

## *Disclaimer*

Thank you to all who have contributed to this offering. A community working together can accomplish a lot in a short time. In Oklahoma, we work together when the going gets rough. Let's get to work.

This document is written and released for Oklahomans, so inclined, to consider and comment. The public comment period is open July 2nd-28th, 2021. We sincerely appreciate everyone who takes the time to take action.

We will compile feedback and re-release and update around July 30th, 2021 for final commentary. In early August, 2021 we may file a draft revised from public commentary and feedback.

## General Petition Process Updates

7/20/21 - As of this date we are roughly 2 weeks behind the targeted schedule for potential filing of language for both Medical and Recreational petitions. This schedule is important to stay on. However, the two weeks consumed have paid dividends in outreach and feedback across our State. We'll likely hold public comment open on Recreational language for an additional week.

Recreational Petition will be let out 7/21/21

8/13/21 - Right to use petition will wrap up public comment on 8/20/21

Edits and additions made on 8/13/21 and through close of comment period on 8/20/21 will be identified in this blue type color.

## **THE OKLAHOMA MARIJUANA REGULATION AND RIGHT TO USE ACT**

### **SECTION 1. Safeguarding Medical Marijuana**

- (1) Nothing in this Article may be construed to limit or abrogate any privilege, right, immunity or defense of medical marijuana patient licensees, caregiver licensees, or medical marijuana business licensees.

## **SECTION 2. Possession Rights**

- (1) It shall be lawful for all persons twenty-one (21) years of age and older to grow, purchase, transport, receive, share, gift, prepare and consume marijuana and marijuana products. It shall be lawful for all persons twenty-one (21) years of age and older to possess up to: twelve (12) marijuana plants and the marijuana harvested therefrom; one (1) ounce of concentrated marijuana; seventy-two (72) ounces of topical marijuana; seventy-two (72) ounces of edible marijuana; eight (8) ounces of suppository marijuana; and eight (8) ounces of commercially sold or gifted marijuana. These amounts are cumulative. The legislature is permitted to increase these quantities as well as permit other forms of marijuana.
- (2) It shall be lawful for all persons twenty-one (21) years of age and older to purchase, possess and use marijuana paraphernalia.
- (3) Possession of marijuana or marijuana products within the limits indicated in this Article shall not constitute either a criminal or civil infraction and shall not be subject to any fine, penalty, sanction or other punishment.

## **SECTION 3. General Protection Language**

- (1) No person shall be subject to arrest, prosecution or penalty in any manner under state law or municipal or county ordinance or resolution including without limitation a civil penalty or disciplinary action by a business, occupational or professional licensing board or bureau, solely on the basis of conduct permitted under this Article.
- (2) No person shall be denied any form of healthcare, housing, employment, public assistance, public benefit, parental right, educational opportunity, extracurricular activity, or licensure solely on the basis of conduct permitted by this Article unless failure to do so would result in substantial imminent harm under federal law or regulations.
- (3) No person shall be denied eligibility in public assistance programs including, but not limited to, Medicaid, Supplemental Nutrition Assistance Program (SNAP), Women, Infants, and Children Nutrition Program (WIC), Temporary Assistance for Needy Families (TANF) or other such public assistance programs solely on the basis of conduct permitted under this Article, unless required by federal law.
- (4) No test which identifies the presence of THC metabolites in a person's blood, urine, hair, hair follicle, or other body fluids or tissues shall be used as evidence of impairment for the purposes of denying any form of healthcare, housing, employment, public assistance,

license or licensed activity, public benefit, parental right, educational opportunity, or extracurricular activity.

- (5) No test which identifies the presence of THC metabolites or active THC in a person's blood, urine, hair, hair follicle, or other body fluids or tissues shall be used as dispositive for marijuana use for the purposes of denying any form of healthcare, housing, employment, public assistance, license or licensed activity, public benefit, parental right, educational opportunity, or extracurricular activity.
- (6) Nothing in this section shall prohibit the use of tests assessing the presence of active THC for the purpose of determining impairment. However, there is no presumption of impairment or intoxication solely on the basis of the use of marijuana, including the presence of active THC or THC metabolites. Proof of impairment requires confirmation of impairment through the use of cognitive, kinetic and/or behavioral evaluations.

