



MAKING THE MEDICAL USE OF MARIJUANA LEGAL UNDER ARKANSAS LAW AND CREATING A SYSTEM FOR CULTIVATION, ACQUISITION AND DISTRIBUTION

ISSUE NO. 5

(Proposed by Petition of the People – 2012)

POPULAR NAME: The Arkansas Medical Marijuana Act

BALLOT TITLE: An act making the medical use of marijuana legal under Arkansas state law, but acknowledging that marijuana use, possession, and distribution for any purpose remain illegal under federal law; establishing a system for the cultivation, acquisition and distribution of marijuana for qualifying patients through nonprofit medical marijuana dispensaries and granting those nonprofit dispensaries limited immunity; allowing localities to limit the number of nonprofit dispensaries and to enact reasonable zoning regulations governing their operations; providing that qualifying patients, their designated caregivers and nonprofit dispensary agents shall not be subject to criminal or civil penalties or other forms of discrimination for engaging in or assisting with the patients' medical use of marijuana; authorizing limited cultivation of marijuana by qualifying patients or designated caregivers if a qualifying patient lives more than five miles from the nearest nonprofit dispensary; authorizing compensation for designated caregivers; requiring that in order to become a qualifying patient, a person submit to the state a written certification from a physician that he or she is suffering from a qualifying medical condition; establishing an initial list of qualifying medical conditions; directing the Department of Health to establish rules related to the processing of applications for Registry Identification Cards, the operations of nonprofit dispensaries, and the addition of qualifying medical conditions if such additions will enable patients to derive therapeutic benefit from the medical use of marijuana; setting maximum registration fees for nonprofit dispensaries; establishing qualifications for Registry Identification Cards; establishing standards to ensure that qualifying patient and designated caregiver registration information is treated as confidential; directing the Department of Health to provide the legislature annual quantitative reports about the medical marijuana program; setting certain limitations on the use of medical marijuana by qualifying patients; establishing an affirmative defense for the medical use of marijuana; establishing registration and operation requirements for nonprofit dispensaries; setting limits on the amount of marijuana a nonprofit dispensary may cultivate and the amount of marijuana a nonprofit dispensary may dispense to a qualifying patient; prohibiting certain conduct by and imposing certain conditions and requirements on physicians, nonprofit dispensaries, nonprofit dispensary agents, qualifying patients, and designated caregivers; establishing a list of felony offenses which preclude certain types of participation in the medical marijuana program; and allowing visiting qualifying patients suffering from qualifying medical conditions to utilize the Arkansas medical marijuana program.

Conflict of Interest: The University of Arkansas Division of Agriculture–Research and Extension is a recognized unit of the University of Arkansas System and is funded in part by State of Arkansas appropriations. As such, any legislation affecting general revenues of the state has the potential to influence the Division of Agriculture and the Cooperative Extension Service's financial well-being. We are obligated to divulge potential conflicts of interest and to recognize their influence on the educational programs and material we produce. As professional faculty of the University of Arkansas Division of Agriculture's Public Policy Center, we are committed to full disclosure and open recognition of our potential for bias. We strive to present Arkansas citizens with a fair and balanced representation of the issues brought to the ballot and welcome any constructive criticism of that effort.

How did the issue make it to the ballot?

This proposed act is the result of a citizen's initiative campaign, which was required to submit at least 62,507 signatures to qualify for placement on the ballot. The number of required signatures is determined by state law, which requires signatures equaling at least 8 percent of the number of people who voted in the last governor's election.

What is being proposed?

The act, if passed, would make the medical use of marijuana legal under Arkansas state law, while recognizing it remains illegal under federal law.

The act would authorize the establishment of a system for cultivation, acquisition and distribution of marijuana for qualifying medical patients through nonprofit medical marijuana dispensaries.

The act also would protect qualifying patients, their designated caregiver, medical marijuana providers and physicians from arrest, prosecution or penalty under Arkansas law. It does not offer protection from federal law, under which marijuana is illegal.

Under the proposed state law, cities and counties could limit the number of dispensaries that operate in their boundaries and enact zoning regulations guiding where dispensaries may locate.

What is marijuana?

Known as cannabis, marijuana is a mix of dried, shredded leaves, stems, seeds and flowers of the plant *Cannabis sativa*. The proposed law uses the phrase "usable marijuana," which means the dried leaves and flowers of the marijuana plant.

