

1 HB488  
2 156947-1  
3 By Representative Todd  
4 RFD: Judiciary  
5 First Read: 13-FEB-14

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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 possession and personal use 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 This bill would also provide that the  
17 possession of one ounce or less of marijuana is a  
18 civil penalty.

19  
20 A BILL  
21 TO BE ENTITLED  
22 AN ACT  
23

24 Relating to the possession and use of marijuana; to  
25 establish a medical exemption for the possession and personal  
26 use of marijuana only for certain qualifying patients under  
27 the direction of a physician; to provide that the possession

1 of one ounce or less of marijuana is a civil penalty; and to  
2 amend Sections 13A-12-213 and 13A-12-214, of the Code of  
3 Alabama 1975, to exempt from the crimes of possession and use  
4 of marijuana persons who use marijuana for medical purposes.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. This act shall be known and may be cited  
7 as the Alabama Marijuana Protection Act.

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

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

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

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

22 b. Full assessment and recording of patient's  
23 medical history.

24 c. Relevant physical examination.

25 d. Review of prior records of relevant examinations  
26 and treatments.

1 e. Receipt and review of relevant diagnostic test  
2 results.

3 f. Discussion of advantages, disadvantages,  
4 alternatives, potential adverse effects, and expected response  
5 to treatment.

6 g. Development of a plan of care with stated goals  
7 of therapy.

8 h. Monitoring of the response to treatment and  
9 possible adverse effects.

10 i. Creation and maintenance of patient records  
11 documenting the information above.

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

15 (4) MARIJUANA. All parts of the plant of the genus  
16 cannabis whether growing or not, the seeds thereof, the resin  
17 extracted from any part of the plant, and every compound,  
18 manufacture, salt, derivative, mixture, or preparation of the  
19 plant, its seeds, or its resin. Marijuana is also referred to  
20 as marihuana or cannabis. Marijuana does not include  
21 industrial hemp, nor does it include fiber produced from the  
22 stalks, oil, or cake made from the seeds of the plant,  
23 sterilized seeds of the plant, which are incapable of  
24 germination, or the weight of any other ingredient combined  
25 with cannabis to prepare topical or oral administrations,  
26 food, drink, or other product.

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

6                   (6) SERIOUS MEDICAL CONDITION. Any of the following  
7 medical conditions:

- 8                   a. Acquired immune deficiency syndrome (AIDS).
- 9                   b. Anorexia.
- 10                   c. Attention deficit hyperactivity disorder  
11 (ADHD)/Attention deficit disorder (ADD).
- 12                   d. Autism.
- 13                   e. Bipolar disorder.
- 14                   f. Cachexia.
- 15                   g. Cancer.
- 16                   h. Cerebral palsy.
- 17                   i. Chronic depression.
- 18                   j. Chronic pain.
- 19                   k. Dystonia.
- 20                   l. Diabetes
- 21                   m. Fibromyalgia.
- 22                   n. Gastrointestinal disorders, including, but not  
23 limited to, colitis, Crohns disease, and irritable bowel  
24 syndrome (IBS).
- 25                   o. Glaucoma.
- 26                   p. Lupus.
- 27                   q. Migraine.

- 1           r. Obsessive-compulsive disorder.
- 2           s. Persistent muscle spasms, including, but not
- 3 limited to, spasms associated with amyotrophic lateral
- 4 sclerosis (ALS), multiple sclerosis (MS), and Parkinson's
- 5 disease.
- 6           t. Post traumatic stress disorder (PTSD).
- 7           u. Rheumatoid arthritis.
- 8           v. Seizures, including, but not limited to, seizures
- 9 associated with epilepsy.
- 10          w. Severe nausea.
- 11          x. Tourette's syndrome.
- 12          y. Any other chronic disease or persistent medical
- 13 symptom that either:

14           (i) Substantially limits the ability of the person

15 to conduct one or more major life activities as defined in the

16 Americans with Disabilities Act of 1990 (Public Law 101-336).

17           (ii) If not alleviated, may cause serious harm to

18 the patient's safety or physical or mental health.

19           Section 3. (a) A person diagnosed with a serious

20 medical condition may receive an exemption for medical use of

21 marijuana. To receive an exemption, a person must apply for

22 and be issued a valid medical marijuana identification card

23 from his or her county health department or the county's

24 designee in accordance with this act.

25           (b) A person possessing a valid identification card

26 shall not be subject to arrest for possession, use,

27 transportation, delivery, or cultivation of medical marijuana

1 unless there is reasonable cause to believe that the  
2 information contained on the identification card is false or  
3 falsified, the identification card has been obtained by means  
4 of fraud, or the person is otherwise in violation of the  
5 provisions of this act or a rule adopted pursuant to this act.

