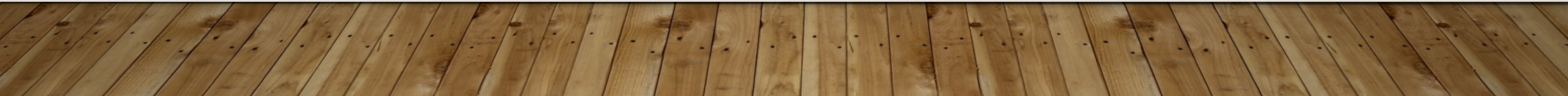


MARIJUANA AMENDMENT, LEGISLATION AND PRACTICAL SOLUTIONS

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OVERVIEW

- History of Medical Marijuana,
- Our Amendment and Legislation,
- Federal Cases touching on Med. Marijuana,
- Other Cases.

UP IN SMOKE

The Background and History of Medical Marijuana

What is Marijuana?

- Expensive
- Somewhere in Little Rock, I'm sure
- Marijuana is a mix of dried, shredded leaves, stems, seeds and flowers of the cannabis plant. Delta-9-tetrahydrocannabinol, or THC, is the main psychoactive ingredient in marijuana.
- Marijuana's potential for therapeutic or harmful effects is the subject of much debate.
 - Studies have shown that marijuana smoke includes carcinogens known to cause cancer and can cause respiratory issues such as bronchitis.
 - Although there are laboratory studies that show that oral THC (the active ingredient in marijuana) and smoked marijuana may reduce pain and nausea, the types of studies needed by the federal government to determine if smoked marijuana can be effective and safe for treating those conditions have not yet been conducted.

So is it good or bad?

- Depends who you ask:
- **What do supporters say?**
 - Polls indicate that over 80 percent of Arkansans support patients being able to use medical marijuana when prescribed by a physician.
 - Many people know somebody who has been sick and used marijuana to help with their suffering.
 - New jobs would be created – somebody has to build the dispensaries, work in them and supply them with goods.
- **What do opponents say?**
 - There are Food and Drug Administration-approved treatment alternatives for all the medical conditions proposed to be treated with marijuana.
 - It will create a hardship for business owners to maintain a drug free workplace due to the numerous safe guards built into the amendment that protect the user interests over the interests of the employer.

History of Marijuana

- 6000 BC – Cannabis seeds used as food in China
- "The earliest record of man's use of cannabis comes from the island of Taiwan located off the coast of mainland China. In this densely populated part of the world, archaeologists have unearthed an ancient village site dating back over 10,000 years to the Stone Age.
- Scattered among the trash and debris from this prehistoric community were some broken pieces of pottery the sides of which had been decorated by pressing strips of cord into the wet clay before it hardened. Also dispersed among the pottery fragments were some elongated rod-shaped tools, very similar in appearance to those later used to loosen cannabis fibers from their stems." . K. Chang, *The Archaeology of Ancient China* (New Haven: Yale University Press, 1968), pp. 111-12; C.T. Kung, *Archeology in China* (Toronto: University of Toronto Press, 1959), 1:131.
- 4000 BC – Textiles made of hemp in China
- 2727 BC – first recorded medicinal use in Chinese Pharmacopoeia
- "According to Chinese legend, the emperor Shen Nung (circa 2700 BC; also known as Chen Nung) [considered the Father of Chinese medicine] discovered marijuana's healing properties as well as those of two other mainstays of Chinese herbal medicine, ginseng and ephedra."
- 1400 BC to AD – trade moves product through India, Mediterranean countries, Europe – numerous medicinal uses reported

History of Marijuana

- 1378 – Emir of the Ottoman Empire makes the first edict against eating hashish or smoking cannabis – 1st “War on Drugs”
- 1484, Pope Innocent VIII labelled cannabis as ‘an unholy sacrament of the Satanic mass’ and banned cannabis medicine.
 - This Is Cannabis By Nick Brownlee
- 1798 – Napoleon declared total prohibition on marijuana after realizing much of the Egyptian lower class were habitual smokers
 - His troops brought hashish back to France from the east.
- 1868 – Egypt – 1st modern country to outlaw cannabis ingestion
- 1890 – Hashish made illegal in Turkey

History of Marijuana

- Introduced to North America in 1600s by Puritans – Hemp for ropes, sails, clothing; cannabis a common ingredient in medicines, sold openly in pharmacies
- 1937 – Marijuana Tax Act – transfer of cannabis illegal throughout US except for medicinal and industrial use, expensive excise tax and detailed logs required
- 1969 – found to be unconstitutional since it violated 5th Amendment privilege against self-recrimination - *Leary v. United States*, 395 U.S. 6, 89 S. Ct. 1532, 23 L. Ed. 2d 57 (1969), *aff'd*, 544 F.2d 1266 (5th Cir. 1977)

Leary v. United States

- The Marihuana Tax Act of 1937, required stringent reporting requirements for those engaged in the marijuana business (Despite said business being illegal).
- Penalties for involvement with marijuana increased, in certain states the penalties were harsh. Judges had the option of sentencing a marijuana seller or user to life imprisonment. In Georgia, a second offence of selling marijuana to a minor could be punishable by death.
- The Court ruled that the registration requirement in the Act violated famed drug-proponent Timothy Leary's Fifth Amendment right against self-incrimination.
- One justice wrote, “[i]f read according to its terms, the Marihuana Tax Act compelled petitioner to expose himself to a ‘real and appreciable’ risk of self-incrimination, within the meaning of our decisions . . .”

University of Mississippi Becomes Official Grower

- "Since about 1968 the University of Mississippi has held a registration from the DEA or its predecessor agency to cultivate marijuana for government use and research activities... [as] the only DEA-registered cultivator of marijuana. The University of Mississippi... supplies marijuana to researchers for studies ranging from chemical research to preclinical toxicology in animals to clinical work on humans." Mary Ellen Bittner, JD, Ruling in the Matter of Lyle E. Craker, PhD, Feb. 12, 2007.
- "Starting with the 1999 contract, the Univ. of Miss. subcontracted . . . the manufacture of marijuana cigarettes, analysis of the THC and moisture content of the cigarettes, and distribution of the cigarettes to researchers."

New Mexico Passes First State Law

- In 1978, New Mexico passed the first state law recognizing the medical value of marijuana Controlled Substances Therapeutic Research Act. Over the next few years, more than 30 states passed similar legislation.
- <http://medicalmarijuana.procon.org/sourcefiles/new-mexico-progress-report-1983.pdf>
- The controversial proposal: “to provide marijuana for medical use has been successfully implemented in New Mexico, no occasions have arisen regarding the misues or abuse of the drug, no problems have been encountered . . .”

San Francisco

- "The first medical marijuana initiative appeared in the city of San Francisco as Proposition P, which passed with an overwhelming 79% of the vote on Nov. 5, 1991.
- Proposition P called on the State of California and the California Medical Association to 'restore hemp medical preparations to the list of available medicines in California,' and not to penalize physicians 'from prescribing hemp preparations for medical purposes.'"
- Richard Glen Boire, JD Kevin Feeney, JD, Medical Marijuana Law, 2007

California Becomes First State to Legalize Medical Marijuana

- "Voters in California [pass] a state medical marijuana initiative in 1996. Known as Proposition 215, it permits patients and their primary caregivers, with a physician's recommendation, to possess and cultivate marijuana for the treatment of AIDS, cancer, muscular spasticity, migraines, and several other disorders; it also protects them from punishment if they recommend marijuana to their patients."
- Ballot Proposition 215 was approved on Nov. 5, 1996 by 56% of voters and became effective on Nov. 6, 1996.
- Things are starting to get fun out west.

Alaska, Oregon, and Washington Succeed

- "Fifty-eight percent of voters [in Alaska] approved Ballot Measure #8 on November 3, 1998. The law took effect on March 4, 1999. It removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess written documentation from their physician advising that they 'might benefit from the medical use of marijuana...'

Fifty-five percent of voters [in Oregon] approved Measure 67 on November 3, 1998. The law took effect on December 3, 1998. It removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess a signed recommendation from their physician stating that marijuana "may mitigate" his or her debilitating symptoms...

Fifty-nine percent of voters [in Washington] approved Measure 692 on November 3, 1998. The law took effect on that day. It removes state-level criminal penalties on the use, possession and cultivation of marijuana by patients who possess 'valid documentation' from their physician affirming that he or she suffers from a debilitating condition and that the "potential benefits of the medical use of marijuana would likely outweigh the health risks."

- http://norml.org/pdf_files/leaflet_summer_o1_web.pdf

“Rocky Mountain High”

Colorado

November 2000

Coloradoans passed Amendment 20

Colorado Department of Public Health and Environment was tasked with implementing and administering the Medical Marijuana Registry program

March 2001

Colorado Board of Health approved rules and regulations

June 2001

MMJ Registry began accepting applications for Registry Identification Cards.

The Flood Gates Opened

- **February 2009**
 - Obama administration indicated that Medical Marijuana prosecution would have low priority
- **October 2009**
 - Obama administration will not seek to arrest medical marijuana users and suppliers as long as they conform to state laws
- **Applications increased dramatically**
 - September 2009 – 3,523 applications received/month
 - December 2009 – 10,585 applications received/month

The Passage of Amendment 20

Storefront “Medical” Marijuana dispensaries sprouted like weeds!



