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SECTION 25. ABANDONMENT OF LICENSE

25.1 *Notice of Intent to Commence Operations*

- a. If a licensed cultivator, licensed processor, licensed dispensary, or licensed transporter within 365 days of its initial license being issued or within 365 days of its renewal, if the initial license was issued prior to January 1, 2020, fails to notify the Division of its intent to commence operations pursuant to rule 4.2, the license shall be considered abandoned and shall be immediately surrendered to the Director.
- b. A licensed cultivator, licensed processor, licensed dispensary, or licensed transporter prior to the abandonment of the license may submit a written petition to Director for a one-time 60 day extension which will be granted upon a finding that the delay was not due to inattention on the part of the licensee and there is a good faith basis to grant the extension.

25.2 *Petition for Return*

Within thirty (30) days of the date the license is abandoned, the licensee may petition the Board to have the license returned by submitting evidence of the following information:

- a. That all taxes and fees owing the state have been paid;
- b. The reason for the delay; and
- c. The date the licensee intends to commence operations.

25.3 *Return of License*

The Board may return the license if the Board finds that:

- a. Business circumstances exist to justify the delay;
- b. The delay to commence operations was not due to mere deferral or inattention on the part of the licensee; and
- c. The license should be returned

25.4 *License Revocation*

If the licensee does not petition for the return of the license, or if the Board rejects the petition, the license shall be considered revoked.

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West's Arkansas Code Annotated

Constitution of the State of Arkansas of 1874

Amendments to the Constitution of Arkansas of 1874

Amendment 98. Arkansas Medical Marijuana Amendment of 2016 (Refs & Annos)

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AR Const. Amend. 98, § 8

§ 8. Licensing of dispensaries and cultivation facilities

Currentness

(a)(1) Dispensaries and cultivation facilities shall be licensed by the Medical Marijuana Commission.

(2) The commission shall administer and regulate the licensing of dispensaries and cultivation facilities, including the issuance of a:

(i) License to operate a dispensary; and

(ii) License to operate a cultivation facility.

(3) The Alcoholic Beverage Control Division shall administer and enforce the provisions of this amendment concerning dispensaries and cultivation facilities.

(b)(1) The commission and division shall each adopt rules necessary to:

(A) Carry out the purposes of this amendment; and

(B) Perform its duties under this amendment.

(2) Rules adopted under this section are rules as defined in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(c) The following individuals associated with a dispensary or cultivation facility shall be current residents of Arkansas who have resided in the state for the previous seven (7) consecutive years:

(1) The individual(s) submitting an application to license a dispensary or cultivation facility; and,

(2) Sixty percent (60%) of the individuals owning an interest in a dispensary or cultivation facility.

(d) Not later than one hundred eighty (180) days after the effective date of this amendment, the commission shall adopt rules governing:

- (1) The manner in which the commission considers applications for and renewals of licenses for dispensaries and cultivation facilities;
- (2) The form and content of registration and renewal applications for dispensaries and cultivation facilities; and
- (3) Any other matters necessary for the commission's fair, impartial, stringent, and comprehensive administration of this amendment.

(e) Not later than one hundred eighty (180) days after the effective date of this amendment, the division shall adopt rules governing:

- (1) Oversight requirements for dispensaries and cultivation facilities;
- (2) Recordkeeping requirements for dispensaries and cultivation facilities;
- (3) Security requirements for dispensaries and cultivation facilities;
- (4) Personnel requirements for dispensaries and cultivation facilities;
- (5) The manufacture, processing, packaging, labeling, and dispensing of usable marijuana to qualifying patients and designated caregivers, including without limitation:
 - (A) Before sale, food or drink that has been combined with usable marijuana shall not exceed ten milligrams (10 mg) of active tetrahydrocannabinol per portion and shall be physically demarked; and
 - (B) If portions cannot be physically determined, the entirety of the food or drink that has been combined with usable marijuana shall not contain more than ten milligrams (10 mg) of active tetrahydrocannabinol;
- (6) Procedures for suspending or terminating the licenses of dispensaries and cultivation facilities that violate the provisions of this amendment or the rules adopted under this amendment, procedures for appealing penalties, and a schedule of penalties;
- (7) Procedures for inspections and investigations of dispensaries and cultivation facilities;

(8) Advertising restrictions for dispensaries and cultivation facilities, including without limitation the advertising, marketing, packaging, and promotion of dispensaries and cultivation facilities with the purpose to avoid making the product of a dispensary or a cultivation facility appealing to children, including without limitation:

(A) Artwork;

(B) Building signage;

(C) Product design, including without limitation shapes and flavors;

(D) Child-proof packaging that cannot be opened by a child or that prevents ready access to toxic or harmful amount of the product, and that meets the testing requirements in accordance with the method described in 16 C.F.R. § 1700.20, as existing on January 1, 2017;

(E) Indoor displays that can be seen from outside the dispensary or cultivation facility; and

(F) Other forms of marketing related to medical marijuana;

(9) Procedures for the disposal or other use of marijuana not dispensed to a qualifying patient; and

(10) Any other matters necessary to the division's fair, impartial, stringent, and comprehensive administration of its duties under this amendment.

