〈 Previous Next 〉

16 CFR § 1700.20 - Testing procedure for special packaging.

CFR

§ 1700.20 Testing procedure for special packaging.

(a) ***Test protocols*** -

(1) ***General requirements*** -

(i) ***Requirements for packaging.*** As specified in § 1700.15(b), special packaging is required to meet the child test requirements and the applicable adult test requirements of this § 1700.20.

(ii) ***Condition of packages to be tested*** -

(A) ***Tamper-resistant feature.*** Any tamper-resistant feature of the package to be tested shall be removed prior to testing unless it is part of the package's child-resistant design. Where a package is supplied to the consumer in an outer package that is not part of the package's child-resistant design, one of the following situations applies:

(1) In the child test, the package is removed from the outer package, and the outer package is not given to the child.

(2) In both the adult tests, if the outer package bears instructions for how to open or properly resecure the package, the package shall be given to the test subject in the outer package. The time required to remove the package from the outer package is not counted in the times allowed for attempting to open and, if appropriate, reclose the package.

(3) In both the adult tests, if the outer package does not bear any instructions relevant to the test, the package will be removed from the outer package, and the outer package will not be given to the test subject.

(B) ***Reclosable packages - adult tests.*** In both the adult tests, reclosable packages, if assembled by the testing agency, shall be properly secured at least 72 hours prior to beginning the test to allow the materials (e.g., the closure liner) to "take a set." If assembled by the testing agency, torque-dependent closures shall be secured at the same on-torque as applied on the packaging line. Application torques must be recorded in the test report. All packages shall be handled so that no damage or jarring will occur during storage or transportation. The packages shall not be exposed to extreme conditions of heat or cold. The packages shall be tested at room temperature.

(2) ***Child test*** -

(i) ***Test subjects*** -

(A) ***Selection criteria.*** Use from 1 to 4 groups of 50 children, as required under the sequential testing criteria in table 1. No more than 20% of the children in each group shall be tested at or obtained from any given site. Each group of children shall be randomly selected as to age, subject to the limitations set forth below. Thirty percent of the children in each group shall be of age 42-44 months, 40% of the children in each group shall be of age 45-48 months, and 30% of the children in each group shall be of age 49-51 months. The children's ages in months shall be calculated as follows:

(1) Arrange the birth date and test date by the numerical designations for month, day, and year (e.g., test date: 8/3/1990; birth date: 6/23/1986).

(2) Subtract the month, day, and year numbers for the birth date from the respective numbers for the test date. This may result in negative numbers for the months or days. (e.g.,

8/03/1990
− 6/23/1986
2−204

(3) Multiply the difference in years by 12 to obtain the number of months in the difference in years, and add this value to the number of months that was obtained when the birth date was subtracted from the test date (i.e., 4 × 12 = 48; 48 + 2 = 50). This figure either will remain the same or be adjusted up or down by 1 month, depending on the number of days obtained in the subtraction of the birth date from the test date.

(4) If the number of days obtained by subtracting the days in the birth date from the days in the test date is + 16 or more, 1 month is added to the number of months obtained above. If the number of days is −16 or less, subtract 1 month. If the number of days is between −15 and + 15 inclusive, no change is made in the number of months. Thus, for the example given above, the number of days is −20, and the number of months is therefore 50 − 1 = 49 months.

(B) ***Gender distribution.*** The difference between the number of boys and the number of girls in each age range shall not exceed 10% of the number of children in that range. The children selected should have no obvious or overt physical or mental handicap. A parent or guardian of each child shall read and sign a consent form prior to the child's participation. (The Commission staff will not disregard the results of tests performed by other parties simply because informed consent for children is not obtained.)

(ii) ***Test failures.*** A test failure shall be any child who opens the special packaging or gains access to its contents. In the case of unit packaging, however, a test failure shall be any child who opens or gains access to the number of individual units which constitute the

amount that may produce serious personal injury or serious illness, or a child who opens or gains access to more than 8 individual units, whichever number is lower, during the full 10 minutes of testing. The number of units that a child opens or gains access to is interpreted as the individual units from which the product has been or can be removed in whole or in part. The determination of the amount of a substance that may produce serious personal injury or serious illness shall be based on a 25-pound (11.4 kg) child. Manufacturers or packagers intending to use unit packaging for a substance requiring special packaging are requested to submit such toxicological data to the Commission's Office of Compliance.

