

Legalize2012.com

P.O. Box 19084, Boulder, Colorado 80308

Phone: 877-420-4205

Email: info@legalize2012.com

Web: www.Legalize2012.com

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Mike Mauer, Director
Colorado Legislative Council Staff
State Capitol Building, Room 029
Denver, Colorado 80203
Phone: 303-866-3521
Fax: 303-866-3855
E-mail: lcs.ga@state.co.us

Re: Cannabis Re-legalization Act of 2012

Dear Mr. Mauer,

Pursuant to Article V Section I of the Colorado Constitution and CRS 1-40-105, please accept the attached proposal for a citizen's ballot initiative to amend the Colorado Constitution with the Cannabis Re-legalization Act.

Pursuant to CRS 1-40-104, the designated representatives of the proponents are:

Laura Kriho
Legalize2012.com
P.O. Box 19084, Boulder, Colorado 80308
Phone: 877-420-4205
Email: info@legalize2012.com
Web: www.Legalize2012.com

Dr. Robert Melamede, PhD, President
Colorado Cannabis Science, Inc.
6946 North Academy Blvd, Suite B #254
Colorado Springs, CO 80918
Phone: 719-641-1188
Email: rmelamede@cannabisscience.com
Web: www.CannabisScience.com

We look forward to the Council's input on the initiative. Please feel free to email us if you have any questions.

Sincerely,

Laura Kriho

Be it Enacted by the People of the State of Colorado:

The constitution of the state of Colorado, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE XXX: Cannabis Re-legalization.

Preamble: Whereas, the people of the state of Colorado believe that cannabis is safe and has many uses, including food, fuel, fiber, plastic, lumber, paper and medicine and believe there is compelling evidence that cannabis may be a cure for many cancers; and

Whereas, the human body produces cannabis-like compounds, including psychoactive ones, known as endocannabinoids that are necessary to maintain the biochemical balance in all of our body's systems; and

Whereas, cannabis has no known toxicity level and is safe for humans to consume; and

Whereas, we believe the use of preparations derived from cannabis is a fundamental human right and necessary to maintain our body's natural systems and our health;

Whereas cannabis prohibition laws are harmful to citizens and are not supported by evidence; and

Whereas the money spent on cannabis prohibition could be used to greatly expand the Colorado economy and create thousands of jobs;

Therefore, be it resolved, this article is enacted to completely re-legalize cannabis, remove any punishment for its use and encourage Colorado to become a leader in cannabis research and economic development.

Section 1. Purpose. The goals of this article are to:

- (1) Create a fundamental right to personal cannabis use in Colorado.
- (2) Allow personal cannabis use by adults without punishment or discrimination.
- (3) Allow commercial cannabis use without restrictions that are onerous or burdensome.
- (4) Repeal all criminal statutes and rules that punish or discriminate against the personal and commercial use of cannabis, while leaving other parts of those statutes in effect.
- (5) Replace the racist words "marijuana" and "marihuana" with the scientifically-accurate word "cannabis".
- (6) Create the Colorado Cannabis Commission to implement this article.
- (7) Prohibit the personal and commercial use of cannabis by persons under the age of 18.
- (8) Allow existing medical marijuana providers to stay in business.
- (9) Require the commercial cannabis industry to self-regulate.
- (10) Prohibit the federal government from enforcing federal marijuana laws on Colorado citizens by:
 - (a) making cannabis a fundamental and absolute right in our Constitution;
 - (b) requiring the attorney general to file lawsuits against the federal government;
 - (c) prohibiting state resources from being spent to assist federal marijuana investigations;
 - (d) providing funding to the commission to, at their discretion, assist Colorado citizens in their legal defense if the federal government threatens to punish them for violating the provisions of this article;
 - (e) requiring the attorney general to notify the federal government that cannabis needs to be removed from the federal schedule of controlled substances; and
 - (f) protecting a citizen's right against self-incrimination in federal marijuana crimes as guaranteed by section 18 of article II of this constitution and the Fifth Amendment to the U.S. Constitution.
- (11) Require a 2% sales tax on cannabis to fund the commission, require any other tax to be approved by voters, and limit total taxes on cannabis to a maximum of 10%.
- (12) Require and authorize the governor, attorney general, general assembly and state agencies to implement this article.
- (13) Investigate, impeach or remove from office any state official that does not uphold and enforce this article.
- (14) Allow only the use of evidence-based performance tests to be used to determine impairment by cannabis.
- (15) Create an affirmative defense to cannabis prosecutions.

