

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1383

Short Title: Medical Marijuana Act/Referendum. (Public)

Sponsors: Representative Jones.

Referred to: Health, if favorable, Judiciary II, if favorable, Finance.

April 13, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE MEDICAL MARIJUANA ACT AND PROVIDE FOR A
3 REFERENDUM THEREFORE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 90 of the General Statutes is amended by adding the
6 following new Article to read:

7 "Article 72.

8 "Medical Marijuana Act.

9 **"§ 90-725. Short title.**

10 This Article shall be known and may be cited as the "North Carolina Medical Marijuana
11 Act."

12 **"§ 90-726. Legislative findings and purpose.**

13 The General Assembly makes the following findings:

- 14 (1) Modern medical research has discovered beneficial uses for marijuana in
15 treating or alleviating pain, nausea, and other symptoms associated with
16 certain debilitating medical conditions, as found by the National Academy of
17 Sciences' Institute of Medicine in March 1999.
- 18 (2) According to the U.S. Sentencing Commission and the Federal Bureau of
19 Investigation, 99 out of every 100 marijuana arrests in the United States are
20 made under State law, rather than under federal law. Consequently, changing
21 State law will have the practical effect of protecting from arrest the vast
22 majority of seriously ill people who have a medical need to use marijuana.
- 23 (3) The United States Department of Health and Human Services, through the
24 Compassionate Investigational New Drug (IND) program, provides
25 marijuana by prescription to a number of individuals for their use as
26 medicine. The marijuana is grown at the federal marijuana research garden
27 at the University of Mississippi and is processed and distributed by the
28 Research Triangle Institute in Research Triangle Park, North Carolina. The
29 patients receive the marijuana monthly in canisters of approximately 300
30 prerolled cigarettes. The dosage for patients in the IND program ranges from
31 seven to nine grams per day. Since the program's inception in 1978, patients
32 in the IND program have received and consumed approximately 6.5 pounds
33 of marijuana per year, thereby establishing a safe and effective dosage for
34 chronic daily-use patients to possess and consume. The IND program was
35 closed to new applicants in 1991.
- 36 (4) In 1992, the United States Drug Enforcement Administration (DEA)
37 published research in a report entitled "Cannabis Yields" stating that canopy



1 cover, rather than the number of plants, is the most accurate indicator of a
2 garden's yield. According to the DEA report, 100 square feet of mature
3 garden canopy will typically yield three pounds of processed marijuana per
4 year, a common amount for patients who use marijuana daily, but less than
5 half the amount prescribed in the federal IND patients.

6 (5) Although federal law currently prohibits any use of marijuana outside of the
7 IND program, the laws of Alaska, California, Colorado, Hawaii, Maine,
8 Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont,
9 and Washington permit the medical use and cultivation of marijuana. North
10 Carolina joins in this effort for the health and welfare of its citizens.

11 (6) States are not required to enforce federal law or prosecute people for
12 engaging in activities prohibited by federal law. Therefore, compliance with
13 this Article does not put the State of North Carolina in violation of federal
14 law.

15 (7) Compassion dictates that State law should make a distinction between the
16 medical and nonmedical use of marijuana. Hence, the purpose of this Article
17 is to protect patients with debilitating medical conditions, and their
18 physicians and caregivers, from arrest and prosecution, criminal and other
19 penalties, and property forfeiture by allowing the beneficial use of medical
20 marijuana in a regulated system for alleviating symptoms caused by
21 debilitating medical conditions and their medical treatments.

22 (8) This act is intended to make only those changes to existing North Carolina
23 laws that are necessary to protect patients and their doctors from criminal
24 and civil penalties and is not intended to change current civil and criminal
25 laws governing the use of marijuana for nonmedical purposes.

26 (9) Based on data gathered from other states where medical marijuana has been
27 regulated, this act will result in revenues for the State approximately sixty
28 million dollars (\$60,000,000) per year within four years of implementation.

29 (10) The General Assembly enacts this act pursuant to its police power to enact
30 legislation for the protection of the health of its citizens, as reserved to the
31 State in the Tenth Amendment of the United States Constitution.

32 **"§ 90-727. Definitions.**

33 The following definitions apply in this Article:

34 (1) "Adequate supply" means an amount of marijuana possessed by a qualified
35 patient or collectively possessed by a qualified patient and the qualified
36 patient's designated caregiver that is not more than is reasonably necessary
37 to assure the uninterrupted availability of marijuana for the purpose of
38 alleviating the symptoms or effects of qualifying patient's debilitating
39 medical condition and that is derived solely from the intrastate source;
40 provided that an "adequate supply" shall not exceed a garden with up to 100
41 square feet of total garden canopy of mature female marijuana plants,
42 measured by the combined vegetative growth area, and 24 ounces of usable
43 marijuana. If usable marijuana is added as an ingredient to food, salve,
44 tincture, or any other preparation to be consumed or used by a registered
45 qualifying patient, the weight of the other ingredients that are not usable
46 marijuana shall not be included for purposes of determining whether a
47 registered qualified patient possesses more usable cannabis than permitted
48 under this section.

