

Below is the proposed CONSTITUTIONAL AMENDMENT with complexities red-lined.

## PROPOSED AMENDMENT

### Initiative #65

**No product, medical or otherwise, has ever been placed in the Constitution of the State of Mississippi. This is in contradiction to the purpose of our Constitution which primary purpose is to establish the Legislative, Executive, and Judicial branches of government and a Bill of Rights**

#### Section 1.

The purpose of this article is to ensure the availability of and safe access to medical marijuana for qualified persons with debilitating medical conditions.

“Debilitating Medical Conditions” is overly broad and permits marijuana use for practically any reason. Read Section 4 (3). There is no such thing as “medical” marijuana – it’s just marijuana. There are varying strengths of the compounds in the plant – the strength of these compounds (like THC and CBD) is varied due to the breeding and hybridizing of the marijuana plants.

#### Section 2.

- (1) Except as otherwise provided for in this article, a qualified patient or caregiver shall not be subject to criminal or civil sanctions for the use of medical marijuana, obtained from a medical marijuana treatment center, for a debilitating medical condition.

A “Medical Marijuana Treatment Center,” Section 4 (7), is actually a marijuana dispensary – not a treatment center. This “treatment center” will not be “treating” anything – only selling strains of marijuana. Calling a dispensary a “treatment center” is disingenuous at best. This section allows caregivers to use medical marijuana with no need to be certified.

- (2) Except as otherwise provided for in this article, a physician shall not be subject to criminal or civil sanctions solely for issuing a physician certification to a person diagnosed with a debilitating medical condition.

There are no specific criteria that a physician will use to certify someone. The current language will basically permit carte blanche issuance of medical marijuana cards.

Physicians cannot legally “prescribe” marijuana as it is an illegal controlled substance under federal law and there is no FDA-approved medical marijuana, nor dosing guidelines.

- (3) Except as otherwise provided for in this article, a medical marijuana treatment center and its officers, owners, operators, employees, contractors, and agents shall not be subject to criminal or civil sanctions for processing medical marijuana in compliance with regulations prescribed by the department.

A treatment center is just a place to buy the marijuana of your choice since the physician cannot “prescribe” marijuana and send you to a pharmacy. The person dispensing the marijuana is not a licensed pharmacist, and the dosing is anybody’s guess. In other states the marijuana with the highest percentage of THC is what most “patients” ask for.

## EXAMPLE OF FLORIDA MEDICAL MARIJUANA CARD:



### Section 3.

(1) Except as otherwise provided for in this article, **nothing in this article shall:**

- a) Affect or repeal laws relating to the use of marijuana that is not intended for use for a debilitating medical condition.
- b) Authorize the use of medical marijuana for anyone other than a qualified patient, and, where authorized by this chapter, for caregivers and officers, owners, operators, employees, contractors, and agents of treatment centers.
- c) Permit a person to operate any motor vehicle, aircraft, train, or boat while consuming or impaired by medical marijuana.  
**Law enforcement must enforce any violations of driving under the influence (DUI) of marijuana whether a person is under the influence of “medical” marijuana or illegal marijuana. No mention of necessary restrictions on the use of machinery, sensitive medical equipment/technology, interpreting medical test results, etc.**
- d) Require accommodation for the use of medical marijuana or require any on- site use of medical marijuana in any public or private correctional institution, detention facility, or place of education, or employment.  
**This does not forbid the use in these locations; it only states that accommodations are not required at these locations. One can smoke marijuana and then enter these places in a decreased mental and physical condition... school children as well. Read Section 4(9).**
- e) Require any health insurance provider or any government agency or authority to reimburse any person for expenses related to the use of medical marijuana.  
**Medicaid, Medicare and Insurance companies cannot cover this as it’s against federal law. This will effectively force individuals to pay cash in the black market to buy less expensive and untested/unregulated marijuana.**
- f) Override any public laws, ordinances, regulations, or rules or any private rules, regulations, or provisions **related to smoking in or on public or private places.** **However this does not prevent the other marijuana products that can be taken in or on public or private places. Smoking is but one method -- it can also be in the form of food, tinctures, aerosols (vaping) oils or ointments** Section 4 (10) and Section 8 (1). Increased smoking disease will occur and is multiple times more harmful than cigarettes.

