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HB 1 – Health: Department of Public Health (Haleigh’s Hope Act)

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HEALTH

Department of Public Health: Amend Chapter 12 of Title 16 of the Official Code of Georgia Annotated, Relating to Public Health and Morals, so as to Provide for the Possession of Low THC Oil Under Certain Circumstances; Provide for Definitions; Provide for Penalties; Amend Title 31 of the Official Code of Georgia Annotated, Relating to Health, so as to Create a Registration within the Department of Public Health for Individuals or Caregivers who are Authorized to Possess Low THC Oil; Define Certain Terms; Provide for Registration Cards; Provide for Procedure; Create the Georgia Commission on Medical Cannabis; Provide for Membership, Procedures, Duties, and Responsibilities; Provide for an Automatic Repeal of the Commission; Allow the Board of Regents of the University System of Georgia to Create or Work with Others to Create a Research Program Using Low THC Oil in Treating Certain Residents of this State who Have Medication-Resistant Epilepsies; Provide for Permits to be Issued to Program Participants and Others; Provide for Automatic Repeal of the Research Program; Amend Chapter 1 of Title 51 of the Official Code of Georgia Annotated, Relating to General Provisions of Torts, so as to Provide for Limited Liability for Health Care Institutions and Health Care Providers that Permit the Possession, Administration, or Use of Low THC Oil by an Individual or Caregiver on Their Premises in Accordance with the Laws of This State; Provide for a Short Title; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 16-12-190, -191 (new); 31-2A-18 (new); 31-50-1, -2, -3, -4, -5 (new); 31-51-1, -2, -3, -4, -5, -6, -7, -8, -9, -10 (new); 51-1-29.6 (new)
BILL NUMBER:	HB 1
ACT NUMBER:	20
GEORGIA LAWS:	2015 Ga. Laws 49

SUMMARY:

The Act allows legal possession of low THC oil for individuals with certain medical illnesses and their caregivers, creates a registration within the Department of Public Health for such individuals and their caregivers, creates the Georgia Commission on Medical Cannabis, authorizes the Georgia University System to create a low THC oil research program, and provides for limited liability for health care institutions and providers that permit low THC oil on their premises.

EFFECTIVE DATE:

April 16, 2015

History

The U.S. government classifies controlled substances into five schedules based on their chemical qualities and use in the medical community.¹ One of these classifications, Schedule I is reserved for drugs with no accepted medical use.² Despite studies done to the contrary, cannabis is still considered a Schedule I drug and listed as having no medical use.³ Cannabis falls within that classification, even though the U.S. government lists cannabinoids found within the plant as useful in neurodegenerative diseases, including Alzheimer's and Parkinson's diseases.⁴ As such, there is a federal ban on medical cannabis, even though it has proven beneficial effects on certain diseases.⁵ Recognizing these benefits, a number of states have passed medical cannabis laws to allow the limited use of medical cannabis for medical treatment.⁶

1. 21 U.S.C. § 812 (2012).

2. *Id.* § 812(b)(1)(B).

3. *Id.* § 812(c)(sched. I)(c)(10). Other Schedule I drugs include: heroin, morphine methylbromide, codeine methylbromide, and morphine-n-oxide. *Id.* § 812(c)(sched. I)(b).

4. Gloria Tatum, *Georgia Senate Passes Pitiful Medical Cannabis Research Bill*, ATLANTA PROGRESSIVE NEWS (Mar. 15, 2015), <http://atlantaprogressivenews.com/2015/03/15/georgia-senate-passes-pitiful-medical-cannabis-research-bill/>.

5. *Id.*

6. *See, e.g.*, CAL. HEALTH & SAFETY CODE § 11362.5 (West, Westlaw through 2015).