(iii) ***Sequential test.*** The sequential test is initially conducted using 50 children, and, depending on the results, the criteria in table 1 determine whether the package is either child-resistant or not child-resistant or whether further testing is required. Further testing is required if the results are inconclusive and involves the use of one or more additional groups of 50 children each, up to a maximum of 200 children. No individual shall administer the test to more than 30% of the children tested in each group. Table 1 gives the acceptance (pass), continue testing, and rejection (fail) criteria to be used for the first 5 minutes and the full 10 minutes of the children's test. If the test continues past the initial 50-child panel, the package openings shown in table 1 are cumulative.

TABLE 1 - NUMBER OF OPENINGS: ACCEPTANCE (PASS), CONTINUE TESTING, AND REJECTION (FAIL) CRITERIA FOR THE FIRST 5 MINUTES AND THE FULL 10 MINUTES OF THE CHILDREN'S PROTOCOL TEST

Test panel	Cumulative number of children	Package openings					
		First 5 minutes			Full 10 minutes		
		Pass	Continue	Fail	Pass	Continue	Fail
1	50	0-3	4-10	11 +	0-5	6-14	15 +
2	100	4-10	11-18	19 +	6-15	16-24	25 +

3	150	11-18	19-25	26+	16-25	26-34	35+
4	200	19-30		31+	26-40		41+

(iv) ***Test procedures.*** The children shall be divided into groups of two. The testing shall be done in a location that is familiar to the children, for example, their customary nursery school or regular kindergarten. No child shall test more than two special packages. When more than one special package is being tested, each package shall be of a different ASTM type and they shall be presented to the paired children in random order. This order shall be recorded. The children shall be tested by the procedure incorporated in the following test instructions:

STANDARDIZED CHILD TEST INSTRUCTIONS

1. Reclosable packages, if assembled by the testing agency, shall be properly secured at least 72 hours prior to the opening described in instruction number 3 to allow the materials (e.g., the closure liner) to "take a set." Application torques must be recorded in the test report.

2. All packages shall be handled so that no damage or jarring will occur during storage or transportation. The packages shall not be exposed to extreme conditions of heat or cold. The packages shall be tested at room temperature.

3. Reclosable packages shall be opened and properly resecured one time (or more if appropriate), by the testing agency or other adult prior to testing. The opening and resecuring shall not be done in the presence of the children. (In the adult-resecuring test, the tester must not open and resecure the package prior to the test.) If multiple openings/resecurings are to be used, each of four (4) testers shall open and properly resecure one fourth of the packages once and then shall open and properly resecure each package a second, third, fourth, through tenth (or other specified number) time, in the same sequence as the first opening and resecuring. The packages shall not be opened and resecured again prior to testing. The name of each

tester and the package numbers that he/she opens and resecures shall be recorded and reported. It is not necessary for the testers to protocol test the packages that they opened and resecured.

4. The children shall have no overt physical or mental handicaps. No child with a permanent or temporary illness, injury, or handicap that would interfere with his/her effective participation shall be included in the test.

5. The testing shall take place in a well-lighted location that is familiar to the children and that is isolated from all distractions.

6. The tester, or another adult, shall escort a pair of children to the test area. The tester shall seat the two children so that there is no visual barrier between the children and the tester.

7. The tester shall talk to the children to make them feel at ease.

8. The children shall not be given the impression that they are in a race or contest. They are not to be told that the test is a game or that it is fun. They are not to be offered a reward.

9. The tester shall record all data prior to, or after, the test so that full attention can be on the children during the test period.

10. The tester shall use a stopwatch(s) or other timing devices to time the number of seconds it takes the child to open the package and to time the 5-minute test periods.

11. To begin the test, the tester shall hand the children identical packages and say, "PLEASE TRY TO OPEN THIS FOR ME."

12. If a child refuses to participate after the test has started, the tester shall reassure the child and gently encourage the child to try. If the child continues to refuse, the tester shall ask the child to hold the package in his/her lap until the other child is finished. This pair of children shall not be eliminated from the results unless the refusing child disrupts the participation of the other child.

13. Each child shall be given up to 5 minutes to open his/her package. The tester shall watch the children at all times during the test. The tester shall minimize conversation with the children as long as they continue to attempt to open their packages. The tester shall not discourage the children verbally or with facial expressions. If a

child gets frustrated or bored and stops trying to open his/her package, the tester shall reassure the child and gently encourage the child to keep trying (e.g., "please try to open the package").

