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Current through all laws of the 2018 Fiscal Session and 2018 Second Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

Constitution Of The State Of Arkansas Of 1874  
 AMENDMENTS TO THE CONSTITUTION OF ARKANSAS OF 1874  
 AMEND. 98. ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016

**GO TO ARKANSAS STATUTES ARCHIVE DIRECTORY**

Ark. Const. Amendment 98 Note (2018)

**Amendment 98 Note****NOTES: A.C.R.C. Notes.**

Identical Acts 2017 (1st Ex. Sess.), Nos. 1 and 8, § 1, provided: "LEGISLATIVE INTENT.

"(a) The General Assembly finds that:

"(1) Arkansas Constitution, Amendment 98, § 23, empowers the General Assembly to amend certain sections of Arkansas Constitution, Amendment 98, so long as the amendments are germane to the section and consistent with its policy and purposes;

"(2) Twenty-three (23) separate acts of the regular session of the Ninety-First General Assembly, Acts 2017, Nos. 4, 5, 438, 479, 544, 545, 587, 593, 594, 638, 639, 640, 641, 642, 670, 740, 948, 1022, 1023, 1024, 1098, 1099, and 1100, amended Arkansas Constitution, Amendment 98;

"(3) (A) Twenty (20) of these twenty-three (23) acts were enacted independently of the other acts and do not reflect the language added by any of the other amendatory acts.

"(B) However:

"(i) Acts 2017, No. 438, § 1, was enacted as amended by Acts 2017, No. 5;

"(ii) Acts 2017, No. 593, § 1, was enacted as amended by Acts 2017, No. 5; and

"(iii) Acts 2017, No. 640, § 1, was enacted as amended by Acts 2017, No. 4;

"(4) Thirteen (13) of the twenty-three (23) acts, Acts 2017, Nos. 4, 438, 479, 593, 639, 641, 670, 740, 948, 1023, 1024, 1098, and 1100, have conflicting provisions such as the same numbering for new subsections or subdivisions within the same section or subsection;

"(5) (A) Acts 2017, No. 1023, §§ 2 and 3, imposed additional requirements on both the Department of Health and the Alcoholic Beverage Control Division of the Department of Finance and Administration regarding labeling and testing of usable marijuana to ensure that food or drink that has been combined with usable marijuana does not exceed ten milligrams (10 mg) of active tetrahydrocannabinol per portion.

"(B) However, after further review, the additional requirements imposed on the Department of Health within Acts 2017, No. 1023, § 2, are unnecessary to achieve this purpose as the Alcoholic Beverage Control Division of the Department of Finance and Administration must also meet these requirements for dispensaries and cultivation facilities;

## Ark. Const. Amendment 98 Note

"(6) Arkansas Code § 1-2-207, which addresses codification upon the passage of multiple acts amending the same subject matter, only references amendments to the Arkansas Code and uncodified acts and does not address the treatment of acts amending the Arkansas Constitution;

"(7) The applicability of Arkansas Code § 1-2-303(d)(1), concerning nonsubstantive technical corrections to provisions of the Arkansas Code and acts of the General Assembly made under the direction of the Arkansas Code Revision Commission, is equally uncertain;

"(8) It is unclear whether the Arkansas Code Revision Commission may exercise its authority under Arkansas Code §§ 1-2-207 and 1-2-303 and make the customary technical corrections, such as changes to numbering and formatting, that are made by the Arkansas Code Revision Commission to acts of the General Assembly that amend the same section of law; and

"(9) Without technical corrections to the conflicting language in thirteen (13) of the twenty-three (23) amendatory acts of the 2017 regular session, Arkansas Constitution, Amendment 98, will not read coherently and will be difficult to interpret, utilize, and cite.

"(b) The intent of this act is to:

"(1) Supersede certain provisions of Acts 2017, Nos. 4, 438, 479, 593, 639, 641, 670, 740, 948, 1023, 1024, 1098, and 1100, that conflict with or substantively duplicate the provisions of this act;

"(2) Repeal Acts 2017, No. 1023, § 2, to ensure that the language incorporated within Arkansas Constitution, Amendment 98, is without conflicts; and

"(3) Enact certain provisions of Acts 2017, Nos. 4, 438, 479, 593, 639, 641, 670, 740, 948, 1023, 1024, 1098, and 1100, in a format that integrates and incorporates certain provisions of the thirteen (13) acts by restating certain provisions in a coherent, cohesive, and comprehensive manner.

"(c) This act does not modify or supersede:

"(1) Any emergency clause, effective date clause, or retroactivity clause, of Acts 2017, Nos. 4, 438, 479, 593, 639, 641, 670, 740, 948, 1023, 1024, 1098, and 1100;

"(2) Sections within Acts 2017, Nos. 4, 438, 479, 593, 639, 641, 670, 740, 948, 1023, 1024, 1098, and 1100, that are not within this act; or

"(3) Acts 2017, Nos. 5, 544, 545, 587, 594, 638, 640, 642, 1022, and 1099."

#### **Publisher's Notes.**

Ark. Const. Amend. 98, effective November 9, 2016, was proposed by initiative petition and adopted at the 2016 general election by a vote of 585,030 for and 516,525 against.

Amend. 98, § 1 added §§ 1--23 set out below.

#### **Cross References.**

Medical Marijuana, § 20-56-301 et seq.

#### **Effective Dates.**

Ark. Const. Amend. 98, § 2: effective Nov. 9, 2016.

Acts 2017, No. 4, § 8, provided: "RETROACTIVITY. This act is retroactive to the effective date of the Arkansas Medical Marijuana Amendment of 2016 [Nov. 9, 2016]."

Acts 2017, No. 4, § 9: Jan. 23, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the dates set for rulemaking within the Arkansas Medical Marijuana Amendment of 2016 are impractical to encompass the magnitude of the medical marijuana program; that the Department of Health, the Alcoholic Beverage Control Division of the Department of Finance and Administration, and the Medical Marijuana Commission need additional time to properly establish a medical marijuana program to fulfill the policies and purposes of the Arkansas Medical Marijuana Amendment of 2016; and that this act is immediately necessary because the citizens of Arkansas need certainty about the law and rules creating the medical marijuana program before fully investing time, funds, personnel, and other resources into the development of dispensaries and cultivation facilities and because public

participation in and transparency of the rulemaking process must be ensured. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Acts 2017, No. 1098, § 3: July 1, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that the Medical Marijuana Commission will begin accepting applications for the licensing of cultivation facilities and dispensaries on July 1, 2017, which will begin the implementation of the use of medical marijuana in the state; that additional funding is needed to ensure that the implementation of the Arkansas Medical Marijuana Amendment of 2016 is revenue neutral; and that this act is necessary because it is in the best interests of the state to increase Arkansas's ability to impose a special privilege tax on cultivation facilities and dispensaries to relieve the burden on the state of implementing the Arkansas Medical Marijuana Amendment of 2016. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 1, 2017."

Acts 2017, No. 1099, § 2: Apr. 7, 2017. Emergency clause provided: "It is found and determined by the General Assembly of the State of Arkansas that public schools need additional guidance and clarity concerning the effect of Arkansas Constitution, Amendment 98, also known as the 'Arkansas Medical Marijuana Amendment of 2016'; that the Arkansas Medical Marijuana Amendment of 2016 became effective on and after November 9, 2016; and that this act is immediately necessary because the public schools of the State of Arkansas need certainty about the law and rules concerning the use of medical marijuana by public school students. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on: (1) The date of its approval by the Governor; (2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or (3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

Identical Acts 2017 (1st Ex. Sess.), Nos. 1 and 8, § 8: July 31, 2017. Emergency clause, provided: "It is found and determined by the General Assembly of the State of Arkansas that twenty-three (23) separate acts of the regular session of the Ninety-First General Assembly amended the Arkansas Constitution, Amendment 98, also known as the 'Arkansas Medical Marijuana Amendment of 2016'; that this act is intended to avoid difficulties in interpreting, utilizing, and citing Arkansas Constitution, Amendment 98, in the wake of passage of Acts 2017, Nos. 4, 438, 479, 593, 639, 641, 670, 740, 948, 1023, 1024, 1098, and 1100; that this act enacts certain provisions of Acts 2017, Nos. 4, 438, 479, 593, 639, 641, 670, 740, 948, 1023, 1024, 1098, and 1100, in a format that integrates and incorporates the provisions of the thirteen (13) acts by restating certain provisions of the thirteen (13) acts in a coherent, cohesive, and comprehensive manner; and that to avoid confusion in the law, this act should become effective on the same date as the majority of the thirteen (13) acts. Therefore, an emergency is declared to exist, and this act being necessary for the preservation of the public peace, health, and safety shall become effective on July 31, 2017."

#### **HIERARCHY NOTES:**

Const Note

Amend. AMENDMENTS TO THE CONSTITUTION OF ARKANSAS OF 1874 Note

Ark. Const. Amendment 98, § 1

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Ark. Const. Amendment 98, § 1 (2018)

**§ 1. Short title.**

This amendment shall be known and cited as the "Arkansas Medical Marijuana Amendment of 2016".

**HIERARCHY NOTES:**

Const Note

Amend. AMENDMENTS TO THE CONSTITUTION OF ARKANSAS OF 1874 Note

Amendment 98 Note

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**GO TO ARKANSAS STATUTES ARCHIVE DIRECTORY**

Ark. Const. Amendment 98, § 2 (2018)

**§ 2. Definitions.**

As used in this amendment:

- (1) "Acquire" or "acquisition" means coming to possess marijuana by means of any legal source herein authorized, not from an unauthorized source, and in accordance with this amendment and any rules promulgated under this amendment;
- (2) "Assist" or "assisting" means helping a qualifying patient make medical use of marijuana by enabling the medical use by any means authorized under this amendment;
- (3) "Cardholder" means a qualifying patient, a dispensary agent, a cultivation facility agent, or a designated caregiver;
- (4) "Cultivation facility" means an entity that:
  - (A) Has been licensed by the Medical Marijuana Commission under § 8 of this amendment; and
  - (B) Cultivates, prepares, manufactures, processes, packages, sells to and delivers usable marijuana to a dispensary;
- (5) "Cultivation facility agent" means an employee, supervisor, or agent of a cultivation facility who:
  - (A) Is twenty-one (21) years of age or older;
  - (B) Works at the cultivation facility; and
  - (C) Has registered with the Alcoholic Beverage Control Division under § 9 of this amendment;
- (6) (A) "Designated caregiver" means a person who is at least twenty-one (21) years of age, has not been convicted of an excluded felony offense, has agreed to assist a physically disabled qualifying patient with the medical use of marijuana, and who has registered with the Department of Health under § 5 of this amendment.
  - (B) "Designated caregiver" includes without limitation a parent:
    - (i) Of a qualifying patient who is under the age of eighteen (18); and
    - (ii) Required to register as a designated caregiver under this amendment.
  - (C) "Designated caregiver" shall not include a member of the Arkansas National Guard or the United States military;
- (7) "Dispensary" means an entity that has been licensed by the Medical Marijuana Commission under § 8 of this amendment;

**(8)** "Dispensary agent" means:

**(A)** An employee, supervisor, volunteer, or agent of a dispensary who:

**(i)** Is twenty-one (21) years of age or older;

**(ii)** Works at the dispensary; and

**(iii)** Has registered with the division under § 9 of this amendment; and

**(B)** An owner, officer, or board member of a dispensary who has registered with the division under § 8 of this amendment;

**(9)** "Enclosed, locked facility" means a room, greenhouse, or other enclosed area equipped with locks or other security devices that permit access only by an authorized individual;

**(10)** "Excluded felony offense" means:

**(A) (i) (a)** A felony offense as determined by the jurisdiction where the felony offense occurred.

**(b)** The Medical Marijuana Commission, the Department of Health, or the Alcoholic Beverage Control Division shall determine whether an offense is a felony offense based upon a review of the relevant court records concerning the conviction for the offense.