49 (2) "Cannabis" means marijuana as defined in G.S. 90-87(16).

50 (3) "Canopy" means the foliage of growing plants. The area shaded by foliage is
51 called its "canopy cover."

- 1 (4) "Debilitating medical condition" means:
2 a. Cancer; glaucoma; positive status for human immunodeficiency virus
3 (HIV); acquired immune deficiency syndrome (AIDS); hepatitis C;
4 porphyria; amyotrophic lateral sclerosis; Alzheimer's disease; nail
5 patella syndrome; rheumatoid arthritis; fibromyalgia; severe
6 migraines; multiple sclerosis; Crohn's disease; injury or disease to the
7 spinal cord, spinal column, or vertebra; mylomalacia; celiac disease;
8 or the treatment of such conditions;
9 b. A chronic or debilitating disease or medical condition or its treatment
10 that produces one or more of the following: cachexia or wasting
11 syndrome; severe pain; severe nausea; anorexia; seizures, including
12 those characteristic of epilepsy; or severe and persistent muscle
13 spasms, including those characteristic of multiple sclerosis (MS),
14 amyotrophic lateral sclerosis (Lou Gehrig's disease or ALS), or
15 Crohn's disease; or
16 c. Any other serious medical or mental condition or its treatment
17 approved by a licensed physician.
18 (5) "Department" means the North Carolina Department of Health and Human
19 Services.
20 (6) "Designated caregiver" means a resident of North Carolina who is at least 21
21 years old and who has agreed to assist with a patient's medical use of
22 marijuana.
23 (7) "Dispensary" means any entity, including the directors, employees, or agents
24 of such an entity, licensed to possess, produce, deliver, transport, supply, and
25 dispense usable marijuana, marijuana plants, and marijuana seeds to registry
26 identification cardholders and to other dispensaries. Dispensaries may also
27 assist patients with other products and services including equipment,
28 supplies, and educational materials.
29 (8) "Licensed medical marijuana producer" or "producer" means a person or an
30 entity licensed to produce marijuana, marijuana plants, and marijuana seeds
31 for dispensaries. A licensed medical marijuana producer may be an
32 individual North Carolina resident and the employees of the individual or a
33 licensed dispensary and the directors and employees of the dispensary.
34 (9) "Medical use of marijuana" means the acquisition, possession, cultivation,
35 manufacture, use, internal possession, delivery, transfer, or transportation of
36 marijuana or paraphernalia relating to the administration of marijuana to
37 treat or alleviate a qualifying patient's medical condition or symptoms
38 associated with the medical condition or its treatment.
39 (10) "Practitioner" means a person licensed in North Carolina to prescribe and
40 administer drugs that are subject to the Controlled Substances Act (Article 5
41 of Chapter 90 of the General Statutes).
42 (11) "Qualified patient" means a resident of North Carolina who has been
43 diagnosed by a practitioner as having a debilitating medical condition.
44 (12) "Registry identification card" means a document issued by the Department
45 that identifies a person as a qualifying patient or designated caregiver.
46 (13) "Regulated medical marijuana supply system" or "system" means the
47 method authorized by rules adopted by the Department for producing and
48 distributing marijuana to registry identification cardholders and the
49 individuals and nonprofit entities licensed to produce and distribute
50 marijuana to registry identification cardholders.

1 (14) "Usable marijuana" means the dried buds and mature female flowers of the
2 plant (genus) cannabis, and any mixture or preparation thereof, which are
3 appropriate for medical use as provided in this act, but excludes the plant's
4 seeds, stalks, stems, and roots.

5 (15) "Written certification" means a statement in a patient's medical records or a
6 statement signed by a practitioner that, in the practitioner's professional
7 opinion, the patient has a debilitating medical condition and the practitioner
8 believes that the potential health benefits of the medical use of marijuana
9 would likely outweigh the health risks for the patient.

10 **§ 90-728. Protections for the medical use of marijuana.**

11 (a) A qualified patient shall not be subject to arrest, prosecution, or penalty in any
12 manner, or denied any right or privilege, including, but not limited to, civil penalty or
13 disciplinary action by a business or occupational or professional licensing board or bureau, for
14 the possession of or the medical use of marijuana if the quantity of marijuana does not exceed
15 an adequate supply.

16 (b) A qualified patient's designated caregiver shall not be subject to arrest, prosecution,
17 or penalty in any manner, or denied any right or privilege, including, but not limited to, civil
18 penalty or disciplinary action by a business or occupational or professional licensing board or
19 bureau, for the possession of marijuana for medical use by the qualified patient if the quantity
20 of marijuana does not exceed an adequate supply for the qualified patient.

