

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

HOUSE BILL 1321

4
5 By: Representatives Lendall, Blair
6
7

For An Act To Be Entitled

8
9 AN ACT TO PERMIT THE MEDICAL USE OF MARIJUANA;
10 AND FOR OTHER PURPOSES.
11

Subtitle

12
13 AN ACT TO PERMIT THE MEDICAL USE OF
14 MARIJUANA.
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code Title 20, Chapter 64 is amended to add an
20 additional subchapter as follows:

21 20-64-1101. Title.

22 This subchapter may be referred to and cited as the "Arkansas Medical
23 Marijuana Act".
24

25 20-64-1102. Findings.

26 The General Assembly finds that:

27 (1) Patients and physicians have found marijuana to be an effective
28 treatment for suffering caused by debilitating medical conditions, and
29 therefore, marijuana should be treated like other medicines;

30 (2) Arkansans suffering from debilitating medical conditions should be
31 allowed to use marijuana without fear of civil or criminal penalties when
32 their physicians advise that such use may provide a medical benefit to them
33 and when other reasonable restrictions are met regarding that use;

34 (3) Arkansans with debilitating medical conditions who may benefit
35 from the medical use of marijuana should be able to discuss freely with their
36 doctors the possible risks and benefits of medical marijuana use and to have



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1 the benefit of their doctor’s professional advice; and

2 (4) The General Assembly intends to make only those changes to
3 existing Arkansas laws that are necessary to protect patients and their
4 doctors from criminal and civil penalties, and are not intended to change
5 current civil and criminal laws governing the use of marijuana for nonmedical
6 purposes.

7
8 20-64-1103. Definitions.

9 For purposes of this subchapter:

10 (1) "Debilitating medical condition" means:

11 (A) Cancer, glaucoma, positive status for human immunodeficiency
12 virus or acquired immune deficiency syndrome, or treatment for these
13 conditions;

14 (B) A medical condition or treatment for a medical condition
15 that produces, for a specific patient, one or more of the following:

16 (i) Cachexia;

17 (ii) Severe pain;

18 (iii) Severe nausea;

19 (iv) Seizures, including seizures caused by epilepsy; or

20 (v) Persistent muscle spasms, including but not limited to
21 spasms caused by multiple sclerosis; or

22 (C) Any other medical condition or treatment for a medical
23 condition adopted by the department by regulation or approved by the
24 department pursuant to a petition under § 20-64-1114 requesting that a
25 particular disease or condition be included among the diseases and conditions
26 that qualify as debilitating medical conditions;

27 (2) "Delivery" means the actual, constructive, or attempted transfer
28 from one (1) person to another of a controlled substance or counterfeit
29 substance in exchange for money or anything of value, whether or not there is
30 an agency relationship;

31 (3)(A) "Designated primary caregiver" means an individual eighteen
32 (18) years of age or older who has significant responsibility for managing
33 the well-being of a person who has been diagnosed with a debilitating medical
34 condition and who is designated as such on that person’s application for a
35 registry identification card or in other written notification to the
36 department.

1 (B) "Designated primary caregiver" does not include the person's
2 physician;

3 (4) "Department" means the Department of Health;

4 (5) "Manufacture" means the same as provided in § 5-64-101;

5 (6) "Marijuana" means the same as provided in § 5-64-101;

6 (7) "Medical use of marijuana" means the manufacture, possession,
7 delivery, or administration of marijuana, or paraphernalia used to administer
8 marijuana, as necessary for the exclusive benefit of a person to mitigate the
9 symptoms or effects of his or her debilitating medical condition;

10 (8) "Physician" means a medical doctor licensed by the Arkansas State
11 Medical Board;

12 (9) "Registry identification card" means a document issued by the
13 department that identifies a person authorized to engage in the medical use
14 of marijuana and the person's designated primary caregiver, if any;

15 (10)(A) "Usable marijuana" means the dried leaves and flowers of the
16 plant cannabis and any mixture or preparation thereof that are appropriate
17 for medical use.

18 (B) "Usable marijuana" does not include the seeds, stalks, and
19 roots of the plant; and

20 (11) "Written documentation" means a statement signed by the physician
21 of a person diagnosed with a debilitating medical condition or copies of the
22 person's relevant medical records.

23
24 20-64-1104. Immunity - Registration card program.

