Opinion No. 2013-079

August 6, 2013

Melissa Fults, Campaign Director
Arkansans for Compassionate Care 2014
Post Office Box 420
Hensley, Arkansas 72065

Dear Ms. Fults:

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). Five similar measures were rejected due to ambiguities in the text of the proposed acts. *See* Ops. Att'y Gen. 2013-046, 2013-033, 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, in 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 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 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 qualifying patients' medical use of marijuana; allowing limited cultivation of marijuana by qualifying patients and designated caregivers if the qualifying patient and his or her designated caregiver lacks access to reasonable transportation to a nonprofit dispensary and obtains a hardship cultivation certificate from the Department of Health; allowing 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, hardship cultivation certificates; 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; directing the Department of Health to establish a system to provide affordable marijuana from nonprofit dispensaries to low income patients; establishing qualifications for registry identification cards; establishing qualifications for hardship cultivation certificates; 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 number of 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; prohibiting felons from serving as designated caregivers, owners, board members, or officers of nonprofit dispensaries, or as nonprofit dispensary agents; allowing visiting qualifying patients suffering from qualifying medical conditions to utilize the Arkansas Medical Marijuana Program; and directing the sales tax revenues received from the sale of marijuana to cover the costs to the Department of Health for administering the Medical Marijuana Program and fifty percent (50%) of the remainder to the Newborn Umbilical Cord Initiative Fund and fifty percent (50%) to drug education programs administered through the Department of Human Services.

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, consistent with Arkansas Supreme Court precedent, unless the measure is "clearly contrary to law,"[1] this office will not require that a measure's proponents acknowledge in the ballot title any possible constitutional infirmities. As part of my review, however, I may address constitutional concerns for consideration by the measure's proponents.

Consequently, this review has been limited primarily to a determination, pursuant to the guidelines that have been set forth by the Arkansas Supreme Court, discussed below, of whether the popular name and ballot title you have submitted accurately and impartially summarize the provisions of your proposed amendment.

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[1] *See 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); *Plugge v. McCuen,* 310 Ark. 654, 841 S.W.2d 139 (1992).

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]

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

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[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).

[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.

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).

I refer to the following ambiguities:

-The meaning of the phrase "any part and any variety of species, or both," which appears in the definition of "Marijuana," is not clear.

-The word "Marijuana" is defined to include seeds and growing plants. Section 103(e) refers to "Marijuana, Marijuana seeds, seedlings, and plants." The latter usage implies, of course, that "Marijuana" does not include "Marijuana seeds, seedlings [or] plants," and introduces ambiguity. Similar usage occurs elsewhere in the proposal.

-"Medical Use" is defined to include "cultivation" and "manufacture." Section 103(a) provides that Qualifying Patients may engage in Medical Use subject to a quantity possession limit. The proposal would therefore permit any Qualifying Patient to grow Marijuana, subject to the possession limit, without any necessity of acquiring a Hardship Cultivation Certificate. Your proposed ballot title refers to cultivation only by those with Hardship Cultivation Certificates, which suggests that you intended that only those persons be permitted to grow Marijuana. The provision is therefore ambiguous.

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[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).

-Section 103(h) provides that "A Designated Caregiver may receive compensation for costs, including reasonable labor costs. . . ." The sentence is ambiguous. One might receive compensation for time or services, or reimbursement for costs or expenses. The sentence implies that Designated Caregivers may pay laborers in connection with a Qualifying Patient's Medical Use and receive reimbursement from the Qualifying Patient for those payments. Such an arrangement does not, however, appear to be contemplated elsewhere in the proposal.

-Section 103(k) is ambiguous in purporting to make the property described therein exempt from seizure and forfeiture in all cases and under all laws that might otherwise provide for seizure or forfeiture, not just state laws providing for seizure or forfeiture in connection with marijuana violations.

-By its terms, the affirmative defense set forth in section 108 is available only when an initial application for a Registry Identification Card has not been reviewed, or the card has not been issued. Section 108(b)(1) is therefore ambiguous in describing an eventuality that can never occur, and section 108(c) is ambiguous in characterizing an impossibility as unnecessary.

-Section 109(e) provides that a Nonprofit Dispensary may possess seedlings obtained under section 103(e) via transfer from a third party. It also provides that a Nonprofit Dispensary may possess larger plants. There appears to be no authorization to possess seedlings grown by the Nonprofit Dispensary itself, creating ambiguity with respect to basic Nonprofit Dispensary operations.

-The proposal contains several references to Qualifying Medical Conditions "as set forth in subsection 102(j)" or the like. That subsection does not define that term.

