

By Senator Bullard

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Senate 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 the patient might benefit from the medical use of cannabis in

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

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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.

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,

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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 of,  
100 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;

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

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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.

137 (4) A person may not be denied any right or privilege and  
138 is 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

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## SCHEDULE

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

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

## CONSTITUTIONAL AMENDMENT

## ARTICLE X, SECTION 28

## ARTICLE XII, SECTION 32

MEDICAL USE OF CANNABIS.—Proposing an amendment to the State Constitution to provide a patient or primary caregiver charged with a violation of the state's criminal laws related to the patient's medical use of cannabis, also known as marijuana, with a defense to the charge if the patient has a debilitating condition and the physician, in the context of a bona fide physician-patient relationship, determines that the patient might benefit from the medical use of cannabis. The amendment provides that a physician may advise a patient with a debilitating condition about the medical use of cannabis and document the patient's need for this use. The amendment specifies that it does not authorize any nonmedical use of cannabis. The amendment provides that property seized as a result of an arrest in connection with a claimed medical use of cannabis may not be harmed unless the charge results in a criminal conviction. The amendment provides that a patient may engage in the medical use of cannabis with no more cannabis than is medically necessary and that the Legislature may establish a maximum amount of cannabis or cannabis plants, possession or use of which, or any lesser amount, is presumed to be medically

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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 which can be clearly articulated and shown  
191 by substantial competent evidence. The amendment provides that a  
192 person may not be denied any right or privilege and is not  
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.