Delta-9-tetrahydrocannabinol, or THC, is the main active ingredient in marijuana. THC quickly enters the bloodstream when marijuana is smoked and its effects can last from one to three hours, according to the National Institute on Drug Abuse.

Marijuana is classified as a Schedule 1 drug according to the federal Controlled Substances Act of 1970. Schedule 1 drugs are defined as substances with high potential for abuse, have no currently accepted medical use in treatment in the United States, and there is a lack of accepted safety for use of the drug under medical supervision.

Arkansas has had legal restrictions at the state level on the use of marijuana since 1923.

How would a person be eligible to acquire and use medical marijuana?

A person with a qualifying medical condition would have to submit an application for a Registry Identification Card through the Arkansas Department of Health. The state agency would have authority to approve or reject the application.

What qualifies as a medical condition?

The proposed law defines three categories of qualifying medical conditions.

The first includes cancer, glaucoma, positive status for human immunodeficiency virus/acquired immune deficiency syndrome (HIV/AIDS), hepatitis C, amyotrophic lateral sclerosis, Tourette's disease, Crohn's disease, ulcerative colitis, post-traumatic stress disorder, fibromyalgia, agitation of Alzheimer's disease or the treatment of these conditions.

The second category is defined as: "A chronic or debilitating disease or medical condition or its treatment that produces one 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 6 months; severe nausea; seizures, including those characteristic of Epilepsy; or severe and persistent muscle spasms, including those characteristic of Multiple Sclerosis."

Third, the proposed law authorizes the Arkansas Department of Health to approve other medical conditions or treatments as qualifying conditions.

What is a designated caregiver?

A qualified patient may designate a specific person as his or her "designated caregiver." Under the proposed law, a designated caregiver would be able to assist the patient in acquiring marijuana from a dispensary and deliver it to the patient. The caregiver must be at least 21 and have a record free of felony offenses. A designated caregiver would also have to register with the Arkansas Department of Health and could not assist more than five patients at a time.

How would marijuana be dispensed under this law?

Nonprofit dispensaries approved by the Arkansas Department of Health would be authorized to dispense marijuana for medical use to people possessing Registry Identification Cards.

A dispensary could dispense no more than 2.5 ounces of usable marijuana to a qualifying patient or the patient's caregiver in a 15-day period.

A qualified patient who lives more than five miles from a nonprofit dispensary could not be penalized if he or she is in possession of six or fewer flowering marijuana plants 12 inches in height or less.

How many dispensaries would be allowed?

According to the proposal, the health department may not issue more than one dispensary registration certificate for every 25 pharmacies that have obtained a pharmacy permit from the Arkansas Board of Pharmacy and operate within the state.

The proposal includes an exception that would allow the health department to issue more certificates than the formula calls for if it determines additional dispensaries are needed to provide "convenient access to patients in all parts of the state."

According to the Arkansas Pharmacists Association, there are 761 retail pharmacies licensed in the state. The formula would limit the potential number of medical-marijuana dispensaries to 30 unless there are changes to the formula or there is an increase in number of pharmacies.

Could people smoke medical marijuana in public as they can a cigarette?

No. The proposed law does not allow the use of medical marijuana in public places, schools, community centers, on public transportation or in correctional facilities. The proposed law would also prohibit driving a motor vehicle, aircraft or watercraft under the influence of medical marijuana.

If passed, could I still be arrested for using, growing or dispensing medical marijuana in Arkansas?

Yes. Regardless of state law, the use, cultivation and dispensing of medical marijuana remain illegal under federal law. In a few of the 17 states where there are medical marijuana laws, federal agents have arrested owners and employees of dispensaries.

The United States Supreme Court has ruled that the federal government can regulate and criminalize all uses of marijuana. In 2005, in *Gonzales v. Raich*, the Supreme Court ruled that medical marijuana growers and distributors were violating federal law even if what

they were doing was legal under state law. This opened them up for federal prosecution.

The proposed Arkansas law specifies that a cardholder, the cardholder's caregiver or a dispensary are not subject to arrest or prosecution. However, local police in other states have made arrests when state medical marijuana laws were not followed and when there was question whether a person had a medical marijuana card.

Does marijuana have therapeutic properties?

Although there are laboratory studies that show that oral THC (the active ingredient in marijuana) and smoked marijuana may reduce pain and nausea, the types of studies needed to determine if smoked marijuana can be effective and safe for treating those conditions have not yet been conducted. More research is needed to gather enough information to determine if smoked marijuana can be used as a safe "medication" that could be prescribed for medical conditions.

