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Arkansas Medical Marijuana Amendment of 2024

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Ballot Title

ATTORNEY GENERAL
OF
ARKANSAS

This amendment to the Arkansas Constitution expands access to medical marijuana by qualified patients under the Arkansas Medical Marijuana Amendment of 2016, Amendment 98 and ratifies and affirms that amendment as originally adopted and as amended by any legislative act, except as specified; amending Amendment 98, § 2(4)(B) to define "cultivation facility" as including sale and delivery of usable marijuana to a processor; amending Amendment 98, § 2(12) to replace the definition of "physician" with "health care practitioner," which includes medical and osteopathic doctors, nurse practitioners, physicians' assistants, and pharmacists and to remove requirements for federal controlled-substances registration; amending Amendment 98, §§ 4(f), 5(a)(l), 5(f)(1), 5(h), and 15 to replace references to physicians with references to health care practitioners; amending Amendment 98, § 2(13)(C) to add language to the definition of "qualifying medical condition" to include any condition not otherwise specified in Amendment 98 that a health care practitioner considers debilitating to a patient that might be alleviated by the use of usable marijuana; amending Amendment 98, § 2(14)(A) to allow non-Arkansas residents to apply for and receive registry identification cards in the same way as Arkansas residents; amending Amendment 98, § 2(17) to define "usable marijuana" as cannabis and other substances including all parts of the plant *Cannabis sativa*, whether growing or not, including any seeds, resin, compound, manufacture, salt, derivative, mixture, isomer or preparation of the plant, including tetrahydrocannabinol and all other cannabinol derivatives, and to exclude hemp with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis; amending Amendment 98, § 2(19) to remove language requiring a physician-patient relationship from the definition of "written certification" and to allow assessments in person or by telemedicine; amending Amendment 98, § 3(e) to allow licensed dispensaries to receive, transfer, or sell marijuana seedlings, plants, or usable marijuana to and from Arkansas-licensed cultivation facilities, processors, or other dispensaries, to accept marijuana seeds, seedlings, or clones from any individual or entity authorized by law to possess them, and to sell usable marijuana, marijuana seedlings, plants or seeds to qualifying patients and designated caregivers; amending Amendment 98, § 3(h) to remove language allowing professional licensing boards to sanction a physician for improper evaluation of a patient's medical condition or for violating the standard of care; amending Amendment 98, § 3(1) to remove authorization for Department of Health rules concerning visiting qualifying patients obtaining marijuana from a dispensary; amending Amendment 98, § 4(a)(4)(A) to require criminal background checks for all

applicants seeking to serve as designated caregivers, with the exception of parents or guardians of minors who are qualifying patients applying to serve as designated caregivers for those minors; amending Amendment 98, § 5(a)(2) to remove language requiring reasonable registry identification card application fees or renewal fees; amending Amendment 98, § 5(d) to extend the expiration date of registry identification cards from one to three years and to add two additional years to the expiration date of existing cards; amending Amendment 98, § 8(e)(8) to remove and replace advertising restrictions with restrictions for dispensaries, processors, and cultivation facilities narrowly tailored to prevent advertising and packaging from appealing to children and to require the Alcoholic Beverage Control to make rules that require packaging that cannot be opened by a child or that prevents ready access to toxic or harmful amounts of the product; amending Amendment 98, § 8(m)(1)(A) to remove prohibitions on dispensary-provided paraphernalia requiring combustion of marijuana; amending Amendment 98, § 8(m)(4)(A)(ii) to allow cultivation facilities to sell marijuana in any form to dispensaries, processors, or other cultivation facilities; amending Amendment 98, § 16 to replace its current language with a waiver of state sovereign immunity so that a licensed person or entity may seek injunctive relief in the event the state fails to follow Amendment 98; amending Amendment 98, § 21 to remove a prohibition on the growing of marijuana by qualifying patients and designated caregivers and to allow such growing under Amendment 98; repealing Amendment 98, §§ 23 and 26 in their entirety; amending Amendment 98 to allow qualifying patients or caregivers at least 21 years old and in possession of a valid registry identification card to possess, plant, dry, and process marijuana plants in limited quantities and sizes at their domicile solely for the personal use of the qualifying patient, to prohibit sale, bartering, and trade of such marijuana plants, and to provide for regulation of such activities by the Alcoholic Beverage Control Division; amending Amendment 98 to allow possession by adults of up to one ounce of usable marijuana, to allow sale of marijuana by licensed cultivation facilities and dispensaries for adult use if current federal law prohibiting such activities changes, and to provide for the regulation of the wholesale and retail of marijuana by licensed cultivation facilities and dispensaries by the Alcoholic Beverage Control Division; amending Arkansas Constitution, Article 5, § 1, to provide that unless provided in such constitutional amendment, no constitutional amendment shall be amended or repealed unless approved by the people under the Constitution; providing that this amendment's provisions are severable, nullifying any provision of state law in conflict with this amendment; and providing that the amendment is self-executing.

