

1 HB703
2 71008-2
3 By Representatives Hall (L), Jackson, Major, Mitchell,
4 Robinson (O), Dunn and Rogers
5 RFD: Judiciary
6 First Read: 31-MAR-05

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8 SYNOPSIS: Under existing law, the possession and use
9 of marijuana is a criminal act.

10 This bill would authorize the medical use of
11 marijuana only for certain qualifying patients who
12 have been diagnosed by a physician as having a
13 debilitating medical condition.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT
18

19 To authorize the medical use of marijuana only for
20 certain qualifying patients who have been diagnosed by a
21 physician as having a debilitating medical condition.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

23 Section 1. The Legislature hereby finds that state
24 law should make a distinction between the medical and
25 non-medical use of marijuana. Hence, the purpose of this act
26 is to ensure that physicians are not penalized for discussing
27 marijuana as a treatment option with their patients, and

1 seriously ill people who engage in the medical use of
2 marijuana upon their physicians' advice are not arrested and
3 incarcerated for using marijuana for medical purposes.

4 Section 2. As used in this act, the following terms
5 shall have the following meanings:

6 (1) ADEQUATE SUPPLY. An amount of marijuana
7 collectively possessed between the qualifying patient and the
8 qualifying patient's primary caregivers that is not more than
9 is reasonably necessary to ensure the uninterrupted
10 availability of marijuana for the purpose of alleviating the
11 symptoms or effects of a qualifying patient's debilitating
12 medical condition.

13 (2) ATTENDING PHYSICIAN. An individual who possesses
14 a certificate of qualification issued in his or her behalf by
15 the State Board of Medical Examiners and a license and
16 certificate of registration from the board and who has taken
17 responsibility for an aspect of the medical care, treatment,
18 diagnosis, counseling, or referral of a patient and who has
19 conducted a medical examination of that patient before
20 recording in the patient's medical record the physician's
21 assessment of whether the patient has a serious medical
22 condition and whether the medical use of marijuana is
23 appropriate.

24 (3) DEBILITATING MEDICAL CONDITION. Any of the
25 following medical conditions:

26 a. Cancer.

27 b. Glaucoma.

- 1 c. Multiple sclerosis.
- 2 d. Chronic arthritis.
- 3 e. Cachexia.
- 4 f. Chronic pain.
- 5 g. Fibromyalgia.
- 6 h. Migraine.
- 7 i. Acquired Immune Deficiency Syndrome (AIDS) or
- 8 Human Immunodeficiency Virus (HIV).
- 9 j. Anorexia.
- 10 k. Seizures, including, but not limited to, seizures
- 11 associated with epilepsy.
- 12 l. Severe nausea.
- 13 m. Any other chronic or persistent medical symptom
- 14 that either substantially limits the ability of the person to
- 15 conduct one or more major life activities as defined in the
- 16 Americans with Disabilities Act of 1990 (Public Law 101-336)
- 17 or if not alleviated, may cause serious harm to the patient's
- 18 safety or physical or mental health.

19 (4) DEPARTMENT. The Alabama Department of Public
20 Health.

21 (5) MARIJUANA. The same definition as provided in
22 Section 20-2-23, Code of Alabama 1975.

23 (6) MEDICAL USE. The acquisition, possession,
24 cultivation, use, transfer, or transportation of marijuana or
25 paraphernalia relating to the administration of marijuana to
26 alleviate the symptoms or effects of a qualifying patient's
27 debilitating medical condition. For the purposes of this act,

1 the term transfer is limited to the transfer of marijuana and
2 paraphernalia between primary caregivers and qualifying
3 patients.

4 (7) PRIMARY CAREGIVER. An individual who is at least
5 18 years of age, unless he or she is the parent of a minor
6 child who is a qualified patient or a person with a registry
7 identification card or is a person otherwise entitled to make
8 medical decisions under state law.

9 (8) QUALIFIED PATIENT. A person who is entitled to
10 the protections of this act, but who does not have a registry
11 identification card issued pursuant to this act.

12 (9) QUALIFYING PATIENT. A person who has been
13 diagnosed by a physician as having a debilitating medical
14 condition.