21 (c) Subsection (a) of this section shall not apply to a qualified patient under the age of
22 18 years, unless:

23 (1) The qualified patient's practitioner has explained the potential risks and
24 benefits of the medical use of marijuana to the qualified patient and to a
25 parent, guardian, or person having legal custody of the qualified patient; and

26 (2) A parent, guardian, or person having legal custody consents in writing to:

27 a. Allow the qualified patient's medical use of marijuana.

28 b. Serve as the qualified patient's designated caregiver.

29 c. Control the dosage and the frequency of the medical use of marijuana
30 by the qualified patient.

31 (d) A qualified patient or a designated caregiver shall be granted the full legal
32 protection provided in this section if the patient or caregiver is in possession of a registry
33 identification card. If the qualified patient or designated caregiver is not in possession of a
34 registry identification card, the patient or caregiver shall be given an opportunity to produce the
35 registry identification card before any arrest or criminal charges or other penalties are initiated.

36 (e) There shall exist a presumption that a qualifying patient or designated caregiver is
37 engaged in the medical use of marijuana if the qualifying patient or designated caregiver is in
38 possession of a registry identification card, and is in possession of an amount of marijuana that
39 does not exceed the amount permitted under this act. Such presumption may be rebutted by
40 evidence that conduct related to marijuana was not for the purpose of alleviating the qualifying
41 patient's debilitating medical condition or symptoms associated with the medical condition.

42 (f) A designated caregiver may receive reimbursement for costs associated with
43 assisting a registered qualifying patient's medical use of marijuana. Such compensation shall
44 not constitute sale of controlled substances.

45 (g) No school, employer, or landlord may refuse to enroll, employ, or lease to or
46 otherwise penalize a person solely for his or her status as a registered qualifying patient or a
47 registered designated caregiver.

48 (h) For the purposes of medical care, including organ transplants, a registered
49 qualifying patient's authorized use of marijuana in accordance with this act shall be considered
50 the equivalent of the authorized use of any other medication used at the direction of a physician
51 and shall not constitute the use of an illicit substance.

1 (i) A licensed producer shall not be subject to arrest, prosecution, or penalty in any
2 manner, or denied any right or privilege, including, but not limited to, civil penalty or
3 disciplinary action by a business or occupational or professional licensing board or bureau, for
4 the production, possession, distribution, or dispensing of marijuana pursuant to this act.

5 (j) A practitioner shall not be subject to arrest, prosecution, or penalty in any manner,
6 or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action
7 by the North Carolina Medical Board or by any other business or occupational or professional
8 licensing board or bureau for:

9 (1) Advising a patient about the risks and benefits of medical use of marijuana
10 or that the patient may benefit from the medical use of marijuana where such
11 use is in the individual physician's medical judgment, or

12 (2) Providing a patient with valid documentation, based upon the physician's
13 assessment of the patient's medical history and current medical condition,
14 that the potential benefits of the medical use of marijuana would likely
15 outweigh the health risks for the particular patient.

16 (k) A practitioner nurse or pharmacist shall not be subject to arrest, prosecution, or
17 penalty in any manner, or denied any right or privilege, including, but not limited to, civil
18 penalty or disciplinary action by a business or occupational or professional licensing board or
19 bureau for discussing the benefits or health risks of medical marijuana or its interaction with
20 other substances with a patient.

21 (l) Any interest in or right to property that is possessed, owned, or used in connection
22 with the medical use of marijuana, or acts incidental to such use, shall not be harmed,
23 neglected, injured, or destroyed while in the possession of State or local law enforcement
24 officials where such property has been seized in connection with the claimed medical use of
25 marijuana. Any such property interest shall not be forfeited under any provision of State law
26 providing for the forfeiture of property other than as a sentence imposed after conviction of a
27 criminal violation of this act or entry of a plea of guilty to such offense. Marijuana,
28 paraphernalia or other property seized from a qualified patient, designated caregiver, or
29 licensed producer in connection with the claimed medical use of marijuana shall be returned
30 immediately upon the determination by a court or prosecutor that the qualified patient,
31 designated caregiver, or licensed producer is entitled to the protections of the provisions of this
32 act, as may be evidenced by a failure to actively investigate the case, a decision not to
33 prosecute, the dismissal of charges, or acquittal.

34 (m) A person shall not be denied custody of, or visitation or parenting time with, a
35 minor and there shall be no presumption of neglect or child endangerment for conduct allowed
36 under this act.

37 (n) No person shall be subject to arrest or prosecution for constructive possession,
38 conspiracy, aiding and abetting, being an accessory, or any other offense for simply being in
39 the presence or vicinity of the medical use of marijuana as permitted under this act or for
40 assisting a registered qualifying patient with using or administering marijuana.