#### **SECTION 4. Privacy Rights**

- (1) The handling of any records maintained by the agency authorized to regulate marijuana or by businesses licensed by or contracted with this agency shall comply with all applicable state and federal privacy laws.

#### **SECTION 5. Employment Rights**

- (1) No employer may refuse to hire, discipline, discharge or otherwise penalize an applicant or employee solely on the basis of conduct permitted by this Article.
- (2) This is not to exclude workplace policies which prohibit the use or being under the influence of marijuana during a work shift for a safety-sensitive employee, or the testing for active THC in order to assess current impairment. Standardized OSHA cognitive, kinetic and/or behavioral evaluations to determine job safety and current impairment of personnel shall be permissible to determine impairment.

#### **SECTION 6. Healthcare Rights**

- (1) For the purposes of medical care, including organ transplants, marijuana use does not constitute the use of an illicit substance or otherwise disqualify a marijuana user from medical care.
- (2) No medical practitioner shall deny or alter the treatment of a patient, including the prescribing of scheduled medications such as opioids or benzodiazepines, solely on the

basis of conduct permitted by this Article, unless that denial or alteration is medically indicated.

- (3) It is within the standard of care for a medical practitioner with appropriate prescriptive authority to prescribe scheduled medications, including opioids without having to modify the patient's treatment solely on the basis of conduct permitted under this Article.

## **SECTION 7. Parental Rights**

- (1) For the purposes of assessing child endangerment, abuse or neglect, marijuana use does not constitute the use of an illicit substance. There is no presumption of endangerment, abuse or neglect solely on the basis of conduct permitted under this Article.
- (2) No person shall be denied custody of or visitation or parenting time with a minor solely on the basis of conduct permitted under this Article. There is no presumption of child endangerment, neglect or abuse solely on the basis of conduct permitted under this Article.
- (3) The mere presence of active THC or THC metabolites in birth tissue including but not limited to fetal tissue, amniotic fluid, umbilical cord or placental tissue is not dispositive of child endangerment, abuse or neglect.

## **SECTION 8. Licensure Rights**

- (1) No conduct permitted by this Article shall be the basis for the denial, revocation or suspension of any state-issued license, including drivers' licenses, concealed carry permits, occupational and professional licensing.
- (2) There is no presumption of impairment or intoxication solely on the basis of the use of marijuana, including the presence of active THC or THC metabolites in a person's blood, urine, hair, hair follicle, or other body fluids or tissues. The mere presence of THC metabolites in a person's blood, urine, hair, hair follicle, or other body fluids or tissues carries no evidentiary weight with regards to current impairment. Proof of impairment requires confirmation of impairment through the use of cognitive, kinetic and/or behavioral evaluations.
- (3) Nothing in this section shall be construed to permit operating a motor vehicle while impaired. Nothing in this section shall be construed to prohibit testing for active THC as part of a determination of impairment. Nothing in this section shall be construed to prohibit the use of breathalyzers, blood tests or other technologies for assessing the presence of active THC. Nothing in this section shall prohibit the use of cognitive, kinetic or behavioral tests for the purpose of determining impairment.

## **SECTION 9. Second Amendment Rights**

- (1) No person engaged in conduct permitted by this Article shall be denied the right to own, purchase, possess or use a firearm, ammunition, or firearm accessories solely based upon conduct permitted under this Article.
- (2) No state or local agency, municipal or county governing authority shall restrict, revoke, suspend or otherwise infringe upon the right of a person to own, purchase or possess a firearm, ammunition, or firearm accessories or any related firearms license or certification based solely on conduct permitted under this Article.
- (3) No state or local agency, municipal or county governing authority shall enforce a federal law that prohibits or restricts firearm use or ownership solely on the basis of conduct permitted under this Article.

#### **SECTION 10. Fourth and Fifth Amendment Rights**

- (1) No conduct permitted under this Article shall be the basis for the revocation of bail, parole, or probation.
- (2) No person currently under parole, probation, or other state supervision, or released awaiting trial or other hearing, may be punished or otherwise penalized based solely on conduct that is permitted under this Article.
- (3) No conduct permitted under this Article shall constitute a reasonable articulable suspicion of any civil infraction or criminal act.
- (4) No conduct permitted under this Article shall constitute the basis for detention, search, or arrest; except when law enforcement is investigating with a reasonable articulable suspicion that a person is operating a motor vehicle, motorboat, or other motorized form of transport while impaired.
- (5) Suspicion without evidence of possession of marijuana of quantity in excess of the amount lawful under this Article or the possession of multiple containers of marijuana without evidence of quantity in excess of the amount lawful under this Article shall not constitute a reasonable articulable suspicion of a crime.
- (6) Marijuana, marijuana concentrates, and marijuana-infused products permitted under this Article for personal possession are not subject to seizure. This shall not be construed to prohibit law enforcement from such seizures on grounds outside the scope of conduct permitted by this Article.
- (7) No person shall be subject to increased punishment for any crime or civil infraction on the basis of any conduct permitted under this Article.