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

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Enclosure

(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 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 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 QUALIFYING PATIENTS' MEDICAL USE OF MARIJUANA; ALLOWING LIMITED CULTIVATION OF MARIJUANA BY QUALIFYING PATIENTS AND DESIGNATED CAREGIVERS IF THE QUALIFYING PATIENT AND HIS OR HER DESIGNATED CAREGIVER LACKS ACCESS TO REASONABLE TRANSPORTATION TO A NONPROFIT DISPENSARY AND OBTAINS A HARDSHIP CULTIVATION CERTIFICATE FROM THE DEPARTMENT OF HEALTH; ALLOWING 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, HARDSHIP CULTIVATION CERTIFICATES; 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; DIRECTING THE DEPARTMENT OF HEALTH TO ESTABLISH A SYSTEM TO PROVIDE AFFORDABLE MARIJUANA FROM NONPROFIT DISPENSARIES TO LOW INCOME PATIENTS; ESTABLISHING QUALIFICATIONS FOR REGISTRY IDENTIFICATION CARDS; ESTABLISHING QUALIFICATIONS FOR HARDSHIP CULTIVATION CERTIFICATES; 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 NUMBER OF 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; PROHIBITING FELONS FROM SERVING AS DESGINATED CAREGIVERS, OWNERS, BOARD MEMBERS, OR OFFICERS OF NONPROFIT DISPENSARIES, OR AS NONPROFIT DISPENSARY AGENTS; ALLOWING VISITING QUALIFYING PATIENTS SUFFERING FROM QUALIFYING MEDICAL CONDITIONS TO UTILIZE THE ARKANSAS MEDICAL MARIJUANA PROGRAM; AND DIRECTING THE SALES TAX REVENUES RECEIVED FROM THE SALE OF MARIJUANA TO COVER THE COSTS TO THE DEPARTMENT OF HEALTH FOR ADMINISTERING THE MEDICAL MARIJUANA PROGRAM AND FIFTY PERCENT (50%) OF THE REMAINDER TO THE NEWBORN UMBILICAL CORD INITIATIVE FUND AND FIFTY PERCENT (50%) TO DRUG EDUCATION PROGRAMS ADMINISTERED THROUGH THE DEPARTMENT OF HUMAN SERVICES.

"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" (hereinafter "Act").

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

(a) "Assist," or "Assisting" means helping a Qualifying Patient make Medical Use of Marijuana by any means herein allowed.

(b) "Cardholder" means a Qualifying Patient, a Designated Caregiver, or a Nonprofit Dispensary Agent.

(c) "Designated Caregiver" means a person who is at least twenty-one (21) years of age who has agreed to Assist with a Qualifying Patient's Medical Use of Marijuana, including acquiring Marijuana from a Nonprofit Dispensary and delivering it to the Qualifying Patient, and who has registered with The Department pursuant to subsection 105(d). A Designated Caregiver may serve as a Designated Caregiver for no more than five (5) Qualifying Patients at a time. A person who has been found guilty or pleaded guilty or *nolo contendere* in a criminal proceeding, regardless of whether or not the adjudication of guilt or sentence is withheld by a court of this state, another state, or the federal government for any felony, shall not be a Designated Caregiver.

(d) "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.

(e) "Hardship Cultivation Certificate" means a document issued by The Department that identifies a location at the primary residence of a Qualifying Patient or Designated Caregiver that is approved for the Qualifying Patient or Designated Caregiver to cultivate Marijuana for the Qualifying Patient's Medical Use based on documentation of the Qualifying Patient's lack of access to a Nonprofit Dispensary. . A person who has been found guilty or pleaded guilty or *nolo contendere* in a criminal proceeding, regardless of whether or not the adjudication of guilt or sentence is withheld by a court of this state, another state, or the federal government for any felony, shall not be permitted to obtain a Hardship Cultivation Certificate.

(f) "Marijuana" means any part and any variety of species, or both, of the cannabis plant that contains tetrahydrocannabinol (THC) whether growing or not, the seeds of the plant, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Marijuana" does not include the mature stalks of the plant, fiber produced from the stalks, fiber, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted from the mature stalks), the sterilized seed of the plant that is incapable of germination, or the weight of any other ingredient combined with Marijuana to prepare topical or oral administrations, food, drink, or other products.

(g) "Medical Use" means the acquisition, possession, cultivation, preparation, manufacture, use, delivery, transfer or transportation of Marijuana or paraphernalia to treat or alleviate a Qualifying Patient's Qualifying Medical Condition or symptoms associated with the Qualifying Patient's Qualifying Medical Condition.

(h) "Nonprofit Dispensary" means a not-for-profit entity that has registered with The Department pursuant to section 109, and performs any combination of the activities therein described.

(i) "Nonprofit Dispensary Agent" means an employee, supervisor, volunteer, owner, or agent of a Nonprofit Dispensary who:

(1) Is twenty-one (21) years of age or older;

(2) Works at the Nonprofit Dispensary; and

(3) Has registered with The Department pursuant to section 109.