41 (o) Possession of, or application for, a registry identification card shall not alone
42 constitute probable cause to search the person or the property of the person possessing or
43 applying for the registry identification card, or otherwise subject the person or his property to
44 inspection by any governmental agency.

45 (p) If an individual being investigated by a law enforcement officer employed by a
46 State-funded or locally funded law enforcement agency credibly asserts during the course of
47 the investigation that he or she is a registered qualifying patient or registered designated
48 caregiver, neither the law enforcement officer nor the law enforcement agency shall provide
49 any information, except as required by federal law of the United States Constitution, from any
50 marijuana-related investigation of the person to any law enforcement authority that does not

1 recognize the protection of this act. Any prosecution of the individual for a violation of this act
2 shall be conducted pursuant to the laws of this State.

3 (q) Marijuana produced and possessed under this act shall be deemed exempt as
4 authorized possession per G.S. 105-113.107A(a) of the Unauthorized Substances Tax set forth
5 at Article 2D of Chapter 105 of the General Statutes, and no tax under that Article may be
6 levied against any patient, caregiver, producer, or dispensary operating under the terms of this
7 act.

8 (r) Notwithstanding the foregoing provisions, no person, including a qualified patient,
9 designated caregiver, or licensed producer, shall be entitled to the protection of this act for his
10 or her acquisition, possession, manufacture, production, use, sale, distribution, dispensing, or
11 transportation of marijuana for any use other than medical use.

12 **"§ 90-729. Prohibitions, restrictions, and limitations on the medical use of marijuana.**

13 (a) This act shall not permit:

14 (1) Any person to operate, navigate, or be in actual physical control of any
15 motor vehicle, aircraft, or motorboat while impaired by marijuana. However,
16 a registered qualifying patient shall not be considered to be impaired solely
17 for having marijuana metabolites in his or her system.

18 (2) Any person to undertake any task under the influence of marijuana, when
19 doing so would constitute negligence or professional malpractice.

20 (3) The smoking of marijuana in a school bus or other form of public
21 transportation, on any school grounds, in any correctional facility, or in any
22 public place in this State.

23 A person who commits an act as provided in this section shall be subject to such penalties
24 as provided by law.

25 (b) Nothing in this Article shall be construed to require:

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

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

30 (c) Fraudulent representation to a law enforcement official of any fact or circumstance
31 relating to the medical use of marijuana to avoid arrest or prosecution shall be punishable by a
32 fine of five hundred dollars (\$500.00) which shall be in addition to any other penalties that may
33 apply for making a false statement for the nonmedical use of marijuana.

34 (d) If a licensed producer sells, distributes, dispenses, or transfers cannabis to a person
35 not approved by the Department pursuant to this act or obtains or transports cannabis outside
36 North Carolina in violation of federal law, the licensed producer shall be subject to arrest,
37 prosecution, and civil or criminal penalties pursuant to State law.

38 (e) The State shall not be held liable for any deleterious outcomes from the medical use
39 of marijuana by any qualifying patient.

40 **"§ 90-730. Registry identification cards; Department rules; duties.**

41 (a) Not later than 90 days after the effective date of this act, the Department shall
42 promulgate rules pursuant to the Administrative Procedure Act, Chapter 150B of the General
43 Statutes, that govern the manner in which it shall consider applications for and renewals of
44 registry identification cards for qualifying patients and designated caregivers.

45 (b) The Department shall issue registry identification cards to qualifying patients who
46 submit the following, in accordance with the Department's regulations:

47 (1) Written certification as defined in G.S. 90-727.

48 (2) Application or renewal fee;

49 (3) Name, address, and date of birth of the qualifying patient; provided,
50 however, that if the patient is homeless, no address is required;