Section 2. Definitions. For the purposes of this article, unless the context otherwise requires:

- (1) "Adult" means a person over 18 years of age.
- (2) "Cannabis" means all parts of all plants of the genus *Cannabis*, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, extraction or preparation.
- (3) "Cannabis use" means the acquisition, possession, production, transportation, sale, distribution, presence in the body, consumption, cultivation, dispensation, or delivery of cannabis.
- (4) "Personal cannabis use" means cannabis use without the intent of making a profit.
- (5) "Commercial cannabis use" means cannabis use with the intent of making a profit.
- (6) "Commission" means the Colorado Cannabis Commission.

Section 3. Declaration of Policy.

- (1) Personal cannabis use by adults is a fundamental and absolute right to seek and obtain safety and happiness, as protected in section 3 of article II of this constitution.
- (2) Personal cannabis use by adults shall not be punished. No adult shall be subject to arrest or prosecution, nor penalized in any manner, nor denied any right or privilege, nor discriminated against, nor have their privacy violated, nor have inflicted on them any loss, suffering or pain as a retribution for personal cannabis use. This includes, but is not limited to, penalties in cases related to employment, insurance, benefits, or child custody.
- (3) No citizen shall be compelled to testify or give evidence against himself as guaranteed by the section 18 of article II of this constitution
- (4) Only performance-based tests that have been scientifically proven beyond a reasonable doubt to show impairment by cannabis shall be performed on anyone suspected of endangering public safety under the influence of cannabis. No taking of any blood, urine, hair, or breath samples shall be compelled in any way.
- (5) The people find and determine that the laws of the state of Colorado shall always:
 - (a) Conform to the principles and limitations embodied in this constitution;
 - (b) Allow personal cannabis use by adults without punishment;
 - (c) Use the term "cannabis" as defined in this article, and not use the words "marijuana" or "marihuana";
 - (d) Treat commercial cannabis as an agricultural product either equally or less restrictively than grapes, tomatoes or other harmless botanical plants;
 - (e) Allow commercial use of cannabis without onerous or burdensome restrictions;
 - (f) Be based on science and research and have evidence to support them;
 - (g) Protect a citizen's right against self-incrimination with regards to federal marijuana crimes;
 - (h) Prohibit the state from presenting false information about cannabis to the public.

Section 4. Repeal of Marijuana Criminal Statutes.

- (1) Immediately upon proclamation of the governor that this amendment has been approved by a majority of the votes cast, all criminal statutes and regulations related to marijuana shall be repealed. This includes, but is not limited to:
 - (a) Colorado Revised Statutes Title 18, Article 18, Section 406, Offenses relating to marijuana and marijuana concentrate,
 - (b) Colorado Revised Statutes Title 12, Article 43.3, and
 - (c) Any other state, county and municipal statutes, rules, regulations, ordinances or laws that punish the use of marihuana, marijuana and marihuana concentrate, including medical marijuana
 - (d) All other parts of such laws shall otherwise remain in effect.

Section 5. Duty to Replace Term "Marijuana" with "Cannabis".

- (1) (a) The general assembly and all state and local governments and agencies shall amend all statutory laws, regulations and policies previously enacted concerning or relating to marihuana, marijuana and marihuana concentrate to conform to the provisions of this article.
- (b) The general assembly and all state and local governments and agencies shall eliminate the terms marijuana and marihuana and replace such terms with the word "cannabis" as defined in Section 2 of this article.
- (c) If the general assembly does not amend such statutes to conform to the provisions of this article within one year of the enactment of this article, such statutes will be voided and of no effect, except as provided herein.
- (d) All other parts of such statutes shall otherwise remain in effect.
- (2) Until such time that the general assembly amends statutes, as directed in this article, any action that conforms to the provisions of this article shall be an exception to the state's criminal statutes.

Section 6. Unlawful Acts.