(j) "Physician" means a doctor of medicine who holds a valid and existing license to practice medicine pursuant to Arkansas Code Title 17, Chapter 95 or its successor; or a doctor of osteopathic medicine who holds a valid and existing license pursuant to Arkansas Code Title 17, Chapter 91 or its successor.

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

(1) 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;

(2) 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 six (6) months; severe nausea; seizures, including those characteristic of Epilepsy; or severe and persistent muscle spasms, including those characteristic of Multiple Sclerosis; or

(3) Any other medical condition or its treatment approved by The Department as provided for in subsection 104(g).

(l) "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 subsection 105(a).

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

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

(o) "Visiting Qualifying Patient" means a patient with a Qualifying Medical Condition who is not a resident of Arkansas or who has been a resident of Arkansas for less than thirty (30) days, and who is in actual possession of a Registry Identification Card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth or insular possession of the United States, and pertains to a Qualifying Medical Condition under this section.

(p) "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 an amount of Marijuana that:

(1) Is not more than two and one-half (2 ½) ounces of Marijuana; and

(2) If the Qualifying Patient has a Hardship Cultivation Certificate, does not exceed six (6) Marijuana plants, only three (3) of which may be greater than twelve (12) inches in height or diameter. The Marijuana plants must be kept in an Enclosed, Locked Facility unless they are being transported because the Qualifying Patient is moving, or they are being transported to the Qualifying Patient's property. In addition to the Marijuana plants, the Qualifying Patient may possess harvested Marijuana in varying stages of processing in excess of the amount allowed under subdivision (1) of this subsection in order to ensure the Qualifying Patient is able to maintain a sufficient supply to meet his or her personal medical needs. The harvested Marijuana must be kept in the Enclosed, Locked Facility where the Marijuana plants were grown.

(b) Designated Caregiver. A Designated Caregiver in actual possession of a Registry Identification Card may 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 Assisting a Qualifying Patient to whom the Designated Caregiver is connected through The Department's registration process with the Medical Use of Marijuana in accordance with this chapter, as long as the Designated Caregiver possesses an amount of Marijuana that:

(1) Is not more than two and one-half (2 ½) ounces of Marijuana for each Qualifying Patient to whom the Designated Caregiver is connected through The Department's registration process; and

(2) For each Qualifying Patient who has a Hardship Cultivation Certification and who has specified that the Designated Caregiver is allowed under state law to cultivate Marijuana for the Qualifying Patient, does not exceed six (6) Marijuana plants, only three (3) of which may be greater than twelve (12) inches in height or diameter, provided in no circumstance shall the total number of plants exceed thirty (30). The Marijuana plants must be kept in an Enclosed, Locked Facility unless they are being transported because the Designated Caregiver is moving or they are being transported to a Qualifying Patient's property. In addition to the Marijuana plants, the Designated Caregiver may possess harvested Marijuana in varying stages of processing in excess of the amount allowed under subdivision (1) of this subsection in order to ensure that each Qualifying Patient is able to maintain a sufficient supply to meet his or her personal medical needs. The harvested Marijuana must be kept in the Enclosed, Locked Facility where the Marijuana plants were grown.

(c) Presumption.

(1) 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.

(2) A Designated Caregiver is presumed to be lawfully engaged in Assisting with the Medical Use of Marijuana in accordance with this chapter if the Designated Caregiver 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.

(3) The presumptions made in subdivisions 103(c)(1) and 103(c)(2) 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 may 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 subsections 103(a) or 103(b) to a Qualifying Patient or Designated Caregiver 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

(1) A Nonprofit Dispensary may accept Marijuana, Marijuana seeds, seedlings, and plants from other Nonprofit Dispensaries in Arkansas. A Nonprofit Dispensary may transfer or sell Marijuana, Marijuana seeds, seedlings, and plants to other Nonprofit Dispensaries in Arkansas.

(2) A Nonprofit Dispensary may accept a donation of Marijuana, Marijuana seeds or seedlings, without compensation, from individuals and entities from jurisdictions outside of Arkansas who are allowed to cultivate Marijuana under the laws of their state of legal residency.

(3) Individuals and entities from jurisdictions outside of Arkansas who are allowed to cultivate Marijuana under the laws of their state of legal residency shall not be subject to arrest, prosecution, or penalty, or denied any right or privilege for donating Marijuana, Marijuana seeds, or seedlings to Nonprofit Dispensaries.

(f) Discrimination

(1) 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 or a Designated Caregiver, unless failing to do so would put the school or landlord in violation of federal law or regulations.

(2) For the purposes of medical care, including organ transplants, a Qualifying Patient's 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.

(3) 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 or Designated Caregiver.