- 1 (4) Name, address, and telephone number of the qualifying patient's practitioner;
2 and
- 3 (5) Name, address, and date of birth of each designated caregiver of the
4 qualifying patient, if any.
- 5 (c) The Department shall not issue a registry identification card to a qualifying patient
6 under the age of 18 unless:
- 7 (1) The qualifying patient's practitioner has explained the potential risks and
8 benefits of the medical use of marijuana to the qualifying patient and to a
9 parent, guardian, or person having legal custody of the qualifying patient;
10 and
- 11 (2) A parent, guardian, or person having legal custody consents in writing to:
- 12 a. Allow the qualifying patient's medical use of marijuana;
13 b. Serve as one of the qualifying patient's designated caregivers; and
14 c. Control the acquisition of the marijuana, the dosage, and the
15 frequency of the medical use of marijuana by the qualifying patient.
- 16 (d) The Department shall verify the information contained in an application or renewal
17 submitted pursuant to this section and shall approve or deny an application or renewal within
18 15 days of receiving it. The Department may deny an application or renewal only if the
19 applicant did not provide the information required pursuant to this section, or if the Department
20 determines that the information provided was falsified. If the Department fails to issue a valid
21 registry identification card in response to a valid application or renewal submitted pursuant to
22 this act within 20 days of its submission, the registry identification card shall be deemed
23 granted, and a copy of the registry identification application or renewal shall be deemed a valid
24 registry identification card.
- 25 (e) The Department shall issue a registry identification card to each designated
26 caregiver, if any, who is named in a qualifying patient's approved application, up to a maximum
27 of two designated caregivers per qualifying patient.
- 28 (f) The Department shall issue registry identification cards within five days of
29 approving an application or renewal, which shall expire two years after the date of issuance.
30 Registry identification cards shall contain:
- 31 (1) The date of issuance and expiration date of the registry identification card;
32 (2) A random registry identification number;
33 (3) A photograph; and
34 (4) Any additional information as required by regulation or the Department.
- 35 (g) Persons issued registry identification cards shall be subject to the following:
- 36 (1) A qualifying patient who has been issued a registry identification card shall
37 notify the Department of any change in the qualifying patient's name,
38 address, or designated caregiver within 15 days of such change.
- 39 (2) A registered qualifying patient who fails to notify the Department of any of
40 these changes is responsible for a civil infraction, punishable by a fine of no
41 more than one hundred fifty dollars (\$150.00).
- 42 (3) A registered designated caregiver shall notify the Department of any change
43 in his or her name or address within 15 days of such change. A designated
44 caregiver who fails to notify the Department of any of these changes is
45 responsible for a civil infraction, punishable by a fine of no more than one
46 hundred fifty dollars (\$150.00).
- 47 (4) When a qualifying patient or designated caregiver notifies the Department of
48 any changes listed in this subsection, the Department shall issue the
49 registered qualifying patient and each designated caregiver a new registry
50 identification card within 10 days of receiving the updated information and a
51 ten dollar (\$10.00) fee.

1 (5) When a qualifying patient who possesses a registry identification card
2 changes his or her designated caregiver, the Department shall notify the
3 designated caregiver with 15 days. The designated caregiver's protections as
4 provided in this Article shall expire 30 days after notification by the
5 Department.

6 (6) If a registered qualifying patient or a designated caregiver loses his or her
7 registry identification card, he or she shall notify the Department and submit
8 a ten dollar (\$10.00) fee within 15 days of losing the card. Within five days,
9 the Department shall issue a new registry identification card with a new
10 random identification number.

11 (7) If a qualifying patient and/or designated caregiver willfully violates any
12 provision of this Article as determined by the Department, his or her registry
13 identification card may be revoked.

14 (h) Applications and supporting information submitted by qualifying patients, including
15 information regarding their designated caregivers and practitioners, are confidential and
16 protected under the federal Health Insurance Portability and Accountability Act of 1996.

17 (i) The Department shall maintain a confidential list of the persons to whom the
18 Department has issued registry identification cards. Individual names and other identifying
19 information on the list shall be confidential, exempt from the provisions of North Carolina
20 Public Records Act, Chapter 132 of the General Statutes, and not subject to disclosure, except
21 to authorized employees of the Department as necessary to perform official duties of the
22 Department.

23 (j) The Department shall verify to law enforcement personnel whether a registry
24 identification card is valid solely by confirming the random registry identification number.

25 (k) It shall be a crime, punishable by up to 180 days in jail and a one thousand dollar
26 (\$1,000) fine, for any person, including an employee or official of the Department or another
27 State agency or local government, to breach the confidentiality of information obtained
28 pursuant to this Article. Notwithstanding this provision, the Department employees may notify
29 law enforcement about falsified or fraudulent information submitted to the Department.

30 **"§ 90-731. Regulated medical marijuana supply system.**

31 (1) The Department shall establish a regulated medical marijuana supply
32 system. No general fund revenue shall be used to establish the system. The
33 system shall be funded through program fees. The purpose of the system is
34 to provide a safe, regulated supply of quality medical marijuana for registry
35 identification cardholders and to provide revenue to help fund the systems
36 established under this act and other Department programs.

37 (2) Not later than 180 days after the effective date of this act, the Department
38 shall promulgate rules pursuant to the Administrative Procedure Act,
39 Chapter 150B of the General Statutes, that govern the manner in which it
40 shall consider applications for and renewals of licenses for marijuana
41 dispensaries and producers.

42 (3) The Department shall issue a dispensary license to an entity that submits the
43 following in accordance with the Department's rules:

44 a. The name of the entity and any name used in dispensing medical
45 marijuana.

46 b. The address of any property used by the dispensary to possess,
47 produce, deliver, transport, dispense, or distribute marijuana.

48 c. The names, addresses, and dates of birth of all principal officers and
49 board members of the dispensary.

50 d. The names, addresses, and dates of birth of all dispensary employees.