14. The children shall be allowed freedom of movement to work on their packages as long as the tester can watch both children (e.g., they can stand up, get down on the floor, or bang or pry the package).

15. If a child is endangering himself or others at any time, the test shall be stopped and the pair of children eliminated from the final results.

16. The children shall be allowed to talk to each other about opening the packages and shall be allowed to watch each other try to open the packages.

17. A child shall not be allowed to try to open the other child's package.

18. If a child opens his/her package, the tester shall say, "THANK YOU," take the package from the child and put it out of the child's reach. The child shall not be asked to open the package a second time.

19. At the end of the 5-minute period, the tester shall demonstrate how to open the package if either child has not opened his or her package. A separate "demo" package shall be used for the demonstration.

20. Prior to beginning the demonstration, the tester shall ask the children to set their packages aside. The children shall not be allowed to continue to try to open their packages during the demonstration period.

21. The tester shall say, "WATCH ME OPEN MY PACKAGE."

22. Once the tester gets the children's full attention, the tester shall hold the demo package approximately two feet from the children and open the package at a normal speed as if the tester were going to use the contents. There shall be no exaggerated opening movements.

23. The tester shall not discuss or describe how to open the package.

24. To begin the second 5-minute period, the tester shall say, "NOW YOU TRY TO OPEN YOUR PACKAGES."

25. If one or both children have not used their teeth to try to open their packages during the first 5 minutes, the tester shall say immediately before beginning the second 5-minute period, "YOU CAN USE YOUR TEETH IF YOU WANT TO." This is the only statement that the tester shall make about using teeth.

26. The test shall continue for an additional 5 minutes or until both children have opened their packages, whichever comes first.

27. At the end of the test period, the tester shall say, "THANK YOU FOR HELPING." If children were told that they could use their teeth, the tester shall say, "I KNOW I TOLD YOU THAT YOU COULD USE YOUR TEETH TODAY, BUT YOU SHOULD NOT PUT THINGS LIKE THIS IN YOUR MOUTH AGAIN" In addition, the tester shall say, "NEVER OPEN PACKAGES LIKE THIS WHEN YOU ARE BY YOURSELF. THIS KIND OF PACKAGE MIGHT HAVE SOMETHING IN IT THAT WOULD MAKE YOU SICK."

28. The children shall be escorted back to their classroom or other supervised area by the tester or another adult.

29. If the children are to participate in a second test, the tester shall have them stand up and stretch for a short time before beginning the second test. The tester shall take care that the children do not disrupt other tests in progress.

(3) ***Senior-adult panel*** -

(i) ***Test subjects.*** Use a group of 100 senior adults. Not more than 24% of the senior adults tested shall be obtained from or tested at any one site. Each group of senior adults shall be randomly selected as to age, subject to the limitations set forth below. Twenty-five percent of the participants shall be 50-54 years of age, 25% of participants shall be 55-59 years of age, and 50% of the participants shall be 60-70 years old. Seventy percent of the participants of ages 50-59 and ages 60-70 shall be female (17 or 18 females shall be apportioned to the 50-54 year age group). No individual tester shall administer the test to more than 35% of the senior adults tested. The adults selected should have no obvious or overt physical or mental disability.

(ii) ***Screening procedures.*** Participants who are unable to open the packaging being tested in the first 5-minute time period, are given a screening test. The screening tests for this purpose shall use two packages with conventional (not child-resistant (CR) or "special") closures. One closure shall be a plastic snap closure and the other a CT plastic closure. Each closure shall have a diameter of 28 mm±18%, and the CT closures shall have been resecured 72 hours before testing at 10 inch-pounds of torque. The containers for both the snap- and CT-type closures shall be round plastic containers, in sizes of 2 ounce± 1/2 ounce for the CT-type closure and 8 drams±4 drams for the snap-type closure. Persons who cannot open and close both of the screening packages in 1-minute screening tests shall not be counted as participants in the senior-adult panel.

(iii) ***SAUE.*** The senior adult use effectiveness (SAUE) is the percentage of adults who both opened the package in the first (5-minute) test period and opened and (if appropriate) properly resecured the package in the 1-minute test period.