15 (10) REGISTRY IDENTIFICATION CARD. A document issued
16 by the department that identifies a person authorized to
17 engage in the medical use of marijuana and the person's
18 designated primary caregiver, if any.

19 (11) WRITTEN RECOMMENDATION. The qualifying
20 patient's medical records or a statement signed by a
21 physician, stating that in the physician's professional
22 opinion, after having completed a full assessment of the
23 qualifying patient's medical history and current medical
24 condition made in the course of a bona fide physician-patient
25 relationship, the qualifying patient has a debilitating
26 medical condition and the potential benefits of the medical

1 use of marijuana would likely outweigh the health risks for
2 the qualifying patient.

3 Section 3. (a) The authorization for the medical use
4 of marijuana in this act shall not apply to any of the
5 following:

6 (1) The medical use of marijuana that endangers the
7 health or well-being of another person, such as driving or
8 operating heavy machinery while under the influence of
9 marijuana.

10 (2) The smoking of marijuana at or in any of the
11 following:

12 a. In a school bus, public bus, or other public
13 vehicle.

14 b. In the workplace of one's employment.

15 c. On any school grounds.

16 d. At any public park, public beach, public
17 recreation center, or youth center.

18 e. The use of marijuana by a qualifying patient,
19 primary caregiver, or any other person for purposes other than
20 medical use permitted by this act.

21 (b) Notwithstanding any law to the contrary,
22 fraudulent representation to a law enforcement official of any
23 fact or circumstance relating to the medical use of marijuana
24 to avoid arrest or prosecution shall be a Class C misdemeanor.
25 This penalty shall be in addition to any other penalties that
26 may apply for the non-medical use of marijuana.

1 Section 4. (a) A qualifying patient who has in his
2 or her possession a written recommendation or his or her
3 registry identification card shall not be subject to arrest,
4 prosecution, or penalty in any manner for the medical use of
5 marijuana, provided the quantity of marijuana does not exceed
6 an adequate supply.

7 (b) Subsection (a) shall not apply to a qualifying
8 patient under the age of 18 years, unless all of the following
9 occur:

10 (1) The qualifying patient's physician has explained
11 the potential risks and benefits of the medical use of
12 marijuana to the qualifying patient and to a parent, guardian,
13 or person having legal custody of the qualifying patient.

14 (2) A parent, guardian, or person having legal
15 custody consents in writing to allow the qualifying patient's
16 medical use of marijuana, serve as the qualifying patient's
17 primary caregiver, and control the acquisition of the
18 marijuana, the dosage, and the frequency of the medical use of
19 marijuana by the qualifying patient.

20 (c) When the acquisition, possession, cultivation,
21 transportation, or administration of marijuana by a qualifying
22 patient is not practicable, the legal protections established
23 by this act for a qualifying patient shall extend to the
24 qualifying patient's primary caregivers, provided that the
25 primary caregivers' actions are necessary for the qualifying
26 patient's medical use of marijuana.

1 (d) A physician shall not be subject to arrest or
2 prosecution, penalized in any manner, or denied any right or
3 privilege for providing a written recommendation for the
4 medical use of marijuana to qualifying patients.

5 (e) Any property interest that is possessed, owned,
6 or used in connection with the medical use of marijuana, or
7 acts incidental to such use, shall not be harmed, neglected,
8 injured, or destroyed while in the possession of state or
9 local law enforcement officials. Any such property interest
10 shall not be forfeited under any provision of state or local
11 law providing for the forfeiture of property other than as a
12 sentence imposed after conviction of a criminal offense or
13 entry of a plea of guilty to a criminal offense.

14 (f) No person shall be subject to arrest or
15 prosecution for constructive possession, conspiracy, or any
16 other offense for simply being in the presence or vicinity of
17 the medical use of marijuana as permitted under this act.

18 Section 5. A person and a person's primary
19 caregivers may assert the medical use of marijuana as a
20 defense to any prosecution involving marijuana, and such
21 defense shall be presumed valid where the evidence shows that
22 the following occur:

23 (1) The person's medical records indicate, or a
24 physician has stated that, in the physician's professional
25 opinion, after having completed a full assessment of the
26 person's medical history and current medical condition made in
27 the course of a bona fide physician-patient relationship, the

1 potential benefits of the medical use of marijuana would
2 likely outweigh the health risks for the person.

