

PROPOSITION 203, RELATING TO THE MEDICAL USE OF MARIJUANA; PROVIDING FOR CONDITIONAL REPEAL

Adds, Title 36, Chapter 28.1, Medical Marijuana Act.

Contains a "Findings" section

§36-2801. Definitions.

1. "Allowable amount of marijuana"

(a) With respect to a qualifying patient, the "allowable amount of marijuana" means:

(i) Two-and-one-half ounces of usable marijuana; and

(ii) If the qualifying patient's registry identification card states that the qualifying patient is authorized to cultivate marijuana, twelve marijuana plants contained in an enclosed, locked facility except that the plants are not required to be in an enclosed, locked facility if the plants are being transported because the qualifying patient is moving.

(b) With respect to a designated caregiver, the "allowable amount of marijuana" for each patient assisted by the designated caregiver under this chapter means:

(i) Two-and-one-half ounces of usable marijuana; and

(ii) If the designated caregiver's registry identification card provides that the designated caregiver is authorized to cultivate marijuana, twelve marijuana plants contained in an enclosed, locked facility except that the plants are not required to be in an enclosed, locked facility if the plants are being transported because the designated caregiver is moving.

(c) Marijuana that is incidental to medical use, but is not usable marijuana as defined in this chapter, shall not be counted toward a qualifying patient's or designated caregiver's allowable amount of marijuana.

2. "Cardholder" means a qualifying patient, a designated caregiver or a nonprofit medical marijuana dispensary agent who has been issued and possesses a valid registry identification card.

3. "Debilitating medical condition" means one or more of the following:

(a) cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis c, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease or the treatment of these conditions.

(b) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis.

(c) Any other medical condition or its treatment added by the department pursuant to section 36-2801.01.

4. "Department" means the Arizona Department of Health Services or its successor agency.

5. "Designated caregiver" means a person who:

(a) Is at least twenty-one years of age.

(b) Has agreed to assist with a patient's medical use of marijuana.

(c) Has not been convicted of an excluded felony offense.

(d) Assists no more than five qualifying patients with the medical use of marijuana.

(e) May receive reimbursement for actual costs incurred in assisting a registered qualifying patient's medical use of marijuana if the registered designated caregiver is connected to the registered qualifying patient through the department's registration process. The designated caregiver may not be paid any fee or compensation for his service as a caregiver. Payment for costs under this subdivision shall not constitute an offense under Title 13, Chapter 34 or under Title 36, Chapter 27, Article 4.

6. "Enclosed, locked facility" means a closet, room, greenhouse or other enclosed area equipped with locks or other security devices that permit access only by a cardholder.

7. "Excluded felony offense" means:

(a) A violent crime as defined in section 13-901.03, subsection B that was classified as a felony in the jurisdiction where the person was convicted.

(b) A violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted but does not include:

(i) An offense for which the sentence, including any term of probation, incarceration or supervised release, was completed ten or more years earlier.

(ii) An offense involving conduct that would be immune from arrest, prosecution or penalty under §36-2811 except that the conduct occurred before the effective date of this chapter or was prosecuted by an authority other than the state of Arizona.

8. "Marijuana" means all parts of any plant of the genus cannabis whether growing or not, and the seeds of such plant.

9. "Medical use" means the acquisition, possession, cultivation, manufacture, use, administration, delivery, transfer or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

10. "Nonprofit medical marijuana dispensary agent" means a principal officer, board member, employee or volunteer of a nonprofit medical marijuana dispensary who is at least twenty-one years of age and has not been convicted of an excluded felony offense.

11. "Nonprofit medical marijuana dispensary" means a not-for-profit entity that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, sells or dispenses marijuana or related supplies and educational materials to cardholders. A nonprofit medical marijuana dispensary may receive payment for all expenses incurred in its operation.

12. "Physician" means a doctor of medicine who holds a valid and existing license to practice medicine pursuant to Title 32, Chapter 13 or its successor, a doctor of osteopathic medicine who holds a valid and existing license to practice osteopathic medicine pursuant to Title 32, Chapter 17 or its successor, a naturopathic physician who holds a valid and existing license to practice naturopathic medicine pursuant to Title 32, Chapter 14 or its successor or a homeopathic physician who holds a valid and existing license to practice homeopathic medicine pursuant to Title 32, Chapter 29 or its successor.