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

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

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

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

16 a. The applicant has been given a full medical  
17 evaluation and has been diagnosed with a serious medical  
18 condition;

19 b. The serious medical condition is severe and  
20 resistant to conventional medicine, conventional medicine has  
21 more side effects or more dangerous side effects, or the  
22 applicant is unable to take conventional medications due to a  
23 medical condition; and

24 c. Marijuana is likely to provide the applicant with  
25 therapeutic or palliative relief from the debilitating medical  
26 condition.

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

4           (4) A government-issued photo identification card of  
5 the applicant, or if the applicant is under 18 years of age, a  
6 government-issued photo identification card or a certified  
7 copy of a birth certificate.

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

11           (d) The department shall develop protocols for the  
12 issuance of medical marijuana identification cards, including  
13 protocols to confirm the accuracy of information contained in  
14 an application and to protect the confidentiality of program  
15 records.

16           (e) The department shall establish and maintain a  
17 24-hour, toll-free telephone number, as well as a secure,  
18 web-based verification system, that will enable state and  
19 local law enforcement officers to have immediate access to  
20 information necessary to verify the validity of an  
21 identification card.

22           (f) The department shall establish by rule the  
23 amount of medical marijuana a person possessing a valid  
24 identification card may possess, use, transport, deliver, or  
25 cultivate.

26           Section 5. (a) Each county health department or the  
27 county's designee shall make application forms for



1 identification cards available to its residents. Within 30  
2 days of receipt of an application and application fee, a  
3 county health department or its designee shall do all of the  
4 following:

5 (1) Verify that the information contained in the  
6 application is accurate.

7 (2) Verify with the Board of Medical Examiners that  
8 the attending physician has a license in good standing to  
9 practice medicine or osteopathy in the state, or with the  
10 appropriate licensing boards for naturopathic doctors,  
11 physicians assistants, chiropractors, acupuncturists, or other  
12 medical professionals with diagnostic and treatment  
13 responsibilities.

14 (3) Contact the attending physician by facsimile,  
15 telephone, or mail to confirm that the medical records  
16 submitted by the applicant are a true and correct copy of  
17 those contained in the physician's office records, and obtain  
18 from the physician either a confirmation or denial that the  
19 contents of the medical records are accurate.

20 (4) Obtain a photograph or electronically  
21 transmissible image of the applicant.

22 (5) Approve or deny the application.

23 (b) If an applicant is less than 18 years of age,  
24 the county health department or its designee shall also  
25 contact the parent with legal authority to make medical  
26 decisions, a legal guardian, or other person or entity with

1 legal authority to make medical decisions to verify the  
2 information on the application.

3 (c) By the end of the business day after approving  
4 an application, the county health department or its designee  
5 shall electronically transmit all of the following information  
6 to the department:

7 (1) A unique serial identification number for the  
8 applicant.

9 (2) The date of expiration of the identification  
10 card.

11 (3) The name and telephone number of the county  
12 health department or its designee that approved the  
13 application.

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

17 (e) In any case involving an incomplete application,  
18 the applicant shall assume responsibility for rectifying the  
19 deficiency. Once it receives all necessary information, the  
20 county health department or its designee shall approve or deny  
21 the application within 14 days.

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

24 (1) The applicant did not provide the information  
25 required, and upon notice of the deficiency, did not provide  
26 the information within 30 days.

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

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

5           (g) An applicant whose application has been denied  
6 may appeal the decision to the department. The county health  
7 department or its designee shall make available a telephone  
8 number or address to which the denied applicant can direct an  
9 appeal.

10           (h) At the time of renewal of an identification  
11 card, the county health department or its designee shall  
12 verify all new information and may verify any other  
13 information that has not changed. The county health department  
14 or its designee shall transmit its determination of approval  
15 or denial of the renewal to the department.

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

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

22           (1) A unique number of the cardholder.

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

24           (3) The name and telephone number of the county  
25 health department or its designee that issued the  
26 identification card.

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

6           (5) Photo identification of the cardholder.

7           Section 7. (a) A person who possesses an  
8 identification card shall notify the county health department  
9 or its designee of any change in the person's attending  
10 physician or change in the person's address within seven days  
11 of the change.

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

16           Section 8. (a) An agency, including any law  
17 enforcement agency, of this state or a political subdivision  
18 of this state may not initiate an administrative, civil, or  
19 criminal investigation into a physician licensed to practice  
20 medicine in this state on the ground that the physician  
21 discussed marijuana as a treatment option with a patient or  
22 made a written or oral statement that, in the physician's  
23 professional opinion, the potential benefits of marijuana  
24 would likely outweigh the health risks for a patient.

25           (b) A physician may not be denied any right or  
26 privilege or be subject to any disciplinary action solely for  
27 making a written recommendation that, in the physician's

1 professional opinion, the potential benefits of marijuana  
2 would likely outweigh the health risks for a patient.