**(ii)** An offense that has been sealed by a court or for which a pardon has been granted is not considered an excluded felony offense; or

**(B)** A violation of a state or federal controlled-substance law that was classified as a felony in the jurisdiction where the person was convicted, but not including:

**(i)** An offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed ten (10) or more years earlier; or

**(ii)** An offense that has been sealed by a court or for which a pardon has been granted;

**(11)** "Medical use" means the acquisition, possession, use, delivery, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a qualifying patient's qualifying medical condition or symptoms associated with the qualifying patient's qualifying medical condition;

**(12)** "Physician" means a doctor of medicine or doctor of osteopathic medicine who holds a valid, unrestricted, and existing license to practice in the state of Arkansas and has been issued a registration from the United States Drug Enforcement Administration to prescribe controlled substances;

**(13)** "Qualifying medical condition" means one (1) or more of the following:

**(A)** Cancer, glaucoma, positive status for human immunodeficiency virus/acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Tourette's syndrome, Crohn's disease, ulcerative colitis, post-traumatic stress disorder, severe arthritis, fibromyalgia, Alzheimer's disease, or the treatment of these conditions;

**(B)** A chronic or debilitating disease or medical condition or its treatment that produces one (1) or more of the following: cachexia or wasting syndrome; peripheral neuropathy; intractable pain, which is pain that has not responded to ordinary medications, treatment, or surgical measures for more than six (6) months; severe nausea; seizures, including without limitation those characteristic of epilepsy; or severe and persistent muscle spasms, including without limitation those characteristic of multiple sclerosis; and

**(C)** Any other medical condition or its treatment approved by the Department of Health under § 4 of this amendment;

**(14) (A)** "Qualifying patient" means a person who has been diagnosed by a physician as having a qualifying medical condition and who has registered with the department under § 5 of this amendment.

**(B)** "Qualifying patient" shall not include a member of the Arkansas National Guard or the United States military;

**(15)** "Registry identification card" means a document issued by the department or the division that identifies a person as a qualifying patient, a dispensary agent, a cultivation facility agent, or a designated caregiver;

**(16)** "Sealed" means to expunge, remove, sequester, and treat as confidential the record or records of a felony offense;

**(17) (A)** "Usable marijuana" means the stalks, seeds, roots, dried leaves, flowers, oils, vapors, waxes, and other portions of the marijuana plant and any mixture or preparation thereof.

**(B)** "Usable marijuana" does not include the weight of any ingredients other than marijuana that are combined with marijuana and prepared for consumption as food or drink;

**(18)** "Visiting qualifying patient" means a patient with a qualifying medical condition who is not a resident of Arkansas or who has been a resident of Arkansas for less than thirty (30) days and who is in actual possession of a registry identification card or its equivalent that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States and pertains to a qualifying medical condition under this section;

**(19) (A)** "Written certification" means a document signed by a physician stating that in the physician's professional opinion, after having completed an assessment of the qualifying patient's medical history and current medical condition made in the course of a physician-patient relationship, the qualifying patient has a qualifying medical condition.

**(B)** A written certification shall specify the qualifying patient's qualifying medical condition, which also shall be noted in the physician's records.

**(C)** A physician shall not issue a written certificate to a patient based on an assessment performed through telemedicine.

**(D)** A written certification is not a medical prescription;

**(20) (A)** "Current use of marijuana" means use of marijuana that justifies the good faith belief of an employer that an applicant or employee is engaging in the use of marijuana.

**(B)** "Current use of marijuana" is presumed when a positive test result for marijuana occurs;

**(21)** "Employee" means an individual employed by an employer, but does not include:

**(A)** An individual employed by his or her parents, spouse, or child;

**(B)** An individual participating in a specialized employment training program conducted by a nonprofit sheltered workshop or rehabilitation facility;

**(C)** An individual employed outside the State of Arkansas; or

**(D)** An independent contractor;

**(22)** "Employer" means an entity that employs nine (9) or more employees in the State of Arkansas in twenty (20) or more calendar weeks in the current or preceding calendar year;

**(23) (A)** "Good faith belief" means reasonable reliance on a fact, or that which is held out to be factual, without intent to deceive or be deceived and without reckless or malicious disregard for the truth.

**(B)** "Good faith belief" does not include a belief formed with gross negligence.

**(C)** "Good faith belief" may be based on any of the following:

**(i)** Observed conduct, behavior, or appearance;

**(ii)** Information reported by a person believed to be reliable, including without limitation a report by a person who witnessed the use or possession of marijuana or marijuana paraphernalia by an applicant or employee in the workplace;

**(iii)** Written, electronic, or verbal statements from the employee or other persons;

**(iv)** Lawful video surveillance;

**(v)** A record of government agencies, law enforcement agencies, or courts;

**(vi)** A positive test result for marijuana;

(vii) A warning label, usage standard, or other printed material that accompany instructions for usable marijuana;

(viii) Information from a physician, medical review officer, or a dispensary;

(ix) Information from reputable reference sources in print or on the internet;

(x) Other information reasonably believed to be reliable or accurate; or

(xi) Any combination of the items listed in subdivisions (23)(C)(i)-(x) of this section;

(24) "Positive test result for marijuana" means a result that is at or above the cutoff concentration level established by the United States Department of Transportation or the Arkansas laws regarding being under the influence, whichever is lower;

(25) (A) "Safety sensitive position" means any position involving a safety sensitive function pursuant to federal regulations governing drug and alcohol testing adopted by the United States Department of Transportation or any other rules, guidelines, or regulations adopted by any other federal or state agency.

(B) "Safety sensitive position" also means any position designated in writing by an employer as a safety sensitive position in which a person performing the position while under the influence of marijuana may constitute a threat to health or safety, including without limitation a position:

(i) That requires any of the following activities:

(a) Carrying a firearm;

(b) Performing life-threatening procedures;

(c) Working with confidential information or documents pertaining to criminal investigations; or

(d) Working with hazardous or flammable materials, controlled substances, food, or medicine; or

(ii) In which a lapse of attention could result in injury, illness, or death, including without limitation a position that includes the operating, repairing, maintaining, or monitoring of heavy equipment, machinery, aircraft, motorized watercraft, or motor vehicles as part of the job duties; and

(26) (A) "Under the influence" means symptoms of the current use of marijuana that may negatively impact the performance of the job duties or tasks or constitute a threat to health or safety.

(B) "Under the influence" includes without limitation:

(i) Symptoms of the applicant's or employee's speech, walking, standing, physical dexterity, agility, coordination, actions, movement, demeanor, appearance, clothing, odor, or other irrational or unusual behavior that are inconsistent with the usual conduct of the applicant or employee;

(ii) Negligence or carelessness in operating equipment, machinery, or production or manufacturing processes;

(iii) Disregard for safety;

(iv) Involvement in an accident that results in:

(a) Damage to equipment, machinery, or property;

(b) Disruption of a production or manufacturing process; or

(c) An injury; or

(v) Other symptoms causing a reasonable suspicion that the current use of marijuana may negatively impact the performance of the job duties or tasks or constitute a threat to health or safety. [As amended by Acts 2017, No. 5, § 1; 2017, No. 438, § 1; 2017, No. 479, §§ 1, 2; 2017, No. 544, § 1; 2017, No. 593, §§ 1, 2; 2017 (1st Ex. Sess.), No. 1, § 2; 2017 (1st Ex. Sess.), No. 8, § 2.]

**NOTES: A.C.R.C. Notes.**

Acts 2017, No. 4, § 1, provided: "Legislative findings.

The General Assembly finds that:

"(1) Transparency and participation by the public in the development of rules to implement the Arkansas Medical Marijuana Amendment of 2016 requires sufficient time to publish rules, allow for comment by the public, and incorporate comments as appropriate;

"(2) One hundred eighty (180) days from the effective date of the amendment is a reasonable amount of time to comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

"(3) The fiscal year for the State of Arkansas begins on July 1 of each year and ends on June 30 of each year;

"(4) It is an unwise expenditure of public resources to enact the necessary appropriations, acts, and establish the necessary fiscal and regulatory provisions for a one-month period beginning on June 1, 2017; and

"(5) The date of July 1, 2017, is a better effective date for the Medical Marijuana Commission to begin accepting applications."

**Publisher's Notes.**

Acts 2017, No. 438, § 1, and Acts 2017, No. 593, § 1, specifically amended this section as amended by Acts 2017, No. 5.

**Amendments.**

The 2017 amendment by No. 5, in (19)(A), substituted "an" for "a full" preceding "assessment" and deleted "and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient" from the end; and substituted "physician's records" for "qualifying patient's medical records" in (19)(B).

The 2017 amendment by No. 438 added (19)(C).

The 2017 amendment by No. 479 added (6)(C); redesignated former (14) as (14)(A); and added (14)(B).

The 2017 amendment by No. 544 rewrote (10)(A)(i); added (10)(A)(i)(b); and deleted "However" at the beginning of in (10)(A)(ii).

The 2017 amendment by No. 593 added (19)(C) (now (19)(D)), and (20) through (26).

The 2017 (1st Ex. Sess.) amendment by identical acts Nos. 1 and 8 added (19)(C) and (19)(D).

**HIERARCHY NOTES:**

Const Note

Amend. AMENDMENTS TO THE CONSTITUTION OF ARKANSAS OF 1874 Note

Amendment 98 Note

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Ark. Const. Amendment 98, § 3 (2018)

**§ 3. Protections for the medical use of marijuana.**

(a) A qualifying patient or designated caregiver in actual possession of a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including without limitation a civil penalty or disciplinary action by a business, occupational, or professional licensing board or bureau, for the medical use of marijuana in accordance with this amendment if the qualifying patient or designated caregiver possesses not more than two and one-half ounces (2 1/2 oz.) of usable marijuana.

(b) (1) A qualifying patient or designated caregiver is presumed to be lawfully engaged in the medical use of marijuana in accordance with this amendment if the qualifying patient or designated caregiver is in actual possession of a registry identification card and possesses an amount of usable marijuana that does not exceed the amount allowed under this amendment.

(2) The presumption made in subdivision (b)(1) of this section may be rebutted by evidence that conduct related to marijuana was not for the purpose of treating or alleviating the qualifying patient's qualifying medical condition or symptoms associated with the qualifying medical condition in accordance with this amendment.

(c) A qualifying patient or designated caregiver shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including without limitation a civil penalty or disciplinary action by a business, occupational, or professional licensing board or bureau, for giving, or offering to give, up to two and one-half ounces (2 1/2 oz.) of usable marijuana to a qualifying patient or designated caregiver for the qualifying patient's medical use when nothing of value is transferred in return.

(d) A designated caregiver is not prohibited from receiving compensation or reimbursement of expenses from a qualifying patient for assisting a qualifying patient with the medical use of marijuana.

(e) A dispensary may:

(1) Accept marijuana seedlings, plants, or usable marijuana from:

(A) Cultivation facilities;

(B) Other dispensaries in Arkansas; and

(C) If permissible under federal law, out-of-state dispensaries;

(2) Transfer or sell marijuana seedlings, plants, or usable marijuana to:

(A) Cultivation facilities;

(B) Other dispensaries in Arkansas; and

(C) If permissible under federal law, out-of-state dispensaries; and

**(3)** Accept marijuana seeds from any individual lawfully entitled to possess marijuana seeds, seedlings, or plants under the laws of the state in which the individual resides.

**(f) (1)** A school or landlord shall not refuse to enroll, refuse to lease to, or otherwise penalize an individual solely for his or her status as a qualifying patient or designated caregiver unless doing so would put the school or landlord in violation of federal law or regulations.

**(2)** For the purposes of medical care, including without limitation organ transplants, a qualifying patient's authorized use of marijuana in accordance with this amendment is considered the equivalent of the authorized use of any other medication used at the direction of a physician and does not constitute the use of an illicit substance.

**(3) (A)** An employer shall not discriminate against an applicant or employee in hiring, termination, or any term or condition of employment, or otherwise penalize an applicant or employee, based upon the applicant's or employee's past or present status as a qualifying patient or designated caregiver.