The Rest

- Maine Becomes Fifth State to Legalize Medical Marijuana – 1999
- Hawaii Becomes Sixth State to Legalize Medical Marijuana – 2000
- Colorado and Nevada Become Seventh and Eighth States -2000
- Vermont Becomes Ninth State to Legalize Medical Marijuana – 2004
- Montana Becomes 10th State to Legalize Medical Marijuana – 2004
- Rhode Island Becomes 11th State to Legalize Medical Marijuana after Legislature Overrides Governor's Veto – 2006
- You get the idea, lets see some visuals!

■ States with Recreational Marijuana Laws ■ States with Medical Marijuana Laws



59.3%

of the U.S. population now lives in a state where marijuana has been legalized

29 states plus Washington DC have medical marijuana laws ...

19 plus Washington DC have operating dispensaries

8 states plus Washington DC have recreational marijuana laws ...

4 with operating retail stores

Arkansas Tries

- The Arkansas Medical Marijuana Question, also known as Issue 5, was an initiated state statute on the November 6, 2012 ballot in the state of Arkansas, where it was defeated.
- "Any individual who can acquire, grow or own his own marijuana is one step away from sharing with his friends who may not have any medical issues." Family Council Action Committee
- "I don't know if Arkansas is ready for medicinal marijuana or not. But if they are, I doubt they would want open dispensaries on the corners in various towns." Randy Laverty
- Issue 5 lost 51.44% to 48.56%

Arkansas Lights Up

- Going into the 2016 election, the possession and use of marijuana for medical purposes was illegal.
- Prior to the passage of Issue 6, medical marijuana was legal in 25 states, and cannabis oil was legal in an additional 15. While marijuana is still illegal at the federal level, enforcement of federal marijuana laws is often not strict against state-legal medical marijuana.
- Arkansans United for Medical Marijuana outraised opponents six to one. Supporters received about \$1.77 million, while opponents received \$285,112. Polls indicated a close race, with the last poll before the election showing support at 50 percent.

Where are we Going?

- Now that Issue 6 has passed we have a constitutional amendment and several acts amending the amendment.
- Currently, the big issues for Arkansas municipalities are:
 - **1. Employment and**
 - **2. Zoning**

Arkansas Medical Marijuana Amendment of 2016

Subtitle

Overview

- The AMMA has twenty-five sections, and most were amended in the 2017 legislative session.
- We'll do a quick overview of the AMMA but municipalities need to pay close attention to Sections 3, 6, and 8.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

- Permitting the production, supply, sales, and consumption of marijuana for medicinal purposes under state law.
 - **Medical Use-** the acquisition, possession, use, delivery, transfer or transportation of marijuana to treat or alleviate a *qualifying patient's qualifying medical condition*.
 - **Qualifying Patient-** person diagnosed by a *physician* as having a *qualifying medical condition* and registered with Department of Health.
 - Cannot be member of Arkansas National Guard or US military.
-

- **Physician-** doctor of medicine or osteopathic medicine holding a valid, unrestricted license to practice in Arkansas, and
 - Issued a registration from the US DEA to prescribe controlled substances.

- **Qualifying medical condition-** One or more of the following:

Cancer Glaucoma Positive status for HIV/AIDS Hepatitis C Amyotrophic lateral sclerosis Tourette's syndrome Crohn's disease,
Ulcerative colitis PTSD Severe arthritis Fibromyalgia Alzheimer's disease, Or

Treatment of conditions such as: A chronic or debilitating disease or medical condition, Or

Treatment producing one or more of following:

Cachexia or wasting syndrome Peripheral neuropathy intractable pain severe nausea seizures severe or persistent muscle spasms, And

Any other medical condition or treatment approved by Department of Health

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

- **Designated caregiver-**
 - Person at least 21 years old,
 - Not convicted of an *excluded felony offense*,
 - Assists physically disabled *qualifying patient* with medical use of marijuana, and
 - Registered with Department of Health
 - Can be a parent of qualified patient under 18 (must still register) but:
 - Cannot be member of Arkansas National Guard or US military.
-
- **Registry ID card-** issued by Department of Health,
 - Identifying as *qualified patient*, dispensary agent, cultivation facility agent, or *designated caregiver*.
 - **Usable Marijuana-** stalks, seeds, roots, dried leaves, flowers, oils, vapors, waxes, including other portions or mixtures of a marijuana plant.
 - **Excluded felony offense-** means:
 - A felony based on jurisdiction where offense occurred as determined by Medical Marijuana Commission, Department of Health, or Alcoholic Beverage Control Division upon review relevant conviction records unless;
 - Offense was sealed by a court or a pardon was granted.
 - Prior state or federal controlled-substance felony conviction unless,
 - Sentence was completed 10 years or more ago, or
 - Offense was sealed by court or a pardon was granted.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 3- Medical Use Protections

- *Qualifying patients or designated caregivers:*
 - Presumed to be lawfully engaged in medical marijuana use if
 - Possess *registry ID card*; and
 - Possesses less than 2.5 oz. of *usable marijuana*.
 - May rebut with evidence that use was not for treating or alleviating *qualifying medical conditions* or symptoms.
 - May offer or give, up to 2.5 oz., of usable marijuana to *qualifying patient* or *designated caregiver* for *qualifying patient's medical use*.
 - Protected from arrest, prosecution, penalty, or denial of right or privilege;
 - Cannot be refused enrollment by schools based on status unless the school's acceptance violates federal law or regulations;
 - Cannot be refused a lease by landlords based on status unless the landlord's acceptance violates federal law or regulation;
 - Must be considered same as physician's authorized medication use for medical care, including organ transplant.
- **Dispensaries** (entity licensed by Medical Marijuana Commission) may:
 - Accept, transfer, or sell *usable marijuana* from
 - Cultivation facilities,
 - Other dispensaries,
 - Out-of-state dispensaries if federally permissible, or
 - Any individual lawfully entitled to possession.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 3- Medical Use Protections --Employers--

- Employers shall not discriminate against, or penalize, applicants or employees based on their past or present status as a *qualifying patient* or *designated caregiver*.
- The Amendment safeguards employer's from cause of actions based on an employer:
 - Establishing or implementing a substance abuse or drug-free workplace policy, which may include drug testing (complying with state or federal law);
 - Acting on a good faith belief that a qualifying patient:
 - Possessed, smoked, ingested or engaged in marijuana use while on the employer's premises or during working hours;
 - ~~• Was under the influence of marijuana while on employer's premises or during working hours~~
 - Positive marijuana test result cannot be sole basis for employer's good faith belief.
 - Excluding qualified patients from safety sensitive positions based on good faith belief of current marijuana use
- Authorized or protected employer actions include:
 - Implementing, monitoring, assessing, supervising, or controlling the employee's job performance;
 - Reassigning the employee's position or duties;
 - Suspending, terminating, or placing the employee on leave;
 - Requiring successful completion of substance abuse program before returning to work;
 - Refusing to hire; or
 - Any combination of these factors.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 3—Medical Use Protections

- Employment discrimination damages under this Amendment limited to those available under Arkansas Civil Rights Act of 1993, Ark. Code Ann. § 16-123-101 *et seq.* and further limited by state or federal statutory limits on January 1, 2017.
- Employment back pay liability limited to two years prior to complaint filing.
- Employment discrimination claim under the Amendment has one year state of limitations.
- Custody, visitation, or parenting time cannot be denied solely for Amendment-allowed conduct, nor:
 - Abuse findings based solely on Amendment-allowed conduct; or
 - Presumptions of neglect or child endangerment based on Amendment-allowed conduct.
- Physicians cannot be arrested, prosecuted, or penalized in any manner solely for providing a written certification.
 - Provision not applicable to sanctions for failure to properly evaluate a patient's medical condition or violating applicable physician-patient standard of care.
- Allows persons to provide marijuana paraphernalia to facilitate qualifying patient's use.
- Prevents seizure and forfeiture of property associated with medical marijuana use.
- Forbids arresting, prosecuting, or penalizing persons assisting a physically disabled qualifying patient, or in vicinity of medical marijuana use.
- Recognizes extra-territorial registry ID cardholders (*visiting qualifying patients*) as having same effect and rights as state-issued cardholders and requiring Department of Health to promulgate necessary rules for dispensary sales to visiting qualifying patients.
- Pharmacists are also protected from arrest, prosecutions, and penalties (including disciplinary actions) when acting as a registered dispensary's pharmacist consultant.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

~~Section 4—Qualifying Patient—Administration and Enforcement—Rules~~

- Department of Health adopts, administers, and enforces provisions of Amendment concerning qualified patients, qualifying medical conditions, and designated caregivers, including registry ID cards.
- The Department must:
 - Require designated caregiver applicants to approve and pay for two-agency, criminal background checks conforming to federal standards;
 - Adopt rules within 180 days of the Amendment's effective date regarding:

 - Criteria for considering applications and renewals of registry ID cards;
 - Labeling and testing standards for marijuana, including additional warnings for combustion based marijuana;
 - Public petitions to add medical conditions or treatments to list of qualifying medical conditions;
 - Conditions or treatments added if patients suffering from the condition derive therapeutic benefit from medical marijuana use.
 - Department allowed 120 days after hearing to approve or deny petition.
 - Jurisdiction for judicial review vested in Pulaski County Circuit Court.
 - Manner in which designated caregiver assists physically disabled qualified patient or qualifying patient under 18 with medical marijuana use;
 - Any other necessary matters administering the Amendment.
- Department permitted to collect fines or fees for violation of rules adopted under this section.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 5- Registry ID Cards

- Department of Health shall issue registry ID cards to qualifying patients and designated caregivers submitting in accordance with promulgated rules:
 - Physician written certification submitted within thirty days of application;
 - Payment of department established application or renewal fees.
 - May establish sliding scale of application and renewal fees based upon a qualifying patient's family income;
 - The name, address, and date of birth of qualifying patient or designated caregiver, if homeless no address needed.
 - Name, address, and telephone number of qualifying patient's physician; and
 - Signed statement from qualifying patient or designated caregiver pledging not to divert marijuana to anyone not allowed possession under amendment.

