

# North Dakota Marijuana Legalization Initiative Outline

## 1. Title of the Act

## 2. Definitions

Provide definitions for all terms used throughout the Act that are not otherwise defined by reference to existing state code. Question for Public Feedback

What is/isn't marijuana?

What should/should not be included in the definitions?

Edibles/Smokables/oils, hashish, etc

## 3. Establishment of governing body

This could be a new agency or a division within an existing agency to establish, manage, and regulate a marijuana regulatory system. The majority of states that have legalized marijuana give authority to the agency in the state that licenses the retail sale of alcohol. However, unlike in the other states, in North Dakota retail alcohol is licensed by the Attorney General. Thus, unless there is another state agency well suited to take on this role, we should look to establishing a new agency or new commission to oversee licensing and regulation. Perhaps we can use the tobacco/vape model, or would people be more ok with the department of health?

## 4. Administration

Provide authority to the governing body and dates by which it must take action:

- Grants the governing body authority to regulate and license commercial marijuana activity;
- Establishes a date by which licenses must first be issued;
- Establishes an effective date for the licensing provisions of the Act;
- Establishes a process for collecting fees.
- What is an acceptable timeline to people?

## 5. Rulemaking

Require the governing body to promulgate rules necessary to implement, administer, and enforce the Act and the date by which they must do so.

These rules shall include:

- Procedures for the issuance, renewal, suspension, and revocation of licenses;
- A schedule of application, licensing and renewal fees; qualifications for licensure;
- Security requirements for marijuana establishments;
- Protections for persons under age 21 from accessing marijuana;
- Labeling requirements;

- Health and safety regulations for the manufacture and cultivation of marijuana and marijuana products;
- Quality control and testing standards; advertising and display restrictions;
- Civil penalties for failure to comply with regulations; and
- This section may include language permitting the body to prescribe, adopt, and enforce emergency regulation as necessary to carry out its respective duties.

## **6. Administrative Hearings**

Establish a process for applicants appealing license denial, typically pursuant to the North Dakota Administrative Agencies Practice Act.

## **7. Local Control**

Permit a local jurisdiction to enact ordinances or regulations, including local zoning and land use requirements and business license requirements not in conflict with the Act.

Should local jurisdictions be allowed to opt out?

## **8. Licensing**

Grant the governing body authority to issue commercial licenses necessary to carry out the purpose of the Act.

- Requires the governing body to issue commercial licenses including, but not necessarily limited to, marijuana cultivators, marijuana manufacturers, marijuana nurseries, marijuana distributors, marijuana retailers and independent marijuana testing facilities.
- This section may also include limits on the number of licenses or licenses categories owned by any person with majority ownership interest may obtain.
- This section may also require the licensing of a certain number or percentage of small businesses or small cultivators.

## **9. Application**

This section requires the governing body to establish procedures for the issuance and renewal of licenses and to start accepting and processing licenses no later than a set number of months following the effective date of the Act.

## **10. Denial of a marijuana license**

Establish the parameters for denying a license.

- Should we restrict prior marijuana convictions from being the sole basis for denying a license.
- At what level of previous conviction should if at all licenses be denied?

## **11. Protections for licensees**

Protect licensees, employees and agents acting in compliance with the Act from state and local criminal, civil, and administrative penalties and from seizure or forfeiture of property.

## **12. License fees**

Establish application, licensing and renewal fees that 1) shall not exceed reasonable regulatory costs to the governing body, and 2) should be scaled based on the size of the business.

### **13. Funding**

Establish a fund to which marijuana license fees will be deposited monthly.

### **14. Packaging and labeling**

Provide standards for the production, packaging, and labeling of marijuana and marijuana products.

### **15. Marijuana products**

Provide consumer safety standards for marijuana products, such as ensuring that products are not appealing to children and that they come with standardized THC dosages.

### **16. Protections of minors**

Provide that no licensee shall sell marijuana or marijuana products to or employ persons under 21 years of age.

### **17. Advertising and marketing restrictions**

Restrict marketing and advertising so that they are not appealing to individuals under 21.

