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.

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. This act may be known and cited as the "Michael Phillips Compassionate Care Act."

Section 2. (a) 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's report continue to show the therapeutic value of marijuana in treating a wide array of debilitating medical conditions.

(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 federal law.

(d) Although federal law currently prohibits any use of marijuana except under very limited circumstances, Alaska, California, Colorado, Hawaii, Maine, Michigan, Montana, Nevada, New Jersey, 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 or prosecute people for engaging in activities prohibited by federal law. Therefore, compliance with this act does not put the State of Alabama in violation of federal law.

(f) State law should make a distinction between the medical and nonmedical uses of marijuana. Hence, the purpose of this act is to protect patients with debilitating medical conditions, as well as their practitioners, caregivers, and providers, from arrest and prosecution, criminal and other penalties, and property forfeiture if such patients engage in the medical use of marijuana.

(g) The Legislature declares that this act is enacted pursuant to police power to protect the health of the state's citizens that is reserved to the State of Alabama and its people under the 10th Amendment to the United States Constitution.

Section 3. As used in this act, the following terms shall have the following meanings:

(1) CARDHOLDER. A qualifying patient, designated caregiver, or principal officer, board member, employee, volunteer, or agent of a nonprofit compassion center who has been issued and possesses a valid registry identification card.

(2) DEBILITATING MEDICAL CONDITION. 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, nail patella, 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 pain; severe nausea; seizures, including, but not limited to, those characteristic of epilepsy; or severe and persistent muscle spasms, including, but not limited to, those characteristic of multiple sclerosis.
   c. Any other medical condition or its treatment approved by the department, as provided for in subsection (b) of Section 5.

(3) DEPARTMENT. The Department of Public Health or its successor agency.

(4) ENCLOSED, LOCKED FACILITY. A closet, room, greenhouse, or other enclosed indoor or outdoor area equipped with the locks or other security devices that permit access only by a cardholder.

(5) EXCLUDED FELONY OFFENSE. A violation of a state or federal controlled substance law that was classified as a felony in the jurisdiction where the person was convicted. It does not include the following:
   a. An offense for which the sentence, including any term of probation, incarceration, or supervised release, was completed 10 or more years earlier.
   b. An offense that consisted of conduct for which this act would likely have prevented a conviction, but the conduct either occurred prior to the enactment of this act or
(6) MATURE MARIJUANA PLANT. A marijuana plant that has flowers or buds that are readily observable by an unaided visual examination.

(7) MEDICAL USE. The acquisition, possession, cultivation, manufacture, use, delivery, sale, transfer, or transportation of marijuana or paraphernalia relating to the administration of marijuana to treat or alleviate a qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

(8) PHYSICIAN. An individual who possesses a certificate of qualification issued on his or her behalf by the Board of Medical Examiners and a license and certificate of registration from the board.

(9) PRIMARY CAREGIVER. A person who is at least 21 years of age, who has agreed to assist with a qualifying patient's medical use of marijuana, and who has never been convicted of an excluded felony offense. A primary caregiver, other than a registered compassion center, may assist no more than three qualifying patients with their medical use of marijuana.

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

(11) REGISTERED COMPASSION CENTER. A not-for-profit entity registered pursuant to Section 9 that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, supplies, or dispenses marijuana or related supplies and educational materials to cardholders. A registered compassion center may receive monetary compensation for all expenses incurred in its operation.

(12) REGISTERED PRIMARY CAREGIVER. A primary caregiver who is registered with the department pursuant to Section 6.

(13) REGISTERED QUALIFYING PATIENT. A qualifying patient who is registered with the department pursuant to Section 6.

(14) REGISTRY IDENTIFICATION CARD. A document issued by the department that identifies a person as a registered qualifying patient, registered designated caregiver, or a registered principal officer, board member, employee, volunteer, or agent of a registered compassion center.

(15) USABLE MARIJUANA. The dried leaves and 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.

(16) VISITING QUALIFYING PATIENT. A patient with a debilitating medical condition who is not a resident of the State of Alabama or who has been a resident of the State of Alabama for less than 30 days.

(17) WRITTEN CERTIFICATION. A document 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. A written certification shall be made only in the course of a bona fide physician-patient relationship after the physician has completed a full assessment of the qualifying patient's medical history. The written certification shall specify the qualifying patient's debilitating medical condition.

Section 4. (a) A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for the medical use of marijuana in accordance with this act as long as the qualifying patient possesses an amount of marijuana that:

(1) Is not more than two and one-half ounces of usable marijuana.