- (1) This article does not provide for any person under 18 years of age to engage in cannabis use, unless under direct parental supervision for health reasons as approved by a physician.
- (2) The General Assembly may define prohibition for cannabis use by persons under 18 years of age. Confinement shall not be used as a punishment. Counseling may be required if approved by a parent.
- (3) Private property owners or their agents have the right to regulate or prohibit the use of cannabis on the private property that they own or control.
- (4) Other unlawful acts may be recommended to the general assembly or enacted by the commission. The commission shall have standing in all courts in Colorado to bring suit against those it believes have violated the provisions in this article.

Section 7. Law Enforcement - Duty to Self-Enforce - Prohibition on Assistance to Federal Government.

- (1) In the interest of creating a self-regulating commercial cannabis industry, all persons engaged in commercial cannabis use have a duty to enforce all the provisions of this article and may join together as a group for the purposes of enforcement of this article.
- (2) No state or local executive officer, official, employee, contractor or agent shall ever assist agents of the federal government in any way to investigate, arrest, prosecute, search or seize the property of a Colorado citizen if the intent of the federal government is to punish that citizen for acts considered legal under this article. Any such assistance shall be grounds for dismissal or breach of contract.

Section 8. Commission Powers, Duties and Responsibilities.

- (1) The Colorado Cannabis Commission is hereby formed and charged with carrying out the directives and guidelines of this article. The primary agenda of this article, and therefore the commission, is to allow personal cannabis use by adults without punishment, to allow commercial cannabis use without onerous and burdensome restrictions, to encourage and direct research into the many uses of cannabis and to encourage economic development of cannabis.
- (2) The commission is given the power and the duty to promulgate rules, pursuant to responsibilities set out in this article. These rules shall include, but not be limited to:
 - (a) regulations regarding commercial cannabis use;
 - (b) regulations encouraging cannabis research and economic development;
 - (c) regulations concerning investigation of public officials pursuant to Section 16 (4) of this article.
- (3) Rules restricting cannabis use shall be the minimum necessary to promote cannabis economic development. Restrictions shall not be onerous or burdensome. All regulations, if any, shall be evidence-based. No cannabis

regulation shall ever require a person to incriminate himself in any way in order to exercise his rights under this article. All regulations shall respect a citizen's absolute right to privacy as established in this article.

(4) The commission may appoint and empower other commissions, study groups or any other persons, bodies or organizations to assist in its mission to implement this article.

(5) The commission shall make recommendations to the general assembly necessary to enact and enforce the provisions of this article. These recommendations shall include, but not be limited to, recommendations for:

- (a) determining offenses and penalties for violation of the provisions or intent of this article;
- (b) determining any restrictions on cannabis that may be necessary to further the intent of this article; and
- (c) determining labeling standards of cannabis sold to the public.

(6) The commission may make recommendations to the governor of persons to be considered for pardon, commutation, or reprieve who were convicted, prior to the enactment of this article, of a non-violent offense related to the use of cannabis.

(7) The commission shall file an annual report to the governor and general assembly on or before the second Tuesday in January each year. The first report shall be due in January 2014.

- (a) The report shall include recommendations for any statutory changes necessary to implement and enforce the provisions of this article.
- (b) The report shall indicate the degree of compliance by federal, state and local governments, agencies, non-profit corporations, or any other entities dealing with cannabis.
- (c) The report may include recommendations for research programs designed to gather information or answer questions about cannabis
- (d) The report shall make recommendations to establish adequate funding levels to achieve the goals of this article.

(8) The commission will establish discussions between federal government agencies, state government agencies, and other parties in interest, to establish a cohesive transition where conflict of law or regulation may exist. All policies shall evidence-based.

(9) The commission shall have the power to issue subpoenas, hold hearings, compel testimony, and hire experts in various disciplines.

(10) Upon written complaint from any Colorado citizen, the commission may investigate any state executive officers for alleged violations of this article. The commission shall conduct a thorough and swift investigation of the charges. The commission shall have the power to refer cases to the house of representatives for impeachment or to the supreme court for prosecution for malfeasance in office, pursuant to pursuant to Section 16 (4) of this article. The commission may also investigate complaints against other public officials for violations of this article. The commission has the authority make recommendations for district court prosecutions or engage in any other legal action as may be available by law.

(11) The commission may, at its discretion, provide funding to aid in the legal defense of any Colorado citizen arrested or charged with a federal marijuana offense while in compliance with this article.

(12) The commission shall provide the attorney general with a report containing scientific evidence to prove that marijuana has accepted medical use and that it does not fit in any of the federal schedules of controlled substances.