(iv) ***Test procedures.*** The senior adults shall be tested individually, rather than in groups of two or more. The senior adults shall receive only such printed instructions on how to open and properly secure the special packaging as will appear on or accompany the package as it is delivered to the consumer. The senior-adult panel is tested according to the procedure incorporated in the following senior-adult panel test instructions:

TEST INSTRUCTIONS FOR SENIOR TEST

The following test instructions are used for all senior tests. If non-reclosable packages are being tested, the commands to close the package are eliminated.

1. No adult with a permanent or temporary illness, injury, or disability that would interfere with his/her effective participation shall be included in the test.

2. Each adult shall read and sign a consent form prior to participating. Any appropriate language from the consent form may be used to recruit potential participants. The form shall include the

basic elements of informed consent as defined in 16 CFR 1028.116. Examples of the forms used by the Commission staff for testing are shown at § 1700.20(d). Before beginning the test, the tester shall say, "PLEASE READ AND SIGN THIS CONSENT FORM." If an adult cannot read the consent form for any reason (forgot glasses, illiterate, etc.), he/she shall not participate in the test.

3. Each adult shall participate individually and not in the presence of other participants or onlookers.

4. The tests shall be conducted in well-lighted and distraction-free areas.

5. Records shall be filled in before or after the test, so that the tester's full attention is on the participant during the test period. Recording the test times to open and resecure the package are the only exceptions.

6. To begin the first 5-minute test period, the tester says, "I AM GOING TO ASK YOU TO OPEN AND PROPERLY CLOSE THESE TWO IDENTICAL PACKAGES ACCORDING TO THE INSTRUCTIONS FOUND ON THE CAP." (Specify other instruction locations if appropriate.)

7. The first package is handed to the participant by the tester, who says, "PLEASE OPEN THIS PACKAGE ACCORDING TO THE INSTRUCTIONS ON THE CAP." (Specify other instruction locations if appropriate.) If the package contains product, the tester shall say, "PLEASE EMPTY THE (PILLS, TABLETS, CONTENTS, etc.) INTO THIS CONTAINER." After the participant opens the package, the tester says, "PLEASE CLOSE THE PACKAGE PROPERLY, ACCORDING TO THE INSTRUCTIONS ON THE CAP." (Specify other instruction locations if appropriate)

8. Participants are allowed up to 5 minutes to read the instructions and open and close the package. The tester uses a stopwatch(s) or other timing device to time the opening and resecuring times. The elapsed times in seconds to open the package and to close the package are recorded on the data sheet as two separate times.

9. After 5 minutes, or when the participant has opened and closed the package, whichever comes first, the tester shall take all test materials from the participant. The participant may remove and replace the closure more than once if the participant initiates these

actions. If the participant does not open the package and stops trying to open it before the end of the 5-minute period, the tester shall say, "ARE YOU FINISHED WITH THAT PACKAGE, OR WOULD YOU LIKE TO TRY AGAIN?" If the participant indicates that he/she is finished or cannot open the package and does not wish to continue trying, skip to Instruction 13.

10. To begin the second test period, the tester shall give the participant another, but identical, package and say, "THIS IS AN IDENTICAL PACKAGE. PLEASE OPEN IT ACCORDING TO THE INSTRUCTIONS ON THE CAP." (Specify other instruction locations if appropriate.) If the package contains product, the tester shall say, "PLEASE EMPTY THE (PILLS, TABLETS, CONTENTS, etc.) INTO THIS CONTAINER." After the participant opens the package, the tester says, "PLEASE CLOSE THE PACKAGE PROPERLY, ACCORDING TO THE INSTRUCTIONS ON THE CAP." (Specify other instruction locations if appropriate.)

11. The participants are allowed up to 1 minute (60 full seconds) to open and close the package. The elapsed times in seconds to open and to close the package are recorded on the data sheet as two separate times. The time that elapses between the opening of the package and the end of the instruction to close the package is not counted as part of the 1-minute test time.

12. After the 1-minute test, or when the participant has opened and finished closing the package, whichever comes first, the tester shall take all the test materials from the participant. The participant shall not be allowed to handle the package again. If the participant does not open the package and stops trying to open it before the end of the 1-minute period, the tester shall say, "ARE YOU FINISHED WITH THAT PACKAGE, OR WOULD YOU LIKE TO TRY AGAIN?" If the participant indicates that he/she is finished or cannot open the package and does not wish to continue trying, this shall be counted as a failure of the 1-minute test.