- g) Affect any existing drug testing laws, regulations, or rules.  
Employment testing will become complicated. Federal Law contradicts this new constitutional amendment and can result in loss of employment. Workers Compensation insurance may be voidable.

(2) It is unlawful for any person to smoke medical marijuana in a public place. Any person who violates this subsection may, upon conviction, be punished by a fine of not more than One Hundred Dollars (\$100.00).

No teeth in this provision and will not be easy to regulate or enforce the law. Other products as defined in Section 4(1) and Section 8(1) can be used in public places regardless of a prohibition against smoking. Smoking marijuana in a private home around children is dangerous to the children.

#### Section 4.

For purposes of this article, the following terms shall have the following meanings:

(1) "**Caregiver**" shall mean a person who is at least twenty one (21) years of age, who complies with the regulations prescribed by the department, and who assists with a qualified patient's use of medical marijuana. The department may limit the number of qualified patients a caregiver may assist at any one time. A qualified patient may have more than one caregiver. A caregiver is prohibited from consuming medical marijuana provided for use by a qualified patient.

Open ended. What specifically does a caregiver do? What qualifies someone as a caregiver? Simple dosing of marijuana? No true medical qualification.

(2) "**Criminal or civil sanctions**" shall mean arrest; incarceration; prosecution; penalty; fine; sanction; the denial of any right, privilege, license, certification; and/or to be subject to disciplinary action by a licensing board or commission; and/or to be subject to seizure and/or forfeiture of assets pursuant to any Mississippi law, local ordinance, or board, commission, or agency regulation or rule.

It is difficult, if not impossible to impose criminal or civil sanctions when all that is required is for a physician to certify someone for medical marijuana. Federal law is violated and results in legal problems such as firearm applications, etc. Complications!

(3) "**Debilitating medical condition**" shall mean cancer, epilepsy or other seizures, Parkinson's disease, Huntington's disease, muscular dystrophy, multiple sclerosis, cachexia, post-traumatic stress disorder, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, **chronic or debilitating pain**, amyotrophic lateral sclerosis, glaucoma, agitation of dementias, Crohn's disease, ulcerative colitis, sickle-cell anemia, autism with aggressive or self-injurious behaviors, pain refractory to appropriate opioid management, spinal cord disease or severe injury, intractable nausea, severe muscle spasticity, **or another medical condition of the same kind or class to those herein enumerated and for which a physician believes the benefits of using medical marijuana would reasonably outweigh potential health risks.**

Opens the door for practically any reason to certify someone.