(g) Person shall not be denied custody of or visitation with 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, unless the individual's behavior is such that it creates an unreasonable danger to the safety or welfare of the minor that can be established by clear and convincing evidence.

(h) Designated Caregiver may receive compensation for costs. A Designated Caregiver may receive compensation for costs, including reasonable labor costs, associated with Assisting a Qualifying Patient's Medical Use of Marijuana as long as the Designated Caregiver is connected to the Qualifying Patient through The Department's registration process. Any such compensation does not constitute the sale of controlled substances.

(i) 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.

(j) Person not subject to penalty for providing Qualifying Patient or Designated Caregiver 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 or a Designated Caregiver with Marijuana paraphernalia for purposes of facilitating a Qualifying Patient's Medical Use of Marijuana.

(k) 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, may not be seized or forfeited.

(l) 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 using or administering Marijuana.

(m) 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, in the jurisdiction of issuance, a Visiting Qualifying Patient to possess Marijuana for medical purposes, shall have the same force and effect as a Registry Identification Card issued by The Department, provided that the same Qualifying Medical Condition as defined in subsection 102(j) exists, except that a Visiting Qualifying Patient may not 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 Act are Rules as defined in Arkansas Code § 25-15-201 et seq., the Arkansas Administrative Procedure Act.

(b) Registry Identification Cards. Not later than one hundred twenty (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. The Department's Rules must establish application and renewal fees not to exceed fifty dollars ($50.00) per year. The Department may establish a sliding scale of application and renewal fees based upon a Qualifying Patient's family income. The Department may accept donations from private sources in order to reduce the application and renewal fees.

(c) Hardship Cultivation Certificates. Not later than one (1) year after the effective date of this chapter, The Department shall adopt Rules governing the manner in which it considers applications for and renewals of Hardship Cultivation Certificates. The Department's Rules must establish application and renewal fees not to exceed one hundred dollars ($100) per year. The Department may establish a sliding scale of application and renewal fees based upon a Qualifying Patient's family income. The Department may accept donations from private sources in order to reduce the application and renewal fees.

(d) Nonprofit Dispensaries. Not later than one hundred twenty (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 or their Designated Caregivers, including Rules governing:

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

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

(3) Oversight requirements for Nonprofit Dispensaries;

(4) Record-keeping requirements for Nonprofit Dispensaries;

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

(6) Sanitary requirements for Nonprofit Dispensaries;

(7) Electrical safety requirements for Nonprofit Dispensaries;

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

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

(10) Labeling standards for Marijuana distributed to Qualifying Patients;

(11) 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;

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

(13) Advertising restrictions for Nonprofit Dispensaries;

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

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

(e) Application and renewal fees for Nonprofit Dispensaries. Not later than one hundred twenty (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:

(1) Nonprofit medical Marijuana dispensary application fees may not exceed five thousand dollars ($5,000).

(2) Nonprofit medical Marijuana dispensary renewal fees may not exceed one thousand dollars ($1,000).

(f) Affordable dispensing. Not later than one hundred eighty (180) days after the effective date of this chapter, The Department shall adopt Rules establishing a system to provide for the safe and affordable dispensing of Marijuana to Qualifying Patients who are unable to afford a sufficient supply of Marijuana based upon the Qualifying Patient's income and existing financial resources that:

(1) Allow Qualifying Patients to apply to The Department to be eligible to purchase Marijuana on a sliding scale from Nonprofit Dispensaries; and

(2) Require each Nonprofit Dispensary to devote a percentage of its gross revenue, as determined by The Department, to providing Marijuana on the sliding scale to Qualifying Patients determined to be eligible pursuant to subdivision (1) of this subsection.

(g) Adding Qualifying Medical Conditions. Not later than one hundred twenty (120) 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 subsection 102(j).

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

(2) In considering such petitions, The Department shall add medical conditions or treatments to the list of Qualifying Medical Conditions set forth in subsection 102(j) 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 shall consider published studies in peer-reviewed journals, Physician testimony, and public comments made pursuant to subdivision 104(g)(2) in making such determination.

(3) The Department shall approve or deny such petitions within sixty (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.

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:

(1) Written Certification;

(2) Application or renewal fee;

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

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

(5) Name, street address and date of birth of the Qualifying Patient's Designated Caregiver, if any;

(6) Name and address of the Nonprofit Dispensary that the Qualifying Patient designates, if any. A Qualifying Patient may designate only one Nonprofit Dispensary at a time;

(7) A designation as to which Nonprofit Dispensary will cultivate Marijuana plants for the Qualifying Patient's Medical Use, or, if the Qualifying Patient obtains a Hardship Cultivation Certificate, a designation that the Qualifying Patient or the Qualifying Patient's Designated Caregiver will grow Marijuana for the Qualifying Patient's Medical Use;

(8) 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; and

(9) A signed statement from the Designated Caregiver, if any, agreeing to be the Qualifying Patient's Designated Caregiver and 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 shall not issue a Registry Identification Card to a Qualifying Patient who is under eighteen (18) years of age unless:

(1) 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

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

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

(B) Serve as one of the Qualifying Patient's Designated Caregivers; and

(C) Control the acquisition of the Marijuana and the dosage and 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 fourteen (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.