Note: The following health care providers listed in Title 32 do not fall within this definition: podiatrists (Ch 7), chiropractors (Ch 8), dentists (Ch 11), physicians assistants (Ch 25), and acupuncturists (Ch 39).

13. "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

14. "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient, registered designated caregiver or a registered nonprofit medical marijuana dispensary agent.

15. "Usable marijuana" means the dried flowers of the marijuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks and roots of the plant and does not include the weight of any non-marijuana ingredients combined with marijuana and prepared for consumption as food or drink.

16. "Verification system" means a secure, password-protected, web-based system established and maintained by the department that is available to law enforcement personnel and nonprofit medical marijuana dispensary agents on a twenty-four hour basis for verification of registry identification cards.

17. "Visiting qualifying patient" means a person:

(a) Who is not a resident of Arizona or who has been a resident of Arizona less than thirty days.

(b) Who has been diagnosed with a debilitating medical condition by a person who is licensed with authority to prescribe drugs to humans in the state of the person's residence or, in the case of a person who has been a resident of Arizona less than thirty days, the state of the person's former residence.

18. "Written certification" means a document dated and signed by a physician, stating that in the physician's professional opinion the patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. The physician must:

(a) Specify the qualifying patient's debilitating medical condition in the written certification.

(b) Sign and date the written certification only in the course of a physician-patient relationship after the physician has completed a full assessment of the qualifying patient's medical history.

NOTE: a written certification is not a prescription, which could raise an issue in a prosecution for §28-1383(A) (3), DUI per se drugs. See §28-1383 (D), A person using a drug, as prescribed by a medical practitioner licensed pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating subsection A, paragraph 3 of this section. See §32-1901 (77) defining prescription.

§36-2801.01. Addition of debilitating medical conditions. Permits a member of the public to petition DHS to add a debilitating medical condition, sets forth the action required by DHS.

§36-2802. Arizona medical marijuana act; limitations. The chapter Medical Marijuana Act) does not authorize any person to engage in, and does not prevent the imposition of any civil, criminal or other penalties for engaging in, the following conduct:

- Undertaking any task under the influence of marijuana that would constitute negligence or professional malpractice.
- Possessing or engaging in the medical use of marijuana:
 1. On a school bus
 2. On the grounds of any preschool or primary or secondary school
 3. In any correctional facility
- Smoking marijuana:
 1. On any form of public transportation
 2. In any public place
- Operating, navigating or being in actual physical control of any motor vehicle, aircraft or motorboat while under the influence of marijuana, except a registered qualifying patient is not considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment. (§36-2802(D))
- Otherwise using marijuana except as authorized under this chapter

Note: This section may provide a limited defense to §28-1381(A) (1), DUI, as it applies to Driving under the influence of marijuana. However, see § 28-1381 (B), It is not a defense to a charge of a violation of subsection A, paragraph 1 of this section that the person is or has been entitled to use the drug under the laws of this state.

Note: §36-2802(D) refers to not simply marijuana, but “metabolites or components of marijuana”.

§36-2803. Rulemaking. Requires DHS to establish rules no later than one hundred and twenty days after the effective date of the chapter (April 16, 2011 based upon a December 15, 2010 effective date). The content of the rules are spelled out in the section.

§36-2804. Registration and certification of nonprofit medical marijuana dispensaries. Establishes the process for registration and certification of nonprofit medical marijuana dispensaries. DHS has ninety days from the date of application to register the dispensary if the enumerated criteria are met.

§36-2804.01. Registration of nonprofit medical marijuana dispensary agents; notices; civil penalty; classification. Requires, a dispensary agent to be registered with DHS prior to volunteering or working at a dispensary. The title of the section refers to a civil penalty, however, no civil penalty is referred to in the section.

§36-2804.02. Registration of qualifying patients and designated caregivers. Sets forth the procedure for a qualifying patient to apply to DHS for a registry indemnification card.

