

#70 AMENDED

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MAR 23 2012

ELECTIONS/LICENSING
SECRETARY OF STATE

1:42 p.m. 

The People of the State of Colorado do enact as follows:

In the Constitution of the State of Colorado, article XVIII, add section 16 as follows:

Section 16. Equalization of Cannabis Laws for Safer Communities.

(1) **Purpose and Findings.** The People of the State of Colorado hereby find and declare:

- (a) **CANNABIS PROHIBITION HAS FAILED AND HAS RESULTED IN AN ENORMOUS UNREGULATED MARKET, FACILITATING WIDESPREAD USE BY MINORS, UNTAXED PROFITS BY CRIMINAL ENTERPRISES AND THE EXPANSION OF CRIME.**
- (b) **ENDING CANNABIS PROHIBITION WILL MITIGATE ILLICIT SALES AND REDUCE FISCAL BURDENS ON STATE AND LOCAL GOVERNMENTS.**
- (c) **REGULATING CANNABIS IN THE SAME MANNER AS TOBACCO IS RATIONAL AS CANNABIS IS SAFER THAN ALCOHOL, CULTIVATED, PROCESSED AND CONSUMED LIKE TOBACCO AND STATE TOBACCO REGULATIONS PROHIBIT SALES TO AND USE BY MINORS.**
- (d) **THE CANNABIS INDUSTRY WILL CREATE NEW JOBS AND GENERATE MILLIONS IN TAX REVENUE, WHICH CAN HELP SUPPORT SAFER COMMUNITIES IN PART BY FUNDING PUBLIC SCHOOLS, HEALTH CARE AND DRUG REHABILITATION PROGRAMS.**
- (f) **PROVIDING ALL COLORADANS EQUAL ACCESS TO ECONOMIC AND EMPLOYMENT OPPORTUNITIES IN THE CANNABIS INDUSTRY BENEFITS COLORADO COMMUNITIES AND CREATES NEW AGRICULTURAL OPPORTUNITIES FOR COLORADO FARMERS.**

(2) **Definitions. AS USED IN THIS SECTION UNLESS THE CONTEXT OTHERWISE REQUIRES:**

- (A) **"CANNABIS" MEANS ALL SPECIES OF NATURALLY OCCURRING AND SUSTAINABLY PRODUCED PLANTS OF THE GENUS CANNABIS SATIVA L INCLUDING ANY DERIVATIVE, CONCENTRATE, EXTRACT, FLOWER, LEAF, PARTICLE, PREPARATION, RESIN, ROOT, SALT, SEED, STALK, STEM, OR ANY PRODUCT THEREOF.**
- (B)
- (c) **"CANNABIS BUSINESSES" MEANS THE CANNABIS EQUIVALENT TO PRE-EXISTING COLORADO STATE LEVEL TOBACCO BUSINESS LICENSES AND STATE LEVEL CIGAR AND PIPE TOBACCO LAW AND REGULATIONS. CANNABIS RETAILER, CANNABIS PRODUCTS DISTRIBUTOR, CANNABIS SUBCONTRACTOR. CANNABIS BUSINESSES WILL BE EXEMPT FROM THE MSA.**
- (d) **"CANNABIS PRODUCTS" MEANS ANY PRODUCT THAT CONTAINS ONE PERCENT THC OR MORE THAT IS DERIVED FROM CANNABIS AND IS INTENDED TO BE INGESTED, INHALED, OR APPLIED TO THE SKIN OF AN ADULT TWENTY ONE YEARS OF AGE OR OLDER; OR ANY ELECTRONIC DEVICE THAT CAN BE USED TO DELIVER ONE PERCENT THC OR MORE TO AN ADULT INHALING FROM A DEVICE, INCLUDING BUT NOT LIMITED TO AN ELECTRONIC CIGARETTE, CIGAR, CIGARILLO, OR PIPE THAT CAN INDUCE EUPHORIA. CANNABIS PRODUCTS DO NOT INCLUDE HEMP PRODUCTS OR CULTIVATION BY-PRODUCTS SUCH AS NON-CONSUMABLE PLANT MATERIAL, SOIL AND SEEDS AND ARE EXEMPT FROM THE MSA.**
- (E) **"HEMP PRODUCTS" MEANS ANY PRODUCT THAT IS DERIVED FROM CANNABIS THAT IS INTENDED TO BE USED ONLY FOR INDUSTRIAL AND COMMERCIAL PURPOSES SUCH AS BUT NOT LIMITED TO FOOD MATERIALS, SEED, SEED CAKE, OIL, STALK, LEAF, PULP, FIBER, POLYMERS, CELL FLUID OR**

BIOFUELS. BUT WILL NOT INCLUDE ANY PRODUCTS OR EXTRACTS THAT CAN INDUCE EUPHORIA. HEMP PRODUCTS DO NOT INCLUDE CANNABIS PRODUCTS AND ARE EXEMPT FROM THE MSA.