(d) Designated Caregiver Registry Identification Card. The Department shall issue a Registry Identification Card to the Designated Caregiver, if any, who is named in a Qualifying Patient's approved application pursuant to subsection 105(a). A person who has been found guilty or pleaded guilty or *nolo contendere* in a criminal proceeding, regardless of whether or not the adjudication of guilt or sentence is withheld by a court of this state, another state, or the federal government for any felony, shall not be a Designated Caregiver and shall not be issued a Designated Caregiver Registry Identification Card. The Department shall conduct a background check of each prospective Designated Caregiver in order to carry out this subsection.

(e) Registry Identification Card issuance. The Department shall issue Registry Identification Cards to Qualifying Patients and Designated Caregivers within five (5) days of approving an application or renewal under this section.

(1) Registry Identification Cards expire one (1) year after the date of issuance, unless the Physician states in the Written Certification that he believes the Qualifying Patient would benefit from the Medical Use of Marijuana only until a specified earlier date, then the Registry Identification Card shall expire on that date.

(2) In the case of Qualifying Patients and Designated Caregivers, Registry Identification Cards shall contain:

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

(B) The name, address and date of birth of the Qualifying Patient's Designated Caregiver, if any;

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

(D) A random, 10-digit alphanumeric identification number that is unique to the Qualifying Patient or Designated Caregiver;

(E) A photograph, if The Department decides to require one; and

(F) A clear designation showing whether the Qualifying Patient or Designated Caregiver will be allowed under state law to cultivate Marijuana plants for the Qualifying Patient's Medical Use.

(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.

(1) A Qualifying Patient shall notify The Department within fifteen (15) days of any change in the Qualifying Patient's name, address, Designated Caregiver or preference regarding who may cultivate Marijuana for the Qualifying Patient or if the Qualifying Patient ceases to have a Qualifying Medical Condition.

(2) A Nonprofit Dispensary shall notify The Department within fifteen (15) days of any change in the name or address of a Nonprofit Dispensary Agent issued a Registry Identification Card in accordance with subsection 109(g).

(3) A Qualifying Patient or a Nonprofit Dispensary who fails to notify The Department as required under subdivisions 105(f)(1) or 105(f)(2) commits a civil violation for which a penalty of not more than one hundred fifty dollars ($150) may be adjudged and collected by The Department.

(4) 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.

(5) A Designated Caregiver or Nonprofit Dispensary shall notify The Department of any change in the Designated Caregiver's or Nonprofit Dispensary's name or address within ten (10) days of such change. A Designated Caregiver or 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 one hundred fifty dollars ($150) may be adjudged and collected by The Department

(6) When a Qualifying Patient or Designated Caregiver notifies The Department of any changes listed in this subsection, The Department shall issue the Qualifying Patient and the Designated Caregiver a new Registry Identification Card within ten (10) days of receiving the updated information and a ten dollar ($10.00) fee.

(7) When a Qualifying Patient changes the Qualifying Patient's Designated Caregiver, The Department shall notify the previous Designated Caregiver within ten (10) days. The previous Designated Caregiver's protections as provided in this chapter expire ten (10) days after notification by The Department.

(8) If a Cardholder loses the Cardholder's Registry Identification Card, the Cardholder shall notify The Department and submit a ten dollar ($10.00) fee within ten (10) days of losing the card. Within five (5) days after such notification, The Department shall issue a new Registry Identification Card with a new random identification number.

(g) Confidentiality.

(1) Applications and supporting information submitted by Qualifying Patients and Designated Caregivers under this chapter, including information regarding Designated Caregivers and Physicians, are confidential as a medical record under The Health Insurance Portability and Accountability Act (HIPAA) of 1996 (P.L.104-191).

(2) The Department shall maintain a confidential list of the persons to whom The Department has issued Registry Identification Cards and Hardship Cultivation Certificates. Individual names and other identifying information on the list are confidential, exempt from the Arkansas Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., and not subject to disclosure except to authorized employees of The Department as necessary to perform official duties of The Department.

(3) The Department shall verify to law enforcement personnel whether a Registry Identification Card or Hardship Cultivation Certificate is valid without disclosing more information than is reasonably necessary to verify the authenticity of the Registry Identification Card or Hardship Cultivation Certificate.