#### **SECTION 11. Homegrow and Local Protections**

- (1) There shall be no additional licensing or fees related to homegrows. No municipal or county governing body or agency may charge any additional fees or require any additional licensing for homegrows.
- (2) No ordinance, regulation or statute relating to homegrows shall be unduly burdensome.
- (3) Municipal and county governing bodies shall not restrict or interfere with the rights of persons to possess, share, gift, purchase, prepare, cultivate or transport marijuana within the quantities permitted under this Article.
- (4) No ordinance, regulation or statute relating to the vaporization or smoking of cannabis shall be more restrictive than those relating to tobacco use.
- (5) Counties and municipalities shall not add any additional taxes, fees, permits, charges or restrictions specific to marijuana businesses or consumers.

## **SECTION 12. No Further Regulatory Agency or Business Licenses Required**

- (1) The same agency responsible for the regulation of medical marijuana is hereby authorized to regulate marijuana activities related to this Article.
- (2) All licensed marijuana dispensaries shall, sixty (60) days after the passage of this Article, be permitted to sell, [including by way of residential delivery](#), marijuana and marijuana products not only to all medical marijuana patient licensees and caregiver licensees, but also to all persons twenty-one (21) years of age and older.
- (3) Unless otherwise specified in this Article, there shall be no further licenses, fees or registrations required by a state agency, county or municipal government in order for medical marijuana business licensees to engage in business activities of the same business license type and at the same location for conduct related to this Article, nor shall there be additional licenses, fees or registrations required by a state agency, county or municipal government in order for business licensees engaged in activities related to this Article to engage in business activities of the same business license type and at the same location for conduct specific to medical marijuana.

## **SECTION 13. Taxes and Expenditures**

- (1) The excise tax rate for marijuana and marijuana products purchased by persons without a valid Oklahoma medical marijuana patient license or Oklahoma caregiver license shall be fifteen percent (15%). This rate of fifteen percent (15%) may be lowered ~~or raised to a~~

~~maximum of twenty (20) percent~~ by the Oklahoma State Legislature. This tax shall be collected at the point of retail sale.

- (2) The Oklahoma Tax Commission shall be responsible for collecting this tax and for directing it to the fund managed by the agency responsible for regulating marijuana. Revenue in this fund shall first provide for the operational costs of the agency responsible for the regulation of marijuana in addition to the expenditures from the Fund as specified in this section.
- (3) One hundred and eighty (180) days after the passage of this Article, the excise tax rate for marijuana and marijuana products purchased by an Oklahoma medical marijuana patient licensee or Oklahoma caregiver licensee shall be reduced from seven percent (7%) to five percent (5%).
- (4) Two hundred and seventy (270) days after the passage of this Article, the excise tax rate for marijuana and marijuana products purchased by an Oklahoma medical marijuana patient licensee or Oklahoma caregiver licensee shall be reduced from five percent (5%) to three percent (3%).
- (5) One (1) year after the passage of this Article, the excise tax rate for marijuana and marijuana products purchased by an Oklahoma medical marijuana patient licensee or Oklahoma caregiver licensee shall be reduced from three percent (3%) to zero percent (0%).
- (6) **Counties and municipalities shall not add any additional taxes, fees or further charges** to marijuana businesses and consumers, **with the exception of an increase** in county or municipal sales tax rates **affecting all other taxed goods**.
- (7) In addition to all other expenditures of marijuana licensing and sales revenue authorized in law, ten percent (10%) of the gross collection of the excise tax on retail marijuana sales shall be made available to the Oklahoma Water Resources Board for infrastructure financing programs to foster water supply reliability and economic and environmental resiliency.
- (8) In addition to all other expenditures of marijuana licensing and sales revenue authorized in law, five percent (5%) of the gross collection of the excise tax on retail marijuana sales shall be made available to agencies and not-for-profit organizations, whether government or community-based, to increase access to evidence-based low-barrier drug addiction treatment and to support job placement, housing, and counseling for those with substance

use disorders.

