

Initiative Petition for a Law ending marihuana prohibition for persons 21 years of age or older

BE IT ENACTED by the People, and by their authority, as follows:

SECTION 1 Short title

This act shall be known and may be cited as the Marijuana Regulation and Taxation Act.

SECTION 2 Declaration of policy; purposes

It is the policy of this commonwealth to secure the fundamental right of persons 21 years of age and older to acquire, possess, consume and cultivate marihuana for their personal use and that of their household members and adult guests, and to direct its limited resources toward suppressing the availability of marihuana to persons under 21 years of age.

The purposes of this act are to: advance the policy of the commonwealth; establish uniform statewide regulation of the cultivation of cannabis and of commerce involving marihuana by persons 21 years of age and older; prevent interference with parental rights due solely to the lawful conduct of a parent or child's caregiver relative to marihuana; provide persons who lawfully consume marihuana while off duty equal treatment with those who consume alcoholic beverages in employment practices; provide equal treatment of those who consume marihuana by smoking with tobacco users by residential landlords, provide equal treatment of those who consume marihuana by smoking in public with those who consume alcoholic beverages in public; provide opportunity for domestic farms and manufactures; and, encourage scientific research into the uses of the produce of the cannabis plant as medicine and other products.

SECTION 3 Construction

This act shall be liberally construed to accomplish its policy and purposes.

It shall be construed to apply retroactively where retroactive application is constitutionally authorized.

It shall not be construed to:

alter the drug-free school provisions of section 37H of chapter 71 of the General Laws;

permit the operation while impaired by the consumption of marihuana of a motor vehicle, aircraft, watercraft, recreation vehicle or snow vehicle as provided in chapters 90 and 90B of the General Laws;

permit the operation of any commercial activity within 300 feet of the real property comprising a public or private accredited preschool, accredited headstart facility, elementary, vocational, or secondary school, whether or not in session, or within 100 feet of a public park or public playground;

bar landlords of residential housing from prohibiting the smoking of marihuana, provided that the smoking of tobacco is also prohibited, or from prohibiting the cultivation of marihuana or extraction of resin from marihuana by a tenant and members of the tenant's household for their own use;

alter the provisions of section 22 of chapter 270 of the General Laws relative to smoking in public places and other enumerated places except as provided herein;

limit any of the rights, privileges or immunities recognized or established by an “Act for the Humanitarian Medical Use of Marijuana”, chapter 369 of the acts of 2012; or

except as provided herein limit the application of the state tax code, laws concerning the adulteration and misbranding of food, other consumer protection laws, laws concerning agriculture and conservation, regulation of trade and public safety.

SECTION 4 Amendments to the Controlled Substances Act

Chapter 94C is amended as follows:

The first sentence of the definition of marihuana in Section 1 is amended by inserting after the words “any part of the plant” the following words—

“that contain tetrahydrocannabinol”.

The first sentence of the definition of marihuana in Section 1 is further amended by inserting at the end of the sentence after the word “resin”, the following words—

“that contain tetrahydrocannabinol”.

Section 1 is further amended by amending the definition of “Tetrahydrocannabinol” by striking the words—

“except when it has been established that the concentration of delta-9 tetrahydrocannabinol in said marihuana exceeds two and one-half per cent”.

Chapter 94C is further amended by inserting the following sections 31A–31G:

Section 31A Cultivation, possession and transportation of marihuana for private use

This chapter shall not apply to the acquisition, possession, consumption, cultivation and transportation of marihuana by persons over the age of 21, or to 2 or more such persons who do not share a single household who agree to use land or buildings owned or rented by one 1 or more such persons for the cultivation of marihuana for their personal use and that of their household members and guests over the age of 21, provided that the places of cultivation and storage comply with section 31C and that when transported in a motor vehicle such marihuana shall be secured in sealed packaging, or not in the passenger area of the vehicle, as defined in section 24I of chapter 90 of the General Laws.

A violation of this section’s provision for transportation shall subject an offender to a civil fine of up to \$300.

No municipality shall enact any bylaw or ordinance, rule or regulation that prohibits the use by lawful occupants 21 years of age or older of residential property in the exercise of their right to cultivate marihuana, possess it for their personal use and that of their household members and guests 21 years of age and older or to 2 or more such persons who do not share a single household who agree to use land or buildings owned or rented by one 1 or more such persons that imposes additional requirement upon such use.

