

HOUSE BILL 738¹: AGRICULTURE; PRODUCTION, MANUFACTURING, DISPENSING AND USE OF MEDICAL MARIJUANA IN THIS STATE; AUTHORIZE

Amending O.C.G.A. Chapter 11 of Title 2, Chapter 12 of Title 16, Article 1 of Chapter 2A of Title 31 and Chapter 1 of Title 51 of the O.C.G.A.; and Repealing ALL Laws in Conflict with the Same

First signature: Representative Pedro “Pete” Marin (96th)

Co-Sponsors: Representative James Beverly (143rd), Representative Billy Mitchell (88th), Representative Sam Park (101st), Representative Kim Schofield (60th) and representative Zulma Lopez (86th)

Summary: “A Bill to be entitled an Act to amend Chapter 11 of Title 2, Chapter 12 of Title 16, Article 1 of Chapter 2A of Title 31, and Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to seeds and plants generally, offenses against public health and morals, general provisions relative to the Department of Public Health, and general provisions relative to torts, respectively, so as to authorize the use, production, manufacturing, and dispensing of medical marijuana in this state; to provide for the medical conditions for which medical marijuana may be prescribed and used; to provide for conforming changes; to provide for related matters; to repeal conflicting laws; and for other purposes.”²

Status: House Second Readers on March 10, 2021.³

TEXT OF HOUSE BILL 738⁴

SECTION 1.

Chapter 11 of Title 2 of the Official Code of Georgia Annotated, relating to seeds and plants generally, is amended by revising Code Section 2-11-36, relating to seeds used in production of low THC oil, as follows:

“2-11-36.

¹ H.B. 738, 156th Gen. Assemb., 2nd Reg. Sess. (Ga. 2021), *available at* <https://www.legis.ga.gov/api/legislation/document/20212022/199860> (last visited Oct. 2, 2022).

² *2021-2022 Regular Session-HB 738, Agriculture; production, manufacturing, dispensing and use of medical marijuana in this state; authorize; enact*, ga. gen. assemb., *available at* <https://www.legis.ga.gov/legislation/60349> (last visited, Oct. 2, 2022) [hereinafter H.B. 738 Status Sheet].

³ *Id.*

⁴ H.B. 738, *supra* note 1.

This article shall not apply to seeds used for the production of ~~low THC oil~~ medical marijuana in accordance with Article 9 of Chapter 12 of Title 16 and no person shall be subject to regulation or penalties pursuant to this article for growing, selling, offering for sale, exposing for sale, or transporting in this state any seed used for the lawful production of ~~low THC oil~~ medical marijuana pursuant to Article 9 of Chapter 12 of Title 16."

SECTION 2.

Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to offenses against public health and morals, is amended by revising Code Section 16-12-190, relating to definitions relative to regulation of low THC oil, as follows:

"16-12-190.

~~As used in this article, the term 'low THC oil' means an oil that contains an amount of cannabidiol and not more than 5 percent by weight of tetrahydrocannabinol, tetrahydrocannabinolic acid, or a combination of tetrahydrocannabinol and tetrahydrocannabinolic acid which does not contain plant material exhibiting the external morphological features of the plant of the genus Cannabis~~ 'medical marijuana' means all parts of the plant of the genus Cannabis, whether growing or not, the seed thereof, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seed, or resin that has been converted into a liquid or solid substance."

SECTION 3.

Said title is further amended by revising Code Section 16-12-191, relating to possession, manufacture, distribution, or sale of low THC oil and penalties, as follows:

"16-12-191.

(a)(1) Notwithstanding any provision of Chapter 13 of this title, it shall be lawful for any person to possess, purchase, or have under his or her control ~~20 fluid ounces or less of low THC oil~~ medical marijuana if such substance is in a pharmaceutical container labeled by the manufacturer indicating the percentage of tetrahydrocannabinol therein and:

(A) Such person is registered with the Department of Public Health as set forth in Code Section 31-2A-18 and has in his or her possession a registration card issued by the Department of Public Health; or

(B) Such person has in his or her possession a registration card issued by another state that allows the same possession of ~~low-THC oil~~ medical marijuana as provided by this state's law; provided, however, that such registration card shall not be lawful authority when such person has been present in this state for 45 days or more.

(2) Notwithstanding any provision of Chapter 13 of this title, any person who possesses, purchases, or has under his or her control ~~20 fluid ounces or less of low-THC oil~~ medical marijuana without complying with paragraph (1) of this subsection shall be punished as for a misdemeanor.