(4) 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, employees of The Department 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 Cardholder under this chapter shall have his Registry Identification Card and Hardship Cultivation

Certificate 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 or Hardship Cultivation Certificate 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:

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

(2) The number of Qualifying Patients and Designated Caregivers approved in each county;

(3) The number of applications and renewals for Hardship Cultivation Certificates;

(4) The number of Hardship Cultivation Certificates approved in each county;

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

(6) The number of Registry Identification Cards revoked;

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

(8) The number of registered Nonprofit Dispensaries; and

(9) The number of Nonprofit Dispensary Agents.

SECTION 106. Hardship Cultivation Certificates

(a) Application for Hardship Cultivation Certificates; qualifications. The Department shall issue Hardship Cultivation Certificates to Qualifying Patients who, in accordance with Rules issued by The Department, submit:

(1) A written explanation and supporting documentation of the Qualifying Patient's need for a Hardship Cultivation Certificate based on a physical incapacity to access reasonable transportation to a Nonprofit Dispensary, lack of a Designated Caregiver with access to reasonable transportation to a Nonprofit Dispensary, and lack of a Nonprofit Dispensary that will deliver medical Marijuana to the Qualifying Patient's residence;

(2) An application or renewal fee;

(3) A copy of the Qualifying Patient's Registry Identification Card;

(4) The address and description of the single location that shall be used for the cultivation of Marijuana, which shall be either the primary residence of the Qualifying Patient or the Designated Caregiver; and

(5) Any other information required by The Department.

(b) 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 thirty (30) 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 Hardship Cultivation Certificate revoked, The Department determines that the Qualifying Patient does not have a verified hardship and is capable of obtaining Marijuana from a registered Nonprofit Dispensary, or The Department determines that the information provided was falsified. 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.

(c) Hardship Cultivation Certificate issuance. The Department shall issue Hardship Cultivation Certificates to Qualifying Patients within five (5) days of approving an application or renewal under this section. Hardship Cultivation Certificates expire one (1) year after the date of issuance.

(d) Notification of changes in status. This subsection governs notification of changes in status.

(1) A Qualifying Patient shall notify The Department within fifteen (15) days if the Qualifying Patient ceases to have the hardship which qualified the Qualifying Patient for a Hardship Cultivation Certificate under subdivision 106(a)(1).

(2) The Hardship Cultivation Certificate becomes void upon receipt by The Department that the Qualifying Patient ceases to have a qualifying hardship.

(e) Location of cultivation. This subsection governs the location of cultivation.

(1) A Qualifying Patient with a Hardship Cultivation Certificate may only cultivate Marijuana at the location specified in the application and approved by The Department.

(2) The Hardship Cultivation Certificate must be displayed and clearly visible at the location where Marijuana is cultivated.

(3) At any given location, cultivation may occur pursuant to only one (1) Hardship Cultivation Certificate unless it is the primary residence of more than one (1) Qualifying Patient for whom The Department has approved a Hardship Cultivation Certificate for that location or it is the primary residence of a Designated Caregiver who is the Designated Caregiver for more than one (1) Qualifying Patient for whom The Department has approved a Hardship Cultivation Certificate for that location.

(4) Marijuana cultivation and storage of Marijuana produced by the cultivation shall be in an Enclosed, Locked Facility.

(f) Inspection of cultivation. The Department may inspect and search the location of cultivation specified in a Hardship Cultivation Certificate during business hours.

SECTION 107. Scope

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

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

(2) Possess, smoke, or otherwise engage in the Medical Use of Marijuana:

(A) In a school bus;

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

(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;

(3) 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

(4) Use Marijuana if that person does not have a Qualifying Medical Condition.

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

(1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the Medical Use of Marijuana;

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

(3) 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

(4) A landlord to permit a Qualifying Patient to smoke Marijuana on any or in any leased property, except that a landlord shall not prohibit the Medical Use of Marijuana on leased property by a Qualifying Patient through means other than smoking, including but not limited to the ingestion of medical Marijuana or the inhalation through vaporization, as long as the tenant in possession of the property provides permission to the Qualifying Patient to use medical Marijuana in the rented property.

(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 five hundred dollars ($500) payable to The Department, 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 108. Affirmative defense and dismissal for medical Marijuana

(a) Affirmative defense. Except as provided in subsection 107(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:

(1) 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 (30) days;

(2) The individual's application meets the requirements of a Qualifying Patient or Designated Caregiver; and

(3) The individual is in compliance with the requirements imposed by this act in section 103.

(b) Limitations. The defense and motion to dismiss shall not prevail if either of the following are proven:

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

(2) The purposes for the possession or cultivation of Marijuana were not solely for Medical Use.