- (9) In addition to all other expenditures of marijuana licensing and sales revenue authorized in law, three percent (3%) of the gross collection of the excise tax on retail marijuana sales shall be used to fund means-tested grants to pay for the expungement program outlined in this Article. Any unused amount from this allocation shall at the end of each fiscal year be transferred to the State General Revenue Fund.
- (10) **All taxes and fees collected by the agency responsible for the regulation of marijuana, not utilized** for the purposes specified in this Article shall transfer to the **State General Revenue Fund**. Seventy-five percent (75%) of such transferred funds shall only be expended for common education, **unless otherwise specified in this Article**.
- (11) **If federal law allows for the consumption, cultivation, manufacture, processing, sale distribution, interstate transport, or international export of marijuana or marijuana products, there shall be a three percent (3%) wholesale tax on all marijuana and marijuana products sold to entities outside of Oklahoma. (what “authorized” looks like is too problematic).**
- (12) **Neither the excise tax designated in this Article for retail sales or state, county or municipal sale taxes in the State of Oklahoma shall apply to wholesale sales taxed as specified in this section.**
- (13) **Funds generated by the three percent (3%) wholesale tax shall be collected by the Oklahoma Tax Commission and shall be deposited in the State General Fund.**
- (14) **The agency responsible for the regulation of marijuana may receive legislative appropriations** for funding from the legislature upon submission of a budget in accordance with regular agency budget submissions and the approval of the legislature.

#### **SECTION 14. Commercial Licensing - Developed from comment - 8/13/21**

- (1) **Commercial licenses issued** by the authority regulating medical marijuana shall be valid for the purposes of this Article. Unless otherwise specified in this Article, there shall be no additional fees, costs or regulatory requirements to commercial license holders for conduct permitted under this Article.
- (2) **Within Sixty (60) days** of passage of this Article, the regulatory authority responsible for the issuance of Dispensary Licenses shall issue without cost **Initial Retail Permits to all Dispensary Licensees** for the purposes of permitting the sale of marijuana and marijuana products to any person twenty-one (21) years of age and older. Dispensary License applicants whose applications are submitted to the licensing authority before passage of



this Article shall be issued Initial Retail Permits upon issuance of their Dispensary License.

- (3) Initial Retail Permits shall be **valid for one (1) year** plus any additional duration of time remaining on the dispensary license before its renewal date. Permits may then be subsequently renewed with a Retail Permit fee of \$250 paid to the licensing authority in addition to the standard renewal fee required for a Dispensary License, at the time of the Dispensary License's annual renewal.
- (4) The number of Initial Retail Permits and Retail **Permits shall be limited** to the total number of Dispensary License holders in addition to the number of Dispensary License applications currently submitted to the licensing authority **at the time of passage** of this Article.
- (5) Local governments shall not have different zoning rules or ordinances for dispensaries with versus without a Retail Permit. Local governments shall not charge any additional fees, or require any additional certifications or local permits to dispensaries who carry a Retail Permit.
- (6) **Unclaimed and voluntarily surrendered Retail Permits** shall be made **available** to Dispensary Licenses and awarded to applicants on a **first come, first serve** basis. **Retail Permits surrendered, forfeited or revoked** through enforcement action **shall be available** for Dispensary License holders on a **first come, first serve basis**.
- (7) The licensing authority shall develop an **ordered list, to be made publicly available**, of Dispensary Licenses in queue for Retail Permits, or showing the **number of Retail Permits available** for Dispensary License holders.
- (8) **Ownership** of Retail Permits **may be transferred** in tandem with their corresponding Dispensary License.
- (9) The legislature may raise the number of Retail Permits.

## **SECTION 15.       Expungement**

- (1) A person currently serving a sentence for a conviction, whether by trial or by plea of guilty or nolo contendere, who would not have been guilty of an offense or who would have been guilty of no offense or a lesser offense under this Article had it been in effect at the time of the offense, may file a petition for resentencing, reversal of conviction and dismissal of case, or modification of judgment and sentence before the trial court that entered the judgment of conviction in the person's case to request resentencing, modification, or reversal in accordance with this Article.

