

House Bill 738

By: Representatives Marin of the 96<sup>th</sup>, Beverly of the 143<sup>rd</sup>, Mitchell of the 88<sup>th</sup>, Park of the 101<sup>st</sup>, Schofield of the 60<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

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

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

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

14 "2-11-36.

15 This article shall not apply to seeds used for the production of ~~low-THC oil~~ medical  
16 marijuana in accordance with Article 9 of Chapter 12 of Title 16 and no person shall be

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17 subject to regulation or penalties pursuant to this article for growing, selling, offering for  
 18 sale, exposing for sale, or transporting in this state any seed used for the lawful production  
 19 of ~~low-THC oil~~ medical marijuana pursuant to Article 9 of Chapter 12 of Title 16."

20

## SECTION 2.

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

24 "16-12-190.

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

34

## SECTION 3.

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

37 "16-12-191.

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

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

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

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

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

56 (A) Such person is involved in a clinical research program being conducted by the  
 57 Board of Regents of the University System of Georgia or any authorized clinical trial  
 58 or research study in this state or their authorized agent ~~pursuant to Chapter 51 of Title~~  
 59 ~~31~~ as:

- 60 (i) A program participant;
- 61 (ii) A parent, guardian, or legal custodian of a program participant;
- 62 (iii) An employee of the board of regents designated to participate in the research  
 63 program;
- 64 (iv) A program agent;
- 65 (v) A program collaborator and their designated employees;
- 66 (vi) A program supplier and their designated employees;
- 67 (vii) A program physician;
- 68 (viii) A program clinical researcher;

- 69 (ix) Program pharmacy personnel; or  
70 (x) Other program medical personnel; and  
71 ~~(B) Such person has in his or her possession a permit issued as provided in Code~~  
72 ~~Section 31-51-7; and~~  
73 ~~(C)~~(B) Such substance is in a pharmaceutical container labeled by the manufacturer  
74 indicating the percentage of tetrahydrocannabinol therein.
- 75 (2) Notwithstanding any provision of Chapter 13 of this title, any person who possesses,  
76 purchases, or has under his or her control ~~20 fluid ounces or less of low THC oil~~ medical  
77 marijuana without complying with subparagraphs (A), (B), and (C) of paragraph (1) of  
78 this subsection shall be punished as for a misdemeanor.
- 79 ~~(c) Notwithstanding any provision of Chapter 13 of this title, any person having possession~~  
80 ~~of, purchasing, or having under his or her control more than 20 fluid ounces of low THC~~  
81 ~~oil but less than 160 fluid ounces of low THC oil or who manufactures, distributes,~~  
82 ~~dispenses, sells, purchases, or possesses with the intent to distribute low THC oil shall be~~  
83 ~~guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not~~  
84 ~~less than one year nor more than ten years, a fine not to exceed \$50,000.00, or both.~~
- 85 ~~(d) Notwithstanding any provision of Chapter 13 of this title, any person who sells,~~  
86 ~~manufactures, delivers, brings into this state, purchases, or has possession of 160 or more~~  
87 ~~fluid ounces of low THC oil shall be guilty of the felony offense of trafficking in low THC~~  
88 ~~oil and, upon conviction thereof, shall be punished as follows:~~
- 89 ~~(1) If the quantity of low THC oil is at least 160 fluid ounces but less than 31,000 fluid~~  
90 ~~ounces, by imprisonment for not less than five years nor more than ten years and a fine~~  
91 ~~not to exceed \$100,000.00;~~
- 92 ~~(2) If the quantity of low THC oil is at least 31,000 fluid ounces but less than 154,000~~  
93 ~~fluid ounces, by imprisonment for not less than seven years nor more than 15 years and~~  
94 ~~a fine not to exceed \$250,000.00; and~~

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

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

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

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

116 **SECTION 4.**

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

119 "16-12-200.