(13) At its first meeting, the commission shall establish the guidelines for its meetings, including frequency of meetings, procedures, and other administrative functions.

(14) The commission shall fill vacancies in the commission by a majority vote for the remainder of the vacated term.

(15) The commission is required to establish initial rules and regulations within 180 days after its first meeting to begin the implementation this article.

(16) It is the duty of the commission, and the commission is vested with the authority, to implement this article.

(17) The commission may, by majority vote, seek additional formal opinions from outside counsel at any time regarding this article. The attorney general can comment on such opinions, but such comments shall not be binding.

Section 9. Formation of Commission - Governor Appoints - Qualifications – Senate Confirmation.

(1) The commission shall be composed of seven members to be appointed by the governor. The governor will take applications for the position and appoint the candidates who will best implement this article. Potential appointees must be residents of Colorado and must meet the following qualifications:

(a) Six appointees must have been publicly advocating for the re-legalization of cannabis without onerous or burdensome restrictions for all adults 18 years of age and older in Colorado for at least the past 10 years. Four of these appointees shall have a term of four years and two of these appointees shall have a term of three years.

(b) One appointee shall be chosen at large at the discretion of the governor whom he/she believes will best represent the state in the implementation of this article. The term of this appointee shall be 3 years.

(2) Each appointee shall be confirmed by a majority of the Senate.

(3) The governor shall make the first set of appointments no later than January 15, 2013. The Senate shall vote on whether to confirm the members of the commission no later than May 15, 2013.

(4) The commissioners shall serve without compensation, unless otherwise provided for by law.

Section 10. Grandfather Clause

(1) Any medical marijuana distributor or manufacturer that possesses a local license or is in good standing with their local community at the time of this article's passage shall be allowed to continue operation unhindered until the new regulations for commercial cannabis use promulgated by the commission under this article are enacted.

(2) Since the commission will be the main regulatory authority concerning commercial cannabis use, any state agencies involved in the regulation of cannabis at the time of this article's passage shall be disbanded within 6 months of the passage of this article and their duties regarding cannabis shall transfer to the commission.

Section 11. Tax on Commercial Cannabis Sales - Tax to Fund Commission - Election Required for Additional Taxes.

(1) There shall be a 2% sales tax on commercial cannabis. The tax money shall go in its entirety to fund the activities of the cannabis commission.

(2) The General Assembly or any state or local government or district may enact additional taxes on cannabis sold commercially, but any such tax shall first have been approved by the voters through enactment of an initiated or referred measure authorizing the tax pursuant to section 1 of article V and section 20 of article X of this constitution. The cumulative total of all taxes shall not exceed 10% in any jurisdiction.

Section 12. Attorney General - Chief Legal Officer of the State - Requirement to Make Recommendations for Enforcement to Governor and General Assembly.

- (1) The attorney general is the chief legal officer of the state and has the duty to enforce this article.
- (2) The attorney general shall make timely recommendations to the general assembly and the governor to assist those bodies in the promulgation of statutes or rules and establish enforcement regulations to enact the goals of this article.
- (3) (a) The attorney general shall establish guidelines for law enforcement officers for establishing probable cause that the provisions of this article have been intentionally violated.
(b) The purpose of these guidelines shall be to eliminate as much as possible the arrest and prosecution of adults for cannabis use and to enable immunity from prosecution.
- (4) The attorney general shall, upon written notification of the commission, assist the commission with recommendations to promulgate effective rules and regulations to achieve the goals of this article.
- (5) If the federal government tries to enforce or threatens to enforce federal marijuana prohibition laws in the state of Colorado, the attorney general shall bring lawsuits against the federal government, until such threats or enforcement activities by the federal government completely cease and desist. If the attorney general cannot formulate appropriate legal theories under which to file these lawsuits, the attorney general shall hire outside consultants to advise him on potential legal strategies.
- (6) The attorney general shall, at the request of the commission, assist the commission in the legal defense of any Colorado citizen arrested or charged with a federal marijuana offense.

Section 13. Governor - Chief Executive Officer - Duty to Execute the Article.

