

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, to establish uniform statewide regulation of the cultivation of cannabis and of commerce involving marihuana, to prevent interference with parental rights due solely to the lawful conduct of a parent or child's caregiver relative to marihuana, to provide persons who lawfully consume marihuana while off duty equal treatment with those who consume alcoholic beverages in employment practices, to provide equal treatment of those who consume marihuana by smoking with tobacco users by residential landlords, to provide opportunity for domestic farms and manufactures and to 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 a marihuana farm, marihuana farmer's market, marihuana product producer, retailer, cannabis café or club authorized by this act to be located 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, of laws concerning the adulteration and misbranding of food, other consumer protection laws, or laws concerning agriculture and conservation.

#### 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–31C:

##### 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 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 penalty of up to \$300 but not to any other form of criminal or civil punishment or disqualification. Enforcement shall be in a manner consistent with the provisions of section 21D of chapter 40 of the General Laws.

##### Section 31B Cultivation, possession and storage of marihuana for sale

No person shall cultivate or possess marihuana with intent to sell, or sell marihuana, or transport marihuana possessed with the intent to sell it, except as authorized by sections 50–53 and 62 and 63 of this chapter.

##### 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 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.

Chapter 94C is further amended by inserting the following sections 50–63:

Section 50 Definitions

As used in sections 50–63, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Cannabis café”, an establishment licensed as a common victualler or innholder pursuant to section 2 of chapter 140 and licensed pursuant to section 62 of this chapter to engage in retail sale of marihuana including foods prepared with marihuana as an ingredient for consumption by customers on 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 sharing of marihuana licensed pursuant to section 63 of this chapter, 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. Such club shall file with the local licensing authority and the commissioner 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.

“Commissioner”, the commissioner of the department of revenue.

“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 registered with the commissioner of agricultural resources pursuant to section 51.

“Marihuana farmer”, a farmer who intends to sell marihuana seeds, plants or marihuana whether at wholesale to marihuana product producers or retailers, or to persons 21 years of age registered with the commissioner as a retailer in accordance with section 67 of chapter 62C.

“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 product”, the subclass of marihuana as defined in section 1, being shorthand for the resin that contains tetrahydrocannabinol extracted 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.

“Marihuana products producer”, a person or business entity licensed by the department of public health under section 52 authorized to purchase marihuana at wholesale from a marihuana farmer for the purpose of manufacturing and selling marihuana products to a retailer.

“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.

“Raw marihuana”, the plant severed from its roots, including the leaves and flowers, recognizable as vegetable matter.

“Retailer”, a person or business entity authorized 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 as required by section 53.

“Secret shopper program”, at a minimum, 6 visits per year to a retail sales outlet by a person retained by a retailer, where the person poses as a customer in order to ensure compliance by the outlet's employees with laws prohibiting the sale of marihuana or marihuana products to juveniles and minors, with each visit made on a different day and at a different time, and, where practical, to a different outlet employee.

#### Section 51 Marihuana farm registration to cultivate and registration to sell or offer for sale marihuana at wholesale or retail

No person shall cultivate marihuana for commercial purposes unless the land on which it is grown is registered with the department of agricultural resources as a marihuana farm under chapter 128, section 116 and the marihuana farmer is registered with the commissioner.

The marihuana farmer shall comply with all general laws applicable to the cultivation of plants intended as food for human consumption and shall prepare raw marihuana intended for sale to marihuana products producers, retailers or retailed directly to persons over the age of 21 as required by general law for the preparation of produce for human consumption.

#### Section 52 Marihuana products producer license, annual fee

No person shall engage in the business of a marihuana products producer unless each place of business is licensed by the department of public health, which license shall be granted if the applicant establishes that it will prepare, test, package and label its products in conformance with the department’s regulations for MMTCs as amended from time to time.

For the first year after the effective date of this act the annual fee for such a license shall be \$1,500.00 for each place of business. Thereafter, pursuant to section 3B of chapter 7, the

secretary of administration and finance shall establish the annual fee, but in no event shall it increase more than 50% from year to year.

#### Section 53 Registration of retailer with the department of revenue

No person shall engage in the business of retail sale of marihuana unless a registration shall have been issued to him for each place of business in accordance with section 67 of chapter 62C. Such registration shall specify as the tax type “sales tax on marihuana.”

A MMTC may register as a retailer and collect sales tax only from adults not registered as a patient.

