

State of Arkansas
91st General Assembly
First Extraordinary Session, 2017

A Bill

Call Item 3
SENATE BILL 2

By: Senator J. Dismang
By: Representative Gillam

For An Act To Be Entitled

AN ACT TO MAKE TECHNICAL CORRECTIONS TO ARKANSAS CONSTITUTION, AMENDMENT 98, ALSO KNOWN AS THE "ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016" TO INTEGRATE AND INCORPORATE THE PROVISIONS OF ACTS 4, 438, 479, 593, 639, 641, 670, 740, 948, 1023, 1024, 1098, AND 1100 OF 2017 INTO ARKANSAS CONSTITUTION, AMENDMENT 98; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO INTEGRATE AND INCORPORATE THE PROVISIONS OF ACTS OF 2017 INTO ARKANSAS CONSTITUTION, AMENDMENT 98, ALSO KNOWN AS THE "ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016"; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. 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;

(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.

SECTION 2. Under the authority granted by § 23 of Arkansas Constitution, Amendment 98, also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas Constitution, Amendment 98, § 2(18) and (19), concerning the definition of "written certification" within the Arkansas Medical Marijuana Amendment of 2016, are amended to reflect the changes enacted by Acts 2017, Nos. 438, as amended by Acts 2017, No. 5, and 593, as amended by Acts 2017, No. 5, to read as follows:

(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; ~~and~~

(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;

SECTION 3. Acts 2017, No. 1023, § 2, is repealed.

~~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)(2), concerning the rules of the Department of Health relating to qualifying patients, is amended to read as follows:~~

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

SECTION 4. Under the authority granted by § 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 regarding medical marijuana issued by the Department of Health, is amended to reflect the changes enacted by Acts 2017, Nos. 4 and 740, and to acknowledge the repeal of changes enacted by Acts 2017, No. 1023, § 2, to read as follows:

(b) Not later than ~~one hundred twenty (120) days~~ one hundred eighty (180) days after the effective date of this amendment, the department shall adopt rules governing:

(1) The manner in which ~~it~~ 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.

SECTION 5. Under the authority granted by § 23 of Arkansas Constitution, Amendment 98, also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas Constitution, Amendment 98, § 6(a), is amended to reflect the changes enacted by Acts 2017, Nos. 479 and 740, to read as follows:

(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; ~~or~~

(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.

SECTION 6. Under the authority granted by § 23 of Arkansas Constitution, Amendment 98, also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas Constitution, Amendment 98, § 8, is amended to reflect the changes enacted by Acts 2017, Nos. 639, 641, 948, 1024, and 1100 to add additional subsections to read as follows:

(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;

(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.

SECTION 7. Under the authority granted by § 23 of Arkansas Constitution, Amendment 98, also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas Constitution, Amendment 98, § 17, concerning taxation and the distribution of proceeds, is amended to reflect the changes enacted by Acts 2017, Nos. 670 and 1098 to read as follows:

§ 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 ~~goods~~, 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 ~~states~~ 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.

~~(1) Five percent (5%) to the Department of Health paying account or its successor fund or fund account;~~

~~(2) Two percent (2%) to the Miscellaneous Agencies Fund or its~~

~~successor fund or fund account to be used exclusively by the Department of Finance and Administration—Alcoholic Beverage Control Administration Division or its successor;~~

~~(3)—Two percent (2%) to the Miscellaneous Agencies Fund or its successor fund or fund account to be used exclusively by the Department of Finance and Administration—Alcoholic Beverage Control Enforcement Division or its successor;~~

~~(4)(A)—One percent (1%) to a special revenue account credited to the Medical Marijuana Commission Fund or its successor fund or fund account to be used exclusively by the Medical Marijuana Commission.~~

~~(B)—The General Assembly shall by law created the Medical Marijuana Commission Fund no later than July 1, 2017;~~

~~(5)(A)—Ten percent (10%) to the Skills Development Fund or its successor fund or fund account, to be used exclusively by the Office of Skills Development of the Department of Career Education or its successor for the development and implementation of workforce training programs.~~

~~(B)—The Office of Skills Development of the Department of Career Education or its successor may use revenues received under subdivision (b)(6)(A) of this section to:~~

~~(i)—Supplement or enhance existing programs, including without limitation grant programs; or~~

~~(ii)—Establish new programs, including without limitation grant programs.~~

~~(C)—If the Office of Skills Development of the Department of Career Education or its successor establishes a new program under subdivision (b)(6)(B) of this section, it shall promulgate rules to implement the program;~~

~~(6)(A)—Fifty percent (50%) to a special revenue account credited to the Vocational and Technical Training Special Revenue Fund or its successor fund or fund account, to be used exclusively by the Department of Finance and Administration or its successor for grants to technical institutes and vocational technical schools for personal services and operating expenses, scholarships, research, development and delivery of education coursework and math and science coursework, land acquisition, equipment acquisition, and infrastructure costs, including without limitation site development costs, construction, improvements, landscaping, renovation,~~

~~dormitory renovation, major maintenance, and the building of roads and parking lots.~~

~~(B) The General Assembly shall by law create the Vocational and Technical Training Special Revenue Fund no later than July 1, 2017.~~

~~(C) The Department of Finance and Administration or its successor shall promulgate rules to implement the grant program described in this subdivision (b)(7) by July 1, 2017;~~

~~(7) Thirty percent (30%) to the General Revenue Fund.~~

~~(e)(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.

SECTION 8. EMERGENCY CLAUSE. 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.