13. Participants who do not open the package in the first 5-minute test period are asked to open and close two non-child-resistant screening packages. The participants are given a 1-minute test period for each package. The tester shall give the participant a package and say, "PLEASE OPEN AND PROPERLY CLOSE THIS PACKAGE." The tester records the time for opening and closing, or 61 seconds,

whichever is less, on the data sheet. The tester then gives the participant the second package and says, "PLEASE OPEN AND PROPERLY CLOSE THIS PACKAGE." The time to open and resecure, or 61 seconds, whichever is less, shall be recorded on the data sheet.

14. Participants who cannot open and resecure both of the non-child-resistant screening packages are not counted as part of the 100-seniors panel. Additional participants are selected and tested.

15. No adult may participate in more than two tests per sitting. If a person participates in two tests, the packages tested shall not be the same ASTM type of package.

16. If more adults in a sex or age group are tested than are necessary to determine SAUE, the last person(s) tested shall be eliminated from that group.

(4) ***Younger-adult panel.***

(i) One hundred adults, age 18 to 45 inclusive, with no overt physical or mental handicaps, and 70% of whom are female, shall comprise the test panel for younger adults. Not more than 35% of adults shall be obtained or tested at any one site. No individual tester shall administer the test to more than 35% of the adults tested. The adults shall be tested individually, rather than in groups of two or more. The adults shall receive only such printed instructions on how to open and properly resecure the special packaging as will appear on the package as it is delivered to the consumer. Five minutes shall be allowed to complete the opening and, if appropriate, the resecuring process.

(ii) Records shall be kept of the number of adults unable to open and of the number of the other adults tested who fail to properly resecure the special packaging. The number of adults who successfully open the special packaging and then properly resecure the special packaging (if resecuring is appropriate) is the percent of adult-use effectiveness of the special packaging. In the case of unit packaging, the percent of adult-use effectiveness shall be the number of adults who successfully open a single (unit) package.

(b) The standards published as regulations issued for the purpose of designating particular substances as being subject to the requirements for special packaging under the act will stipulate the percent of child-

resistant effectiveness and adult-use effectiveness required for each and, where appropriate, will include any other conditions deemed necessary and provided for in the act.

(c) It is recommended that manufacturers of special packaging, or producers of substances subject to regulations issued pursuant to the act, submit to the Commission summaries of data resulting from tests conducted in accordance with this protocol.

(d) ***Recommendations.*** The following instructions and procedures, while not required, are used by the Commission's staff and are recommended for use where appropriate.

(1) ***Report format for child test.***

A. IDENTIFICATION

1. Close-up color photographs(s) clearly identifying the package and showing the opening instructions on the closure.

2. Product name and the number of tablets or capsules in the package.

3. Product manufacturer.

4. Closure model (trade name - e.g., "KLIK & SNAP").

5. Closure size (e.g., 28 mm).

6. Closure manufacturer.

7. Closure material and color(s) (e.g., white polypropylene).

8. Closure liner material.

9. TAC seal material.

10. Opening instructions (quote exactly, e.g., "WHILE PUSHING, DOWN, TURN RIGHT"). Commas are used to separate words that are on different lines.

11. Symbols, numbers, and letters found inside the closure.

12. Package model.

13. Package material and color.

14. Net contents.

15. Symbols, numbers, and letters on the bottom of the package.

16. Other product identification, e.g., EPA Registration Number.

B. Procedures

1. Describe all procedures for preparing the test packages.

2. Describe the testing procedures.

3. Describe all instructions given to the children.

4. Define an individual package failure.

C. Results

1. Openings in each 5-minute period and total openings for males and for females in each age group.

2. Opening methods (e.g., normal opening, teeth, etc.).

3. Mean opening times and standard deviation for each 5-minute test period.

4. The percentage of packages tested at each site as a percentage of total packages.

5. The percentage of packages tested by each tester as a percentage of total packages.

6. Child-resistant effectiveness for the first 5-minute period and for the total test period.

(2) *Standardized adult-resecuring test instructions.* CPSC will use the adult-resecuring test where an objective determination (e.g., visual or mechanical) that a package is properly resecured cannot be made. The adult-resecuring test is performed as follows:

Adult-Resecuring Procedure

1. After the adult participant in either the senior-adult test of 16 CFR 1700.20(a)(3) or the younger-adult test of 16 CFR 1700.20(a)(4) has resecured the package, or at the end of the test period (whichever

comes first), the tester shall take the package and place it out of reach. The adult participant shall not be allowed to handle the package again.