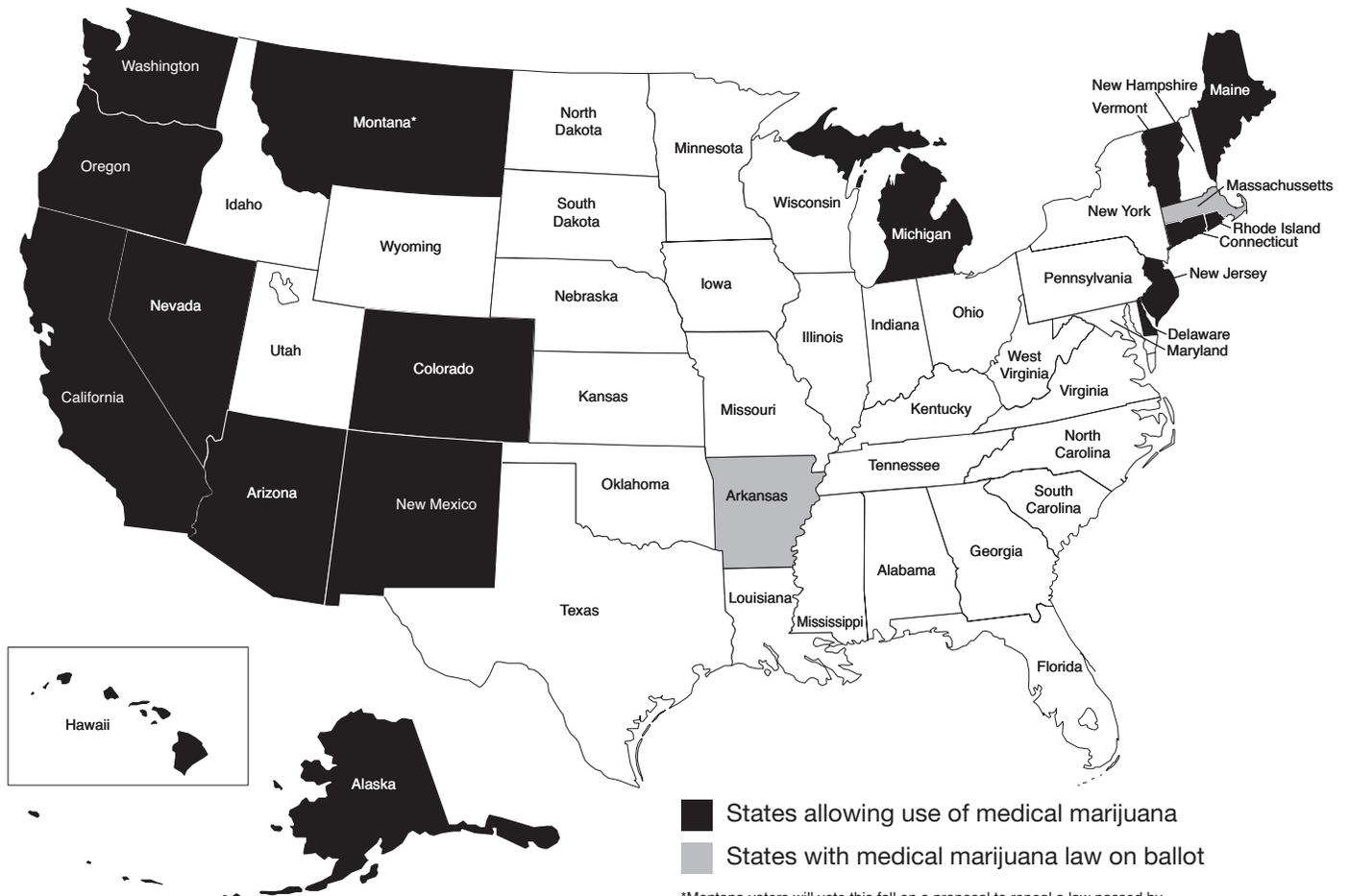
Does marijuana have harmful properties?

Studies have shown that marijuana smoke includes carcinogens known to cause cancer, and can cause respiratory issues. However, no cases of lung cancer or emphysema have been reported. Recent studies suggest that long-term moderate smoking does not impair respiratory function. Studies have also shown that smoked marijuana can temporarily impair memory and other cognitive processes, and turn into an addiction. Marijuana does not have to be smoked but can be vaporized or ingested orally. Marijuana can be, in some cases, psychologically addictive, but it is not physically addictive.