**(B)** A cause of action shall not be established against an employer based upon, and an employer is not prohibited from, any of the following actions:

**(i)** Establishing and implementing a substance abuse or drug-free workplace policy that may include a drug testing program that complies with state or federal law and taking action with respect to an applicant or employee under the policy;

**(ii)** Acting on the employer's good faith belief that a qualifying patient:

**(a)** Possessed, smoked, ingested, or otherwise engaged in the use of marijuana while on the premises of the employer or during the hours of employment; or

**(b)** Was under the influence of marijuana while on the premises of the employer or during the hours of employment, provided that a positive test result for marijuana cannot provide the sole basis for the employer's good faith belief; or

**(iii)** Acting to exclude a qualifying patient from being employed in or performing a safety sensitive position based on the employer's good faith belief that the qualifying patient was engaged in the current use of marijuana.

**(C)** The authorized or protected actions of an employer under this subdivision (f)(3) include without limitation:

**(i)** Implementing, monitoring, or taking measures to assess, supervise, or control the job performance of an employee;

**(ii)** Reassigning an employee to a different position or job duties;

**(iii)** Placing an employee on paid or unpaid leave;

**(iv)** Suspending or terminating an employee;

**(v)** Requiring an employee to successfully complete a substance abuse program before returning to work;

**(vi)** Refusing to hire an applicant; or

**(vii)** Any combination of the actions listed in subdivisions (f)(3)(C)(i) -- (f)(3)(C)(vi) of this section.

**(D) (i)** Damages established for an employment discrimination claim based on an applicant's or employee's past or present status as a qualifying patient or designated caregiver in violation of this amendment shall be limited to the damages available for an employment discrimination claim under § 16-123-107(c) of the Arkansas Civil Rights Act of 1993, § 16-123-101 et seq., including the statutory limits provided under § 16-123-107(c)(2)(A)(i)-(v).

**(ii)** Liability for back pay shall not accrue from a date more than two (2) years prior to the filing of an action.

**(iii)** Damages under this subdivision (f)(3) shall not duplicate or increase an award for damages over the statutory limit allowed by state law or federal law existing on January 1, 2017, whichever is lower.

**(E)** An action based on employment discrimination in violation of this subdivision (f)(3) shall be brought within one (1) year of the occurrence of the alleged discrimination.

**(F)** An individual employee, agent of the employer, or employee of the agent of the employer is not liable for any violation of this subdivision (f)(3) that the employer is found to have committed.

**(G)** This amendment does not waive the sovereign immunity of the State of Arkansas.

**(g)** A person otherwise entitled to custody of, or visitation or parenting time with, a minor shall not be denied custody, visitation, or parenting time solely for conduct allowed under this amendment, nor shall there be:

**(1)** A finding of abuse solely for conduct allowed under this amendment; or

**(2)** A presumption of neglect or child endangerment for conduct allowed under this amendment.

**(h) (1)** A physician shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including without limitation a civil penalty or disciplinary action by the Arkansas State Medical Board or by any other business, occupational, or professional licensing board or bureau, solely for providing a written certification.

**(2)** Subdivision (g)(1) of this section does not prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or for otherwise violating the applicable physician-patient standard of care.

**(i)** A person shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including without limitation a civil penalty or disciplinary action by a business, occupational, or professional licensing board or bureau, for providing a qualifying patient or designated caregiver with marijuana paraphernalia for purposes of facilitating the qualifying patient's medical use of marijuana.

**(j)** Any marijuana, marijuana paraphernalia, licit property, or interest in licit property, that is possessed, owned, or used exclusively in connection with the medical use of marijuana as allowed under this amendment, or property incidental to such use, shall not be seized or forfeited.

**(k)** A person shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including without limitation a civil penalty or disciplinary action by a business, occupational, or professional licensing board or bureau, simply for being in the presence or vicinity of the medical use of marijuana as allowed under this amendment or for directly assisting a physically disabled qualifying patient with the medical use of marijuana.

**(l) (1)** A registry identification card or its equivalent that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows a visiting qualifying patient to possess or use marijuana for medical use in the jurisdiction of issuance has the same force and effect when held by a visiting qualifying patient as a registry identification card issued by the Department of Health if the same qualifying medical condition exists.

**(2) (A)** A visiting qualifying patient may obtain marijuana from a dispensary upon producing evidence of his or her registry identification card or its equivalent that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States.

**(B)** The department shall promulgate necessary rules concerning a visiting qualifying patient obtaining marijuana from a dispensary.

**(m)** A pharmacist shall not be subject to arrest, prosecution, or penalty in any manner or denied any right or privilege, including without limitation a civil penalty or disciplinary action by the Arkansas State Board of Pharmacy or by any other business, occupational, or professional licensing board or bureau, solely for performing his or her duties as a pharmacist consultant for a registered dispensary. [As amended by Acts 2017, No. 593, § 3; 2017, No. 1024, § 1.]

**NOTES: Amendments.**

The 2017 amendment by No. 593 redesignated former (f)(3) as (f)(3)(A); substituted "applicant or employee" for "individual" and variations thereof in (f)(3)(A); and added (f)(3)(B) through (f)(3)(G).

The 2017 amendment by No. 1024 added (m).

**HIERARCHY NOTES:**

Const Note

Ark. Const. Amendment 98, § 3

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Ark. Const. Amendment 98, § 4 (2018)

**§ 4. Qualifying patient -- Administration and enforcement -- Rules.**

(a) (1) The Department of Health shall administer and enforce the provisions of this amendment concerning qualifying patients, qualifying medical conditions, and designated caregivers, including without limitation the issuance of a registry identification card to a qualifying patient and designated caregiver.

(2) The department shall adopt rules necessary to:

(A) Carry out the purposes of this amendment; and

(B) Perform its duties under this amendment.

(3) Rules adopted under this section are rules as defined in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(4) (A) The Department of Health shall require each applicant for a designated caregiver registry identification card to apply for or authorize the Department of Health to obtain state and national criminal background checks to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(B) The criminal background checks shall conform to the applicable federal standards and shall include the taking of fingerprints.

(C) The applicant shall authorize the release of the criminal background checks to the Department of Health and shall be responsible for the payment of any fee associated with the criminal background checks.

(D) Upon completion of the criminal background checks, the Identification Bureau of the Department of Arkansas State Police shall forward to the Department of Health all information obtained concerning the applicant.

(b) Not later than one hundred eighty (180) days after the effective date of this amendment, the department shall adopt rules governing:

(1) The manner in which the department considers applications for and renewals of registry identification cards;

(2) Labeling and testing standards for marijuana distributed to qualifying patients, including a warning label on all marijuana for medical use that is processed or sold for smoking that communicates the health and safety risks associated with smoking and a list of places and conditions in which smoking marijuana for medical use is illegal in the State of Arkansas; and

(3) Any other matters necessary for the department's fair, impartial, stringent, and comprehensive administration of this amendment.

(c) (1) Not later than one hundred eighty (180) days after the effective date of this amendment, the department shall adopt rules that govern the manner in which the department considers petitions from the public to add medical conditions or treatments to the list of qualifying medical conditions set forth in § 2 of this amendment.

(2) In considering a petition, the department shall add medical conditions or treatments to the list of qualifying medical conditions set forth in § 2 of this amendment if patients suffering from the medical conditions or undergoing the treatments in question would derive therapeutic benefit from the use of marijuana, taking into account the positive and negative health effects of such use.

(3) (A) The department shall, after hearing, approve or deny a petition within one hundred twenty (120) days of submission of the petition.

(B) The approval or denial of a petition constitutes final agency action, subject to judicial review, and jurisdiction for judicial review is vested in the Pulaski County Circuit Court.

(d) The department shall adopt rules within one hundred eighty (180) days of the effective date of this amendment that govern the manner in which a designated caregiver assists a physically disabled qualifying patient or a qualifying patient under the age of eighteen (18) with the medical use of marijuana.

(e) The department may collect fines or fees for any violation of a rule adopted under this section. [As amended by Acts 2017, No. 4, §§ 2, 3; 2017, No. 545, § 1; 2017, No. 639, § 1; 2017, No. 740, § 2; 2017, No. 1023, § 2; 2017 (1st Ex. Sess.), No. 1, §§ 3, 4; 2017 (1st Ex. Sess.), No. 8, §§ 3, 4.]

**NOTES: A.C.R.C. Notes.**

Acts 2017, No. 4, § 1, provided: "Legislative findings.

The General Assembly finds that:

"(1) Transparency and participation by the public in the development of rules to implement the Arkansas Medical Marijuana Amendment of 2016 requires sufficient time to publish rules, allow for comment by the public, and incorporate comments as appropriate;

"(2) One hundred eighty (180) days from the effective date of the amendment is a reasonable amount of time to comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

"(3) The fiscal year for the State of Arkansas begins on July 1 of each year and ends on June 30 of each year;

"(4) It is an unwise expenditure of public resources to enact the necessary appropriations, acts, and establish the necessary fiscal and regulatory provisions for a one-month period beginning on June 1, 2017; and

"(5) The date of July 1, 2017, is a better effective date for the Medical Marijuana Commission to begin accepting applications."

**Publisher's Notes.**

Acts 2017, No. 1023, § 2, which amended subdivision (b)(2) of this section, was repealed by Identical Acts 2017 (1st Ex. Sess.), Nos. 1 and 8, § 3, before taking effect.

**Amendments.**

The 2017 amendment by No. 4 substituted "one hundred eighty (180) days" for "one hundred twenty (120) days" in the introductory language of (b) and in (d); and substituted "the department" for "it" in (b)(1).

The 2017 amendment by No. 545 added (a)(4).

The 2017 amendment by No. 639 added (e).

The 2017 amendment by No. 740 inserted "including a warning label on all marijuana for medical use that is processed or sold for smoking that communicates the health and safety risks associated with smoking and a list of places and conditions in which smoking marijuana for medical use is illegal in the State of Arkansas" in (b)(2).

The 2017 (1st Ex. Sess.) amendment by identical acts Nos. 1 and 8 substituted "one hundred eighty (180) days" for "one hundred twenty (120) days" in the introductory language of (b); substituted "the department" for "it" in (b)(1); and inserted "including a warning label on all marijuana for medical use that is processed or sold for smoking that

communicates the health and safety risks associated with smoking and a list of places and conditions in which smoking marijuana for medical use is illegal in the State of Arkansas" in (b)(2).

**HIERARCHY NOTES:**

Const Note

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Ark. Const. Amendment 98, § 5 (2018)

**§ 5. Registry identification cards.**

(a) The Department of Health shall issue registry identification cards to qualifying patients and designated caregivers who submit in accordance with the rules promulgated by the department:

- (1) Written certification issued by a physician within thirty (30) days of the application;
- (2) (A) A reasonable application or renewal fee as established by the department by rule.

(B) The department may establish a sliding scale of application and renewal fees based upon a qualifying patient's family income;

(3) The name, address, and date of birth of the qualifying patient or designated caregiver, except that if the applicant is homeless, no address is required;

(4) For a designated caregiver application:

(A) The name of the physically disabled qualifying patient or qualifying patient under the age of eighteen (18) whom the applicant will be assisting; and

(B) Documentation from the qualifying patient's physician indicating that the qualifying patient is physically disabled or under the age of eighteen (18);

(5) The name, address, and telephone number of the qualifying patient's physician; and

(6) A signed statement from the qualifying patient or designated caregiver pledging not to divert marijuana to anyone who is not allowed to possess marijuana under this amendment.