2. The packages that have been opened and appear to be resecured by adults shall be tested by children according to the child-test procedures to determine if the packages have been properly resecured. The packages are given to the children without being opened or resecured again for any purpose.

3. Using the results of the adult tests and the tests of apparently-resecured packaging by children, the adult use effectiveness is calculated as follows:

a. *Adult use effectiveness.*

1. The number of adult opening and resecuring failures, plus the number of packages that were opened by the children during the full 10-minute test that exceeds 20% of the apparently-resecured packages, equals the total number of failures.

2. The total number of packages tested by adults (which is 100) minus the total number of failures equals the percent adult-use effectiveness.

(3) *Report format for adult-resecuring test.*

A. IDENTIFICATION

1. Close-up color photograph(s) clearly identifying the package and showing the top of the closure.

2. Product name and the number of tablets or capsules in the package.

3. Product manufacturer.

4. Closure model (trade name).

5. Closure size (e.g., 28 mm).

6. Closure manufacturer.

7. Closure material and color(s) (e.g., white polypropylene)

8. Closure liner material.

9. Symbols, numbers, and letters found inside the closure.

10. TAC seal material.

11. Opening instructions (Quote exactly, e.g., "WHILE PUSHING, DOWN, TURN RIGHT"). Commas are used to separate words that are on different lines.

12. Package model.

13. Package material and color.

14. Net contents.

15. Symbols, numbers, and letters on the bottom of the package.

16. Other product identification, e.g., EPA Registration Number.

B. Procedures

1. Describe all procedures for preparing the test packages.

2. Describe the testing procedures in detail.

3. Describe all instructions given to participants.

4. Define an individual package failure and the procedures for determining a failure.

C. Results

Adult Test

1. Total packages opened and total packages resecured; packages opened by males and by females; and packages resecured by males and by females.

2. Mean opening times and standard deviation for total openings, total openings by females, and total openings by males.

3. Mean resecuring times and standard deviation for total resecurings, total resecurings by females and total resecurings by males.

4. The percentage of packages tested at each site as a percentage of total packages.

5. The percentage of packages tested by each tester as a percentage of total packages.

6. Methods of opening (e.g., normal opening, pried closure off, etc.)

CHILD TEST

1. Openings in each 5-minute period, and total openings, for males and females in each age group.

2. Opening methods.

3. Mean opening times and standard deviation for each 5-minute test period.

4. The percentage of packages tested at each site as a percentage of total packages.

5. The percentage of packages tested by each tester as a percentage of total packages.

(4) Consent forms. The Commission uses the following consent forms for senior-adult testing reclosable and unit-dose packaging, respectively.

1. *Reclosable packages.*

[Testing Organization's Letterhead]

CHILD-RESISTANT PACKAGE TESTING

The U.S. Consumer Product Safety Commission is responsible for testing child-resistant packages to make sure they protect young children from medicines and dangerous household products. With the help of people like you, manufacturers are able to improve the packages we use, keeping the contents safe from children but easier for the rest of us to open.

Effective child-resistant packages have prevented thousands of poisonings since the Poison Prevention Act was passed in 1970. The use of child-resistant packages on prescription medicines alone may have saved the lives of over 350 children since 1974.

As part of this program, we are testing a child-resistant package to determine if it can be opened and properly closed by an adult who is between 50 and 70 years of age. You may or may not be familiar with the packages we are testing. Take your time, and please do not feel that you are being tested - we are testing the package, not you.

Description of the Test

1. I will give you a package and ask you to read the instructions and open and properly close the package.

2. I will then give you an identical package, and ask you to open and properly close it.

3. I may ask you to open some other types of packages.

4. The packages may be empty or they may contain a product.

5. I will ask you whether you think the child-resistant package was easy or hard to use.

CONSENT FORM FOR CHILD-RESISTANT PACKAGE TESTING

The Consumer Product Safety Commission has been using contractors to test child-resistant packages for many years with no injuries to anyone, although it is possible that a minor injury could happen.

