



MARK BRNOVICH  
ATTORNEY GENERAL

OFFICE OF THE ARIZONA ATTORNEY GENERAL

MICHAEL S. CATLETT  
DEPUTY SOLICITOR GENERAL  
(602) 542-7751  
MICHAEL.CATLETT@AZAG.GOV

August 4, 2020

**VIA EMAIL**

Sambo (Bo) Dul  
State Elections Director  
Arizona Secretary of State Katie Hobbs

**Re: 2020 Ballot Initiatives – Ballot Language**

Dear Ms. Dul:

Thank you for providing the Attorney General's Office ("AGO") with the Secretary of State's ("Secretary") proposed language for the initiatives to appear on the general election ballot. The AGO has carefully reviewed the proposed language for each of the three initiatives still eligible for the ballot, along with the Application for Serial Number filed with the Secretary, Analysis By Legislative Council, and Joint Legislative Budget Committee Pamphlet Summary for each of those measures.<sup>1</sup>

In reviewing the proposed language, we have been primarily guided by A.R.S. § 19-125, which sets forth the form of the official ballot for initiative measures. Specifically, A.R.S. § 19-125(D) provides that the official form of ballot shall include "a descriptive title containing a summary of the principal provisions of the measure, not to exceed fifty words, which shall be prepared by the secretary of state and approved by the attorney general." Moreover, the official form of ballot shall contain a "yes" clause and a "no" clause, which shall be followed by "a brief phrase, approved by the attorney

---

<sup>1</sup> The AGO provides this letter pursuant to the Attorney General's authority under A.R.S. § 19-125(D). The analysis contained herein has been performed by attorneys with the AGO who are separate from the attorneys that represent and advise the Secretary of State's Office. This is not an attorney-client communication.

general, stating the essential change in the existing law should the measure receive a majority of votes cast in that particular manner.” *See* A.R.S. § 19-125(D).

Moreover, the Arizona Supreme Court, in the context of a challenge by an initiative proponent to proposed ballot language, has construed A.R.S. § 19-125(D) as prohibiting the Secretary of State from using “false or clearly misleading language.” *Quality Educ. & Jobs Supporting I-16-2012 v. Bennett*, 231 Ariz. 206, 209 ¶10 (2013). Instead, the language used must be “an attempt to provide necessary and appropriate information to the voting public.” *Id.* ¶12. Finally, the “length and complexity of the initiative” are factored in when “assessing compliance with [A.R.S. § 19-125(D).]” *Id.* at 208 ¶9.

The AGO has concluded that the Secretary’s current proposed ballot language for each of the three ballot initiatives does not yet comply with the requirements in A.R.S. § 19-125(D), and therefore the AGO will not approve the language as currently drafted.<sup>2</sup> The AGO has taken the time, however, to revise the proposed ballot language for each of the three initiatives to comply with the statutory requirements. Clean and redline documents showing those changes are enclosed herewith. Below is a brief explanation of the changes the AGO believes are essential to comply with § 19-125(D). The proposed ballot language is approved with the changes as noted.

### **Global Changes**

- § 19-125(D) requires that the ballot language provide, “A ‘yes’ vote shall have the effect of \_\_\_\_\_” and “A ‘no’ vote shall have the effect of \_\_\_\_\_.” The AGO has revised the draft language for each of the ballot initiatives to comply with this requirement. This change also resulted in other minor word changes throughout the description.
- The AGO has revised each of the explanations for the effect a “no” vote will have to state simply that a “no” vote will have the effect of retaining existing law regarding the subject matter(s) of each initiative. This is consistent with past

---

<sup>2</sup> Because of the Superior Court’s ruling removing Proposition 210 (the Invest in Education Act) from the ballot (*see Molera, et al. v. Hobbs, et al.*, CV2020-007964), the AGO has not included any proposed changes to the Secretary’s draft language for that ballot measure. The AGO will review the Secretary’s draft language for Proposition 210

practice and is the approach most likely to avoid voter confusion about the effect of a “no” vote.