§36-2804.03. Issuance of registry identification cards. Establishes requirements for DHS in issuing registry identification cards. A registry identification card, or its equivalent issued in another state, district, territory, commonwealth or insular possession of the United States that allows a visiting qualifying patient to possess or use marijuana for medical purposes in the jurisdiction of issuance has the same effect as a registry identification card issued by DHS, except a visiting qualifying patient is not authorized to obtain marijuana from a dispensary.

Note. Theoretically, this provision of the statute may not need the 120 day DHS rulemaking period to be effective.

§36-2804.04. Registry identification cards. Sets forth the required content of registry identification cards.

§36-2804.05. Denial of registry identification card. Lists the reasons for denial of a registry identification card.

§36-2804.06. Expiration and renewal of registry identification cards and registration certificates; replacement. Covers expiration, renewal and cancellation of registry identification cards.

§36-2805. Facility restrictions. Permits a nursing care institution, hospice, assisted living center, assisted living facility, assisted living home, residential care institution, adult day health care facility or adult foster care home licensed under Title 36, Chapter 4 (Health care institutions) to adopt reasonable restrictions, enumerated in statute, on the use of marijuana by its residents or persons receiving services.

§36-28-2806. Registered nonprofit medical marijuana dispensaries; requirements. Contains administrative requirements for dispensaries.

A dispensary is prohibited from acquiring, possessing, cultivating, manufacturing, delivering, transferring, transporting, supplying or dispensing marijuana for any purpose except to assist a registered qualifying patient with the medical use of marijuana.

All cultivation of marijuana must take place in an enclosed, locked facility at a physical address provided to DHS during the registration process that can only be accessed by a dispensary agent associated in the registry with the dispensary.

A dispensary may acquire usable marijuana or marijuana plants from a registered qualifying patient or a registered designated caregiver only if the registered qualifying patient or registered designated caregiver receives no compensation for the marijuana.

Consuming marijuana on the property of a dispensary is prohibited.

§36-2806.01. Dispensary locations. Permits cities and towns to enact reasonable zoning regulations that limit the use of land for dispensaries, as provided in Title 9 (cities and towns) and Title 11 (counties).

§36-2806.02. Dispensing marijuana for medical use. Prior to dispensing marijuana to a registered designated caregiver or a registered qualifying patient, a dispensary agent must access the DHS verification system and determine for the registered qualifying patient for whom the marijuana is intended and any registered designated caregiver transporting the marijuana to the patient, that:

- The registry identification card presented to the dispensary is valid
- Each person presenting a registry identification card is the person identified on the card
- The amount to be dispensed would not cause the registered qualifying patient to exceed the limit on obtaining no more than two-and-one-half ounces of marijuana during any fourteen-day period

Requires the dispensary agent to enter information enumerated in statute to be entered into the system.

§36-2807. Verification system. Requires DHS to within one hundred twenty days of the effective date of the chapter to establish a secure, password-protected, web-based verification system for use on a twenty-four hour basis by law enforcement personnel and nonprofit medical marijuana dispensary agents in order to verify registry identification cards. The system must allow law enforcement personnel and nonprofit medical marijuana dispensary agents to enter a registry identification number and verify whether the number corresponds with a current, valid identification card. The system is required to disclose:

- The name of the cardholder
- The amount of marijuana that each registered qualifying patient received from a dispensary within the past sixty days

The system must include the following security features:

- Any time an authorized user enters five invalid registry identification numbers within five minutes that user cannot log in to the system for ten minutes
- A user's log-in information must be deactivated after 5 incorrect login attempts until the authorized user contacts DHS and verifies identity
- The server must reject any log-in request that is not over an encrypted connection

§36-2808. Notifications to department. civil penalty. A qualifying patient and registered designated caregiver is required to notifying DHS of a change of address within ten days. Failure to notify can result in up to a \$150 penalty, seemingly paid to the medical marijuana fund, not adjudicated in court.

If the registered qualifying patient's certifying physician notifies DHS in writing that either the registered qualifying patient no longer suffers from a debilitating medical condition or that the physician no longer believes the patient would receive therapeutic or palliative benefit from the medical use of marijuana, the registration card is void upon DHS notifying the qualifying patient. When a registered qualifying patient ceases to be a registered qualifying patient or changes the patient's registered designated caregiver, DHS must promptly notify the former designated caregiver that the caregiver's duties and rights expire fifteen days after notification is sent.