No municipality shall enact any bylaw, ordinance or regulation that imposes any penalty greater than that imposed upon those possessing an open container of alcoholic beverage in public, for publicly consuming marihuana or for displaying an open container of marihuana or marihuana product in public, and any such ordinance or bylaws shall in the

first instance be enforced by the noncriminal disposition process in section 21D of chapter 40 of the General Laws.

Section 31B Cultivation, possession and storage of marihuana and marihuana products for sale, sales tax

Except as provided herein, this chapter shall not apply to the cultivation or possession of marihuana with intent to sell, or the selling or transport of marihuana possessed with the intent to sell by any person, provided that the places of cultivation and storage comply with section 31C, retail sales and advertising are conducted in accordance with Section 31D and that when transported in a motor vehicle such marihuana shall be secured in sealed packaging, or not in the passenger area of the vehicle, as defined in section 24I of chapter 90 of the General Laws.

The provisions of sections 186, 187, 188-190, 192 and 193 of chapter 94 of the General Laws in the case of food shall apply to marihuana and marihuana products being offered for sale; however, marihuana shall not be considered for purposes hereof a poisonous or deleterious substance.

The provisions of chapter 64H shall apply to the retail sale of marihuana. The provisions of 64I shall apply to the storage, use or other consumption in the commonwealth of marihuana. In municipalities that have adopted chapter 64L said tax shall apply to retail sales of meals prepared with marihuana as an ingredient.

Of the tax collected less all amounts allowed as refunds and abateements, 12.5% shall be credited to the Agricultural Reserve and Security Fund established in section 2III and 12.5% shall be credited to the Commonwealth Substance Abuse Prevention and Treatment Fund established in section 2BBBB of chapter 29 and spent for the purposes thereof subject to appropriation by the legislature.

Section 31C Preventing access to marihuana by persons under 21 years of age

Whoever is authorized by this chapter to cultivate or possess marihuana shall:

cultivate inside a building or room within a building, greenhouse or outside behind 6-foot fencing that is locked when the owner or authorized person over the age of 21 is not present, on private property leased or owned by them and that the growing plants are not visible to the naked eye 6 feet 6 inches above the ground at the property line with abutting public or private property; and

store harvested plants and marihuana in a locked room or container when the owner or other lawfully authorized adult is not present.

A violation of this section shall be punished by a civil fine of up to \$300.

Any person 21 years of age or older who fails to comply with the provisions of this section and as a result of such noncompliance a person under the age of 21, not his spouse, who was a foreseeable trespasser or guest acquires marihuana shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than 1 year or both.

SECTION 31D Prevention of persons under the age of 21 from accessing marihuana from retailers and regulation of advertising:

(A) Retailers, cannabis cafés and clubs shall

- (a) deny persons under the age of 21 access to rooms in which marihuana or marihuana products are served, displayed for sale by verifying by means of valid government-issued photographic identification that each person entering the sales room is 21 years of age or older and repeating the verification prior to sale—no such verification is required for any person who appears 27 years of age or older—and, if employing 6 or more persons, shall undertake an in-house secret shopper program consisting of at a minimum, 6 visits per year to the establishment by a person retained by the establishment, where a person poses as a customer in order to ensure compliance by the employees with laws prohibiting the entry and sale of marihuana or marihuana products to persons under 21 years of age, with each visit made on a different day and at a different time, and, where practical, to a different outlet employee;
- (b) not use vending machines or any other electronic or mechanical device to effectuate sales of marihuana or marihuana products;
- (c) not use self-service displays of marihuana or marihuana products;
- (d) not display marihuana or marihuana products exposed for sale to persons outside the sales room;
- (e) implement and operate a training program for all employees who handle exchanges of marihuana or marihuana products regarding compliance with laws prohibiting the sale of marihuana or marihuana products to juveniles and minors;
- (f) post a copy of the penalties set forth in subdivision (1) of section 24 of chapter 90 for driving under the influence and for the sale, delivery or furnishing marihuana or marihuana products to a juvenile or minor. Said copies shall be posted conspicuously by the owner or person in charge of the respective establishment.
- (g) place purchases in sealed containers;
- (h) affix to all packages containing marihuana a label in boldface font of not less than 10 points, with these warnings, in boldface: “For adults only. Keep out of reach of children”, “May be habit-forming”, “It is a crime to operate a motor vehicle, recreational vehicle, boat or aircraft if impaired by consumption of this product” and “This product must be stored in a locked container when you are not present.”