**Proposition 207 – Smart and Safe Arizona Act**

- The proposed description omits certain essential effects that the proposed ballot measure will have on existing Arizona law. The ballot measure will allow adults to transfer marijuana to others so long as no remuneration is received in return. [See proposed A.R.S. § 36-2852(A)(3).] The ballot measure will allow adults to cultivate up to six marijuana plants for personal use in the primary residence. [Id. § 36-2852(A)(2).] The ballot measure will amend criminal classifications and penalties for marijuana possession and use. [Id. § 36-2853.] The descriptive title and the description of the ballot measure’s effects should explain each of these essential changes to existing law. This is consistent with the Analysis of the Legislative Council, which also included each of these items.
- “Capped” is less ambiguous than “limited” as an adjective to describe the number of licensees to be permitted under the new law.
- Because the ballot language should only include “the essential change in the existing law,” the language should not explain that employer and property owner rights will remain as they currently exist.
- It is more accurate to say that the new law will allow courts to both “vacate and expunge” marijuana records and to list out the five items that will be permitted to be vacated and expunged—arrests, charges, adjudications, convictions or sentences—which is what the language of the proposed law does. [Id. § 36-2862(A), (C).]

**Proposition 208 – Stop Surprise Billing and Protect Patients Act**

- Proposed ballot language uses the term “minimum wages” to describe the base wage that will be set should the new law go into effect. Using the term “minimum

---

should the Arizona Supreme Court reverse and order Proposition 210 placed back on the ballot.

wages” could confuse voters into thinking that the law will require private hospitals merely to pay staff the state or local minimum wage set by law. The AGO has inserted quotes around “minimum wage” to make clear to voters that the term is a specially defined term in the new law. This is consistent with the Legislative Council’s analysis.

- It is misleading to state only that the new law will “prohibit health insurers from . . . charging higher prices for people with pre-existing conditions.” Instead, the ballot language should explain that the law will restrict health insurers to four statutory factors when charging health premiums. Although pre-existing conditions is not one of the four factors, there are a myriad of other factors not included among the four (*e.g.*, hair color, eye color, weight, height, gender, etc.). Singling out pre-existing conditions as a factor that will not be included among the four allowable factors is misleading. Our revision tracks the language in the new law and is consistent with the Legislative Council’s analysis.
- The ballot language should explain that the new law will prohibit pre-existing condition exclusions, but that this is consistent with many existing state and federal laws. This is consistent with the Legislative Council’s analysis.
- The new law will not create a new prohibition on all surprise out-of-network bills; rather, the new law will cap the amount that health insurers or medical providers can charge for certain of those bills. [*See* proposed A.R.S. § 20-3113(A).] Thus, the AGO has revised the language to reflect that the new law will have the effect of “establishing a cap on certain surprise out-of-network medical bills,” rather than “prohibit surprise out-of-network medical bills.”
- The draft language omits that the proposed initiative will mandate private hospitals to provide annual wage increases to covered employees. [*Id.* § 23-363.01(A)(2).] This is an essential change in existing law that should be reflected in the ballot language.
- The last provision in the “yes” paragraph, stating merely “fund with fees paid by private hospitals,” is incomplete and confusing. Thus, the AGO has revised the language to make clear that the fund will be used for administration and enforcement of the infection standards mentioned in the preceding clause.