- (F) "MEDICAL MARIJUANA BUSINESSES" MEANS ANY MEDICAL MARIJUANA BUSINESS ENTITY LICENSED BY THE STATE AND LOCAL AUTHORITY TO SELL MEDICAL MARIJUANA AND OR INFUSED PRODUCTS PURSUANT THE MEDICAL MARIJUANA CODE ARTICLE 43.3 OF TITLE 12, C.R.S.
- (G) "MSA" MEANS THE MASTER SETTLEMENT AGREEMENT, THE SMOKELESS TOBACCO MASTER SETTLEMENT AGREEMENT, AND THE CONSENT DECREE APPROVED AND ENTERED BY THE COURT IN THE CASE DENOMINATED STATE OF COLORADO, EX REL. GALE A. NORTON, ATTORNEY GENERAL V. R.J. REYNOLDS TOBACCO Co.; AMERICAN TOBACCO Co., INC.; BROWN & WILLIAMSON TOBACCO CORP.; LIGGETT & MYERS, INC.; LORILLARD TOBACCO Co., INC.; PHILIP MORRIS, INC.; UNITED STATES TOBACCO Co.; B.A.T. INDUSTRIES, P.L.C.; THE COUNCIL FOR TOBACCO RESEARCH--U.S.A., INC.; AND TOBACCO INSTITUTE, INC., CASE No. 97 CV 3432, IN THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER.
- (H) "PARAPHERNALIA" MEANS EQUIPMENT, PRODUCTS AND MATERIALS OF ANY KIND WHICH ARE USED, INTENDED FOR USE, OR DESIGNED FOR USE, IN PLANTING, PROPAGATING, CULTIVATING, HARVESTING, MANUFACTURING, COMPOUNDING, CONVERTING, PROCESSING, PREPARING, TESTING, ANALYZING, PACKAGING, LABELING, STORING, CONCEALING, CONTAINING, INGESTING, INHALING, AND OR OTHERWISE INTRODUCING INTO THE HUMAN BODY CANNABIS PRODUCTS.
- (i) "REASONABLE" MEANS THAT NO STATE OR LOCAL GOVERNMENT WILL ENACT OR ENFORCE AN ORDINANCE, RESOLUTION OR REGULATION THAT REQUIRES AN EXCESSIVE LICENSING FEE, INVESTMENT OF MONEY, TIME, RISK, OR ANY OTHER RESOURCE OR ASSETS OR VIOLATION OF PRIVACY OR RESTRICTIONS THAT WOULD DETER OR DENY AN AVERAGE COLORADAN FROM OPERATING A CANNABIS BUSINESS.
- (j) "THC" MEANS ONLY ACTIVE DELTA-9-TETRAHYDROCANNABINOL AND ITS 11-HYDROXY METABOLITE, BUT WILL NOT INCLUDE ANY OTHER PRECURSOR ACIDS AND OR METABOLITES.

(3) Repeal of marijuana laws. THE REVISOR OF STATUTES AND LOCAL GOVERNMENTS ARE HEREBY DIRECTED TO IMMEDIATELY REPEAL AND REMOVE FROM TITLE 18 OF THE COLORADO REVISED STATUTES AND FROM ANY AND ALL EXISTING STATE, COUNTY OR MUNICIPAL LAWS ANY PROVISIONS THAT CONTAIN ANY REFERENCE TO ANY SPECIES OF THE GENUS *Cannabis SATIVA L*, MARIJUANA, MARIHUANA, HEMP PLANT AND IT'S DERIVATIVES, PRODUCTS AND PARAPHERNALIA THAT CRIMINALIZE *Cannabis* AND OTHERWISE CONFLICT WITH THE PROVISIONS OF THIS SECTION, AND FROM ANY OTHER LAWS OF THE STATE THAT CRIMINALIZE *Cannabis* AS POSSESSED OR USED WITHIN THE TERMS OF THIS SECTION.

