

1 HB315
2 148398-1
3 By Representative Todd
4 RFD: Health
5 First Read: 21-FEB-13

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

10 This bill would establish a medical
11 exemption for the personal use and possession of
12 marijuana only for certain qualifying patients who
13 have been diagnosed by a physician as having a
14 serious medical condition and been issued a valid
15 medical marijuana identification card.

16
17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 To establish a medical exemption for the personal
22 use and possession of marijuana only for certain qualifying
23 patients under the direction of a physician; and to amend
24 Sections 13A-12-213 and 13A-12-214, of the Code of Alabama
25 1975, to exempt from the crimes of possession and use of
26 marijuana persons who use marijuana for medical purposes.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the Alabama Medical Exemption Act.

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

5 (1) DEPARTMENT. The Department of Public Health.

6 (2) FULL MEDICAL EVALUATION. The standard of care
7 that applies when certifying individuals as candidates for the
8 use of medical marijuana is the same as that expected in any
9 other situation in which an individual is being evaluated for
10 medical services. Accepted components of a full medical
11 evaluation to determine suitability and appropriateness for
12 recommending treatment of any kind include any of the
13 following where medical encounters take place in permanent
14 locations that enable the patient to return for follow-up,
15 consultation, or assistance as needed:

16 a. A hands-on physician-patient encounter.

17 b. Full assessment and recording of patient's
18 medical history.

19 c. Relevant physical examination.

20 d. Review of prior records of relevant examinations
21 and treatments.

22 e. Receipt and review of relevant diagnostic test
23 results.

24 f. Discussion of advantages, disadvantages,
25 alternatives, potential adverse effects, and expected response
26 to treatment.

1 g. Development of a plan of care with stated goals
2 of therapy.

3 h. Monitoring of the response to treatment and
4 possible adverse effects.

5 i. Creation and maintenance of patient records
6 documenting the information above.

7 (3) IDENTIFICATION CARD. A medical marijuana
8 identification card issued by a county health department or
9 its designee pursuant to this act.

10 (4) QUALIFIED PATIENT. A person who has been
11 diagnosed with a serious medical condition and, having been
12 given a full medical evaluation by a physician, it has been
13 determined would benefit from the personal use of marijuana
14 for therapeutic or palliative relief.

15 (5) SERIOUS MEDICAL CONDITION. Any of the following
16 medical conditions:

17 a. Acquired immune deficiency syndrome (AIDS).

18 b. Anorexia.

19 c. Attention deficit hyperactivity disorder
20 (ADHD)/Attention deficit disorder (ADD).

21 d. Autism.

22 e. Bipolar disorder.

23 f. Cachexia.

24 g. Cancer.

25 h. Cerebral palsy.

26 i. Chronic depression.

27 j. Chronic pain.

- 1 k. Dystonia.
- 2 l. Fibromyalgia.
- 3 m. Gastrointestinal disorders, including, but not
4 limited to, colitis, Crohns disease, and irritable bowel
5 syndrome (IBS).
- 6 n. Glaucoma.
- 7 o. Lupus.
- 8 p. Migraine.
- 9 q. Obsessive-compulsive disorder.
- 10 r. Persistent muscle spasms, including, but not
11 limited to, spasms associated with amyotrophic lateral
12 sclerosis (ALS), multiple sclerosis (MS), and Parkinson's
13 disease.
- 14 s. Post traumatic stress disorder (PTSD).
- 15 t. Rheumatoid arthritis.
- 16 u. Seizures, including, but not limited to, seizures
17 associated with epilepsy.
- 18 v. Severe nausea.
- 19 w. Tourette's syndrome.
- 20 x. Any other chronic disease or persistent medical
21 symptom that either:
- 22 (i) Substantially limits the ability of the person
23 to conduct one or more major life activities as defined in the
24 Americans with Disabilities Act of 1990 (Public Law 101-336).
- 25 (ii) If not alleviated, may cause serious harm to
26 the patient's safety or physical or mental health.