- Designated caregiver applications also require:
 - Name of physically disabled qualifying patient or qualifying patient under age 18 applicant will be assisting; and
 - Documentation from qualifying patient's physician indicating that qualifying patient is physically disabled or under eighteen.
- Department prohibited from issuing registry ID card to a qualifying patient under eighteen unless:
 - Qualifying patient's physician explains potential risks and benefits of medical marijuana use to qualifying patient and parent, guardian, or person with legal custody of qualifying patient; and
 - Parent, guardian, or person with legal custody:
 - Consents in writing to:
 - Allow qualifying patient's medical marijuana use;
 - Assist qualifying patient in medical marijuana use;
 - Control acquisition, dosage, and frequency of qualifying patient's medical marijuana use; and
 - Registers as designated caregiver under Amendment.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 5- Registry ID Cards

- Department has fourteen days to review application or renewal information after receiving it.
- Application or renewal will be denied if:
 - Applicant previously had registry ID card revoked; or
 - Department determines improper written certification
 - Not in context of physician-patient, or
 - Fraudulently obtained.
 - Application or renewal rejection is final agency action, subject to judicial review with jurisdiction in Pulaski County Circuit Court.
- Registry ID cards expire one year after issuance unless physician states in written certification that believes qualifying patient would benefit from medical marijuana use only until a specified earlier date.
- All qualified patient or designated caregiver submitted application or renewal information under this amendment is considered confidential records and exempt from Freedom of Information Act of 1967.
 - Department shall keep a confidential list of persons issued registry ID cards.
 - Confidential list information may be shared with Alcoholic Beverage Control Division, Medical Marijuana Commission as necessary and State Insurance Department for purposes of Arkansas all-payer claims database.
 - Individual names and other identifying information on confidential list are exempt from the Freedom of Information Act of 1967, and not subject to disclosure except to authorized employees of department, division, and commission as necessary to perform official duties.
 - Validity of registry ID card shall be provided to law enforcement only to extent reasonably necessary to verify authenticity.
 - Any person knowingly breaching the confidentiality of information under this amendment commits Class A misdemeanor.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 5- Registry ID Cards

- Registry ID card subject to revocation and other penalties established by law when:
 - Cardholder transfers of marijuana to non-qualifying patient or designated caregiver; or
 - Cardholder knowingly violates any provision of this Amendment.
 - Except that cardholder may give up to 2.5 oz. of usable marijuana to another cardholder.
- Department, Division, and Commission must submit an annual report to General Assembly protecting confidential cardholder and physician information but containing:
 - Registry ID card applications and renewals filed;
 - Nature of qualifying patient's qualifying medical conditions;
 - Number of registry ID cards as well as dispensary and cultivation facility revocations;
 - Number of physicians giving written certifications;
 - Number of licensed dispensaries;
 - Number of licensed cultivation facilities;
 - Number of dispensary agents; and
 - Number of cultivation facility agents.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 6- Scope

- The Amendment does not allow persons to:
 - Undertake tasks under the influence of marijuana constituting negligence or professional malpractice;
 - Possess, smoke, or engage in medical marijuana use:
 - On a school bus;
 - On daycare center, preschool, primary or secondary school, college, or university grounds;
 - At drug or alcohol treatment facilities;
 - ~~At community or recreational facilities;~~
 - In a correctional facility;
 - On any form of public transportation;
 - In a public place; or
 - On property under the control of Arkansas National Guard or the US military; or
 - Operate, navigate, or be in actual physical control of a motor vehicle, aircraft, motorized watercraft, or any other vehicle drawn by power other than muscle power while under the influence of marijuana.
 - Smoke marijuana:
 - Where tobacco smoking is prohibited by law;
 - In the presence of persons under 14 years of age;
 - Inside a motor vehicle, aircraft, motorized watercraft, or any vehicle drawn by more than muscle power;
 - Knowingly in presence of a pregnant woman; or
 - Where medical marijuana smoking is likely to cause another unauthorized person to be under the influence of marijuana; or
 - Smoke medicinal marijuana if the person is under 21 years old.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 6- Scope

- Amendment does not require:
 - Governmental medical assistance programs or private health insurers to reimburse costs associated with medical marijuana use unless federal law requires reimbursement;
 - Employers to accommodate ingestion of marijuana in a workplace or an employee working while under influence of marijuana;
 - A property owner to allow a guest, client, customer, or other visitor to use marijuana on or in that property;
 - A property owner to admit an inebriated guest, client, customer, or other visitor resulting from medical marijuana use;
 - A landlord to permit a qualifying patient to smoke marijuana on or in leased property; or
 - Landlord may not prohibit medical marijuana use through non-smoking means on leased property by a qualifying patient.
 - Public schools to permit a qualifying patient student to attend a school event, or participate in extracurricular activities in violation of the public school's student discipline policies when a school office has good faith belief that the qualifying patient's behavior is impaired.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 7- Affirmative Defense and Dismissal for Medical Use of Marijuana

- Unless prohibited in this Amendment, persons may offer medical reasons for marijuana use as affirmative defenses to prosecution for offenses involving marijuana intended for the individuals medical use, and the defense is presumed valid where the evidence demonstrates that the individual is:
 - A qualifying patient or designated caregiver; and
 - No need for actual possession of registry ID card to raise defense.
 - Complying with the requirements of section 3 of this Amendment.
 - Affirmative defense will not prevail if:
 - The persons registry ID card was revoked when offense occurred; or
 - The marijuana possession was not solely for medical use.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 8- Licensing of Dispensing and Cultivation Facilities

- A dispensary or cultivation facility license can only be issued and/or transferred to a natural person.
- Dispensary and cultivation facility licenses expire annually on June 30, and are renewable on or before that date.
- Medical Marijuana Commission permitted to charge reasonable license renewal fees.
- Medical Marijuana Commission and Alcoholic Beverage Control Division permitted to collect fines and fees for rule violation.
- Dispensary or cultivation facility owners, board members, or officers cannot be:
 - Convicted of excludable felony offense;
 - Own more than one dispensary and cultivation facility;
 - Owned a previously revoked dispensary or cultivation facility; and
 - Be under 21 years old.
- The following persons must be current Arkansas residents and residing in Arkansas the prior seven consecutive years:
 - Applicants for dispensary and cultivation facility licenses; and
 - 60% of persons owning interests in a dispensary or cultivation facility.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 8- Licensing of Dispensing and Cultivation Facilities

- Dispensaries and cultivation facilities are licensed by the Medical Marijuana Commission.
 - Commission given 180 days after Amendment's effective date to adopt rules concerning:
 - How dispensary and cultivation facility applications and renewals are considered;
 - Form and content of applications and renewals;
 - License application and renewal fees; and
 - Dispensary application capped at \$7,500;
 - Cultivation facility application capped at \$15,000;
 - Commission may prorate (up to 50%) application fees between January 1 and July 1.
 - Matters necessary for fair, impartial, stringent, and comprehensive administration.
- Commission must accept dispensary and cultivation facility applications (may also issue temporary licenses) by July 1, 2017, applications must include:
 - Application fees;
 - Dispensary or cultivation facility's legal name;
 - Dispensary or cultivation facility physical address;
 - Dispensaries cannot be within 1,500' of public or private schools, churches, or daycare centers existing at time of application;
 - Cultivation facilities cannot be within 3,000' of public or private schools, churches, or daycare centers existing at time of application.
 - Distance measured from entrance of dispensary or cultivation facility to nearest excludable property boundary.
 - Name, address, and birthdate of all dispensary or cultivation facility agents; and
 - A sworn zoning compliance statement where zoning restrictions apply.
- Commission to issue 20-40 dispensary licenses and 4-8 cultivation facility licenses.
 - No more than 4 dispensaries in any county.
- Must conduct a two bureau criminal background checks for each application.
- Develop rules with Department of Health determining reasonably necessary amounts of cultivation facility marijuana production.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 8- Licensing of Dispensing and Cultivation Facilities