Marijuana's potential for therapeutic or harmful effects is the subject of much debate.

What states have medical marijuana laws?

California was the first state to pass a medical marijuana law in 1996. Since then, Alaska, Arizona, Colorado, Connecticut, Delaware, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and Washington have passed some form of law allowing the use of medical marijuana. The District of Columbia also has a medical marijuana law.



*Montana voters will vote this fall on a proposal to repeal a law passed by legislators that revised a 2004 voter-approved medical marijuana law.

The following statements are what supporters and opponents said either in media statements, campaign literature, on web sites or in interviews conducted by Public Policy Center staff. The University of Arkansas Division of Agriculture does not endorse or validate these statements.

What do supporters say?

- Arkansans for Compassionate Care say sick people should have the ability to acquire the medicine they need and that medicine may be marijuana.
- Supporters say synthetic drugs containing similar chemicals as marijuana do not work for everyone, or address all of a patient's symptoms as they believe marijuana can.
- Since 1996, 17 states have passed laws allowing marijuana for medical use and Arkansans should be afforded this opportunity.
- The proposed legislation has a strict list of conditions people must have to be able to use medical marijuana.

- Cities and counties can limit the number of dispensaries that operate in their boundaries and enact zoning regulations guiding where dispensaries may locate.

What do opponents say?

- The Arkansas Family Council says that legalizing marijuana would make the drug more available for recreational use and would be a step towards trying to legalize the use of marijuana for any purpose.
- Medical marijuana violates federal law. Supporters should lobby Congress and the Drug Enforcement Agency to change marijuana's classification as a dangerous drug.
- Medical marijuana laws can and have been abused in other states. Individuals who do not have legitimate medical conditions have obtained approval for marijuana. There is also the possibility that an individual who can acquire or grow his or her own marijuana would share it with friends who may not have any medical issues.

- Smoking marijuana poses a different set of health risks, including putting someone at risk for elevated heart rate, respiratory problems, decreased immunity and exposure to chemicals similar to those found in tobacco.
- Drugs containing some of the same chemical ingredients as marijuana are legally available with a doctor's prescription.

When does the legislation take effect, if passed?

The Arkansas Department of Health has 90 days from the law's passing to develop:

- Regulations for considering and renewing applications for Registry Identification Cards.
- Rules for the operation of nonprofit dispensaries.
- Application and renewal fees.
- Rules meant to protect against diversion or theft.

What does a "FOR" vote mean?

A **FOR** vote means you are in favor of making the medical use of marijuana legal under Arkansas law and establishing a system for the cultivation, acquisition and distribution of marijuana for medical purposes.

What does an "Against" vote mean?

An **AGAINST** vote means you are not in favor of making the medical use of marijuana legal under Arkansas law and establishing a system for the cultivation, acquisition and distribution of marijuana for medical purposes.

Where can I find more information?

A complete version of the proposed act can be found at www.sos.arkansas.gov/elections/Pages/initiativeReferendums.aspx.

For additional information, please visit the University of Arkansas Division of Agriculture's Public Policy Center web site at ppc.uaex.edu or contact your county Cooperative Extension Service office.

Voter registration information and election information can be obtained through the Arkansas Secretary of State's office by calling 501-682-1010 or visiting www.sos.arkansas.gov.

Exercising your voting privilege.

We live in a democratic society where voting is a privilege of citizenship. Democracy works best when informed citizens exercise their voting privilege. Please vote.

The deadline to register to vote in the General Election is Oct. 8, 2012.

Early voting begins Oct. 22, 2012. Election Day is Nov. 6, 2012.

Absentee ballots can be requested from the county clerks' offices beginning Sept. 21, 2012.

The following is the proposed act as it will appear on the state's November General Election ballot.

(Popular Name)

THE ARKANSAS MEDICAL MARIJUANA ACT

(Ballot Title)