1 Section 3. (a) A person diagnosed with a serious
2 medical condition may receive an exemption for medical use of
3 marijuana. To receive an exemption, a person must apply for
4 and be issued a valid medical marijuana identification card
5 from his or her county health department or the county's
6 designee in accordance with this act.

7 (b) A person possessing a valid identification card
8 shall not be subject to arrest for possession, use,
9 transportation, delivery, or cultivation of medical marijuana
10 unless there is reasonable cause to believe that the
11 information contained on the identification card is false or
12 falsified, the identification card has been obtained by means
13 of fraud, or the person is otherwise in violation of the
14 provisions of this act or a rule adopted pursuant to this act.

15 Section 4. (a) The department, by rule, shall
16 establish and maintain a program for the issuance of
17 identification cards which shall be administered by each
18 county health department or the county's designee.

19 (b) The department shall develop an application form
20 that includes all of the following:

21 (1) The name of the applicant and proof of his or
22 her residency within the county.

23 (2) Written documentation by the attending physician
24 in the medical records of the applicant stating that:

25 a. The applicant has been given a full medical
26 evaluation and has been diagnosed with a serious medical
27 condition;

1 b. The serious medical condition is severe and
2 resistant to conventional medicine, conventional medicine has
3 more side effects or more dangerous side effects, or the
4 applicant is unable to take conventional medications due to a
5 medical condition; and

6 c. Marijuana is likely to provide the applicant with
7 therapeutic or palliative relief from the debilitating medical
8 condition.

9 (3) The name, office address, office telephone
10 number, and medical license number of the applicant's
11 attending physician.

12 (4) A government-issued photo identification card of
13 the applicant, or if the applicant is under 18 years of age, a
14 government-issued photo identification card or a certified
15 copy of a birth certificate.

16 (c) The department shall establish an appropriate
17 application fee which shall be not less than one hundred
18 dollars (\$100) and not more than two hundred dollars (\$200).

19 (d) The department shall develop protocols for the
20 issuance of medical marijuana identification cards, including
21 protocols to confirm the accuracy of information contained in
22 an application and to protect the confidentiality of program
23 records.

24 (e) The department shall establish and maintain a
25 24-hour, toll-free telephone number, as well as a secure,
26 web-based verification system, that will enable state and
27 local law enforcement officers to have immediate access to

1 information necessary to verify the validity of an
2 identification card.

3 (f) The department shall establish by rule the
4 amount of medical marijuana a person possessing a valid
5 identification card may possess, use, transport, deliver, or
6 cultivate.

7 Section 5. (a) Each county health department or the
8 county's designee shall make application forms for
9 identification cards available to its residents. Within 30
10 days of receipt of an application and application fee, a
11 county health department or its designee shall do all of the
12 following:

13 (1) Verify that the information contained in the
14 application is accurate.

15 (2) Verify with the Board of Medical Examiners that
16 the attending physician has a license in good standing to
17 practice medicine or osteopathy in the state, or with the
18 appropriate licensing boards for naturopathic doctors,
19 physicians assistants, chiropractors, acupuncturists, or other
20 medical professionals with diagnostic and treatment
21 responsibilities.

22 (3) Contact the attending physician by facsimile,
23 telephone, or mail to confirm that the medical records
24 submitted by the applicant are a true and correct copy of
25 those contained in the physician's office records, and obtain
26 from the physician either a confirmation or denial that the
27 contents of the medical records are accurate.

1 (4) Obtain a photograph or electronically
2 transmissible image of the applicant.

3 (5) Approve or deny the application.

4 (b) If an applicant is less than 18 years of age,
5 the county health department or its designee shall also
6 contact the parent with legal authority to make medical
7 decisions, a legal guardian, or other person or entity with
8 legal authority to make medical decisions to verify the
9 information on the application.

10 (c) By the end of the business day after approving
11 an application, the county health department or its designee
12 shall electronically transmit all of the following information
13 to the department:

14 (1) A unique serial identification number for the
15 applicant.

16 (2) The date of expiration of the identification
17 card.