- The Alcoholic Beverage Control Division administers and enforces the Amendment's provisions regarding dispensaries and cultivation facilities.
 - Division directed to adopt rules necessary to carry out this task.
 - Division given 180 days after Amendment's effective date to adopt rules concerning:
 - Oversight;
 - Recordkeeping;
 - Security;
- Personnel;
- Manufacture, processing, packaging, labeling, and dispensing usable marijuana;
 - Usable marijuana in pre-sale food or drink must not exceed 10 mg active tetrahydrocannabinol per portion and marked accordingly; and
 - Where food or drink portions are undetermined entire combined amount cannot exceed 10 mg active tetrahydrocannabinol.
- Suspension, termination, penalties, and review procedures;
- Investigation and inspection procedures;
- Advertising restrictions necessary to avoid any appeal to children;
 - Includes artwork, building signage, product design (shapes and flavors), child-proof packaging, indoor displays, and other marketing forms.
- Marijuana disposal procedures; and
- Matters necessary for fair, impartial, stringent, and comprehensive administration.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 8- Licensing of Dispensing and Cultivation Facilities

- Licensed dispensaries may acquire, possess, manufacture, process, prepare, deliver, transfer, transport, supply, and dispense non-combustion based marijuana to qualifying patients or designated caregivers:
 - Marijuana,
 - Marijuana paraphernalia, and
 - Related supplies and educational materials.
 - Provide marijuana smoking or combusting potential health risk warnings; and
 - Provide potential health benefits of vaporizing.
- Licensed dispensaries may:
 - Receive compensation for goods and services offered;
 - Contract with licensed transporters, distributors, or processors;
 - May grow 50 mature marijuana plants at any one time plus seedlings; and
 - Contract with cultivation facilities to cultivate portions of the mature marijuana plants dispensary permitted to grow.
- Licensed cultivation facilities may:
 - Cultivate and possess reasonably necessary amounts of usable marijuana to meet demand determined by Medical Marijuana Commission;
 - Receive compensation for goods and services offered;
 - Contract with licensed transporters, distributors, or processors;

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 8- Licensing of Dispensing and Cultivation Facilities

- All dispensaries must appoint a pharmacist consultant licensed with the Arkansas State Board of Pharmacy, who must:
 - Be accessible by telephone or video conference at all times during operating hours, including patient consultation;
 - Register as a dispensary agent and follow all Amendment procedures;
 - Develop and train dispensary agents at least once every year on the following subjects:
 - Information guidelines to qualifying patients regarding risks, benefits, and side effects of medical marijuana use;
 - Recognition of signs and symptoms of substance abuse; and
 - Guidelines regarding refusal to provide medical marijuana to impaired or marijuana abusing persons.
 - Assist in improving the dispensary's patient education and support system;
 - Oversee the development and dissemination of:
 - Qualifying patient education and informative materials;
 - Descriptions of potential effects of differing medical marijuana strengths and strains;
 - Information regarding potential drug-drug interactions;
 - Techniques for medical marijuana use, including paraphernalia; and
 - Systems for documentation, such as logbooks, pain rating scales, and guidelines for self-assessment.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 8- Licensing of Dispensing and Cultivation Facilities

- Cultivation facilities must meet following security requirements:
 - Security controls set forth in 21 C.F.R. §§ 1301.72-1301.74, as of January 1, 2017;
 - Cultivation Structure must:
 - Have complete roof and walls enclosure;
 - Be Secure against unauthorized entry;
 - Have foundation, slab, or base to which floor is securely attached;
 - Meet performance standards ensuring processing activities are not perceptible from the structure, including:
 - Visual observation;
 - Odors, smell, fragrances, or other olfactory stimulus;
 - Light pollution, glare, or brightness;
 - Adequate ventilation to prevent mold; and
 - Noise.
 - Provide visual screening and access through only lockable doors;
 - Detailed plans and elevation drawings of all medical marijuana operational areas maintained on cultivation premises;
 - Controlled and limited access to where marijuana is grown, harvested, processed and stored;
 - Maintain logs of all visitors to premises and policies in place regarding nonregistered agents;
 - Develop protocols regarding visitors to, and contractors working at the cultivation facility;
 - Have effective and active alarm systems which dispatch notices to local or state police agencies and cultivation facility agent's; and
 - Maintain compliance with applicable city or county building rules, regulations, and ordinances.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 9- Registration and Certification of Cultivation Facility Agents and Dispensary Agents

- Dispensary agent and cultivation facility agent registry ID cards expire annually on June 30, and are renewable on or before that time.
- The Alcoholic Beverage Control Division registers all dispensary and cultivation facility agents, and the division shall:
 - Administer and enforce dispensary and cultivation facility agent registry ID cards;
 - Adopt rules to carry out purposes of Amendment and perform its duties within 180 days of Amendment's effectiveness;
 - Conduct a two bureau criminal background check for all applicants;
 - Issue or deny registry ID cards within 10 days of receipt of complete application;
 - Deny registry ID card approval to dispensary or cultivation facility agents convicted of excluded felony offenses; and
 - Notify dispensaries or cultivation facilities in writing concerning reasons for denying registry ID card.
- The Alcoholic Beverage Control Division may:
 - Charge reasonable fees for application, renewal, or replacement agent registry ID cards;
 - Revoke registry ID card of agents violating provisions of this Amendment;
 - Revoke or suspend license of dispensary or cultivation facility which knowingly aids or facilitates violation of this Amendment; and
 - Collect fines or fees for any violation of rules adopted under this section.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 10- Dispensary and Cultivation Facility Inspections and Requirements

- Dispensaries and cultivation facilities are highly regulated and subject to reasonable inspections by the Alcoholic Beverage Control Division.
- Dispensaries and cultivation facilities must:
 - Incorporated in the State of Arkansas;
 - Implement security measures deterring and preventing unauthorized marijuana exposure or theft;
 - Implement procedures ensuring accurate recordkeeping;
 - Keep following records for at least three years:
 - Disposal of marijuana not distributed to qualifying patients; and
 - Transactional record, including amount dispensed, amount of compensation, and registry ID number of each qualifying patient or designated caregiver.
 - Comprehensively inventory all marijuana at each authorized location on the date of first dispensing, and biannually thereafter;
 - Cultivate all marijuana in an enclosed, locked facility;
 - Dispensaries cannot dispense more than 2.5 oz. of usable marijuana to a qualified patient or designated caregiver during a fourteen-day period;
 - Dispensary agents held to same dispensing limitation; and
 - Dispensary agents must ensure that any dispensing will not cause the qualified patient or designated caregiver to receive more usable marijuana than permitted in a fourteen-day period.
- Dispensary agents must record date and amount of usable marijuana dispensed for each transaction and notify Department of Health as required.
- Department maintains database enabling dispensaries to verify that dispensing usable marijuana to qualifying patient or designated caregiver will not exceed the amount allowed by law (2.5 oz. in fourteen day period).

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 11- Immunity for Dispensaries and Cultivation Facilities

- A dispensary, cultivation facility, transporter, distributor, or processor not subject to:
 - Prosecution for the acquisition, possession, cultivation, processing, preparation, manufacture, delivery, transfer, transport, sale, supply, or dispensing of marijuana and related supplies;
 - Inspection, except under § 10 of this Amendment or upon a search warrant issued by court or judicial officer;
 - Seizure of marijuana, except upon any order issued by a court or judicial officer and with due process of law; or
 - Imposition of penalty or denial of a right or privilege solely for acting in accordance with this Amendment.
- ~~Dispensary agent, cultivation facility agent, transporter agent, distributor agent, or processor agent not subject to arrest, prosecution, search, seizure, or penalty in any manner or denied any right or privilege solely for working for or with a dispensary, cultivation facility, transporter, distributor, or processor in acts permitted by this Amendment.~~
- Dispensary, cultivation facility, or processor agents may possess, manufacture, and transfer marijuana as registered.
- A volunteer dispensary agent may possess and manufacture marijuana at a dispensary location but may not dispense or transport marijuana.
- Cultivation facilities and processors must label marijuana moved between facilities or processors with a trip ticket identifying:
 - Cultivation facility by identification number, date, time, origin, destination of marijuana transported, marijuana form, and amount.
- Transporter and distributor agents may possess marijuana while transferring marijuana to a dispensary, cultivation facility, or processor.
- Importing seeds, cuttings, clones, or plants by a dispensary or cultivation facility shall not be prosecuted in state courts.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 12- Prohibitions for Dispensaries

- A dispensary cannot dispense, deliver, or transfer marijuana to any person not a qualified patient or designated caregiver.
- Dispensaries may transfer marijuana to licensed transporters, distributors, or processors to extent of licensure.
- Dispensary agents dispensing, delivering, or transferring marijuana to unauthorized persons shall have registry ID card revoked by Alcohol Beverage Control Division and be disqualified from serving as a dispensary agent.
- Dispensaries employing a revoked dispensing agent are not subject to penalties unless the dispensary knowingly aided or facilitated the violation.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 13- Prohibitions for Cultivation Facilities

- Cultivation facilities may sell marijuana plants, seeds, and usable marijuana only to a dispensary, or other cultivation facility, or processor.
- Cultivation facilities may employ transporters or distributors to transfer marijuana from the cultivation facility to a dispensary, other cultivation facility, or processor.

Section 14- Local Regulation

- Cities, incorporated towns, and counties not prohibited from enacting reasonable zoning regulations for dispensaries or cultivation facilities as long as zoning regulations are same as for licensed retail pharmacies.
 - Local governments cannot prohibit dispensary or cultivation facility operation unless the prohibition is approved at an election under Article 5, § 1, of the Arkansas Constitution.