(2) Does not exceed six mature and six immature marijuana plants, provided that the qualifying patient has not specified that a primary caregiver is allowed under state law to cultivate marijuana for the qualifying patient. The plants shall be kept in an enclosed, locked facility, unless they are being transported because the qualifying patient is moving or they are being transported to the qualifying patient's or designated primary caregiver's property.

(b) A primary caregiver other than a nonprofit compassion center, who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for assisting a qualifying patient to whom the primary caregiver is connected through the department's registration process with the medical use of marijuana in accordance with this act as long as the primary caregiver possesses an amount of marijuana that:

(1) Is not more than two and one-half ounces of usable marijuana for each qualifying patient to whom the primary caregiver is connected through the department's registration process.

(2) For each qualifying patient who has specified that the primary caregiver is allowed under state law to cultivate for the qualifying patient, does not exceed six mature and six immature marijuana plants, which shall be kept in an enclosed, locked facility, unless they are being transported because the designated caregiver is moving or they are being transported to a designated caregiver's or a qualifying patient's property.

(c) Any incidental amount of marijuana seeds, stalks, and unusable roots may not be included in the amounts specified in this section.

(d)(1) There is a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marijuana in accordance with this act if the qualifying patient or primary caregiver:

A. Is in possession of a registry identification card.

B. Is in possession of an amount of marijuana that does not exceed the amount allowed under this act.

(2) The presumption under subdivision (1) 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 debilitating medical condition in accordance with this act.

(e) A school, employer, or landlord may not refuse to enroll or employ or lease to or otherwise penalize a person solely for that person's status as a registered qualifying patient or registered primary caregiver unless failing to do so would put the school, employer, or landlord in violation of federal law or cause it to lose a federal contract of funding.
(f) For the purposes of medical care, including organ transplants, a registered qualifying patient's authorized use of marijuana shall be considered the equivalent of the authorized use of any other medication used at the direction of a physician, and shall not constitute the use of an illicit substance for purposes of qualification for an organ transplant.

(g) A person shall not be denied custody or visitation of a minor for acting in accordance with this act unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated.

(h) A registered primary caregiver may receive monetary or other compensation for costs associated with assisting a registered qualifying patient's medical use of marijuana as long as the registered primary caregiver is connected to the registered qualifying patient through the department's registration process. Any such compensation shall not constitute the sale of controlled substances.

(i) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by the Board of Medical Examiners or by any other business or occupational or professional licensing board or bureau, solely for providing written certifications or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic benefit from the medical use of marijuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, except that nothing prevents a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical condition.

(j) A person shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for providing a registered qualifying patient or a registered primary caregiver with marijuana paraphernalia for a qualifying patient's medical use of marijuana.

(k) Any marijuana, marijuana paraphernalia, licit property, or interest in licit property that is possessed, owned, or used in connection with the medical use of marijuana as allowed under this act, or property incidental to such use, may not be seized or forfeited.

(l) A person shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for providing a registered qualifying patient or a registered primary caregiver with marijuana paraphernalia for a qualifying patient's medical use of marijuana.

Section 5. (a) The department may adopt rules in accordance with the Administrative Procedure Act to carry out the purposes of this act.

(b) Not later than 120 days after the effective date of this act, the department shall adopt rules that govern the manner in which the department shall consider petitions from the public to add medical conditions or treatments to the list of debilitating medical conditions set forth in subsection (b) of Section 3. In considering such petitions, the department shall include public notice of, and an opportunity to comment in a public hearing upon such petitions. The department, after hearing, shall approve or deny such petitions within 180 days of their submission. The approval or denial of such a petition constitutes final agency action subject to judicial review. Jurisdiction and venue for judicial review are vested in the circuit court.

(c) Not later than 120 days after the effective date of this act, the department shall adopt rules governing the manner in which it considers applications for and renewals of registry identification cards. The department's rules must establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering this act. The department may establish a sliding scale of application and renewal fees based upon a qualifying patient's family income. The department may accept donations from private sources in order to reduce the application and renewal fees.

Section 6. (a) The department shall issue registry identification cards to qualifying patients who submit the documents and information described in this subsection, in accordance with the department's rules:

1. Written certification.
2. Application or renewal fee.
3. Name, address, and date of birth of the qualifying patient.
4. Name, address, and telephone number of the qualifying patient's physician.
5. Name, address, and date of birth of each primary caregiver, if any, of the qualifying patient.
6. If the qualifying patient designates one or two primary caregivers, a designation as to who will be allowed under state law to cultivate marijuana plants for the qualifying patient's medical use. Only one person may be allowed to cultivate marijuana plants for a qualifying patient.

