

State of Arkansas

82nd General Assembly

Regular Session, 1999

A Bill

HOUSE BILL 1043

By: Representative Lendall

For An Act To Be Entitled

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

Subtitle

"AN ACT TO PERMIT THE MEDICAL USE OF
MARIJUANA. "

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

SECTION 1. This act may be referred to and cited as the "Arkansas
Medical Marijuana Act".

SECTION 2. The General Assembly finds that:

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

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

(3) Arkansans with debilitating medical conditions who may benefit from
the medical use of marijuana should be able to discuss freely with their
doctors the possible risks and benefits of medical marijuana use and to have
the benefit of their doctor's professional advice; and

(4) The General Assembly intends to make only those changes to existing
Arkansas laws that are necessary to protect patients and their doctors from

criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes.

SECTION 3. Definitions. For purposes of this act:

(1) "Attending physician" means a medical doctor licensed by the Arkansas State Medical Board who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition;

(2) "Debilitating medical condition" means:

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

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

(i) Cachexia;

(ii) Severe pain;

(iii) Severe nausea;

(iv) Seizures, including but not limited to seizures caused by epilepsy; or

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

(C) Any other medical condition or treatment for a medical condition adopted by the Department by rule or approved by the Department pursuant to a petition under section 14 of this act requesting that a particular disease or condition be included among the diseases and conditions that qualify as debilitating medical conditions;

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

(4) "Designated primary caregiver" means an individual eighteen (18) years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Department. "Designated primary caregiver" does not include the person's attending physician;

1 (5) "Department" means the Department of Health;

2 (6) "Marijuana" means all parts and any variety and/or species of the
3 plant Cannabis that contains THC (Tetrahydrocannabinol) whether growing or
4 not; the seeds thereof; the resin extracted from any part of the plant; and
5 every compound, manufacture, salt, derivative, mixture, or preparation of the
6 plant, its seeds or resin. It does not include the mature stalks of the plant,
7 fiber produced from the stalks, oil or cake made from the seeds of the plant,
8 any other compound, manufacture, salt, derivative, mixture, or preparation of
9 the mature stalks (except the resin extracted therefrom), fiber, oil, or cake,
10 or the sterilized seed of the plant which is incapable of germination;

11 (7) "Medical use of marijuana" means the production, possession,
12 delivery, or administration of marijuana, or paraphernalia used to administer
13 marijuana, as necessary for the exclusive benefit of a person to mitigate the
14 symptoms or effects of his or her debilitating medical condition;

15 (8) "Production" includes the manufacture, planting, cultivation,
16 growing, or harvesting of a controlled substance;

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

20 (10) "Usable marijuana" means the dried leaves and flowers of the plant
21 Cannabis, and any mixture or preparation thereof, that are appropriate for
22 medical use. "Usable marijuana" does not include the seeds, stalks and roots
23 of the plant;

24 (11) "Written documentation" means a statement signed by the attending
25 physician of a person diagnosed with a debilitating medical condition or
26 copies of the person's relevant medical records.

27
28 SECTION 4. (a) Except as provided in this act, a person engaged in or
29 assisting in the medical use of marijuana is excepted from the criminal laws
30 of the state for possession, delivery or production of marijuana, aiding and
31 abetting another in the possession, delivery or production of marijuana or any
32 other criminal offense in which possession, delivery or production of
33 marijuana is an element if the following conditions have been satisfied:

34 (1) The person holds a registry identification card, has applied
35 for a registry identification card, or is the designated primary caregiver of
36 a cardholder or applicant; and

1 (2) The person who has a debilitating medical condition and his
2 or her primary caregiver are collectively in possession of, delivering or
3 producing marijuana for medical use in the amounts allowed in Section 7 of
4 this act.

5 (b) The Department shall establish and maintain a program for the
6 issuance of registry identification cards. The Department shall issue a
7 registry identification card to any person eighteen (18) years of age or older
8 who pays a fee in the amount established by the Department and provides the
9 following:

10 (1) Valid, written documentation from the person's attending
11 physician stating that the person has been diagnosed with a debilitating
12 medical condition and that the medical use of marijuana may mitigate the
13 symptoms or effects of the person's debilitating medical condition;

14 (2) The name, address and date of birth of the person;

15 (3) The name, address and telephone number of the person's
16 attending physician; and

17 (4) The name and address of the person's designated primary
18 caregiver, if the person has designated a primary caregiver at the time of
19 application.

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

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

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

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

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

33 (d) A person applying for a registry identification card may submit the
34 information required in subsection (b) to a local health unit of the
35 Department of Health for transmittal to the Department. A local health unit of
36 the Department of Health that receives that shall transmit the information to

1 the Department within five (5) days after receipt of the information.
2 Information regarding registry identification cards received by a local health
3 unit of the Department of Health shall be confidential and not subject to
4 disclosure, except as required to transmit the information to the Department.