Section 15- Prohibited Conduct for Physicians

- Physicians cannot:
 - Accept, solicit, or offer any form of pecuniary remuneration from or to a dispensary or cultivation facility;
 - A physician who is also a qualifying patient may purchase usable marijuana from a dispensary.
 - Offer discounts or things of value to qualifying patient agreeing to use a particular dispensary;
 - Examine patients for purposes of diagnosing qualifying medical conditions at a dispensary; or
 - Have an economic interest in a dispensary or cultivation facility if certifying a qualifying medical condition for medical marijuana use.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 17 Taxation and Distribution of Proceeds

- Usable marijuana sales are taxable at same rate as tangible personal property.
- Usable marijuana sales are also subject to the Arkansas Medical Marijuana Special Privilege Tax Act of 2017, Ark. Code Ann. § 26-57-1501 *et seq.*
- Sales and special privilege tax revenues received under this Amendment shall be distributed as follows:
 - Funds received designated as special revenue and credited to Arkansas Medical Marijuana Implementation and Operations Fund;
 - To determine state agency expenses due to the Amendment's passage the following state entities shall submit a report to Chief Fiscal Officer of the State by May 1 of each year of projected expenses.
 - Alcoholic Beverage Control Division of the Department of Finance and Administration;
 - Department of Health;
 - Medical Marijuana Commission; and
 - Any other state agency incurring implementation, administration, or enforcement expenses related to this Amendment.
- At fiscal year-end, unobligated transferred balances are deducted from the amount transferred for the next fiscal year
- Unanticipated expenses or expenses over the amount transferred may be added from time to time to the transfer.
- Division of Finance and Administration reports at fiscal year-end to Legislative Council or Joint Budget Committee the following:
 - Total amount received resulting from Amendment;
 - Amount transferred to each agency; and
 - Report copies submitted to Chief Fiscal Officer of the State identifying estimated expenses.
- Amounts remaining in Arkansas Medical Marijuana Implementation and Operations Fund are transferred to General Revenue Fund Account.
- Grant applications may be made by entities by one or more applications for the same project.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 18- Costs of Administration and Regulation of Amendment

- Department of Health, Alcoholic Beverage Control Division, and Medical Marijuana Commission shall use following funds to perform its duties under this Amendment:
 - Sales and special privilege tax revenues received under section 17;
 - Revenue generated from fees, penalties, and other assessments including:
 - Registry ID card applications and renewals;
 - Fees to replace registry ID cards; and
 - These revenues must only be used to perform department's duties under Amendment
 - Private donations, if available; and
 - Other appropriations of General Assembly, if available.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 19- Medical Marijuana Commission -- Creation

- Medical Marijuana Commission created within the Department of Finance and Administration to determine licensing qualifications of dispensary and cultivation facilities and award licenses.
- Commission members serve 4 year terms.
- There are 5 commission members.
 - Two members appointed by President Pro Tempore of Senate;
 - Two members appointed by Speaker of House of Representatives; and
 - ~~One member appointed by Governor.~~
- Vacancies filled in same manner as original appointment.
- Commission chooses one member as chair.
- Majority vote of a quorum present needed to transact business.
- Two of initial members appointed by President Pro Tempore of Senate, and Speaker of House of Representatives shall serve only two years.
 - Appointees shall draw lots to determine who serves two year term.
- Commission members shall be:
 - Arkansas residents for at least 10 years before appointment;
 - Qualified elector;
 - 25 years old; and
 - No economic interest in a dispensary or cultivation facility.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 19- Medical Marijuana Commission -- Creation

- Commission may authorize member stipends not exceeding \$85.00 per day for meetings or commission business occurs.
 - Members receive no other compensation, expense reimbursement, or in-lieu-of payments.
- Commission may employ staff as needed to assist in duties under Amendment.
- Alcoholic Beverage Control Division must provide employees to commission if it does not have employees available.
- Initial members must be appointed within 30 days of this section's effectiveness.
- President Pro Tempore of Senate calls first meeting of commission within 45 days of this section's effectiveness.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 20- No Implied Repeal

- No implied repeal of Arkansas laws criminalizing marijuana possession for purposes not specified in this Amendment.
- Marijuana use, possession, and distribution for any purpose remains illegal under federal law.

Section 21- Limitation on Growing

- Amendment authorizes growing marijuana at properly state licensed dispensaries or cultivation facilities.
- Does not authorize qualifying patient, designated caregiver, or other person to grow marijuana.

Section 22- Severability

- Amendment provisions or sections held invalid do not affect any other provisions or application of Amendment that can be given effect without invalid provisions or applications.
 - Provisions of Amendment declared severable.

Section 23- Amendment by General Assembly

- General Assembly may make germane amendments to the Arkansas Medical Marijuana Amendment of 2016 as long as consistent with policy and purpose.
- General Assembly cannot amend the following provisions:
 - Subsections (a), (b), and (c) of section 3 Protections for Medical use of Marijuana;
 - Subsections (h), (i), and (j) of section 8 Licensing of Dispensing and Cultivation Facilities; and
 - Section 23.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 24- Licensure for Transporters, Distributors, and Processors

- Medical Marijuana Commission will license transporters, distributors, and processors and:
 - May conduct criminal background checks to carry out this section;
 - May establish by rule a reasonable fee for license application and renewal.
 - Transporter, distributor, and processor licenses expire one year after issuance.
 - Renewable within 10 days to entity meeting requirement of section and providing renewal fee.
 - Alcoholic Beverage Control Division administers and enforces provisions of this section.
-
- Owners, board members, or officers of transporters, distributors, or processors shall not:
 - Be convicted of an excluded felony offense;
 - Previously been an owner, board member, or officer of a revoked dispensary, cultivation facility, transporter, distributor, or processor; and
 - Be under 21 years old.
-
- Licensed transporters or distributors may:
 - Acquire, possess, deliver, transfer, transport, or distribute marijuana to a dispensary, cultivation facility, or processor; and
 - Receive compensation for its services; but may not
 - Grow, manufacture, process, prepare, supply, or dispense marijuana.
-
- Licensed processors may:
 - Acquire, possess, manufacture, process, prepare, deliver, transport, and supply marijuana to a dispensary or cultivation facility; and
 - Receive compensation for services provided; but may not
 - Grow or dispense marijuana.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 24- Licensure for Transporters, Distributers, and Processers

- Alcoholic Beverage Control Division may reasonably inspect transporters, distributors, and processors to ensure that an entity:
 - Is incorporated in State of Arkansas;
 - Implements appropriate security measures to deter and prevent unauthorized entrance and marijuana theft;
 - Conducts initial and biannual comprehensive inventories of all marijuana;
 - Records all transactions and maintains records for three years; and
 - Adopts procedures to ensure accurate recordkeeping.
- Division shall adopt rules governing transporter, distributor, and processor:
 - Oversight;
 - Recordkeeping;
 - Security;
 - Personnel;
 - Suspending, reviewing, or terminating licenses;
 - Advertising restrictions; and
 - Any other necessary matter.

Arkansas Medical Marijuana Amendment of 2016 (Amendment 98)

Section 25- Registration and Certification of Transporter Agents, Distributer Agents, and Processor Agents

- Alcoholic Beverage Control Division licenses all transporter agents, distributor agents, and processor agents and administers and enforces provisions of this section.
- Division may conduct criminal background checks.
- Division must issue transporter, distributor, and processor agent registry ID cards within 10 days of receiving established application fee and person's name, address, and date of birth, unless:
 - That person was convicted of an excluded felony offense.
- Transporter, distributor, and processor agent registry ID cards expire one year after issuance.
 - Also expire upon notification to division by dispensary or cultivation facility that person ceases to work for transporter, distributor, or processor.
- Registry ID cards may be revoked when agents knowingly violates any provision of this Amendment.
 - Cardholder then subject to other penalties established by law.
- Transporter, distributor, or processor licenses may be revoked or suspended if the division determines that the transporter, distributor, or processor knowingly aided or facilitated a violation of any Amendment provision.
 - Cardholder then subject to other penalties established by law.
- Division may adopt rules covering:
 - Application and renewal review;
 - Form and content of application and renewals;
 - Procedures for suspending, terminating, and review of registry ID cards and licenses; and
 - Any other matter necessary.

Quick Hits of Amendments

-
- During the Regular Session of the 91st General Assembly, the Legislature passed 25 Acts concerning the Arkansas Medical Marijuana Amendment of 2016.
 - Additionally, 13 of the Acts passed during the Regular Session had internal codification inconsistencies among themselves which were addressed by the Legislature during the First Extraordinary Session, convening May 1, 2017 and adjourning May 3, 2017.
 - Acts 1 and 8 followed from that session amending in part and repealing (Act 1023, § 2) in part portions of Acts 4, 438, 479, 593, 639, 641, 670, 740, 948, 1023, 1024, 1098, and 1100.
 - Acts 1 and 8 are essentially identical to each other. Act 1 originated as House Bill 1002 and Act 8 originated as Senate Bill 2.