(B) Advertising

- (a) Outdoor advertising of marihuana or marihuana products, including advertising in enclosed stadiums and advertising from within a retail establishment that is directed toward or visible from the outside of the establishment, in any location that is within a 1,000-foot radius of any public playground, playground area in a public park, elementary school or secondary school is prohibited.
- (b) Point-of-sale advertising of marihuana or marihuana products outside of the sales room may be placed on the premises, provided that no portion of such advertising is placed lower than 5 feet from the floor of any retail establishment which is located within a 1,000-foot radius of any public playground, playground area in a public park, elementary school or secondary school, and which is not an adult-only retail establishment.

(c) No signs or other printed matter advertising any brand or kind of marihuana or marihuana product shall be displayed on the exterior or interior of any licensed premises where such a brand or kind of marihuana or marihuana product is not regularly and usually kept for sale.

(d) The use of vehicles equipped with either radio or loudspeakers for the advertising of marihuana or marihuana products is prohibited. The use of radio or loudspeaker equipment in any licensed premises for the purpose of attracting attention to the sale of marihuana or marihuana products therein is also prohibited.

Any retailer that violates the provisions of this section shall be subject to a civil penalty of \$300 but not to any other form of criminal or civil punishment or disqualification.

Section 31E Types of marihuana businesses authorized

“Cannabis café”, an establishment licensed as a common victualler or innholder pursuant to section 2 of chapter 140 licensed by the municipal licensing authority to engage in retail sale of marihuana including foods prepared with marihuana as an ingredient for consumption by customers on the premises by smoking, eating or otherwise ingesting marihuana. No cannabis café shall be granted an on-premises alcoholic beverage license, nor permit the consumption of alcoholic beverages on the premises or permit consumption of marihuana by patrons that the manager of the cannabis café knows or has reason to know recently consumed alcoholic beverages prior to entering the premises.

“Club”, an exclusively social or fraternal association or corporation, not organized for private profit, owning, hiring or leasing land, buildings, or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests for the consumption on the premises by smoking, eating or otherwise ingesting marihuana and the sharing of marihuana licensed by the local licensing authority, provided that its affairs and management are conducted by a board of directors, executive committee, or similar body chosen by the members at its annual meeting. No club shall be granted an on-premises alcoholic beverage license, nor permit the consumption of alcoholic beverages on the premises or permit consumption of marihuana by patrons that the manager of the club knows or has reason to know recently consumed alcoholic beverages prior to entering the premises. Such club shall file with the local licensing authority annually within 3 months after January 1st in each year a list of the names and residences of its officers, together with the amount of salary or compensation received by each employee engaged in the handling of marihuana.

“Marihuana farm”, a parcel of 5 acres or more or a parcel of 2 acres or in an area zoned for agriculture, horticulture, floriculture or viticulture as set forth in the first paragraph of section 3 of chapter 40A of the General Laws G.L. c. 40A, on which a farmer intends to cultivate cannabis with the intent to sell at retail or wholesale marihuana.

“Marihuana farmer’s market”, a public market for the primary purpose of connecting and mutually benefiting Massachusetts marihuana farmers, communities, and adult shoppers while promoting and selling products grown and raised by participating farmers.

“Marihuana products producer”, a person or business entity licensed by the department of public health, which license shall be granted if the applicant establishes that it will prepare,

test, package and label the “marihuana products” it produces by extraction from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant; such products are commonly called hashish, hash oils and edibles, in conformance with the department’s regulations for MMTCs as amended from time to time.

“Medical marijuana treatment center” or “MMTC”, a not-for-profit entity established pursuant to Chapter 369 of the Acts of 2012 and department of public health regulations. A MMTC may register as a retailer and collect sales tax only from adults not registered as a patient.

“Retailer”, a person or business entity offering to sell to persons 21 years of age or older at retail raw marihuana and marihuana products who has registered each location at which sales are conducted with the commissioner of the department of revenue in accordance with section 67 of chapter 62C. Such registration shall specify as the tax type “sales tax on marihuana.”

Section 31F Local bylaws and ordinances regulating marihuana farms, marihuana farmers’ markets, marihuana product producers, retailers, cannabis cafes and clubs

No municipality shall enact any bylaw or ordinance, rule or regulation that imposes additional requirements or fees upon:

marihuana farms than imposed upon any other farm engaged in horticulture;

marihuana farmers registered as retailers joining with other marihuana farmers so registered and holding a marijuana farmer’s market on an appropriate site, except that the municipal licensing authority may require a daily fee for a license to hold such a farmer’s market, not to exceed \$100;

marihuana products producers than imposed upon any other food processing use;

retailers than those imposed upon sellers of tobacco products;

cannabis cafes or clubs beyond those imposed upon common victuallers licensed to sell alcoholic beverages for on-premises consumption, however a municipality may limit the number of such licenses issued in the municipality to the number of licenses it may issue for the sale of alcoholic beverages for on-premises consumption.