- (4) **"Department"** shall mean the Mississippi State Department of Health or its successor agency.  
Imposes duties not permitted by existing statutes, growing, processing, dispensing and taxation (called a fee), etc.
- (5) **"Medical marijuana"** shall have the meanings given as of July 1, 2018 in Section 41-29-105(r) and/or Section 41-29-105(0), of the Mississippi Code of 1972, and which is used to treat the symptoms and/or effects of a debilitating medical condition as provided for in this article. This section of the Code states that it is an illegal Schedule I drug.
- (6) **"Medical marijuana identification card"** shall mean a document, prescribed by and issued by the department, which identifies a person as a qualified patient or caregiver or officer, owner, operator, employee, contractor, or agent of a medical marijuana treatment center.  
Section 8 tenants can be evicted as not allowed as it is a Schedule 1 drug and illegal. Health insurance providers, Medicare and Medicaid will not pay for it as it is illegal. Black market product will cause more incarceration and law enforcement problems. It allows individuals other than the certified patient to use medical marijuana.
- (7) **"Medical marijuana treatment center"** shall mean an entity that is registered with and licensed and regulated by the department and that processes medical marijuana, related supplies, and/or educational materials. A treatment center may engage in one or more of the activities involved in the processing of medical marijuana. Pandora's box. A dispensary more so than a treatment center. It's simply a sales center. See Section 2 (3); also Section 4 (10) describes the expansive activities and products it entails.
- (8) **"Physician"** shall mean a person with a valid Doctor of Medicine or Doctor of Osteopathic Medicine degree and who holds an unrestricted license to practice medicine in the state of Mississippi by the Mississippi Board of Medical Licensure, or its successor agency.
- (9) **"Physician certification"** shall mean a form approved by the department, signed and dated by a physician, certifying that a person suffers from a debilitating medical condition for which the use of medical marijuana may mitigate the symptoms and/or effects. The certification shall remain current for twelve months, unless the physician specifies a shorter period of time, and shall be issued only after an in-person examination of the patient in Mississippi. A certification shall only be issued on **behalf of a minor** when the **minor's parent or guardian** is present and **provides signed consent**. Nothing herein shall require a physician to issue a certification. Physicians are only certifying someone, not prescribing a medically approved drug. Only certification not prescribing!
- (10) **"Process"** shall mean to acquire, administer, compound, convert, cultivate, deliver, develop, disburse, dispense, distribute, grow, harvest, manufacture, package, possess, prepare, process, produce, propagate, research, sell, test, transport, or transfer medical marijuana or any related products such as **foods, tinctures, aerosols, oils, or ointments**.  
A nightmare to regulate this expansive definition of people and entities involved. See Section 4 (7) as it relates to this section. The health department is not the agriculture department.

- (11) "**Qualified patient**" shall mean a person who has been diagnosed with a Debilitating Medical Condition and who has been issued a physician certification.
- (12) "**Use**" shall mean the acquisition, possession, preparation, use or use with an accessory, delivery, transfer, or administration of medical marijuana by a qualified patient or caregiver. For purposes of this chapter, "accessory" shall have the meaning given in Section 41-29-105(v) of the Mississippi Code of 1972, as of July 1, 2018. **Illegal devices named therein.**

## Section 5.

- (1) The department shall implement, administer, and enforce the provisions of this article and shall issue **reasonable** rules and regulations, pursuant to the Mississippi Administrative Procedures Act, in the discharge of its responsibilities. **What will be decided that is "reasonable"? Like asking, "How long is a piece of string?"**
- (2) The department shall prescribe **reasonable** rules and regulations pursuant to this section that shall include, but not be limited to, tracking and labelling of medical marijuana; qualifications for and safe and secure processing of medical marijuana by medical marijuana treatment centers; restrictions on advertising and marketing; issuance of medical marijuana identification cards; standards for testing facilities; use of medical marijuana in nursing homes, hospices, and assisted living facilities; **reciprocal agreements with other states for patients registered in medical marijuana programs**; qualifications of and limitations on caregivers and officers, owners, operators, employees, contractors, and agents of treatment centers; implementation and operation of a **statewide data base system to support the utilization of identification cards**; and penalties for violations of this article.  
**READ CAREFULLY. Real time database maintained? Need to accept other states registered in medical marijuana programs – many different qualifications than Mississippi.**
- (3) The rules and regulations may include a **reasonable** fee of up to Fifty Dollars (\$50.00) for issuing an identification card and reasonable fees for licensing treatment centers, which shall be fixed by and paid to the department, pursuant to Section 6. **Insufficient to fund cost.**
- (4) The rules and regulations **shall not limit** the number of licensed medical marijuana treatment centers **nor set the price** of medical marijuana. **There will be a multitude of dispensaries opened in the state. Oklahoma now has over 2,000 dispensaries.**
- (5) The rules and regulations shall require the department to issue an identification card or a license for a treatment center within a reasonable time following an application for a card or license.
- (6) The department shall issue a qualified patient a medical marijuana identification card upon presentation of a physician certification. Such card shall be renewed, as applicable, upon presentation of a new physician certification, but in no case shall a card have an expiration term longer than twelve (12) months. A qualified patient is authorized to receive medical marijuana from a treatment center upon presentation of his or her identification card.
- (7) The department and medical marijuana treatment centers shall protect the confidentiality

of all qualified patients. All records containing the identity of qualified patients, caregivers, and physicians shall be confidential and exempt from disclosure under the Mississippi Public Records Act or any related statute, regulation, or rule pertaining to the public disclosure of records.