§1 Short Title

This amendment to the Arkansas Constitution shall be known as the “Arkansas Medical Marijuana Amendment of 2024.”

§2 Effective Date; Intent

This amendment shall be effective on and after November 15, 2024. The intent of this amendment is to expand access to medical marijuana by qualified patients under the limitations provided in this amendment and to provide that no constitutional amendment may be amended or repealed without a vote of the people.

§3 Effect on Amendment 98

This amendment shall ratify and affirm the Arkansas Medical Marijuana Amendment of 2016, otherwise known as Amendment 98, as codified on January 12, 2024, in its entirety except for the following amendments:

- a) §2(4)(B) is amended to read: “Cultivates, prepares, manufactures, processes, packages, sells to and delivers usable marijuana to a dispensary or processor;”
- b) §2(12) is amended to read: “Health care practitioner’ means a doctor of medicine, a doctor of osteopathic medicine, a nurse practitioner, a physician’s assistant or a pharmacist who holds a valid, unrestricted license to practice in the state of Arkansas.”
- c) §2(13)(C) is amended to read: “Any other condition not otherwise specified that a health care practitioner considers debilitating to the patient and which may be alleviated by the use of usable marijuana; or any other medical condition approved by the Department of Health under § 4 of this amendment.”
- d) §2(14)(A) is amended to read: “Qualifying patient’ means a person who has been diagnosed by a health care practitioner as having a qualifying medical condition and who has registered with the department under § 5 of this amendment. A person who is not an Arkansas resident may apply for and receive a registry identification card in the same manner as a resident of Arkansas.”
- e) §2(17) is amended to read: “Usable marijuana’ means cannabis and other substances including any parts of the plant *Cannabis sativa*, whether growing or not, its seeds and the resin extracted from any part of the plant; and any compound, manufacture, salt, derivative, mixture, isomer or preparation of the plant, including

tetrahydrocannabinol and all other cannabinol derivatives, whether produced directly or indirectly by extraction except that usable marijuana shall not include hemp with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Usable cannabis does not include the weight of any other ingredient that may be combined with cannabis. The terms 'cannabis' and 'marijuana' are used interchangeably throughout this amendment."

f) §2(19) is amended to read: "Written certification' means a document signed by a health care practitioner stating that in the health care practitioner's professional opinion, after having completed an assessment of the qualifying patient in person or via telemedicine, the qualifying patient has a qualifying medical condition, which shall be noted in the health care practitioner's records. A written certification is not a medical prescription."

g) §3(e) is amended to read: "A dispensary may receive, transfer, or sell marijuana seedlings, plants or usable marijuana to and from Arkansas-licensed cultivation facilities, processors or other dispensaries, may accept marijuana seeds, seedlings or clones from any individual or entity authorized under applicable state law to possess marijuana seeds, seedlings or clones and may sell usable marijuana, marijuana seedlings, plants or seeds to qualifying patients and designated caregivers."

h) §3(h) is amended to read: "A health care practitioner 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 any business, professional, or occupational licensing board or bureau for providing written certifications to qualified patients."

i) §3(l) is amended to read: "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 has the same force and effect when held by a visiting qualifying patient as a registry identification card issued by the Department of Health. Visiting qualifying patients shall be permitted to use the equivalent of a registry identification card from their state, district, territory, commonwealth or insular possession of the United States to enter a dispensary and to make purchases of medical marijuana in the same manner and amounts as resident qualifying patients."

j) §4(a)(4)(A) is amended to read: "The parent or guardian of a minor who is a qualifying patient shall not be required to complete a criminal background check

in order to become a designated caregiver for that minor. The Department of Health shall require all other applicants 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.”

k) §4(f) is amended to read: “When a patient receives a written certification from a health care practitioner, the health care practitioner may require the patient to consult with a pharmacist consultant of a dispensary.”

l) §5(a)(1)-(2) is amended to read: “(1) Written certification issued by a health care practitioner within thirty (30) days of application; (2) The department shall not charge an application fee to qualifying patients and designated caregivers.”

m) §5(d) is amended to read: “A registry identification card expires three (3) years from the date of issuance. Upon the effective date of this amendment, the department shall automatically update all current registry identification cards to add two additional years to the expiration date.”