Section 31G Municipal Taxes on cannabis cafes and clubs

Municipalities may levy, assess and collect on or before June 30 of each year from:

cannabis cafes an excise at the rate of 0.75 per cent of such taxpayer’s gross receipts in the prior calendar year; and

clubs an excise at the rate of \$25 for each person who was a member during the prior 12 months as of May 1 preceding.

Section 32L is amended by inserting after the word “program” in the third sentence–

“, substance abuse evaluation”.

Section 32M as amended by section 34 of chapter 84 of the acts of 2013 is amended by adding the following paragraph–

Such an offender shall also undergo a substance abuse evaluation conducted by a licensed alcohol and drug counselor as defined in section 1 of chapter 111J, and a report of the evaluation shall be provided to the parents or legal guardian and to the offender if over the age of 16.

Section 32N is amended by adding the following paragraph:

The police department issuing the citation on behalf of the municipality in which the offense occurred, or the municipality shall, if the civil fine is not paid when due, enforce collection of the civil fine using the procedure authorized by section 21 of chapter 218. The offender in such action shall be deemed to have waived all defenses except sufficiency of the service of the citation and the right of appeal provided in section 23 of chapter 218. The court shall not impose a filing fee for such action. The court shall award the municipality \$300 in damages together with interest at the rate of 12 percent per annum from the twenty-first day after the citation issued.

Chapter 94C is further amended by inserting the following sections 32O–32Q:

Section 32O Sale, distribution or delivery of marihuana to person under 21 years of age

(1) Any person 21 years of age or older who sells, distributes or delivers marihuana to a person they know or should know is under 21 years of age, not his or her child, grandchild, ward or spouse shall be punished by a fine of not more than \$3,000 or by imprisonment for not more than 2 years or both.

(2) Any person convicted of violating subsection (1) of this section after one or more prior convictions, or of any offense of any other jurisdiction, federal, state, or territorial, which is the same as or necessarily includes the elements of said offense, shall be imprisoned in state prison for not more than 5 years or a house of correction for not more than 2 years, or a fine of not less than \$3,000 nor more than \$5,000 or both such fine and imprisonment.

Section 32P Allowing marihuana consumption by underage guests

Any person 21 years of age or older who knowingly allows a person under 21 years of age, except for the spouse, wards, children and grandchildren of the person being charged, to consume marihuana on premises or property owned or controlled by the person charged shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than 1 year or both.

Section 32Q Administering marihuana to another without that person's knowledge and consent

Whoever intentionally administers marihuana or causes marihuana to be ingested by a person without that person's knowledge and consent, or whoever intentionally leaves unattended marihuana in a public place shall be punished by a term of imprisonment in the state prison for not less than two and one-half nor more than 5 years or by imprisonment in a jail or house of correction for not less than 1 nor more than two and one-half years and a fine of not less than \$500 nor more than \$10,000.

Section 32R Delivery of marihuana as prima facie evidence of sale

The delivery of marihuana in or from a building, booth, stand or other place, except a private dwelling-house, or in or from a private dwelling-house if any part of it or its

dependencies is used as an inn, eating house or shop of any kind, or in or from any other place of common resort, such delivery in any case being to a person not a resident therein, shall be prima facie evidence that such delivery is a sale.

Section 32S Issuance of search warrant for marihuana kept or deposited contrary to law

Search warrants may issue upon the application of 2 persons of full age under oath setting forth the facts upon which they rely for their belief that marihuana described in the application is kept or deposited by a person named therein in the place specified therein and intended for sale contrary to law. In all other respects such application, warrant and execution shall comply with the provisions of sections 1, 2, 2A, 2B and 3 of chapter 276.

Section 32T Search of dwelling-house and associated real property for marihuana

A warrant shall not issue for the search of a dwelling-house or real property associated with it, if no inn, tavern, store, grocery, eating house or place of common resort is kept therein, unless affiant states under oath that upon personal knowledge or reliable information from an identified person that marihuana has been sold therein or taken therefrom for the purpose of being sold, either by the occupant, or with the occupant's consent or permission, contrary to law, within 2 weeks previous to the filing of the application. In all other respects such application, warrant and execution shall comply with the provisions of sections 1, 2, 2A, 2B, 3 and 3A of chapter 276.