- (4) Responsible Adult Use. PERSONAL CULTIVATION AND USE OF *Cannabis* Products WILL BE A CONSTITUTIONAL RIGHT AND NO COLORADAN TWENTY ONE YEARS OF AGE OR OLDER WILL BE PUNISHED, HAVE THEIR PRIVACY OR INDIVIDUAL LIBERTY VIOLATED IN ANY MANNER, BE DENIED ANY RIGHT OR PRIVILEGE FOR THE:
- (a) POSSESSION, PURCHASE, TRADING, GIFTING, TRANSPORTATION, CONSUMPTION OR LIMITED UNTAXED CULTIVATION OF *Cannabis* IN AN ENCLOSED OR RESTRICTED SPACE OF EIGHT PLANTS; FOUR VEGETATIVE, FOUR FLOWERING AND FOUR OUNCES OF CONSUMABLE RAW *Cannabis* Products PER MONTH IF THERE IS ONLY ONE ADULT RESIDING IN THE HOUSEHOLD, OR SIXTEEN PLANTS; EIGHT VEGETATIVE, EIGHT FLOWERING AND EIGHT OUNCES OF CONSUMABLE RAW

Cannabis Products PER MONTH IF THERE ARE TWO OR MORE ADULTS RESIDING IN THE HOUSEHOLD. ADULT USE IS LAWFUL AS SOON AS THIS SECTION IS ADOPTED.

- (b) ANY PERSON VIOLATING THE UNTAXED CULTIVATION LIMITS IN THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR AND UPON CONVICTION THEREOF BE FINED FOR EACH OFFENSE. THE SALE OF ANY AMOUNT OF CANNABIS OR CANNABIS PRODUCTS WILL REQUIRE LICENSING AND REMITTANCE OF TAX TO THE COLORADO DEPARTMENT OF REVENUE.

(5) Lawful Business Operation. NO BUSINESS, CORPORATE ENTITY OR IT'S AGENTS WILL BE PROSECUTED, DENIED ANY RIGHT OR PRIVILEGE, NOR BE SUBJECT TO ANY SEIZURE, ASSET FORFEITURE, AND OR ANY CRIMINAL OR CIVIL PENALTY OR SANCTION FOR THE STATE LICENSED MANUFACTURE, POSSESSION, RESEARCH, TESTING, ANALYZING, TRANSPORTATION, DISTRIBUTION, PURCHASE, SALE, DISPLAY, DISPENSING OR SERVING OF Cannabis Products AND OR Cannabis.

(6) Licensing and Regulation. THE LEGISLATURE WILL AUTHORIZE THE DEPARTMENT OF REVENUE ALCOHOL, Cannabis AND TOBACCO ENFORCEMENT DIVISION TO ENACT Reasonable RULES AND LICENSING REQUIREMENTS FOR Cannabis Businesses EFFECTIVE NO LATER THAN THE FIRST LEGISLATIVE SESSION AFTER THIS SECTION IS ADOPTED. Cannabis Businesses AND Cannabis Products ARE TO BE REGULATED AND LICENSED IN A EQUAL MANNER TO AND NO MORE EXCESSIVE OR COST PROHIBITIVE THAN THE EQUIVALENT STATE LEVEL CIGAR AND PIPE TOBACCO PRODUCTS LAWS AS EXISTED PRIOR TO JANUARY 1ST 2012, ALLOWING FOR Reasonable LICENSE FEE ADJUSTMENTS OVER TIME. WITH THE FOLLOWING CAVEATS APPLYING TO LICENSING AND REGULATIONS AS DEFINED UNDER THIS SECTION 6:

