Opinion No. 2013-033

April 16, 2013

David A Couch, Legal Counsel
Arkansans for Compassionate Care
1501 North University, Suite 228
Little Rock, Arkansas 72207

Dear Mr. Couch:

This is in response to your submission on behalf of Arkansans for Compassionate Care for certification of the popular name and ballot title for a proposed initiated act pursuant to A.C.A. § 7-9-107 (Repl. 2007). Three similar measures were rejected due to ambiguities in the text of the proposed acts. *See* Ops. Att'y Gen. 2013-015, 2011-038 and 2011-023. This office substituted the popular name and ballot title and certified a proposed measure on April 18, 2011, as evidenced by Op. Att'y Gen. 2011-049. You have made changes to the text of the measure and resubmitted your previously proposed popular name and ballot title, as follows:

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, 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; requiring that in order to become a qualifying patient, a person submit to the state a written certification from a physician licensed in the state of Arkansas 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 initial maximum registration fees for nonprofit dispensaries; establishing qualifications for registry identification cards; establishing standards to ensure that qualifying patient 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, and qualifying patients; establishing a list of felony offenses which preclude certain types of participation in the medical marijuana program; and providing that the sale of usable marijuana is subject to all state and local sales taxes.

The Attorney General is required, pursuant to A.C.A. § 7-9-107, to certify the popular name and ballot title of all proposed initiative and referendum acts or amendments before the petitions are circulated for signature. The law provides that the Attorney General may substitute and certify a more suitable and correct popular name and ballot title, if he can do so, or if the proposed popular name and

ballot title are sufficiently misleading, may reject the entire petition. **Neither certification nor rejection of a popular name and ballot title reflects my view of the merits of the proposal. This Office has been given no authority to consider the merits of any measure.**

In this regard, A.C.A. § 7-9-107 neither requires nor authorizes this office to make legal determinations concerning the merits of the act or amendment, or concerning the likelihood that it will accomplish its stated objective. In addition, following Arkansas Supreme Court precedent, this office will not address the constitutionality of proposed measures in the context of a ballot title review unless the measure is "clearly contrary to law."[1] Consequently, this review has been limited to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, discussed below, of whether the proposed popular name and ballot title accurately and impartially summarize the provisions of your proposed amendment or act.

The purpose of my review and certification is to ensure that the popular name and ballot title honestly, intelligibly, and fairly set forth the purpose of the proposed amendment or act.[2]

The popular name is primarily a useful legislative device.[3] It need not contain detailed information or include exceptions that might be required of a ballot title, but it must not be misleading or give partisan coloring to the merit of the proposal.[4] The popular name is to be considered together with the ballot title in determining the ballot title's sufficiency.[5]

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[1] *Kurrus v. Priest,* 342 Ark. 434, 445, 29 S.W.3d 669, 675 (2000); *Donovan v. Priest,* 326 Ark. 353, 359, 931 S.W.2d 119, 121 (1996).

[2] *See Arkansas Women's Political Caucus v. Riviere*, 283 Ark. 463, 466, 677 S.W.2d 846 (1984).
[3] *Pafford v. Hall*, 217 Ark. 734, 739, 233 S.W.2d 72, 75 (1950).

[4] *E.g., Chaney v. Bryant*, 259 Ark. 294, 297, 532 S.W.2d 741, 743 (1976). ; *Moore v. Hall*, 229 Ark. 411, 316 S.W.2d 207 (1958).

[5] *May v. Daniels,* 359 Ark. 100, 105, 194 S.W.3d 771, 776 (2004).

The ballot title must include an impartial summary of the proposed amendment or act that will give the voter a fair understanding of the issues presented.[6] According to the court, if information omitted from the ballot title is an "essential fact which would give the voter serious ground for reflection, it must be disclosed."[7] At the same time, however, a ballot title must be brief and concise (*see* A.C.A. § 7-9-107(b)); otherwise voters could run afoul of A.C.A. § 7-5-522's five minute limit in voting booths when other voters are waiting in line.[8] The ballot title is not required to be perfect, nor is it reasonable to expect the title to cover or anticipate every possible legal argument the proposed measure might evoke.[9] The title, however, must be free from any misleading tendency, whether by amplification, omission, or fallacy; it must not be tinged with partisan coloring.[10] A ballot title must convey an intelligible idea of the scope and significance of a proposed change in the law.[11] The ballot title must be intelligible, honest, and impartial.[12]

Having analyzed your proposed amendment, as well as your proposed popular name and ballot title under the above precepts, it is my conclusion that I must reject your proposed popular name and ballot title due to ambiguities in the *text* of your proposed measure. A number of additions or changes to your ballot title are, in my view, necessary in order to more fully and correctly summarize your proposal. I cannot, however, at this time, fairly or completely summarize the effect of your proposed measure to the electorate in a popular name or ballot title without the resolution of the ambiguities. I am therefore unable to substitute and certify a more suitable and correct popular name and ballot title pursuant to A.C.A. § 7-9-107(b).

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[6] *Becker v. Riviere*, 270 Ark. 219, 226, 604 S.W.2d 555, 558 (1980).

[7] *Bailey v. McCuen*, 318 Ark. 277, 285, 884 S.W.2d 938, 942 (1994).

[8] *Id.* at 288, 884 S.W.2d at 944.

[9] *Id.* 293, 884 S.W.2d at 946–47.

[10] *Id.* at 284, 884 S.W.2d at 942.

[11] *Christian Civic Action Committee v. McCuen*, 318 Ark. 241, 245, 884 S.W.2d 605, 607 (1994) (internal quotations omitted).

[12] *Becker v. McCuen*, 303 Ark. 482, 489, 798 S.W.2d 71, 74 (1990).

I refer to the following ambiguities:

-The definition of "assist" in section 102(b) is ambiguous with respect to the meaning of the phrase "physically enabling," given the context of the proposal and the activities authorized thereby.

-The definition of the term "The Department," beginning as it does with the letter "t," is not in alphabetical order in section 102.

-The defined term "Designated Caregiver" is ambiguous in that the proposal appears to contain no provision for any designation of such a person.

-Provisions relating to Excluded Felony Offenses are ambiguous in that the term's definition refers to unadjudicated offenses, while each reference to the term in the body of the proposal is to "conviction" of an Excluded Felony Offense. Conviction necessarily involves adjudication.

-The definition of "Excluded Felony Offense" in section 102 is ambiguous in using the phrase "shall not be considered and Excluded Felony Offense," a seemingly meaningless formulation.