(b)(1) Notwithstanding any provision of Chapter 13 of this title, it shall be lawful for any person to possess, purchase, or have under his or her control ~~20 fluid ounces or less of low-THC oil~~ medical marijuana if:

(A) Such person is involved in a clinical research program being conducted by the Board of Regents of the University System of Georgia or any authorized clinical trial or research study in this state or their authorized agent ~~pursuant to Chapter 51 of Title 31~~ as:

(i) A program participant;

(ii) A parent, guardian, or legal custodian of a program participant;

(iii) An employee of the board of regents designated to participate in the research program;

(iv) A program agent;

(v) A program collaborator and their designated employees;

(vi) A program supplier and their designated employees;

(vii) A program physician;

(viii) A program clinical researcher;

(ix) Program pharmacy personnel; or

(x) Other program medical personnel; and

~~(B) Such person has in his or her possession a permit issued as provided in Code Section 31-51-7; and~~

~~(C)~~(B) Such substance is in a pharmaceutical container labeled by the manufacturer indicating the percentage of tetrahydrocannabinol therein.

(2) Notwithstanding any provision of Chapter 13 of this title, any person who possesses, purchases, or has under his or her control ~~20 fluid ounces or less of low THC oil~~ medical marijuana without complying with subparagraphs (A), (B), and (C) of paragraph (1) of this subsection shall be punished as for a misdemeanor.

~~(c) Notwithstanding any provision of Chapter 13 of this title, any person having possession of, purchasing, or having under his or her control more than 20 fluid ounces of low THC oil but less than 160 fluid ounces of low THC oil or who manufactures, distributes, dispenses, sells, purchases, or possesses with the intent to distribute low THC oil shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years, a fine not to exceed \$50,000.00, or both. (d) Notwithstanding any provision of Chapter 13 of this title, any person who sells, manufactures, delivers, brings into this state, purchases, or has possession of 160 or more fluid ounces of low THC oil shall be guilty of the felony offense of trafficking in low THC oil and, upon conviction thereof, shall be punished as follows:~~

~~(1) If the quantity of low THC oil is at least 160 fluid ounces but less than 31,000 fluid ounces, by imprisonment for not less than five years nor more than ten years and a fine not to exceed \$100,000.00;~~

~~(2) If the quantity of low THC oil is at least 31,000 fluid ounces but less than 154,000 fluid ounces, by imprisonment for not less than seven years nor more than 15 years and a fine not to exceed \$250,000.00; and~~

~~(3) If the quantity of low THC oil is 154,000 or more fluid ounces, by imprisonment for not less than ten years nor more than 20 years and a fine not to exceed \$1 million.~~

~~(e) Subsections (c) and (d) of this Code section shall not apply to a person involved in a research program being conducted by the Board of Regents of the University System of Georgia or its authorized agent pursuant to Chapter 51 of Title 31 as an employee of the board of regents designated to participate in such program, a program agent, a program collaborator and their designated employees, a program supplier and their designated employees, a physician, clinical researcher, pharmacy personnel, or other medical personnel, provided that such person has in his or her possession a permit issued as provided in Code Section 31-51-7 and such possession, purchase, sale, manufacturing, distribution, or dispensing is solely for the purposes set forth in Chapter 51 of Title 31.~~

~~(f) Subsections (c) and (d) of this Code section shall not apply to a designated university, pharmacy, or licensee under Article 9 of Chapter 12 of Title 16, provided that such possession, purchase, control, sale, manufacturing, distribution, or dispensing is solely conducted in accordance with the provisions of Article 9 of Chapter 12 of Title 16.~~

~~(g)(c)~~ Nothing in this article shall require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, purchase, sale, or growing of marijuana in any form, or to affect the ability of an employer to have a written zero tolerance policy prohibiting the on-duty, and off-duty, use of marijuana, or prohibiting any employee from having a detectable amount of marijuana in such employee's system while at work."

SECTION 4.

Said title is further amended by revising Code Section 16-12-200, relating to definitions relative to access to medical cannabis, as follows:

"16-12-200.