During Georgia’s 2014 legislative session, Representative Allen Peake (R-141st) introduced House Bill (HB) 885, which was designed to provide additional treatment options for children who suffer from specific medical conditions by regulating the use of cannabidiol.⁷ When HB 885 failed on March 20, 2014, at least fifteen families relocated to other states in order to legally obtain medical cannabis.⁸ In addition, HB 885’s failure sparked the creation of the Prescription of Medical Cannabis for Serious Medical Conditions Joint Study Committee, which “held several meetings to hear from families . . . seeking [medical] treatment, . . . law enforcement officials, the medical community, and leaders from other states with similar legislation.”⁹ Relentless Georgians continued to petition for the medical marijuana bill, with Representative Peake leading the initiative and fighting to bring these families home.¹⁰

In 2015, three children tragically died after visiting the Georgia Capitol to petition for the passage of the bill: Abe, Trinity, and Mary Elizabeth.¹¹ Representative Peake, attempting to honor Abe, Trinity, and Mary Elizabeth, called upon lawmakers to take action, stating: “[I]t is imperative that we, as elected officials of this state, come up with a safe, effective, and timely delivery system of medical cannabis oil in Georgia, for these children and for our citizens.”¹²

With the support of Speaker David Ralston (R-7th), the medical cannabis bill was designated HB 1 as the first bill filed in the 2015 legislative session, signifying the bill’s importance to the Georgia House.¹³ The bill was dubbed “Haleigh’s Hope Act” after five-year-old Haleigh Cox.¹⁴ Haleigh has a severe type of epilepsy that causes daily seizures.¹⁵ Her mother, Janea Cox, relocated to Colorado after

7. HB 885, as introduced, 2014 Ga. Gen. Assem.; Press Release, Ga. House Republican Caucus, Rep. Allen Peake Pre-Files Med. Cannabis Bill (Nov. 21, 2014), <http://gahousegop.org/rep-allen-peake-pre-files-medical-cannabis-bill/>.

8. Press Release, *supra* note 7.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. Doug Richards, *Governor Will Sign Medical Marijuana Bill*, 11 ALIVE (Mar. 26, 2015), <http://www.11alive.com/story/news/politics/2015/03/25/georgia-politics-medical-marijuana/70453736/>.

15. *Id.*

the medical marijuana bill failed in 2014.¹⁶ Janea's husband, a Johns Creek firefighter, stayed in Georgia.¹⁷

Senator Curt Thompson (D-5th) introduced Senate Bill (SB) 7, the Controlled Substances Therapeutic Relief Act, during the 2015 legislative session.¹⁸ SB 7 would allow patients to possess up to two ounces of cannabis if they are suffering from specific medical conditions.¹⁹ In addition, the Senate created another medical marijuana bill, SB 185, which would create clinical trials for cannabidiol products to provide treatment for patients under the age of eighteen suffering from medication-resistant epilepsies.²⁰ Representative Peake hoped that both chambers could eventually reach an agreement to include the nine conditions outlined in HB 1 within the permissible treatment uses for medical cannabis.²¹ As Representative Peake commented, "SB 185 excludes thousands of our citizens who suffer from medical conditions beyond epilepsy and could benefit from cannabis oil, and the immunity language in the bill does not bring our medical refugees home. That remains my top priority and commitment."²²

According to the National Conference of State Legislatures, at the time of Georgia's 2015 legislative session, twenty-three states had workable medical cannabis programs.²³ Of those twenty-three programs, Colorado, Washington, and Alaska allow recreational cannabis use.²⁴

16. *Id.*

17. Bill Hendrick, Associated Press, *Georgia Medical Marijuana: Gov. Deal Signs Cannabis Oil Bill Into Law*, THE CANNABIST (Apr. 16, 2015), <http://www.thecannabist.co/2015/04/16/georgia-medical-marijuana-gov-nathan-deal-signs-cannabis-oil-bill-law/33407/>.

18. SB 7, as introduced, 2015 Ga. Gen. Assem.

19. Thomas H. Clarke, *Medical & Adult Use Marijuana Legalization Bills Filed in Georgia*, THE DAILY CHRONIC (Nov. 24, 2014), <http://www.thedailychronic.net/2014/38975/medical-adult-use-marijuana-legalization-bills-filed-in-georgia/>.

20. Alexa Rodriguez, *Georgia Senate Proposes Its Own Medical Marijuana Bill*, 41 NBC MACON (Mar. 3, 2015), <http://www.41nbc.com/story/d/story/georgia-senate-proposes-its-own-medical-marijuana/26037/5MXrDNIB80uyZdZ9qxV0vQ>.