**Proposition 209 – Second Chances, Rehabilitation, and Public Safety Act**

- The proposed description omits certain essential effects that the proposed ballot measure will have on existing Arizona law. The ballot measure will create a new category of offenses defined as “nondangerous offenses.” [See proposed A.R.S. § 41-1604.07(O).] The ballot measure will change the circumstances under which the Department of Corrections can take away earned release credits. [Id. § 41-1604.07(D); § 41-1604.07(K)(1).] The ballot measure will change the conditions under which an individual is considered a repetitive offender. [Id. § 13-703.] The ballot measure will eliminate the literacy requirement to be eligible for early release. [Id. § 31-229.02.] The ballot measure will establish the fund for crime victims and first responders by transferring funds from the Medical Marijuana Fund. [Id. § 36-2817.01.] The descriptive title and the description of the ballot measure’s effects should explain each of these essential changes to existing law. This is consistent with the Analysis of the Legislative Council, which also included each of these items.
- Existing law will not change with respect to how release credits are earned. Moreover, it is misleading to say that earned release credits will be earned in consideration for good behavior and participation in certain work, training, and rehabilitation programs. Under both existing law and the proposed ballot measure, a prisoner automatically earns release time regardless of good behavior or participation in programs. The Department of Corrections then has discretion to take away earned release credits under certain circumstances. The primary change in existing law will be to limit the Department of Corrections to taking away credits earned within a year, whereas it now can take away credits regardless of when they were earned. [See id. § 41-1604.07(D).] The AGO has, therefore, struck the proposed language that makes it seem as though existing law will be modified such that earned release credits will only be earned based on good behavior and participation in programs.
- The grammatical structure of the proposed sentence relating to sentencing is confusing, and thus we have attempted to modify it to read better. It is also an

Sambo Dul, State Elections Director  
August 4, 2020  
Page 6

essential change to existing law that, under the proposed ballot measure, trial judges will be permitted to sentence those convicted of a “nondangerous offense” to no prison time, so the AGO has included that change.

Thank you for your attention to these matters. As you review the proposed changes, please do not hesitate to reach out to me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael S. Catlett', with a long horizontal stroke extending to the right.

Michael S. Catlett  
Deputy Solicitor General

MSC

Enclosure

**Proposition 207**

**DESCRIPTIVE TITLE**

THE LAW WOULD ALLOW LIMITED MARIJUANA POSSESSION, USE, AND CULTIVATION BY ADULTS 21 OR OLDER; AMEND CRIMINAL PENALTIES FOR MARIJUANA POSSESSION; BAN SMOKING MARIJUANA IN PUBLIC; IMPOSE A 16% EXCISE TAX ON MARIJUANA SALES TO FUND PUBLIC PROGRAMS; AUTHORIZE STATE/LOCAL REGULATION OF MARIJUANA LICENSEES; AND ALLOW EXPUNGEMENT OF MARIJUANA OFFENSES.

A "Yes" vote shall have the effect of allowing adults 21 years or older to use, possess, or transfer up to one ounce of marijuana and cultivate for personal use not more than six marijuana plants at a primary residence; banning smoking marijuana in public places and open spaces; amending criminal classifications and penalties for marijuana possession and use; allowing the retail sale of marijuana at licensed establishments; imposing a 16% excise tax on marijuana sales to fund community colleges, infrastructure, public safety, and public health programs; authorizing state and local regulation of the sale and production of marijuana by a capped number of licensees; and allowing courts to vacate and expunge certain marijuana arrests, charges, adjudications, convictions or sentences.

A "NO" vote shall have the effect of retaining current law regarding the use of marijuana.

Proposition 207

DESCRIPTIVE TITLE

THE LAW WOULD ALLOW LIMITED MARIJUANA POSSESSION, ~~AND USE, AND CULTIVATION~~ BY ADULTS 21 ~~YEARS~~ OR OLDER; AMEND CRIMINAL PENALTIES FOR MARIJUANA POSSESSION; BAN SMOKING MARIJUANA IN PUBLIC ~~PLACES AND OPEN SPACES~~; IMPOSE A 16% EXCISE TAX ON MARIJUANA SALES TO FUND ~~CERTAIN~~ PUBLIC PROGRAMS; AUTHORIZE STATE/LOCAL REGULATION OF MARIJUANA LICENSEES; AND ALLOW EXPUNGEMENT OF ~~SOME~~ MARIJUANA OFFENSES.

A "Yes" vote ~~will shall have the effect of~~ allowing adults 21 years or older to use, ~~or possess, or transfer~~ up to one ounce of marijuana and cultivate for personal use not more than six marijuana plants at a primary residence; banning smoking marijuana in public places and open spaces; amending criminal classifications and penalties for marijuana possession and use; allowing the retail sale of marijuana at licensed establishments; imposinge a 16% excise tax on marijuana sales to fund community colleges, infrastructure, public safety, and public health programs; authorizinge state and local regulation of the sale and production of marijuana by a limited-capped number of licensees; ~~maintain existing employer and property owner rights,~~ and allowing the expungement courts to vacate and expunge ~~of~~ certain ~~prior~~ marijuana ~~offenses~~ arrests, charges, adjudications, convictions or sentences.