As used in this article, the term:

- (1) 'Applicant' means a corporate entity applying for a license pursuant to this article.
- (2) 'Available capital' means corporate assets that are available to fund business operations in the event a license is awarded pursuant to Part 2 of this article.
- (3) 'Class 1 production license' means a license to produce and manufacture ~~low-THC oil~~ medical marijuana issued pursuant to Code Section 16-12-211.
- (4) 'Class 2 production license' means a license to produce and manufacture ~~low-THC oil~~ medical marijuana issued pursuant to Code Section 16-12-212.
- (5) 'Commission' means the Georgia Access to Medical Cannabis Commission created pursuant to Code Section 16-12-202.
- (6) 'Designated universities' means the University of Georgia and Fort Valley State University.
- (7) 'Designated university license' means a license issued by the commission pursuant to this article to a designated university to, separately or jointly, produce, manufacture, and purchase ~~low-THC oil~~ medical marijuana in accordance with this article.

- (8) 'Dispense' means the sale or provision of ~~low-THC-oil~~ medical marijuana to registered patients by a dispensing licensee.
- (9) 'Dispensing license' means a specialty license issued by the State Board of Pharmacy, or the commission pursuant to Code Section 16-12-206 to dispense ~~low-THC-oil~~ medical marijuana to registered patients.
- (10) 'Grow' means cultivating and harvesting cannabis for use in producing ~~low-THC-oil~~ medical marijuana.
- (11) 'Licensee' means any business, or owner of such business, with a valid license issued pursuant to this article.
- ~~(12) 'Low-THC oil' shall have the same meaning as set forth in Code Section 16-12-190.~~
- ~~(13)~~(12) 'Manufacture' means to process cannabis to produce ~~low-THC-oil~~ medical marijuana.
- (13) 'Medical marijuana' shall have the same meaning as set forth in Code Section 16-12-190.
- (14) 'Owner' means any person who directly or indirectly owns, actually or beneficially, or controls 5 percent or greater of interests of the applicant or any licensee. In the event that one person owns a beneficial right to interests and another person holds the voting rights with respect to such interests, then both shall be considered an owner of such interests.
- (15) 'Product' means ~~low-THC-oil~~ medical marijuana delivered through an oil, tincture, transdermal patch, lotion, or capsule, except as prohibited by Code Section 16-12-234, but not including any food products infused with ~~low-THC-oil~~ medical marijuana, including, but not limited to, cookies, candies, or edibles.
- (16) 'Registered patient' means an individual who is legally authorized to possess and use ~~low-THC-oil~~ medical marijuana pursuant to Code Section 31-2A-18.
- (17) 'Tracking system' means a seed-to-sale tracking system to track marijuana that is grown, processed, manufactured, transferred, stored, or disposed of and ~~low-THC-oil~~ medical marijuana that is transferred, stored, sold, dispensed, or disposed of pursuant to this article."

SECTION 5.

Said chapter is further amended by replacing "low THC oil" and "Low THC oil" with "medical marijuana" and "Medical marijuana", respectively, wherever either former term occurs in:

(1) Code Section 16-12-201, relating to prohibition against producing, growing,

manufacturing, or dispensing low THC oil or products;

(2) Code Section 16-12-203, relating to powers, duties and responsibilities;

(3) Code Section 16-12-204, relating to issuance of nontransferable designated university

licenses for production of low THC oil, research on therapeutic use, reporting, collected information, and license revocation;

(4) Code Section 16-12-206, relating to annual, nontransferable dispensing license, and adoption of rules;

(5) Code Section 16-12-210, relating to powers, duties, and responsibilities of Commission, no undue burden on patients, and remission of fees;

(6) Code Section 16-12-211, relating to Class 1 production licenses, application fee, revocation, limitation on ownership, and replacement license;

(7) Code Section 16-12-212, relating to Class 2 production licenses, application fees, revocation, limitation on ownership, and replacement license;

(8) Code Section 16-12-213, relating to tracking systems required;

(9) Code Section 16-12-215, relating to limitation on locations, advertising or marketing prohibited, and information available to physicians;

(10) Code Section 16-12-216, relating to Bureau of Investigation ensures compliance;

(11) Code Section 16-12-217, relating to on-demand access to facilities, provision of samples, testing, and secured transportation;

(12) Code Section 16-12-224, relating to limitation on ownership by member or former member of commission, limitation on physician's involvement, and identification when contributing to political campaigns;

(13) Code Section 16-12-225, relating to criminal offenses and penalty;

(14) Code Section 16-12-226, relating to sales and use taxes applicable;

(15) Code Section 16-12-230, relating to requirements for dispensing low THC oil;

(16) Code Section 16-12-231, relating to exemptions from arrest and prosecutions or penalty;

(17) Code Section 16-12-233, relating to contracts not against public policy;

(18) Code Section 16-12-234, relating to unlawful ways to ingest low THC oil; and

(19) Code Section 16-12-235, relating to research in compliance with federal regulations and other research permitted.