(f)(1) Not later than one hundred eighty (180) days after the effective date of this amendment, the commission shall adopt rules establishing license application and license renewal fees for dispensary and cultivation facility licenses.

(2)(A) The initial dispensary application fee shall be a maximum of seven thousand five hundred dollars (\$7,500).

(B) The initial cultivation facility application fee shall be a maximum of fifteen thousand dollars (\$15,000).

(C) A license that is initially issued between January 1 and July 1 may have the licensing fees up to fifty percent (50%) prorated and refunded as determined by the commission.

(g)(1) Not later than July 1, 2017, the commission shall begin accepting applications for licenses to operate a dispensary and cultivation facility.

(2) The application shall include without limitation the following:

(A) The application fee;

(B) The legal name of the dispensary or cultivation facility;

(C) The physical address of the:

(i)(a) Dispensary, the location of which may not be within one thousand five hundred feet (1,500') of a public or private school, church, daycare center, or facility for individuals with developmental disabilities 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, daycare center, or facility for individuals with developmental disabilities.

(b) Subdivision (g)(2)(C)(i)(a) of this section does not apply to or impact existing locations of dispensaries issued a license before the effective date of this subdivision (g)(2)(C)(i)(b) that may be located within one thousand five hundred feet (1,500') of a facility for individuals with developmental disabilities; 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;

(D) The name, address, and date of birth of each dispensary agent or cultivation facility agent; and

(E) If the city, town, or county in which the dispensary or cultivation facility would be located has enacted zoning restrictions, a sworn statement certifying that the dispensary or cultivation facility will operate in compliance with the restrictions.

(2)¹ None of the owners, board members, or officers of the dispensary or cultivation facility:

(A) Shall have been convicted of an excluded felony offense;

(B) Shall have previously been an owner of a dispensary or cultivation facility that has had its license revoked; and

(C) Shall be under twenty-one (21) years of age.

(4)(A) The commission may issue a temporary license to another natural person in conjunction with a dispensary or a cultivation facility when the natural person whose name is on the license for the dispensary or cultivation facility ceases to be in actual control of the dispensary or cultivation facility.

(B) The commission shall adopt rules as necessary to provide temporary licenses.

- (h) The commission shall issue at least twenty (20) but no more than forty (40) dispensary licenses.
- (i) There shall be no more than four (4) dispensaries in any one (1) county.
- (j) The commission shall issue at least four (4) but no more than eight (8) cultivation facility licenses.
- (k)(1) The commission shall conduct a criminal background check in order to carry out this section.
 - (2) The commission shall require each applicant for a dispensary license or cultivation facility license to apply for or authorize the commission to obtain state and national criminal background checks to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.
 - (3) The criminal background checks shall conform to the applicable federal standards and shall include the taking of fingerprints.
 - (4) The applicant shall authorize the release of the criminal background checks to the commission and shall be responsible for the payment of any fee associated with the criminal background checks.
 - (5) Upon completion of the criminal background checks, the Identification Bureau of the Department of Arkansas State Police shall forward to the commission all information obtained concerning the applicant.
- (l)(1)¹ No individual shall own an interest in more than:
 - (1) One (1) cultivation facility; and,
 - (2) One (1) dispensary.
- (m)(1)(A) A dispensary licensed under this section may acquire, possess, manufacture, process, prepare, deliver, transfer, transport, supply, and dispense marijuana, marijuana paraphernalia, and related supplies and educational materials to a qualifying patient or designated caregiver, but shall not supply, possess, manufacture, deliver, transfer, or sell marijuana paraphernalia that requires the combustion of marijuana to be properly utilized, including pipes, water pipes, bongs, chillums, rolling papers, and roach clips.
 - (B) A dispensary licensed under this section shall:
 - (i) Make marijuana vaporizers available for sale to qualifying patients; and

(ii) Provide educational materials about medical marijuana methods of ingestion to qualifying patients and designated caregivers, including without limitation:

(a) Warnings on the potential health risks of smoking or combusting marijuana; and

(b) Information on potential health benefits of vaporizing marijuana compared to smoking or combusting.

(2)(A) A dispensary may receive compensation for providing the goods and services allowed by this section.