### **18. Track and Trace System**

Provide a mechanism for tracking marijuana from seed to sale to ensure that all taxes are paid and no marijuana is diverted to the illicit market.

### **19. Contracts**

Provide that all contracts relating to the lawful operation of licenses under the Act are enforceable.

### **20. Provision of professional services**

Protect professionals subject to state licensure (such as attorneys, accountants and real estate agents) from disciplinary action by their state licensing association or professional board for providing professional services or assistance to prospective or licensed marijuana establishments or others related to activity permitted under the Act.

### **21. Marijuana Tax**

Establish a marijuana tax.

### **22. Revenue**

Establish a fund in which marijuana tax revenues shall be deposited and the process by which monies shall be disbursed from the fund and to where, depending on feedback forum and public opinion.

### **23. Annual reports**

Provide that every year the governing body shall prepare and submit to the legislature an annual report on the governing body's activities that includes information about revenues allocated; costs incurred by the governing body; licenses issued, denied, revoked, and renewed; demographics of marijuana industry licensees and employees; enforcement activities; and disciplinary actions.

## **24. Medical marijuana**

Statement that the Act does not impact or change existing medical marijuana laws.

## **25. Personal use of marijuana**

Make the following acts lawful for persons 21 and older:

- Possessing, using, obtaining, transporting, and transferring without renumeration (to persons 21 and older) up to X ounces of marijuana flower and X grams of concentrated cannabis/hashish;
- Possessing, using, obtaining, transporting, and transferring marijuana paraphernalia;
- Cultivating up to 6 plants and possessing the product of those the plants on the cultivation site;
- Assisting another person 21 or older or allowing property to be used in any of the acts listed above.

## **26. Personal cultivation of marijuana**

Establish rules regarding home cultivation of marijuana, such as how it must be stored and a limit of X plants per single dwelling.

## **27. Limitations on what the Act authorizes:**

Statement that the initiative does not authorize:

- Operating a vehicle, aircraft, or boat while under the influence of marijuana or consuming marijuana while driving or while in the driver's compartment;
- The transfer of marijuana or paraphernalia to a person under the age of 21;
- A person under the age of 21 to possess, consume, purchase, obtain, cultivate, transport, or sell marijuana;
- Butane or other dangerous extraction without a license;
- Consumption of marijuana in a public place or smoking in an area where the smoking of tobacco is prohibited.
- Possession or consumption on school grounds, on a school bus, or in a correctional facility.

## **28. Employers**

Statement that the Act does not prohibit an employer from:

- Prohibiting or not accommodating conduct otherwise allowed by the Act in any workplace or on the employer's property.
- Refusing to hire, discharge, disciplining, or taking other adverse employment action for violation of a workplace drug policy or for working under the influence.

## **29. Parental Rights**

Provide that a person shall not be denied custody or visitation with a minor for conduct that is permitted by the Act unless the person's behavior creates an unreasonable danger to the minor.

## **30. Industrial hemp**

Exempts industrial hemp from the Act.

**31. Writ of mandamus/mandate**

Permit any person to commence a writ of mandamus to compel the governing body to perform the acts mandated by the Act.

**32. Severability**

Provide for severability so that if any part of the Act is found invalid or unconstitutional the other parts of the Act can stand alone.

**33. Enactment**

Establish the date of enactment for all aspects of the Act unrelated to a licensing and regulation.

\*\*\*

**34. Limits on competition**

Limit market concentration (no oligopolies or monopolies) and vertical or horizontal integration to improve competition.

**35. Reduce existing marijuana penalties for persons 21 and older**

Reduce criminal penalties for some marijuana activities not made lawful by the initiative to lesser criminal penalties or tiered civil penalties.

**36. Marijuana penalties for persons under 21**

Reduce penalties for unlawful marijuana or concentrated cannabis/hashish possession for persons under 21 years of age from a misdemeanor to an infraction and remove fines/fees for youth under 18 years of age

**37. Resentencing for persons serving marijuana sentences at the time the initiative is enacted**

Should we provide that a person serving a sentence who would have been guilty of a lesser offense or no offense had the act been enacted at the time of sentencing may petition for resentencing in accordance with the new penalties?