21. Tatum, *supra* note 4.

22. *Id.*

23. Maggie Lee, *Georgia House Approves Modified Cannabis Oil Bill*, MACON TEL. (Feb. 25, 2015), <http://www.macon.com/2015/02/25/3605508/georgia-medical-cannabis.html>.

24. *Id.*

*Bill Tracking of HB 1**Consideration and Passage by the House*

Representatives Allen Peake (R-141st), Micah Gravley (R-67th), Margaret Kaiser (D-59th), Matt Ramsey (R-72nd), Tom McCall (R-33rd), and Rich Golick (R-40th) sponsored HB 1.²⁵ The House read the bill for the first time on January 27, 2015.²⁶ The House read the bill for the second time on January 28, 2015.²⁷ Speaker David Ralston (R-7th) assigned the bill to the House Judiciary Non-Civil Committee, which amended the entire bill and reported the bill by substitute on February 24, 2015.²⁸

The Committee substitute included none of the introduced bill’s reserved text except for the title,²⁹ and inserted substantive Parts I–III, creating Code sections 16-12-190 and -191,³⁰ 31-2A-18,³¹ and 31-50-1, -2, -3, -4, -5.³² These sections provide, respectively, for legal possession of low THC oil within Title 16,³³ for the creation of a registration within the Department of Public Health for individuals and caregivers authorized to possess low THC oil within Title 31,³⁴ and for the creation of the Georgia Commission on Medical Cannabis, also within Title 31.³⁵

The House read the bill for the third time on February 25, 2015.³⁶ Representatives Peake and Brian Strickland (R-111th) offered a floor amendment that redesignated Part IV as Part V and inserted a new Part IV, creating Code section 51-1-29.6, relating to general provisions of torts.³⁷ This amendment provided limited liability for health care institutions and providers that permit the possession,

25. Georgia General Assembly, HB 1, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/1>.

26. State of Georgia Final Composite Status Sheet, HB 1, May 14, 2015.

27. *Id.*

28. *Id.*

29. *Compare* HB 1, as introduced, 2015 Ga. Gen. Assem., *with* HB 1 (HCS), 2015 Ga. Gen. Assem.

30. HB 1 (HCS), § 1-2, p. 1–2, ln. 19–53, 2015 Ga. Gen. Assem.

31. *Id.* § 2-1, p. 3–4, ln. 54–107.

32. *Id.* § 3-1, p. 4–7, ln. 108–200.

33. *Id.* § 1-2, p. 1–2, ln. 19–53.

34. *Id.* § 2-1, p. 3–4, ln. 54–107.

35. *Id.* § 3-1, p. 4–7, ln. 108–200.

36. State of Georgia Final Composite Status Sheet, HB 1, May 14, 2015.

37. HB 1 (HCSFA), § 4-1, p. 7, ln. 208–09, 2015 Ga. Gen. Assem.

administration, or use of low THC oil on their premises.³⁸ Representatives Peake, Golick, and Minority Leader Stacey Abrams (D-89th) proposed a second floor amendment that added—within Part II, Code section 31-2A-18—“(I) sickle cell disease” as a ninth condition for which a patient may receive a low THC oil registration card from the Department of Public Health registration.³⁹ The House adopted both floor amendments without objection.⁴⁰ The House passed HB 1 on February 25, 2015, by a vote of 158 to 2.⁴¹

Consideration and Passage by the Senate

Administration Floor Leader Butch Miller (R-49th) sponsored HB 1 in the Senate.⁴² The Senate first read HB 1 on February 26, 2015.⁴³ HB 1 was assigned to the Senate Health and Human Services Committee,⁴⁴ which made a number of amendments to the bill.⁴⁵

In Part I, the Senate Committee changed the definition of “low THC oil” in Code section 16-12-190, from “an oil that contains cannabidiol and not more than 5 percent by weight of tetrahydrocannabinol” to “an oil that contains not more than 5 percent by weight of tetrahydrocannabinol and an amount of cannabidiol equal to or greater than the amount of tetrahydrocannabinol.”⁴⁶ The Committee added subsection (b) to Code section 16-12-191, clarifying that a person may lawfully possess twenty fluid ounces or less of low THC oil if that person is involved in a clinical research program as set forth in Chapter 51 of Title 31.⁴⁷ The Committee also added subsection (e) to Code section

38. *Id.* § 4-1, p. 7, ln. 218–25.