-The definition of "Excluded Felony Offense" is ambiguously vague in referring to "felony violent crime" without providing any guidance on how it might be determined whether a particular crime is of that nature, particularly in jurisdictions where the term does not necessarily have a fixed meaning in law. In Arkansas, for instance, the code does not appear to use the term "felony violent crime" at all, but a statute defines "felony involving violence" and "serious felony involving violence" for purposes of enhanced sentencing. *See* A.C.A. § 4-5-501. It is not clear which, if either, is intended to be included in "felony violent crime."

- The definition of "Excluded Felony Offense" is ambiguously vague in using the phrase "crime against a person in the jurisdiction where the person was convicted." It appears that the intention may be to measure the severity of a crime by reference to the law of the place where the person was convicted rather than by reference to Arkansas law, but that intention is not clearly expressed.

-The definition of "Excluded Felony Offense" is ambiguously vague in referring to conduct that would be "immune." The proposal does not appear to expressly grant immunity to individuals (see, e.g., section 103(a)) as it does to dispensaries (see section 110).

-I note that "Excluded Felony Offense" does not include a conviction in a jurisdiction other than Arkansas for conduct that would have been "immune" under your proposal. The proposal is ambiguously vague in failing to address by whom and how this determination, which likely will require significant resources in many cases, is to be made.

-The definition of "Medical Use" is ambiguously vague in stating that cultivation, etc., must merely "relate to" the treatment of Qualifying Patients. The extent of the relationship required is a matter of material interest.

-"Nonprofit Dispensary" is defined to include entities only but section 107(a)(i) implies that an individual may be a Nonprofit Dispensary. Additionally, section 109(b)(i) provides for the optional incorporation of a Nonprofit Dispensary under title 4, chapter 28 (presumably of the Arkansas Code), but the proposal fails to address what sort of entity a Nonprofit Dispensary may or must be if it does not elect to incorporate.

-Two separate provisions are designated section 102(j)(i).

-The second section 102(j)(i) and section 102(j)(ii) are unclear as to whether owners, board members, and officers must register in order to be considered Nonprofit Dispensary Agents.

-The definition of "Physician" is ambiguous in referring to DEA "certification." It is my understanding that the DEA provides and requires *registration* of physicians.

-Section 103(a) essentially provides that a Qualifying Patient may possess 2.5 ounces of Usable Marijuana, which is defined to exclude parts of the marijuana plant. Section 103(b) introduces ambiguity in apparently designating those same excluded parts as "incidental," an added layer of apparently unneeded definition. The subsection is also ambiguous in leaving open the possibility that a Qualifying

Patient may be prosecuted for possession of incidental marijuana: it provides that incidental marijuana does not count toward the 2.5 ounces, but the protections of section 103(a) extend only to Usable Marijuana.

-Section 103(c)(ii) is ambiguous in referring to the "presumptions" made in section 103(c)(i), when the latter appears to contain only one presumption.

-Section 103(d) provides that a Cardholder, which includes a Qualifying Patient, may not be penalized for transferring marijuana to a Qualifying Patient when nothing of value is transferred in return. This suggests that a Qualifying Patient may transfer marijuana to another Qualifying Patient only without consideration. Section 105(h) provides that a Cardholder who transfers marijuana to a person who is not a Qualifying Patient may be penalized. Together, the sections create ambiguity with respect to the permissibility of a Qualifying Patient's transfer of marijuana to another Qualifying Patient for consideration.

-Section 103(d) provides that a Cardholder, which includes a Nonprofit Dispensary Agent, may not be penalized for transferring marijuana to a Qualifying Patient when nothing of value is transferred in return. The intent of this provision is unclear. To the extent a Nonprofit Dispensary Agent can deal in marijuana only as an agent of a Nonprofit Dispensary, the provision may merely mean that a Nonprofit Dispensary may give marijuana to Qualifying Patients without consideration. But the provision does not clearly so state and may be interpreted to address a Nonprofit Dispensary Agent's activities undertaken independently of a Nonprofit Dispensary.

-Section 103(d) is ambiguous with respect to whether "the person" refers to the transferor or transferee.

-Section 103(e) authorizes a Nonprofit Dispensary to transfer marijuana to another Nonprofit Dispensary, but section 105(h) prohibits Cardholders (including a Nonprofit Dispensary Agent) from transferring marijuana to any person other than a Qualifying Patient and section 111(b) requires the revocation of the Registry Identification Card of any Nonprofit Dispensary Agent who transfers marijuana to anyone other than a Qualifying Patient. As it is not clear how a Nonprofit Dispensary can transfer marijuana other than through the act of its Nonprofit

Dispensary Agent, the former section appears to be in irreconcilable conflict with the latter two.

-Section 103(f)(iii) is ambiguous in failing to provide an occupational-qualification exception to its rule.

-Section 103(k) provides that a person cannot be penalized for engaging in activities including those within the definition of the term "Designated Caregiver." As a result, the presence of the defined term is confusing and ambiguous, and possibly superfluous.

-Section 103(k) is ambiguous with respect to the liability of a person who Assists a Qualifying Patient who is not physically disabled.

-Section 103(l) is ambiguous in implying that another jurisdiction might issue a Registry Identification Card, a thing established under Arkansas law and to be issued only by Arkansas authorities. It is also ambiguously vague in failing to provide standards of equivalency.

-Section 104(d)(ii) is ambiguous in stating that "Cardholder fees for shall be sufficient," a formulation whose meaning is not clear.

-Section 105(f)(2) refers to a Registry Identification Card issued "in accordance with section 108(h)" but section 108(h) does not provide for this issuance of Registry Identification Cards.

-Sections 105(g) purports to make certain information confidential under the (federal) Health Insurance Portability and Accountability Act (HIPAA). It is misleading to assert that state law can dictate how information is treated under HIPAA.

-Section 106(b)(iv) is ambiguous in referring to a "Qualified Patient," a term not defined in the proposal.

-The subsection designations of section 107(a)(i)-(ii) and (iii)-(v) are ambiguous with respect to how many and which of the facts stated therein must be shown in order for the affirmative defense to be available.

-Sections 108(b)(i)(B)(2) and 109(b)(ii) are ambiguous in combination because they appear intended to establish a common rule but are not stated identically.

-Section 108(e)(i) refers to "useable marijuana." The absence of initial capitals and the difference in spelling between the term and the defined term "Usable Marijuana" imply that something other than "Usable Marijuana" is meant.

