

Legislative Proposals for 2013

“Medical Marijuana” Law, ARS 36-2801 et seq.

Legislative proposal #1:

Cannabis is not a crop. The proposal excludes cannabis from the definition of “general agricultural purposes” in statute, thus subjecting the cultivation of medical marijuana to greater county zoning.

Rationale:

Under ARS 11-812, a county may not regulate tracts of land within its jurisdiction over 5 “commercial acres” that are used for “general agricultural purposes.” (“Commercial acre” is roughly equivalent to 4.2 standard acres.) Marijuana is arguably an agricultural product, and marijuana “coops” on tracts of land in excess of five commercial acres would arguably be exempt from county zoning ordinances, thus permitting cardholders to band together to grow marijuana. The proposed change would exclude marijuana and cannabis from the definition of “general agricultural purposes” under ARS 11-812.

- This proposal has been submitted to CSA for consideration at the 8th Annual CSA Legislative Summit to be held Oct. 1-3, 2012.

Legislative proposal #2:

Prohibit law enforcement agencies from returning any marijuana seized pursuant to a lawful seizure, regardless of whether criminal prosecution results.

Rationale:

There are many reasons why a lawful seizure of marijuana may not result in a successful prosecution of the possessor, including a decision by the prosecuting agency that there is not sufficient evidence to charge, or the production after-the-fact of a duly issued medical marijuana card. Law enforcement should not be in the position of preserving or otherwise cultivating marijuana in the event of the dropping of charges. The legislature should clarify that any marijuana lawfully seized shall not be returned to the individual.

Legislative proposal #3:

Clarify that any use by cardholders, caregivers, and dispensary agents in the production, transportation, sale, use or possession marijuana outside of the terms of

their authority granted by the medical marijuana law removes the protections of the law, and the person may be prosecuted pursuant to the Arizona Revised Statutes as a non-medical marijuana cardholder. Any activity beyond that permitted in the medical marijuana law should also result in the permanent loss of the medical marijuana card.

Rationale:

Arizona has a strong public policy against marijuana. The medical marijuana law has carved out a narrow exception to that policy for medical use. To uphold Arizona's prohibition against marijuana, it is imperative that those individuals granted access to marijuana through the medical marijuana law be strongly discouraged from using their access to marijuana to add to the supply of illicit marijuana in the state, or to supply it to those without authorization to possess marijuana. One of the best ways this may be accomplished is for the legislature to specify and clarify that any activity beyond that permitted in the medical marijuana law results in the forfeiture of the protections of the law and the individual is subject to prosecution as if he/she is not a cardholder. Any activity beyond that permitted in the medical marijuana law should also result in the permanent loss of the medical marijuana card.

Legislative proposal #4:

Impose criminal penalties for smoking marijuana in public. The law should clarify that smoking in public is prosecutable pursuant to Arizona Revised Statutes as if the violator is not a cardholder. Any activity beyond that permitted in the medical marijuana law should also result in the permanent loss of the medical marijuana card.

Rationale:

The medical marijuana law forbids smoking marijuana in public, but provides no penalty. Smoking of marijuana in public encourages its illicit use, and exposes marijuana to children. Since marijuana use in public is not authorized by the medical marijuana law and is a criminal activity in Arizona, smoking of marijuana in public by a cardholder should be made a serious criminal act.

Legislative proposal #5:

Impose criminal penalties for smoking marijuana in the presence of children under the age of 18. The law should clarify that smoking in the presence of children is prosecutable pursuant to Arizona Revised Statutes as if the violator is not a cardholder. Any activity beyond that permitted in the medical marijuana law should also result in the permanent loss of the medical marijuana card.

Rationale:

Children exposed to marijuana use are desensitized to the hazards of marijuana use, and are more likely to use marijuana illegally in the future. Children exposed to marijuana smoke will suffer the same health hazards as exposure to tobacco smoke. Smoking marijuana in the presence of children should be made a serious criminal act.

Legislative proposal #6:

Create a presumption that the exchange of marijuana at any location where fees are paid is an exchange for value.

Proposed language:

“There is a conclusive presumption that a transfer of marijuana to a person is a transfer of marijuana for value where the transferee must pay anything of value to be a member of an organization, or to participate in an activity, in order to be eligible to receive such transfer, or where a donation is accepted.”

Rationale:

Arizona Revised Statutes section 36-2811(B)(3) allows patients and caregivers to transfer marijuana to other patients or caregivers as long as nothing of value is transferred in return. In recent days, “marijuana clubs” have appeared. The clubs require the person to pay a fee to join an “educational club,” and a participation fee each time they visit the club. For each visit, the participant is given 3-5 grams of marijuana for “free” by another cardholder, who just happens to be the person that runs the club and collects the fees. Other businesses are now transferring marijuana in exchange for a “donation.”

The proposed legislation creates a conclusive presumption that (1) if you have to pay to gain status as a member or participant to a club that gives you the right to “free” marijuana, or (2) if you transfer marijuana in exchange for a donation, the payment or donation is the transfer for value. Dispensaries are allowed to sell, so the proposed legislation would not affect them.

Legislative proposal #7:

The legislature should set a presumptive level of marijuana impairment at a concentration of 2.0 ng/ml of blood THC for purposes of operating automobiles or other machinery, and for purposes of employment.

Rationale:

The medical marijuana law, A.R.S. section 36-2801 et seq., authorizes the use of marijuana for medical purposes, but does not allow a user to be impaired while employed or operating automobiles or other machinery. Use of marijuana impairs a person's ability to operate automobiles and other machinery, and to properly perform their job. Impairment is difficult to determine without presumptive standards. Marijuana impairment can be compared to use of alcohol, which is legal but impairment is not allowed when a person is operating automobiles or other machinery or by most employers. Levels of presumptive alcohol impairment are codified in law so employers and law enforcement may more easily determine if a person is impaired.

Scientific tests are available to determine the level of Tetrahydrocannabinol (THC) the active ingredient in marijuana, and standards exist that prove a person is impaired at blood levels of THC of 2.0 nanograms per milliliter (ng/ml) or greater. Presumptive levels of marijuana impairment for both employment and operation of automobiles and other machinery must be adopted by the legislature in order to allow employers and law enforcement to quickly and easily determine if probable cause exists that a person is impaired, and to take appropriate action to protect the person, the employer, and the public.