

1 HB207  
2 105756-1  
3 By Representative Todd  
4 RFD: Judiciary  
5 First Read: 12-JAN-10

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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. (a) The Legislature hereby finds that  
24 state law should make a distinction between the medical and  
25 nonmedical use of marijuana. Modern medical research has  
26 discovered beneficial uses for marijuana in treating or  
27 alleviating the pain, nausea, and other symptoms associated

1 with a variety of debilitating medical conditions, as found by  
2 the National Academy of Sciences' Institute of Medicine in  
3 March 1999.

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

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

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

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

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

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

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

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

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

27 a. Cancer.

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

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

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

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

1 medical condition. For the purposes of this act, the term  
2 transfer is limited to the transfer of marijuana and  
3 paraphernalia between primary caregivers and qualifying  
4 patients.

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

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

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

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

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

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

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

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

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

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

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

14 c. On any school grounds.

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

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

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

26 Section 4. (a) A qualifying patient who has in his  
27 or her possession a written recommendation or his or her

1 registry identification card shall not be subject to arrest,  
2 prosecution, or penalty in any manner for the medical use of  
3 marijuana, provided the quantity of marijuana does not exceed  
4 an adequate supply.

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

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

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

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

25 (d) A physician shall not be subject to arrest or  
26 prosecution, penalized in any manner, or denied any right or



1 privilege for providing a written recommendation for the  
2 medical use of marijuana to qualifying patients.

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

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

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

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

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

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

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

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

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

24           (1) The written recommendation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 marijuana patient under this act and the marijuana metabolites  
2 in his or her system are the result of legitimate off duty use  
3 of medical marijuana.

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

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

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