n) §5(f)(1) is amended to read: “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 health care practitioner, are considered confidential records that are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.”

o) §5(h) is amended to read: “The department, division, and commission shall submit to the General Assembly an annual report that does not disclose any identifying information about cardholders or health care practitioners 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 health care practitioners 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.”

p) §8 (e)(8) is amended to read: “Advertising restrictions for dispensaries, processors and cultivation facilities narrowly tailored to avoid making the advertising and packaging by a dispensary, processor or a cultivation facility appealing to children. The rules of the Alcoholic Beverage Control Division shall also require packaging that cannot be opened by a child or that prevents ready access to toxic or harmful amount of the product.”

q) §8(m)(1)(A) is amended to read: “A dispensary licensed under this section may acquire, possess, manufacture, process, prepare, deliver, transfer, transport, supply, and dispense marijuana, marijuana plants and seeds, marijuana paraphernalia, and related supplies and educational materials to a qualifying patient or designated caregiver.”

r) §8(m)(4)(A)(ii) is amended to read: “A cultivation facility may sell marijuana in any form to a dispensary, processor or other cultivation facility.”

s) §15 is amended to read: “Prohibited conduct for health care practitioners.

A health care practitioner shall not:

(1) Accept, solicit, or offer any form of pecuniary remuneration from or to a dispensary or cultivation facility in exchange for providing written certifications for patients;

(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 health care professional certifies the qualifying medical condition of a patient for medical use of marijuana.”

t) §16 is amended to read: “If the state of Arkansas fails to establish and enforce the provisions of this amendment as written, sovereign immunity is hereby

waived to the extent necessary to allow any person or any entity licensed under this amendment to seek and obtain injunctive relief."

u) §21 is amended to read: "This amendment authorizes the growing of marijuana at a dispensary or cultivation facility that is properly licensed with the state or by a qualifying patient or designated caregiver when grown in compliance with this amendment."

v) §23 is repealed in its entirety.

w) §26 is repealed in its entirety.

§4 Cultivation by certain qualifying patients for personal use.

a) A qualifying patient or a designated caregiver who is at least twenty-one (21) years old and in possession of a valid registry identification card may possess, plant, cultivate, dry and process up to seven (7) marijuana plants fourteen (14) or more inches tall and up to seven (7) or fewer marijuana plants, clones or seedlings which are each less than fourteen (14) inches tall at their domicile solely for the personal use of the qualifying patient or the qualifying patient who has designated the caregiver.

b) No more than fourteen (14) marijuana plants of any size may be planted or cultivated at one residence at any one time, regardless of the number of persons at the residence holding a registry identification card.

c) In no event may any marijuana cultivated or processed at the domicile of a qualifying patient be sold, bartered or traded for anything of value.

d) The cultivation of marijuana plants under this section shall be regulated under rules to be enacted and administered by the Alcohol Beverage Control Division

§5 Effect of future federal classification of marijuana

a) If and when marijuana is no longer scheduled as a controlled substance as defined under the Federal Controlled Substance Act, 21 U.S.C. §801 *et seq.* or, if and when possession of marijuana under 21 U.S.C. §844 is no longer a criminal offense:

b) Adults are authorized under Arkansas state law to possess up to 1 ounce of usable marijuana acknowledging that as of January 12, 2024, possession and sale of marijuana is illegal under federal law;

c) All types of usable marijuana produced pursuant to this Amendment shall be authorized for wholesale and retail sale for adult use by cultivation facilities and dispensaries licensed under this Amendment under rules to be enacted and administered by the Alcohol Beverage Control Division; and

d) The cultivation and sale of marijuana in this state shall only be allowed as provided under this Amendment.

§6 Effect on Article 5, §1

Article 5, §1 is amended to add at the end of the provision headed "Amendment and Repeal": "Unless expressly allowed in such constitutional amendment, no constitutional amendment shall be amended or repealed unless approved by a vote of the people under this Constitution."

§7 Severability; Inconsistent Provisions Inapplicable

a) If any part or subpart of this amendment or the application 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.

b) All provisions of the Constitution, statutes, regulations, and common law of this state, to the extent inconsistent or in conflict with any provision of this amendment, are expressly declared null and void as to, and do not apply to, any activities allowed under this amendment.

§8 Self-Executing

This amendment shall be self-executing, and all its provisions shall be treated as mandatory, but laws may be enacted to facilitate its operation. No legislation shall be enacted nor rules promulgated to restrict, hamper, or impair the intent of this amendment.