

DEC 29 2021

## POPULAR NAME

## ARKANSAS MARIJUANA AMENDMENT OF 2022

Arkansas  
Secretary of StateBALLOT TITLE

This is an amendment to the Arkansas Constitution that amends Amendment 98 to the Arkansas Constitution (The Arkansas Medical Marijuana Amendment of 2016). This amendment legalizes the possession and sale of marijuana for personal use to adults 21 years of age or older while acknowledging that the possession and sale of marijuana is illegal under the federal law at the time this amendment is filed. On the effective date of this amendment, adults may possess up to 5 ounces of usable marijuana and paraphernalia used to consume usable marijuana. Beginning January 1, 2023, dispensaries with a valid license to sell medical marijuana are authorized to sell usable marijuana to adults for personal use. Beginning January 1, 2023, cultivation facilities with a valid license to sell medical marijuana to dispensaries shall be authorized to sell usable marijuana to dispensaries for retail sale to adults for personal use. All cultivation facilities and dispensaries currently licensed to sell medical marijuana must continue to sell medical marijuana. Patients with a chronic disease or patients with a terminal diagnosis shall be entitled to receive a lifetime certification from their doctor or APRN and receive a lifetime medical marijuana card for a fee not to exceed \$50. Medical marijuana patients shall be allowed the use of telemedicine in obtaining or renewing their annual certification. Renaming the Medical Marijuana Commission as the Marijuana Commission and placing it under the Arkansas Department of Finance and Administration. Giving the Marijuana Commission the authority to regulate the content, composition, and packaging of usable marijuana and medical marijuana used in food and drink, including the THC level. Adding to the list of qualifying conditions to obtain a physician's certification to receive a medical marijuana card as; Any condition that the physician or APRN believes will be of therapeutic or palliative benefit to the patient. The number of dispensaries, including those previously authorized shall be one per 17,500 residents or part thereof within the state and within a county. At least 25% of dispensary licenses issued shall be minority owned. The number of cultivation facilities including those previously owned shall be one per 300,000 residents or part thereof. Cultivation facilities and Dispensaries shall be located no less than 1000 ft from a pre-existing school or church. This does not include homeschool or higher education facilities No individual, group or entity shall own or have an interest in more than one cultivation facility and two dispensaries. Within 90 days of the effective date of this amendment the marijuana commission shall promulgate rules for the issuance of dispensary and cultivation licenses by lottery. Within 90 days of the effective date of this amendment the marijuana commission shall provide public notice of the intent to issue cultivation and dispensary licenses and within 180 days from the effective date of this amendment cultivation facility and dispensary licenses shall be issued. Requiring that recipients of a license shall be open for business within 18 months of receipt of license or it shall be revoked. Providing that a license may not be sold prior to opening and that the license holder shall be open for a minimum of 24 months before the license can be sold

Providing that dispensaries may grow up to 400 mature marijuana plants and seedlings on or off premises. All convictions prior to January 1, 2023 for non-violent felony or misdemeanor convictions within the State of Arkansas for the possession, cultivation, manufacture, distribution, or sale of less than 16 ounces of marijuana, 6 or fewer marijuana plants; or paraphernalia intended for use with marijuana, as defined by Ark. Code Ann. § 5-64-101, et seq. shall be annulled, vacated, pardoned, and expunged and all rights are automatically restored. The General Assembly shall provide by law that all records shall be sealed. Usable marijuana is subject to a 15% retail sales tax. The General Assembly with a two-thirds vote may increase the retail sales tax on usable marijuana provided the increase does not exceed 5% on an annual basis. Effective January 1, 2023, medical marijuana shall have no state or local sales tax imposed No additional sales or excise taxes shall be imposed on the sale of marijuana for personal use or medical use. All sales of marijuana for personal use shall be subject to city and county taxes. All revenues from the retail state sales tax shall first be used to fund the salaries and expenses of the Marijuana Commission and delegates for the licensing and regulation of marijuana cultivation facilities and dispensaries. The excess sales tax revenue shall be directed 50% to fund and operate public pre-kindergarten and after school programs. The legislature shall not reduce the funds currently budgeted for these programs, 20% to fund the operations of the University of Arkansas for Medical Sciences National Cancer Institute and research on the health and therapeutic properties of marijuana; 15% to general revenues and 15% to establish a fund for low-income medical marijuana patients to purchase their marijuana for free or at reduced prices;

Providing that the amendment is effective November 9, 2022, that the provisions of the amendment are severable and that the General Assembly cannot modify, repeal or nullify any part of this amendment.

ARKANSAS MARIJUANA AMENDMENT OF 2022**§ 1 Short Title**

This amendment to the Arkansas Constitution shall be known as the "Arkansas Marijuana Amendment of 2022." This Amendment amends Amendment 98 of the Arkansas Constitution of 1874 and shall be effective on November 9, 2022. It acknowledges that the sale and use of marijuana is still illegal under federal law.

**§ 2 Definitions**

- (a) "Adult" means a person who is twenty-one (21) years of age or older.
- (b) "APRN" means Advanced Practice Registered Nurse
- (c) "Marijuana Commission" means the commission formerly known as the Medical Marijuana Commission, renaming the Medical Marijuana Commission in the Department of Finance and Administration.
- (d) "Mature marijuana plant" is a marijuana plant that is flowering.
- (e) "Minority" means any race that makes up less than 50% of the Arkansas population as determined by the last federal census.

