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

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

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

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

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

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

(2) Provide a patient with written documentation, based on the physician's contemporaneous assessment of the patient's medical history and current medical condition and a bona fide physician-patient relationship, stating that the patient has a
debilitating medical condition and might benefit from the medical use of cannabis.

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

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

(e) A property interest that is possessed, owned, or used in connection with the medical use of cannabis or acts incidental to such use may not be harmed, neglected, injured, or destroyed while in the possession of state or local law enforcement officials who seized the property in connection with the claimed medical use of cannabis. Such property interest may not be forfeited under any provision of state law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense or entry of a plea of guilty to such offense. Cannabis and paraphernalia seized by state or local law enforcement officials from a patient or primary caregiver in connection with the claimed medical use of cannabis shall be returned immediately upon the determination of the state attorney or his or her designee that the patient or primary caregiver is entitled to the protection contained in this section, including, but not limited to, by a decision not to prosecute, the dismissal of charges, or acquittal.
(f)(1) A patient may engage in the medical use of cannabis with no more cannabis than is medically necessary to address a debilitating medical condition. The legislature may, by general law, establish a maximum amount of cannabis or cannabis plants, possession or use of which, or any lesser amount, is presumed to be medically necessary.

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

(g) A patient may not:

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

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

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

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

(2) One of the physicians referred to in paragraph (1) has explained the possible risks and benefits of medical use of cannabis to the patient and each of the patient's parents residing in this state;
(3) Each of the patient's parents residing in this state consents in writing to permit the patient to engage in the medical use of cannabis;

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

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

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

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

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

(2) This section does not require any employer to accommodate the medical use of cannabis in any workplace.

(3) A person may not be denied custody of or visitation with a minor for acting in accordance with this section and legislation implementing this section unless the person's behavior creates an unreasonable danger to the minor that can be clearly articulated and shown by substantial competent evidence.
(4) A person may not be denied any right or privilege and is not subject to arrest, prosecution, or penalty in any manner, including, but not limited to, a civil penalty or disciplinary action by a business, occupational, or professional licensing board, for providing a qualifying patient or primary caregiver of such a patient with cannabis or cannabis paraphernalia or for any other act done in accordance with this section or legislation implementing this section.

ARTICLE XII

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
necessary. The amendment provides that a patient may not engage
in the medical use of cannabis in a way that endangers the
health or well-being of any person or in plain view of, or in a
place open to, the general public. The amendment provides
additional restrictions on the medical use of cannabis by
persons under 18 years of age. The amendment requires that, by a
specified date, the Legislature must define such terms and enact
such legislation as may be necessary for implementation of the
amendment and enact criminal penalties for fraudulent
representation of a medical condition by a patient to a
physician or state or local law enforcement official for the
purpose of avoiding arrest and prosecution. The amendment
provides that a person may not be denied custody of or
visitation with a minor for acting in accordance with this
amendment unless the person's behavior creates an unreasonable
danger to the minor that can be clearly articulated and shown by
substantial competent evidence. The amendment provides that a
person may not be denied any right or privilege and is not
subject to arrest, prosecution, or penalty in any manner, including, but not limited to, a civil penalty or disciplinary action by a business, occupational, or professional licensing board, for providing a qualifying patient or primary caregiver of such a patient with cannabis or cannabis paraphernalia or for any other act done in accordance with the amendment. The amendment is scheduled to take effect July 1, 2013.