(b) The department shall not issue a registry identification card to a qualifying patient who is under eighteen (18) years of age unless:

(1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and

(2) A parent, guardian, or person having legal custody:

(A) Consents in writing to:

- (i) Allow the qualifying patient's medical use of marijuana;
- (ii) Assist the qualifying patient in the medical use of marijuana; and
- (iii) Control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient; and

## Ark. Const. Amendment 98, § 5

- (B)** Registers as a designated caregiver under this amendment.
- (c) (1)** The department shall review the information contained in an application or renewal submitted under this section within fourteen (14) days of receiving it.
- (2)** The department shall deny an application or renewal if the:
- (A)** Applicant previously had a registry identification card revoked; or
- (B)** Department determines the written certification was not made in the context of a physician-patient relationship or that the written certification was fraudulently obtained.
- (3)** Rejection of an application or renewal is considered a final agency action, subject to judicial review, and jurisdiction is vested in the Pulaski County Circuit Court.
- (d) (1)** A registry identification card expires one (1) year after the date of issuance unless the physician states in the written certification that he or she believes the qualifying patient would benefit from the medical use of marijuana only until a specified earlier date.
- (2)** If the written certification specifies an earlier date, the registry identification card shall expire on that date.
- (f) (1)** An application or renewal and supporting information submitted by a qualifying patient or designated caregiver under this amendment, including without limitation information regarding the qualifying patient's physician, are considered confidential records that are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.
- (2) (A) (i)** The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards.
- (ii) (a)** The department may share information from the confidential list under this subsection with the Alcoholic Beverage Control Division and the Medical Marijuana Commission as necessary and the State Insurance Department for the purposes of the Arkansas all-payer claims database established under § 23-61-901 et seq.
- (b)** Confidential information shared with the division or commission shall remain confidential while in the division's or commission's possession.
- (B)** Individual names and other identifying information on the confidential list are confidential, exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq., and not subject to disclosure except to authorized employees of the department, division, and commission as necessary to perform official duties of the department, division, and commission.
- (3)** The department shall verify to law enforcement personnel whether a registry identification card is valid without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.
- (4)** A person, including without limitation an employee or official of the department, division, commission, or another state agency or local government, who knowingly breaches the confidentiality of information obtained under this amendment commits a Class A misdemeanor.
- (g) (1)** Except as provided in § 3 of this amendment, a cardholder who transfers marijuana to a person who is not a qualifying patient or designated caregiver under this amendment shall have his or her registry identification card revoked and shall be subject to any other penalties established by law.
- (2)** The department may revoke the registry identification card of any cardholder who knowingly violates any provision of this amendment, and the cardholder is subject to any other penalties established by law.
- (3)** This subsection does not prohibit:
- (A)** A qualifying patient or designated caregiver from giving up to two and one-half ounces (2 1/2 oz.) of usable marijuana to another qualifying patient or designated caregiver as set forth in § 3 of this amendment; or
- (B)** The transfer of marijuana seedlings, plants, or usable marijuana as set forth in § 3 of this amendment.
- (h)** The department, division, and commission shall submit to the General Assembly an annual report that does not disclose any identifying information about cardholders or physicians but contains at a minimum:
- (1)** The number of applications and renewals filed for registry identification cards;

- (2) The nature of the qualifying medical conditions of the qualifying patients;
- (3) The number of registry identification cards revoked and the number of licenses to operate a dispensary and licenses to operate a cultivation facility revoked;
- (4) The number of physicians providing written certifications for qualifying patients;
- (5) The number of licensed dispensaries;
- (6) The number of licensed cultivation facilities;
- (7) The number of dispensary agents; and
- (8) The number of cultivation facility agents. [As amended by Acts 2017, No. 5, § 2; 2017, No. 948, § 1.]

**NOTES: Publisher's Notes.**

This section as adopted does not contain a subsection (e).

**Amendments.**

The 2017 amendment by No. 5 substituted "records that are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq." for "medical records" at the end of (f)(1).

The 2017 amendment by No. 948 redesignated former (f)(2)(A)(ii) as present (f)(2)(A)(ii)(a) and (f)(2)(A)(ii)(b); and added "and the State Insurance Department for the purposes of the Arkansas all-payer claims database established under § 23-61-901 et seq." at the end of (f)(2)(A)(ii)(a).

**HIERARCHY NOTES:**

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Ark. Const. Amendment 98, § 6 (2018)

**§ 6. Scope.**

(a) This amendment does not permit a person to:

- (1) Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice;
- (2) Possess, smoke, or otherwise engage in the medical use of marijuana:
  - (A) On a school bus;
  - (B) On the grounds of a daycare center, preschool, primary or secondary school, college, or university;
  - (C) At a drug or alcohol treatment facility;
  - (D) At a community or recreation center;
  - (E) In a correctional facility;
  - (F) On any form of public transportation;
  - (G) In a public place; or
  - (H) On any property that is under control of the Arkansas National Guard or the United States military;
- (3) Operate, navigate, or be in actual physical control of a motor vehicle, aircraft, motorized watercraft, or any other vehicle drawn by power other than muscle power while under the influence of marijuana;
- (4) Smoke marijuana:
  - (A) In a place where the smoking of tobacco is prohibited by law;
  - (B) In the presence of a person who is under fourteen (14) years of age;
  - (C) Inside a motor vehicle, aircraft, motorized watercraft, or any vehicle drawn by power other than muscle power;
  - (D) Knowingly in the presence of a pregnant woman; or
  - (E) In a place where the smoking of marijuana for medical use is likely to cause another person not authorized to use marijuana to be under the influence of marijuana; or
- (5) Smoke marijuana for medical use if the person is under twenty-one (21) years of age.

(b) This amendment does not require:

## Ark. Const. Amendment 98, § 6

(1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana unless federal law requires reimbursement;

(2) An employer to accommodate the ingestion of marijuana in a workplace or an employee working while under the influence of marijuana;

(3) An individual or establishment in lawful possession of property to allow a guest, client, customer, or other visitor to use marijuana on or in that property;

(4) An individual or establishment in lawful possession of property to admit a guest, client, customer, or other visitor who is inebriated as a result of his or her medical use of marijuana;

(5) A landlord to permit a qualifying patient to smoke marijuana on or in leased property, except that a landlord may not prohibit the medical use of marijuana through means other than smoking on leased property by a qualifying patient; or

(6) A public school to permit a qualifying patient who is a student to be present on school grounds, to attend a school event, or to participate in extracurricular activities in violation of the public school's student discipline policies when a school office has a good faith belief that the behavior of the qualifying patient is impaired. [As amended by Acts 2017, No. 479, § 3; 2017, No. 740, § 1; 2017, No. 1099, § 1; 2017 (1st Ex. Sess.), No. 1, § 5; 2017 (1st Ex. Sess.), No. 8, § 5.]

**NOTES: Amendments.**

The 2017 amendment by No. 479 added (a)(2)(H).

The 2017 amendment by No. 740 inserted "medical" in the introductory language of (a)(2); and added (a)(4) and (a)(5).

The 2017 amendment by No. 1099 added (b)(6).

The 2017 (1st Ex. Sess.) amendment by identical acts Nos. 1 and 8 inserted "medical" in the introductory language of (a)(2); added (a)(2)(H); and added (a)(4) and (a)(5).

**HIERARCHY NOTES:**

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Ark. Const. Amendment 98, § 7 (2018)

**§ 7. Affirmative defense and dismissal for medical use of marijuana.**

(a) Except as provided in § 6 of this amendment and this section, an individual may assert a medical purpose for using marijuana as an affirmative defense to prosecution for an offense involving marijuana intended for the individual's medical use, and this defense shall be presumed valid and the prosecution shall be dismissed where the evidence demonstrates that the individual is:

- (1) A qualifying patient or a designated caregiver; and
- (2) In compliance with the conditions set forth in § 3 of this amendment.

(b) The defense and motion to dismiss shall not prevail if either of the following are proven:

- (1) The individual's registry identification card had been revoked at the time of the alleged offense; or
- (2) The purposes for the possession of marijuana were not solely for medical use.

(c) An individual is not required to be in actual physical possession of a registry identification card to raise the affirmative defense set forth in this section.

(d) If an individual demonstrates a medical use of marijuana under this section, except as provided in § 6 of this amendment, the individual shall not be subject to the following:

- (1) Disciplinary action by a business, occupational, or professional licensing board or bureau; or
- (2) Forfeiture of any interest in or right to nonmarijuana, licit property.

**HIERARCHY NOTES:**

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Ark. Const. Amendment 98, § 8 (2018)

**§ 8. Licensing of dispensaries and cultivation facilities.**

- (a) (1) Dispensaries and cultivation facilities shall be licensed by the Medical Marijuana Commission.
- (2) The commission shall administer and regulate the licensing of dispensaries and cultivation facilities, including the issuance of a:
- (i) License to operate a dispensary; and
  - (ii) License to operate a cultivation facility.
- (3) The Alcoholic Beverage Control Division shall administer and enforce the provisions of this amendment concerning dispensaries and cultivation facilities.
- (b) (1) The commission and division shall each adopt rules necessary to:
- (A) Carry out the purposes of this amendment; and
  - (B) Perform its duties under this amendment.
- (2) Rules adopted under this section are rules as defined in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.
- (c) The following individuals associated with a dispensary or cultivation facility shall be current residents of Arkansas who have resided in the state for the previous seven (7) consecutive years:
- (1) The individual(s) submitting an application to license a dispensary or cultivation facility; and,
  - (2) Sixty percent (60%) of the individuals owning an interest in a dispensary or cultivation facility.
- (d) Not later than one hundred eighty (180) days after the effective date of this amendment, the commission shall adopt rules governing:
- (1) The manner in which the commission considers applications for and renewals of licenses for dispensaries and cultivation facilities;
  - (2) The form and content of registration and renewal applications for dispensaries and cultivation facilities; and
  - (3) Any other matters necessary for the commission's fair, impartial, stringent, and comprehensive administration of this amendment.
- (e) Not later than one hundred eighty (180) days after the effective date of this amendment, the division shall adopt rules governing:
- (1) Oversight requirements for dispensaries and cultivation facilities;

- (2) Recordkeeping requirements for dispensaries and cultivation facilities;
  - (3) Security requirements for dispensaries and cultivation facilities;
  - (4) Personnel requirements for dispensaries and cultivation facilities;
  - (5) The manufacture, processing, packaging, labeling, and dispensing of usable marijuana to qualifying patients and designated caregivers, including without limitation:
    - (A) Before sale, food or drink that has been combined with usable marijuana shall not exceed ten milligrams (10 mg) of active tetrahydrocannabinol per portion and shall be physically demarked; and
    - (B) If portions cannot be physically determined, the entirety of the food or drink that has been combined with usable marijuana shall not contain more than ten milligrams (10 mg) of active tetrahydrocannabinol;
  - (6) Procedures for suspending or terminating the licenses of dispensaries and cultivation facilities that violate the provisions of this amendment or the rules adopted under this amendment, procedures for appealing penalties, and a schedule of penalties;
  - (7) Procedures for inspections and investigations of dispensaries and cultivation facilities;
  - (8) Advertising restrictions for dispensaries and cultivation facilities, including without limitation the advertising, marketing, packaging, and promotion of dispensaries and cultivation facilities with the purpose to avoid making the product of a dispensary or a cultivation facility appealing to children, including without limitation:
    - (A) Artwork;
    - (B) Building signage;
    - (C) Product design, including without limitation shapes and flavors;
    - (D) Child-proof packaging that cannot be opened by a child or that prevents ready access to toxic or harmful amount of the product, and that meets the testing requirements in accordance with the method described in 16 C.F.R. § 1700.20, as existing on January 1, 2017;
    - (E) Indoor displays that can be seen from outside the dispensary or cultivation facility; and
    - (F) Other forms of marketing related to medical marijuana;
  - (9) Procedures for the disposal or other use of marijuana not dispensed to a qualifying patient; and
  - (10) Any other matters necessary to the division's fair, impartial, stringent, and comprehensive administration of its duties under this amendment.
- (f) (1) Not later than one hundred eighty (180) days after the effective date of this amendment, the commission shall adopt rules establishing license application and license renewal fees for dispensary and cultivation facility licenses.
- (2) (A) The initial dispensary application fee shall be a maximum of seven thousand five hundred dollars (\$7,500).
- (B) The initial cultivation facility application fee shall be a maximum of fifteen thousand dollars (\$15,000).
- (C) A license that is initially issued between January 1 and July 1 may have the licensing fees up to fifty percent (50%) prorated and refunded as determined by the commission.
- (g) (1) Not later than July 1, 2017, the commission shall begin accepting applications for licenses to operate a dispensary and cultivation facility.
- (2) The application shall include without limitation the following:
- (A) The application fee;
  - (B) The legal name of the dispensary or cultivation facility;
  - (C) The physical address of the:
    - (i) Dispensary, the location of which may not be within one thousand five hundred feet (1,500') of a public or private school, church, or daycare center existing before the date of the dispensary application, which shall be

calculated from the primary entrance of the dispensary to the nearest property boundary of a public or private school, church, or daycare center; or

(ii) Cultivation facility, the location of which may not be within three thousand feet (3,000') of a public or private school, church, or daycare center existing before the date of the cultivation facility application, which shall be calculated from the primary entrance of the cultivation facility to the nearest property boundary of a public or private school, church, or daycare center;

(D) The name, address, and date of birth of each dispensary agent or cultivation facility agent; and

(E) If the city, town, or county in which the dispensary or cultivation facility would be located has enacted zoning restrictions, a sworn statement certifying that the dispensary or cultivation facility will operate in compliance with the restrictions.