(c) Possession of Registry Identification Card not required. 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) Protections. If an individual demonstrates a Medical Use of Marijuana pursuant to this section, except as provided in subsection 107(a), the individual shall not be subject to the following:

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

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

SECTION 109. Registration, certification of Nonprofit Dispensaries

(a) Nonprofit Dispensary registration required. Nonprofit Dispensaries shall register with The Department.

(b) Issuing Nonprofit Dispensary registration certificates. Not later than sixty (60) days after receiving an application for a Nonprofit Dispensary, The Department shall register the Nonprofit Dispensary and issue a registration certificate and a random 10-digit alphanumeric identification number if:

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

(A) The application fee;

(B) An application, including:

(i) The legal name of the Nonprofit Dispensary;

(ii) 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 (1000') of a public or private school existing before the date of the Nonprofit Dispensary application;

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

(vi) Written procedures to ensure accurate record-keeping and adequate security measures;

(v) 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; and

(iv) A sworn statement that none of the Nonprofit Dispensary Agents is under twenty-one (21) years of age;

(2) None of the owners, board members, or officers has been found guilty or pleaded guilty or *nolo contendere* in a criminal proceeding, regardless of whether or not the adjudication of guilt or sentence is withheld by a court of this state, another state, or the federal government for any felony; and

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

(c) Number of Nonprofit Dispensaries limited. The Department shall not issue more than one (1) Nonprofit Dispensary registration certificate for every thirty (30) pharmacies that have obtained a pharmacy permit from the Arkansas State 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 Marijuana by Qualifying Patients in all parts of the state.

(d) Criminal background checks. The Department shall conduct criminal background checks on each prospective owner, board member, or officer in order to carry out subdivision 109(b)(2).

(e) Allowable conduct. A Nonprofit Dispensary registered under this section may acquire, possess, cultivate, manufacture, prepare, deliver, transfer, transport, supply, sell, and dispense Marijuana, Marijuana paraphernalia, and related supplies and educational materials, to Qualifying Patients who have designated it as their Nonprofit Dispensary and to their Designated Caregivers 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 possess

Marijuana seeds, stalks, and unusable roots, and Marijuana and Marijuana seedlings obtained as set forth in subsection 103(e). A Nonprofit Dispensary may also cultivate and possess whichever of the following quantities is greater:

(1) Ninety-five (95) Marijuana plants greater than twelve (12) inches in height or diameter, and the Marijuana produced by the plants; or

(2) Six (6) Marijuana plants greater than twelve (12) inches in height or diameter, and all Marijuana produced by the plants, for each Qualifying Patient who has designated the Nonprofit Dispensary to provide him or her with Marijuana for Medical Use.

(f) Tracking. 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 and each Qualifying Patient's Designated Caregivers. 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. The Department shall provide by Rule that the updated written statements may not be required more frequently than one (1) time per week.

(g) Nonprofit Dispensary Agent Registry Identification Card. The Department shall issue each Nonprofit Dispensary Agent a Registry Identification Card within ten (10) days of receipt of the person's name, address and date of birth under subdivision 109(b)(1)(B)(iii) or subsection 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:

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

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

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

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

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

(h) Felony exclusion. The Department shall not issue a Registry Identification Card to any Nonprofit Dispensary Agent who has been found guilty or pleaded guilty or *nolo contendere* in a criminal proceeding, regardless of whether or not the adjudication of guilt or sentence is withheld by a court of this state, another state, or the federal government for any felony. The Department shall conduct a background check of each prospective Nonprofit Dispensary Agent in order to carry out this subsection. The Department shall notify the Nonprofit Dispensary Agent 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 (1) year after the date of issuance. The Department shall issue renewal Nonprofit Dispensary registration certificates and renewal Registry Identification Cards within ten (10) days prior to their expiration. 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 110. 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. The Department shall give reasonable notice of an inspection and search under this subsection.

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

(1) 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 U.S.C. § 501(c)(3).

(2) A Nonprofit Dispensary shall not be located within one thousand feet (1000') of the property line of a pre-existing public or private school.

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

(4) 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.

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

(6) A Nonprofit Dispensary must have procedures for the oversight of the Nonprofit Dispensary and procedures to ensure accurate record keeping.

(7) Each Nonprofit Dispensary shall keep the following records, dating back at least one (1) year:

(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; and

(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 or Designated Caregiver.

(8) Each Nonprofit Dispensary shall:

(A) Conduct an initial comprehensive inventory of all Marijuana available for dispensing, Marijuana plants, and seedlings at each approved location on the date the Nonprofit Dispensary first dispenses Marijuana; and

(B) Conduct a monthly comprehensive inventory of all Marijuana, including Marijuana available for dispensing, Marijuana plants, and seedlings at each approved location.

(9) A Nonprofit Dispensary is prohibited from acquiring, possessing, cultivating, preparing, manufacturing, delivering, transferring, transporting, supplying or dispensing Marijuana for any purpose except to Assist Qualifying Patients with the Medical Use of Marijuana directly or through the Qualifying Patients' Designated Caregiver.