AN ACT MAKING THE MEDICAL USE OF MARIJUANA LEGAL UNDER ARKANSAS STATE LAW, BUT ACKNOWLEDGING THAT MARIJUANA USE, POSSESSION, AND DISTRIBUTION FOR ANY PURPOSE REMAIN ILLEGAL UNDER FEDERAL LAW; ESTABLISHING A SYSTEM FOR THE CULTIVATION, ACQUISITION AND DISTRIBUTION OF MARIJUANA FOR QUALIFYING PATIENTS THROUGH NONPROFIT MEDICAL MARIJUANA DISPENSARIES AND GRANTING THOSE NONPROFIT DISPENSARIES LIMITED IMMUNITY; ALLOWING LOCALITIES TO LIMIT THE NUMBER OF NONPROFIT DISPENSARIES AND TO ENACT REASONABLE ZONING REGULATIONS GOVERNING THEIR OPERATIONS; PROVIDING THAT QUALIFYING PATIENTS, THEIR DESIGNATED CAREGIVERS AND NONPROFIT DISPENSARY AGENTS SHALL NOT BE SUBJECT TO CRIMINAL OR CIVIL PENALTIES OR OTHER FORMS OF DISCRIMINATION FOR ENGAGING IN OR ASSISTING WITH THE PATIENTS' MEDICAL USE OF MARIJUANA; AUTHORIZING LIMITED CULTIVATION OF MARIJUANA BY QUALIFYING PATIENTS OR DESIGNATED CAREGIVERS IF A QUALIFYING PATIENT LIVES MORE THAN FIVE MILES FROM THE NEAREST NONPROFIT DISPENSARY; AUTHORIZING COMPENSATION FOR DESIGNATED CAREGIVERS; REQUIRING THAT IN ORDER TO BECOME A QUALIFYING PATIENT, A PERSON SUBMIT TO THE STATE A WRITTEN

CERTIFICATION FROM A PHYSICIAN THAT HE OR SHE IS SUFFERING FROM A QUALIFYING MEDICAL CONDITION; ESTABLISHING AN INITIAL LIST OF QUALIFYING MEDICAL CONDITIONS; DIRECTING THE DEPARTMENT OF HEALTH TO ESTABLISH RULES RELATED TO THE PROCESSING OF APPLICATIONS FOR REGISTRY IDENTIFICATION CARDS, THE OPERATIONS OF NONPROFIT DISPENSARIES, AND THE ADDITION OF QUALIFYING MEDICAL CONDITIONS IF SUCH ADDITIONS WILL ENABLE PATIENTS TO DERIVE THERAPEUTIC BENEFIT FROM THE MEDICAL USE OF MARIJUANA; SETTING MAXIMUM REGISTRATION FEES FOR NONPROFIT DISPENSARIES; ESTABLISHING QUALIFICATIONS FOR REGISTRY IDENTIFICATION CARDS; ESTABLISHING STANDARDS TO ENSURE THAT QUALIFYING PATIENT AND DESIGNATED CAREGIVER REGISTRATION INFORMATION IS TREATED AS CONFIDENTIAL; DIRECTING THE DEPARTMENT OF HEALTH TO PROVIDE THE LEGISLATURE ANNUAL QUANTITATIVE REPORTS ABOUT THE MEDICAL MARIJUANA PROGRAM; SETTING CERTAIN LIMITATIONS ON THE USE OF MEDICAL MARIJUANA BY QUALIFYING PATIENTS; ESTABLISHING AN AFFIRMATIVE DEFENSE FOR THE MEDICAL USE OF MARIJUANA; ESTABLISHING REGISTRATION AND OPERATION REQUIREMENTS FOR NONPROFIT DISPENSARIES; SETTING LIMITS ON THE AMOUNT OF MARIJUANA A NONPROFIT DISPENSARY MAY CULTIVATE AND THE AMOUNT OF MARIJUANA A NONPROFIT DISPENSARY MAY

DISPENSE TO A QUALIFYING PATIENT; PROHIBITING CERTAIN CONDUCT BY AND IMPOSING CERTAIN CONDITIONS AND REQUIREMENTS ON PHYSICIANS, NONPROFIT DISPENSARIES, NONPROFIT DISPENSARY AGENTS, QUALIFYING PATIENTS, AND DESIGNATED CAREGIVERS; ESTABLISHING A LIST OF FELONY OFFENSES WHICH PRECLUDE CERTAIN TYPES OF PARTICIPATION IN THE MEDICAL MARIJUANA PROGRAM; AND ALLOWING VISITING QUALIFYING PATIENTS SUFFERING FROM QUALIFYING MEDICAL CONDITIONS TO UTILIZE THE ARKANSAS MEDICAL MARIJUANA PROGRAM.

For Proposed State Statute No. 1

Against Proposed State Statute No. 1

Medical Sources

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Cohen, P. J. (2010), Medical Marijuana 2010: It's Time to Fix the Regulatory Vacuum. *The Journal of Law, Medicine & Ethics*, 38: 654-666.

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