-Section 108(h) is ambiguous in requiring the Department to state the "purpose" of denying an application. Surely the purpose of any denial will be to prevent the issuance of a card to, and the giving of the status of a Cardholder to, a person who is not eligible to receive a card. I recognize that you may mean "reason," but your use of the word "purpose" suggests that the Department must state its aim rather than its justification in denying an application

-Section 109(b)(ix) prohibits a Nonprofit Dispensary from dealing in marijuana except to "Assist" a Qualifying Patient. According to the definition in section 102(b), "Assist" means "physically enabl[e]." The former section is ambiguous with respect to a Nonprofit Dispensary's activities that cannot fairly be characterized as physically enabling a Qualifying Patient, yet are clearly within the proposal's contemplated role for Nonprofit Dispensaries.

-Section 109(b)(x) is ambiguous with respect to whether permitted outdoor cultivation must be in an Enclosed, Locked Facility.

-Section 109(b)(xi) is ambiguous in requiring all marijuana to be dispensed by "an individual." The same subsection refers to dispensation by a Nonprofit Dispensary, which must be an entity, not an individual. The provision, and the proposal as a whole, is also ambiguous in failing to clarify whether individuals who are not Nonprofit Dispensary Agents may dispense marijuana or otherwise act for Nonprofit Dispensaries.

-Section 109(b)(xii) states that "the dispensary records with patient information shall be treated as confidential under" HIPAA. It is not clear whether the provision is an attempt to subject otherwise-exempt entities or information to the HIPAA privacy rule or a state-law requirement that dispensaries operate as if they were subject to the rule.

-Section 111(c) is ambiguous in that its mere presence suggests that it must add something to the rule stated in section 108(h), yet it does not appear to do so.

-Section 114(c) is ambiguously vague in failing to state the required circumstances involving the Department's not taking applications (e.g., Department offices closed for the weekend), and the period during which the notarized statement will be deemed to be a Registry Identification Card.

I cannot certify a ballot title for your proposed amendment in the face of the ambiguities noted above. You must remedy these confusing and ambiguous points before I can perform my statutory duty.

My office, in the certification of ballot titles and popular names, does not concern itself with the merits, philosophy, or ideology of proposed measures. I have no constitutional role in the shaping or drafting of such measures. My statutory mandate is embodied only in A.C.A. § 7-9-107 and my duty is to the electorate. I am not your counsel in this matter and cannot advise you as to the substance of your proposal.

At the same time, however, the Arkansas Supreme Court, through its decisions, has placed a practical duty on the Attorney General, in exercising his statutory duty, to include language in a ballot title about the effects of a proposed measure on current law. *See, e.g.*, *Finn v. McCuen, supra*. Furthermore, the Court has recently confirmed that a proposed amendment cannot be approved if "[t]he text of the proposed amendment itself contribute[s] to the confusion and disconnect between the language in the popular name and the ballot title and the language in the proposed measure." *Roberts v. Priest*, 341 Ark. 813, 20 S.W.3d 376 (2000). The Court concluded: "[I]nternal inconsistencies would inevitably lead to confusion in drafting a popular name and ballot title and to confusion in the ballot title itself." *Id.* Where the effects of a proposed measure on current law are unclear or ambiguous, it is impossible for me to perform my statutory duty to the satisfaction of the Arkansas Supreme Court without clarification of the ambiguities.

My statutory duty, under these circumstances, is to reject your proposed ballot title, stating my reasons therefor, and to instruct you to "redesign" the proposed

measure and ballot title. *See* A.C.A. § 7-9-107(c). You may, after clarification of the matters discussed above, resubmit your proposed amendment, along with a proposed popular name and ballot title, at your convenience. I anticipate, as noted above, that some changes or additions to your submitted popular name and ballot title may be necessary. I will be pleased to perform my statutory duties in this regard in a timely manner after resubmission.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/cyh

Enclosures

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, 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; REQUIRING THAT IN ORDER TO BECOME A QUALIFYING PATIENT, A PERSON SUBMIT TO THE STATE A WRITTEN CERTIFICATION FROM A PHYSICIAN LICENSED IN THE STATE OF ARKANSAS 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 INITIAL MAXIMUM REGISTRATION FEES FOR NONPROFIT DISPENSARIES; ESTABLISHING QUALIFICATIONS FOR REGISTRY IDENTIFICATION CARDS; ESTABLISHING STANDARDS TO ENSURE THAT QUALIFYING PATIENT 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, AND QUALIFYING PATIENTS; ESTABLISHING A LIST OF FELONY OFFENSES WHICH PRECLUDE CERTAIN TYPES OF PARTICIPATION IN THE MEDICAL MARIJUANA PROGRAM; AND PROVIDING THAT THE SALE OF USABLE MARIJUANA IS SUBJECT TO ALL STATE AND LOCAL SALES TAXES.

"An Act to Establish the Arkansas Medical Marijuana Act".

Be it enacted by the People of the State of Arkansas as follows:

Amending Title 20, Arkansas Code, by adding new Subtitle 6, Chapter 91, Medical Marijuana

Section 101. Short title. This chapter shall be known and cited as "The Arkansas Medical Marijuana Act."

Section 102. Definitions. As used in this chapter, unless the context otherwise requires:

(a) "Acquire" or "Acquisition" means coming to possess marijuana by means of any legal source herein authorized, and not from any unauthorized source; and in accordance with this act and any regulations promulgated by The Department.

(b) "Assist," or "Assisting" mean helping a Qualifying Patient make Medical Use of marijuana by physically enabling such Medical Use by any means herein authorized.

(c) "Cardholder" means a Qualifying Patient or a Nonprofit Dispensary Agent.

(d) "The Department" means the Arkansas Department of Health or its successor.

(e) "Designated Caregiver" means a person who is at least 21 years of age who has not been convicted of an Excluded Felony Offense and who has agreed to Assist a physically disabled Qualifying Patient with the Medical Use of marijuana.

(f) "Enclosed, Locked Facility" means a closet, room, greenhouse or other enclosed area equipped with locks or other security devices that permit access only by a Cardholder.

