

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

SENATE BILL 238

By: Senator Rapert
By: Representatives A. Mayberry, Hammer

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS CONSTITUTION, AMENDMENT 98, ALSO KNOWN AS THE "ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016"; TO DELAY IMPLEMENTATION UNTIL THE EFFECTIVE DATE OF THE LEGALIZATION OF MARIJUANA IN THE UNITED STATES AND THE STATE OF ARKANSAS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016; AND TO DELAY IMPLEMENTATION UNTIL THE EFFECTIVE DATE OF THE LEGALIZATION OF MARIJUANA IN THE UNITED STATES AND THE STATE OF ARKANSAS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings and purpose.

(a) 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) Marijuana is illegal under federal law, in particular under the Controlled Substances Act, 21 U.S.C. § 801 et seq.;

(3) Federal law preempts state law in most instances;

(4) 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.;

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

(6) It is an unwise expenditure of public resources to enact the necessary appropriations and acts and establish the necessary fiscal and regulatory provisions for the sale and use of medical marijuana when marijuana is illegal in the United States of America and within the State of Arkansas; and

(7) The effective date of the legalization of marijuana under federal law is a better appropriate date for the Medical Marijuana Commission to begin accepting applications and for the implementation of the Arkansas Medical Marijuana Amendment of 2016.

(b) The purpose of this act is to clarify that the effective date of the legalization of medical marijuana within the State of Arkansas shall be the date on which the provisions of the "Arkansas Medical Marijuana Amendment of 2016" or any provisions of the enabling legislation are not in violation of the United States statutory law.

SECTION 2. Pursuant to § 23 of Arkansas Constitution, Amendment 98, also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas Constitution, Amendment 98, § 4(b), concerning the rules of the Department of Health regarding the registry identification cards, as amended by Acts 2017, No. 4, is amended to read as follows:

(b) Not later than one hundred eighty (180) days after the effective date of ~~this amendment~~ the legalization of medical marijuana in the United States and the State of Arkansas, the department shall adopt rules governing:

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

(2) Labeling and testing standards for marijuana distributed to qualifying patients; and

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

SECTION 3. Pursuant to § 23 of Arkansas Constitution, Amendment 98, also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas

Constitution, Amendment 98, § 4(d), concerning the rules of the Department of Health, as amended by Acts 2017, No. 4, is amended to read as follows:

(d) The department shall adopt rules within one hundred eighty (180) days of the effective date of ~~this amendment~~ the legalization of medical marijuana in the United States and the State of Arkansas 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.

SECTION 4. Pursuant to § 23 of Arkansas Constitution, Amendment 98, also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas Constitution, Amendment 98, § 8(d) and (e), concerning the rules of the Medical Marijuana Commission and the Alcoholic Beverage Control Division of the Department of Finance and Administration regarding dispensaries and cultivation facilities, as amended by Acts 2017, No. 4, is amended to read as follows:

(d) Not later than one hundred eighty (180) days after the effective date of ~~this amendment~~ the legalization of medical marijuana in the United States and the State of Arkansas, 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 its duties under this amendment.

(e) Not later than one hundred eighty (180) days after the effective date of ~~this amendment~~ the legalization of medical marijuana in the United States and the State of Arkansas, 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, and dispensing of usable marijuana to qualifying patients and designated caregivers;

(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;

(9) Procedures for the disposal or other use of marijuana not dispensed to a qualifying patient; and

(10) Any other matters necessary for the division's fair, impartial, stringent, and comprehensive administration of its duties under this amendment.

SECTION 5. Pursuant to § 23 of Arkansas Constitution, Amendment 98, also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas Constitution, Amendment 98, § 8(f)(1), concerning the rules of the Medical Marijuana Commission regarding dispensaries and cultivation facilities, as amended by Acts 2017, No. 4, is amended to read as follows:

(f)(1) Not later than one hundred eighty (180) days after the effective date of ~~this amendment~~ the legalization of medical marijuana in the United States and the State of Arkansas, the commission shall adopt rules establishing license application and license renewal fees for dispensary and cultivation facility licenses.

SECTION 6. Pursuant to § 23 of Arkansas Constitution, Amendment 98, also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas Constitution, Amendment 98, § 8(g)(1), concerning the date to begin accepting applications by the Medical Marijuana Commission, as amended by Acts 2017, No. 4, is amended to read as follows:

(g)(1) Not later than ~~July 1, 2017~~ one hundred eighty (180) days after the effective date of legalization of medical marijuana in the United States and the State of Arkansas, the commission shall begin accepting applications

for licenses to operate a dispensary and cultivation facility.

SECTION 7. Pursuant to § 23 of Arkansas Constitution, Amendment 98, also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas Constitution, Amendment 98, § 9(c), concerning the rules of the Alcoholic Beverage Control Division of the Department of Finance and Administration regarding dispensary agents and cultivation facility agents, as amended by Acts 2017, No. 4, is amended to read as follows:

(c) Not later than one hundred eighty (180) days after the effective date of ~~this amendment~~ the legalization of medical marijuana in the United States and the State of Arkansas, 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 who 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 for the division's fair, impartial, stringent, and comprehensive administration of its duties under this amendment.

SECTION 8. Pursuant to § 23 of Arkansas Constitution, Amendment 98, also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas Constitution, Amendment 98, is amended to add new section to read as follows:

§ 24. Effective date.

The effective date of the legalization of medical marijuana within the State of Arkansas shall be the date on which the provisions of the "Arkansas Medical Marijuana Amendment of 2016" or any provisions of the enabling legislation are not in violation of the United States statutory law.

SECTION 9. RETROACTIVITY. This act is retroactive to the effective date of Arkansas Constitution, Amendment 98, which is also known as the "Arkansas Medical Marijuana Amendment of 2016".

SECTION 10. EMERGENCY CLAUSE. 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; that the federal preemption doctrine holds that federal law preempts state law when there is a conflict of laws; that the marijuana is illegal under federal law, in particular under the Controlled Substances Act, 21 U.S.C. § 801 et seq.; and that this act is immediately necessary to stop agencies from performing wasteful and unnecessary work when the Arkansas Medical Marijuana Amendment of 2016 may be in violation of federal law. 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.