18 (3) The name and telephone number of the county
19 health department or its designee that approved the
20 application.

21 (d) The county health department or its designee
22 shall issue an identification card to the applicant within
23 five business days of approving an application.

24 (e) In any case involving an incomplete application,
25 the applicant shall assume responsibility for rectifying the
26 deficiency. Once it receives all necessary information, the

1 county health department or its designee shall approve or deny
2 the application within 14 days.

3 (f) A county health department or its designee may
4 deny an application only for one of the following reasons:

5 (1) The applicant did not provide the information
6 required, and upon notice of the deficiency, did not provide
7 the information within 30 days.

8 (2) The county health department or its designee
9 determined that the information provided was false.

10 (3) The applicant did not meet the criteria set
11 forth in this act.

12 (g) An applicant whose application has been denied
13 may appeal the decision to the department. The county health
14 department or its designee shall make available a telephone
15 number or address to which the denied applicant can direct an
16 appeal.

17 (h) At the time of renewal of an identification
18 card, the county health department or its designee shall
19 verify all new information and may verify any other
20 information that has not changed. The county health department
21 or its designee shall transmit its determination of approval
22 or denial of the renewal to the department.

23 (i) A county health department or its designee may
24 charge an additional fee to cover costs incurred for
25 administering the identification card program.

1 Section 6. An identification card shall be valid for
2 a period of two years, shall be serially numbered, and shall
3 contain all of the following:

4 (1) A unique number of the cardholder.

5 (2) The expiration date of the identification card.

6 (3) The name and telephone number of the county
7 health department or its designee that issued the
8 identification card.

9 (4) The 24-hour, toll-free telephone number, and the
10 address of the secure web-based verification system that will
11 enable state and local law enforcement officers to have
12 immediate access to information necessary to verify the
13 validity of an identification card.

14 (5) Photo identification of the cardholder.

15 Section 7. (a) A person who possesses an
16 identification card shall notify the county health department
17 or its designee of any change in the person's attending
18 physician or change in the person's address within seven days
19 of the change.

20 (b) Upon satisfactory proof of participation and
21 eligibility in a social services program, an applicant shall
22 receive a 50 percent reduction in the application fees
23 established by the county pursuant to Section 5.

24 Section 8. (a) An agency, including any law
25 enforcement agency, of this state or a political subdivision
26 of this state may not initiate an administrative, civil, or
27 criminal investigation into a physician licensed to practice

1 medicine in this state on the ground that the physician
2 discussed marijuana as a treatment option with a patient or
3 made a written or oral statement that, in the physician's
4 professional opinion, the potential benefits of marijuana
5 would likely outweigh the health risks for a patient.

6 (b) A physician may not be denied any right or
7 privilege or be subject to any disciplinary action solely for
8 making a written recommendation that, in the physician's
9 professional opinion, the potential benefits of marijuana
10 would likely outweigh the health risks for a patient.

11 Section 9. Nothing in this act shall require any
12 accommodation of any medical use of marijuana on the property
13 or premises of any place of employment or during the hours of
14 employment, or on the property or premises of any jail,
15 correctional facility, or other type of penal institution in
16 which prisoners reside or persons under arrest are detained.

17 Section 10. Nothing in this act shall require a
18 governmental, private, or any other health insurance provider
19 or health care service plan to be liable for any claim for
20 reimbursement for the medical use of marijuana.

21 Section 11. (a) It shall be unlawful for an employer
22 to discriminate against a person in hiring, terminating, or
23 imposing any term or condition of employment or otherwise
24 penalizing a person if the discrimination or penalty is based
25 solely upon either of the following:

26 (1) The person's status as a qualified patient or
27 possession of a valid identification card.

1 (2) The person's positive drug test for marijuana,
2 provided the person is a qualified person and has been issued
3 a valid identification card and the medical use of marijuana
4 does not occur on the property or premises of the place of
5 employment or during the hours of employment.