(g) "Excluded Felony Offense" means:

(i) A felony violent crime or felony crime against a person in the jurisdiction where the person was convicted, provided, an offense which has been expunged by a court or was unadjudicated and the conditions satisfied and the offender released from conditions shall not be considered and Excluded Felony Offense; or

(ii) 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 does not include:

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

(B) An offense which has been expunged by a court or was unadjudicated and the conditions satisfied and the offender released from conditions; or

(C) An offense involving conduct that would be immune from arrest, prosecution or penalty under this chapter except that the conduct occurred before the effective date of this chapter or was prosecuted by an authority other than the State of Arkansas.

(h) "Medical Use" means the Acquisition, possession, cultivation, preparation, manufacture, 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.

(i) "Nonprofit Dispensary" means a not-for-profit entity that has registered with The Department pursuant to section 108, and performs any combination of the activities therein described.

(j) "Nonprofit Dispensary Agent" means:

(i) An employee, supervisor, volunteer, or agent of a Nonprofit Dispensary who:

(A) Is 21 years of age or older;

(B) Works at the Nonprofit Dispensary; and

(C) Has registered with The Department pursuant to section 108; or

(i) The owner(s) of a Nonprofit Dispensary who has registered with The Department pursuant to section 108;

(ii) the board members and officers of a Nonprofit Dispensary if the Nonprofit Dispensary has exercised its discretionary right to incorporate pursuant to section 109(b)(i).

(k) "Physician" means a doctor of medicine or doctor of osteopathic medicine who holds a valid, unrestricted and existing license to practice

medicine in the state of Arkansas and who possesses certification from the United States Drug Enforcement Administration to prescribe controlled substances.

(l) "Qualifying Medical Condition" means one or more of the following:

(i) 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 (PTSD), Fibromyalgia, agitation of Alzheimer's Disease or the treatment of these conditions;

(ii) 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;

(iii) Any other medical condition or its treatment approved by The Department as provided for in section 104(e).

(m) "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 pursuant to 105(a).

(n) "Registry Identification Card" means a document issued by The Department that identifies a person as a Qualifying Patient or a Nonprofit Dispensary Agent.

(o) "Usable Marijuana" means the dried leaves and flowers of the marijuana plant and any mixture or preparation thereof, but does not include the seeds, stalks and roots of the plant and does not include the weight of any ingredients other than marijuana that are combined with marijuana and prepared for consumption as food or drink.

(p) "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 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.

(q) "Written Certification" means a document signed by a Physician stating that in the Physician's professional opinion, after having completed a full assessment of the Qualifying Patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the Qualifying Patient has a Qualifying Medical Condition and the potential benefits of the Medical Use of marijuana would likely outweigh the health risks for the Qualifying Patient. A Written Certification shall specify the Qualifying Patient's Qualifying Medical Condition, which also shall be noted in the Qualifying Patient's medical records.

Section 103. Protections for the Medical Use of marijuana

(a) Qualifying Patient. A Qualifying Patient 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 but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the Medical Use of marijuana in accordance with this chapter as long as the Qualifying Patient possesses not more than 2 1/2 ounces of Usable Marijuana.

(b) Incidental amount of marijuana. Marijuana that is incidental to Medical Use, but is not Usable Marijuana, shall not be counted toward a Qualifying Patient's allowable amount of marijuana.

(c) Presumption.

(i) A Qualifying Patient is presumed to be lawfully engaged in the Medical Use of marijuana in accordance with this chapter if the Qualifying Patient is in actual possession of a Registry Identification Card and possesses an amount of marijuana that does not exceed the amount allowed under this chapter.

(ii) The presumptions made in section 103(c)(i) 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 chapter.

(d) Cardholder not subject to arrest. A Cardholder shall not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for

giving an amount of marijuana the person is allowed to possess under section 103 to a Cardholder who is also a Qualifying Patient for the Qualifying Patient's Medical Use when nothing of value is transferred in return or for offering to do the same.

(e) Transfer of seeds and seedlings. A Nonprofit Dispensary may accept marijuana seeds, seedlings, plants, or Useable Marijuana from other Nonprofit Dispensaries in Arkansas. A Nonprofit Dispensary may transfer or sell marijuana seeds, seedlings, plants, or Useable Marijuana to other Nonprofit Dispensaries in Arkansas.

(f) Discrimination

(i) No school or landlord may refuse to enroll or lease to, or otherwise penalize, an individual solely for his or her status as a Qualifying Patient unless doing so would put the school or landlord in violation of federal law or regulations.

(ii) For the purposes of medical care, including organ transplants, a Qualifying Patient's authorized use of marijuana in accordance with this chapter shall be considered the equivalent of the authorized use of any other medication used at the direction of a Physician, and shall not constitute the use of an illicit substance.

(iii) An employer shall not discriminate against an individual in hiring, termination, or any term or condition of employment, or otherwise penalize an individual, based upon the individual's past or present status as a Qualifying Patient.

(g) Person shall not be denied custody or visitation of minor. A person otherwise entitled to custody of, or visitation or parenting time with, a minor shall not be denied custody, visitation or parenting time and there shall be no finding of abuse solely for conduct allowed under this chapter and there shall be no presumption of neglect or child endangerment for conduct allowed under this chapter.

(h) Physician not subject to penalty. A Physician shall not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by the Arkansas State Medical Board or by any other business or occupational or professional licensing board or bureau, solely for providing Written Certifications that, in the Physician's professional opinion, a patient is likely to receive therapeutic benefit from the Medical Use of marijuana to treat or alleviate the patient's Qualifying Medical

Condition or symptoms associated with the Qualifying Medical Condition, provided that nothing shall prevent a professional licensing board from sanctioning a Physician for failing to properly evaluate a patient's medical condition or otherwise violating the applicable physician-patient standard of care.

(i) Person not subject to penalty for providing Qualifying Patient marijuana paraphernalia. A person shall not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for providing a Qualifying Patient with marijuana paraphernalia for purposes of facilitating a Qualifying Patient's Medical Use of marijuana.

(j) Property not subject to forfeiture. Any marijuana, marijuana paraphernalia, licit property or interest in licit property that is possessed, owned or used in connection with the Medical Use of marijuana, as allowed under this chapter, or property incidental to such use, shall not be seized or forfeited.

(k) Person not subject to penalty for being in presence of Medical Use of marijuana. A person shall not be subject to arrest, prosecution or penalty in any manner or denied any right or privilege, including but not limited to a civil penalty or disciplinary action by a business or 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 chapter or for directly Assisting a physically disabled Qualifying Patient with the Medical Use of marijuana.