- (1) The governor, as the Chief Executive Officer of the state, has the duty to execute and enforce this article.
- (2) Upon written notification of the commission, the governor shall assist the commission in its constitutional duties to carry out the goals of this article.
- (3) The governor shall work closely with the commission and its recommendations to implement this article.
- (4) The governor shall grant reprieves or pardons, pursuant to section 7 of article IV of this constitution, to persons recommended by the commission, pursuant to Section 8 (6) of this article.

Section 14. General Assembly - Duty to Authorize Funds - Duty to Assist the Commission - Duty to Promulgate Statutes.

- (1) The general assembly shall provide to the commission from the state treasury the tax money collected pursuant to section 11 (1) and appropriate any other funding necessary to accomplish the goals of this article.
- (2) Upon written notification of the commission, the general assembly shall render the assistance requested within the laws of the state of Colorado.
- (3) The general assembly shall work closely with the commission and its recommendations to enact statutes that would more effectively enforce or otherwise implement the goals of this article.
- (4) The general assembly shall not appropriate any funding or allow any state resources to be used to assist the federal government in the punishment of Colorado citizens for acts considered legal under this article.

Section 15. Other State Government Agencies - Duty to Assist the Commission.

- (1) As this article is first and foremost an amendment to the Colorado state constitution, and all agents of state and local government must protect and defend that constitution, the Cannabis Re-legalization Act is the law of the land that all government agents must protect and defend.
- (2) Upon written notification of the commission, any state or local government agency or agent shall render the requested assistance within the laws of the state of Colorado.

Section 16. Executive Officers - Duty to Resign - Subject to Impeachment - Commission Investigates.

- (1) It is the duty of all state executive officers to implement this article, notwithstanding their personal beliefs, and shall carry out their duties as herein provided or as may otherwise be provided for by law.
- (2) Should a state executive officer be unable to implement of this article, due to personal beliefs or any other reason, it is that officer's duty to resign their office.
- (3) Failure of a state executive officer to perform their duties as provided in this article shall subject such officer to impeachment or removal for malfeasance in office, pursuant to article XIII of this constitution.
- (4) Any party aggrieved by any alleged malfeasance in office may file a written complaint with the commission, who shall investigate the complaint pursuant to Section 8 (10) of this article.
- (5) If the officer is found guilty of malfeasance, the court shall enter a judgment that the officer shall be removed from office.

Section 17. Immunity from Prosecution - Affirmative Defense.

- (1) Any person who had a reasonable belief that his or her actions conformed to the provisions of this article shall be immune from prosecution for offenses relating to this article.
- (2) Any person charged with a violation of state law related to marihuana, marijuana, marihuana concentrate, or cannabis may raise an affirmative defense to such charge that their actions conform to the intent or provisions of this article. Any official arresting or prosecuting any adult for a cannabis infraction as a crime shall be deemed to have deprived a citizen of a civil right and shall be subject to a suit for damages secured by the official's pension.
- (3) In all trials in which an affirmative defense is raised, notwithstanding the possible penalty for the offense, the defendant shall be entitled to a trial by jury, and such jury shall be informed of their right to judge the law as well as the fact.

Section 18. Notification to Federal Government - Petition to Remove from Federal Schedule of Controlled Substances.

- (1) Upon passage of this amendment, the governor is instructed to inform the President and Congress of the United States of America of this amendment's passage and ask them to repeal the federal prohibition laws against marijuana and to enact federal laws similar to or less restrictive than the provisions of this amendment.
- (2) Within six months of the passage of this article, the attorney general shall notify the federal government that marijuana must be removed from its current federal classification as a substance with no medical uses. Such notification shall contain evidence gathered by the commission, pursuant to Section 8 (12) of this article. The attorney general shall take any and all legal action necessary to force the federal government to remove marijuana from the federal schedule of controlled substances.

Section 19. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Section 20. Liberal Construction.

This article shall be liberally construed in favor of the people to further the stated purposes of this article.

Section 21. Article Self-Executing.

This article shall be in all respects self-executing; but the general assembly may by law provide for its more effective enforcement.

Section 22. Supremacy

The provisions of this article shall prevail over any conflicting provision of any other law, including but not limited to Section 16 of Article XVIII of this constitution, or any other amendment regarding marijuana, should such amendments also be approved by voters at the same time as this article.

Section 23. Effective Date. Enacted by a vote of the people, November 6, 2012. Effective upon proclamation of the governor.