(2) None of the owners, board members, or officers of the dispensary or cultivation facility:

(A) Shall have been convicted of an excluded felony offense;

(B) Shall have previously been an owner of a dispensary or cultivation facility that has had its license revoked; and

(C) Shall be under twenty-one (21) years of age.

(4) (A) The commission may issue a temporary license to another natural person in conjunction with a dispensary or a cultivation facility when the natural person whose name is on the license for the dispensary or cultivation facility ceases to be in actual control of the dispensary or cultivation facility.

(B) The commission shall adopt rules as necessary to provide temporary licenses.

(h) The commission shall issue at least twenty (20) but no more than forty (40) dispensary licenses.

(i) There shall be no more than four (4) dispensaries in any one (1) county.

(j) The commission shall issue at least four (4) but no more than eight (8) cultivation facility licenses.

(k) (1) The commission shall conduct a criminal background check in order to carry out this section.

(2) The commission shall require each applicant for a dispensary license or cultivation facility license to apply for or authorize the commission to obtain state and national criminal background checks to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(3) The criminal background checks shall conform to the applicable federal standards and shall include the taking of fingerprints.

(4) The applicant shall authorize the release of the criminal background checks to the commission and shall be responsible for the payment of any fee associated with the criminal background checks.

(5) Upon completion of the criminal background checks, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all information obtained concerning the applicant.

(l) (1) No individual shall own an interest in more than:

(1) One (1) cultivation facility; and,

(2) One (1) dispensary.

(m) (1) (A) A dispensary licensed under this section may acquire, possess, manufacture, process, prepare, deliver, transfer, transport, supply, and dispense marijuana, marijuana paraphernalia, and related supplies and educational materials to a qualifying patient or designated caregiver, but shall not supply, possess, manufacture, deliver, transfer, or sell marijuana paraphernalia that requires the combustion of marijuana to be properly utilized, including pipes, water pipers, bongs, chillums, rolling papers, and roach clips.

(B) A dispensary licensed under this section shall:

(i) Make marijuana vaporizers available for sale to qualifying patients; and

**(ii)** Provide educational materials about medical marijuana methods of ingestion to qualifying patients and designated caregivers, including without limitation:

**(a)** Warnings on the potential health risks of smoking or combusting marijuana; and

**(b)** Information on potential health benefits of vaporizing marijuana compared to smoking or combusting.

**(2) (A)** A dispensary may receive compensation for providing the goods and services allowed by this section.

**(B)** A dispensary may contract with a transporter, distributor, or processor to extent of the license of the transporter, distributor, or processor.

**(3) (A)** A dispensary may grow or possess:

**(i)** Fifty (50) mature marijuana plants at any one (1) time plus seedlings; and

**(ii)** All usable marijuana derived from the plants under subdivision (m)(3)(A)(i) of this section or predecessor plants.

**(B)** A dispensary may contract with a cultivation facility to cultivate one (1) or more mature marijuana plants the dispensary is permitted to grow.

**(4) (A) (i)** A cultivation facility may cultivate and possess usable marijuana in an amount reasonably necessary to meet the demand for the needs of qualifying patients as determined by the commission with the assistance of the Department of Health.

**(ii)** However, a cultivation facility shall not sell marijuana in any form except to a dispensary or other cultivation facility.

**(B)** A cultivation facility may also possess marijuana seeds.

**(C)** The commission with the assistance of the Department of Health shall promulgate rules determining the amount of marijuana reasonably necessary under subdivision (m)(4)(A) of this section.

**(5) (A)** A cultivation facility may receive compensation for providing goods and services allowed by this section.

**(B)** A cultivation facility may contract with a transporter, distributor, or processor to extent of the license of the transporter, distributor, or processor.

**(n) (1)** A dispensary license and cultivation facility license shall expire on June 30 of each calendar year and are renewable on or before June 30 of each calendar year for the fiscal year beginning July 1.

**(2)** The commission shall issue a renewal dispensary license or a renewal cultivation facility license within ten (10) days to any entity who complies with the requirements contained in this amendment, including without limitation the payment of a renewal fee.

**(o)** The commission may charge a reasonable fee as established by rule for the issuance of a renewal license.

**(p)** The commission and the division may collect fines or fees for any violation of a rule adopted under this section.

**(q) (1)** A license for a dispensary or cultivation facility shall only be issued to a natural person.

**(2)** A license issued for a dispensary or cultivation facility shall be transferable only to a natural person upon approval of the commission.

**(r)** Data or records submitted to the division or commission under rules adopted under this amendment may be shared with the Department of Health and the State Insurance Department for purposes of the Arkansas all-payer claims database established under the Arkansas Healthcare Transparency Initiative Act of 2015, § 23-61-901 et seq.

**(s) (1)** A dispensary shall appoint a pharmacist consultant who is a pharmacist licensed with the Arkansas State Board of Pharmacy.

**(2)** A pharmacist consultant shall:

**(A)** Register as a dispensary agent under this amendment and follow all procedures;

**(B)** Develop and provide training to other dispensary agents at least one (1) time every twelve (12) months from the initial date of the opening of the dispensary on the following subjects:

**(i)** Guidelines for providing information to qualifying patients related to risks, benefits, and side effects associated with medical marijuana;

**(ii)** Recognizing the signs and symptoms of substance abuse; and

**(iii)** Guidelines for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana;

**(C)** Assist in the development and implementation of review and improvement processes for patient education and support provided by the dispensary;

**(D)** Provide oversight for the development and dissemination of:

**(i)** Education materials for qualifying patients and designated caregivers that include:

**(a)** Information about possible side effects and contraindications of medical marijuana;

**(b)** Guidelines for notifying the physician who provided the written certification for medical marijuana if side effects or contraindications occur;

**(c)** A description of the potential effects of differing strengths of medical marijuana strains and products;

**(d)** Information about potential drug-to-drug interactions, including interactions with alcohol, prescription drugs, nonprescription drugs, and supplements;

**(e)** Techniques for the use of medical marijuana and marijuana paraphernalia; and

**(f)** Information about different methods, forms, and routes of medical marijuana administration;

**(ii)** Systems for documentation by a qualifying patient or designated caregiver of the symptoms of a qualifying patient that includes a logbook, rating scale for pain and symptoms, and guidelines for a patient's self-assessment; and

**(iii)** Policies and procedures for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana; and

**(E)** Be accessible to the dispensary or dispensary agent through:

**(i)** Telephonic means at all times during operating hours; and

**(ii)** Telephone or video conference for a patient consultation during operating hours.

**(t) (1)** A cultivation facility shall meet the following security requirements:

**(A) (i)** The physical security controls set forth in 21 C.F.R. § 1301.72 -- 1301.74, as existing on January 1, 2017.

**(ii)** The division shall adopt rules to implement subdivision (t)(1)(A)(i) of this section;

**(B)** All cultivation of marijuana occurs within a building, greenhouse, or other structure that:

**(i)** Has a complete roof enclosure supported by connecting walls that are constructed of solid material extending from the ground to the roof;

**(ii)** Is secure against unauthorized entry;

**(iii)** Has a foundation, slab, or equivalent base to which the floor is securely attached;

**(iv)** Meets performance standards ensuring that cultivation and processing activities cannot be and are not perceptible from the structure in terms of:

**(a)** Common visual observation;

**(b)** Odors, smells, fragrances, or other olfactory stimuli;

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- (c) Light pollution, glare, or brightness;
  - (d) Adequate ventilation to prevent mold; and
  - (e) Noise;
  - (v) Provides complete visual screening; and
  - (vi) Is accessible only through one (1) or more lockable doors;
- (C) Current detailed plans and elevation drawings of all operational areas involved with the production of medical marijuana are maintained on the premises of the cultivation facility, including:
- (i) All storage areas, ventilation systems, and equipment used for production;
  - (ii) All entrances and exits to the cultivation facility;
  - (iii) All windows, skylights, and retractable mechanisms built into the roof;
  - (iv) The location of all required security cameras;
  - (v) The location of all alarm inputs, detectors, and sirens;
  - (vi) All video and alarm system surveillance areas;
  - (vii) All production areas labeled according to the specific activity occurring within the area;
  - (viii) All restricted and limited access areas identified; and
  - (ix) All nonproduction areas labeled according to purpose;
- (D) Access to areas where marijuana is grown, harvested, processed, and stored is limited to authorized personnel and:
- (i) Designated by clearly marked signage; and
  - (ii) Locked and accessible only by authorized personnel on a current roster of authorized personnel;
- (E) (i) Written policies regarding any nonregistered agent who may visit the premises and a log of all visitors to the premises are developed and maintained.
- (ii) The log shall consist of the visitor's name, purpose of visit, time of arrival, and time of departure.
  - (iii) Visitors to a cultivation facility shall be:
    - (a) Issued a visitor identification tag containing the visitor's name that shall be worn for the duration of the visit on the premises; and
    - (b) Escorted by a cultivation facility agent at all times while present on the premises.
  - (iv) (a) However, contractors conducting repairs, maintenance, or other specific duties may be escorted to their work site and left unaccompanied while completing a job.
    - (b) Cultivation facility agents shall ensure that the contractor and area under repair are under video surveillance for the duration of the time spent on the premises by the contractor; and
- (F) (i) An alarm system is equipped that upon attempted unauthorized entry, transmits a signal directly to a central protection company for a local or state police agency and a designated cultivation facility agent.
- (ii) The alarm system shall:
    - (a) Provide coverage for all points of ingress and egress to the cultivation facility, including without limitation doorways, windows, loading bays, skylights, and retractable roof mechanisms;
    - (b) Provide coverage of any room with an exterior wall, any room containing a safe, and any room used to grow or store medical marijuana;
    - (c) Be equipped with a panic drive that upon activation will not only sound any audible alarm components but will also notify law enforcement;

(d) Have duress and hold up features to enable a cultivation facility agent to activate a silent alarm notifying law enforcement of an emergency;

(e) Be equipped with failure notification systems to notify cultivation facilities and law enforcement of any failure in the alarm system; and

(f) Have the ability to remain operational during a power outage.

(2) A cultivation facility shall maintain compliance with applicable city or county building or structure rules, regulations, or ordinances and any other applicable state laws or rules regarding buildings or structures. [As amended by Acts 2017, No. 4, §§ 4-6; 2017, No. 545, § 2; 2017, No. 587, § 1; 2017, No. 594, §§ 1, 2; 2017, No. 639, § 2; 2017, No. 640, § 1; 2017, No. 641, § 1; 2017, No. 642, § 1; 2017, No. 948, § 2; 2017, No. 1023, § 3; 2017, No. 1024, §§ 2, 3; 2017, No. 1100, § 1, 2; 2017 (1st Ex. Sess.), No. 1, § 6; 2017 (1st Ex. Sess.), No. 8, § 6.]