- (8) The department may establish an advisory committee to assist the department in the promulgation of rules and regulations and the regulation and enforcement of the provisions of this article.
- (9) The department shall adopt final rules and regulations pursuant to this article no later than July 1, 2021. **8 months.** The department shall begin issuing identification cards and treatment center licenses no later than August 15, 2021. **9 months.**
- (10) To ensure timely implementation of this chapter for qualified patients, and only for activities associated with implementation and operation, the department is exempt from the Mississippi Department of Information Technology Services laws, rules, and regulations for any information technology procurements made up to Two Hundred Fifty Thousand Dollars (\$250,000) for two years from the effective date of this chapter. This exemption shall not apply to any reporting requirements. **So does this mean the department can spend up to \$250,000 without asking?**
- (11) The department is authorized to adopt and levy administrative fines to enforce the provisions of this article. Payment of any fines shall be deposited in the special fund created by Section 6 of this article. **The Health Department becomes a depository and most collections will be in cash placed in a state treasury special fund when the Department of Revenue is the proper entity to collect revenue.**
- (12) The department is authorized to adopt and levy the following sanctions, singly or in combination, when it finds an applicant or licensee has committed any violation of this article or department rules or regulations: revoke or suspend a license, censure a licensee, impose a fine in an amount not to exceed Five Thousand Dollars (\$5,000) for the first violation and an amount not to exceed Twenty Five Thousand Dollars (\$25,000) for each subsequent violation, place a licensee on a probationary status, require the licensee to file regular reports and submit to reasonable requirements and restrictions, revoke probationary status of a licensee and impose other authorized sanctions, and refuse to issue or renew a license, restrict a license, or accept a voluntary surrendering of a license. The department is authorized to deny, suspend or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements of a licensee. The notice and hearing requirements and judicial review provisions contained in Section 43-11-11 of the Mississippi Code of 1972, as of July 1, 2018, shall apply to the denial, suspension, or revocation of a license.

## Section 6.

In addition to the fees applied to issuing identification cards and licensing medical marijuana treatment centers, the department may assess up to the equivalent of the state's sales tax rate to the final sale of medical marijuana. **The Health Department will assess and collect what may be called fees, when in essence fees are taxes on sales of product. Is the Health Department authorized to do so? The Health Department can't subcontract with Department of Revenue. The municipality will not receive any portion of the tax. Municipalities will have no control over facilities, etc. locating in their cities anywhere a**

pharmacy or any commercial or industrial business is allowed to locate. See Section 8(5). Revenue generated under this section or through the issuance of identification cards or the licensing of medical marijuana treatment centers shall pay for the costs incurred by the department in implementing and enforcing the provisions of this article and shall be **deposited into a special fund in the state treasury to be expended by the department without prior appropriation or authorization.** The department shall administer the fund and make expenditures from the fund for costs or other services or programs associated with this article. **Fund balances shall not revert to the General Fund. Is this legal??** **The department shall have the authority to utilize these special funds to escalate personnel positions in the department where needed, as non-state-service, to administer and enforce the provisions of this article.** Upon request of the department, the State Treasurer shall provide a line of credit from the Working Cash Stabilization Fund or any other available special source funds maintained in the state treasury in an amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000), for deposit to this special fund to provide sufficient working cash to implement the provisions of this article. **This forces the treasurer to remit \$2,500,000 to the Health Department. No funding can come from federal funds or grants. Constitutional mandate if passed.** Any such loans shall be repaid from the available funds received by the department under this article.