3 Section 9. Nothing in this act shall require any  
4 accommodation of any medical use of marijuana on the property  
5 or premises of any place of employment or during the hours of  
6 employment, or on the property or premises of any jail,  
7 correctional facility, or other type of penal institution in  
8 which prisoners reside or persons under arrest are detained.

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

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

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

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

25 (b) A person who has suffered discrimination in  
26 violation of this section may institute and prosecute in his  
27 or her own name and on his or her own behalf a civil action

1 for damages, injunctive relief, or any other appropriate  
2 equitable relief to protect the peaceable exercise of the  
3 right or rights secured.

4 (c) Subdivision (2) of subsection (a) shall not  
5 apply when an employer employs a person in a safety-sensitive  
6 position. For purposes of this section, safety-sensitive  
7 position means a position in law enforcement or a position in  
8 which medical marijuana-affected performance could clearly  
9 endanger the health and safety of others. A safety-sensitive  
10 position shall have all of the following general  
11 characteristics:

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

15 (2) Efforts in judgment, inattentiveness, or  
16 diminished coordination, dexterity, or composure while  
17 performing its duties could clearly result in mistakes that  
18 would endanger the health and safety of others.

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

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

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

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

6           Section 13. Nothing in this act shall be construed  
7 as authorizing the operation of a vehicle by a person while  
8 the person is under the influence of marijuana. A person in  
9 possession of a valid identification card shall not be  
10 considered to be operating a vehicle under the influence  
11 solely for having marijuana metabolites in his or her system,  
12 being a qualified patient possessing a valid identification  
13 card, or being in possession of marijuana.

14           Section 14. (a) Notwithstanding Sections 13A-12-213  
15 and 13A-12-214, Code of Alabama 1975, possession of one ounce  
16 or less of marijuana shall only be a civil offense, subjecting  
17 an offender who is 18 years of age or older to a civil penalty  
18 of one hundred dollars (\$100) and forfeiture of the marijuana,  
19 but not to any other form of criminal or civil punishment or  
20 disqualification. Unpaid fines shall double if not paid within  
21 90 days of the offense. An offender under the age of 18 shall  
22 be subject to the same forfeiture of the marijuana, but a  
23 civil penalty and fine shall be imposed only if he or she  
24 fails to complete a drug awareness program that meets the  
25 criteria set forth in Section 15. The parents or legal  
26 guardian of any offender under the age of 18 shall be notified  
27 of the offense and of available drug awareness programs. If an

1 offender under the age of 18, within one year of such notice  
2 of available programs, fails to complete a drug awareness  
3 program, a civil penalty of up to three hundred fifty dollars  
4 (\$350) may be imposed.

5 (b) Except as specifically provided in this section,  
6 neither the state nor any of its political subdivisions or  
7 their respective agencies, authorities, or instrumentalities  
8 may impose any form of penalty, sanction, restriction, or  
9 disqualification on a person for possessing one ounce or less  
10 of marijuana or paraphernalia for marijuana use, nor may any  
11 penalties or obligations exceeding those outlined in  
12 subsection (a) be imposed by the state nor any of its  
13 political subdivisions or their respective agencies,  
14 authorities, or instrumentalities solely for having  
15 cannabinoids or cannabinoid metabolites in the urine, blood,  
16 sweat, hair, fingernails, toenails, or other tissue or fluid  
17 of the human body. By way of illustration rather than  
18 limitation, neither possession of one ounce or less of  
19 marijuana, nor possession of paraphernalia for marijuana use,  
20 nor the presence of cannabinoids or cannabinoid metabolites in  
21 the urine, blood, sweat, hair, fingernails, toenails, or other  
22 tissue or fluid of the human body, provide a basis to deny a  
23 person student financial aid, public housing, or any form of  
24 public financial assistance including unemployment benefits,  
25 to deny a person the right to operate a motor vehicle, or to  
26 disqualify a person from serving as a foster parent or  
27 adoptive parent. However, nothing contained herein shall be



1 construed to repeal or modify existing laws, ordinances,  
2 bylaws, regulations, personnel practices, or policies  
3 concerning the operation of motor vehicles or other actions  
4 taken while under the influence of marijuana. Information  
5 concerning the offense of possession of one ounce or less of  
6 marijuana shall not be recorded in any database of criminal  
7 offenders.

8 (c) As used in this section, "possession of one  
9 ounce or less of marijuana" includes possession of one ounce  
10 or less of marijuana, or any mixture or preparation thereof,  
11 including, but not limited to, five grams or less of hashish,  
12 but does not include the weight of other ingredients in  
13 marijuana prepared for consumption as food or drink.