5 (e) 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 application.

8 (1) The Department may deny an application only for the following
9 reasons:

10 (A) The applicant did not provide the information required
11 to establish his or her debilitating medical condition and to document his or
12 her consultation with an attending physician regarding the medical use of
13 marijuana in connection with such condition; or

14 (B) The Department determines that the information provided
15 was falsified.

16 (2) Denial of a registry identification card shall be considered
17 a final Department action, subject to judicial review. Only the person whose
18 application has been denied, or, in the case of a person under the age of
19 eighteen (18) years of age whose application has been denied, the person's
20 parent or legal guardian shall have standing to contest the Department's
21 action.

22 (3) Any person whose application has been denied may not reapply
23 for six (6) months after the date of the denial, unless so authorized by the
24 Department or a court of competent jurisdiction.

25 (f)(1) If the Department has verified the information submitted in an
26 application for a registry identification card and none of the reasons for
27 denial listed in subdivision (e)(1) are applicable, the Department shall issue
28 a serially numbered registry identification card within five (5) calendar days
29 after verification of the information. The registry identification card shall
30 state:

31 (A) The cardholder's name, address and date of birth;

32 (B) The date of issuance and expiration date of the
33 registry identification card;

34 (C) The name and address of the person's designated primary
35 caregiver, if any; and

36 (D) Such other information as the Department may specify by

1 rule.

2 (2) When the person to whom the Department has issued a registry
 3 identification card pursuant to this section has specified a designated
 4 primary caregiver, the Department shall issue a registry identification card
 5 to the designated primary caregiver. The primary caregiver's registry
 6 identification card shall contain the information required in subdivision
 7 (f)(1).

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

9 (A) Notify the Department of any change in the person's
 10 name, address, attending physician or designated primary caregiver; and

11 (B) Annually submit to the Department:

12 (i) Updated written documentation of the person's
 13 debilitating medical condition; and

14 (ii) The name of the person's designated primary
 15 caregiver if a primary caregiver has been designated for the upcoming year.

16 (2) If a person who possesses a registry identification card
 17 fails to comply with this subsection, the card shall be deemed expired. If a
 18 registry identification card expires, the identification card of any
 19 designated primary caregiver of the cardholder shall also expire.

20 (h) A person who possesses a registry identification card and who has
 21 been diagnosed by the person's attending physician as no longer having a
 22 debilitating medical condition shall return the registry identification card
 23 to the Department within seven (7) calendar days after notification of the
 24 diagnosis. Any designated primary caregiver shall return his or her
 25 identification card within the same period of time.

26 (i) A person who has applied for a registry identification card but
 27 whose application has not yet been approved or denied, and who is contacted by
 28 any law enforcement officer in connection with his or her administration,
 29 possession, delivery or production of marijuana for medical use may provide to
 30 the law enforcement officer a copy of the written documentation submitted to
 31 the Department and proof of the date of mailing or other transmission of the
 32 documentation to the Department. This documentation shall have the same legal
 33 effect as a registry identification card until such time as the person
 34 receives notification that the application has been approved or denied.

35
 36 SECTION 5. (a) No person authorized to possess, deliver or produce

marijuana for medical use shall be excepted from the criminal laws of this state or shall be deemed to have established an affirmative defense to criminal charges of which possession, delivery or production of marijuana is an element if the person, in connection with the facts giving rise to such charges:

(1) Drives under the influence of marijuana;

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

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

(4) Delivers marijuana for consideration to any individual, even if the individual is in possession of a registry identification card.

(b) In addition to any other penalty allowed by law, a person who the Department finds has willfully violated the provisions of this act or rules adopted under this act may be precluded from obtaining or using a registry identification card for the medical use of marijuana for a period of up to six months, at the discretion of the Department.

SECTION 6. (a) Except as provided in sections 5 and 11 of this act, it is an affirmative defense to a criminal charge of possession or production of marijuana, or any other criminal offense in which possession or production of marijuana is an element, that the person charged with the offense is a person who:

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

(2) Is engaged in the medical use of marijuana; and

(3) Possesses or produces marijuana only in the amounts permitted under section 7 of this act, if the person proves by a preponderance of the evidence that the greater amount is medically necessary to mitigate the symptoms or effects of the person's debilitating medical condition.

(b) It is not necessary for a person asserting an affirmative defense under subsection (a) to have received a registry identification card in order to assert the affirmative defense established under subsection (a).

(c) No person who claims that marijuana provides medically necessary

1 benefits and who is charged with a crime pertaining to such use of marijuana
2 shall be precluded from presenting in his or her defense evidence supporting
3 the necessity of marijuana for treatment of a specific disease or medical
4 condition, provided that the amount of marijuana at issue is no greater than
5 permitted under section 7 of this act.