120 As used in this article, the term:

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- 121 (1) 'Applicant' means a corporate entity applying for a license pursuant to this article.
- 122 (2) 'Available capital' means corporate assets that are available to fund business  
123 operations in the event a license is awarded pursuant to Part 2 of this article.
- 124 (3) 'Class 1 production license' means a license to produce and manufacture ~~low-THC~~  
125 ~~oil~~ medical marijuana issued pursuant to Code Section 16-12-211.
- 126 (4) 'Class 2 production license' means a license to produce and manufacture ~~low-THC~~  
127 ~~oil~~ medical marijuana issued pursuant to Code Section 16-12-212.
- 128 (5) 'Commission' means the Georgia Access to Medical Cannabis Commission created  
129 pursuant to Code Section 16-12-202.
- 130 (6) 'Designated universities' means the University of Georgia and Fort Valley State  
131 University.
- 132 (7) 'Designated university license' means a license issued by the commission pursuant  
133 to this article to a designated university to, separately or jointly, produce, manufacture,  
134 and purchase ~~low-THC oil~~ medical marijuana in accordance with this article.
- 135 (8) 'Dispense' means the sale or provision of ~~low-THC oil~~ medical marijuana to  
136 registered patients by a dispensing licensee.
- 137 (9) 'Dispensing license' means a specialty license issued by the State Board of Pharmacy  
138 or the commission pursuant to Code Section 16-12-206 to dispense ~~low-THC oil~~ medical  
139 marijuana to registered patients.
- 140 (10) 'Grow' means cultivating and harvesting cannabis for use in producing ~~low-THC oil~~  
141 medical marijuana.
- 142 (11) 'Licensee' means any business, or owner of such business, with a valid license  
143 issued pursuant to this article.
- 144 ~~(12) 'Low-THC oil' shall have the same meaning as set forth in Code Section 16-12-190.~~  
145 ~~(13)~~(12) 'Manufacture' means to process cannabis to produce ~~low-THC oil~~ medical  
146 marijuana.

147 (13) 'Medical marijuana' shall have the same meaning as set forth in Code Section  
148 16-12-190.

149 (14) 'Owner' means any person who directly or indirectly owns, actually or beneficially,  
150 or controls 5 percent or greater of interests of the applicant or any licensee. In the event  
151 that one person owns a beneficial right to interests and another person holds the voting  
152 rights with respect to such interests, then both shall be considered an owner of such  
153 interests.

154 (15) 'Product' means ~~low-THC oil~~ medical marijuana delivered through an oil, tincture,  
155 transdermal patch, lotion, or capsule, except as prohibited by Code Section 16-12-234,  
156 but not including any food products infused with ~~low-THC oil~~ medical marijuana,  
157 including, but not limited to, cookies, candies, or edibles.

158 (16) 'Registered patient' means an individual who is legally authorized to possess and use  
159 ~~low-THC oil~~ medical marijuana pursuant to Code Section 31-2A-18.

160 (17) 'Tracking system' means a seed-to-sale tracking system to track marijuana that is  
161 grown, processed, manufactured, transferred, stored, or disposed of and ~~low-THC oil~~  
162 medical marijuana that is transferred, stored, sold, dispensed, or disposed of pursuant to  
163 this article."

164 **SECTION 5.**

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

168 (1) Code Section 16-12-201, relating to prohibition against producing, growing,  
169 manufacturing, or dispensing low THC oil or products;

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

- 171 (3) Code Section 16-12-204, relating to issuance of nontransferable designated university  
172 licenses for production of low THC oil, research on therapeutic use, reporting, collected  
173 information, and license revocation;
- 174 (4) Code Section 16-12-206, relating to annual, nontransferable dispensing license, and  
175 adoption of rules;
- 176 (5) Code Section 16-12-210, relating to powers, duties, and responsibilities of Commission,  
177 no undue burden on patients, and remission of fees;
- 178 (6) Code Section 16-12-211, relating to Class 1 production licenses, application fee,  
179 revocation, limitation on ownership, and replacement license;
- 180 (7) Code Section 16-12-212, relating to Class 2 production licenses, application fees,  
181 revocation, limitation on ownership, and replacement license;
- 182 (8) Code Section 16-12-213, relating to tracking systems required;
- 183 (9) Code Section 16-12-215, relating to limitation on locations, advertising or marketing  
184 prohibited, and information available to physicians;
- 185 (10) Code Section 16-12-216, relating to Bureau of Investigation ensures compliance;
- 186 (11) Code Section 16-12-217, relating to on-demand access to facilities, provision of  
187 samples, testing, and secured transportation;
- 188 (12) Code Section 16-12-224, relating to limitation on ownership by member or former  
189 member of commission, limitation on physician's involvement, and identification when  
190 contributing to political campaigns;
- 191 (13) Code Section 16-12-225, relating to criminal offenses and penalty;
- 192 (14) Code Section 16-12-226, relating to sales and use taxes applicable;
- 193 (15) Code Section 16-12-230, relating to requirements for dispensing low THC oil;
- 194 (16) Code Section 16-12-231, relating to exemptions from arrest and prosecutions or  
195 penalty;
- 196 (17) Code Section 16-12-233, relating to contracts not against public policy;
- 197 (18) Code Section 16-12-234, relating to unlawful ways to ingest low THC oil; and



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

200

### SECTION 6.

201 Article 1 of Chapter 2A of Title 31 of the Official Code of Georgia Annotated, relating to  
 202 general provisions relative to the Department of Public Health, is amended by revising Code  
 203 Section 31-2A-18, relating to establishment of the Low THC Oil Patient Registry, as follows:  
 204 "31-2A-18.