(l) Effect of Registry Identification Card issued by another jurisdiction 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 provided that the same Qualifying Medical Condition as defined in section 102(l) exists, except that a Visiting Qualifying Patient is not authorized to obtain marijuana from a Nonprofit Dispensary.

Section 104. Rules

(a) Rule making power. The Department may adopt rules to carry out the

purposes of this chapter. Rules adopted pursuant to this subsection are Rules as defined in Ark. Code Ann. § 25-15-201 et seq., the Arkansas Administrative Procedure Act.

(b) Registry Identification Cards. Not later than 120 days after the effective date of this chapter, The Department shall adopt rules governing the manner in which it considers applications for and renewals of Registry Identification Cards.

(c) Nonprofit Dispensaries. Not later than 120 days after the effective date of this chapter, The Department shall adopt rules with the goal of protecting against diversion and theft, without imposing an undue burden on the registered Nonprofit Dispensaries or compromising the confidentiality of Qualifying Patients, including rules governing:

(i) The manner in which it considers applications for and renewals of registration certificates for Nonprofit Dispensaries;

(ii) The form and content of registration and renewal applications;

(iii) Oversight requirements for Nonprofit Dispensaries;

(iv) Record-keeping requirements for Nonprofit Dispensaries;

(v) Security requirements for Nonprofit Dispensaries which shall include lighting, physical security, alarm requirements, and measures to prevent loitering;

(vi) Sanitary requirements for Nonprofit Dispensaries;

(vii) Electrical safety requirements for Nonprofit Dispensaries;

(viii) The specification of acceptable forms of picture identification that a Nonprofit Dispensary may accept;

(ix) Personnel requirements including how many volunteers a Nonprofit Dispensary is permitted to have and requirements for supervision;

(x) Labeling and testing standards for marijuana distributed to Qualifying Patients;

(xi) The Manufacture, processing and dispensing of medical marijuana prepared for consumption as food or drink to Qualifying Patients;

(xii) Procedures for suspending or terminating the registration of Nonprofit Dispensaries that violate the provisions of this section or the rules adopted pursuant to this section, procedures for appealing penalties, and a schedule

of penalties;

(xiii) Procedures for inspections and investigations of Nonprofit Dispensaries;

(xiv) Advertising restrictions for Nonprofit Dispensaries;

(xv) Procedures for the disposal of Medical Marijuana not dispensed to Qualifying Patients;

(xvi) Permissible hours of operation for Nonprofit Dispensary sales; and

(xvii) Such other matters as are necessary for the fair, impartial, stringent, and comprehensive administration of this chapter.

(d) Application and renewal fees for Nonprofit Dispensaries. Not later than 120 days after the effective date of this chapter, The Department shall adopt rules establishing application and renewal fees for Nonprofit Dispensary registration certificates, according to the following:

(i) The initial Nonprofit Dispensary application fee shall be a maximum of $5,000.

(ii) The total amount of revenue from Nonprofit Dispensary application and renewal fees and Cardholder fees for shall be sufficient to administer the Nonprofit Dispensary provisions of this chapter, except that the fee revenue may be offset or supplemented by private donations or appropriations by the General Assembly. The Department may establish a sliding scale of application and renewal fees based upon a Qualifying Patient's family income.

(e) Adding Qualifying Medical Conditions.

(i) Not later than 180 days after the effective date of this chapter, The Department shall adopt rules that govern the manner in which The Department shall consider petitions from the public to add medical conditions or treatments to the list of Qualifying Medical Conditions set forth in section 102(l).

(ii) In considering such petitions, The Department shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions.

(iii) In considering such petitions, The Department shall add medical conditions or treatments to the list of Qualifying Medical Conditions set forth in section 102(l) 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. The Department may consider published studies in peer-reviewed journals, physician testimony, and public comments made pursuant to 104(e)(ii) in making such determination.

(iv) The Department shall, after hearing, approve or deny such petitions within 60 days of their submission. The approval or denial of such a petition constitutes final agency action, subject to judicial review, and jurisdiction for judicial review is vested in the Circuit Court of Pulaski County.

(f) Designated Caregivers. The Department shall adopt rules that govern the manner in which a Designated Caregiver Assists a physically disabled Qualifying Patient with the Medical Use of marijuana within 120 days of the effective date of this chapter.

Section 105. Registry Identification Cards

(a) Application for Registry Identification Card; qualifications. The Department shall issue Registry Identification Cards to Qualifying Patients who submit, in accordance with The Department's rules:

(i) Written Certification issued by the Physician within 30 days of the application;

(ii) Application or renewal fee;

(iii) Name, address and date of birth of the Qualifying Patient, except that if the applicant is homeless, no address is required;

(iv) Name, address and telephone number of the Qualifying Patient's Physician;

(v) A designation as to which Nonprofit Dispensary will be allowed under state law to cultivate marijuana plants for the Qualifying Patient's Medical Use. Only one Nonprofit Dispensary may be allowed to cultivate marijuana plants for a Qualifying Patient at a time.

(vi) A signed statement from the Qualifying Patient pledging not to divert marijuana to anyone who is not allowed to possess marijuana pursuant to this chapter.

(b) Issuing Registry Identification Card to minor. The Department may not issue a Registry Identification Card to a Qualifying Patient who is

under 18 years of age unless:

(i) 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

(ii) A parent, guardian or person having legal custody consents in writing to:

(A) Allow the Qualifying Patient's Medical Use of marijuana;

(B) Assist the Qualifying Patient in the Medical Use of marijuana; and

(C) Control the Acquisition of the marijuana, the dosage and the frequency of the Medical Use of marijuana by the Qualifying Patient.

(c) Department approval or denial. The Department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 14 days of receiving it. The Department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, the applicant previously had a Registry Identification Card revoked, The Department determines that the information provided was falsified, or The Department determines the Written Certification was not made in the context of a bona fide Physician-patient relationship. Rejection of an application or renewal is considered a final agency action, subject to judicial review, and jurisdiction is vested in the Circuit Court of Pulaski County.

(e) Registry Identification Card issuance. The Department shall issue Registry Identification Cards to Qualifying Patients within 5 business days of approving an application or renewal under this section. Registry Identification Cards expire one year after the date of issuance, unless the Physician states in the Written Certification that he believes the Qualifying Patient would benefit from medical marijuana only until a specified earlier date, then the Registry Identification Card shall expire on that date.

(i) Registry Identification Cards shall contain:

(A) The name, address and date of birth of the Qualifying Patient;

(B) The date of issuance and expiration date of the Registry Identification Card;

(C) A random, 10-digit alphanumeric identification number that is unique to the Cardholder;

(D) A photograph, if The Department decides to require one.