SECTION 5 Amendment to the term "misbranded" as used in Section 187 of chapter 94

Section 187 of chapter 94 of the general laws is hereby amended by striking the words "cannabis" and "marihuana" following the words, "Fifth, if it is for use by man and contains any quantity of the narcotic or hypnotic substance".

SECTION 6 Inquiry of defendant convicted of driving under influence of intoxicating liquor or marihuana as to establishment serving alcohol or marihuana

The first paragraph of section 24J of chapter 90 of the General Laws is hereby amended by inserting after the word "liquor" the words "or marihuana".

The first paragraph of section 24J is further amended by inserting after the words "served alcohol" in the first paragraph the words "or marijuana".

The first paragraph of section 24J is further amended by inserting after the words "alcohol on the premises" the words "or marihuana on the premises".

The second paragraph of section 24J is amended by inserting after the word "shall" the words "in the case of alcohol".

The second paragraph of section 24J is amended by inserting after the word "commission," the words "or in the case of marijuana to the local licensing authority and".

SECTION 7 Chapter 139 abatement of common nuisances

Section 14 of chapter 139 of the general laws is hereby amended by inserting after the word "thirty-eight" the words—"illegal keeping or sale of marihuana, as defined in chapter 94C,".

SECTION 8 Employment of persons under 21 years of age prohibited

Section 62 of chapter 149 of the General Laws is hereby amended as follows:

(a) inserting after the word “bottled” in clause (13) — “or if under the age of 21 in the cultivating of cannabis or harvesting of cannabis or the production and packaging of marihuana products”; and

(b) inserting after the word “liquors” in clause (14) — “or if under the age of 21 marihuana or marihuana products”.

SECTION 9 Protection and care of children

Chapter 119 of the general laws is hereby amended by inserting the following new section:

Section 86 In any administrative action or proceeding relating to the care and protection of a child under this chapter the presence of marihuana metabolites in a newborn’s bodily fluids, or conduct by a person caring for a child related to marihuana permitted under chapter 94C shall not form the sole or primary basis for supporting an allegation of neglect or abuse or for any action by the department or the basis for proceedings before the juvenile court.

SECTION 10 Custody of children (divorce)

Section 31 of chapter 208 of the general laws is amended by adding at the end of the paragraph that begins: “In making an order or judgment relative to the custody of children” the following sentence:

A parent’s conduct related to marihuana permitted under chapter 94C shall not be considered misconduct.

SECTION 11 Award of custody, criteria (children born out of wedlock)

Section 10 (a) of chapter 209C of the general laws is amended by adding at the end the following paragraph:

In making an order or judgment relative to custody or visitation, a parent’s or other person’s conduct related to marihuana permitted under chapter 94C shall not be considered a factor contrary to the best interest of the child.

SECTION 12 Employment practices

Section 4 of chapter 151B is hereby amended by inserting the following new subsection 4E:

For a public or private employer failing to treat adult off-duty consumption of marihuana in the same manner as they treat off-duty consumption of alcoholic beverages in their employment practices, unless the employer proves that failing to treat such activities equally would cause loss of a monetary benefit under federal law or regulations.

SECTION 13 Providing banking services to entities lawfully engaged in marihuana commerce in the commonwealth

The commissioner of banks shall promulgate rules and regulations establishing standards relative to the provision of banking services by banks or credit unions under his supervision for the provision of banking services to entities authorized to engage in marihuana commerce under chapter 94C of the general laws.

Such regulations to be established by June 30, 2017.

SECTION 14 Expungement of marihuana offenses from the databases of the Criminal Justice Information System and Criminal Offender Record Information System

The Department of Criminal Justice Information Services shall expunge from all databases maintained by it records of violations or alleged violations of section 34 of chapter 94C by persons 21 years of age or older at the time of the offense and of violations or alleged violations of section 32C of chapter 94C by persons 21 years of age or older at the time of the offense alleging cultivation of marihuana.

SECTION 15 Effective dates

This act shall be effective the day following the state secretary's receipt from the governor and council of their determination of an affirmative vote on the question as provided by G.L. c. 54, § 115.

We the undersigned state under the pains and penalties of perjury that we have personally read the final text of this proposed statute, fully subscribe to its contents, are qualified voters of the commonwealth at the addresses printed below our names, and freely and voluntarily agree to be one of its original signers as required by Amendment Article 48 of the Constitution of the Commonwealth of Massachusetts.

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