

State of Arkansas  
91st General Assembly  
Regular Session, 2017

# A Bill

HOUSE BILL 1460

By: Representatives Wing, House  
By: Senators Irvin, Standridge

## For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS CONSTITUTION, AMENDMENT 98,  
ALSO KNOWN AS THE "ARKANSAS MEDICAL MARIJUANA  
AMENDMENT OF 2016" REGARDING EMPLOYEE PROTECTIONS AND  
EMPLOYEE SAFETY; AND FOR OTHER PURPOSES.

## Subtitle

TO AMEND THE ARKANSAS MEDICAL MARIJUANA  
AMENDMENT OF 2016 REGARDING EMPLOYEE  
PROTECTIONS AND EMPLOYEE SAFETY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Pursuant to § 23 of Arkansas Constitution, Amendment 98,  
also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas  
Constitution, Amendment 98, § 2(19), concerning the definition of "written  
certification" within the Arkansas Medical Marijuana Amendment of 2016, as  
amended by Acts 2017, No. 5, is amended to read as follows:

(19)(A) "Written certification" means a document signed by a  
physician stating that in the physician's professional opinion, after having  
completed an assessment of the qualifying patient's medical history and  
current medical condition made in the course of a physician-patient  
relationship, the qualifying patient has a qualifying medical condition.

(B) A written certification shall specify the qualifying  
patient's qualifying medical condition, which also shall be noted in the  
physician's records.

(C) A written certification is not a medical prescription.



SECTION 2. Pursuant to § 23 of Arkansas Constitution, Amendment 98, also known as the "Arkansas Medical Marijuana Amendment of 2016", § 2(6), concerning the definition of "designated caregiver", is amended to read as follows:

(6)(A) "Designated caregiver" means a person who is at least twenty-one (21) years of age, has not been convicted of an excluded felony offense, ~~has agreed to assist a physically disabled qualifying patient with the medical use of marijuana, and~~ who has registered with the Department of Health under § 5 of this amendment, and who has agreed to assist one (1) of the following qualifying patients with the medical use of marijuana:

(A) No more than one (1) physically disabled qualifying patient;

(B) His or her ward who is a qualifying patient;

(C) His or her spouse who is a qualifying patient; or

(D) His or her minor child who is a qualifying patient

~~(B) "Designated caregiver" includes without limitation a parent;~~

~~(i) Of a qualifying patient who is under the age of eighteen (18); and~~

~~(ii) Required to register as a designated caregiver under this amendment;~~

SECTION 3. Pursuant to § 23 of Arkansas Constitution, Amendment 98, also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas Constitution, Amendment 98, § 2, is amended to add additional subdivisions to read as follows:

(20)(A) "Current use of marijuana" means use of marijuana that justifies the good faith belief of an employer that an employee is engaging in the use of marijuana.

(B) "Current use of marijuana" is presumed when a positive test result for marijuana occurs;

(21) "Employee" means an individual employed by an employer, but does not include:

(A) An individual employed by his or her parents, spouse, or child;

1                   (B) An individual participating in a specialized  
2 employment training program conducted by a nonprofit sheltered workshop or  
3 rehabilitation facility;

4                   (C) An individual employed outside the State of Arkansas;  
5 or

6                   (D) An independent contractor;

7                   (22) "Employer" means an individual who employs nine (9) or more  
8 employees in the State of Arkansas in twenty (20) or more calendar weeks in  
9 the current or preceding calendar year or an agent of the individual  
10 described;

11                   (23)(A) "Good faith belief" means reasonable reliance on a fact,  
12 or that which is held out to be factual, without intent to deceive or be  
13 deceived and without reckless or malicious disregard for the truth.

14                   (B) "Good faith belief" does not include a belief formed  
15 with gross negligence.

16                   (C) "Good faith belief" may be based on any of the  
17 following:

18                               (i) Observed conduct, behavior, or appearance;

19                               (ii) Information reported by a person believed to be  
20 reliable, including without limitation a report by a person who witnessed the  
21 use or possession of marijuana or marijuana paraphernalia by an employee in  
22 the workplace;

23                               (iii) Written, electronic, or verbal statements from  
24 the employee or other persons;

25                               (iv) Lawful video surveillance;

26                               (v) A record of government agencies, law enforcement  
27 agencies, or courts;

28                               (vi) A positive test result for marijuana;

29                               (vii) A warning label, usage standard, or other  
30 printed material that accompany instructions for usable marijuana;

31                               (viii) Information from a physician, medical review  
32 officer, or a dispensary;

33                               (ix) Information from reputable reference sources in  
34 print or on the internet;

35                               (x) Other information reasonably believed to be  
36 reliable or accurate; or

1                   (xi) Any combination of the items listed in  
2 subdivisions (23)(C)(i)-(x) of this section;

3                   (24) "Positive test result for marijuana" means a result that is  
4 at or above the cutoff concentration level established by the United States  
5 Department of Transportation or the Arkansas laws regarding being under the  
6 influence, whichever is lower;

7                   (25)(A) "Safety sensitive position" means any position involving  
8 a safety sensitive function pursuant to federal regulations governing drug  
9 and alcohol testing adopted by the United States Department of Transportation  
10 or any other rules, guidelines, or regulations adopted by any other federal  
11 or state agency.