(f) Notification of changes in status or loss of card. This subsection governs notification of changes in status or the loss of a Registry Identification Card.

(i) A Qualifying Patient shall notify The Department within 10 days of any change in the Qualifying Patient's name, address, or preference regarding which Nonprofit Dispensary may cultivate marijuana for the Qualifying Patient or if the Qualifying Patient ceases to have a Qualifying Medical Condition.

(ii) A Nonprofit Dispensary shall notify The Department within 10 days of any change in the name or address of a Nonprofit Dispensary Agent issued a Registry Identification Card in accordance with section 108(h).

(iii) A Qualifying Patient or a Nonprofit Dispensary who fails to notify The Department as required under sections 105(f)(i) or 105(f)(ii) commits a civil violation for which a penalty of not more than $250 may be adjudged and collected by The Department.

(iv) If the Qualifying Patient's certifying Physician notifies The Department in writing that the Qualifying Patient has ceased to suffer from a Qualifying Medical Condition, the Qualifying Patient's Registry Identification Card becomes void upon notification by The Department to the Qualifying Patient.

(v) A Nonprofit Dispensary shall notify The Department of any change in the Nonprofit Dispensary's name or address within 10 days of such change. A Nonprofit Dispensary who fails to notify The Department of any of these changes commits a civil violation for which a penalty of not more than $250 may be adjudged and collected by The Department

(vi) When a Qualifying Patient notifies The Department of any changes listed in this subsection, The Department shall issue the Qualifying Patient a new Registry Identification Card within 10 days of receiving the updated information.

(vii) If a Cardholder loses the Cardholder's Registry Identification Card, the Cardholder shall notify The Department within 10 days of losing the card. Within 5 days after such notification, The Department shall issue a new Registry Identification Card with a new random identification number.

(g) Confidentiality.

(i) Applications and supporting information submitted by Qualifying Patients under this chapter, including information regarding their Physicians are confidential pursuant to The Health Insurance Portability and Accountability Act (HIPAA) of 1996 (P.L.104-191).

(ii) The Department shall maintain a confidential list of the persons to whom The Department has issued Registry Identification Cards. Individual names and other identifying information on the list are confidential, exempt from the Arkansas Freedom of Information Act, and not subject to disclosure except to authorized employees of The Department as necessary to perform official duties of The Department.

(iii) 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.

(iv) A person, including an employee or official of The Department or another state agency or local government, who breaches the confidentiality of information obtained pursuant to this chapter commits a Class A misdemeanor. However, department employees may notify law enforcement about falsified or fraudulent information submitted to The Department as long as the employee who suspects that falsified or fraudulent information has been submitted confers with the employee's supervisor and both agree that circumstances exist that warrant reporting.

(h) Cardholder who sells marijuana to person not allowed to possess. Any Cardholder who transfers marijuana to a person who is not a Qualifying Patient and Cardholder under this chapter shall have his Registry Identification Card revoked and shall be subject to any other penalties established by law for unlawful transfer of a controlled substance. The Department may revoke the Registry Identification Card of any Cardholder who violates any provision of this chapter, and the Cardholder is subject to any other penalties established in law for the violation.

(i) Annual report. The Department shall submit to the Legislature an annual report that does not disclose any identifying information about Cardholders or Physicians, but does contain, at a minimum:

(i) The number of applications and renewals filed for Registry Identification Cards;

(ii) The number of Qualifying Patients approved in each county;

(iii) The nature of the Qualifying Medical Conditions of the Qualifying Patients;

(iv) The number of Registry Identification Cards revoked;

(v) The number of Physicians providing Written Certifications for Qualifying Patients;

(vi) The number of registered Nonprofit Dispensaries; and

(vii) The number of Nonprofit Dispensary Agents.

Section 106. Scope

(a) Limitations. This chapter does not permit any person to:

(i) Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice;

(ii) Possess, smoke, or otherwise engage in the Medical Use of marijuana:

(A) In a school bus;

(B) On the grounds of any day care center, preschool, primary or secondary school, or college or university;

(C) At a drug or alcohol treatment facility;

(D) At a skating rink, Boys Club, Girls Club, YMCA, YWCA, or any similar community or recreation center;

(E) In any correctional facility;

(F) On any form of public transportation; or

(G) In any public place;

(ii) Operate, navigate or be in actual physical control of any motor vehicle, aircraft, motorized watercraft or any other vehicle drawn by power other than muscular power while under the influence of marijuana; or

(iii) Use marijuana if that person does not have a Qualifying Medical Condition.

(b) Construction. This chapter shall not be construed to require:

(i) A government medical assistance program or private health insurer to

reimburse a person for costs associated with the Medical Use of marijuana;

(ii) An employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana;

(iii) Any 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; or

(iv) A landlord to permit a Qualified Patient to smoke marijuana on any or in any leased property, except that a landlord may not prohibit the Medical Use of marijuana on leased property by a qualified patient through means other than smoking.

(c) Penalty for fraudulent representation. Fraudulent representation to a law enforcement official of any fact or circumstance relating to the Medical Use of marijuana to avoid arrest or prosecution is a civil violation punishable by a fine of $500, which is in addition to any other penalties that may apply for making a false statement to law enforcement or for the use of marijuana other than use undertaken pursuant to this chapter.

Section 107. Affirmative defense and dismissal for medical marijuana

(a) Except as provided in section 106(a) and this section, an individual may assert a medical purpose for using marijuana as an affirmative defense to any 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:

(i) The individual is a Qualifying Patient or Nonprofit Dispensary; and

(ii) The individual is in compliance with the conditions imposed by this act in section 103; or

(iii) The Department has delayed the review of the individual's application, the issuance of the individual's Registry Identification Card, or both for a period of greater than thirty days; and

(iv) The individual's application meets the conditions of a Qualifying Patient; and

(v) The individual is in compliance with the conditions set forth in section 103.

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

following are proven:

(i) The individual's Registry Identification Card has been revoked; or

(ii) 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 pursuant to this section, except as provided in section 106(a), the individual shall not be subject to the following:

(i) Disciplinary action by an occupational or professional licensing board or bureau; or

(ii) Forfeiture of any interest in or right to non-marijuana, licit property.

Section 108. Registration, certification of Nonprofit Dispensaries

(a) Nonprofit Dispensaries shall register with The Department.