Misc. Provisions

- *Act 1023.*
- Enacts Ark. Code Ann. §§ 20-56-301 through 304, to establish additional prohibitions on medical marijuana uses such as barring self-service marijuana dispensing machines; banning intoxicated persons from dispensary or cultivation facilities; limiting access to dispensary or cultivation facilities; and requiring child-proof packaging.
-
- *Act 1098.*
- Enacts the Arkansas Medical Marijuana Special Privilege Tax Act of 2017 (Ark. Code Ann. §§ 26-57-1501 through 1507). Cultivation facilities, dispensaries, and other marijuana businesses must collect and remit a 4% special privilege tax from the gross receipts or proceeds derived from sale of usable marijuana. The Medical Marijuana Special Privilege Tax Act has a sunset provision, expiring on July 1, 2019, unless the General Assembly extends.

What was the Assembly Focused on?

- I think the amendments show a large concern for employers.
- **Section 2** of AMMA received the following amendments alone:
- **Act 479** added section 2(6)(C) prohibiting members of the United States military or Arkansas National Guard from being designated caregivers under that definition.
- **Act 544** amended section 2(10) granting the Medical Marijuana Commission, the Department of Health, or the Alcoholic Beverage Control Division the right to determine whether a felony offense is an “excluded felony offense” under the AMMA based on court records concerning the offense.
- **Act 479** added section 2(14)(B) prohibiting members of the United States military and Arkansas National Guard from being a “qualifying patient.”
- **Act 5** amended section 2(19)(a) and (b) replacing the original physician’s “full assessment” written certification, with “an assessment,” and removing the need for a physician determination regarding whether the potential benefits of the medical marijuana use outweigh a qualifying patient’s health risks. This section now only requires a qualifying patient to only have a “qualifying medical condition.”
- **Act 593** added additional defined terms to section 2. Those terms are “[c]urrent use of marijuana,” “[e]mployee,” “[e]mployer,” “[g]ood faith belief,” “[p]ositive test result for marijuana,” “[s]afety sensitive position,” and “[u]nder the influence.”
- **Act 438** added 2(19)(C) prohibiting a physician’s “telemedicine” based assessment from meeting a patient’s written certification requirement.
- **Act 593** added 2(19)(D) (originally identified in Act as 2(19)(C) but later amended by First Extraordinary Session Act 1 and 8 to 2(19)(D)) stating that a “written certification is not a medical prescription.”

More Focus on Employers

- **Section 3 received the following amendments:**
- **Act 1024** protects “pharmacist consultants” for “registered dispensar[ies]” from discipline, arrest, prosecution, or penalty based upon their performance of duties.
- **Act 593** added significant additional content to section 3(f)(3) forbidding employee and applicant job discrimination based upon whether that person is, or was, a “qualifying patient or designated caregiver.”
- **Act 593** also safeguards employers from cause of action claims based on an employer “[e]stablishing and implementing a substance abuse or drug-free workplace policy,” including drug testing programs complying with state or federal law; shielding employer actions based upon a “good faith belief” that an applicant or employee used or possessed marijuana on the employer’s premises while working, or was under the influence of marijuana during work hours (a positive drug test cannot be the basis of the employer’s good faith belief); and where the employer excludes a qualifying patient from “safety sensitive” positions based upon good faith belief that the qualifying patient is currently using marijuana.
- **Act 593** explicitly authorizes and protects six employer employment actions including individual job performance controls, reassignment of employees, placing employees on paid or unpaid leave, suspension or termination, requiring employee involvement in substance abuse programs, and refusing to hire.
- **Act 593** also limits employment discrimination damages based on an applicant or employee’s qualifying patient or designated caregiver status to those available under the Arkansas Civil Rights Act of 1993, Ark. Code Ann. § 16-123-101 *et seq.* Back pay claims are limited to two years. Claims may be further limited by state or federal law in effect on January 1, 2017. Finally, claims involving the AMMA must be brought within 1 year of the alleged discrimination. The State of Arkansas’ sovereign immunity is unaffected by this Act.

Help for the Public Employer

- *Amending Section 8:*
- *Act 740* adds more limitations to section 6(a)(4) regarding the use of “smoke marijuana,” generally prohibiting its use: **where tobacco smoking is also prohibited by law**; in the presence of children fourteen and younger; inside any vehicle powered by more than muscle; in the presence of a known pregnant woman; or where smoking medical marijuana may cause another person to be under the influence of marijuana. Persons must be over 21 years old to smoke medical marijuana.



What do I really need to know?





Employers



- An employer, including municipalities, cannot discriminate against employees or job applicants based upon whether that person is, or was, a “qualifying patient or designated caregiver.”
- However, Act 593 of 2017 allows employers to establish and implement a substance abuse or drug-free workplace policy.
- The policy can include drug testing programs complying with state or federal law.
- Keep in mind, the AMMA does not permit a person to possess, smoke, or otherwise engage in the use of marijuana in a public place and does not permit a person to smoke marijuana where the smoking of tobacco is prohibited by law. AMMA § 6.



Employers

- Additionally, employers can take action based upon a “good faith belief” that an applicant or employee used or possessed marijuana on the employer’s premises while working, or
- was under the influence of marijuana during work hours (a positive drug test cannot be the basis of the employer’s good faith belief).
- Finally, employers can exclude a qualifying patient from “safety sensitive” positions based upon good faith belief that the qualifying patient is currently using marijuana.

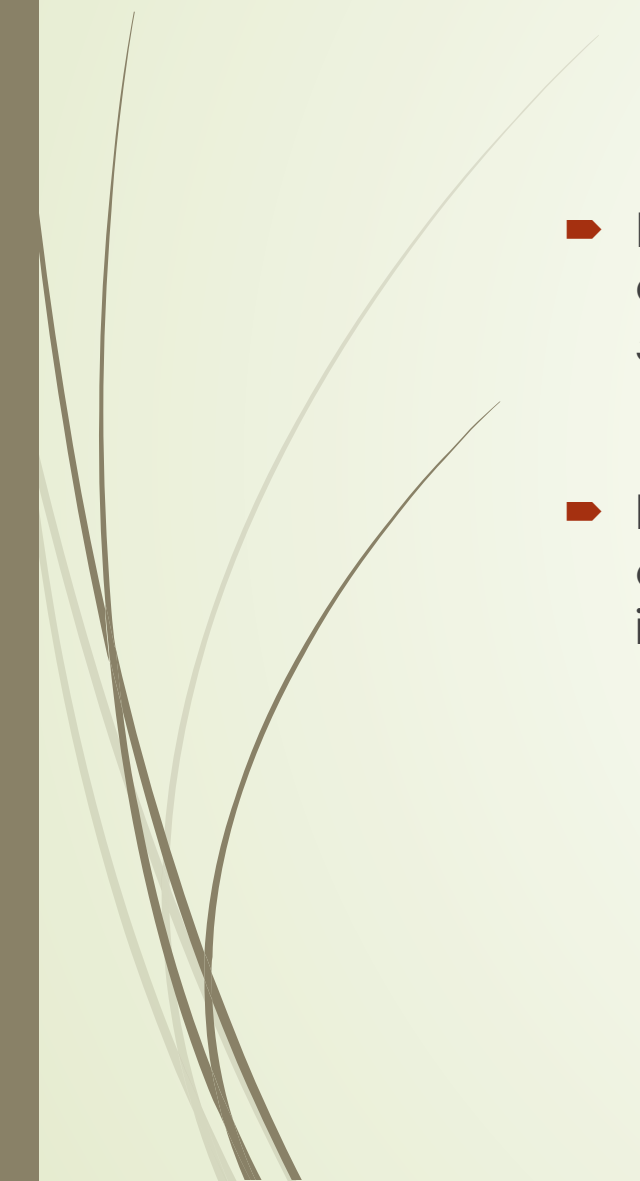


Location, Location, Location

- Zoning regulations for medical marijuana dispensaries or cultivation facilities must be the same as those for a licensed retail pharmacy.
- So municipalities may restrict where dispensaries and cultivation facilities are located, only if the zoning is reasonable and treats the facilities as if they are licensed retail pharmacies.
- In addition to municipal zoning laws, the AMMA places the following location restrictions on dispensaries and cultivation facilities:
- “(i) Dispensary, the location of which may not be within one thousand five hundred feet (**1,500'**) of a **public or private school, church, or daycare center** existing before the date of the dispensary application, which shall be calculated from the primary entrance of the dispensary to the nearest property boundary of a public or private school, church, or daycare center; or
- (ii) Cultivation facility, the location of which may not be within three thousand feet (**3,000'**) of a **public or private school, church, or daycare center** existing before the date of the cultivation facility application, which shall be calculated from the primary entrance of the cultivation facility to the nearest property boundary of a public or private school, church, or daycare center[.]”
- AMMA §8.