### Section 7.

A medical marijuana identification card issued pursuant to this article shall serve to identify a person as a qualified patient **or** caregiver **or** officer, owner, operator, employee, contractor, **or** agent of a medical marijuana treatment center and thus exempt such person from criminal or civil sanctions for the conduct authorized by this article.

**This allows individuals other than a qualified patient to have a medical marijuana card and protection from malfeasance.**

### Section 8.

- (1) Medical marijuana treatment centers shall not provide to a qualified patient, during any **one fourteen-day period**, an amount of medical marijuana that **exceeds 2.5 ounces by weight**. At no one time shall a qualified patient possess more than 2.5 ounces of medical marijuana. The **weight limitation herein shall not include any ingredients combined with medical marijuana to prepare edible products, topical products, ointments, oils, tinctures, or other products.** **Exactly what specifically will be prescribed as to percentage of THC, etc.? Not just smoking but all sorts of products.**
- (2) Medical marijuana shall only be dispensed to a qualified patient **or** caregiver with a current medical marijuana identification card by a medical marijuana treatment center. **No differentiation between a qualified patient and a caregiver and others named.**
- (3) All contracts under this article and related to the operation of medical marijuana treatment centers shall be enforceable and rules applicable to other similar businesses by the Department of Revenue shall apply to medical marijuana treatment centers created pursuant to this article, **except that the processing and use of medical marijuana shall be exempt from the application of any state and/or local sales tax or other fee**, other than that authorized by this article.  
**The Health Department keeps all fee (equivalent to tax) revenue and no sharing with state or cities, etc.**

(4) No medical marijuana treatment center shall be located within five hundred (500) feet of a pre-existing school, church, or licensed child care center.

Do schools and churches feel comfortable with this distance?

(5) Except as otherwise provided in this article, any zoning ordinances, regulations and/or provisions of a municipality or county shall be consistent with Section 1 of this article and shall not impair the availability of and reasonable access to medical marijuana. **Zoning provisions applicable to retail dispensaries shall be no more restrictive than those for a licensed retail pharmacy and zoning provisions applicable to other businesses that fall within the definition of medical marijuana treatment centers shall be no more restrictive than other comparably sized and staffed lawful commercial or industrial businesses.**

Municipalities cannot control the number of dispensaries and in suburban areas without zoning, they are permitted anywhere. Zoning is liberally allowed in cities.

What about 16<sup>th</sup> Section lands for future schools ???

### **Section 9.**

No later than two years from the implementation of this article, and every two years thereafter, the department shall provide to the Legislature a comprehensive public report of the operation of this article.

### **Section 10.**

The provisions of this article are declared to be severable, and if any provision, word, phrase, or clause of this article or the application thereof shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this article.

**CAUTION: THIS ALLOWS MANIPULATION**



## AMOUNT AND SOURCE OF REVENUE

**The amendment is required to pay for itself and would require no general fund appropriation.** The amendment creates **three sources of operating revenue for the State Department of Health** to use in implementing and enforcing the provisions of the amendment: **fee** for identification cards, **fee** for treatment center licenses, and a **charge** that the Department of Health may assess at the point of retail sale of medical marijuana. The revenue generated by the medical marijuana program in Arizona was used as a basis for a projection In Mississippi. Based on those calculations, implementation of this amendment would generate an estimated \$6 million in special fund revenue on an annual basis.

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This effectively makes the Health Department a taxing agency. Words such as fees and charges are effective taxes. How do we collect the taxes? There will be a great deal of cash to be collected and banking illegal marijuana will create serious problems as banks are not allowed to bank illegal marijuana sales proceeds in many cases. Also municipalities get no portion of the revenue collected. Cities receive a rebate of tax proceeds which would not be permitted by this Amendment 65. Cost of law enforcement, education and more will be additional financial burden on counties and cities.

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What is the penalty when a medical marijuana card holder gives/sells/trades their medical marijuana to a person with – or without - a medical marijuana card? Diversion will occur.