

House Joint Resolution

A joint resolution proposing the creation of Section 28 of Article X and the creation of Section 32 of Article XII of the State Constitution to allow the medical use of cannabis by citizens, allow the Legislature to implement these provisions by general law, and provide an effective date.

Be It Resolved by the Legislature of the State of Florida:

That the following creation of Section 28 of Article X and the creation of Section 32 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE X

MISCELLANEOUS

SECTION 28. Medical use of cannabis.-

(a) Except as otherwise provided in subsections (g), (h), and (i), a patient or primary caregiver charged with a violation of the state's criminal laws related to the patient's medical use of cannabis has an affirmative defense to such allegation if:

(1) The patient was previously diagnosed by a physician as having a debilitating medical condition;

(2) The patient was advised by his or her physician, in the context of a bona fide physician-patient relationship, that

HJR 353

2012

29 the patient might benefit from the medical use of cannabis in
30 connection with a debilitating medical condition; and

31 (3) The patient and his or her primary caregiver were
32 collectively in possession of amounts of cannabis only as
33 permitted under this section.

34
35 This affirmative defense does not exclude the assertion of any
36 other defense by a patient or primary caregiver who is charged
37 with a violation of state law related to the patient's medical
38 use of cannabis.

39 (b) It is not a violation of the state's criminal laws for
40 a patient or primary caregiver to engage or assist in the
41 medical use of cannabis pursuant to this section, except as
42 otherwise provided in subsections (g) and (i).

43 (c) It is not a violation of the state's criminal laws for
44 a physician to:

45 (1) Advise a patient whom the physician has diagnosed as
46 having a debilitating medical condition about the risks and
47 benefits of the medical use of cannabis or that the patient
48 might benefit from the medical use of cannabis, if such advice
49 is based on the physician's contemporaneous assessment of the
50 patient's medical history and current medical condition and a
51 bona fide physician-patient relationship; or

52 (2) Provide a patient with written documentation, based on
53 the physician's contemporaneous assessment of the patient's
54 medical history and current medical condition and a bona fide
55 physician-patient relationship, stating that the patient has a

HJR 353

2012

56 debilitating medical condition and might benefit from the
57 medical use of cannabis.

58
59 A physician may not be denied any rights or privileges for
60 engaging in acts authorized by this subsection.

61 (d) Notwithstanding subsection (a), subsection (b), or
62 subsection (c), a person, including a patient or primary
63 caregiver, is not entitled to the protection of this section for
64 his or her acquisition, possession, manufacture, production,
65 use, sale, distribution, dispensing, or transportation of
66 cannabis for any use other than medical use.

67 (e) A property interest that is possessed, owned, or used
68 in connection with the medical use of cannabis or acts
69 incidental to such use may not be harmed, neglected, injured, or
70 destroyed while in the possession of state or local law
71 enforcement officials who seized the property in connection with
72 the claimed medical use of cannabis. Such property interest may
73 not be forfeited under any provision of state law providing for
74 the forfeiture of property other than as a sentence imposed
75 after conviction of a criminal offense or entry of a plea of
76 guilty to such offense. Cannabis and paraphernalia seized by
77 state or local law enforcement officials from a patient or
78 primary caregiver in connection with the claimed medical use of
79 cannabis shall be returned immediately upon the determination of
80 the state attorney or his or her designee that the patient or
81 primary caregiver is entitled to the protection contained in
82 this section, including, but not limited to, by a decision not
83 to prosecute, the dismissal of charges, or acquittal.

HJR 353

2012

84 (f) (1) A patient may engage in the medical use of cannabis
85 with no more cannabis than is medically necessary to address a
86 debilitating medical condition. The legislature may, by general
87 law, establish a maximum amount of cannabis or cannabis plants,
88 possession or use of which, or any lesser amount, is presumed to
89 be medically necessary.

90 (2) For quantities of cannabis in excess of an amount
91 legislatively presumed to be medically necessary, a patient or
92 his or her primary caregiver may raise as an affirmative defense
93 to charges of violation of state law that such greater amounts
94 were medically necessary to address the patient's debilitating
95 medical condition.

96 (g) A patient may not:

97 (1) Engage in the medical use of cannabis in a way that
98 endangers the health or well-being of any person; or

99 (2) Engage in the medical use of cannabis in plain view
100 of, or in a place open to, the general public.