**§ 3 Possession, Cultivation, and Sales**

- (a) January 1, 2023 adults may possess up to 5 ounces of usable marijuana and paraphernalia used for consuming usable marijuana.
- (b) Beginning on January 1, 2023, dispensaries with a valid license to sell medical marijuana are authorized to sell usable marijuana to adults for personal use.
- (c) Beginning on January 1, 2023 cultivation facilities with a valid license to cultivate medical marijuana under Amendment 98 shall be authorized to sell usable marijuana to dispensaries for retail sale to adults for personal use.
- (d) All cultivation facilities must grow marijuana for personal and medical use. All dispensaries must sell marijuana for personal and medical use.

**§ 4. Marijuana Commission**

- (a) The Marijuana Commission is hereby created in the Arkansas Department of Finance and Administration to replace the Medical Marijuana Commission.
- (b) It shall have the power to issue licenses for dispensaries and cultivation and transportation between them under rules it may adopt. The absence of legislation or rule shall not impede the implementation of this amendment.
- (c) The Marijuana Commission shall delegate to an agency within the Department of Finance and Administration the power to enforce this amendment.

**§ 5 Medical Marijuana Patients**

- (a) Patients with a chronic or terminal diagnosis shall be entitled to receive a lifetime certification from their physician or APRN and entitled to receive a lifetime medical marijuana card for a fee not to exceed \$50.00.

- (b) Medical Marijuana patients shall be allowed the use of telemedicine in the process of obtaining or renewing their annual certification.
- (c) The following is added as a qualifying condition to obtain a physician's certification for a medical marijuana card under Amendment 98: Any condition that the physician or APRN using their medical judgment believes will be of therapeutic or palliative benefit to the patient.

#### **§ 6 Cultivation and Dispensary Licensing and Regulation**

- (a) The Marijuana Commission is directed to provide public notice of the intent to issue cultivation and dispensary licenses within 90 days of the effective date of this amendment. Cultivation and dispensary licenses shall be issued within 180 days of the effective date of this amendment. Application fees for a dispensary shall be no more than \$10,000; Application fees for a cultivation facility shall be no more than \$20,000.
- (b) The number of dispensary licenses, including those previously authorized, shall be one per 17,500 residents or part thereof within the state and within a county. At least 25% of dispensary licenses issued shall be minority owned. The number of cultivation facility licenses, including those previously authorized shall be one per 300,000 residents or part thereof.
- (c) Cultivation facilities and Dispensaries shall be located no less than 1000 ft from a pre-existing school or church. This does not include homeschool or higher education facilities
- (d) Licensed dispensaries may grow up to 400 mature marijuana plants and seedlings on or off premises.
- (e) Within 90 days of the effective date of this amendment, the Marijuana Commission shall promulgate rules to effectuate the intent of this amendment and providing for the issuance of dispensary and cultivation licenses by lottery.
- (f) No individual, group or entity shall own or have interest in more than one cultivation facility and two dispensaries. No dispensary shall be located within two miles of an existing dispensary.
- (g) Recipients of a cultivation or dispensary license shall be open for business within 18 months of receipt of said license or the license shall be revoked. A license may not be sold prior to the business opening. A license holder shall be open for business a minimum of 24 months before their license can be sold.
- (h) The Marijuana Commission shall have the authority to regulate the content, composition and packaging of usable and medical marijuana used in food and drink, including the amount of THC.
- (i) All dispensaries and cultivation facilities shall adhere to the security requirements of Amendment 98.

#### **§ 7 Taxation and Revenue**

- (a) There is imposed a state retail sales tax on the non-medical sale of usable marijuana for personal use and consumption in the amount of 15%. The General Assembly with a two-thirds vote may increase the retail sales tax on usable marijuana provided the increase does not exceed 5% on an annual basis.
- (b) Effective January 1, 2023, no state or local tax shall be imposed on medical marijuana.
- (c) No additional state sales taxes or excise taxes shall be imposed on the sale of usable marijuana for personal use or medical marijuana. Only local general sales taxes may be imposed on non-medical marijuana sales.
- (b) All revenues derived from the retail state sales tax shall be used first to fund the salaries and operating expenses of the Marijuana Commission for administration and delegates as necessary for the licensing and regulation of marijuana cultivation facilities and dispensaries by the Marijuana Commission. Excess revenue from the retail state sales tax shall be directed as follows: 50% to fund and operate public pre-kindergarten and after school programs. The legislature shall not reduce the funds currently budgeted for these programs, 20% to fund the operations of the University of Arkansas for Medical Sciences National Cancer Institute and research on the health and therapeutic properties of marijuana; 15% to general revenues and 15% to establish a fund for low-income medical marijuana patients to purchase their marijuana for free or at reduced prices;
- (c) The Marijuana Commission shall establish eligibility requirements for participation in the low-income medical marijuana fund no later than July 1, 2023.

#### **§ 8 Relief from Marijuana Criminal Convictions**

All convictions prior to January 1, 2023 for non-violent felony or misdemeanor convictions whenever occurring within the courts of the State of Arkansas for the possession, cultivation, manufacture, distribution, or sale of:

- (1) less than 16 ounces of marijuana,
- (2) 6 or fewer marijuana plants; or
- (3) paraphernalia intended for use with marijuana, as defined by Ark. Code Ann. § 5-64-101, et seq. shall be annulled, vacated, pardoned, and expunged and all rights are automatically restored. The General Assembly shall provide by law that all records shall be sealed at completion.

#### **§ 9 Severability; Inconsistent Provisions Inapplicable**

- (a) If any part or subpart of this amendment or the application thereof 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, and common law of this State, including without limitation laws forbidding the possession, cultivation and use of marijuana, 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 Legislative Authority to Modify this Amendment**

The General Assembly has no power to modify, repeal, or otherwise nullify any part of subpart of this amendment.