

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
4

As Engrossed: H3/24/03

A Bill

HOUSE BILL 1321

5 By: Representatives Lendall, Blair
6 *By: Senator Madison*
7

For An Act To Be Entitled

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

Subtitle

14 AN ACT TO PERMIT THE MEDICAL USE OF
15 MARIJUANA.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

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

22 20-64-1101. Title.

23 This subchapter may be referred to and cited as the "Arkansas Medical
24 Marijuana Act".
25

26 20-64-1102. Findings.

27 The General Assembly finds that:

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

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

35 (3) Arkansans with debilitating medical conditions who may benefit
36 from the medical use of marijuana should be able to discuss freely with their



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1 doctors the possible risks and benefits of medical marijuana use and to have
2 the benefit of their doctor's professional advice; and

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

8
9 20-64-1103. Definitions.

10 For purposes of this subchapter:

11 (1) "Debilitating medical condition" means, for a person who is
12 terminally ill:

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

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

18 (i) Cachexia;

19 (ii) Severe pain;

20 (iii) Severe nausea;

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

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

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

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

33
34 (3) "Department" means the Department of Health;

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

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

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

5 (7) "Physician" means a medical doctor licensed by the Arkansas State
6 Medical Board;

7 (8) "Registry identification card" means a document issued by the
8 department that identifies a person authorized to engage in the medical use
9 of marijuana;

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

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

15 (10) "Written documentation" means a statement signed by the physician
16 of a person diagnosed with a debilitating medical condition or copies of the
17 person's relevant medical records.

18
19 20-64-1104. Immunity - Registration card program.

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

26 (1) The person holds a registry identification card issued
27 pursuant to this section, has applied for a registry identification card
28 pursuant to this section; and

29 (2) The person who is terminally ill and has a debilitating
30 medical condition is in possession of, delivering, or manufacturing marijuana
31 for medical use in the amounts allowed in § 20-64-1107.

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

34 (2) Except as provided in subsection (c) of this section, the
35 department shall issue a registry identification card to any person who pays
36 a fee in an affordable amount established by the department and provides the

1 following:

2 (A) Written documentation stating that the person is
3 terminally ill and has been diagnosed with a debilitating medical condition
4 and that the medical use of marijuana may mitigate the symptoms or effects of
5 the person's debilitating medical condition;

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

8 (C) The name, address, and telephone number of the
9 person's physician.

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

14 (1) The person's physician has explained to the person and to
15 one (1) of the person's parents or legal guardians the possible risks and
16 benefits of the medical use of marijuana;

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

19 (3) The parent or legal guardian agrees to control the
20 acquisition of marijuana and the dosage and frequency of use by the person.

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

24 (2) A county health department that receives that information
25 shall transmit the information to the department within five (5) days after
26 receipt.

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

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

34 (2) The department may deny an application only for the
35 following reasons:

36 (A) The applicant did not provide the information required

1 pursuant to this section to document his or her terminally ill state and
2 debilitating medical condition and to document his or her consultation with a
3 physician regarding the medical use of marijuana in connection with such
4 condition; or

5 (B) The department determines that the information
6 provided was falsified.

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

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

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

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

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

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

27 (B) The registry identification card shall state:

28 (i) The cardholder's name, address, and date of
29 birth;

30 (ii) The date of issuance and expiration date of the
31 registry identification card;

32 (iii) The name and address of the person's
33 designated primary caregiver, if any; and

34 (iv) Such other information as the department may
35 specify by regulation.

36 (2) If the person to whom the department has issued a registry

1 identification card pursuant to this section has specified a designated
2 primary caregiver, the department shall issue a registry identification card
3 to the designated primary caregiver.

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

6 (A) Notify the department of any change in the person's
7 name, address, or physician; and

8 (B) Annually submit to the department updated written
9 documentation of the person's terminally ill state and debilitating medical
10 condition.

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

13 (h) A person who possesses a registry identification card
14 pursuant to this section and who has been diagnosed by the person's physician
15 as no longer being terminally ill or having a debilitating medical condition
16 shall return the registry identification card to the department within seven
17 (7) calendar days after notification of the diagnosis.

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

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

29
30 20-64-1105. Prohibitions.