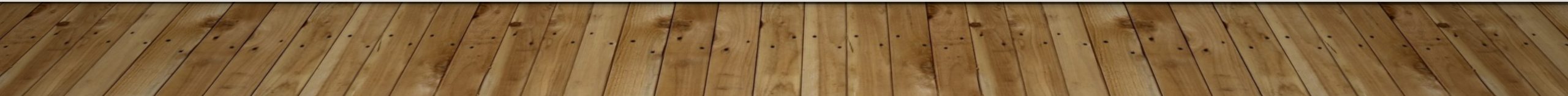


Location, Location, Location

- Finally, the AMMA allows for a municipality to prohibit the operation of any dispensaries or cultivation facilities via a referendum or initiative under Art. 5, § 1 of the Arkansas Constitution.
 - If your municipality is especially concerned about this issue you should consider a referendum, that way the citizens are allowed to vote on the issue.
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FEDERAL LAWS AND THEIR HISTORY

OF MEDICAL MARIJUANA



THE FIRST BANS

- Marijuana was not the first drug to have its use regulated by the government
- Rather, the earliest anti-drug law in the United States was enacted in 1874 in San Francisco to control Chinese immigrants' smoking of opium.
- Forty years later, municipal and state governments began to enact legislation prohibiting the sale or possession of marijuana.
- In western states, legislatures were quick to pass measures prohibiting the use of marijuana, referencing the “drug's Mexican origins, and sometimes vociferous allusion to the criminal conduct inevitably generated when Mexicans ate the ‘killer weed.’”
- The eastern states that banned marijuana use in the 1920s and early 1930s did so as more of a preventative measure, to stop addicts from switching to marijuana as a substitute for other drugs and alcohol banned by the Harrison and Volstead Acts, respectively.
- Kathleen Auerhahn, [The Split Labor Market and the Origins of Anti-drug Legislation in the United States](#), 24 *Law & Soc. Inquiry* 411, 417 (1999).

FEDS GET INVOLVED

- At the federal level, marijuana was first regulated by the 1906 Pure Food and Drug Act, which required a label on the side of the product container detailing the amount and content of the drug.
- Prior to the 1932 Uniform Narcotic Drug Act, however, laws prohibiting the distribution and sale of marijuana for non-medical purposes remained entirely a state matter.
- The Act was passed primarily because of “[t]he general lack of uniformity in anti-narcotic legislation, the weakness of state enforcement procedures, and the growing hysteria about dope fiends and criminality.”

UNIFORM NARCOTIC DRUG ACT

- The drafting process of the Uniform Narcotic Drug Act must also be viewed against the backdrop of two larger movements:
- (1) the trend toward the creation and dissemination of uniform state laws by the National Commissioners on Uniform State Laws, a group to which each state sent two representatives appointed by the governor; and
- (2) the general concern in the late 20's and early 30's about controlling interstate crime, manifested, for example, in the creation of the nearly autonomous Federal Bureau of Investigation in 1930.
- Because the concepts of states rights and narrowly construed federal power held such sway in this period, appeal to the National Commissioners was the inevitable recourse for those pressing for uniform anti-narcotic regulations.

UNIFORM NARCOTIC DRUG ACT

- The Uniform Narcotic Drug Act, or some form of legislation pertaining to marijuana, was eventually passed in all states by 1937.
- Instrumental to the success of anti-marijuana legislation was Harry Anslinger, who headed the Federal Bureau of Narcotics from 1932 until 1962.
- Anslinger appealed to the states by concocting fictitious accounts of the horrors of marijuana use that were littered with cultural and racial prejudices.
- State legislatures and newspapers paid little attention to any relevant scientific reports on marijuana use, including the 1925 Panama Canal Zone Report which had concluded that marijuana was “neither habit forming nor risky in terms of the user's health and behavior.”
- See Richard J. Bonnie & Charles H. Whitebread, II, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 Va. L. Rev. 971, 1096 (1970).

MARIHUANA TAX ACT OF 1937

- Although the Act was designed to discourage recreational use, it had the effect of making legal marijuana transactions particularly onerous,
- requiring registration with the Internal Revenue Service and
- payment of a tax on the transfer of marijuana by physicians who wished to prescribe it to patients.
- Thus, the Marihuana Tax Act, combined with the Federal Bureau of Narcotics' relentless public crusade against the evils of marijuana, led to a “dramatic reduction in doctors' willingness to prescribe marijuana for medicinal purposes”

THE BOGGS ACT

- In 1951, at the behest of Louisiana Democrat Hale Boggs, the House Ways and Means Committee held hearings regarding the substantial increase in narcotics addiction, especially among young people under the age of twenty-one.
- The Boggs Act was subsequently passed and included the federal government's first mandatory minimum penalties for violating the Narcotic Drugs Import and Export Act and the Marihuana Tax Act.
- Five years later, these penalties were increased with the adoption of the Narcotic Control Act of 1956.

STATES' LAWS AND FEDERAL RESPONSE

- Responding immediately to the passage of Propositions 200 and 215, the Office of National Drug Control Policy, issued a memorandum that “developed a coordinated administrative strategy with the other agencies of the Federal Government to minimize the tragedy of drug abuse in America.”⁸
- As part of the federal strategy, the Department of Justice and the Department of Health and Human Services threatened any physician who recommended or prescribed a Schedule I drug with revocation of his DEA registration and exclusion from Medicare and Medicaid reimbursements.
- For more than five years, though, the Northern District of California enjoined the government from revoking physicians' DEA registrations or investigating physicians who recommended or prescribed medical marijuana to patients until the U.S. Court of Appeals for the Ninth Circuit held that physicians' First Amendment freedom of speech rights under the privileged doctor-patient relationship permitted them to issue recommendations to patients. Thus, any resulting illegal conduct committed by a patient who had received a medical marijuana recommendation was deemed too indirectly related to the proscribed speech.

THE SUPREME COURT'S DECISION

- In early 1998, the U.S. Government filed separate lawsuits against six medical cannabis cooperatives and several individuals associated with the cooperatives, alleging that the cooperatives were operating in violation of federal law. . . .
- In May 1998, the district court resolved the cases in light of the Supremacy Clause of the U.S. Constitution, finding that the cooperatives' conduct likely violated federal law.
- In September 1999, the Ninth Circuit reviewed the district court orders and . . . agreed that Oakland Cooperative's argument in favor of a medical necessity defense was a legally cognizable defense that would apply under the circumstances.
- United States v. Oakland Cannabis Buyers' Coop., 532 U.S. 483 (2001)

OAKLAND CANNABIS BUYERS' COOP

- The Supreme Court agreed to review Oakland Cannabis Buyers' Coop. to determine whether medical necessity was a defense to manufacturing and distributing of marijuana.
- While the Court unanimously ruled against the permissibility of the medical necessity defense, Justice Stevens's concurring opinion sought to clarify the majority's broad dicta.
- He asserted that the court was not required to rule on the discretion of a district court's enjoining of a seriously ill patient's use of a medical necessity defense.
- He also remarked that federal courts should “minimize conflict between federal and state law, particularly in situations in which the citizens of a State have chosen to ‘serve as a laboratory’ in the trial of ‘novel social and economic experiments without risk to the rest of the country.’”

AND THUS MEDICAL MARIJUANA NEVER HAPPENED AGAIN

- Four years after Oakland Cannabis Buyers' Coop., and nearly a decade after California's Proposition 215, ten states had legalized medical marijuana in varying capacities, not including Arizona and Maryland.
- So the Supreme Court decided to take another case:
- [Gonzales v. Raich, 545 U.S. 1 \(2005\).](#)

GONZALES V. RAICH, 545 U.S. 1 (2005).

- Like Walters and Oakland Cannabis Buyers' Club, Raich originated in the Northern District of California, with respondents “seeking injunctive and declaratory relief prohibiting the enforcement of the federal Controlled Substances Act . . . to the extent it prevent[ed] them from possessing, obtaining, or manufacturing cannabis for their personal medical use.”
- Although the respondent's request was denied by the district court, the Ninth Circuit Court of Appeals found that the CSA, as it applied to respondents, was likely an “unconstitutional exercise of Congress' Commerce Clause authority.”
- The Supreme Court granted certiorari to determine whether the Commerce Clause allocated to Congress the “power to prohibit the local cultivation and use of marijuana in compliance with California law.”

HOW IT WAS DECIDED - COMMERCE

- In a 6-3 decision, Justice Stevens's majority opinion upheld the constitutionality of the CSA and Congress's Commerce Clause power of regulating the interstate flow of medicinal substances, even if those substances are produced and consumed intrastate.
- He analogized the locally grown marijuana to the wheat locally produced in *Wickard v. Filburn*.

WICKARD V. FILBURN

- The similarities between this case and Wickard are striking. Like the farmer in Wickard, respondents are cultivating, for home consumption, a fungible commodity for which there is an established, albeit illegal, interstate market. . . .
- In Wickard, we had no difficulty concluding that Congress had a rational basis for believing that, when viewed in the aggregate, leaving home-consumed wheat outside the regulatory scheme would have a substantial influence on price and market conditions.
- Here too, Congress had a rational basis for concluding that leaving home-consumed marijuana outside federal control would similarly affect price and market conditions.

O'CONNOR'S DISSENT

- Ironically, Justice O'Connor's dissenting opinion touched on similar concerns raised by Justice Stevens in his concurrence in Oakland Cannabis Buyers' Coop.
- Distinguishing her position from that of the majority, she classified Raich in the mold of United States v. Lopez and United States v. Morrison where, respectively, the federal Gun Free School Zones Act of 1990 and Violence Against Women Act of 1994 were held to have too attenuated an effect on interstate commerce to be valid exercises of Congress's Commerce Clause power.
- She criticized the majority for endorsing a view of congressional commerce power “overreaching [that] stifles an express choice by some States, concerned for the lives and liberties of their people, to regulate medical marijuana differently.”