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7 SECTION 7. (a) A person who possesses a registry identification card
8 may engage in, and a designated primary caregiver of such a person may assist
9 in, the medical use of marijuana only as justified to mitigate the symptoms or
10 effects of the person's debilitating medical condition. Except as allowed in
11 subsection (b), a registry identification cardholder and that person's
12 designated primary caregiver may not collectively possess, deliver or produce
13 more than the following:

14 (1) If the person is present at a location at which marijuana is
15 not produced, including any residence associated with that location, one (1)
16 ounce of usable marijuana; and

17 (2) If the person is present at a location at which marijuana is
18 produced, including any residence associated with that location, three (3)
19 mature marijuana plants, four (4) immature marijuana plants and one (1) ounce
20 of usable marijuana per each mature plant.

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

27 (c) The Department of Health shall define by rule when a marijuana
28 plant is mature and when it is immature for purposes of this act.

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30 SECTION 8. (a) Possession of a registry identification card or
31 designated primary caregiver identification card shall not alone constitute
32 probable cause to search the person or property of the cardholder or otherwise
33 subject the person or property of the cardholder to inspection by any
34 governmental agency.

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

marijuana that has been seized by state or local law enforcement officers shall not be harmed, neglected, injured or destroyed while in the possession of any law enforcement agency. No such property interest may be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense. Marijuana and paraphernalia used to administer marijuana that was seized by any law enforcement officer shall be returned immediately upon a determination by the prosecuting attorney in whose county the property was seized, or his or her designee, that the person from whom the marijuana or paraphernalia used to administer marijuana was seized is entitled to the protections contained in this act. Such determination may be evidenced, for example, by a decision not to prosecute, the dismissal of charges, or acquittal.

SECTION 9. No attending physician may be subjected to civil penalty or discipline by the Arkansas State Medical Board for:

(1) Advising a person whom the attending physician has diagnosed as having a debilitating medical condition, or a person who the attending physician knows has been so diagnosed by another physician licensed in this state, about the risks and benefits of medical use of marijuana or that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, provided the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition; or

(2) Providing the written documentation necessary for issuance of a registry identification card, if the documentation is based on the attending physician's personal assessment of the applicant's medical history and current medical condition and the physician has discussed the potential medical risks and benefits of the medical use of marijuana with the applicant.

SECTION 10. No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based on the licensee's medical use of marijuana or actions taken by the licensee that are necessary to carry out the licensee's role as a designated primary caregiver to a person who possesses a lawful registry identification card.

SECTION 11. Nothing in this act shall protect a person from a criminal

1 cause of action based on possession, production, or delivery of marijuana that
2 is not authorized by this act.

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4 SECTION 12. (a) The Department shall create and maintain a list of the
5 persons to whom the Department has issued registry identification cards and
6 the names of any designated primary caregivers. Except as provided in
7 subsection (b), the list shall be confidential and not subject to public
8 disclosure.

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

11 (1) Authorized employees of the Department as necessary to
12 perform official duties of the Department; and

13 (2) Authorized employees of state or local law enforcement
14 agencies, only as necessary to verify that a person is a lawful possessor of a
15 registry identification card or that a person is the designated primary
16 caregiver of such a person.

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18 SECTION 13. (a) If a person who possesses a registry identification
19 card chooses to have a designated primary caregiver, the person must designate
20 the primary caregiver by including the primary caregiver's name and address:

21 (1) On the person's application for a registry identification
22 card;

23 (2) In the annual updated information required under this act; or

24 (3) In a written, signed statement submitted to the Department.

25 (b) A person described in subsection (a) may have only one designated
26 primary caregiver at any given time.

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28 SECTION 14. Any person may submit a petition to the Department
29 requesting that a particular disease or condition be included among the
30 diseases and conditions that qualify as debilitating medical conditions. The
31 Department shall adopt rules establishing the manner in which the Department
32 will evaluate petitions submitted under this subsection. The Department shall
33 approve or deny a petition within one hundred-eighty (180) days of receipt of
34 the petition by the Department. Denial of a petition shall be considered a
35 final Department action subject to judicial review.

1 SECTION 15. The Department shall adopt all rules necessary for the
2 implementation and administration of this act.

3
4 SECTION 16. Nothing in this act shall be construed to require:

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

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

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11 SECTION 17. All provisions of this Act of a general and permanent
12 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
13 Code Revision Commission shall incorporate the same in the Code.

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15 SECTION 18. If any provision of this Act or the application thereof to
16 any person or circumstance is held invalid, such invalidity shall not affect
17 other provisions or applications of the Act which can be given effect without
18 the invalid provision or application, and to this end the provisions of this
19 Act are declared to be severable.

20
21 SECTION 19. All laws and parts of laws in conflict with this Act are
22 hereby repealed.