#### Section 54 Prevention of persons under the age of 21 from accessing marihuana from retailers and regulation of advertising:

##### (A) Retailers shall

- (a) deny persons under the age of 21 access to rooms in which marihuana or marihuana products are 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 as a routine part of its business to test implementation and compliance with this age verification requirement;
- (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, 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) The use of cartoon characters in any advertisement is prohibited.

(d) 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.

(e) 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. Enforcement shall be in a manner consistent with the provisions of section 21D of chapter 40 of the General Laws.

#### Section 55 Tax on retail sales of marihuana

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.

#### Section 56 Crediting of portion of taxes

Of the tax collected pursuant to section 55, less all amounts allowed as refunds and abatements, 12.5% shall be credited to the Agricultural Resolve 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 57 Adulteration, misbranding applied to marihuana and marihuana products

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; however, marihuana shall not be considered for purposes hereof a poisonous or deleterious substance.

#### Section 58 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 59 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 60 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 one of the affiants 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 and 3 of chapter 276.

**Section 61 Municipalities that vote favorably on enacting the Marijuana Regulation and Taxation Act taken to have authorized local licensing of cannabis cafés and clubs, citizens petition for authorization or repeal**

If a majority of the votes cast in a city or town in answer to the initiative question on the Marijuana Regulation and Taxation Act are in the affirmative, such city or town shall be taken to have authorized, until such time as such authority is repealed as provided in this section, the licensing of cannabis cafés and clubs in such city or town, in accordance with the provisions of this chapter.

If a majority of the votes cast in a city or town in answer to this initiative question are in the negative, the secretary of state shall, upon receipt of a petition signed by at least 10 per cent of the number of voters registered therein at the last preceding state election, cause to be placed on the ballot at the next succeeding biennial state election held not less than 60 days subsequent to the filing of such petition the following question:

Shall licenses be granted in this city (or town) for cannabis cafés and clubs.

If a majority of votes cast on such question is in the affirmative, the city or town shall license cannabis cafés and clubs in accordance with the provisions of this chapter.

In any city or town that has authorized the licensing of cannabis cafés and clubs, such authority may be repealed no sooner than 4 years after such authorization by a petition signed by at least 10 per cent of the number of voters registered therein at the last preceding state election. The state secretary shall upon receipt of such petition cause to be placed on the ballot at the next succeeding biennial state election held not less than 60 days subsequent to the filing of such petition the following question:

Shall licenses be granted in this city (or town) for cannabis cafés and clubs.

If a majority of votes cast on such question is in the negative, the city or town shall cease licensing cannabis cafés and clubs in such city or town.

The forms for such petitions shall be obtained from said secretary and returned with the registrars' certification within 80 days after they are obtained.

The local registrars of voters shall identify and certify the signatures in accordance with the provisions of section 7 of chapter 53 of the General Laws.

**Section 62 Licenses of cannabis cafés authorizing sale of marihuana to be consumed on premises; suspension or revocation; hours of sale; liability insurance; excise tax on gross sales**

In any municipality that approves the licensing of cannabis cafés the local licensing authority shall grant licenses. No license shall be granted for more than 1 year and may be renewed annually.

Cannabis cafés shall comply with section 54, to the extent applicable.

Notwithstanding the provisions of section 22 of chapter 270, the patrons may smoke marihuana and marihuana products in such licensed premises.

A cannabis café may allow a patron to retain and take off the premises only so much as may remain of marihuana or marihuana product purchased by them in conjunction with a meal and not totally consumed during such meal. Such remaining marihuana or marihuana product must be sealed in a one-time-use tamper-proof transparent bag, with a receipt affixed thereto that prominently displays the date of purchase of the meal and the purchase of the marihuana or marihuana product.

The local licensing authority may impose a fee no greater than that imposed on applicants for a license for an on-premises all-alcoholic-beverages license. It may also establish a process similar to but no more rigorous than that imposed on an applicant for an on-premises all-alcoholic-beverages license.

Upon approval of a license the licensing authorities shall set the hours during which the café may be open for business during which marihuana may be served, either generally or specially for each licensee; provided, however, that no license shall authorize operation between the hours of 2 a.m. and 8 a.m. and that no such licensee shall be barred from being open between the hours of 11 a.m. and 11 p.m.; provided, further, that any such licensee or the licensee's manager shall not be prohibited from being on the licensed premises at any time; provided, further, that the employees, contractors or subcontractors shall not be prohibited from being upon such premises at any time for the purpose of cleaning, making renovations, making emergency repairs to or providing security for such premises or preparing food for the day's business or opening or closing the business in an orderly manner. The licensing authority shall not decrease the hours during which sales may be made by a licensee until after a public hearing concerning the public need for such decrease; provided, however, that a licensee affected by any such change shall be given 2 weeks notice of the public hearing.