39. *Id.* § 2-1, p. 3, ln. 77.

40. Video Recording of House Proceedings, Feb. 25, 2015 at 1 hr., 42 min., 2 sec. (remarks by Speaker David Ralston (R-7th)), <http://www.gpb.org/lawmakers/2015/day-22> [hereinafter House Video].

41. Georgia House of Representatives Voting Record, HB 1 (Feb. 25, 2015).

42. Georgia General Assembly, HB 1, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/1>.

43. State of Georgia Final Composite Status Sheet, HB 1, May 14, 2015.

44. *Id.*

45. Compare HB 1 (HCSFA), 2015 Ga. Gen. Assem., with HB 1 (SCS), 2015 Ga. Gen. Assem.

46. Compare HB 1 (HCSFA), § 1-2, p. 2, ln. 23–25, 2015 Ga. Gen. Assem., with HB 1 (SCS), § 1-2, p. 2, ln. 27–30, 2015 Ga. Gen. Assem.

47. HB 1 (SCS), § 1-2, p. 2–3, ln. 45–70, 2015 Ga. Gen. Assem.

16-12-191, which exempts employees or agents of the Board of Regents authorized to participate in a research program.⁴⁸

In Part II, the Committee changed the word “patient” to “individual” in Code section 31-2A-18(a)(2), (c), (d), and (f)(1).⁴⁹ In the list of conditions in Code section 31-2A-18(a)(3), the Committee added “when such diagnosis is end stage or the treatment produces related wasting illness, recalcitrant nausea and vomiting” after “Cancer”;⁵⁰ added “when such diagnosis is severe or end stage” after “Amyotrophic lateral sclerosis,”⁵¹ “Multiple sclerosis,”⁵² “Parkinson’s disease,”⁵³ and “Sickle cell disease”;⁵⁴ added “related to diagnosis of epilepsy or trauma related head injuries” after “Seizure disorders”;⁵⁵ and removed “Fibromyalgia,” previously subsection (a)(3)(G).⁵⁶ In Code section 31-2A-18(c), the Committee changed “or their caregivers” to “and caregivers,” changed “[o]nly patients and caregivers residing in this state shall be eligible for registration under this Code section” to “[o]nly individuals residing in this state for at least one year or a child born in this state less than one year old shall be eligible for registration under this Code section,” and added “[n]othing in this Code section shall apply to any Georgia residents living temporarily in another state for the purpose of securing THC oil for treatment of any condition under this Code section.”⁵⁷

In Code section 31-2A-18(d), the Committee changed the date on which the department shall issue registration cards from “[o]n and after September 1, 2015,” to “as soon as practicable but no later than September 1, 2015.”⁵⁸ The Committee also moved the last two sentences of Code section 31-2A-18(d) into a new section (e) and deleted “patient” before “clinical responses,” “compliance,”

48. *Id.* § 1-2, p. 3–4, ln. 89–97.

49. HB 1 (SCS), § 2-1, p. 4–5, ln. 106, 127, 133, 140, 141, 149, 2015 Ga. Gen. Assem.

50. *Id.* § 2-1, p. 4, ln. 109–10.

51. *Id.* § 2-1, p. 4, ln. 111.

52. *Id.* § 2-1, p. 4, ln. 113.

53. *Id.* § 2-1, p. 4, ln. 116.

54. *Id.* § 2-1, p. 4, ln. 117.

55. HB 1 (SCS), § 2-1, p. 4, ln. 112, 2015 Ga. Gen. Assem.

56. *Compare* HB 1 (HCFSA), § 2-1, p. 3, ln. 75, 2015 Ga. Gen. Assem., *with* HB 1 (SCS), § 2-1, p. 4, ln. 109–17, 2015 Ga. Gen. Assem.

57. *Compare* HB 1 (HCFSA), § 2-1, p. 3, ln. 84–88, 2015 Ga. Gen. Assem., *with* HB 1 (SCS), § 2-1, p. 4–5, ln. 124–31, 2015 Ga. Gen. Assem.