25 (a) Except as provided in this subchapter, a person engaged in or
26 assisting in the medical use of marijuana is excepted from the criminal laws
27 of this state for possession, delivery, or manufacture of marijuana, aiding
28 and abetting another in the possession, delivery, or manufacture of marijuana
29 or any other criminal offense in which possession, delivery, or manufacture
30 of marijuana is an element, if the following conditions have been satisfied:

31 (1) The person holds a registry identification card issued
32 pursuant to this section, has applied for a registry identification card
33 pursuant to this section, or is the designated primary caregiver of a
34 cardholder or applicant; and

35 (2) The person who has a debilitating medical condition and his
36 or her primary caregiver are collectively in possession of, delivering, or

1 manufacturing marijuana for medical use in the amounts allowed in § 20-64-
2 1107.

3 (b)(1) The department shall establish and maintain a program for the
4 issuance of registry identification cards.

5 (2) Except as provided in subsection (c) of this section, the
6 department shall issue a registry identification card to any person who pays
7 a fee in an affordable amount established by the department and provides the
8 following:

9 (A) Written documentation stating that the person has been
10 diagnosed with a debilitating medical condition and that the medical use of
11 marijuana may mitigate the symptoms or effects of the person’s debilitating
12 medical condition;

13 (B) The name, address, and date of birth of the person;

14 (C) The name, address, and telephone number of the
15 person’s physician; and

16 (D) The name and address of the person’s designated
17 primary caregiver, if the person has designated a primary caregiver at the
18 time of application.

19 (c) The department shall issue a registry identification card to a
20 person who is under eighteen (18) years of age if the person submits the
21 materials required under subsection (b) and one (1) of the person’s parents
22 or legal guardians signs a written statement that:

23 (1) The person’s physician has explained to the person and to
24 one (1) of the person’s parents or legal guardians the possible risks and
25 benefits of the medical use of marijuana;

26 (2) The parent or legal guardian consents to the use of
27 marijuana by the person for medical purposes;

28 (3) The parent or legal guardian agrees to serve as the person’s
29 designated primary caregiver; and

30 (4) The parent or legal guardian agrees to control the
31 acquisition of marijuana and the dosage and frequency of use by the person.

32 (d)(1) A person applying for a registry identification card pursuant
33 to this section shall submit the information required in this section to a
34 county health department for transmittal to the department.

35 (2) A county health department that receives that information
36 shall transmit the information to the department within five (5) days after

1 receipt.

2 (3) Information received by a county health department pursuant
 3 to this section shall be confidential and not subject to disclosure except as
 4 required to transmit the information to the department.

5 (e)(1) The department shall verify the information contained in an
 6 application submitted pursuant to this section and shall approve or deny an
 7 application within thirty (30) calendar days after receipt of the
 8 application.

9 (2) The department may deny an application only for the
 10 following reasons:

11 (A) The applicant did not provide the information required
 12 pursuant to this section to document his or her debilitating medical
 13 condition and to document his or her consultation with a physician regarding
 14 the medical use of marijuana in connection with such condition; or

15 (B) The department determines that the information
 16 provided was falsified.

17 (3)(A) Denial of a registry identification card shall be
 18 considered a final department action subject to judicial review.

19 (B) Jurisdiction and venue for judicial review are vested
 20 in the Circuit Court of Pulaski County, Arkansas.

21 (C) Only the person whose application has been denied, or,
 22 in the case of a person under eighteen (18) years of age whose application
 23 has been denied, the person's parent or legal guardian shall have standing to
 24 contest the department's action.

25 (4)(A) Any person whose application has been denied may not
 26 reapply for three (3) months after the date of the denial, unless so
 27 authorized by the department or the Circuit Court of Pulaski County,
 28 Arkansas.

29 (B) Appeals from the decisions of the department shall be
 30 made to the Circuit Court of Pulaski County, Arkansas.

31 (f)(1)(A) If the department has verified the information submitted
 32 pursuant to subsections (b) and (c) of this section in an application for a
 33 registry identification card, and none of the reasons for denial listed in
 34 subdivision (e)(1) are applicable, the department shall issue a serially
 35 numbered registry identification card within five (5) calendar days after
 36 verification of the information.

1 (B) The registry identification card shall state:

2 (i) The cardholder’s name, address, and date of
3 birth;

4 (ii) The date of issuance and expiration date of the
5 registry identification card;

6 (iii) The name and address of the person’s
7 designated primary caregiver, if any; and

8 (iv) Such other information as the department may
9 specify by regulation.