- (a) WITH THE EXCEPTION OF Cannabis Products SALES BEING RESTRICTED TO COLORADANS TWENTY ONE YEARS OF AGE OR OLDER, SALES OF Cannabis Products WILL BE GOVERNED BY THE SAME RULES AS ESTABLISHED IN 18-13-121 C.R.S FOR TOBACCO SALES.
- (b) Cannabis Product RETAIL SALES TAX WILL NOT EXCEED THE GENERAL RETAIL SALES TAX OF THE STATE, COUNTY OR MUNICIPALITY WHERE IT IS SOLD. Cannabis Products SALES TO REGISTERED COLORADO MEDICAL MARIJUANA PATIENTS IN AMOUNTS LIMITED TO THEIR DOCTOR'S RECOMMENDATION ON A PER MONTH BASIS WILL BE TAX EXEMPT.
- (c) ALL Cannabis Business LICENSEES, SHAREHOLDERS AND INVESTORS SHALL BE US CITIZENS AND PRIMARY RESIDENTS OF COLORADO FOR AT LEAST ONE YEAR, AND SHALL NOT BE A LAW OFFICER AND OR EMPLOYEE OF THE STATE OR LOCAL LICENSING AUTHORITY.
- (d) IN THE INTEREST OF SAFER COMMUNITIES, Cannabis Products WILL NOT BE SOLD, CONSUMED OR ADVERTISED IN ESTABLISHMENTS THAT SELL ALCOHOL, OR IN ANY AREA THAT SERVES ANY ONE UNDER TWENTY ONE YEARS OF AGE.
- (e) LOCAL AUTHORITIES WILL ENACT Reasonable ZONING LAWS AND A PER CAPITA CAP ON Cannabis Businesses.
- (f) WITH RESPECT TO LICENSING AND ZONING Cannabis Businesses WILL NOT BE WITHIN ONE THOUSAND FEET OF, THE REAL PROPERTY COMPRISING A PUBLIC OR PRIVATE ELEMENTARY OR SECONDARY SCHOOL OR A PUBLIC OR PRIVATE COLLEGE, JUNIOR COLLEGE, OR UNIVERSITY, OR A PLAYGROUND, OR HOUSING FACILITY OWNED BY A PUBLIC HOUSING AUTHORITY, OR WITHIN ONE HUNDRED FEET OF A PUBLIC OR PRIVATE YOUTH CENTER, PUBLIC SWIMMING POOL, OR VIDEO ARCADE FACILITY AS DEFINED IN USC 21 SECTION 860. THE LOCAL LICENSING AUTHORITY MAY VARY THE DISTANCE RESTRICTIONS IMPOSED BY THIS PARAGRAPH (F) FOR A LICENSE OR MAY

ELIMINATE ONE OR MORE TYPES OF SCHOOLS, CAMPUSES OR FACILITIES FROM THE APPLICATION OF A DISTANCE RESTRICTION ESTABLISHED BY OR PURSUANT TO THIS PARAGRAPH (F).

- (g) Medical Marijuana Businesses THAT HAVE AN APPLICATION ON FILE OR ARE LICENSED AT THE TIME THIS SECTION IS ADOPTED AND THAT CHOOSE TO APPLY FOR A Cannabis Business LICENSE SHALL BE GIVEN PRIMARY CONSIDERATION WITH RESPECT TO LICENSING.
- (h) IF VOTERS APPROVE TO ENACT AN EXCISE TAX ON Cannabis Products, THE TAX WILL NOT EXCEED TWENTY PERCENT OF THE MANUFACTURES LIST PRICE OR APPLY TO Hemp Products OR SEEDS AND WILL BE EXEMPT FROM THE MSA.
- (i) THE GENERAL ASSEMBLY IS HEREBY DIRECTED TO CREATE A "SAFER COMMUNITIES FUND" WHERE TEN PERCENT OF ALL RETAIL SALES TAX REVENUE COLLECTED FROM THE SALE OF Cannabis Products WILL BE APPROPRIATED TO FUND K - 12 PUBLIC SCHOOLS, TEN PERCENT FOR STATE FUNDED HEALTH CARE PROGRAMS, THREE PERCENT FOR STATE FUNDED SUBSTANCE ABUSE AND TREATMENT PROGRAMS, AND TWO PERCENT FOR STATE FUNDED PRISONER REHABILITATION PROGRAMS. SUCH EXISTING REVENUE AND THEIR DISTRIBUTION WILL BE CONTINUOUS AND WILL NOT BE REPEALED OR REDUCED BY THE GENERAL ASSEMBLY. THE REMAINDER SHALL BE ALLOCATED TO THE GENERAL FUND.
- (j) THE LEGISLATURE WILL AUTHORIZE THE DEPARTMENT OF AGRICULTURE TO ENACT Reasonable REGULATIONS FOR INDUSTRIAL HEMP FARMING EFFECTIVE NO LATER THAN THE FIRST LEGISLATIVE SESSION AFTER THIS SECTION IS ADOPTED, THAT WILL BE EQUAL TO AND NO MORE EXCESSIVE OR COST PROHIBITIVE THAN ANY OTHER AGRICULTURAL CROP. Hemp Products WILL BE TAXED NO MORE THAN OTHER AGRICULTURAL OR RETAIL PRODUCTS AND WILL BE AUTHORIZED FOR RETAIL SALES.

