

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1380

Short Title: Medical Marijuana Act. (Public)

Sponsors: Representatives Jones, Harrison, Mackey (Primary Sponsors); K. Alexander and Fisher.

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.  
3 The General Assembly of North Carolina enacts:

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

6 "Article 72.

7 "Medical Marijuana Act.

8 **"§ 90-725. Short title.**

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

11 **"§ 90-726. Legislative findings and purpose.**

12 The General Assembly makes the following findings:

- 13 (1) Modern medical research has discovered beneficial uses for marijuana in  
14 treating or alleviating pain, nausea, and other symptoms associated with  
15 certain debilitating medical conditions, as found by the National Academy of  
16 Sciences' Institute of Medicine in March 1999.
- 17 (2) According to the U.S. Sentencing Commission and the Federal Bureau of  
18 Investigation, 99 out of every 100 marijuana arrests in the United States are  
19 made under State law, rather than under federal law. Consequently, changing  
20 State law will have the practical effect of protecting from arrest the vast  
21 majority of seriously ill people who have a medical need to use marijuana.
- 22 (3) The United States Department of Health and Human Services, through the  
23 Compassionate Investigational New Drug (IND) program, provides  
24 marijuana by prescription to a number of individuals for their use as  
25 medicine. The marijuana is grown at the federal marijuana research garden  
26 at the University of Mississippi and is processed and distributed by the  
27 Research Triangle Institute in Research Triangle Park, North Carolina. The  
28 patients receive the marijuana monthly in canisters of approximately 300  
29 prerolled cigarettes. The dosage for patients in the IND program ranges from  
30 seven to nine grams per day. Since the program's inception in 1978, patients  
31 in the IND program have received and consumed approximately 6.5 pounds  
32 of marijuana per year, thereby establishing a safe and effective dosage for  
33 chronic daily-use patients to possess and consume. The IND program was  
34 closed to new applicants in 1991.
- 35 (4) In 1992, the United States Drug Enforcement Administration (DEA)  
36 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.** This act becomes effective December 1, 2009.