10 (2)(A) If the person to whom the department has issued a
11 registry identification card pursuant to this section has specified a
12 designated primary caregiver, the department shall issue a registry
13 identification card to the designated primary caregiver.

14 (B) The primary caregiver’s registry identification card
15 shall contain the information required in subdivision (f)(1) of this section.

16 (g)(1) A person who possesses a registry identification card shall:

17 (A) Notify the department of any change in the person’s
18 name, address, physician, or designated primary caregiver; and

19 (B) Annually submit to the department:

20 (i) Updated written documentation of the person’s
21 debilitating medical condition; and

22 (ii) The name of the person’s designated primary
23 caregiver if a primary caregiver has been designated for the upcoming year.

24 (2)(A) If a person who possesses a registry identification card
25 fails to comply with this subsection, the card shall be deemed expired.

26 (B) If the primary caregiver of the cardholder knows or
27 should have known that the registry identification card has expired, the
28 identification card of any designated primary caregiver of the cardholder
29 shall also expire.

30 (h)(1) A person who possesses a registry identification card pursuant
31 to this section and who has been diagnosed by the person’s physician as no
32 longer having a debilitating medical condition shall return the registry
33 identification card to the department within seven (7) calendar days after
34 notification of the diagnosis.

35 (2) A designated primary caregiver shall return his or her
36 identification card within the same period of time.

1 (i)(1) A person who has applied for a registry identification card but
 2 whose application has not yet been approved or denied, and who is contacted
 3 by any law enforcement officer in connection with his or her administration,
 4 possession, delivery, or manufacture of marijuana for medical use may provide
 5 to the law enforcement officer a copy of the written documentation submitted
 6 to the department pursuant to subsections (b) and (c) of this section and
 7 proof of the date of mailing or other transmission of the documentation to
 8 the department.

9 (2) This documentation shall have the same legal effect as a
 10 registry identification card until the person receives notification that the
 11 application has been approved or denied.

12
 13 20-64-1105. Prohibitions.

14 No person authorized to possess, deliver, or manufacture marijuana for
 15 medical use shall be excepted from the criminal laws of this state or shall
 16 be deemed to have established an affirmative defense to criminal charges of
 17 which possession, delivery, or manufacture of marijuana is an element if the
 18 person, in connection with the facts giving rise to such charges:

19 (1) Drives under the influence of marijuana;

20 (2) Engages in the medical use of marijuana in a public place;

21 or

22 (3) Delivers marijuana to any individual who the person knows is
 23 not in possession of a registry identification card.

24
 25 20-64-1106. Affirmative defense.

26 Except as provided in §§ 20-64-1105 and 20-64-1111, it is an
 27 affirmative defense to a criminal charge of possession or manufacture of
 28 marijuana, or any other criminal offense in which possession or manufacture
 29 of marijuana is an element, that the person charged with the offense is a
 30 person who:

31 (1) Has been diagnosed with a debilitating medical condition and been
 32 advised by his or her physician that the medical use of marijuana may
 33 mitigate the symptoms or effects of that debilitating medical condition; and

34 (2) Possesses or manufactures marijuana only in the amounts permitted
 35 under § 20-64-1107, unless the person proves by a preponderance of the
 36 evidence that the greater amount is medically necessary to mitigate the

1 symptoms or effects of the person’s debilitating medical condition.

2
3 20-64-1107. Limitations on affirmative defense.

4 (a)(1) A person who possesses a registry identification card issued
5 pursuant to this subchapter may engage in, and a designated primary caregiver
6 of such a person may assist in, the medical use of marijuana only as
7 justified to mitigate the symptoms or effects of the person’s debilitating
8 medical condition.

9 (2) Except as allowed in subsection (b) of this section, a
10 registry identification cardholder and that person’s designated primary
11 caregiver may not collectively possess, deliver, or manufacture more than the
12 following:

13 (A) If the person is present at a location at which
14 marijuana is not manufactured, including any residence associated with that
15 location, four (4) ounces of usable marijuana; and

16 (B) If the person is present at a location at which
17 marijuana is manufactured, including any residence associated with that
18 location, any amount of unusable marijuana, twenty (20) plants at any age
19 before sexual maturity, six (6) female plants in flowering stage, and varying
20 amounts of usable marijuana in quantities up to six (6) pounds as a maximum
21 in conjunction with a harvest.