(7) Enforcement of the law. ALL Cannabis OR Cannabis Products PRODUCED OR MANUFACTURED, WHETHER COMMERCIALY OR PRIVATELY, WITHIN THE BOUNDARIES OF THIS STATE THAT ARE WHOLLY HELD, MAINTAINED, OR RETAINED WITHIN THE BOUNDARIES OF THIS STATE WILL BE DEEMED LAWFUL. NO STATE, COUNTY OR MUNICIPAL EMPLOYEES, FUNDS, LAWS, REGULATIONS OR RULES WILL BE USED TO ASSIST OR AID AND ABET IN THE ENFORCEMENT OF FEDERAL MARIJUANA LAWS AGAINST COLORADANS IN COMPLIANCE WITH THE PROVISIONS OF THIS SECTION:

- (a) ANY PUBLIC OFFICER OR EMPLOYEE ACTING IN HIS OR HER OFFICIAL CAPACITY, IN VIOLATION OF THIS SECTION IS GUILTY OF A CLASS 1 MISDEMEANOR AND SUBJECT TO BE SUED FOR DAMAGES. ANY DEFENSE OF SOVEREIGN IMMUNITY UNDER COLORADO LAW TO SUCH LIABILITY IS HEREBY WAIVED.
- (b) THE GENERAL ASSEMBLY EFFECTIVE NO LATER THAN THE FIRST LEGISLATIVE SESSION AFTER THIS SECTION IS ADOPTED, WILL ENACT LAWS REGARDING PENALTIES FOR UNLICENSED COMMERCIAL MANUFACTURE, DISTRIBUTION, SALE OR SERVING OF Cannabis Products AND POSSESSION OF Cannabis Products BY THOSE UNDER TWENTY ONE YEARS OF AGE. THE PENALTIES WILL BE NO MORE SEVERE THAN THE EXISTING EQUIVALENT TOBACCO LAWS. INTERSTATE TRAFFICKING OF ANY AMOUNT OF Cannabis Products WILL BE A CRIMINAL OFFENSE UNDER STATE LAW.
- (c) DRIVING WHILE THC IMPAIRED WILL BE SUBJECT TO STATE LAWS, BUT THC BLOOD LEVELS WILL BE REBUTTABLE INFERENCE AND LAWFUL MEDICAL MARIJUANA USE WILL CONSTITUTE AN AFFIRMATIVE DEFENSE WITH RESPECT TO THC DUI PER SE LIMITS.
- (d) THE GENERAL ASSEMBLY WILL HAVE THE AUTHORITY TO CHANGE THE LEGAL AGE OF ADULT

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USERS FROM TWENTY ONE TO EIGHTEEN.

(e) UNTIL OR IF THE GENERAL ASSEMBLY FAILS TO ENACT Reasonable REGULATIONS AND LICENSING REQUIREMENTS FOR Cannabis Businesses, THE PRE-EXISTING STATE LEVEL CIGAR AND PIPE TOBACCO REGULATIONS, LICENSING AND FEES AND THIS SECTION WILL BE USED FOR THE IMMEDIATE IMPLEMENTATION OF Cannabis Products COMMERCE.

(8) Sever-ability. IF ANY OF THESE PROVISIONS BE HELD INVALID BY ANY STATE COURT, THE REMAINDER TO THE EXTENT IT CAN BE GIVEN EFFECT, WILL NOT BE AFFECTED THEREBY, AND TO THIS END THE PROVISIONS OF THIS SECTION ARE SEVERABLE:

(a) NO PROVISION IN THIS SECTION WILL AFFECT, REPEAL, MODIFY, OR CHANGE ANY PROTECTIONS GRANTED TO MEDICAL MARIJUANA PATIENTS, CAREGIVERS OR THEIR DOCTORS UNDER SECTION 14 OF ARTICLE XVIII OF THE COLORADO CONSTITUTION.

(b) IF AND WHEN FEDERAL LAW REGARDING Cannabis OR Cannabis Products CHANGES AS TO ALLOW INTERSTATE COMMERCE OF Cannabis AND OR Cannabis Products THE RESIDENCY REQUIREMENTS, COLORADO ID REQUIREMENT TO PURCHASE Cannabis Products AND THE INTERSTATE TRAFFICKING CRIMINAL LAWS WILL BE REPEALED.

(9) Conflicting Measures. IF THIS AMENDMENT IS APPROVED BY THE VOTERS BUT SUPERSEDED BY ANY OTHER CONSTITUTIONAL PROVISION AND THE CONFLICTING PROVISION IS LATER HELD INVALID, THIS AMENDMENT SHALL BE SELF-EXECUTING AND GIVEN THE FULL FORCE OF LAW.

(10) Safer Communities. THE PEOPLE OF COLORADO HEREBY FINDS, DETERMINES, AND DECLARES THAT THIS ACT IS NECESSARY FOR THE IMMEDIATE PRESERVATION OF THE PUBLIC PEACE, HEALTH AND SAFETY.