I agree to test a child-resistant package. I understand that I can change my mind at any time. I am between the ages of 50 and 70, inclusive.

Birthdate
Signature
Date
Zip Code

Office Use

Site:
Sample Number:
Test Number:
Package Number:

2. *Unit-dose packages.*

[Testing Organization's Letterhead]

UNIT DOSE CHILD-RESISTANT PACKAGE TESTING

The U.S. Consumer Product Safety Commission is responsible for testing child-resistant packages to make sure they protect young children from medicines and dangerous household products. With the help of people like you, manufacturers are able to improve the packages we use, keeping the contents safe from children but easier for the rest of us to open.

Effective child-resistant packages have prevented thousands of poisonings since the Poison Prevention Act was passed in 1970.

The use of child-resistant packages on prescription medicines alone may have saved the lives of over 350 children since 1974.

As part of this program, we are testing a child-resistant package to determine if it can be opened by an adult who is between 50 and 70 years of age. You may or may not be familiar with the packages we are testing. Take your time, and please do not feel that you are being tested - we are testing the package, not you.

Description of the Test

1. I will give you a package and ask you to read the instructions, open one unit, and remove the contents.

2. I will then give you an identical package, and ask you to open one unit and remove the contents.

3. I may ask you to open some other types of packages.

4. I will ask you whether you think the child-resistant package was easy or hard to use.

Consent Form for Child-Resistant Package Testing

The Consumer Product Safety Commission has been using contractors to test child-resistant packages for many years with no injuries to anyone, although it is possible that a minor injury could happen.

I agree to test a child-resistant package. I understand that I can change my mind at any time. I am between the ages of 50 and 70, inclusive.

Birthdate
Signature
Date
Zip Code

Office Use

Site:
Sample Number:
Test Number:
Package Number:

[38 FR 21247, Aug. 7, 1973, as amended at 60 FR 37735, 37738, July

7 USC 1639o: Definitions
Text contains those laws in effect on August 27, 2022

From Title 7-AGRICULTURE
CHAPTER 38-DISTRIBUTION AND MARKETING OF AGRICULTURAL PRODUCTS
SUBCHAPTER VII-HEMP PRODUCTION

Jump To:
Source Credit
Miscellaneous

§1639o. Definitions

In this subchapter:

(1) Hemp

The term "hemp" means the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(2) Indian tribe

The term "Indian tribe" has the meaning given the term in section 5304 of title 25.

(3) Secretary

The term "Secretary" means the Secretary of Agriculture.

(4) State

The term "State" means-
(A) a State;
(B) the District of Columbia;
(C) the Commonwealth of Puerto Rico; and
(D) any other territory or possession of the United States.

(5) State department of agriculture

The term "State department of agriculture" means the agency, commission, or department of a State government responsible for agriculture in the State.

(6) Tribal government

The term "Tribal government" means the governing body of an Indian tribe.

(Aug. 14, 1946, ch. 966, title II, §297A, as added Pub. L. 115–334, title X, §10113, Dec. 20, 2018, 132 Stat. 4908 .)

STATUTORY NOTES AND RELATED SUBSIDIARIES

INTERSTATE COMMERCE

Pub. L. 115–334, title X, §10114, Dec. 20, 2018, 132 Stat. 4914 , provided that:

"(a) RULE OF CONSTRUCTION.-Nothing in this title [enacting this subchapter and sections 1627c and 6521a of this title, amending sections 136a, 1622b, 1632a, 1632b, 2204h, 2207b, 2276, 2401, 2402, 2541, 2568, 3003, 5925c, 6502, 6514, 6515, 6518, 6519, 6521–6523, and 7655a of this title and section 714i of Title 15, Commerce and Trade, repealing sections 3005 and 3006 of this title, enacting provisions set out as notes under sections 1627c, 1639o, 6503, and 6521a of this title, and amending provisions set out as a note under section 1621 of this title] or an amendment made by this title prohibits the interstate commerce of hemp (as defined in section 297A of the Agricultural Marketing Act of 1946 [7 U.S.C. 1639o] (as added by section 10113)) or hemp products.

"(b) TRANSPORTATION OF HEMP AND HEMP PRODUCTS.-No State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 [7 U.S.C. 1639o et seq.] (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable."