(B) A dispensary may contract with a transporter, distributor, or processor to extent of the license of the transporter, distributor, or processor.

(3)(A) A dispensary may grow or possess:

(i) Fifty (50) mature marijuana plants at any one (1) time plus seedlings; and

(ii) All usable marijuana derived from the plants under subdivision (m)(3)(A)(i) of this section or predecessor plants.

(B) A dispensary may contract with a cultivation facility to cultivate one (1) or more mature marijuana plants the dispensary is permitted to grow.

(4)(A)(i) A cultivation facility may cultivate and possess usable marijuana in an amount reasonably necessary to meet the demand for the needs of qualifying patients as determined by the commission with the assistance of the Department of Health.

(ii) However, a cultivation facility shall not sell marijuana in any form except to a dispensary or other cultivation facility.

(B) A cultivation facility may also possess marijuana seeds.

(C) The commission with the assistance of the Department of Health shall promulgate rules determining the amount of marijuana reasonably necessary under subdivision (m)(4)(A) of this section.

(5)(A) A cultivation facility may receive compensation for providing goods and services allowed by this section.

(B) A cultivation facility may contract with a transporter, distributor, or processor to extent of the license of the transporter, distributor, or processor.

(n)(1) A dispensary license and cultivation facility license shall expire on June 30 of each calendar year and are renewable on or before June 30 of each calendar year for the fiscal year beginning July 1.

- (2) The commission shall issue a renewal dispensary license or a renewal cultivation facility license within ten (10) days to any entity who complies with the requirements contained in this amendment, including without limitation the payment of a renewal fee.
- (o) The commission may charge a reasonable fee as established by rule for the issuance of a renewal license.
- (p) The commission and the division may collect fines or fees for any violation of a rule adopted under this section.
- (q)(1) A license for a dispensary or cultivation facility shall only be issued to a natural person.
- (2) A license issued for a dispensary or cultivation facility shall be transferable only to a natural person upon approval of the commission.
- (r) Data or records submitted to the division or commission under rules adopted under this amendment may be shared with the Department of Health and the State Insurance Department for purposes of the Arkansas all-payer claims database established under the Arkansas Healthcare Transparency Initiative Act of 2015, § 23-61-901 et seq.
- (s)(1) A dispensary shall appoint a pharmacist consultant who is a pharmacist licensed with the Arkansas State Board of Pharmacy.
- (2) A pharmacist consultant shall:
- (A) Register as a dispensary agent under this amendment and follow all procedures;
- (B) Develop and provide training to other dispensary agents at least one (1) time every twelve (12) months from the initial date of the opening of the dispensary on the following subjects:
- (i) Guidelines for providing information to qualifying patients related to risks, benefits, and side effects associated with medical marijuana;
- (ii) Recognizing the signs and symptoms of substance abuse; and
- (iii) Guidelines for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana;
- (C) Assist in the development and implementation of review and improvement processes for patient education and support provided by the dispensary;

(D) Provide oversight for the development and dissemination of:

(i) Education materials for qualifying patients and designated caregivers that include:

(a) Information about possible side effects and contraindications of medical marijuana;

(b) Guidelines for notifying the physician who provided the written certification for medical marijuana if side effects or contraindications occur;

(c) A description of the potential effects of differing strengths of medical marijuana strains and products;

(d) Information about potential drug-to-drug interactions, including interactions with alcohol, prescription drugs, nonprescription drugs, and supplements;

(e) Techniques for the use of medical marijuana and marijuana paraphernalia; and

(f) Information about different methods, forms, and routes of medical marijuana administration;

(ii) Systems for 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; and

(iii) Policies and procedures for refusing to provide medical marijuana to an individual who appears to be impaired or abusing medical marijuana; and

(E) Be accessible to the dispensary or dispensary agent through:

(i) Telephonic means at all times during operating hours; and

(ii) Telephone or video conference for a patient consultation during operating hours.

(t)(1) A cultivation facility shall meet the following security requirements:

(A)(i) The physical security controls set forth in 21 C.F.R. § 1301.72 -- 1301.74, as existing on January 1, 2017.