(b) Not later than ninety days after receiving an application for a Nonprofit Dispensary, The Department shall register the Nonprofit Dispensary and issue a registration certificate and a random 20-digit alphanumeric identification number if:

(i) The prospective Nonprofit Dispensary had submitted the following:

(A) The application fee;

(B) An application, including:

(1) The legal name of the Nonprofit Dispensary;

(2) The physical address of the Nonprofit Dispensary and the physical address of one additional location, if any, where marijuana will be cultivated, neither of which may be within one thousand feet of a public or private school or church existing before the date of the Nonprofit Dispensary application;

(3) The name, address and date of birth of each Nonprofit Dispensary Agent;

(C) Operating procedures consistent with The Department rules for

oversight of the Nonprofit Dispensary, including procedures to ensure accurate record-keeping and adequate security measures; and

(D) If the city, town or county in which the Nonprofit Dispensary would be located has enacted zoning restrictions, a sworn statement certifying that the Nonprofit Dispensary will operate in compliance with the restrictions;

(ii) None of the owners, board members or officers has been convicted of an Excluded Felony Offense;

(iii) None of the owners, board members or officers has previously been an owner, board member or officer of a Nonprofit Dispensary that has had its registration certificate revoked; and

(iv) None of the Nonprofit Dispensary Agents is under twenty-one years of age.

(c) The Department may not issue more than one Nonprofit Dispensary registration certificate for every twenty pharmacies that have obtained a pharmacy permit from the Arkansas Board of Pharmacy and operate within the state, except that The Department may issue Nonprofit Dispensary registration certificates in excess of this limit if The Department determines that additional Nonprofit Dispensaries are necessary to provide convenient access to patients in all parts of the state.

(d) The Department may conduct a criminal records check in order to carry out this section.

(e) A Nonprofit Dispensary registered under this section may Acquire, possess, cultivate, manufacture, prepare, process, deliver, transfer, transport, supply, and dispense marijuana, marijuana paraphernalia, and related supplies and educational materials, to Qualifying Patients who have designated it as their Nonprofit Dispensary for the Qualifying Patients' Medical Use. A Nonprofit Dispensary may receive compensation for providing the goods and services allowed by this section. A Nonprofit Dispensary may cultivate and possess whichever of the following quantities is greater:

(i) 45 marijuana plants and all useable marijuana derived from such plants and predecessor plants; or

(ii) 5 marijuana plants and all Usable Marijuana derived from such plants or predecessor plants for each Qualifying Patient who has designated the Nonprofit Dispensary to provide him with marijuana for Medical Use. A Nonprofit Dispensary may also possess marijuana seeds, stalks, and

unusable roots.

(f) The Department shall track the number of Qualifying Patients who have designated each Nonprofit Dispensary to cultivate marijuana for them and issue a monthly written statement to the Nonprofit Dispensary identifying the number of Qualifying Patients who have designated that Nonprofit Dispensary along with the registry identification numbers of each Qualifying Patient. This statement must be updated each time a new Qualifying Patient designates the Nonprofit Dispensary or ceases to designate the Nonprofit Dispensary and may be transmitted electronically if The Department's rules so provide.

(g) The Department shall issue each Nonprofit Dispensary Agent a Registry Identification Card within 10 days of receipt of the person's name, address and date of birth under section 108(b)(i)(B)(3), 109(b)(iv) or 105(f), and a fee in an amount established by The Department. Each card must specify that the Cardholder is an agent of the Nonprofit Dispensary and must contain:

(i) The name, address and date of birth of the Nonprofit Dispensary Agent;

(ii) The legal name of the Nonprofit Dispensary with which the Nonprofit Dispensary Agent is affiliated;

(iii) A random identification number that is unique to the Cardholder;

(iv) The date of issuance and expiration date of the Registry Identification Card; and

(v) A photograph, if The Department decides to require one.

(h) The Department may not issue a Registry Identification Card to any Nonprofit Dispensary Agent who has been convicted of an Excluded Felony Offense. The Department may conduct a background check of each Nonprofit Dispensary Agent in order to carry out this provision. The Department shall notify the Nonprofit Dispensary in writing of the purpose for denying the Registry Identification Card.

(i) Expiration. A Nonprofit Dispensary registration certificate and the Registry Identification Card for each Nonprofit Dispensary Agent expire one year after the date of issuance. The Department shall issue renewal Nonprofit Dispensary registration certificates and renewal Registry Identification Cards within 10 days to any person or entity who complies with the requirements contained in this act. A Registry Identification Card of a Nonprofit Dispensary Agent expires upon notification by a Nonprofit

Dispensary that such person ceases to work at the Nonprofit Dispensary.

Section 109. Nonprofit Dispensary inspections and requirements

(a) Inspection. Nonprofit Dispensaries are highly regulated by the state, and a Nonprofit Dispensary therefore is subject to reasonable inspection by The Department.

(b) Nonprofit Dispensary requirements. This subsection governs the operations of Nonprofit Dispensaries.

(i). A Nonprofit Dispensary must be operated on a not-for-profit basis for the mutual benefit of its members and patrons. A Nonprofit Dispensary need not be recognized as a tax-exempt organization under 26 United States Code, Section 501(c)(3) and is not required to, but may, incorporate pursuant to Title 4, Chapter 28.

(ii) A Nonprofit Dispensary shall not be located in an area zoned residential or within 1,000 feet of the property line of a preexisting public or private school or church.

(iii) A Nonprofit Dispensary shall notify The Department within 10 days of when a Nonprofit Dispensary Agent ceases to work at the Nonprofit Dispensary.

(iv) A Nonprofit Dispensary shall notify The Department in writing of the name, address and date of birth of any new Nonprofit Dispensary Agent and shall submit a fee in an amount established by The Department for a new Registry Identification Card before the new Nonprofit Dispensary Agent begins working at the Nonprofit Dispensary.

(v) A Nonprofit Dispensary shall implement appropriate security measures to deter and prevent unauthorized entrance into areas containing marijuana and the theft of marijuana.

(vi) A Nonprofit Dispensary shall have procedures in place to ensure accurate record keeping.

(vii) Each Nonprofit Dispensary shall keep the following records, dating back at least two years:

(A) Records of the disposal of marijuana that is not distributed by the Nonprofit Dispensary to Qualifying Patients who have designated the Nonprofit Dispensary to cultivate for them.

(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.