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

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

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

209 (3) 'Condition' means:

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

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

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

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

216 (E) Crohn's disease;

217 (F) Mitochondrial disease;

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

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

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

221 (J) Autism spectrum disorder, when such disorder is diagnosed for a patient who is at  
 222 least 18 years of age, or severe autism, when diagnosed for a patient who is less than  
 223 18 years of age;

- 224 (K) Epidermolysis bullosa;
- 225 (L) Alzheimer's disease or dementia, ~~when such disease is diagnosed as severe or end~~  
226 ~~stage~~;
- 227 (M) Acquired immune deficiency syndrome, ~~when such syndrome is diagnosed as~~  
228 ~~severe or end stage~~;
- 229 (N) Peripheral neuropathy, ~~when such symptoms are diagnosed as severe or end stage~~;
- 230 (O) Post-traumatic stress disorder resulting from direct exposure to or the witnessing  
231 of a trauma for a patient who is at least 18 years of age; ~~or~~
- 232 (P) Intractable pain;
- 233 (Q) Ulcerative colitis;
- 234 (R) Systemic lupus erythematosus (SLE) or discoid cutaneous lupus;
- 235 (S) Glaucoma;
- 236 (T) Hepatitis C;
- 237 (U) Fibromyalgia;
- 238 (V) Severe arthritis;
- 239 (W) Cerebral palsy;
- 240 (X) Anorexia;
- 241 (Y) Cachexia; or
- 242 (Z) Huntington's disease.
- 243 (4) 'Department' means the Department of Public Health.
- 244 (5) 'Intractable pain' means pain that has a cause that cannot be removed and for which,  
245 according to generally accepted medical practice, the full range of pain management  
246 modalities appropriate for the patient has been used for a period of at least six months  
247 without adequate results or with intolerable side effects.
- 248 (6) ~~Low-THC oil~~ Medical marijuana shall have the same meaning as set forth in Code  
249 Section 16-12-190.

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

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

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

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

259 (d) The department shall issue a registration card to individuals who have been certified  
260 to the department by his or her physician as being diagnosed with a condition or is an  
261 inpatient or outpatient in a hospice program and have been authorized by such physician  
262 to use ~~low-THC-oil~~ medical marijuana as treatment. The department shall issue a  
263 registration card to a caregiver when the circumstances warrant the issuance of such card.  
264 The board shall establish procedures and promulgate rules and regulations to assist  
265 physicians in providing required uniform information relating to certification and any other  
266 matter relating to the issuance of certifications. In promulgating such rules and regulations,  
267 the board shall require that physicians have a doctor-patient relationship when certifying  
268 an individual as needing ~~low-THC-oil~~ medical marijuana and physicians shall be required  
269 to be treating such individual for the specific condition requiring such treatment or be  
270 treating such individual in a hospice program. A physician shall seek and review  
271 information about a patient from the prescription drug monitoring program data base  
272 established pursuant to Code Section 16-13-57 prior to certifying such patient to the  
273 department as being diagnosed with a specific condition that requires the use of ~~low-THC~~  
274 ~~oil~~ medical marijuana as treatment.

275 (e) The board shall require physicians to issue semiannual reports to the board. Such  
276 reports shall require physicians to provide information, including, but not limited to,

277 dosages recommended for a particular condition, patient clinical responses, levels of  
278 tetrahydrocannabinol or tetrahydrocannabinolic acid present in test results, compliance,  
279 responses to treatment, side effects, and drug interactions. Such reports shall be used for  
280 research purposes to determine the efficacy of the use of ~~low-THC oil~~ medical marijuana  
281 as a treatment for conditions.

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

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

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

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

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

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

296 (h) The board, in coordination with the Department of Public Health, shall annually review  
297 the conditions included in paragraph (3) of subsection (a) of this Code section and  
298 recommend additional conditions that have been shown through medical research to be  
299 effectively treated with ~~low-THC oil~~ medical marijuana. Such recommendations shall  
300 include recommended dosages for a particular condition, patient responses to treatment  
301 with respect to the particular condition, and drug interactions with other drugs commonly  
302 taken by patients with the particular condition. Such recommendations shall be made

303 jointly by the board and the Department of Public Health to the General Assembly no later  
304 than December 1 of each year."

305 **SECTION 7.**

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

309 "51-1-29.6.

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

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

312 (2) 'Health care institution' shall have the same meaning as set forth in Code Section  
313 51-1-29.5.

314 (3) 'Health care provider' means any person licensed, certified, or registered under  
315 Chapter 9, 10A, 11, 11A, 26, 28, 30, 33, 34, 35, 39, or 44 of Title 43 or Chapter 4 of Title  
316 26.

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

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

326 **SECTION 8.**

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