58. *Compare* HB 1 (HCFSA), § 2-1, p. 3, ln. 89–90, 2015 Ga. Gen. Assem., *with* HB 1 (SCS), § 2-1, p. 5, ln. 132–33, 2015 Ga. Gen. Assem.

“responses to treatment,” and “side effects” therein.⁵⁹ The Committee added “and prosecuting attorneys” after “[t]o peace officers” in Code section 31-2A-18(f)(2).⁶⁰ Finally, the Committee inserted subsection (g), which instructs the board to develop a waiver form regarding the unknown clinical benefits and potential harmfulness of cannabinoids and THC containing products.⁶¹

In Part III, the Committee changed the number of members on the Georgia Commission on Medical Cannabis from sixteen to seventeen.⁶² The Committee added the Commissioner of public health and the Chairperson of the Georgia Composite Medical Board to the permanent members of the Commission,⁶³ and the Committee removed a “board certified epitologist” from the list of remaining members.⁶⁴ Further, the Committee changed “board certified oncologist” to “board certified hematologist-oncologist.”⁶⁵ In Code section 31-50-3(f), the Committee changed the entity to which the Commission “shall be attached for administrative purposes only” from the Governor’s Office for Children and Families to the Department of Public Health.⁶⁶ In Code section 31-50-4, the Committee added the House Committee on Health and Human Services and the Senate Health and Human Services Committee to the list of groups to which the Commission must submit their report no later than December 31, 2015.⁶⁷

The Committee inserted a new Part IV between Parts III and IV, changing the previous Part IV.⁶⁸ Part IV created the new Chapter 51 of Title 31 containing Code sections 31-51-1, -2, -3, -4, -5, -6, -7, -8,

59. Compare HB 1 (HCFSA), § 2-1, p. 4, ln. 98–102, 2015 Ga. Gen. Assem., with HB 1 (SCS), § 2-1, p. 5, ln. 142–45, 2015 Ga. Gen. Assem.

60. HB 1 (SCS), § 2-1, p. 5, ln. 151, 2015 Ga. Gen. Assem.

61. *Id.* § 2-1, p. 5, ln. 156–59.

62. Compare HB 1 (HCFSA), § 3-1, p. 4, ln. 122, 2015 Ga. Gen. Assem., with HB 1 (SCS), § 3-1, p. 6, ln. 169, 2015 Ga. Gen. Assem.

63. Compare HB 1 (HCFSA), § 3-1, p. 4, ln. 122–24, 2015 Ga. Gen. Assem., with HB 1 (SCS), § 3-1, p. 6, ln. 169–73, 2015 Ga. Gen. Assem.

64. Compare HB 1 (HCFSA), § 3-1, p. 5, ln. 132, 2015 Ga. Gen. Assem., with HB 1 (SCS), § 3-1, p. 6, ln. 179–80, 2015 Ga. Gen. Assem.

65. Compare HB 1 (HCFSA), § 3-1, p. 5, ln. 131, 2015 Ga. Gen. Assem., with HB 1 (SCS), § 3-1, p. 6, ln. 179, 2015 Ga. Gen. Assem.

66. Compare HB 1 (HCFSA), § 3-1, p. 5, ln. 153–56, 2015 Ga. Gen. Assem., with HB 1 (SCS), § 3-1, p. 7, ln. 201–04, 2015 Ga. Gen. Assem.

67. HB 1 (SCS), § 3-1, p. 8, ln. 235–36, 2015 Ga. Gen. Assem.

68. *Id.* § 4-1, p. 8–11, ln. 255–338.