- (2) Upon receiving a petition, the court shall presume the petitioner satisfies the criteria for resentencing, modification, or reversal and without delay resentence or reverse the conviction as legally invalid, or modify the judgment and sentence.
- (3) A person who has completed his or her sentence for a conviction, whether by trial or plea of guilty or nolo contendere, who would not have been guilty of an offense or who would have been guilty of a lesser offense under this Article had it been in effect at the time of the offense, may file a petition before the trial court that entered the judgment of conviction in the person's case to have the conviction dismissed, expunged, and vacated as legally invalid in accordance with this Article.
- (4) Nothing in this section shall be construed to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant. The provisions of this section shall apply equally to juvenile cases if the juvenile would have been guilty of a lesser offense under this Article. A completed expungement shall automatically restore the person's rights to possess and use firearms. A completed expungement of marijuana related felony convictions shall also automatically restore the person's right to vote.
- (5) Nothing in this section shall be construed as limiting the authority of the Legislature to make the process for ensuring retroactive application of this Article less burdensome or automatic for persons currently serving sentences or under criminal justice supervision or who have been previously convicted for conduct now permitted or reclassified under this Article, or to reduce or eliminate civil or criminal penalties for any cannabis-related conduct beyond what is set forth in this Article.

## **SECTION 16. Relations to Federal Law**

- (1) If federal law allows for the cultivation, manufacture, processing, distribution, interstate transport, sale or consumption of marijuana or marijuana products, then the State of Oklahoma shall have no restrictions on such conduct greater than the restrictions set under federal law.
- (2) Should the federal government legalize marijuana, the possession quantities permitted in this Article shall be raised to the maximums permitted by federal law. Should the federal government legalize marijuana, but not set specific possession maximums, the legislature shall determine maximum limits but they shall not be below the maximums indicated in this Article.
- (3) The Oklahoma Bureau of Narcotics and Dangerous Drugs shall retain the authority to enforce Cannabis and Marijuana law in Oklahoma.
- (4) Should either federal action be taken to allow for the interstate transfer of marijuana or the United States Department of Justice issues an opinion or memorandum allowing or tolerating the interstate transfer of marijuana, transfer of marijuana between this state and

other states shall be permitted. Such transfers must be in compliance with the laws and regulations of both the origin and destination states.

**SECTION 17. Judicial Review**

- (1) Any rule or regulation adopted pursuant to this Article must comply with the Oklahoma Administrative Procedures Act. Any person aggrieved by a final agency order is entitled to seek judicial review in accordance with Oklahoma law. If the regulatory agency fails to timely promulgate rules required by this Article, any resident of the state may commence a mandamus action in district court to compel performance by the regulatory agency in accordance with this Article.

**SECTION 18. Severability**

- (1) The provisions hereof are severable, and if any part or provision hereof shall be void, invalid, or unconstitutional, the decision of the court so holding shall not affect or impair any of the remaining parts or provision hereof, and the remaining provisions hereof shall continue in full force and effect.

**SECTION 19. Effective Date**

- (1) This Article shall become effective immediately upon its passage.

#####

**SECTION 20. Definitions**

- (1) “Active THC” means unmetabolized tetrahydrocannabinol, as present in a person’s body fluids or tissues, in contrast to its metabolites.
- (2) “Agency responsible for regulating marijuana” means the Oklahoma Medical Marijuana Authority or its successor(s) as established in law.
- (3) “Cannabis” means a plant of the species Cannabis Sativa Linnaeus and all subspecies thereof that has not been determined to be marijuana or hemp based on THC content on a dry weight basis as defined by federal law.
- (4) “Marijuana” means the flower of a female cannabis plant that contains more THC than on a dry weight basis is considered Hemp by federal law.
- (5) “Marijuana Product” means a product that contains cannabinoids that have been extracted from marijuan by physical or chemical means.
- (6) “Person” means a natural person and does not include any partnership, trust, estate, corporation, association, or any other non-natural person as created by operation of law.

- (7) “THC” means tetrahydrocannabinol.
- (8) “THC metabolite” means a substance formed through the metabolization of THC.
- (9) “Unduly burdensome” means that the measures necessary to comply with the rules or ordinances adopted pursuant to this Article subject persons, licensees or potential licensees to such a high investment of money, time, or any other resource or assess that a reasonably prudent person or business would not operate a marijuana business or engage in the personal use, storage or cultivation of marijuana.

