

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 Ending Marihuana Prohibition For Personal Use By Persons 21 Years of Age Or Older 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 exercise of their rights by persons 21 years of age or older, 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 while off duty consume alcoholic beverages in employment practices, to provide equal treatment of those who consume marihuana by smoking with tobacco users by residential landlords and to provide equal treatment of those who consume marihuana in public with those with an open container of alcoholic beverages.

SECTION 3 Construction

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

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;

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; and,

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.

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** Acquisition, cultivation, possession and transportation of marihuana for private use by persons 21 years of age and older

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 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 31B 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.

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

Whoever is authorized by section 31A 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–32R:

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 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 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 applicant 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 Local bylaws and ordinances

No municipality shall enact any bylaw or ordinance, rule or regulation prohibits the use by lawful occupants 21 years of age or older of residential property, 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 1 or more such persons for the cultivation of marihuana for their personal use 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 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 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 7 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 8 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 10 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 11 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 12 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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