The licensee shall cause to be displayed a copy of the certificate of licensure.

A license granted under this section may be suspended or revoked for cause by the local licensing authority after notice and a hearing; however, no action shall be taken on that

account by such authority with respect to that business's common victualler's license. A licensee aggrieved by the action of a local authority suspending or revoking such license may appeal within 30 days to the superior court division having jurisdiction in accordance with section 14 of chapter 30A.

The local licensing authorities may accept the surrender of a license issued under this section, but no refund of any fees paid shall be authorized.

No license issued under this section shall be subject to any condition or requirement varying the occupancy of the licensed premises as certified by any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules or regulations.

A licensee may provide on-premises sample marihuana tasting; provided, however, that the licensee shall not solicit orders for off-premises consumption; and provided further, that any such tasting shall be limited to one-twentieth of a gram, and food shall be served in conjunction with any such tasting.

The licensee shall register the location with the commissioner under section 67 of chapter 62C. In addition to the tax imposed by section 59 on marihuana not infused into a meal and the tax on meals imposed by chapter 64H and if applicable 64L, there shall be levied, assessed and collected an excise at the rate of 0.75 per cent of such taxpayer's gross receipts.

No license shall be issued or renewed under this section until the applicant or licensee provides proof of coverage under a liability bond or general liability insurance policy for bodily injury or death for a minimum amount of \$100,000 on account of injury to or death of 1 person, and \$200,000 on account of any 1 accident resulting in injury to or death of more than 1 person. Proof of the insurance coverage required by this section shall be made by filing a certificate of insurance in a form acceptable to the local licensing authority. The insurance shall be subject to sections 5 and 6 of chapter 175A of the General Laws.

The number of licenses issued in any city or town under this section and section 63 may not exceed the number of licenses it may issue for the sale of alcoholic beverages for on-premises consumption.

**Section 63 Licenses of clubs where marihuana to be consumed on premises; suspension or revocation; hours of operation; liability insurance; excise tax on gross sales**

In any municipality that approves the licensing of clubs the local licensing authority shall grant licenses. No license shall be granted for more than 1 year and may be renewed annually.

No club shall be granted an on-premises alcoholic beverage license, nor shall such club permit the consumption of alcoholic beverages on the premises or permit consumption of marihuana by members and their guests that the manager of the club knows or has reason to know recently consumed alcoholic beverages prior to entering the premises.

Cannabis clubs shall comply with section 54, to the extent applicable.

Notwithstanding the provisions of section 22 of chapter 270, the members and guests may smoke marihuana and marihuana products in such licensed premises.

Club members and employees of the club may prepare foods from such marihuana for consumption by members and their guests on the premises.

The club must provide proper locked storage space for each member's marihuana, and all marihuana consumed in the club must be brought to the club by individual members. Such marihuana is to be served and consumed only in areas that the local licensing authority approves in writing.

A club member may remove what remains of the marihuana that he or she may have brought to the club. Such remaining marihuana must be sealed in a one-time-use tamper-proof transparent bag, with a certificate affixed thereto signed by the club manager that prominently displays the date it was sealed, along with the name of the club member, and identifies the contents as the property of the named club member.

Clubs may host marihuana farmers' markets.

The local licensing authority may impose a fee no greater than that imposed on applicants for a social or fraternal organization license for an on-premises all-alcoholic-beverages license. It may also establish a process similar to but no more rigorous than that imposed on an applicant for an on-premises all-alcoholic-beverages license.

Upon approval of a license the licensing authority shall specify what hours the club may be open to members and their guests to consume marihuana either generally or specially for each licensee; provided, however, that no license shall authorize operation between the hours of 2 a.m. and 8 a.m. and that no such licensee shall be barred from being open between the hours of 11 a.m. and 11 p.m.; provided, further, that members or the club's manager, if any, shall not be prohibited from being on the licensed premises at any time; provided, further, that the employees, contractors or subcontractors shall not be prohibited from being upon such premises at any time for the purpose of cleaning, making renovations, making emergency repairs to or providing security for such premises or preparing food for members or opening or closing the club in an orderly manner. The licensing authority shall not decrease the hours during which marihuana may be consumed until after a public hearing concerning the public need for such decrease; provided, however, that a licensee affected by any such change shall be given 2 weeks notice of the public hearing.