§36-2809. Annual report. Requires DHS to submit an annual report to the legislature containing the information enumerated in statute.

§36-2810. Confidentiality. Exempts the enumerated information kept on file by DHS from public inspection pursuant to Title 39, Chapter 1, Article 2 (searches and copies), from being released to any agency of the federal government charged with the administration of health services pursuant to §36-105 (information, state federal cooperation), and from disclosure to any person or entity except as permitted by statute.

Permits DHS to notify law enforcement about falsified or fraudulent information submitted to the department if the employee who suspects that falsified or fraudulent information has been submitted has conferred with a supervisor and both agree that the circumstances warrant reporting. Permits DHS to notify state or local law enforcement about apparent criminal violations of the act if the employee who suspects the offense has conferred with a supervisor and both agree that the circumstances warrant reporting. Permits dispensary agents to notify DHS of a suspected violation or attempted violation of the chapter or department rules.

§36-2811. Presumption of medical use of marijuana; protections; civil penalty.

Enacts presumptions having to do with the medical use of marijuana. There is a presumption that a qualifying patient or designated caregiver is engaged in the medical use of marijuana if the qualifying patient or designated caregiver is:

- In possession of a registry identification card
- In possession of an amount of marijuana that does not exceed the allowable amount of marijuana.

The presumption may be rebutted by evidence that conduct related to marijuana was not for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition pursuant to the chapter.

A registered qualifying patient or registered designated caregiver is not subject to arrest, prosecution or penalty, or denial of any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau for:

- The registered qualifying patient's medical use of marijuana if the registered qualifying patient does not possess more than the allowable amount of marijuana
- The registered designated caregiver assisting a registered qualifying patient to whom the caregiver is connected through the department's registration process with the registered qualifying patient's medical use of marijuana pursuant to the chapter if the registered designated caregiver does not possess more than the allowable amount of marijuana
- Offering or providing marijuana to a registered qualifying patient or a registered designated caregiver for the patient's medical use or to a registered nonprofit medical marijuana dispensary if nothing of value is transferred in return and the person giving the marijuana does not knowingly cause the recipient to possess more than the allowable amount of marijuana

A physician is not be subject to arrest, prosecution or penalty or denied any right or privilege, including but not limited to civil penalty or disciplinary action by the Arizona Board of Medical Examiners or by any other business, occupational or professional licensing board or bureau, based solely on providing written certifications or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition. However, a professional licensing board may sanction a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.

A person may not be subject to arrest, prosecution or penalty or denied any right or privilege, including any civil penalty or disciplinary action by a court or occupational or professional licensing board or bureau, for:

- Providing a registered qualifying patient, a registered designated caregiver or a registered nonprofit medical marijuana dispensary with marijuana paraphernalia for purposes of a qualifying patient's medical use of marijuana
- Being in the presence or vicinity of the medical use of marijuana
- Assisting a registered qualifying patient with administering marijuana

A dispensary is not subject to prosecution, search or inspection, except by DHS pursuant to section 36-2806 (H), (reasonable inspection) or to seizure or penalty and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting pursuant to the chapter and DHS regulations in order to acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell or dispense marijuana or related supplies and educational materials to registered qualifying patients, to registered designated caregivers on behalf of registered qualifying patients or to other dispensaries.

A dispensary agent is not subject to arrest, prosecution, search, seizure or penalty and may not be denied any right or privilege, including civil penalty or disciplinary action by a court or occupational or professional licensing board or entity, for working or volunteering for a registered nonprofit medical marijuana dispensary pursuant to the act and DHS regulations in order to acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply, sell or dispense marijuana or related supplies and educational materials to registered qualifying patients, to registered designated caregivers on behalf of registered qualifying patients or to other dispensaries.

Property, including all interests in the property, otherwise subject to forfeiture under Title 13, Chapter 39 (Forfeiture) that is possessed, owned or used in connection with the medical use of marijuana or acts incidental to the medical use of marijuana authorized under this chapter, is not subject to seizure or forfeiture. Civil forfeiture is permitted if the basis for the forfeiture is unrelated to the medical use of marijuana.