**NOTES: A.C.R.C. Notes.**

Acts 2017, No. 4, § 1, provided: "Legislative findings.

The General Assembly finds that:

"(1) Transparency and participation by the public in the development of rules to implement the Arkansas Medical Marijuana Amendment of 2016 requires sufficient time to publish rules, allow for comment by the public, and incorporate comments as appropriate;

"(2) One hundred eighty (180) days from the effective date of the amendment is a reasonable amount of time to comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

"(3) The fiscal year for the State of Arkansas begins on July 1 of each year and ends on June 30 of each year;

"(4) It is an unwise expenditure of public resources to enact the necessary appropriations, acts, and establish the necessary fiscal and regulatory provisions for a one-month period beginning on June 1, 2017; and

"(5) The date of July 1, 2017, is a better effective date for the Medical Marijuana Commission to begin accepting applications."

**Publisher's Notes.**

As adopted this section contained two subdivisions (g)(2).

Acts 2017, No. 640, § 1 specifically amended subsection (e) of this section as amended by Acts 2017, No. 4.

**Amendments.**

The 2017 amendment by No. 4 substituted "one hundred eighty (180) days" for "one hundred twenty (120) days" in the introductory language of (d) and (e) and in (f)(1); and substituted "July 1, 2017" for "June 1, 2017" in (g)(1).

The 2017 amendment by No. 545 redesignated former (k) as (k)(1) and substituted "shall" for "may" and "background" for "records" therein; and added (k)(2) through (k)(5).

The 2017 amendment by No. 587 added (g)(4).

The 2017 amendment by No. 594 added (f)(2)(C); and substituted "on June 30 of each calendar year and are renewable on or before June 30 of each calendar year for the fiscal year beginning July 1" for "one (1) year after the date of issuance" in (n)(1).

The 2017 amendment by No. 639 added (p).

The 2017 amendment by No. 640 rewrote the introductory language of (e)(8); and added subdivisions (e)(8)(A) through (e)(8)(F).

The 2017 amendment by No. 641 added (p) (now (q)).

The 2017 amendment by No. 642 added present (m)(2)(B) and redesignated former (m)(2) as (m)(2)(A); and added (m)(5)(B) and redesignated former (m)(5) as (m)(5)(A).

The 2017 amendment by No. 948 added (p) (now (r)).

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The 2017 amendment by Act 1023, in the introductory language of (e)(5), inserted "labeling" and "including without limitation"; and added (e)(5)(A) and (e)(5)(B).

The 2017 amendment by Act 1024 redesignated former (m)(1) as (m)(1)(A); added "but shall not supply . . . and roach clips" in (m)(1)(A); added (m)(1)(B); and added (p) (now (s)).

The 2017 amendment by No. 1100, in (g)(2)(C)(i), substituted "the location of which" for "which location" and inserted "which shall be calculated from the primary entrance of the dispensary to the nearest property boundary of a public or private school, church, or daycare center"; in (g)(2)(C)(ii), substituted "the location of which" for "which location" and added "which shall be calculated from the primary entrance of the cultivation facility to the nearest property boundary of a public or private school, church, or daycare center"; and added (p) (now (t)).

The 2017 (1st Ex. Sess.) amendment by identical acts Nos. 1 and 8 added (p) through (t).

**Cross References.**

Child-proof packaging, § 20-56-304.

**HIERARCHY NOTES:**

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Ark. Const. Amendment 98, § 9 (2018)

**§ 9. Registration and certification of cultivation facility agents and dispensary agents.**

- (a) (1) Cultivation facility agents and dispensary agents shall register with the Alcoholic Beverage Control Division.
- (2) The division shall administer and enforce the provisions of this amendment concerning cultivation facility agents and dispensary agents, including without limitation the issuance of a:
- (A) Registry identification card to a dispensary agent; and
  - (B) Registry identification card to a cultivation facility agent.
- (b) (1) The division shall adopt rules necessary to:
- (A) Carry out the purposes of this amendment; and
  - (B) Perform its duties under this amendment.
- (2) Rules adopted under this section are rules as defined in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.
- (c) Not later than one hundred eighty (180) days after the effective date of this amendment, the division shall adopt rules governing:
- (1) The manner in which the division considers applications for and renewals of registry identification cards for dispensary agents and cultivation facility agents;
  - (2) The form and content of registration and renewal applications for dispensary agents and cultivation facility agents;
  - (3) Procedures for suspending or terminating the registration of dispensary agents and cultivation facility agents that violate the provisions of this amendment or the rules adopted under this amendment, procedures for appealing penalties, and a schedule of penalties; and
  - (4) Any other matters necessary to the division's fair, impartial, stringent, and comprehensive administration of its duties under this amendment.
- (d) (1) The division shall conduct criminal background checks in order to carry out this section.
- (2) The division shall require each applicant for a dispensary agent license or cultivation facility agent license to apply for or authorize the division to obtain state and national criminal background checks to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.
- (3) The criminal background checks shall conform to the applicable federal standards and shall include the taking of fingerprints.

(4) The applicant shall authorize the release of the criminal background checks to the division and shall be responsible for the payment of any fee associated with the criminal background checks.

(5) Upon completion of the criminal background checks, the Identification Bureau of the Department of Arkansas State Police shall forward to the division all information obtained concerning the applicant.

(e) Except as provided herein, the division shall issue each dispensary agent and cultivation facility agent a registry identification card within ten (10) days of receipt of:

- (1) The person's name, address, and date of birth under this amendment; and
- (2) A reasonable fee in an amount established by rule of the division.

(f) (1) The division shall not issue a registry identification card to a dispensary agent or cultivation facility agent who has been convicted of an excluded felony offense.

(2) The division shall conduct a criminal background check as described in subsection (d) of this section of each dispensary agent or cultivation facility agent in order to carry out this provision.

(3) The division shall notify the dispensary or cultivation facility in writing of the reason for denying the registry identification card.

(g) (1) A registry identification card for a dispensary agent or cultivation facility agent shall expire on June 30 of each calendar year and is renewable on or before June 30 of each calendar year for the fiscal year beginning July 1.

(2) A registry identification card of a dispensary agent or cultivation facility agent expires upon notification to the division by a dispensary or cultivation facility that the person ceases to work at the dispensary or cultivation facility.

(h) The division may charge a reasonable fee as established by rule for the issuance of a new, renewal or replacement registry identification card.

(i) (1) The division may revoke the registry identification card of a dispensary agent or cultivation facility agent who knowingly violates any provision of this amendment, and the cardholder is subject to any other penalties established by law for the violation.

(2) The division may revoke or suspend the dispensary license or cultivation facility license of a dispensary or cultivation facility that the division determines knowingly aided or facilitated a violation of any provision of this amendment, and the licenseholder is subject to any other penalties established in law for the violation.

(j) The division may collect fines or fees for any violation of a rule adopted under this section. [As amended by Acts 2017, No. 4, § 7; 2017, No. 545, §§ 3, 4; 2017, No. 594, § 3; 2017, No. 639, § 3.]

**NOTES: A.C.R.C. Notes.**

Acts 2017, No. 4, § 1, provided: "Legislative findings.

The General Assembly finds that:

"(1) Transparency and participation by the public in the development of rules to implement the Arkansas Medical Marijuana Amendment of 2016 requires sufficient time to publish rules, allow for comment by the public, and incorporate comments as appropriate;

"(2) One hundred eighty (180) days from the effective date of the amendment is a reasonable amount of time to comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

"(3) The fiscal year for the State of Arkansas begins on July 1 of each year and ends on June 30 of each year;

"(4) It is an unwise expenditure of public resources to enact the necessary appropriations, acts, and establish the necessary fiscal and regulatory provisions for a one-month period beginning on June 1, 2017; and

"(5) The date of July 1, 2017, is a better effective date for the Medical Marijuana Commission to begin accepting applications."

**Amendments.**

## Ark. Const. Amendment 98, § 9

The 2017 amendment by No. 4 substituted "one hundred eighty (180) days" for "one hundred twenty (120) days" in the introductory language of (c).

The 2017 amendment by No. 545 redesignated former (d) as (d)(1) and substituted "shall" for "may" and "background" for "records" therein; added (d)(2) through (d)(5); and, in (f)(2), substituted "shall" for "may" and inserted "as described in subsection (d) of this section".

The 2017 amendment by No. 594 substituted "on June 30 of each calendar year and is renewable on or before June 30 of each calendar year for the fiscal year beginning July 1" for "one (1) year after the date of issuance" in (g)(1).

The 2017 amendment by No. 639 added (j).

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Ark. Const. Amendment 98, § 10 (2018)

#### § 10. Dispensary and cultivation facility inspections and requirements.

(a) Dispensaries and cultivation facilities are highly regulated by the state, and a dispensary and cultivation facility is therefore subject to reasonable inspection by the Alcoholic Beverage Control Division.

(b) (1) This subsection governs the operations of dispensaries and cultivation facilities.

(2) A dispensary and a cultivation facility shall be an entity incorporated in the State of Arkansas.

(3) A dispensary and cultivation facility shall implement appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana.

(4) A dispensary and cultivation facility shall have procedures in place to ensure accurate recordkeeping.

(5) Each dispensary shall keep the following records, dating back at least three (3) years:

(A) Records of the disposal of marijuana that is not distributed by the dispensary to qualifying patients; and

(B) A record of each transaction, including the amount of marijuana dispensed, the amount of compensation, and the registry identification number of the qualifying patient or designated caregiver.

(6) Each dispensary and cultivation facility shall:

(A) Conduct an initial comprehensive inventory of all marijuana, including without limitation usable marijuana available for dispensing, mature marijuana plants, and seedlings at each authorized location on the date the dispensary first dispenses usable marijuana or the cultivation facility first cultivates, prepares, manufactures, processes, or packages usable marijuana; and

(B) Conduct a biannual comprehensive inventory of all marijuana, including without limitation usable marijuana available for dispensing, mature marijuana plants, and seedlings at each authorized location.

(7) All cultivation of marijuana shall take place in an enclosed, locked facility.

(8) (A) A qualifying patient or designated caregiver acting on behalf of a qualifying patient shall not be dispensed more than a total of two and one-half ounces (2 1/2 oz.) of usable marijuana during a fourteen-day period.

(B) A dispensary or a dispensary agent may not dispense more than a total of two and one-half ounces (2 1/2 oz.) of usable marijuana to either a qualifying patient or designated caregiver acting on behalf of a qualifying patient during a fourteen-day period.

(C) Each time a dispensary agent dispenses usable marijuana to a qualifying patient or designated caregiver, he or she shall verify that the dispensing of usable marijuana would not cause the qualifying patient or designated caregiver to receive more usable marijuana than is permitted in a fourteen-day period.

(D) Each time usable marijuana is dispensed, the dispensary agent shall:

(i) Record the date the usable marijuana was dispensed and the amount dispensed; and

(ii) Notify the Department of Health in the manner required by the department.

(E) The department shall maintain a database that enables a dispensary to verify that dispensing usable marijuana to a qualifying patient or designated caregiver will not cause the qualifying patient or designated caregiver to exceed the amount allowed by law.

(F) All records shall be kept according to the registry identification number of the qualifying patient or designated caregiver.

(G) It is the specific intent of this Amendment that no qualifying patient or designated caregiver acting on behalf of a qualifying patient be dispensed more than a total of two and one-half ounces (2 1/2 oz.) of usable marijuana during a fourteen-day period whether the usable marijuana is dispensed from one or any combination of dispensaries.

(9) The dispensary records with patient information shall be treated as confidential records that are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq. [As amended by Acts 2017, No. 5, § 3.]

**NOTES: Amendments.**

The 2017 amendment substituted "records that are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq." for "medical records" at the end of (b)(9).

