

Department of Finance and Administration

Legislative Impact Statement

Bill: HB2190

Amendment Number: H1

Bill Subtitle: TO AMEND THE ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016 TO REQUIRE A DISPENSARY TO MAKE VAPORIZERS AVAILABLE FOR SALE TO QUALIFYING PATIENTS AND TO APPOINT A PHARMACIST DIRECTOR.

Basic Change :

Sponsor: Representative Penzo

Engrossment 03/17/17 --- House Amendment 1 ---The bill would amend the Arkansas Medical Marijuana Act of 2016.

The bill provides that a licensed dispensary would not be authorized to supply, possess, manufacture, deliver, transfer, or sell marijuana paraphernalia that requires the combustion of marijuana to be properly utilized. The paraphernalia would include pipes, water pipers, bongs, chillums, rolling papers, and roach clips. A licensed dispensary would be required to make marijuana vaporizers available for sale to qualifying patients and provide educational materials about medical marijuana methods of ingestion to qualifying patients and designated caregivers.

The bill would also require a dispensary to appoint a pharmacist director who is a pharmacist licensed in Arkansas who would register as a dispensary agent under the Medical Marijuana Amendment and develop and provide annual training to dispensary agents. Training subjects would include: (1) Guidelines for providing information to qualifying patients related to risks, benefits, and side effects associated with medical marijuana; (2) Recognizing the signs and symptoms of substance abuse; and (3) Guidelines for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana.

The pharmacist director would also assist in the development and implementation of review and improvement processes for patient education by the dispensary. The pharmacist director would provide oversight for the development and dissemination of education materials for qualifying patients and designated caregivers and provide oversight for systems for the documentation by a qualifying patient or designated caregiver of the symptoms of a qualifying patient that includes a logbook, rating scale for pain and symptoms, and guidelines for a patient's self-assessment. Additionally, the pharmacist director would assist in developing policies and procedures for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana. The pharmacist director would be required to be accessible through telephonic means at all times during operating hours and be onsite at the dispensary a minimum of twenty (20) hours per week. The bill would extend to pharmacists the protections against arrest or prosecution for performing duties as a pharmacist director for a registered dispensary.

The bill would direct the Medical Marijuana Commission to use an independent grading committee or independent grading consultants selected by the commission to score all dispensary applications according to a grading rubric created by the commission. The committee or grading consultants scoring the applicants would be composed of no less than five (5) individuals per application. After scoring the applicants, the commission would conduct in-person interviews and vote whether to issue a dispensary license to the applicant.

The Act would be effective 90 days after final adjournment of the 91st General Assembly.

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Revenue Impact :

None.

Taxpayer Impact :

None.

Resources Required :

None.

Time Required :

None.

Procedural Changes :

None.

Other Comments :

None.

Legal Analysis :

As amended, HB2190 is constitutionally suspect. Article 5, § 21 of the Arkansas Constitution provides in pertinent part "no bill shall be so altered or amended on its passage through either house, as to change its original purpose." As described by the Arkansas Supreme Court, Article 5, §. 21 is intended to "forbid amendments which should not be germane to the subject expressed by the title of the act." *E.g., Cone v. Garner*, 175 Ark. 860, 3 S.W.2d 1 (1927). The original title of HB2190 as introduced reads, "AN ACT TO AMEND ARKANSAS CONSTITUTION, AMENDMENT 98, ALSO KNOWN AS THE "ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016" TO REQUIRE A DISPENSARY TO MAKE VAPORIZERS AVAILABLE FOR SALE TO QUALIFYING PATIENTS AND TO APPOINT A PHARMACIST DIRECTOR; AND FOR OTHER PURPOSES." Any components of an amendment that are not germane to the subject of requiring vaporizers and appointing a pharmacist director are subject to a constitutional challenged under Article 5, § 21.

HB2190-H1 modifies the original bill, which amended the Arkansas Medical Marijuana Amendment

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("Amendment") by requiring dispensaries to offer vaporizers for sale and to require a pharmacy director. The amendment mandates that the selection process for medical marijuana dispensary licenses be done by merit selection and that all application shall be processed through an independent grading committee or independent grading consultants selected by the Arkansas Medical Marijuana Commission. Currently, the Amendment provides that the Arkansas Medical Marijuana Commission is responsible for promulgating rules to license dispensaries. This provision which is not germane to the original stated intent is constitutionally suspect.