- 1 e. A nonrefundable fee paid to the Department in the amount
2 established by the Department by rule. The initial fee for a
3 dispensary license is two thousand dollars (\$2,000).
- 4 f. Proof of North Carolina residency of all principal officers, board
5 members, and employees.
- 6 g. Any other information the Department considers necessary to ensure
7 compliance with the terms of this act.
- 8 (4) A dispensary license is valid for one year and shall be renewed prior to the
9 expiration of a current license.
- 10 (5) The Department shall issue a dispensary registry identification card to each
11 listed director and employee of a qualifying dispensary within 30 days of
12 issuing a license. The fee for each card shall initially be set at ten dollars
13 (\$10.00).
- 14 (6) The Department shall issue a producer license to an entity that submits the
15 following in accordance with the Department's rules:
- 16 a. The name of the producer responsible for the medical marijuana
17 production site and any employees of the producer.
- 18 b. The addresses of the property used by the producer to produce
19 marijuana.
- 20 c. A nonrefundable fee paid to the Department in the amount
21 established by the Department by rule. The initial fee for a producer
22 license is one thousand dollars (\$1,000).
- 23 d. Proof of North Carolina residency and age. Producers and employees
24 of producers must be at least 21 years of age.
- 25 e. Any other information the Department considers necessary to ensure
26 compliance with the terms of this act.
- 27 (7) A producer license is valid for one year and shall be renewed prior to the
28 expiration of a current license.
- 29 (8) The Department shall issue a producer registry identification card to each
30 listed producer and employee of the producer within 30 days of issuing a
31 license who has met the requirements of this section. The fee for each card
32 shall initially be set at ten dollars (\$10.00).
- 33 (9) The Department shall issue a medical marijuana production site card to each
34 producer that has met the requirements of this section. The medical
35 marijuana production site card must be prominently posted at the location of
36 the medical marijuana production site.
- 37 (10) All marijuana dispensed by the system shall be produced by licensed
38 producers and dispensed by licensed dispensaries, according to the
39 following:
- 40 a. A licensed dispensary may dispense marijuana, marijuana plants,
41 marijuana seeds, cultivation equipment, and related supplies and
42 educational materials to any qualified patient or designated caregiver.
43 A dispensary may be reimbursed for the costs associated with the
44 production and dispensing of marijuana.
- 45 b. A licensed producer may provide marijuana, marijuana plants, and
46 marijuana seeds to licensed dispensaries and be reimbursed for the
47 costs associated with the production of these items. A producer may
48 transfer for no consideration marijuana, marijuana plants, and
49 marijuana seeds to any qualified patient or his or her designated
50 caregiver.

- 1 (11) A medical marijuana dispensary with a valid license including its directors,
2 agents, and employees of the dispensary are excepted from the criminal laws
3 of this State for possession, production, delivery, or transportation of
4 marijuana, or aiding and abetting another in the possession, production,
5 delivery, or transportation of marijuana, or any other criminal offense in
6 which possession, production, delivery, or transportation of marijuana is an
7 element if the dispensary and the directors, agents, and employees of the
8 dispensary are in substantial compliance with this section and the applicable
9 rules adopted by the Department.
- 10 (12) A producer with a valid license is excepted from the criminal laws of this
11 State for possession, production, delivery, or transportation of marijuana, or
12 aiding and abetting another in the possession, production, delivery, or
13 transportation of marijuana, or any other criminal offense in which
14 possession, production, delivery, or transportation of marijuana is an element
15 if the producer is in substantial compliance with this section and the
16 applicable rules adopted by the Department for regulating medical marijuana
17 producers.
- 18 (13) All dispensaries and producers shall submit quarterly reports to the
19 Department on all of their financial transactions, including transfers for no
20 consideration.
- 21 (14) Dispensaries and producers shall pay to the Department quarterly fees equal
22 to ten percent (10%) of their gross revenue derived from marijuana and
23 products containing marijuana.
- 24 (15) System revenues from license fees and quarterly gross revenue fees shall be
25 used to fund, in the following order of priority:
- 26 a. Costs associated with the implementation and operation of the
27 regulated medical marijuana supply system established under this
28 section;
- 29 b. The registry system established under G.S. 90-730;
- 30 c. The Medical Cannabis Research Program established under
31 G.S. 90-730; and
- 32 d. Other Department programs.
- 33 (16) A dispensary or producer may not:
- 34 a. Dispense to any other registry identification cardholder marijuana or
35 marijuana plants in excess of the amounts allowed under this act; or
36 b. Possess more usable marijuana or maintain a larger garden canopy of
37 marijuana foliage than allowed by Department rule. These amounts
38 shall initially be set at the amounts that 25 patients may possess and
39 maintain under this act.
- 40 (17) A person who has been convicted of a violent felony or a felony theft
41 offense shall not be licensed as a producer or as an employee of a producer
42 or be licensed as a director or employee of a dispensary for five years from
43 the date of the conviction. Any person convicted of a felony manufacturing
44 or delivery in violation of G.S. 90-95(b)(1) (a controlled substance classified
45 in Schedule I or II) after the effective date of this act, may not be licensed as
46 a producer or be licensed as a director or employee of a dispensary for five
47 years from the date of the conviction. The Department shall conduct a
48 criminal history record check of any person whose name is submitted as a
49 dispensary director or employee of as a producer or employee of a producer
50 in order to ensure compliance with this restriction.