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Ark. Const. Amendment 98, § 11 (2018)

#### § 11. Immunity for dispensaries and cultivation facilities.

(a) A dispensary, cultivation facility, transporter, distributor, or processor is not subject to the following:

(1) Prosecution for the acquisition, possession, cultivation, processing, preparation, manufacture, delivery, transfer, transport, sale, supply, or dispensing of marijuana and related supplies in accordance with the provisions of this amendment and any rule adopted under this amendment;

(2) Inspection, except under § 10 of this amendment or upon a search warrant issued by a court or judicial officer;

(3) Seizure of marijuana, except upon any order issued by a court or judicial officer and with due process of law; or

(4) Imposition of a penalty or denial of a right or privilege, including without limitation imposition of a civil penalty or disciplinary action by a business, occupational, or professional licensing board or entity, solely for acting in accordance with this amendment.

(b) (1) A dispensary agent, cultivation facility agent, transporter agent, distributor agent, or processor agent shall not be subject to arrest, prosecution, search, seizure, or penalty in any manner or denied any right or privilege, including without limitation civil penalty or disciplinary action by a business, occupational, or professional licensing board or entity, solely for working for or with a dispensary, cultivation facility, transporter, distributor, or processor to engage in acts permitted by this amendment.

(2) (A) A dispensary agent, cultivation facility agent, or processor agent may possess and manufacture marijuana at the dispensary, cultivation facility, or processor location or locations for which the dispensary agent, cultivation facility agent, or processor agent is registered or when transferring marijuana under this section.

(B) (i) A dispensary agent who is a volunteer may possess and manufacture marijuana at a dispensary location.

(ii) A dispensary agent who is a volunteer may not dispense or transport marijuana.

(3) A cultivation facility and processor shall label the marijuana that is moved between the cultivation facility or processor and a dispensary, other cultivation facility, or processor with a trip ticket that identifies the cultivation facility by identification number, the time, date, origin, and destination of the marijuana being transported, and the amount and form of marijuana that is being transported.

(4) A transporter agent or distributor agent may possess marijuana at any location while the transporter agent or distributor agent is transferring marijuana from a dispensary, cultivation facility, or processor to another dispensary, cultivation facility, or processor.

(c) Importation of seeds, cuttings, clones, or plants by a dispensary or cultivation facility shall not be prosecuted in the courts of this state. [As amended by Acts 2017, No. 642, § 2; 2017, No. 1022, § 1.]

**NOTES: Amendments.**

The 2017 amendment by No. 642 inserted "transporter, distributor, or processor" in the introductory language of (a); in (b)(1), inserted "transporter agent, distributor agent, or processor agent" and "transporter, distributor, or processor"; in (b)(2)(A), inserted "or processor agent" twice and "or processor"; in (b)(3), inserted "and processor" and "or processor" twice; and added (b)(4).

The 2017 amendment by No. 1022 added (c).

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Ark. Const. Amendment 98, § 12 (2018)

**§ 12. Prohibitions for dispensaries.**

(a) (1) Except as provided in § 3 of this amendment and subdivision (a)(2) of this section, a dispensary may not dispense, deliver, or otherwise transfer marijuana to a person other than a qualifying patient or designated caregiver.

(2) A dispensary may transfer marijuana to a transporter, distributor, or processor to operate to extent of the license of the transporter, distributor, or processor.

(b) (1) Except as provided in § 3 of this amendment, the Alcoholic Beverage Control Division shall immediately revoke the registry identification card of a dispensary agent who has dispensed, delivered, or otherwise transferred marijuana to a person other than a qualifying patient or designated caregiver, and that dispensary agent shall be disqualified from serving as a dispensary agent.

(2) A dispensary employing a dispensary agent found to violate subdivision (b)(1) of this section is not subject to penalties, including without limitation the revocation of its license, for the actions of a dispensary agent unless the dispensary knowingly aided or facilitated the violation. [As amended by Acts 2017, No. 642, § 2.]

**NOTES: Amendments.**

The 2017 amendment redesignated (a) as (a)(1) and added (a)(2); and inserted "and subdivision (a)(2) of this section" in (a)(1).

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Ark. Const. Amendment 98, § 13 (2018)

**§ 13. Prohibitions for cultivation facilities.**

(a) A cultivation facility may sell marijuana plants, seeds, and usable marijuana only to a dispensary, other cultivation facility, or processor.

(b) A cultivation facility may employ a transporter or a distributor to transfer marijuana from the cultivation facility to a dispensary, other cultivation facility, or processor. [As amended by Acts 2017, No. 642, § 2.]

**NOTES: Amendments.**

The 2017 amendment designated the existing language as (a), and added (b); and added "or processor" in (a).

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Ark. Const. Amendment 98, § 14 (2018)

**§ 14. Local regulation.**

(a) This amendment does not prohibit a city, incorporated town, or county of this state from enacting reasonable zoning regulations applicable to dispensaries or cultivation facilities, provided that those zoning regulations are the same as those for a licensed retail pharmacy.

(b) This section does not allow a city, incorporated town, or county to prohibit the operation of any dispensaries or cultivation facilities in the city, incorporated town, or county unless such a prohibition is approved at an election under Article 5, § 1, of this constitution.

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Ark. Const. Amendment 98, § 15 (2018)

**§ 15. Prohibited conduct for physicians.**

A physician shall not:

- (1) Accept, solicit, or offer any form of pecuniary remuneration from or to a dispensary or cultivation facility provided however, that this does not prohibit a physician who is also a qualifying patient from purchasing usable marijuana from a dispensary;
- (2) Offer a discount or other thing of value to a qualifying patient who uses or agrees to use a particular dispensary;
- (3) Examine a patient for purposes of diagnosing a qualifying medical condition at a dispensary; or
- (4) Hold an economic interest in a dispensary or cultivation facility if the physician certifies the qualifying medical condition of a patient for medical use of marijuana.

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Ark. Const. Amendment 98, § 16 (2018)

**§ 16. Failure to adopt rules or issue registry identification cards or licenses.**

If the Department of Health, Alcoholic Beverage Control Division, or Medical Marijuana Commission fails to adopt rules to implement this amendment within the time prescribed or fails to issue the minimum number of dispensary licenses or cultivation facility licenses, any person who would be a qualifying patient under this amendment may commence a mandamus action in Pulaski County Circuit Court to compel the department, division, or commission to perform the actions mandated under the provisions of this amendment.

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Ark. Const. Amendment 98, § 17 (2018)

#### § 17. Taxation and distribution of proceeds.

(a) (1) The sale of usable marijuana is subject to all state and local sales taxes at the same rate as other tangible personal property.

(2) The sale of usable marijuana is also subject to the Arkansas Medical Marijuana Special Privilege Tax Act of 2017, § 26-57-1501 et seq., or its successor.

(b) The state sales and special privilege tax revenues received by the Department of Finance and Administration from the sale of usable marijuana under this amendment shall be distributed as follows:

(1) All moneys received as part of this amendment are designated as special revenue and the funds collected shall be deposited into the State Treasury and credited to the Arkansas Medical Marijuana Implementation and Operations Fund;

(2) All moneys received as part of this amendment prior to the effective date of this section shall be immediately transferred to the Arkansas Medical Marijuana Implementation and Operations Fund upon the effective date of this section;

(3) In order for the Chief Fiscal Officer of the State to determine the expenses that state agencies incurred due to the passage of this amendment, the following state entities shall submit a report to the Chief Fiscal Officer of the State no later than May 1 of each year of the projected expenses for the next fiscal year, including without limitation expenses as set out in subdivision (b)(4) of this section:

(A) The Alcoholic Beverage Control Division of the Department of Finance and Administration;

(B) The Department of Health;

(C) The Medical Marijuana Commission; and

(D) Any other state agency that incurs implementation, administration, or enforcement expenses related to this amendment; and

(4) (A) From time to time, the Chief Fiscal Officer of the State shall transfer on his or her books and those of the Treasurer of State and the Auditor of State the amounts as set out in subdivision (b)(3) of this section or so much as is available in proportion to the amount identified by each agency in subdivision (b)(3) of this section from the Arkansas Medical Marijuana Implementation and Operations Fund to the Miscellaneous Agencies Fund Account for the Alcoholic Beverage Control Division of the Department of Finance and Administration, the paying account as determined by the Chief Fiscal Officer for the Department of Health, the Medical Marijuana Commission Fund, and any other fund necessary to the implementation, administration, or enforcement of this amendment to pay for or reimburse personal services, operating expenses, professional fees, equipment, monitoring, auditing, and other miscellaneous expenses of this amendment.

**(B)** At the end of each fiscal year, any unobligated balances of the amounts transferred shall be deducted from the amount transferred in the next fiscal year as authorized in subdivision (b)(4)(A) of this section.

**(C)** Any unanticipated expenses or expenses over the amount transferred may be added from time to time to the transfer amount authorized in subdivision (b)(4)(A) of this section.

**(D)** The Department of Finance and Administration shall report at the end of the fiscal year to the Legislative Council, or to the Joint Budget Committee if during a legislative session, the following information:

**(i)** The total annual amount received as a result of this amendment;

**(ii)** The amount transferred to each agency; and

**(iii)** Copies of the report submitted to the Chief Fiscal Officer of the State identifying estimated expenses as set out in subdivision (b)(3) of this section.

**(c)** After the transfer described in subsection (b) of this section, the amounts remaining in the Arkansas Medical Marijuana Implementation and Operations Fund shall be distributed one hundred percent (100%) to the General Revenue Fund Account.

**(d)** An entity receiving a grant of state sales tax revenue under subsection (b) of this section may make one (1) or more successive grant applications for the same project or projects. [As amended by Acts 2017, No. 670, § 1; 2017, No. 1098, § 1; 2017 (1st Ex. Sess.), No. 1, § 7; 2017 (1st Ex. Sess.), No. 8, § 7.]

**NOTES: A.C.R.C. Notes.**

Acts 2017, No. 670, § 4, provided: "Review distribution of proceeds.

During the 2019 General Session of the General Assembly, the General Assembly shall:

"**(1)** Review and reexamine the distribution of the proceeds received from medical marijuana under Arkansas Constitution, Amendment 98, also known as the 'Arkansas Medical Marijuana Amendment of 2016'; and

"**(2)** Consider redirecting the proceeds or a portion of the proceeds received from medical marijuana under Arkansas Constitution, Amendment 98, also known as the 'Arkansas Medical Marijuana Amendment of 2016', to workforce education within the state."

**Amendments.**

The 2017 amendment by No. 670 rewrote (b); inserted present (c); and redesignated former (c) as (d).

The 2017 amendment by No. 1098 redesignated former (a) as (a)(1); substituted "tangible personal property" for "goods" in (a)(1); added (a)(2); and substituted "The state sales and special privilege" for "The states sales" in the introductory language of (b).

The 2017 (1st Ex. Sess.) amendment by identical acts Nos. 1 and 8 redesignated former (a) as (a)(1); substituted "tangible personal property" for "goods" in (a)(1); added (a)(2); rewrote (b); inserted present (c); and redesignated former (c) as (d).

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Ark. Const. Amendment 98, § 18 (2018)

**§ 18. Costs of administration and regulation of amendment.**

(a) The following funds shall be used by the Department of Health to perform its duties under this amendment:

- (1) State sales tax revenues received under § 17 of this amendment;
- (2) (A) The revenue generated from fees, penalties, and other assessments of the department provided for by this amendment, including without limitation:
  - (i) Registry identification card application and renewal fees; and
  - (ii) Fees for replacement registry identification cards.
- (B) Revenue generated from fees, penalties, and other assessments under this amendment shall be used solely for the performance of the department's duties under this amendment and shall be used for no other purpose;
- (3) Private donations, if such funds are available; and
- (4) Other appropriations by the General Assembly, if such funds are available.