12                   (B) "Safety sensitive position" also means any position  
13 designated in writing by an employer as a safety sensitive position in which  
14 an employee who is under the influence of marijuana constitutes a threat to  
15 the employee, the coworkers of the employee, or members of the public,  
16 including without limitation a position:

17                   (i) That requires the employee to:

18                   (a) Carry a firearm;

19                   (b) Perform life-threatening procedures;

20                   (c) Work with confidential information or  
21 documents pertaining to criminal investigations; or

22                   (d) Work with controlled substances, food, or  
23 medicine; or

24                   (ii) In which a lapse of attention could result in  
25 injury, illness, or death to the employee or others, including without  
26 limitation a position that includes the operating, repairing, maintaining, or  
27 monitoring of heavy equipment, machinery, aircraft, motorized watercraft, or  
28 motor vehicles as part of job duties; and

29                   (26)(A) "Under the influence" means symptoms of an employee's  
30 current use of marijuana that may negatively impact the performance of the  
31 duties or tasks of the employee's job position or constitute a threat to the  
32 employee, the coworkers of the employee, or members of the public.

33                   (B) "Under the influence" includes without limitation:

34                   (i) Symptoms of the employee's speech, walking,  
35 standing, physical dexterity, agility, coordination, actions, movement,  
36 demeanor, appearance, clothing, odor, or other irrational or unusual behavior

1 that are inconsistent with the usual conduct of the employee;

2 (ii) Negligence or carelessness in operating  
 3 equipment, machinery, or production or manufacturing processes;

4 (iii) Disregard for the safety of the employee or  
 5 others;

6 (iv) Involvement in an accident that results in:  
 7 (a) Damage to equipment, machinery, or  
 8 property;

9 (b) Disruption of a production or  
 10 manufacturing process; or

11 (c) An injury to the employee or others; or

12 (v) Other symptoms causing a reasonable suspicion  
 13 that the employee's current use of marijuana is negatively impacting the work  
 14 performance of the employee or constitutes a threat to health or safety.

15  
 16 SECTION 4. Pursuant to § 23 of Arkansas Constitution, Amendment 98,  
 17 also known as the "Arkansas Medical Marijuana Amendment of 2016", Arkansas  
 18 Constitution, Amendment 98, § 3(f)(3), concerning the protections for the use  
 19 of medical marijuana, is amended to read as follows:

20 (3)(A) An employer shall not discriminate against an ~~individual~~  
 21 applicant or employee in hiring, termination, or any term or condition of  
 22 employment, or otherwise penalize an ~~individual~~ applicant or employee, based  
 23 upon the ~~individual's~~ applicant's or employee's past or present status as a  
 24 qualifying patient or designated caregiver.

25 (B) A cause of action shall not be established against an  
 26 employer based upon any of the following actions:

27 (i) Establishing a substance abuse or drug-free  
 28 workplace policy that may include a drug testing program that complies with  
 29 state or federal law and taking action with respect to an employee under the  
 30 policy;

31 (ii) Acting on the employer's good faith belief that  
 32 a qualifying patient employed by the employer:

33 (a) Possessed, smoked, ingested, or otherwise  
 34 engaged in the use of marijuana while on the premises of the employer or  
 35 during the hours of employment; or

36 (b) Was under the influence of marijuana while

1 on the premises of the employer or during hours of employment, provided that  
 2 a positive test result for marijuana cannot provide the sole basis for the  
 3 employer's good faith belief; or

4 (iii) Acting to exclude a qualifying patient  
 5 employed by the employer from performing a safety sensitive position based on  
 6 the employer's good faith belief that the qualifying patient was engaged in  
 7 the current use of marijuana.

8 (C) The actions of an employer protected by this  
 9 subdivision (f)(3) include:

10 (i) Implementing, monitoring, or taking measures to  
 11 assess, supervise, or control the job performance of an employee;

12 (ii) Reassigning an employee to a different position  
 13 or job duties;

14 (iii) Placing an employee on paid or unpaid leave;  
 15 or

16 (iv) Suspending or terminating an employee.

17 (D)(i) Damages established for an employment  
 18 discrimination claim based on an employee's past or present status as a  
 19 qualifying patient or designated caregiver in violation of this amendment  
 20 shall be limited to damages allowed under the Arkansas Civil Rights Act of  
 21 1993, § 16-123-101 et seq.

22 (ii) Liability for back pay shall not accrue from a  
 23 date more than two (2) years prior to the filing of an action.

24 (iii) Damages under this subdivision (f)(3) shall  
 25 not duplicate or increase a damages award over the statutory cap allowed by:

26 (a) Title VII of the Civil Rights Act of 1964,  
 27 the Americans with Disabilities Act of 1990, or any other federal employment  
 28 discrimination law containing a statutory limit on damages; or

29 (b) The Arkansas Civil Rights Act of 1993 or  
 30 any other state employment discrimination law.

31 (E) An action based on employment discrimination in  
 32 violation of this subdivision (f)(3) shall be brought within one (1) year of  
 33 the occurrence of the alleged discrimination.

34 (F) An individual employee or an agent of the employer is  
 35 not liable for any violation of this subdivision (f)(3) that the employer is  
 36 found to have committed.