101 (h) Notwithstanding paragraph (a) (1), a patient under
102 eighteen years of age may not engage in the medical use of
103 cannabis unless:

104 (1) Two physicians have diagnosed the patient as having a
105 debilitating medical condition;

106 (2) One of the physicians referred to in paragraph (1) has
107 explained the possible risks and benefits of medical use of
108 cannabis to the patient and each of the patient's parents
109 residing in this state;

HJR 353

2012

110 (3) Each of the patient's parents residing in this state
111 consents in writing to permit the patient to engage in the
112 medical use of cannabis;

113 (4) A parent residing in this state consents in writing to
114 serve as the patient's primary caregiver;

115 (5) The patient and primary caregiver collectively possess
116 amounts of cannabis no greater than an amount authorized under
117 subsection (d); and

118 (6) The primary caregiver controls the acquisition of such
119 cannabis and the dosage and frequency of its use by the patient.

120 (i) No later than May 30, 2013, the legislature shall
121 define such terms and enact such legislation as may be necessary
122 for implementation of this section, as well as determine and
123 enact criminal penalties for fraudulent representation of a
124 medical condition by a patient to a physician or state or local
125 law enforcement official for the purpose of avoiding arrest and
126 prosecution.

127 (j) (1) A health insurance provider may not be required to
128 be liable for any claim for reimbursement for the medical use of
129 cannabis.

130 (2) This section does not require any employer to
131 accommodate the medical use of cannabis in any work place.

132 (3) A person may not be denied custody of or visitation
133 with a minor for acting in accordance with this section and
134 legislation implementing this section unless the person's
135 behavior creates an unreasonable danger to the minor that can be
136 clearly articulated and shown by substantial competent evidence.

HJR 353

2012

137 | (4) A person may not denied any right or privilege and is
 138 | not subject to arrest, prosecution, or penalty in any manner,
 139 | including, but not limited to, a civil penalty or disciplinary
 140 | action by a business, occupational, or professional licensing
 141 | board, for providing a qualifying patient or primary caregiver
 142 | of such a patient with cannabis or cannabis paraphernalia or for
 143 | any other act done in accordance with this section or
 144 | legislation implementing this section.

145 | ARTICLE XII

146 | SCHEDULE

147 | SECTION 32. Medical use of cannabis.—Section 28 of Article
 148 | X providing for medical use of cannabis and this section shall
 149 | take effect July 1, 2013.

150 | BE IT FURTHER RESOLVED that the following statement be
 151 | placed on the ballot:

152 | CONSTITUTIONAL AMENDMENT

153 | ARTICLE X, SECTION 28

154 | ARTICLE XII, SECTION 32

155 | MEDICAL USE OF CANNABIS.—Proposing an amendment to the
 156 | State Constitution to provide a patient or primary caregiver
 157 | charged with a violation of the state's criminal laws related to
 158 | the patient's medical use of cannabis, also known as marijuana,
 159 | with a defense to the charge if the patient has a debilitating
 160 | condition and the physician, in the context of a bona fide
 161 | physician-patient relationship, determines that the patient
 162 | might benefit from the medical use of cannabis. The amendment
 163 | provides that a physician may advise a patient with a
 164 | debilitating condition about the medical use of cannabis and

HJR 353

2012

165 document the patient's need for this use. The amendment
166 specifies that it does not authorize any nonmedical use of
167 cannabis. The amendment provides that property seized as a
168 result of an arrest in connection with a claimed medical use of
169 cannabis may not be harmed unless the charge results in a
170 criminal conviction. The amendment provides that a patient may
171 engage in the medical use of cannabis with no more cannabis than
172 is medically necessary and that the Legislature may establish a
173 maximum amount of cannabis or cannabis plants, possession or use
174 of which, or any lesser amount, is presumed to be medically
175 necessary. The amendment provides that a patient may not engage
176 in the medical use of cannabis in a way that endangers the
177 health or well-being of any person or in plain view of, or in a
178 place open to, the general public. The amendment provides
179 additional restrictions on the medical use of cannabis by
180 persons under 18 years of age. The amendment requires that, by a
181 specified date, the Legislature must define such terms and enact
182 such legislation as may be necessary for implementation of the
183 amendment and enact criminal penalties for fraudulent
184 representation of a medical condition by a patient to a
185 physician or state or local law enforcement official for the
186 purpose of avoiding arrest and prosecution. The amendment
187 provides that a person may not be denied custody of or
188 visitation with a minor for acting in accordance with this
189 amendment unless the person's behavior creates an unreasonable
190 danger to the minor that can be clearly articulated and shown by
191 substantial competent evidence. The amendment provides that a
192 person may not be denied any right or privilege and is not

HJR 353

2012

193 | subject to arrest, prosecution, or penalty in any manner,
194 | including, but not limited to, a civil penalty or disciplinary
195 | action by a business, occupational, or professional licensing
196 | board, for providing a qualifying patient or primary caregiver
197 | of such a patient with cannabis or cannabis paraphernalia or for
198 | any other act done in accordance with the amendment. The
199 | amendment is scheduled to take effect July 1, 2013.