6 (b) A person who has suffered discrimination in
7 violation of this section may institute and prosecute in his
8 or her own name and on his or her own behalf a civil action
9 for damages, injunctive relief, or any other appropriate
10 equitable relief to protect the peaceable exercise of the
11 right or rights secured.

12 (c) Subdivision (2) of subsection (a) shall not
13 apply when an employer employs a person in a safety-sensitive
14 position. For purposes of this section, safety-sensitive
15 position means a position in law enforcement or a position in
16 which medical marijuana-affected performance could clearly
17 endanger the health and safety of others. A safety-sensitive
18 position shall have all of the following general
19 characteristics:

20 (1) Its duties involve a greater than normal level
21 of trust, responsibility for, or impact on the health and
22 safety of others.

23 (2) Efforts in judgment, inattentiveness, or
24 diminished coordination, dexterity, or composure while
25 performing its duties could clearly result in mistakes that
26 would endanger the health and safety of others.

1 (3) An employee in a safety-sensitive position works
2 independently or performs tasks of a nature that it cannot
3 safely be assumed that mistakes like those described in
4 subdivision (2) of this subsection could be prevented by a
5 supervisor or another employee.

6 Section 12. An agency, including any law enforcement
7 agency, of this state or a political subdivision of this state
8 may not initiate proceedings to remove a child from the home
9 of parents based solely upon either of the following:

10 (1) The parent's or child's status as a qualified
11 patient or possession of a valid identification card.

12 (2) The parent's or child's positive drug test for
13 marijuana, provided the parent or child is a qualified person
14 and has been issued a valid identification card.

15 Section 13. Nothing in this act shall be construed
16 as authorizing the operation of a vehicle by a person while
17 the person is under the influence of marijuana. A person in
18 possession of a valid identification card shall not be
19 considered to be operating a vehicle under the influence
20 solely for having marijuana metabolites in his or her system,
21 being a qualified patient possessing a valid identification
22 card, or being in possession of marijuana.

23 Section 14. Sections 13A-12-213 and 13A-12-214, of
24 the Code of Alabama 1975, are amended to read as follows:

25 "§13A-12-213.

1 "(a) A person commits the crime of unlawful
2 possession of ~~marihuana~~ marijuana in the first degree if,
3 except as otherwise authorized:

4 "(1) He possesses ~~marihuana~~ marijuana for other than
5 personal use; or

6 "(2) He possesses ~~marihuana~~ marijuana for his personal use
7 only after having been previously convicted of unlawful
8 possession of ~~marihuana~~ marijuana in the second degree or
9 unlawful possession of ~~marihuana~~ marijuana for his personal use only.

10 "(b) Unlawful possession of ~~marihuana~~ marijuana in
11 the first degree is a Class C felony.

12 "(c) A person has not committed the crime of
13 unlawful possession of marijuana if the person is in
14 possession of a valid medical marijuana identification card
15 pursuant to Sections 3 to 7, inclusive, of the act adding this
16 section unless there is reasonable cause to believe that the
17 information contained on the medical marijuana identification
18 card is false or falsified, the medical marijuana
19 identification card has been obtained by means of fraud, or
20 the person is otherwise in violation of the provisions of
21 Sections 3 to 7, inclusive, or a rule adopted thereto.

22 "§13A-12-214.

23 "(a) A person commits the crime of unlawful
24 possession of ~~marihuana~~ marijuana in the second degree if,
25 except as otherwise authorized, he possesses ~~marihuana~~
26 marijuana for his personal use only.

1 "(b) Unlawful possession of ~~marihuana~~ marijuana in
2 the second degree is a Class A misdemeanor.

3 "(c) A person has not committed the crime of
4 unlawful possession of marijuana if the person is in
5 possession of a valid medical marijuana identification card
6 pursuant to Sections 3 to 7, inclusive, of the act adding this
7 section unless there is reasonable cause to believe that the
8 information contained on the medical marijuana identification
9 card is false or falsified, the medical marijuana
10 identification card has been obtained by means of fraud, or
11 the person is otherwise in violation of the provisions of
12 Sections 3 to 7, inclusive, or a rule adopted thereto."

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

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