Mere possession of, or application for, a registry identification card may not constitute probable cause or reasonable suspicion, nor may it be used to support the search of the person or property of the person possessing or applying for the registry identification card. Probable cause may be based on other grounds.

A school, landlord or employer may not be penalized or denied any benefit under state law for enrolling, leasing to or employing a registered qualifying patient or a registered designated caregiver.

Note: This section may provide various defenses to §28-1381, DUI and §13-3405, Possession, use, production, sale or transportation of marijuana.

§36-2812. Affirmative defense. Except as provided in §36-2802, a qualifying patient and a qualifying patient's designated caregiver may assert the medical purpose for using marijuana as a defense to any prosecution of an offense involving marijuana intended for a qualifying patient's medical use, and this defense shall be presumed valid where the evidence shows that:

1. A physician states that, in the physician's professional opinion, after completing a full assessment of the qualifying patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the qualifying patient is likely to receive therapeutic or palliative benefit from the medical use of marijuana to treat or alleviate the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition.
2. The qualifying patient and the qualifying patient's designated caregiver were collectively in possession of a quantity of marijuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marijuana for the purpose of treating or alleviating the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition.
3. All marijuana plants were contained in an enclosed locked facility.
4. The qualifying patient and the qualifying patient's designated caregiver were engaged in the acquisition, possession, cultivation, manufacture, use or transportation of marijuana, paraphernalia or both, relating to the administration of marijuana solely to treat or alleviate the qualifying patient's debilitating medical condition or symptoms associated with the qualifying patient's debilitating medical condition.

A person may assert the medical purpose for using marijuana in a motion to dismiss, and the charges are required to be dismissed following an evidentiary hearing where the person shows the elements listed above.

If a qualifying patient or a qualifying patient's designated caregiver demonstrates the qualifying patient's medical purpose for using marijuana the qualifying patient and the qualifying patient's designated caregiver are not subject to disciplinary action by a court or occupational or professional licensing board or bureau or forfeiture of any interest in or right to non-marijuana, illicit property.

§36-2813. Discrimination prohibited. Prohibits discrimination as follows:

- A school or landlord may not refuse to enroll or lease to and may not penalize a person solely for the person's status as a cardholder, unless failing to do so would cause the school or landlord to lose a monetary or licensing related benefit under federal law or regulations.
- Unless a failure to do so would cause an employer to lose a monetary or licensing related benefit under federal law or regulations, an employer may not discriminate against a person in hiring, termination or imposing any term or condition of employment or otherwise penalize a person based upon either:
 - The person's status as a cardholder
 - A registered qualifying patient's positive drug test for marijuana components or metabolites, unless the patient used, possessed or was impaired by marijuana on the premises of the place of employment or during the hours of employment

For the purposes of medical care, including organ transplants, a registered qualifying patient's authorized use of marijuana must be considered the equivalent of the use of any other medication under the direction of a physician and the marijuana does not constitute the use of an illicit substance or otherwise disqualify a registered qualifying patient from medical care.

A person may not be denied custody of or visitation or parenting time with a minor and there is no presumption of neglect or child endangerment for conduct allowed under the chapter, unless it is proven by clear and convincing evidence that the person's behavior creates an unreasonable danger to the safety of the minor.

36-2814. Acts not required; acts not prohibited. The chapter does not require any of the following:

- A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana.

- Any person or establishment in lawful possession of property to allow a guest, client, customer or other visitor to use marijuana on or in that property.
- An employer to allow the ingestion of marijuana in any workplace or any employee to work while under the influence of marijuana, except that a registered qualifying patient shall not be considered to be under the influence of marijuana solely because of the presence of metabolites or components of marijuana that appear in insufficient concentration to cause impairment.
- That an employer be prohibited from disciplining an employee for ingesting marijuana in the workplace or working while under the influence of marijuana.

§36-2815. Revocation. Requires DHS to immediately revoke the registry identification card of a nonprofit medical marijuana dispensary agent who violates §36-2804.01(D) or 36-2816 (B). Requires DHS to suspend or revoke the registry identification card of a nonprofit medical marijuana dispensary agent for other violations of this chapter.