22 (b) If the individuals described in subsection (a) possess, deliver,
23 or manufacture marijuana in excess of the amounts allowed in subsection (a),
24 those individuals are not excepted from the criminal laws of this state but
25 may establish an affirmative defense to the charges, by a preponderance of
26 the evidence, that the greater amount is medically necessary to mitigate the
27 symptoms or effects of the person’s debilitating medical condition.

28
29 20-64-1108. Search and seizure.

30 (a) Possession of a registry identification card or designated primary
31 caregiver identification card shall not alone constitute probable cause to
32 search the person or property of the cardholder or otherwise subject the
33 person or property of the cardholder to inspection by any governmental
34 agency.

35 (b)(1) Any property interest possessed, owned, or used in connection
36 with the medical use of marijuana or acts incidental to the medical use of

1 marijuana that has been seized by state or local law enforcement officers
 2 shall not be harmed, neglected, injured, or destroyed while in the possession
 3 of any law enforcement agency.

4 (2) No property interest possessed, owned, or used in connection
 5 with the medical use of marijuana or acts incidental to the medical use of
 6 marijuana may be forfeited under any provision of law providing for the
 7 forfeiture of property other than as a sentence imposed after conviction of a
 8 criminal offense.

9 (3) Marijuana and paraphernalia used to administer marijuana
 10 that was seized by any law enforcement officer shall be returned immediately
 11 upon a determination by the prosecuting attorney in whose county the property
 12 was seized, or his or her designee, that the person from whom the marijuana
 13 or paraphernalia used to administer marijuana was seized is entitled to the
 14 protections contained in this subchapter.

15
 16 20-64-1109. Physician immunity.

17 No physician may be subjected to civil penalty or discipline by the
 18 Arkansas State Medical Board for:

19 (1) Advising a person whom the physician has diagnosed as having a
 20 debilitating medical condition, or a person whom the physician knows has been
 21 so diagnosed by another physician, about the risks and benefits of medical
 22 use of marijuana or that the medical use of marijuana may mitigate the
 23 symptoms or effects of the person's debilitating medical condition, if the
 24 advice is based on the physician's personal assessment of the person's
 25 medical history and current medical condition; or

26 (2) Providing the written documentation necessary for issuance of a
 27 registry identification card pursuant to this subchapter, if:

28 (A) The documentation is based on the physician's personal
 29 assessment of the applicant's medical history and current medical condition,
 30 and

31 (B) The physician has discussed the potential medical risks and
 32 benefits of the medical use of marijuana with the applicant.

33
 34 20-64-1110. Licensure immunity.

35 No professional licensing board may impose a civil penalty or take
 36 other disciplinary action against a licensee based on the licensee's medical

1 use of marijuana pursuant to this subchapter or actions taken by the licensee
 2 that are necessary to carry out the licensee's role as a designated primary
 3 caregiver to a person who possesses a lawful registry identification card.

4
 5 20-64-1111. Criminal acts.

6 Nothing in this subchapter shall protect a person from criminal
 7 prosecution based on possession, manufacture, or delivery of marijuana that
 8 is not authorized by this subchapter.

9
 10 20-64-1112. Registry.

11 (a)(1) The department shall create and maintain a list of the persons
 12 to whom the department has issued registry identification cards pursuant to
 13 this subchapter and the names of any designated primary caregivers.

14 (2) Except as provided in subsection (b), the list shall be
 15 confidential and not subject to public disclosure.

16 (b) Names and other identifying information from the list established
 17 pursuant to subsection (a) may be released to:

18 (1) Authorized employees of the department as necessary to
 19 perform official duties of the department; and

20 (2) Authorized employees of state or local law enforcement
 21 agencies, only as necessary to verify that a person is a lawful possessor of
 22 a registry identification card or that a person is the designated primary
 23 caregiver of a lawful possessor of a registry identification card.

24
 25 20-64-1113. Designated primary caregiver.

26 (a) If a person who possesses a registry identification card chooses to
 27 have a designated primary caregiver, the person must designate the primary
 28 caregiver by including the primary caregiver's name and address:

29 (1) On the person's application for a registry identification
 30 card;

31 (2) In the annual updated information required under this
 32 subchapter; or

33 (3) In a written, signed statement submitted to the department.

34 (b) A person who possesses a registry identification card may have
 35 only one (1) designated primary caregiver at any given time.

36

1 20-64-1114. Regulations.

2 The department shall adopt all regulations necessary for the
3 implementation and administration of this subchapter.

4
5 20-64-1115. Refusal to participate.

6 This chapter does not require:

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

10 (2) An employer to accommodate the medical use of marijuana in any
11 workplace.