14 "Possession of one ounce or less of marijuana" includes the  
15 possession of paraphernalia for the ingestion, use,  
16 inhalation, preparation, or storage of marijuana for personal  
17 use.

18 (d) Nothing contained in this section shall be  
19 construed to repeal or modify any law concerning the medical  
20 use of marijuana or tetrahydrocannabinol in any other form,  
21 such as Marinol, or the possession of more than one ounce of  
22 marijuana, or selling, manufacturing, or trafficking of  
23 marijuana.

24 (e) Nothing contained in this section shall prohibit  
25 a political subdivision of the state from enacting ordinances  
26 or bylaws regulating or prohibiting the consumption of  
27 marijuana or tetrahydrocannabinol in public places and

1 providing for additional penalties for the public use of  
2 marijuana, provided that any such additional penalties are no  
3 greater than those related to the public consumption of  
4 alcohol.

5 (f) Possession of one ounce or less of marijuana  
6 shall not be considered a violation of parole or probation.

7 (g) Any individual in possession of an  
8 identification card, license, or other form of identification  
9 issued by this state or any state, municipality, or any  
10 college or university, who fails to produce the same upon  
11 request of a police officer who informs the individual that he  
12 or she has been found in possession of what appears to the  
13 officer to be an ounce or less of marijuana, or any individual  
14 without any such form of identification who fails or refuses  
15 to truthfully provide his or her name, address, and date of  
16 birth to a police officer who has informed such individual  
17 that the officer intends to provide the person with a citation  
18 for possession of an ounce or less of marijuana may be  
19 arrested.

20 Section 15. (a) An offender under the age of 18 is  
21 required to complete a drug awareness program within one year  
22 of his or her parents or legal guardian being given notice of  
23 the offense and available drug awareness programs. Failure of  
24 such an offender to complete such a program may be a basis for  
25 imposing a civil penalty of up to three hundred fifty dollars  
26 (\$350), as authorized by subsection (a) of Section 14.

1 (b) A drug awareness program shall provide at least  
2 four hours of classroom instruction or group discussion and 10  
3 hours of community service. In addition to the programs and  
4 curricula it must maintain, the Department of Public Health  
5 shall develop a compliant drug awareness program. The subject  
6 matter of such drug awareness program shall be specific to the  
7 use and abuse of marijuana, alcohol, and controlled  
8 substances. The Department of Public Health shall set fees for  
9 the program sufficient to cover all costs of administering the  
10 program, which may not exceed one hundred fifty dollars  
11 (\$150). All fees shall be payable by the offender upon entry  
12 in the drug awareness program.

13 Section 16. (a) A copy of the notice delivered to an  
14 offender under the age of 18 shall be mailed or delivered to  
15 at least one of the offender's parents having custody of the  
16 offender or, where there is no such person, to the offender's  
17 legal guardian at the parent's or legal guardian's last known  
18 address. If an offender under the age of 18, or a parent or  
19 legal guardian, fails to file with the clerk of the  
20 appropriate court a certificate that the offender has  
21 completed a drug awareness program in accordance with Section  
22 15 within one year of the notification of the offense, the  
23 clerk shall notify the offender, parent or guardian, and the  
24 enforcing person who issued the original notice to the  
25 offender that a hearing will be held to show cause why a civil  
26 penalty of up to three hundred fifty dollars (\$350) should not  
27 be imposed. Factors to be considered by the court in weighing

1 cause shall be limited to financial capacity to pay any  
2 increase, the offender's ability to participate in a compliant  
3 drug awareness program, the availability of a suitable drug  
4 awareness program, and the offender's willingness to complete  
5 the program within a time frame determined by the court.

6 Section 17. Sections 13A-12-213 and 13A-12-214, of  
7 the Code of Alabama 1975, are amended to read as follows:

8 "§13A-12-213.

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

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

14 "(2) He possesses ~~marihuana~~ marijuana for his personal use  
15 only after having been previously convicted of unlawful  
16 possession of ~~marihuana~~ marijuana in the second degree or  
17 unlawful possession of ~~marihuana~~ marijuana for his personal  
18 use only.

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

21 "(c) A person has not committed the crime of  
22 unlawful possession of marijuana if the person is in  
23 possession of a valid medical marijuana identification card  
24 pursuant to Sections 3 to 7, inclusive, of the act adding this  
25 section unless there is reasonable cause to believe that the  
26 information contained on the medical marijuana identification  
27 card is false or falsified, the medical marijuana

1 identification card has been obtained by means of fraud, or  
2 the person is otherwise in violation of the provisions of  
3 Sections 3 to 7, inclusive, or a rule adopted thereto.

4 "§13A-12-214.

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

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

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

21 Section 18. The provisions of this act are  
22 severable. If any part of this act is declared invalid or  
23 unconstitutional, that declaration shall not affect the part  
24 which remains.

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

