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HB434

By Representative Todd

RFD Judiciary

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**SYNOPSIS:** Under existing law, the possession and use of marijuana is a criminal act. This bill would authorize the medical use of marijuana only for certain qualifying patients who have been diagnosed by a physician as having a debilitating medical condition.

A BILL  
TO BE ENTITLED  
AN ACT

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

**BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:**

Section 1. (a) The Legislature hereby finds that state law should make a distinction between the medical and nonmedical use of marijuana. Modern medical research has discovered beneficial uses for marijuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions, as found by the National Academy of Sciences' Institute of Medicine in March 1999.

(b) Subsequent studies since the 1999 National Academy of Sciences' Institute of Medicine report continue to show the therapeutic value of marijuana in treating a wide array of debilitating medical conditions, including increasing the chances of patients finishing their treatments for HIV/AIDS and hepatitis C.

(c) Data from the Federal Bureau of Investigation's Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marijuana arrests in the United States are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marijuana.

(d) Although federal law currently prohibits any use of marijuana except under very limited circumstances, Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Mexico, Oregon, Vermont, Rhode Island, and Washington have removed state-level criminal penalties from the medical use and cultivation of marijuana. Alabama joins in this effort for the health and welfare of its citizens.

(e) States are not required to enforce federal law. Therefore, compliance with this act does not put the State of Alabama in violation of federal law.

(f) Hence, the purpose of this act is to ensure that physicians are not penalized for discussing marijuana as a treatment option with their patients, and seriously ill people who engage in the medical use of marijuana upon their physician's recommendation are not arrested and prosecuted for using marijuana for medical purposes.

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

(1) ADEQUATE SUPPLY. An amount of marijuana collectively possessed between the qualifying patient and the qualifying patient's primary caregivers that is not more than 12 marijuana plants and two and one-half ounces of usable marijuana.

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

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

a. Cancer.

b. Glaucoma.

c. Multiple sclerosis.

d. Chronic arthritis.

e. Cachexia.

f. Chronic pain.

g. Fibromyalgia.

h. Migraine.

i. Acquired Immune Deficiency Syndrome (AIDS) or Human Immunodeficiency Virus (HIV).

j. Anorexia.

k. Seizures, including, but not limited to, seizures associated with epilepsy.

l. Severe nausea.

m. Any other chronic or persistent medical symptom that either substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336) or if not alleviated, may cause serious harm to the patient's safety or physical or mental health.

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

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

(6) MEDICAL USE. The acquisition, possession, use, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition. For the purposes of this act, the term transfer is limited to the transfer of marijuana and paraphernalia between primary caregivers and qualifying patients.

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

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

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

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

(11) **WRITTEN RECOMMENDATION.** The qualifying patient's medical records or a statement signed by a physician, stating that in the physician's professional opinion, after having completed 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 has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh any potential health risks for the qualifying patient.

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

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

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

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

b. In the workplace of one's employment.

c. On any school grounds.

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

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

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

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

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

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

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

(c) When the acquisition, possession, transportation, or administration of marijuana by a qualifying patient is not practicable, the legal protections established by this act for a qualifying patient shall extend to the qualifying patient's primary caregiver, provided that the primary caregiver's actions are solely to assist the qualifying patient's medical use of marijuana.

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

(e) Any property interest that is possessed, owned, or used in connection with the medical use of marijuana, or acts incidental to

such use, shall not be harmed, neglected, injured, or destroyed while in the possession of state or local law enforcement officials. Any such property interest shall not be forfeited under any provision of state or local law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense or entry of a plea of guilty to a criminal offense.

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

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

(1) The person's medical records indicate, or a physician has stated that, in the physician's professional opinion, after having completed a full assessment of the person's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the person.

(2) The person and the person's primary caregiver were collectively in possession of a quantity of marijuana that was not more than the adequate supply as described in this act for the purpose of alleviating the symptoms or effects of the person's medical condition.

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

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

(c) Not later than 90 days after the effective date of this act, the department shall promulgate administrative rules governing the manner in which it will consider applications for registry identification cards, and for renewing registry identification cards.

(d) The department shall issue registry identification cards to qualifying patients, and to a qualifying patient's primary caregiver, if any, who submit all of the following, in accordance with the department's regulations:

(1) The written recommendation.

(2) A registration fee, not to exceed twenty-five dollars (\$25) per qualifying patient.

(3) The name, address, and date of birth of the qualifying patient.

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

(5) The name, address, and date of birth of the qualifying patient's primary caregiver, if the qualifying patient has designated a primary caregiver at the time of application.

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

(f) The department shall issue registry identification cards within 10 days of approving an application, which shall expire one year after the date of issuance. Registry identification cards shall contain all of the following information:

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

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

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

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

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

(i) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names on the list shall be confidential and not subject to disclosure, except to authorized employees of the department as necessary to perform official duties of the department or authorized employees of state or local law enforcement agencies, only for the purpose of verifying that a person who is engaged in the suspected or alleged medical use of marijuana is lawfully in possession of a registry identification card.

Section 7. The provisions of this act shall not be construed or interpreted to allow a primary caregiver to use marijuana for his or her personal use, unless he or she is also a qualifying patient, or to allow a qualifying patient, primary caregiver, or any other person to sell marijuana. Any such person convicted of selling marijuana under state law for which the defenses outlined in this act would not have been applicable shall not be permitted to be a qualifying patient or primary caregiver under the protection of the provisions of this act. However, a primary caregiver may receive reimbursement for costs associated with assisting a qualifying patient's medical use of marijuana and such compensation shall not constitute sale of a controlled substance.

Section 8. Nothing in Sections 1 to 13, inclusive, of this act shall be construed to require health insurance coverage for the medical use of marijuana.

Section 9. Nothing in Sections 1 to 13, inclusive, of this act shall be construed to require that employers accommodate the medical use of marijuana in the workplace. Employers are not required to allow employees who are qualified patients under this act to use marijuana in the workplace or off-site during employer sanctioned breaks or to require that employers allow employees who are qualified patients to be under the influence of marijuana while at work. An employee may not be terminated solely based on drug test results showing that the employee has marijuana metabolites in his or her system if the employee is a qualified medical marijuana patient under this act and the marijuana metabolites in his or her system are the result of legitimate off duty use of medical marijuana.

Section 10. Nothing contained in this act shall be construed as legalizing or reducing the criminality of the nonmedical or illegal use, sale, possession, or distribution of marijuana pursuant to the Alabama Controlled Substances Act.

Section 11. The provisions of this act are severable. If any part of this act is declared invalid or unconstitutional, that declaration shall not affect the part which remains.

Section 12. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

**Marijuana**

**Drugs**

**Controlled Substances**

**Health**

**Medicine**

**Physicians**