#####

## Document Change Log

7/21/20 - Recreational Document Released

7/22/20

SECTION 4(1) Removed Section - Medical Language Carryover

SECTION 10(6) Medical Language Carryover Removed

SECTION 11(2) Medical Language Carryover Removed

SECTION 13(7-11) Replaced with SECTION 13(7) “ In addition to all other expenditures of marijuana licensing and sales revenue authorized in law, three percent (3%) of the gross collection of the excise tax on retail marijuana sales shall be used to fund means-tested grants to pay for the expungement program outlined in Section 4 of this Article. Any unused amount from this allocation shall be transferred to the State General Fund.”

7/31/21

SECTION 10(4) - REVISED TO “No conduct permitted under this Article shall constitute the basis for detention, search, or arrest; except when law enforcement is investigating with a reasonable articulable suspicion of a crime whether a person is operating a motor vehicle, motorboat, or other motorized form of transport while impaired.”

SECTION 2(1) ADDED “marijuana products”

SECTION 7 AMENDED TO “**Parental Rights**”

- (1) For the purposes of assessing child endangerment, abuse or neglect, marijuana use does not constitute the use of an illicit substance. There is no presumption of endangerment, abuse or neglect solely on the basis of conduct permitted under this Article.

- (2) No person shall be denied custody of or visitation or parenting time with a minor solely on the basis of conduct permitted under this Article. There is no presumption of child endangerment, neglect or abuse for conduct permitted under this Article
- (3) The mere presence of active THC or THC metabolites in birth tissue including but not limited to fetal tissue, amniotic fluid, umbilical cord or placental tissue is not dispositive of child endangerment, abuse or neglect.

8/6/21

**SECTION 3(5) ADDED** - "... However, there is no presumption of impairment or intoxication solely on the basis of the use of marijuana, including the presence of active THC or THC metabolites. Proof of impairment requires the use of cognitive, kinetic and/or behavioral tests."

**SECTION 8 - REMOVED** No person shall be unduly withheld from holding a state-issued license by virtue of conduct permitted under this Article. This includes drivers' licenses and concealed carry permits, occupational and professional licensing.

- (1) The presence of THC metabolites in a person's blood, urine, hair, hair follicle, or other body fluids or tissues carries no evidentiary weight with regards to current impairment. [merge with 3]
- (2) It is not unlawful to operate a motor vehicle with THC metabolites in one's body fluids or tissues. Further, the mere presence of active THC or THC metabolites in one's body fluids or tissues is not dispositive of impairment. Further, there is no presumption of impairment or intoxication solely on the basis of the use of marijuana, including the presence of active THC or THC metabolites. Proof of impairment requires the use of cognitive and/or behavioral tests.
- (3) **This does not, however, make it lawful to drive while impaired nor does it prohibit testing for active THC** as part of a determination of impairment. Notwithstanding operating a motor vehicle while impaired, no conduct permitted by this Article shall be the basis for the revocation or suspension of a motor vehicle license. [merge 3 and 4]
- (4) Nothing in this section shall prohibit the use of breathalyzers, blood tests or other technologies for assessing the presence of active THC. Nothing in this section shall prohibit the use of tests assessing the presence of active THC for the purpose of determining impairment.
- (5) Nothing in this section shall be construed to permit operating a motor vehicle while impaired.

**SECTION 8 REPLACED WITH**

(1) No conduct permitted by this Article shall be the basis for the denial, revocation or suspension of any state-issued license, including drivers' licenses, concealed carry permits, occupational and professional licensing.

(2) There is no presumption of impairment or intoxication solely on the basis of the use of marijuana, including the presence of active THC or THC metabolites in a person's blood, urine, hair, hair follicle, or other body fluids or tissues. The mere presence of THC metabolites in a person's blood, urine, hair, hair follicle, or other body fluids or tissues carries no evidentiary weight with regards to current impairment. Proof of impairment requires the use of cognitive and/or behavioral evaluations.

(3) Nothing in this section shall be construed to permit operating a motor vehicle while impaired. Nothing in this section shall be construed to prohibit testing for active THC as part of a determination of impairment. Nothing in this section shall be construed to prohibit the use of breathalyzers, blood tests or other technologies for assessing the presence of active THC. Nothing in this section shall prohibit the use of cognitive or behavioral tests for the purpose of determining impairment.