A "NO" vote ~~will shall have the effect of~~ preserve existing ~~retaining current~~ laws regarding the use of marijuana, which criminalize using, possessing, or purchasing marijuana unless authorized by the Arizona Medical Marijuana Act; ~~will not create additional revenue by imposing a tax on the sale of marijuana~~; and ~~will not allow those with certain prior marijuana offenses to seek expungement~~.



**Proposition 208**

**DESCRIPTIVE TITLE**

THE LAW WOULD RESTRICT HEALTH INSURERS TO FOUR STATUTORY FACTORS WHEN CHARGING PREMIUMS AND PROHIBIT PRE-EXISTING CONDITION EXCLUSIONS; CAP SURPRISE OUT-OF-NETWORK MEDICAL AND AMBULANCE BILLS; SET WAGE INCREASES AND "MINIMUM WAGES" FOR PRIVATE HOSPITAL WORKERS; AND REQUIRE PRIVATE HOSPITALS TO MEET NATIONAL INFECTION SAFETY STANDARDS.

A "YES" vote shall have the effect of restricting health insurers to four factors when charging premiums (individual or family coverage, age, geography, and tobacco use); prohibiting health insurers from imposing a pre-existing condition exclusion (consistent with state and federal law); establishing a cap on certain surprise out-of-network medical bills and prohibiting balance billings for ambulance services; amending the surprise out-of-network bill dispute process; requiring wage increases and setting new "minimum wages" for workers at private hospitals; requiring private hospitals to meet national safety standards for preventing hospital-acquired infections; and establishing a fund for administration and enforcement of the infection standards with fees paid by private hospitals.

A "NO" vote shall have the effect of retaining existing law relating to health insurance and hospitals.

## Proposition 208

### DESCRIPTIVE TITLE

THE LAW WOULD ~~PROHIBIT RESTRICT~~ HEALTH INSURERS ~~TO FOUR STATUTORY FACTORS FROM DENYING COVERAGE OR CHARGING MORE FOR PRE-EXISTING CONDITIONS WHEN CHARGING PREMIUMS AND PROHIBIT PRE-EXISTING CONDITION EXCLUSIONS;~~ ~~PROHIBIT CAP~~ SURPRISE OUT-OF-NETWORK MEDICAL ~~AND AMBULANCE~~ ~~BILLS AND BALANCE BILLING FOR AMBULANCES;~~ SET ~~WAGE INCREASES AND NEW~~ "MINIMUM WAGES" FOR PRIVATE HOSPITAL WORKERS; ~~AND~~ REQUIRE PRIVATE HOSPITALS TO MEET NATIONAL INFECTION SAFETY STANDARDS; ~~AND FUND ENFORCEMENT WITH PAYMENTS FROM PRIVATE HOSPITALS.~~

A "YES" vote ~~will shall have the effect of prohibit-restricting~~ health insurers ~~from denying coverage or charging higher prices for people with pre-existing conditions to four factors when charging premiums (individual or family coverage, age, geography, and tobacco use); prohibiting health insurers from imposing a pre-existing condition exclusion (consistent with state and federal law); prohibit-establishing a cap on certain~~ surprise out-of-network medical bills and ~~prohibiting~~ balance billings for ambulance services ~~as those terms are defined in the law;~~ amending the surprise ~~out-of-network billing~~ dispute process; ~~requiring wage increases and setting~~ new "minimum wages" for ~~direct care~~ workers at private hospitals; ~~requiring~~ private hospitals to meet national safety standards for preventing hospital-acquired infections; and ~~establishing a fund enforcement for administration and enforcement of the infection standards~~ with fees paid by private hospitals.

