

Department of Finance and Administration

Legislative Impact Statement

Bill: HB1049

Bill Subtitle: TO AMEND THE DEFINITION OF "EXCLUDED FELONY OFFENSE" WITHIN THE ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016; AND TO ADD A DEFINITION OF "FELONY OF VIOLENCE" TO THE ARKANSAS MEDICAL MARIJUANA AMENDMENT OF 2016.

Basic Change :

Sponsor: Representative House

This bill would amend the Arkansas Medical Marijuana Amendment of 2016 ("Amendment") to clarify the definition of "excluded felony offense" as well as the definition of "felony of violence". "Excluded felony offense" would include a felony of violence and also a felony of moral turpitude, a felony of gross immorality, or dishonesty. A "felony of violence" means a felony offense in which the actor causes, threatens to cause, attempts to cause, or reasonably expects to cause, to another person or the property of another person:

- Physical damage or injury;
- Emotional damage or injury;
- Psychological damage or injury; or
- Economic damage or injury.

The Medical Marijuana Commission ("Commission") would determine whether a felony offense is a felony of violence or a felony of moral turpitude, gross immorality, or dishonesty based on the commission's review of the actor's conviction for the felony offense when determining eligibility for licensure of designated caregivers, board members and officers of dispensaries and cultivation facilities, and dispensary agents or cultivation facility agents.

Revenue Impact :

None.

Taxpayer Impact :

The proposal would prohibit those whom have been convicted of a felony involving violence or a felony of moral turpitude, gross immorality, or dishonesty from being eligible to hold a license issued by the Commission.

Resources Required :

None.

Time Required :

Adequate time is provided for implementation.

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Procedural Changes :

None.

Other Comments :

The bill does not define the terms "felony of moral turpitude", "felony of gross immorality", or "dishonesty".

Legal Analysis :

This bill modifies the Amendment by defining the term "felony of violence," adding felony offenses of "moral turpitude, gross immorality, or dishonesty" to the list of "excluded felony offenses," and by giving the Commission additional authority to define these offenses. This bill will affect anyone that applies for a license to own and operate a cultivation facility or dispensary, anyone wishing to apply to work in a cultivation facility or dispensary, or anyone wishing to serve as a caregiver to a qualified patient. Because each of these entities are regulated by a different entity under the Amendment, this bill will have an effect on the ordinary operations of the Commission, the Department of Finance and Administration –("DFA"), Alcoholic Beverage Control Division ("ABC") and the Arkansas Department of Health ("ADH").

The bill includes potentially vague and subjective components. The first potential legal issue that this bill poses is the addition of the clause "a felony of moral turpitude, gross immorality, or dishonesty" to the list of excluded felony offenses and the added definition for "felony of violence," (including felonies involving "emotional damage" or "economic damage"). These terms are ambiguous and are not defined within the bill or the Amendment.

The second issue is that the bill provides for the Commission to determine whether a conviction is a conviction of a crime of violence in an individual and ad hoc manner potentially creating the potential for subjective waivers of the limitations imposed by the Amendment.

The bill does allow for the Commission to provide further definition of these terms and resolve ambiguity, however this bill may present a potentially problematic delegation of authority. The Commission has not been otherwise designated to have authority over the programs of the ADH or ABC but this bill could require ADH and ABC to be subject to regulatory determinations by multiple agencies.