(ii) The division shall adopt rules to implement subdivision (t)(1)(A)(i) of this section;

(B) All cultivation of marijuana occurs within a building, greenhouse, or other structure that:

- (i) Has a complete roof enclosure supported by connecting walls that are constructed of solid material extending from the ground to the roof;
 - (ii) Is secure against unauthorized entry;
 - (iii) Has a foundation, slab, or equivalent base to which the floor is securely attached;
 - (iv) Meets performance standards ensuring that cultivation and processing activities cannot be and are not perceptible from the structure in terms of:
 - (a) Common visual observation;
 - (b) Odors, smells, fragrances, or other olfactory stimuli;
 - (c) Light pollution, glare, or brightness;
 - (d) Adequate ventilation to prevent mold; and
 - (e) Noise;
 - (v) Provides complete visual screening; and
 - (vi) Is accessible only through one (1) or more lockable doors;
- (C) Current detailed plans and elevation drawings of all operational areas involved with the production of medical marijuana are maintained on the premises of the cultivation facility, including:
- (i) All storage areas, ventilation systems, and equipment used for production;
 - (ii) All entrances and exits to the cultivation facility;
 - (iii) All windows, skylights, and retractable mechanisms built into the roof;
 - (iv) The location of all required security cameras;
 - (v) The location of all alarm inputs, detectors, and sirens;

- (vi) All video and alarm system surveillance areas;
 - (vii) All production areas labeled according to the specific activity occurring within the area;
 - (viii) All restricted and limited access areas identified; and
 - (ix) All nonproduction areas labeled according to purpose;
- (D) Access to areas where marijuana is grown, harvested, processed, and stored is limited to authorized personnel and:
- (i) Designated by clearly marked signage; and
 - (ii) Locked and accessible only by authorized personnel on a current roster of authorized personnel;
- (E)(i) Written policies regarding any nonregistered agent who may visit the premises and a log of all visitors to the premises are developed and maintained.
- (ii) The log shall consist of the visitor's name, purpose of visit, time of arrival, and time of departure.
 - (iii) Visitors to a cultivation facility shall be:
 - (a) Issued a visitor identification tag containing the visitor's name that shall be worn for the duration of the visit on the premises; and
 - (b) Escorted by a cultivation facility agent at all times while present on the premises.
 - (iv)(a) However, contractors conducting repairs, maintenance, or other specific duties may be escorted to their work site and left unaccompanied while completing a job.
 - (b) Cultivation facility agents shall ensure that the contractor and area under repair are under video surveillance for the duration of the time spent on the premises by the contractor; and
- (F)(i) An alarm system is equipped that upon attempted unauthorized entry, transmits a signal directly to a central protection company for a local or state police agency and a designated cultivation facility agent.
- (ii) The alarm system shall:

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- (a) Provide coverage for all points of ingress and egress to the cultivation facility, including without limitation doorways, windows, loading bays, skylights, and retractable roof mechanisms;
- (b) Provide coverage of any room with an exterior wall, any room containing a safe, and any room used to grow or store medical marijuana;
- (c) Be equipped with a panic drive that upon activation will not only sound any audible alarm components but will also notify law enforcement;
- (d) Have duress and hold up features to enable a cultivation facility agent to activate a silent alarm notifying law enforcement of an emergency;
- (e) Be equipped with failure notification systems to notify cultivation facilities and law enforcement of any failure in the alarm system; and
- (f) Have the ability to remain operational during a power outage.

(2) A cultivation facility shall maintain compliance with applicable city or county building or structure rules, regulations, or ordinances and any other applicable state laws or rules regarding buildings or structures.

Credits

Added by initiative petition approved at Nov. 8, 2016, election, eff. Nov. 9, 2016; amended by Acts of 2017, Act 4, §§ 4 to 6, eff. Jan. 23, 2017, retroactive to Nov. 9, 2016; Acts of 2017, Act 545, § 2, eff. Aug. 1, 2017; Acts of 2017, Act 587, § 1, eff. Aug. 1, 2017; Acts of 2017, Act 594, §§ 1, 2, eff. Aug. 1, 2017; Acts of 2017, Act 639, § 2, eff. Aug. 1, 2017; Acts of 2017, Act 640, § 1, eff. Aug. 1, 2017; Acts of 2017, Act 641, § 1, eff. Aug. 1, 2017; Acts of 2017, Act 642, § 1, eff. Aug. 1, 2017; Acts of 2017, Act 948, § 2, eff. Aug. 1, 2017; Acts of 2017, Act 1023, § 3, eff. Aug. 1, 2017; Acts of 2017, Act 1024, §§ 2, 3, eff. Aug. 1, 2017; Acts of 2017, Act 1100, §§ 1, 2, eff. Aug. 1, 2017; Acts of 2017 (1st Ex. Sess.), Act 1, § 6, eff. July 31, 2017; Acts of 2017 (1st Ex. Sess.), Act 8, § 6, eff. July 31, 2017; Acts of 2019, Act 1004, § 1, eff. April 15, 2019.

Footnotes

1 Paragraph designation so in approved constitutional amendment.

Const. Amend. 98, § 8, AR CONST Amend. 98, § 8

The constitution and statutes are current through the end of the 2019 Regular Session of the 92nd Arkansas General Assembly.

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