(10) All cultivation of Marijuana must take place in an Enclosed, Locked Facility.

(11) A Nonprofit Dispensary or a Nonprofit Dispensary Agent shall not dispense more than two and one-half (2 ½) ounces of Marijuana to a Qualifying Patient or to a Designated Caregiver on behalf of a Qualifying Patient during a fifteen (15) day period. Each time a Nonprofit Dispensary Agent dispenses Marijuana to a Qualifying Patient directly or through the Qualifying Patient's Designated Caregiver, 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 fifteen (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 records must be kept according to the registry identification number of the Qualifying Patient and Designated Caregiver, if any.

(12) The Nonprofit Dispensary records with Qualifying Patient information shall be treated as confidential medical record under The Health Insurance Portability and Accountability Act (HIPAA) of 1996 (P.L.104-191).

SECTION 111. Immunity for Nonprofit Dispensaries

(a) Protections for Nonprofit Dispensaries. No Nonprofit Dispensary shall be subject to the following:

(1) Prosecution for the Medical Use of Marijuana in accordance with the provisions of this chapter and any Rule adopted by The Department pursuant to this chapter;

(2) Inspection and search, except pursuant to subsection 110(a), or upon a search warrant issued by a court or judicial officer;

(3) Seizure of Marijuana, except upon any order issued by a court or judicial officer and with due process of law; or

(4) Imposition of any penalty or denial of 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 or Designated Caregivers with the Medical Use of Marijuana.

(b) Protections for Nonprofit Dispensary Agents. No Nonprofit Dispensary Agent 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.

SECTION 112. Prohibitions for Nonprofit Dispensaries.

(a) A Nonprofit Dispensary shall 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 or to the Qualifying Patient's Designated Caregiver, or another Nonprofit Dispensary.

(b) The Department shall immediately revoke the Registry Identification Card of a Nonprofit Dispensary Agent who is found to have violated subsection 112(a), and such a person shall be disqualified from serving as a Nonprofit Dispensary Agent.

(c) A person who has been found guilty or pleaded guilty or *nolo contendere* in a criminal proceeding, regardless of whether or not the adjudication of guilt or sentence is withheld by a court of this state, another state, or the federal government for any felony shall not be a Nonprofit Dispensary Agent. A Nonprofit Dispensary Agent in violation of this subsection commits a civil violation for which a fine of not more than $1,000 may be adjudged and collected by The Department. A Nonprofit Dispensary Agent in violation of this subsection and who at the time of the violation has been previously found to have violated this subsection commits a Class C misdemeanor.

SECTION 113. 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 as it sees fit or from enacting reasonable zoning regulations applicable to Nonprofit Dispensaries.

SECTION 114. 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 Marijuana.

(b) Offer a discount or other thing of value to a Qualifying 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 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 115. Enforcement

(a) Department failure to adopt Rules. If The Department fails to adopt Rules to implement this chapter within the time prescribed, any Arkansas citizen 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, Hardship Cultivation Certificate, or registration certificate. If The Department fails to issue a valid Registry Identification Card, Hardship Cultivation Certificate, or a registration certificate in response to a valid application or renewal submitted pursuant to this chapter within forty-five (45) days of its submission, the Registry Identification Card, Hardship Cultivation Certificate, or registration certificate is deemed granted, and a copy of the application or renewal is deemed a valid Registry Identification Card, Hardship Cultivation Certificate, or registration certificate.

(c) Department failure to accept applications for Registry Identification Cards. 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 subsection 105(a), is deemed a valid Registry Identification Card.

(d) Department failure to accept applications for Hardship Cultivation Certificates. If at any time after the effective date of this chapter, allowing time for adoption of Rules, The Department is not accepting applications for Hardship Cultivation Certificates, a notarized statement by a Qualifying Patient containing the information required in an application, pursuant to section 106(a), is deemed a valid Hardship Cultivation Certificate.

SECTION 116. Taxation and distribution of proceeds.

(a) The sale of Marijuana under this chapter is subject to all state and local taxes.

(b) The state sales tax revenues received by the Department of Finance and Administration from the sale of Marijuana under this chapter shall be distributed as special revenue to The Department to cover the cost of administering this chapter. Any remaining revenue shall be allocated as special revenues as follows:

(1) Fifty percent (50%) shall be credited to the Newborn Umbilical Cord Blood Initiative Fund, Arkansas Code § 19-5-1239.

(2) Fifty percent (50%) shall be credited to drug education programs administered through the Arkansas Department of Human Services.

SECTION 117. 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. Nothing in this Act requires the violation of federal law or purports to give immunity under federal law.

SECTION 118. 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.