The licensee shall cause to be displayed a copy of the certificate of licensure.

A license granted under this section may be suspended or revoked for cause by the local licensing authority. A licensee aggrieved by the action of a local authority suspending or revoking such license may appeal within 30 days to the superior court division having jurisdiction in accordance with section 14 of chapter 30A of the general laws.

The local licensing authorities may accept the surrender of a license issued under this section, but no refund of any fees paid shall be authorized.

No license issued under this section shall be subject to any condition or requirement varying the occupancy of the licensed premises as certified by any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules or regulations.

No license shall be issued or renewed under this section until the applicant or licensee provides proof of coverage under a liability bond or general liability insurance policy for bodily injury or death for a minimum amount of \$100,000 on account of injury to or death of 1 person, and \$200,000 on account of any 1 accident resulting in injury to or death of more than 1 person. Proof of the insurance coverage required by this section shall be made by filing a certificate of insurance in a form acceptable to the local licensing authority. The insurance shall be subject to sections 5 and 6 of chapter 175A of the General Laws.

In addition to the license fee the club shall pay to the municipal tax collector on or before June 30 of each year a tax of \$25 for each person who was a member during the prior 12 months as of May 1 preceding.

Each license granted to a club shall count toward the number of on-premises marihuana licenses permitted by the last paragraph of section 62.

#### SECTION 5 Local bylaws and ordinances

No municipality shall enact any bylaw or ordinance, rule or regulation that imposes additional requirements 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, or additional requirements on retailers than those imposed upon sellers of tobacco products;

cannabis cafés or clubs beyond those imposed upon common victuallers licensed to sell alcoholic beverages for on-premises consumption.

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 use by a cultivation cooperative or 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 6 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 7 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 8 Marihuana farms; registration; fee, annual reports

Chapter 128 of the general laws is amended by adding the following section:

##### Section 116 Marihuana farms; registration; fee

Every marihuana farm as defined in section 51 of chapter 94C shall be registered with the commissioner, the fee for which shall be \$100, and such registration shall expire on March 31st of the year following the date of issuance, unless sooner revoked.

Chapter 128 is further amended by adding the following section:

##### Section 116A Marihuana farms; reports

Annually on or before the 31st day of December all registered marihuana farms shall in a manner prescribed by the commissioner report their yield per acre by weight of seed and stalk, and the identity of each marihuana product producer and retailer, as defined in section 50 of chapter 94C, who purchased marihuana from them, the amount of marihuana sold to them by weight and the purchase price and the amount of marihuana by weight sold by the farm at retail and the purchase price.

#### SECTION 9 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 10 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 11 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 12 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 13 Award of custody, criteria (children born out of wedlock)

Section 10 of chapter 209C of the general laws is amended by adding the following subsection:

(g) In making an order or judgment relative to visitation or custody of child, a parent's conduct related to marihuana permitted under chapter 94C shall not be considered misconduct.

#### SECTION 14 Employment practices

Section 4 of chapter 151B is hereby amended by inserting the following new subsection 1E:

For a public or private employer's 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 tolerating such activities would cause loss of a monetary benefit under federal law or regulations.

#### SECTION 15 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 January 1, 2017.

#### SECTION 16 Retroactivity

The amendment in section 4 of this act inserting section 31A into chapter 94C of the general laws shall apply retroactively to:

- (a) all unpaid citations for violation of section 32L of chapter 94C;
- (b) all criminal actions pending in the courts of the commonwealth alleging a person 21 years of age or older at the time of offense violated section 34 of chapter 94C;
- (c) all criminal actions pending in the courts of the commonwealth alleging a person 21 years of age or older at the time of offense violated section 32C of chapter 94C by means of cultivating marihuana where there is insufficient proof that the defendant intended to distribute it for profit; and,

(d) all criminal actions pending in the courts of the commonwealth alleging a person 21 years of age or older at the time of offense violated section 40 of chapter 94C where the defendant was the customer and there is insufficient proof that the defendant intended to distribute it for profit.

SECTION 17 Effective dates

Except for sections 50–53 and 62 and 63 of SECTION 4, which shall take effect on March 31, 2017, this act, including the provision in section 53 of SECTION 4 that MMTCs registered with the commissioner as a retailer, 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.

SECTION 18 Severability

The provisions of this law are severable and if any clause, sentence, paragraph or section of this measure, or an application thereof, shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, section or application adjudged invalid.

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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