SECTION 6.

Article 1 of Chapter 2A of Title 31 of the Official Code of Georgia Annotated, relating to general provisions relative to the Department of Public Health, is amended by revising Code Section 31-2A-18, relating to establishment of the Low THC Oil Patient Registry, as follows:

"31-2A-18.

(a) As used in this Code section, the term:

(1) 'Board' means the Georgia Composite Medical Board.

(2) 'Caregiver' means the parent, guardian, or legal custodian of an individual who is less than 18 years of age or the legal guardian of an adult.

(3) 'Condition' means:

(A) ~~Cancer, when such disease is diagnosed as end stage or the treatment produces related wasting illness or recalcitrant nausea and vomiting;~~

(B) ~~Amyotrophic lateral sclerosis, when such disease is diagnosed as severe or end stage;~~

(C) Seizure disorders related to a diagnosis of epilepsy or trauma related head injuries;

(D) ~~Multiple sclerosis, when such disease is diagnosed as severe or end stage;~~

(E) Crohn's disease;

(F) Mitochondrial disease;

(G) ~~Parkinson's disease, when such disease is diagnosed as severe or end stage;~~

(H) ~~Sickle cell disease, when such disease is diagnosed as severe or end stage;~~

(I) Tourette's syndrome, when such syndrome is diagnosed as severe;

(J) Autism spectrum disorder, when such disorder is diagnosed for a patient who is at least 18 years of age, or severe autism, when diagnosed for a patient who is less than 18 years of age;

(K) Epidermolysis bullosa;

(L) ~~Alzheimer's disease or dementia, when such disease is diagnosed as severe or end stage;~~

- (M) Acquired immune deficiency syndrome, ~~when such syndrome is diagnosed as severe or end stage;~~
- (N) Peripheral neuropathy, ~~when such symptoms are diagnosed as severe or end stage;~~
- (O) Post-traumatic stress disorder resulting from direct exposure to or the witnessing of a trauma for a patient who is at least 18 years of age; ~~or~~
- (P) Intractable pain;
- (Q) Ulcerative colitis;
- (R) Systemic lupus erythematosus (SLE) or discoid cutaneous lupus;
- (S) Glaucoma;
- (T) Hepatitis C;
- (U) Fibromyalgia;
- (V) Severe arthritis;
- (W) Cerebral palsy;
- (X) Anorexia;
- (Y) Cachexia; or
- (Z) Huntington's disease.

(4) 'Department' means the Department of Public Health.

(5) 'Intractable pain' means pain that has a cause that cannot be removed and for which, according to generally accepted medical practice, the full range of pain management modalities appropriate for the patient has been used for a period of at least six months without adequate results or with intolerable side effects.

(6) ~~Low THC oil~~ Medical marijuana shall have the same meaning as set forth in Code Section 16-12-190.

(7) 'Physician' means an individual licensed to practice medicine pursuant to Article 2 of Chapter 34 of Title 43.

(8) 'Registry' means the ~~Low THC Oil~~ Medical Marijuana Patient Registry.

(b) There is established within the department the ~~Low THC Oil~~ Medical Marijuana Patient Registry.

(c) The purpose of the registry is to provide a registration of individuals and caregivers who have been issued registration cards. The department shall establish procedures and promulgate rules and regulations for the establishment and operation of the registration process and dispensing of registry cards to individuals and caregivers.

(d) The department shall issue a registration card to individuals who have been certified to the department by his or her physician as being diagnosed with a condition or is an inpatient or outpatient in a hospice program and have been authorized by such physician to use ~~low THC oil~~

medical marijuana as treatment. The department shall issue a registration card to a caregiver when the circumstances warrant the issuance of such card. The board shall establish procedures and promulgate rules and regulations to assist physicians in providing required uniform information relating to certification and any other matter relating to the issuance of certifications. In promulgating such rules and regulations, the board shall require that physicians have a doctor-patient relationship when certifying an individual as needing ~~low-THC oil~~ medical marijuana and physicians shall be required to be treating such individual for the specific condition requiring such treatment or be treating such individual in a hospice program. A physician shall seek and review information about a patient from the prescription drug monitoring program data base established pursuant to Code Section 16-13-57 prior to certifying such patient to the department as being diagnosed with a specific condition that requires the use of ~~low-THC oil~~ medical marijuana as treatment.