"(b) REPORT.—Not later than 1 year after the date of enactment of the Agriculture Improvement Act of 2018, the Secretary shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report that includes—

"(1) a summary of the data sets identified under subsection (a);

"(2) a summary of the steps the Secretary would have to take to provide access to such data sets by university researchers, including taking into account any technical, privacy, or administrative considerations;

"(3) a summary of safeguards the Secretary employs when providing access to data to university researchers;

"(4) a summary of appropriate procedures to maximize the potential for research benefits while preventing any violations of privacy or confidentiality; and

"(5) recommendations for any necessary authorizations or clarifications of Federal law to allow access to such data sets to maximize the potential for research benefits.".

SEC. 12619. CONFORMING CHANGES TO CONTROLLED SUBSTANCES ACT.

(a) IN GENERAL.—Section 102(16) of the Controlled Substances Act (21 U.S.C. 802(16)) is amended—

(1) by striking "(16) The" and inserting "(16)(A) Subject to subparagraph (B), the"; and

(2) by striking "Such term does not include the" and inserting the following:

"(B) The term 'marihuana' does not include—

"(i) hemp, as defined in section 297A of the Agricultural Marketing Act of 1946; or

"(ii) the".

(b) TETRAHYDROCANNABINOL.—Schedule I, as set forth in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)), is amended in subsection (c)(17) by inserting after "Tetrahydrocannabinols" the following: ", except for tetrahydrocannabinols in hemp (as defined under section 297A of the Agricultural Marketing Act of 1946)".

Approved December 20, 2018.

LEGISLATIVE HISTORY—H.R. 2:

HOUSE REPORTS: Nos. 115–661 (Comm. on Agriculture) and 115–1072 (Comm. of Conference).

CONGRESSIONAL RECORD, Vol. 164 (2018):

May 16–18, considered and failed House.

June 21, considered and passed House.

June 27, 28, considered and passed Senate, amended.

Dec. 11, Senate agreed to the conference report.

Dec. 12, House agreed to the conference report.

DAILY COMPILATION OF PRESIDENTIAL DOCUMENTS (2018):

Dec. 20, Presidential remarks and statement.

○

21 U.S. Code § 802 - Definitions

U.S. Code Notes

As used in this subchapter:

(1) The term "addict" means any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.

(2) The term "administer" refers to the direct application of a controlled substance to the body of a patient or research subject by—

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of the practitioner,

whether such application be by injection, inhalation, ingestion, or any other means.

(3) The term "agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser; except that such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier's or

warehouseman's business.

(4) The term "Drug Enforcement Administration" means the Drug Enforcement Administration in the Department of Justice.

(5) The term "control" means to add a drug or other substance, or immediate precursor, to a schedule under part B of this subchapter, whether by transfer from another schedule or otherwise.

(6) The term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this subchapter. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1986.

(7) The term "counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

(8) The terms "deliver" or "delivery" mean the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not there exists an agency relationship.

(9) The term "depressant or stimulant substance" means—

(A) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid; or

(B) a drug which contains any quantity of (i) amphetamine or any of its optical isomers; (ii) any salt of amphetamine or any salt of an optical isomer of amphetamine; or (iii) any substance which the Attorney General, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or

(C) lysergic acid diethylamide; or

(D) any drug which contains any quantity of a substance which the Attorney General, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(10) The term "dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling or compounding necessary to prepare the substance for such delivery. The term "dispenser" means a practitioner who so delivers a controlled substance to an ultimate user or research subject.

(11) The term "distribute" means to deliver (other than by administering or dispensing) a controlled substance or a listed chemical. The term "distributor" means a person who so delivers a controlled substance or a listed chemical.

(12) The term "drug" has the meaning given that term by section 321(g)(1) of this title.

(13) The term "felony" means any Federal or State offense classified by applicable Federal or State law as a felony.

(14) The term "isomer" means the optical isomer, except as used in schedule I(c) and schedule II(a)(4). As used in schedule I(c), the term "isomer" means any optical, positional, or geometric isomer. As used in schedule II(a)(4), the term "isomer" means any optical or geometric isomer.

(15) The term "manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or

labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term "manufacturer" means a person who manufactures a drug or other substance.

(16)

(A) Subject to subparagraph (B), the term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin.

(B) The term "marihuana" does not include—

(i) hemp, as defined in section 1639o of title 7; or

(ii) the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(17) The term "narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

(B) Poppy straw and concentrate of poppy straw.