-9, and -10.⁶⁹ This section mirrors the substantive portion of SB 185, which creates a THC oil research program under the Georgia University System, and effectively merges the two bills.⁷⁰ SB 185 created this program under a new Chapter 50 of Title 31, however, the Committee created the program under a new Chapter 51, since HB 1 creates the Georgia Commission on Medical Cannabis in the new Chapter 50.⁷¹

Members of the Committee proposed four amendments that did not pass: (1) an amendment to change the amount of tetrahydrocannabinol within the low THC oil definition from 5% to 0.3% in Code section 16-12-190,⁷² (2) an amendment to strike the sentence regarding only one-year residents of Georgia being eligible for low THC oil in Code section 31-2A-18,⁷³ (3) an amendment to add fibromyalgia back to the list of conditions in Section 31-2A-18,⁷⁴ and (4) an amendment to delete a number of the conditions in Section 31-2A-18.⁷⁵

The Senate Health and Human Services Committee favorably reported the bill by substitute on March 20, 2015.⁷⁶ The Senate read the bill for the second time on March 23, 2015, and for the third time on March 24, 2015.⁷⁷

The Senate proposed six floor amendments to the bill, one of which was adopted. Senator Lindsey Tippins (R-37th) alone proposed three of the floor amendments, none of which were adopted. The first proposed additions to the ends of Parts I (Code sections 16-12-190 and -91), II (Code section 31-2A-18), and V (Code section 51-1-29.6) stating, “any other provision of this Code section to the contrary notwithstanding, nothing in this article shall

69. *Id.*

70. *Compare* SB 185 (SCS), as passed Senate, § 1-2, p. 1–4, ln. 12–102, 2015 Ga. Gen. Assem., with HB 1 (SCS), § 4-1, p. 8–11, ln. 255–338, 2015 Ga. Gen. Assem.

71. SB 185 (SCS), as passed Senate, § 1-2, p. 1–4, ln. 12–102, 2015 Ga. Gen. Assem; HB 1 (SCS), § 4-1, p. 8–11, ln. 255–338, 2015 Ga. Gen. Assem.

72. Audio Recording of Senate Health and Human Services Committee, Mar. 19, 2015 at 3 hr., 13 min., 55 sec. (remarks by Sen. Renee Unterman (R-45th)) (on file with the Georgia State University Law Review) [hereinafter Senate Recording].

73. *Id.* at 3 hr., 31 min., 43 sec. (remarks by Sen. Ben Watson (R-1st)).

74. *Id.* at 3 hr., 26 min., 30 sec. (remarks by Sen. Renee Unterman (R-45th)).

75. *Id.* at 3 hr., 30 min., 20 sec. (remarks by Sen. Ben Watson (R-1st)).

76. State of Georgia Final Composite Status Sheet, HB 1, May 14, 2015.

77. *Id.*

authorize any conduct which is prohibited by federal law.”⁷⁸ Senator Tippins’s second amendment proposed an addition of “and has been manufactured and produced under the approval of the federal Food and Drug Administration and certified for purity and content” to Code section 16-12-190’s definition of low THC oil, and it proposed a change in Code section 31-51-1(a) from low THC oil having “the same meaning as set forth in Code Section 16-12-190” to the verbatim text of Code section 16-12-190.⁷⁹ Senator Tippins’s third amendment proposed a change in Code section 31-51-1(a) from low THC oil having “the same meaning as set forth in Code Section 16-12-190” to the verbatim text of Code section 16-12-190 and also proposed a revision to Part VI to keep the effective date “upon approval by the Governor or upon its becoming law without such approval[,]” but specifying Sections 1-2, 2-1, and 5-1 as effective “only upon the effective date of enacted federal law authorizing the possession, dispensation, and administration of low THC oil”⁸⁰ These three amendments did not pass.⁸¹ The third amendment lost by a vote of 47 to 7.⁸²

Additionally, Senators Tippins, Chuck Hufstetler (R-52nd), Majority Caucus Chair William Ligon (R-3rd), Senator Tommie Williams (R-19th), Majority Leader Bill Cowsert (R-46th), and others proposed a fourth amendment, changing the percent by weight of tetrahydrocannabinol in the definition of low THC oil from 5% to 0.3%.⁸³ This amendment did not pass.⁸⁴ Senator Joshua McKoon (R-29th) proposed a fifth floor amendment, which added “(I) Autism” as