(e) The board shall require physicians to issue semiannual reports to the board. Such reports shall require physicians to provide information, including, but not limited to, dosages recommended for a particular condition, patient clinical responses, levels of tetrahydrocannabinol or tetrahydrocannabinolic acid present in test results, compliance, responses to treatment, side effects, and drug interactions. Such reports shall be used for research purposes to determine the efficacy of the use of ~~low-THC oil~~ medical marijuana a treatment for conditions.

(f) Information received and records kept by the department for purposes of administering this Code section shall be confidential; provided, however, that such information shall be disclosed:

(1) Upon written request of an individual or caregiver registered pursuant to this Code section; and

(2) To peace officers and prosecuting attorneys for the purpose of:

(A) Verifying that an individual in possession of a registration card is registered pursuant to this Code section; or

(B) Determining that an individual in possession of ~~low-THC oil~~ medical marijuana is registered pursuant to this Code section.

(g) The board shall develop a waiver form that will advise that the use of cannabinoids and THC containing products have not been approved by the FDA and the clinical benefits are unknown and may cause harm. Any patient or caregiver shall sign such waiver prior to his or her approval for registration.

(h) The board, in coordination with the Department of Public Health, shall annually review the conditions included in paragraph (3) of subsection (a) of this Code section and recommend additional conditions that have been shown through medical research to be effectively treated with ~~low-THC oil~~ medical marijuana. Such recommendations shall include recommended dosages for a particular condition, patient responses to treatment with respect to the particular condition, and drug interactions with other drugs commonly taken by patients with the particular condition. Such recommendations shall be made jointly by the board and the Department of Public Health to the General Assembly no later than December 1 of each year.”

SECTION 7.

Chapter 1 of Title 51 of the Official Code of Georgia Annotated, relating to general provisions relative to torts, is amended by revising Code Section 51-1-29.6, relating to liability of health care institutions and providers regarding THC oil, as follows:

”51-1-29.6.

(a) As used in this Code section, the term:

(1) 'Caregiver' shall have the same meaning as set forth in Code Section 31-2A-18.

(2) 'Health care institution' shall have the same meaning as set forth in Code Section 51-1-29.5.

(3) 'Health care provider' means any person licensed, certified, or registered under Chapter 9, 10A, 11, 11A, 26, 28, 30, 33, 34, 35, 39, or 44 of Title 43 or Chapter 4 of Title 26.

(4) '~~Low-THC oil~~ Medical marijuana' shall have the same meaning as set forth in Code Section 16-12-190.

(b) A health care institution shall not be subject to any civil liability, penalty, licensing sanction, or other detrimental action and a health care provider shall not be subject to any civil liability, penalty, denial of a right or privilege, disciplinary action by a professional licensing board, or other detrimental action for allowing an individual or caregiver to possess, administer, or use ~~low-THC oil~~ medical marijuana on the premises of a health care institution or offices of a health care provider, provided that the possession of such substance is in accordance with the laws of this state.”

SECTION 8.

All laws and parts of laws in conflict with this Act are repealed.

SPONSOR'S RATIONALE

Currently, 37 out of 50 states implemented a medical marijuana program, and ten states including Georgia, allow the use of low-THC medical cannabis oil use for people with specific medical conditions.⁵ Representative Pedro "Pete" Marin ("Representative Marin") planned to change that for Georgia by filing House Bill 738, which would "legalize all parts of the cannabis plant to be used to treat various medical conditions."⁶ House Bill 738 permits the use, production, manufacturing, and dispensing of medical marijuana in Georgia.⁷ A medical marijuana program provides patients with an alternative treatment option as opposed to taking narcotics and has been proven as an "effective alternative."⁸ According to a study by University of Georgia, states with medical marijuana programs have had a 19% decrease in opioid use.⁹ In addition to providing an alternative treatment option, House Bill 738 seeks to expand on the type of medical conditions that patients suffer from who would be able to be prescribed medical marijuana.¹⁰ Representative Marin believes that "[l]egalizing medical marijuana, not just low THC oil, would benefit and help relieve pain that people living with serious medical conditions experience every day."¹¹

Georgia is known to have strict marijuana laws; however, over the years, a few Bills have passed regarding medical cannabis.¹² Currently,

⁵ *State Medical Cannabis Laws*, nat'l conf. of state legis., (Nov. 9, 2022), <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>.