(viii) Each Nonprofit Dispensary shall:

(A) Conduct an initial comprehensive inventory of all medical marijuana, including Usable Marijuana available for dispensing, mature marijuana plants, and seedlings at each authorized location on the date the Nonprofit Dispensary first dispenses medical marijuana.

(B) Conduct a monthly comprehensive inventory of all medical marijuana, including Usable Marijuana available for dispensing, mature marijuana plants, and seedlings at each authorized location.

(ix) A Nonprofit Dispensary is prohibited from acquiring, possessing, cultivating, preparing, manufacturing, processing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to Assist Qualifying Patients with the Medical Use of marijuana.

(x) All cultivation of marijuana must take place in an indoor Enclosed, Locked Facility, unless The Department determines that for a specific Nonprofit Dispensary indoor cultivation would be economically or environmentally impractical.

(xi) A Nonprofit Dispensary or a Nonprofit Dispensary Agent may not dispense more than 2 1/2 ounces of Usable Marijuana to a Qualifying Patient during a 15-day period. Each time a Nonprofit Dispensary Agent dispenses marijuana to a Qualifying Patient, he must consult the Nonprofit Dispensary's records to verify that the records do not indicate that the dispensing of marijuana would cause the Qualifying Patient to receive more marijuana than is permitted in a 15-day period. Each time marijuana is dispensed, the Nonprofit Dispensary Agent shall record the date the marijuana was dispensed and the amount dispensed. All marijuana must be dispensed by an individual. All records must be kept according to the registry identification number of the Qualifying Patient.

(xii) The dispensary records with patient information shall be treated as confidential under The Health Insurance Portability and Accountability Act (HIPAA) of 1996 (P.L.104-191).

Section 110. Immunity for Nonprofit Dispensaries

(a) No Nonprofit Dispensary shall be subject to the following:

(i) Prosecution for the Acquisition, possession, cultivation, preparation,

manufacture, processing, delivery, transfer, transport, sale, supply, or dispensing of marijuana and related supplies in accordance with the provisions of this chapter and any rule adopted by The Department pursuant to this chapter.

(ii) Inspection, except pursuant to section 109(a), or upon a search warrant issued by a court or judicial officer.

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

(iv) Imposition of any penalty or denied any right or privilege including, but not limited to, imposition of a civil penalty or disciplinary action by an occupational or professional licensing board or entity, solely for acting in accordance with this chapter to Assist Qualifying Patients with the Medical Use of marijuana.

(b) No Nonprofit Dispensary Agents shall be subject to arrest, prosecution, search, seizure, or penalty in any manner, or denied any right or privilege including, but not limited to, civil penalty or disciplinary action by a business, occupational, or professional licensing board or entity, solely for working for or with a Nonprofit Dispensary to engage in acts permitted by this chapter.

(i) Nonprofit Dispensary Agents are allowed to possess and manufacture marijuana at the Nonprofit Dispensary location or locations for which the Nonprofit Dispensary Agent is registered or when transferring marijuana pursuant to section 110(b)(ii). Nonprofit Dispensary Agents who are volunteers are only allowed to possess and manufacture marijuana at a Nonprofit Dispensary location. Nonprofit Dispensary Agents who are volunteers may not dispense or transport marijuana.

(ii) A Nonprofit Dispensary with a growing location in addition to the location of the Nonprofit Dispensary must label the marijuana that is being moved between the growing location and Nonprofit Dispensary with a trip ticket that identifies the Nonprofit Dispensary by identification number, the time, date, origin, and destination of the material being transported, and the amount and form of marijuana and marijuana material that is being transported.

Section 111. Prohibitions for Nonprofit Dispensaries.

(a) A Nonprofit Dispensary may not dispense, deliver or otherwise transfer marijuana to a person other than a Qualifying Patient who has designated

the Nonprofit Dispensary to cultivate marijuana for them.

(b) The Department shall immediately revoke the Registry Identification Card of any Nonprofit Dispensary Agent who has dispensed, delivered or otherwise transferred marijuana to a person other than a Qualifying Patient, and such a person shall be disqualified from serving as a Nonprofit Dispensary Agent.

(c) A person who has been convicted of an Excluded Felony Offense shall not be a Nonprofit Dispensary Agent.

Section 112. Local regulation. This chapter does not prohibit a city, incorporated town or county of this State from limiting the number of Nonprofit Dispensaries that may operate in the political subdivision or from enacting reasonable zoning regulations applicable to Nonprofit Dispensaries.

Section 113. Prohibited conduct for Physicians. A Physician shall not:

(a) Accept, solicit, or offer any form of pecuniary remuneration from or to a Nonprofit Dispensary or other provider of medical marijuana.

(b) Offer a discount or other thing of value to a patient who uses or agrees to use a particular Nonprofit Dispensary.

(c) Examine a patient for purposes of diagnosing a Qualifying Medical Condition at a location where medical marijuana is sold or distributed.

(d) Hold an economic interest in a Nonprofit Dispensary if the Physician certifies the Qualifying Medical Condition of a patient for participation in the medical marijuana program.

Section 114. Enforcement

(a) Department failure to adopt rules. If The Department fails to adopt rules to implement this chapter within the time prescribed, any person who would be a Qualifying Patient under this chapter may commence a mandamus action in Pulaski County Circuit Court to compel The Department to perform the actions mandated pursuant to the provisions of this chapter.

(b) Department failure to issue a valid Registry Identification Card. If The Department fails to issue a valid Registry Identification Card or a registration certificate in response to a valid application or renewal submitted pursuant to this chapter within 45 days of its submission, the

Registry Identification Card or registration certificate is deemed granted, and a copy of the registry identification application or renewal is deemed a valid Registry Identification Card.

(c) Department failure to accept applications. If at any time after the effective date of this chapter, allowing time for adoption of rules, The Department is not accepting applications, a notarized statement by a Qualifying Patient containing the information required in an application, pursuant to section 105(a), is deemed a valid Registry Identification Card.

Section 115. Taxation. The sale of Usable Marijuana is subject to all state and local sales taxes.

Section 116. No implied repeal. By adoption of this Act, there is no implied repeal of the existing Arkansas laws criminalizing possession of marijuana for purposes not specified in this act. This act also acknowledges that marijuana use, possession, and distribution for any purpose remain illegal under Federal law.

Section 117. Severability. If any provision or section of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provisions or application of the Act which can be given effect without the invalid provisions or applications, and to this end the provisions of the Act are declared to be severable.