Requires DHS to immediately revoke the registration certificate of a registered nonprofit medical marijuana dispensary that violates §36-2816(B or C). The dispensary board members and principal officers may not serve as the board members or principal officers for any other registered nonprofit medical marijuana dispensary.

Requires DHS to revoke the registry card of any cardholder who sells marijuana to a person who is not allowed to possess marijuana for medical purposes. The person is subject to other penalties for the unauthorized sale of marijuana and other applicable offenses.

Permits DHS to revoke the registry identification card of any cardholder who knowingly violates this chapter, and the cardholder is subject to other penalties for the applicable offense.

Revocation is a final decision of DHS and is subject to judicial review pursuant to Title 12, Chapter 7, Article 6 (Judicial review of administrative decisions). Jurisdiction and venue are vested in the Superior Court.

§36-2816. Violations; civil penalty; classification. Creates a series of violations.

A registered qualifying patient may not directly, or through the patient's designated caregiver, obtain more than two-and-one-half ounces of marijuana from registered nonprofit medical marijuana dispensaries in any fourteen-day period. No penalty provided.

A registered nonprofit medical marijuana dispensary or agent may not dispense, deliver or otherwise transfer marijuana to a person other than another registered nonprofit medical marijuana dispensary, a registered qualifying patient or a registered qualifying patient's registered designated caregiver. No penalty provided. §36-2816(B).

A registered nonprofit medical marijuana dispensary may not knowingly acquire usable marijuana or mature marijuana plants from any person other than another registered nonprofit medical marijuana dispensary, a registered qualifying patient or a registered designated caregiver. A violation is a Class 2 felony. §36-2816(C).

A person, including an employee or official of the department or another state agency or local government, may not breach the confidentiality of information obtained pursuant to this chapter. A violation is a Class 1 Misdemeanor.

A person may not make a false statement to a law enforcement official about any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution. A violation results in a civil penalty of not more than five hundred dollars, seemingly payable to the medical marijuana fund, in addition to any other penalties that may apply for making a false statement or for the use of marijuana other than use undertaken pursuant to this chapter.

Note: Note that the term, "agent" is used in 36-2816(B), however the term, "agent" is not used in §36-2816(C).

§36-2817. Medical marijuana fund. Establishes a Medical Marijuana Fund administered by DHS consisting of fees, civil penalties imposed and private donations received. Monies are continuously appropriated. The DHS director may accept and spend private grants, gifts, donations, contributions and devises to assist in carrying out the provisions of this chapter. Monies in the fund do not revert to the state general fund at the end of a fiscal year.

§36-2818. Enforcement of this act; mandamus. If DHS does not adopt regulations within one hundred twenty days of the effective date of this chapter, any citizen may commence a mandamus action in superior court to compel the department to perform the actions mandated under this chapter. If the department fails to issue a registry identification card within forty-five days of the submission of a valid application or renewal, the registry identification card shall be deemed issued, and a copy of the registry identification card application or renewal is deemed a valid registry identification card.

If at any time after the one hundred forty days following the effective date of this chapter (April 23, 2011) the department is not accepting applications or has not promulgated rules allowing qualifying patients to submit applications, a notarized statement by a qualifying patient containing the information required in an application together with a written certification issued by a physician within the ninety days immediately preceding the notarized statement is deemed a valid registry identification card.

Note: However, if there are no rules in place, are there no qualifying dispensaries? How does a “patient” who becomes qualified under this section obtain marijuana? How does a registry card comply with the requirements of §36-2804.04 regarding an ID number or photograph?

§36-2819. Fingerprinting requirements. Enacts fingerprinting requirements for persons applying as a designated caregiver, a principal officer, agent or employee of a dispensary.

§413-1201. Organizations exempt from tax. Exempts dispensaries from the provisions of Title 43 (Taxation of income).

§36-2712 is repealed as of the date DHS begins to issue registry identification cards.

DHS is exempt from the rulemaking requirements of Title 41, Chapter 6 (Administrative Procedure), however, the public can comment on proposed rules

Contains a severability clause.

December 15, 2010