⁶ *State Representative Pedro Marin Introduces Legislation to Legalize Medical Marijuana*, allongeorgia (Mar. 15, 2021), <https://allongeorgia.com/georgia-state-politics/state-representative-pedro-marin-introduces-legislation-to-legalize-medical-marijuana/#comments>.

⁷ H.B. 738, *supra* note 2.

⁸ Tom Regan, *Medical Marijuana Ready for Production and Sale in Georgia*, wsbtv (Sep. 22, 2022), <https://www.wsbtv.com/news/local/atlanta/medical-marijuana-ready-production-sale-georgia/OECBYPSG6RC6VMC7MHL7VYBJZQ/>.

⁹ *Medical Marijuana for Georgians with Serious Health Issues nears Reality*, cap. beat news serv. (Apr. 16, 2021), <https://capitol-beat.org/2021/04/medical-marijuana-for-georgians-with-serious-health-issues-nears-reality/>.

¹⁰ H.B. 738, *supra* note 2.

¹¹ *State Representative Pedro Marin Introduces Legislation to Legalize Medical Marijuana*, allongeorgia (Mar. 15, 2021), <https://allongeorgia.com/georgia-state-politics/state-representative-pedro-marin-introduces-legislation-to-legalize-medical-marijuana/#comments>.

qualified patients in Georgia are allowed to register to receive low-THC medical cannabis oil that is capped at 5% THC and cannot access more than 20 fluid ounces.¹³ Furthermore, in 2021, Senate Bill 195 was passed, allowing other forms of medical cannabis other than oil, such as tinctures, transdermal patches, lotions, and capsules, excluding edible products.¹⁴ House Bill 738 authorizes patients to possess medical cannabis that is over 5% THC, more or less than 20 fluid ounces and use medical cannabis to be in the above-referenced forms not including edible products.¹⁵

In addition, the Georgia Medical Cannabis Society, which advocates alternate forms of medication other than opioids, supports House Bill 738.¹⁶ The founders of Georgia Medical Cannabis Society suffered from chronic pain and had various issues with opioids and wanted another alternative, preferably holistic.¹⁷ Both founders are opioid-free and help other patients by referring them to medical providers who can assist them in registering for low-THC medical cannabis without using narcotics.¹⁸ Similarly, House Bill 738 would make medical marijuana more obtainable for those patients suffering from a medical condition and a safer alternative.¹⁹

OPPOSITION'S RATIONALE

House Bill 738 has not been voted on and there has been no development regarding this Bill in the Georgia General Assembly.²⁰ Although House Bill 738 does not have any direct opposition, most opposing groups are concerned that medical marijuana “could open the door” to the legalization of marijuana for recreational use and to dangerous substances such as opioids and patients could develop a dependency on marijuana from THC.²¹ The Prosecutor Association of Georgia is known to oppose the implantation of a medical marijuana program in Georgia.²²

¹² *Georgia Legislature Again Fails to Act on Cannabis Reforms*, marijuana pol’y project (Sep. 22, 2022), <https://www.mpp.org/states/georgia/>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ H.B. 738, *supra* note 1.

¹⁶ Kate Norum, *What’s the Deal with *Medical* Marijuana?*, making sense of legis. (Mar. 20, 2021), <https://podcasts.apple.com/es/podcast/whats-the-deal-with-medical-marijuana/id1559688818?i=1000514043374&l=en>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ H.B. 738 Status Sheet, *supra* note 2.

²¹ Medical Marijuana for Georgians, *supra* note 9.

²² Tony Thomas, *Lawmakers Pushes to Legalize Marijuana in Georgia*, wsbtv (Nov. 25, 2014), <https://www.wsbtv.com/news/local/lawmaker-pushes-legalize-marijuana-georgia/137897410/>.