- 1 (18) A person who is less than 21 years of age may not be an employee or
2 director of a dispensary or be a producer or be an employee of a producer.
- 3 (19) Any dispensary, or any location used by a licensed producer to produce
4 medical marijuana, is subject to reasonable inspection by the Department,
5 solely to determine compliance with this act upon a reasonable suspicion of
6 its violation.
- 7 (20) The Department may suspend or revoke the license of a dispensary or
8 producer that is not in substantial compliance with this section. The
9 Department, by rule, may also establish fines and penalties for minor
10 violations of the provisions of this section.
- 11 (21) A person authorized to possess, produce, deliver, or transport marijuana for
12 medical use pursuant to this act is not excepted from the criminal laws of
13 this State if the person:
- 14 a. Drives while impaired by marijuana, provided that the person shall
15 not be considered to be impaired solely for having marijuana
16 metabolites in his or her system.
- 17 b. Delivers marijuana to any individual who the person knows is not a
18 registry identification cardholder or qualifying patient.
- 19 c. Manufactures or distributes marijuana at an address not registered
20 with the Department.
- 21 d. Fails to report transfer of marijuana authorized under this section to
22 the Department.
- 23 (22) List of persons and entities licensed as dispensaries and producers shall be
24 protected by the same provisions protecting registry identification
25 cardholders and designated caregivers under the disclosure rules set forth in
26 G.S. 90-730(i).
- 27 (23) Effect of possession of producer card or dispensary card on search and
28 seizure rights shall have the same effect of possession of registry
29 identification card or designated caregiver card set forth in G.S. 90-728.
- 30 (24) A law enforcement officer who determines that a dispensary or producer
31 cardholder is in possession of amounts of usable marijuana or is maintaining
32 a garden of marijuana plants in excess of the amount or size authorized by
33 this act may confiscate only any usable marijuana or plants that are in excess
34 of the amount authorized.

35 **"§ 90-732. Affirmative defenses.**

36 (a) Except as otherwise provided in this section and G.S. 90-729, it is an affirmative
37 defense to a criminal charge of possession, delivery, or production of marijuana, or any other
38 criminal offense in which possession, delivery, or production of marijuana is an element, that
39 the person charged with the offense:

- 40 (1) Is a person who:
- 41 a. Has been diagnosed with a chronic or debilitating medical condition
42 and has been advised by the person's attending physician that the
43 medical use of marijuana may mitigate the systems or effects of that
44 chronic or debilitating medical condition;
- 45 b. Is engaged in the medical use of marijuana; and
- 46 c. Possesses, delivers, or produces marijuana only in the amount
47 described herein as an adequate supply or in excess of that amount if
48 the person proves by a preponderance of the evidence that the greater
49 amount is medically necessary as determined by the person's
50 attending physician to mitigate the systems or effects of the person's
51 chronic or debilitating medical condition; or

1 (2) Is a person who:

2 a. Is assisting a person described in subdivision (1) of this subsection in
3 the medical use of marijuana; and

4 b. Possesses, delivers, or produces marijuana only in the amount
5 described herein as an adequate supply or in excess of that amount if
6 the person proves by a preponderance of the evidence that the greater
7 amount is medically necessary as determined by the assisted person's
8 attending physician to mitigate the symptoms or effects of the
9 assisted person's chronic or debilitating medical condition.

10 (b) A person need not hold a registry identification card issued to him by the
11 Department to assert an affirmative defense described in this section.

12 (c) A patient or caregiver who has not received a registry identification card may
13 present evidence supporting his or her need for medical marijuana for treatment of a serious
14 medical condition. Such evidence may constitute a defense to a charge of marijuana possession
15 or cultivation and shall be admissible in the courts of the State of North Carolina if such
16 evidence otherwise properly qualifies as admissible under the rules of evidence.

17 (d) Except as otherwise provided in this section and in addition to the affirmative
18 defense described in subsection (a) of this section, a person engaged or assisting in the medical
19 use of marijuana who is charged with a crime pertaining to the medical use of marijuana is not
20 precluded from:

21 (1) Asserting a full defense of medical necessity; or

22 (2) Presenting evidence supporting the necessity of marijuana for treatment of a
23 specific disease or medical condition, if the amount of marijuana at issue is
24 not greater than the amount described herein as an adequate supply and the
25 person has taken steps to comply substantially with the provisions of this act.