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

36 (1) Drives under the influence of marijuana;

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

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

5
6 20-64-1106. Affirmative defense.

7 Except as provided in §§ 20-64-1105 and 20-64-1111, it is an
8 affirmative defense to a criminal charge of possession or manufacture of
9 marijuana, or any other criminal offense in which possession or manufacture
10 of marijuana is an element, that the person charged with the offense is a
11 person who:

12 (1) Is terminally ill and has been diagnosed with a debilitating
13 medical condition and been advised by his or her physician that the medical
14 use of marijuana may mitigate the symptoms or effects of that debilitating
15 medical condition; and

16 (2) Possesses or manufactures marijuana only in the amounts permitted
17 under § 20-64-1107, unless the person proves by a preponderance of the
18 evidence that the greater amount is medically necessary to mitigate the
19 symptoms or effects of the person's debilitating medical condition.

20
21 20-64-1107. Limitations on affirmative defense.

22 (a)(1) A person who possesses a registry identification card issued
23 pursuant to this subchapter may engage in the medical use
24 of marijuana only as justified to mitigate the symptoms or effects of the
25 person's debilitating medical condition.

26 (2) Except as allowed in subsection (b) of this section, a
27 registry identification cardholder may not possess, deliver, or manufacture
28 more than the following:

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

32 (B) If the person is present at a location at which
33 marijuana is manufactured, including any residence associated with that
34 location, any amount of unusable marijuana, ten (10) plants at any age before
35 sexual maturity, three (3) female plants in flowering stage, and varying
36 amounts of usable marijuana in quantities up to one pound (1lb.) as a maximum

1 in conjunction with a harvest.

2 (b) If the individuals described in subsection (a) possess, deliver,
3 or manufacture marijuana in excess of the amounts allowed in subsection (a),
4 those individuals are not excepted from the criminal laws of this state but
5 may establish an affirmative defense to the charges, by a preponderance of
6 the evidence, that the greater amount is medically necessary to mitigate the
7 symptoms or effects of the person's debilitating medical condition.

8
9 20-64-1108. Search and seizure.

10 (a) Possession of a registry identification card shall not alone
11 constitute probable cause to search the person or property of the cardholder
12 or otherwise subject the person or property of the cardholder to inspection
13 by any governmental agency.

14 (b)(1) Any property interest possessed, owned, or used in connection
15 with the medical use of marijuana or acts incidental to the medical use of
16 marijuana that has been seized by state or local law enforcement officers
17 shall not be harmed, neglected, injured, or destroyed while in the possession
18 of any law enforcement agency.

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

24 (3) Marijuana and paraphernalia used to administer marijuana
25 that was seized by any law enforcement officer shall be returned immediately
26 upon a determination by the prosecuting attorney in whose county the property
27 was seized, or his or her designee, that the person from whom the marijuana
28 or paraphernalia used to administer marijuana was seized is entitled to the
29 protections contained in this subchapter.

30
31 20-64-1109. Physician immunity.

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

34 (1) Advising a person whom the physician has diagnosed as being
35 terminally ill and having a debilitating medical condition, or a person whom
36 the physician knows has been so diagnosed by another physician, about the

1 risks and benefits of medical use of marijuana or that the medical use of
2 marijuana may mitigate the symptoms or effects of the person's debilitating
3 medical condition, if the advice is based on the physician's personal
4 assessment of the person's medical history and current medical condition; or

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

7 (A) The documentation is based on the physician's personal
8 assessment of the applicant's medical history and current medical condition,
9 and

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

12
13 20-64-1110. Licensure immunity.

14 No professional licensing board may impose a civil penalty or take
15 other disciplinary action against a licensee based on the licensee's medical
16 use of marijuana pursuant to this subchapter for a person who possesses a
17 lawful registry identification card.

18 20-64-1111. Criminal acts.

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

22
23 20-64-1112. Registry.

24 (a)(1) The department shall create and maintain a list of the persons
25 to whom the department has issued registry identification cards pursuant to
26 this subchapter.

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

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

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

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

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20-64-1113. Regulations.

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

20-64-1114. Refusal to participate.

This chapter does not require:

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

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

/s/ Lendall