Chair member and Former District Attorney for Gwinnett County, Dany Porter, expressed concerns that the legalization of “[m]edical marijuana oil sort of the knife tip to an eventual pass toward legalization or decriminalization of marijuana.”²³ Dany Porter also believes this could cause complications when arresting and prosecuting for possessing a “leafy green substance or smelling like marijuana may no longer be enough if low-THC hemp can be legally possessed.”²⁴

Southern Baptists in Georgia are also against the legalization of marijuana to treat medical conditions.²⁵ Similar reasons to Dany Porter, Mike Griffin, a Georgia Baptists Convention spokesman stated that medical marijuana “ends up being a step toward recreational use.”²⁶ To support their opposition, Georgia Baptist Convention passed a resolution “[to] oppose[] any legislation that would authorize the cultivation of marijuana in the State of Georgia.”²⁷

IMPLICATIONS IN GEORGIA

House Bill 738 would permit Georgia to have a “fully functional medical marijuana program.”²⁸ A common topic that arises when medical marijuana is legalized in a state is how it impacts the workplace for employers and employees.²⁹ One issue that has been raised is if employers or insurers are obligated to pay for employees’ medical marijuana.³⁰ Under Utah, the Utah Medical Cannabis Act specifically stated that insurers or employers are not required to pay for or reimburse employees for cannabis,

²³ *Id.*

²⁴ Tyler Estep, *Citing Georgia Hemp Law, Gwinnett Solicitor Dismisses Marijuana Cases*, the atlanta j. const. (Aug. 8, 2019), <https://www.ajc.com/news/local/citing-georgia-hemp-law-gwinnett-solicitor-dismisses-marijuana-cases/v0UpTyEgO3jlkYOytXUumI/>.

²⁵ Bob Allen, *Baptists Group in Georgia Opposes Marijuana Cultivation Proposal*, baptist news glob. (Dec. 10, 2015), <https://baptistnews.com/article/georgia-baptists-oppose-marijuana-cultivation-proposal/#.Y3AmLuzMIhp>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Kelli Lynn Grey, *New Bill Introduced to Legalize Medical Marijuana – Not Just Low THC Oil - in Georgia*, ga. marijuana card (Mar. 29, 2021)

<https://www.georgiamarijuanacard.com/post/new-bill-introduced-to-legalize-medical-marijuana-not-just-low-thc-oil-in-georgia>.

²⁹ Ryan B. Frazier, *UT Employers Must Understand Impact of Legalized Medical Marijuana*,

utah emp. l. letter (Dec. 2018), <https://plus.lexis.com/api/permalink/20b51ff5-ab37-4191-a336-f8a6db169a49/?context=1530671>.

³⁰ *Id.*

cannabis products, or medical cannabis device.³¹ However, it is unclear how Georgia would approach this situation.³²

Another issue is how employers address employees who are using medical marijuana.³³ Some states have employment-related protection provisions for employees that allows employees to file a claim against an employer who acts against an employee for using medical marijuana.³⁴ States such as New York and Arizona limit employer action, unlike Georgia currently, and under Bill 738, will have no limitation, meaning it is the employer's decision if they want to implement a policy regarding the use of medical marijuana.³⁵ However, this does not mean employers can outright decline employees who are using medical marijuana as an accommodation for their medical condition if it is considered a disability.³⁶ While the Georgia courts have not directly addressed medical marijuana and employment termination, other jurisdictions have addressed this issue.³⁷

LEGISLATIVE GENEALOGY

House Bill 738 was introduced in the House Hopper on March 8, 2021.³⁸ The House read House Bill 738 for the first time on March 9, 2021.³⁹ On March 10, 2021, the House had its second reading of House Bill 738.⁴⁰

Prepared by: *Nikou Ahmad-Khosravi*

³¹ *Id.*

³² H.B. 738, *supra* note 1.

³³ Ryan B. Frazier, *supra* note 29.

³⁴ *Id.*

³⁵ Dale L. Deitchler, *Georgia Becomes 26th Jurisdiction to Legalize Medical Marijuana*, shrm (2015),

<https://www.shrm.org/resourcesandtools/legal-and-compliance/state-and-local-updates/pages/georgia-medical-marijuana.aspx>.

³⁶ *Id.*

³⁷ *Washburn v. Columbia Forest Prod., Inc.*, 134 P.3.d 161, 167-68 (Or. 2006) (The Oregon Supreme Court ruled that employers do not have to make accommodations for employees who use medical marijuana since it is prohibited by federal law).

³⁸ H.B. 738 Status Sheet, *supra* note 2.

³⁹ *Id.*

⁴⁰ *Id.*