(b) The following funds shall be used by the Alcoholic Beverage Control Division to perform its duties under this amendment:

- (1) State sales tax revenues received under § 17 of this amendment;
- (2) (A) The revenue generated from fees, penalties, and other assessments of the division provided for by this amendment.
  - (B) Revenue generated from fees, penalties, and other assessments of the division under this amendment shall be used solely for the performance of the division's duties under this amendment and shall be used for no other purpose;
- (3) Private donations, if such funds are available; and
- (4) Other appropriations by the General Assembly, if such funds are available.

(c) The following funds shall be used by the Medical Marijuana Commission to perform its duties under this amendment:

- (1) State sales tax revenues received under § 17 of this amendment;
- (2) The revenue generated from fees, penalties, and other assessments of the commission provided for by this amendment, including without limitation dispensary and cultivation facility application fees, licensing fees, and renewal fees;
- (3) Private donations, if such funds are available; and

(4) Other appropriations by the General Assembly, if such funds are available.

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Ark. Const. Amendment 98, § 19 (2018)

**§ 19. Medical Marijuana Commission -- Creation.**

(a) (1) There is created a Medical Marijuana Commission within the Department of Finance and Administration to determine the qualifications for receiving a license to operate a dispensary or a license to operate a cultivation facility and the awarding of licenses.

(2) Each member of the commission shall serve a term of four (4) years.

(3) The commission shall consist of five (5) members as follows:

(A) Two (2) members appointed by the President Pro Tempore of the Senate;

(B) Two (2) members appointed by the Speaker of the House of Representatives; and

(C) One (1) member appointed by the Governor.

(4) Vacancies on the commission shall be filled in the manner of the original appointment.

(5) The commission shall select one (1) of its members as chair.

(6) An affirmative vote of a majority of a quorum present shall be necessary to transact business.

(b) (1) (A) One (1) of the initial members appointed by the President Pro Tempore of the Senate shall serve a term of two (2) years and one (1) of the initial members appointed by the President Pro Tempore of the Senate shall serve a term of four (4) years.

(B) The initial members appointed by the President Pro Tempore of the Senate shall draw lots to determine which member shall serve a term of two (2) years.

(2) (A) One (1) of the initial members appointed by the Speaker of the House of Representatives shall serve a term of two (2) years and one (1) of the initial members appointed by the Speaker of the House of Representatives shall serve a term of four (4) years.

(B) The initial members appointed by the Speaker of the House of Representatives shall draw lots to determine which member shall serve a term of two (2) years.

(3) The initial member appointed by the Governor shall serve a term of four (4) years.

(4) All subsequent persons appointed to the commission shall serve a term of four (4) years.

(c) A member of the commission shall be:

(1) A citizen of the United States;

(2) A resident of the State of Arkansas for at least ten (10) years preceding his or her appointment;

- (3) A qualified elector;
- (4) At least twenty-five (25) years of age; and
- (5) Have no economic interest in a dispensary or cultivation facility.

(d) (1) The commission, by a majority vote of the total membership of the commission cast during its first regularly scheduled meeting of each calendar year, may authorize payment to its members of a stipend not to exceed eighty-five dollars (\$85.00) per day for each meeting attended or for any day while performing any proper business of the commission.

(2) Members of the commission shall receive no other compensation, expense reimbursement, or in-lieu-of payments.

(e) (1) The commission may employ staff necessary to assist in the performance of its duties under this amendment.

(2) The Alcoholic Beverage Control Division shall provide staff for the commission if the commission does not have employees available for that purpose.

(f) (1) Initial members of the commission shall be appointed within thirty (30) days of the effective date of this section.

(2) The President Pro Tempore of the Senate shall call the first meeting of the commission, which shall occur within forty-five (45) days of the effective date of this section. [As amended by Acts 2017, No. 638, § 1.]

**NOTES: Amendments.**

The 2017 amendment inserted "within the Department of Finance and Administration" in (a)(1).

**Case Notes**

Judicial Review.

**Judicial Review.**

Circuit court had no subject-matter jurisdiction to review the licensing decision of the Medical Marijuana Commission (MMC) concerning cultivation facilities because (1) under § 25-15-212, no "adjudication" as defined by statute occurred at the agency level and the MMC's decision was not quasi-judicial, and (2) under § 25-15-207, the court only had jurisdiction to resolve a rule's validity or applicability, but the invalidity of a MMC rule was not pled, the "applicability" of a rule was not contested, and no declaration of whether a rule should have been applied was sought; instead, the complaints sought a declaration that the "application" of the MMC rules was improper, unfair, and arbitrary. Ark. Dep't of Fin. & Admin. v. Naturalis Health, LLC, 2018 Ark. 224 (2018).

Supreme Court of Arkansas did not address whether Rule 19 of the Medical Marijuana Commission conveyed subject-matter jurisdiction to the circuit court; although that rule provided that a denial of a cultivation license may be appealed to the circuit court, the issue was not ripe because the appellees had not been issued denial letters subsequent to an adjudication. Ark. Dep't of Fin. & Admin. v. Naturalis Health, LLC, 2018 Ark. 224 (2018).

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Ark. Const. Amendment 98, § 20 (2018)

**§ 20. No implied repeal.**

(a) By adoption of this amendment, there is no implied repeal of the existing Arkansas laws criminalizing possession of marijuana for purposes not specified in this amendment.

(b) This amendment acknowledges that marijuana use, possession, and distribution for any purpose remains illegal under federal law.

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Ark. Const. Amendment 98, § 21 (2018)

**§ 21. Limitation on growing.**

This amendment:

- (1) Authorizes the growing of marijuana at a dispensary or cultivation facility that is properly licensed with the state; and
- (2) Does not authorize a qualifying patient, designated caregiver, or other person to grow marijuana.

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Ark. Const. Amendment 98, § 22 (2018)

**§ 22. Severability.**

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

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Ark. Const. Amendment 98, § 23 (2018)

**§ 23. Amendment by General Assembly.**

(a) Except as provided in subsection (b) of this section, the General Assembly, in the same manner as required for amendment of laws initiated by the people, may amend the sections of this amendment so long as the amendments are germane to this section and consistent with its policy and purposes.

(b) The General Assembly shall not amend the following provisions of this amendment:

- (1) Subsections (a), (b), and (c) of § 3;
- (2) Subsection (h), (i), and (j) of § 8; and
- (3) Section 23.

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Ark. Const. Amendment 98, § 24 (2018)

**§ 24. Licensure for transporters, distributors, and processors.**

- (a) (1) The Medical Marijuana Commission shall license transporters, distributors, and processors.
- (2) The Alcoholic Beverage Control Division shall administer and enforce the provisions of this section concerning transporters, distributors, and processors.
- (b) The owners, board members, or officers of a transporter, distributor, or processor shall not:
- (1) Have been convicted of an excluded felony offense;
- (2) Have previously been an owner of a dispensary, cultivation facility, transporter, distributor, or processor that has had a license revoked; and
- (3) Be under twenty-one (21) years of age.
- (c) The commission may conduct a criminal records check in order to carry out this section.
- (d) (1) A transporter license, distributor license, and processor license shall expire one (1) year after the date of issuance.
- (2) The commission shall issue a renewal license within ten (10) days to any entity who complies with the requirements contained in this amendment, including without limitation the payment of a renewal fee.
- (e) The commission may charge a reasonable fee as established by rule for the issuance of an initial license and a renewal license.
- (f) (1) (A) A transporter or distributor licensed under this section may:
- (i) Acquire, possess, deliver, transfer, transport, or distribute marijuana to a dispensary, cultivation facility, or processor; and
- (ii) Receive compensation for providing services allowed by this section.
- (B) A transporter or distributor licensed under this section shall not grow, manufacture, process, prepare, supply, or dispense marijuana.
- (2) (A) A processor licensed under this section may:
- (i) Acquire, possess, manufacture, process, prepare, deliver, transport, and supply marijuana to a dispensary or cultivation facility; and
- (ii) Receive compensation for providing services allowed by this section.
- (B) A processor licensed under this section shall not grow or dispense marijuana.

(g) The division may make reasonable inspections on a transporter, distributor, and processor to ensure that the transporter, distributor, and processor:

- (1) Is an entity incorporated in the State of Arkansas;
- (2) Has implemented appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana;
- (3) Conducts an initial comprehensive inventory of all marijuana and a biannual comprehensive inventory of all marijuana; and
- (4) Records each transaction between the transporter, distributor, or processor and a dispensary, cultivation facility, or another processor and maintains the records for three (3) years;
- (5) Has adopted procedures to ensure accurate recordkeeping.

(h) (1) The commission shall adopt rules governing the applications for a transporter license, distributor license, or processor license.

(2) The division shall adopt rules governing:

- (A) Oversight requirements for transporters, distributors, and processors;
- (B) Recordkeeping requirements for transporters, distributors, and processors;
- (C) Security requirements for transporters, distributors, and processors;
- (D) Personnel requirements for transporters, distributors, and processors;
- (E) The manufacture, processing, packaging, and dispensing of usable marijuana to qualifying patients and designated caregivers;
- (F) Procedures for suspending or terminating the licenses of transporters, distributors, and processors that violate the provisions of this amendment or the rules adopted under this amendment, procedures for appealing penalties, and a schedule of penalties;
- (G) Procedures for inspections and investigations of transporters, distributors, and processors;
- (H) Advertising restrictions for transporters, distributors, and processors; and
- (J) Any other matters necessary to the fair, impartial, stringent, and comprehensive administration of the duties of the division under this section. [Added by Acts 2017, No. 642, § 3.]

**NOTES: Publisher's Notes.**

As added by Acts 2017, No. 642, § 3, this section does not contain a subdivision (h)(2)(I).

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Ark. Const. Amendment 98, § 25 (2018)

**§ 25. Registration and certification of transporter agents, distributor agents, and processor agents.**

(a) The Alcoholic Beverage Control Division shall:

(1) License transporter agents, distributor agents, and processor agents; and

(2) Administer and enforce the provisions of this section concerning transporter agents, distributor agents, and processor agents.

(b) The division may conduct criminal records checks in order to carry out this section.

(c) Except as prohibited by subdivision (d)(1) of this section, the division shall issue each transporter agent, distributor agent, and processor agent a registry identification card within ten (10) days of receipt of:

(1) The person's name, address, and date of birth under this amendment; and

(2) A reasonable fee in an amount established by rule for the division.

(d) (1) The division shall not issue a registry identification card to a transporter agent, distributor agent, or processor agent who has been convicted of an excluded felony offense.

(2) The division may conduct a criminal background check of each transporter agent, distributor agent, and processor agent in order to carry out this provision.

(3) The division shall notify the transporter, distributor, or processor in writing of the reason for denying the registry identification card.

(e) (1) A registry identification card for a transporter agent, distributor agent, or processor agent shall expire one (1) year after the date of issuance.

(2) A registry identification card of a transporter agent, distributor agent, or processor agent expires upon notification to the division by a dispensary or cultivation facility that the person ceases to work at the transporter, distributor, or processor.

(f) The division may charge a reasonable fee as established by rule for the issuance of a new, renewal, or replacement registry identification card.

(g) (1) The division may revoke the registry identification card of a transporter agent, distributor agent, or processor agent who knowingly violates any provision of this amendment, and the cardholder is subject to any other penalties established by law for the violation.

(2) The division may revoke or suspend the transporter license, distributor license, or processor license of a transporter, distributor, or processor that the division determines knowingly aided or facilitated a violation of any provision of this amendment, and the cardholder is subject to any other penalties established in law for the violation.

(h) The division shall adopt rules governing:

(1) The manner in which the division considers applications for and renewals of registry identification cards for transporter agents, distributor agents, and processor agents;

(2) The form and content of registration and renewal applications for transporter agents, distributor agents, and processor agents;

(3) Procedures for suspending or terminating the registration of transporter agents, distributor agents, and processor agents who violate the provisions of this section or the rules adopted under this section, procedures for appealing penalties, and a schedule of penalties; and

(4) Any other matters necessary for the fair, impartial, stringent, and comprehensive administration of the duties of the division under this section. [Added by Acts 2017, No. 642, § 3.]

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