AFTERMATH

- As we know since Raich many more states have passed medical marijuana laws
- More importantly, no state has invalidated its medical marijuana laws in an effort to comply with Raich.
- Because of differing federal, state, and, more recently, municipal laws, government regulation of medical marijuana has become a vexing issue to officials previously accustomed to “a century of federal drug policy ... [where] two overlapping characteristics emerge[d] as dominant:
- (1) the centrality of legalism in shaping the objectives of drug policy and (2) the reliance on enforcement as the dominant tool in achieving those objectives.”
- Michael M. O'Hear, [Federalism and Drug Control, 57 Vand. L. Rev. 783, 799 n.83 \(2004\).](#)

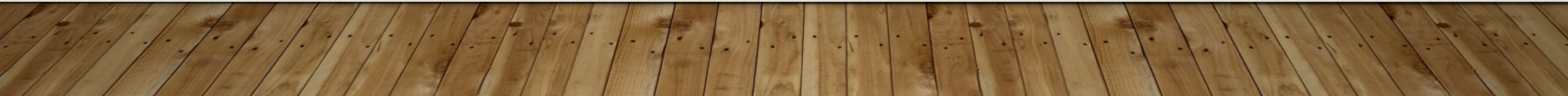
CURRENT STATE OF LAW (OF FLAWS?)

- Where previous drug enforcement methods that included multijurisdictional drug task forces (MJDTF),
- forfeiture laws,
- and equitable sharing aligned federal, state, and municipal interests,.
- The current situation has thrown that alignment out of balance, with federal agents in pro-medical marijuana states no longer sharing the same goals or resources as their state counterparts for pursuing medical marijuana users or distributors who comply with their state medical marijuana laws.

STATE-FEDERAL-MUNICIPAL CONFLICT

- Adding to the web of legal entanglements are state medical marijuana laws that conflict with local ordinances placing restrictions on medical marijuana users and distributors.
- Armed with two Supreme Court rulings intended to rein in these medical marijuana experiments, states have acted “uncooperatively” in their enforcement of federal marijuana laws, resulting in the de facto legalization of medical marijuana within their borders.
- However, what happens when a municipality bucks the state who is bucking federal law?

TUNE IN NEXT TIME FOR THE ANSWERS



STATE AND FEDERAL PREEMPTION?

- At the local level, municipality regulation of medical marijuana has created yet another layer of legal confusion and disagreement.
- With federal policy offering little help to keep in check the proliferation of medical marijuana users and distributors, local law enforcement and governments have been forced into policing medical marijuana users, state regulatory programs, and cannabis dispensaries.
- Local law enforcement officials that arrest medical marijuana users, their primary caregivers, and raid dispensaries are often unable to determine whether the marijuana-related activity is for medical or recreational purposes.
- Newly enacted state medical marijuana laws or revisions to preexisting laws have compounded the problem as well, pressing state courts into clarifying the gaps and ambiguities in medical marijuana laws.

PREEMPTION

- Some communities focus on whether federal law trumps state law, and if so, whether that means that the municipalities need not follow state law, or whether state law preempts the local law, requiring municipal adherence.
- Setting the stage for the preemption dispute is the federal government, whose law explicitly states that marijuana is a schedule one drug and is thus illegal to possess or distribute. See [21 U.S.C. § 812\(c\)](#)(Schedule I)(c)(17).
- An issue immediately arises when state law decriminalizes medical marijuana, allowing for distribution, possession, and consumption, and a local government wishes to follow the federal criminal law rather than the state law, due in part perhaps to the community's aversion to the use, sale, or cultivation of marijuana.

VARIOUS CALIFORNIA CASES

- California courts have dealt with the return of wrongly confiscated medical marijuana by state authorities in *City of Garden Grove v. Superior Court*, and, most importantly, the legality of a county government's challenge to the constitutionality of the state's medical marijuana laws' in *County of San Diego v. San Diego NORML*.
- At issue in *San Diego NORML* was whether counties could challenge the constitutionality of the CUA.
- Although the court held that the Medical Marijuana Program identification card system was not federally preempted by the CSA, it also ruled that Counties had standing to challenge the provisions of the MMP that “impose[d] obligations or inflict[ed] injuries upon the Counties.”

ANAHEIM AND THE BIG QUESTION

- In 2010, in *Qualified Patients Ass'n v. City of Anaheim*, the California Fourth Appellate Court heard arguments on the highly contentious issue of whether municipalities can bar cannabis dispensaries from operating within their jurisdiction, but opted to remand the case back to the Orange County Superior Court.
- With *Qualified Patients Ass'n* awaiting a final decision, California currently has 134 cities and 9 counties that have banned dispensaries from their borders. The eagerly awaited *Qualified Patients Ass'n* ruling hinges on the legislative intent of the MMP and whether dispensaries should be exempt from local ordinances that target them through local zoning and nuisance laws.

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- In a sympathetic analysis found in *Qualified Patients Association*, it appears that federal law will not be held to preempt state law decriminalizing medical marijuana.
 - This is based on the theory that the state laws do not directly conflict with federal law, as they do not require any actor to commit a violation, and do not obstruct federal law, as they serve the same purpose, to limit recreational drug use.
 - At least, this is the argument in California state court.

THE LOS ANGELES EXPERIMENT

- Los Angeles's experience, in particular, provides a valuable case study of a city's problems dealing with the growth of dispensaries and its attempts to remedy them with limited initial guidelines from the courts or state government.
- In January 2010, the Los Angeles City Council voted to significantly reduce the number of dispensaries permitted within its city limits.
- However, the vote should not have even taken place, as three years earlier the city had issued a moratorium on new dispensaries from opening “while the City Council studied the issue. But hundreds of dispensaries continued to operate, flouting the ban” due to a loop-hole in the moratorium.
- The moratorium include[d] a standard provision that allow[ed] dispensaries to appeal to the City Council for a hardship exemption to be allowed to operate. [Soon] medical marijuana entrepreneurs discovered that the city attorney's office was not prosecuting dispensaries that had filed hardship applications, saying the City Council needed to rule on them first. The council [did] not act[] on any of the applications.
- John Hoeffel, L.A.'s Medical Pot Dispensary Moratorium Led to a Boom Instead, L.A. Times, June 3, 2009

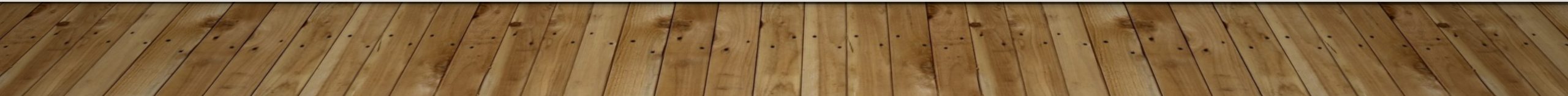
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- Prior to the moratorium, only 186 dispensaries operated in Los Angeles. The January 2010 City Council vote was an attempt to stem the proliferation of post-moratorium dispensaries by shuttering any dispensary that had opened after the moratorium.
 - However, in December 2010, the Los Angeles County Superior Court ruled that the provision was unconstitutional and issued a preliminary injunction that halted most dispensary closings.
 - Subsequently, the council issued a revised ordinance that created a lottery system whereby the dispensaries that had been in business since September 14, 2007 could apply for recognition by the city.

OTHER CALI CITIES

- “San Francisco years ago made its clubs jump through various bureaucratic hoops to become fully licensed, permitted, and regulated, free to join the mainstream business community, pay their taxes, and compete with one another on the basis of quality, price, customer service, ambiance, and support for the community.”
- As such, it has far fewer dispensaries than Los Angeles does.
- Likewise, similar measures instituted in Oakland and Berkeley only permit four and three dispensaries, respectively. Oakland's stringent requirements on dispensaries also include a \$30,000 annual fee and a 1.8% tax on medical marijuana sales.
- In 2004, Oakland became the first city to license dispensaries and monitor their revenue streams.

COLORADO

- While the Colorado Court of Appeals had provided some guidance as to what qualifies as a “primary care-giver,” additional state legislation was needed to regulate the proliferation of dispensaries that had previously only been combated by community ordinances.
- In addition to the state regulation, Colorado municipalities have followed the path paved by California municipalities in issuing moratoriums or outright banning dispensaries from operating within their confines.
- In January 2010, with 300 dispensaries operating within its city limits, Denver's City Council agreed upon a slate of new regulations and licensing restrictions.
- Boulder also has experienced a massive influx of dispensaries in the last two years, with even its historic Flatirons Theatre being leased to a dispensary. Like Denver, Boulder has initiated its own set of regulations on dispensaries, including a licensing program separate and additional to that of the state.



NUISANCE LAW – NO CASES, YET

- Municipal attorneys are beginning to test legal theories in an effort to slow or prevent the cultivation and sale of the drug in their jurisdictions.
- For example, the San Jose, California Deputy City Attorney has opined that the City Code does not allow for a land use that is a nuisance, and that conduct which is illegal under state or federal law, constitutes a nuisance.
- Since the cultivation, sale, and use of marijuana is illegal under federal law, he asserts that medical marijuana dispensing facilities would constitute a nuisance.
- Therefore, since San Jose's existing municipal code effectively bans medical marijuana dispensaries, he has advised that the adoption of a moratorium is unnecessary.