(b) The department may not issue a registry identification card to a qualifying patient who is under 18 years of age unless:

1. The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient.
2. The parent, guardian, or person having legal custody consents in writing to:
   a. Allow the qualifying patient's medical use of marijuana.
   b. Serve as one of the qualifying patient's primary caregivers.
   c. Control the acquisition of the marijuana and the dosage and the frequency of the medical use of marijuana by the qualifying patient.
3. The department shall verify the information contained in an application or renewal submitted pursuant to this section and shall approve or deny an application or renewal within 30 days of receiving it. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this
section or the department determines that the information provided was falsified. Rejection of an application or renewal is considered a final agency action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the circuit court.

(d) The department shall issue a registry identification card to each primary caregiver, if any, who is named in a qualifying patient's approved application pursuant to subdivision (5) of subsection (a). Only one person may cultivate marijuana for the qualifying patient's medical use. The person may either be the qualifying patient or one of the two primary caregivers as determined by the qualifying patient.

(e) The department shall issue registry identification cards to qualifying patients and to primary caregivers within five days of approving an application or renewal under this section. Registry identification cards expire one year after the date of issuance. Registry identification cards must contain the following:

1. The name, address, and date of birth of the qualifying patient.
2. The name, address, and date of birth of each primary caregiver, if any, of the qualifying patient.
3. The date of issuance and expiration date of the registry identification card.
4. A random identification number that is unique to the cardholder.
5. A photograph, if the department decides to require one.
6. A clear designation showing whether the cardholder is allowed under state law to cultivate marijuana plants for the qualifying patient's medical use, which must be determined based solely on the qualifying patient's preference.

(h)(1) A registered qualifying patient shall notify the department within 10 days of any change in the registered qualifying patient's name or address. If the registered qualifying patient fails to notify the department as required under subdivision (1) commits a civil violation for which a fine of not more than one hundred fifty dollars ($150) may be imposed. If the registered qualifying patient's notifying physician notifies the department in writing that the registered qualifying patient has ceased to suffer from a debilitating medical condition, the registered qualifying patient's registry identification card becomes void upon notification by the department to the qualifying patient.

(i) Any cardholder who sells marijuana to a person who is not allowed to possess marijuana for medical purposes under this act shall have the cardholder's registry identification card revoked and is liable for any other penalties for the sale of marijuana as provided by law. The department may revoke the registry identification card of any cardholder who violates this act.

(j) The department shall submit to the Legislature an annual report that does not disclose any identifying information about cardholders or physicians, but does contain, at a minimum:

1. The number of applications and renewals filed for registry identification cards.
2. The number of qualifying patients and primary caregivers approved in each county.
The nature of the debilitating medical conditions of the qualifying patients.

The number of registry identification cards revoked.

The number of physicians providing written certifications for qualifying patients.

The number of registered compassion centers.

The number of principal officers, board members, employees, and agents of compassion centers.

Section 7. (a) This act does not permit any person to:

(1) Undertake any task under the influence of marijuana when doing so would constitute negligence or professional malpractice.

(2) Possess marijuana or otherwise engage in the medical use of marijuana:
   a. On a school bus.
   b. On the grounds of any preschool or primary or secondary school.
   c. In any correctional facility.

(3) Smoke marijuana in any public place.

(4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana.

(5) Use marijuana if that person does not have a debilitating medical condition.

(b) This act may not be construed to require:

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

(2) An employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana.

(c) Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution is a civil violation punishable by a fine of five hundred dollars ($500) which must be 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 act.

Section 8. (a) Except as provided in Section 7, a qualifying patient and a qualifying patient's primary caregiver, other than a compassion center, may assert the medical use of marijuana as a defense to any prosecution involving marijuana, and this defense must be presumed valid when the evidence shows that:

(1) A physician has stated 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 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 primary caregiver, if any, 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.

(3) The qualifying patient and the qualifying patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marijuana or paraphernalia 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.

(b) A person may assert the medical use of marijuana in a motion to dismiss, and the charges must be dismissed following an evidentiary hearing where the person proves the elements listed in subsection (a).

(c) If a qualifying patient or a qualifying patient's primary caregiver demonstrates the qualifying patient's medical use of marijuana pursuant to this section, the qualifying patient and the qualifying patient's primary caregiver may not be subject to any state sanction, including:

(1) Disciplinary action by a business or occupational or professional licensing board or bureau.

(2) Forfeiture of any interest in or right to property.

Section 9. (a) Provisions pertaining to primary caregiver apply to nonprofit compassion centers. All provisions of this act pertaining to a primary caregiver apply to a nonprofit compassion center unless the provision conflicts with a provision contained in this section.