3 (2) The person and the person's primary caregivers
4 were collectively in possession of a quantity of marijuana
5 that was not more than was reasonably necessary to ensure the
6 uninterrupted availability of marijuana for the purpose of
7 alleviating the symptoms or effects of the person's medical
8 condition.

9 Section 6. (a) As used in this section, registry
10 identification card means a document issued by the department
11 that identifies a person as a qualifying patient or primary
12 caregiver.

13 (b) A qualifying patient or primary caregiver shall
14 qualify for the legal protections of Section 4 only if the
15 qualifying patient or primary caregiver is in possession of a
16 registry identification card.

17 (c) Not later than 90 days after the effective date
18 of this act, the department shall promulgate regulations
19 governing the manner in which it will consider applications
20 for registry identification cards, and for renewing registry
21 identification cards, for qualifying patients and primary
22 caregivers.

23 (d) The department shall issue registry
24 identification cards to qualifying patients, and to qualifying
25 patients' primary caregivers, if any, who submit all of the
26 following, in accordance with the department's regulations:

1 (1) A written certification that the person is a
2 qualifying patient.

3 (2) The written recommendation.

4 (3) A registration fee, not to exceed twenty five
5 dollars (\$25) per qualifying patient.

6 (4) The name, address, and date of birth of the
7 qualifying patient.

8 (5) The name, address, and telephone number of the
9 qualifying patient's physician.

10 (6) The name, address, and date of birth of the
11 qualifying patient's primary caregivers, if the qualifying
12 patient has designated any primary caregivers at the time of
13 application.

14 (e) The department shall verify the information
15 contained in an application submitted pursuant to this
16 section, and shall approve or deny an application within 30
17 days of receipt of the application. The department may deny an
18 application only if the applicant did not provide the
19 information required pursuant to this section, or if the
20 department determines that the information provided was
21 falsified. Any person whose application has been denied may
22 not reapply for six months from the date of the denial, unless
23 so authorized by the department or a court of competent
24 jurisdiction.

25 (f) The department shall issue registry
26 identification cards within 10 days of approving an
27 application, which shall expire one year after the date of

1 issuance. Registry identification cards shall contain all of
2 the following information:

3 (1) The name, address, and date of birth of the
4 qualifying patient and primary caregivers, if any.

5 (2) The date of issuance and expiration date of the
6 registry identification card.

7 (3) Any other information that the department may
8 specify in its regulations.

9 (g) A person who possesses a registry identification
10 card shall notify the department of any change in the person's
11 name, address, qualifying patient's physician, qualifying
12 patient's primary caregiver, or change in status of the
13 qualifying patient's debilitating medical condition within 10
14 days of such change, or the registry identification card shall
15 be deemed null and void.

16 (h) Possession of, or application for, a registry
17 identification card shall not alone constitute probable cause
18 to search the person or property of the person possessing or
19 applying for the card, or otherwise subject the person or
20 property of the person possessing the card to inspection by
21 any governmental agency.

22 (i) The department shall maintain a confidential
23 list of the persons to whom the department has issued registry
24 identification cards. Individual names on the list shall be
25 confidential and not subject to disclosure, except to
26 authorized employees of the department as necessary to perform
27 official duties of the department or authorized employees of

1 state or local law enforcement agencies, only for the purpose
2 of verifying that a person who is engaged in the suspected or
3 alleged medical use of marijuana is lawfully in possession of
4 a registry identification card.

5 Section 7. The provisions of this act shall not be
6 construed or interpreted to allow a primary caregiver to use
7 marijuana for his or her personal use or to allow a qualifying
8 patient, primary caregiver, or any other person to sell
9 marijuana. Any such person convicted of selling marijuana
10 shall not be permitted to be a qualifying patient or primary
11 caregiver under the protection of the provisions of this act.

12 Section 8. The provisions of this act are severable.
13 If any part of this act is declared invalid or
14 unconstitutional, that declaration shall not affect the part
15 which remains.

16 Section 9. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.