26 (e) A person may assert the medical purpose for using marijuana in a motion to dismiss,
27 and the charges shall be dismissed following an evidentiary hearing where the defendant shows
28 the elements listed in subsection (a) of this section.

29 (f) Any interest in or right to property that was possessed, owned, or used in connection
30 with a person's use of marijuana for medical purposes shall not be forfeited, nor shall the
31 person be subject to disciplinary action by a business or occupation or professional licensing
32 board or bureau, if the person or the person's designated caregiver demonstrates the person's
33 medical purpose for using marijuana pursuant to this section.

34 **"§ 90-733. Medical Cannabis Research Program.**

35 (a) It is the intent of the General Assembly that the State commission objective
36 scientific research by The University of North Carolina, regarding the efficacy and safety of
37 administering cannabis as part of medical treatment. If the Board of Governors of The
38 University of North Carolina, by appropriate resolution, accepts this responsibility, The
39 University of North Carolina shall create a program, to be known as the North Carolina
40 Cannabis Research Program.

41 (b) The program shall develop and conduct studies intended to ascertain the general
42 medical safety and efficacy of cannabis and, if found valuable, shall develop medical
43 guidelines for the appropriate administration and use of cannabis to assist physicians and
44 patients in evaluating the risks and benefits of using cannabis for medical purposes and to
45 provide a scientific basis for future policies.

46 (c) Research may include developing quality control, purity, and labeling standards for
47 medical cannabis dispensed through the system, sound advice and recommendations on the best
48 practices for the safe and efficient cultivation of cannabis, and analysis of genetic and healing
49 properties of the many varied strains of cannabis to determine which strains may be best suited
50 for a particular condition or treatment.

51 **"§ 90-734. Temporary provision.**

1 (a) During the period between the effective date of this act and 30 days after the
2 effective date of rules promulgated by the Department pursuant to G.S. 90-730(a), a person
3 who would be eligible to participate in the medical use of marijuana program as a qualified
4 patient, but for the lack of effective rules concerning registry identification cards, licensed
5 producers, production facilities, distribution system, and adequate supply, may obtain a written
6 certification from a practitioner and upon presentation of that certification to the Department,
7 the Department shall issue a temporary certification for participation in the program. The
8 Department shall maintain a list of all temporary certificates issued pursuant to this section.

9 (b) A person possessing a temporary certificate and the person's designated caregiver
10 are not subject to arrest, prosecution, civil or criminal penalty, or denial of any right or
11 privilege for possessing marijuana if the amount of marijuana possessed collectively is not
12 more than the amount that is specified on the temporary certificate issued by the Department.

13 (c) A practitioner shall not be subject to arrest or prosecution, penalized in any manner,
14 or denied any right or privilege for recommending the medical use of marijuana or providing
15 written certification for the medical use of marijuana pursuant to this act on or after the
16 effective date of this act.

17 **"§ 90-735. Severability.**

18 If any part or application of this act is held invalid, the remainder of its application to other
19 situations or persons shall not be affected. Failure to promulgate rules or implement any
20 provision of this act shall not interfere with the remaining protections provided by this act.

21 **SECTION 2.** The question of whether North Carolina should enact a Medical
22 Marijuana Act allowing the possession and use of Marijuana for medical purposes only shall be
23 submitted to the qualified voters of the State at a statewide election on the question held on
24 November 3, 2009.

25 The referendum shall be conducted under the laws then governing elections in the
26 State. Ballots, voting systems, or both may be used in accordance with Chapter 163 of the
27 General Statutes. The question to be used in the voting systems and ballots shall be:

28 " YES NO

29 North Carolina should enact an act to permit the possession and use of marijuana for medical
30 purposes only (Medical Marijuana Act)."

31 **SECTION 3.** If a Medical Marijuana Act is approved by the qualified voters of this
32 State in the referendum held under Section 2 of this act, the costs to the State Board of
33 Elections and the county boards of elections for conducting the referendum are considered
34 expenses of the State; the General Assembly shall appropriate funds to reimburse the State
35 Board of Elections and the county boards of elections for these costs from the General Fund.

36 If a Medical Marijuana Act is not approved by the qualified voters of this State in
37 the referendum held under Section 2 of this act, the State Board of Elections and the county
38 boards of elections may seek reimbursement from the General Assembly for their costs
39 incurred in conducting the referendum.

40 **SECTION 4.** Sections 2, 3, and 4 of this act are effective when they become law. If
41 a Medical Marijuana Act is approved by the qualified voters of this State in the referendum
42 held under Section 2 of this act, then Section 1 of this act becomes effective when the results of
43 the referendum are certified by the State Board of Elections. If a Medical Marijuana Act is not
44 approved, Section 1 of this act does not become effective.