(b)(1) The department shall register a nonprofit compassion center and issue within 30 days a registration certificate to up to three persons or entities that provide:
   a. A reasonable fee paid to the department in the amount established by the department.
   b. The legal name of the nonprofit compassion center.
   c. The physical address of the nonprofit compassion center and the physical address of one additional location, if any, where marijuana will be cultivated.
   d. The name, address, and date of birth of each principal officer and board member of the nonprofit compassion center.
The name, address, and date of birth of any person who is an agent of or employed by the nonprofit compassion center.

The department shall track the number of registered qualifying patients who designate a nonprofit compassion center as a primary caregiver and issue to each nonprofit compassion center a written statement of the number of qualifying patients who have designated the nonprofit compassion center to cultivate marijuana for them. This statement must be updated each time a new registered qualifying patient designates the nonprofit compassion center or ceases to designate the nonprofit compassion center and may be transmitted electronically if the department's rules so provide. The department may provide by rule that the updated written statements may not be issued more frequently than once each week.

The department shall issue each principal officer, board member, agent, and employee of a nonprofit compassion center a registry identification card within 10 days of receipt of the person's name, address, and date of birth under paragraph a. and a fee in an amount established by the department. Each card must specify that the cardholder is a principal officer, board member, agent, or employee of a nonprofit compassion center and must contain the following:

- The name, address, and date of birth of the principal officer, board member, agent, or employee.
- The legal name of the nonprofit compassion center with which the principal officer, board member, agent, or employee is affiliated.
- A random identification number that is unique to the cardholder.
- The date of issuance and expiration date of the registry identification card.
- A photograph, if the department decides to require one.

The department may not issue a registry identification card to any principal officer, board member, agent, or employee of a nonprofit compassion center who has been convicted of an excluded felony drug offense. The department may conduct a background check of each principal officer, board member, agent, or employee in order to carry out this provision. The department shall notify the nonprofit compassion center in writing of the purpose for denying the registry identification card.

Any time one or more compassion center registration applications are being considered, the department shall also allow for comment by the public and shall solicit input from registered qualifying patients, registered primary caregivers, and the town or city officials where the applicants would be located.

Each time a compassion center certificate is granted, the decision shall be based upon the overall health needs of qualified patients and the safety of the public, including, but not limited to, the following factors:

- Convenience to patients from throughout the State of Alabama to the compassion centers if the applicant were approved.
- The applicant's ability to provide a steady supply to the registered qualifying patients in the state.
- The applicant's experience running a nonprofit or business.
- The interest of qualifying patients regarding which applicant be granted a registration certificate.
- The interest of the city or town where the compassion center would be located.
- The sufficiency of the applicant's plans for record keeping and security which records shall be considered confidential health care information under Alabama law and are intended to be deemed protected health care information for purposes of the Federal Health Insurance Portability and Accountability Act of 1996, as amended.
- The sufficiency of the applicant's plans for safety and security, including proposed location, security devices employed, and staffing.

Not later than 120 days after the effective date of this act, the department shall adopt rules governing the manner in which it considers applications for and renewals of registration certificates for nonprofit compassion centers, including rules governing:

1. The fee for registration.
2. The form and content of registration and renewal applications.
3. Minimum oversight requirements for nonprofit compassion centers.
5. Minimum security requirements for nonprofit compassion centers.
6. Procedures for suspending or terminating the registration of nonprofit compassion centers that violate the provisions of this section or the rules adopted pursuant to this subsection.

A nonprofit compassion center operating on a not-for-profit basis for the mutual benefit of its members and patrons. The bylaws of a nonprofit compassion center and its contracts with patrons must contain such provisions relative to the disposition of revenues and receipts as may be necessary and appropriate to establish and maintain its nonprofit character. A nonprofit compassion center need not be recognized as a tax exempt organization under 26 United States Code, Section 501(c)(3).
Section 11. 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.

Section 10. (a) If the department fails to adopt rules to implement this act within 120 days of the effective date of this act, a qualifying patient may commence an action in the circuit court to compel the department to perform the actions mandated in this act.

(b) If the department fails to issue a valid registry identification card or registration certificate in response to a valid application or renewal submitted pursuant to this act within 45 days of its submission, the registry identification card or registration certificate is deemed granted, and a copy of the registry identification application or renewal is deemed a valid registry identification card.

(c) If at any time after the 140 days following the effective date of this act the department is not accepting applications or has not adopted rules allowing qualifying patients to submit applications, a notarized statement by a qualifying patient containing the information required in an application, pursuant to Section 6, is deemed a valid registry identification card.

Section 11. 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.