A "NO" vote ~~will shall have the effect of maintain the current health care billing rules, dispute process, and wages for private hospital workers retaining existing law relating to health insurance and hospitals.~~

## **Proposition 209**

### **DESCRIPTIVE TITLE**

THE LAW WOULD EXPAND THE EARNING OF RELEASE CREDITS TO REDUCE PRISON TIME BY UP TO 50% FOR THOSE CONVICTED OF STATUTORILY DEFINED "NONDANGEROUS OFFENSES"; AUTHORIZE JUDGES TO IMPOSE LOWER SENTENCES WHEN SENTENCING FOR "NONDANGEROUS OFFENSES"; AND ESTABLISH A FUND FOR VICTIMS/FIRST RESPONDERS.

A "YES" vote shall have the effect of creating a new category of offense defined as a "nondangerous offense," which includes all crimes except molestation of a child, a dangerous crime against children, first or second degree murder, sexual assault, or any crime determined by the jury or the court to be a dangerous offense; expanding the current earned release credit program to require the Arizona Department of Corrections, Rehabilitation and Reentry to grant earned release credits to those incarcerated for a nondangerous offense to reduce their time in prison by up to 50%; allowing a judge, when imposing a sentence for a nondangerous offense, to impose any prison sentence less than the statutory minimum or no prison sentence, considering statutory factors and input of victims, family members, and experts; changing the circumstances under which earned release credits can be taken away; changing the conditions under which an individual is considered a repetitive offender; eliminating the literacy requirement to be eligible for early release; and establishing a new fund for services for crime victims and first responders by transferring funds from the Medical Marijuana Fund.

A "NO" vote shall have the effect of retaining existing law relating to early prison release and criminal sentencing.

## Proposition 209

### DESCRIPTIVE TITLE

THE LAW WOULD ~~ALLOW-EXPAND THE EARNING OF RELEASE CREDITS TO REDUCE PRISON TIME BY UP TO 50% FOR THOSE CONVICTED OF STATUTORILY DEFINED "NONDANGEROUS OFFENSES"~~ ~~THOSE INCARCERATED FOR NONDANGEROUS OFFENSES TO EARN RELEASE CREDITS TO REDUCE PRISON TIME BY UP TO 50% FOR GOOD BEHAVIOR AND PARTICIPATING IN REHABILITATION AND EDUCATION PROGRAMS~~; AUTHORIZE JUDGES TO ~~EXERCISE DISCRETION~~ IMPOSE LOWER SENTENCES WHEN SENTENCING FOR "NONDANGEROUS OFFENSES"; AND ESTABLISH A FUND FOR VICTIMS/FIRST RESPONDERS' ~~SERVICES~~.

A "YES" vote ~~will~~ shall have the effect of creating a new category of offense defined as a "nondangerous offense," which includes all crimes except molestation of a child, a dangerous crime against children, first or second degree murder, sexual assault, or any crime determined by the jury or the court to be a dangerous offense; allow-expanding the current earned release credit program to require the Arizona Department of Corrections, Rehabilitation and Reentry to grant earned release credits to those incarcerated for a ~~nondangerous offenses~~ ~~with earned release credits~~ to reduce their time in prison by up to 50% ~~for good behavior and participating in available work, training, rehabilitation, and education programs~~; allowing a judge, when imposing a sentence for a nondangerous offense, to impose any prison sentence less than the statutory minimum or no prison sentence, considering statutory factors such as the specific circumstances of each case and input of victims, family members, and experts ~~and impose a sentence for a nondangerous offense that is less than the statutory minimum if the judge determines it is in the interest of justice; changing the circumstances under which earned release credits can be taken away; changing the conditions under which an individual is considered a repetitive offender; eliminating the literacy requirement to be eligible for early release; and establishing~~ a new fund for services for crime victims and first responders by transferring funds from the Medical Marijuana Fund.

A "NO" vote ~~will~~ shall have the effect of ~~preserve- retaining~~ existing law relating to early prison release and criminal sentencing rules regarding earned release credits; maintain mandatory sentencing pursuant to statutory sentencing ranges; and create no new fund for services for crime victims and first responders.