78. Failed Senate Floor Amendment to HB 1 (1 AM 25 1345), introduced by Sen. Lindsey Tippins (R-37th), Mar. 24, 2015.

79. Failed Senate Floor Amendment to HB 1 (2 AM 25 1346), introduced by Sen. Lindsey Tippins (R-37th).

80. Failed Senate Floor Amendment to HB 1 (6 AM 25 1347), introduced by Sen. Lindsey Tippins (R-37th), Mar. 24, 2015.

81. Failed Senate Floor Amendment to HB 1 (1 AM 25 1345), introduced by Sen. Lindsey Tippins (R-37th), Mar. 24, 2015; Failed Senate Floor Amendment to HB 1 (2 AM 25 1346), introduced by Sen. Lindsey Tippins (R-37th), Mar. 24, 2015; Failed Senate Floor Amendment to HB 1 (6 AM 25 1347), introduced by Sen. Lindsey Tippins (R-37th), Mar. 24, 2015.

82. Georgia Senate Voting Record, HB 1, Vote #190 (Mar. 24, 2015).

83. Failed Senate Floor Amendment to HB 1 (3), introduced by Sen. Chuck Hufstetler (R-52nd), Mar. 24, 2015.

84. *Id.*

a ninth condition to Code section 31-2A-18.⁸⁵ This amendment failed by a vote of 44 to 11.⁸⁶

One Senate floor amendment, however, passed. Senators Renee Unterman (R-45th), Charlie Bethel (R-54th), Dean Burke (R-11th), and Cowsert proposed an amendment that added section (f) to the end of Code section 16-12-191, clarifying that nothing in the article requires an employer to permit or accommodate on-duty or off-duty use, consumption, possession, of marijuana in any form, as well as other marijuana activities, and protecting employers’ ability to have a zero-tolerance policy for such actions.⁸⁷

The Senate passed HB 1 on March 24, 2015, by a vote of 48 to 6.⁸⁸ The Senate transmitted the bill to the House on March 24, 2015.⁸⁹ The House agreed to the Senate’s substitute version of the bill, as amended, on March 25, 2015, by a vote of 160 to 1.⁹⁰ The House sent the bill to Governor Nathan Deal (R) on April 6, 2015; the Governor signed the bill into law on April 16, 2015, and the bill became effective upon the Governor’s signature.⁹¹

The Act

Part I, Section 1-1 of the Act names the Act “Haleigh’s Hope Act.”⁹² “Haleigh’s Hope Act” refers to 5-year-old Georgian Haleigh Cox, who suffers from severe epilepsy-induced seizures and relocated to Colorado with her mother after HB 885 failed to pass in 2014.⁹³

85. Failed Senate Floor Amendment to HB 1 (5 AM 37 0277), introduced by Sen. Joshua McKoon (R-29th), Mar. 24, 2015.

86. Georgia Senate Voting Record, HB 1, Vote #189 (Mar. 24, 2015).

87. HB 1 (SCSFA), § 1-2, p. 4, ln. 98–102, 2015 Ga. Gen. Assem.

88. Georgia Senate Voting Record, HB 1, Vote #191 (Mar. 24, 2015).

89. State of Georgia Final Composite Status Sheet, HB 1, May 14, 2015.

90. Georgia House of Representatives Voting Record, HB 1 (Mar. 25, 2015).

91. State of Georgia Final Composite Status Sheet, HB 1, May 14, 2015.

92. 2015 Ga. Laws 49, § 1-1, at 50.

93. Richards, *supra* note 14.

Decriminalizing Possession of THC Oil

Part I, Section 1-2 creates Code sections 16-12-190 and 16-12-191 by adding the new Article 8 to Chapter 12 of Title 16.⁹⁴ This addition defines “low THC oil”⁹⁵ and outlines the lawfulness of possession of low THC oil.⁹⁶

Code section 16-12-190 defines low THC oil as “an oil that contains not more than 5 percent by weight of tetrahydrocannabinol and an amount of cannabidiol equal to or greater than the amount of tetrahydrocannabinol.”⁹⁷ The Act sets this 5% ceiling in order to provide flexibility for diagnosing doctors and for patients who may benefit from or require higher levels of THC.⁹⁸

Code section 16-12-191 permits legal possession of twenty fluid ounces or less of low THC oil if (1) the person in possession is registered with the Department of Public Health per Code section 31-2A-18,⁹⁹ (2) the person in possession has on his or her person a Department of Public Health registration card,¹⁰⁰ and (3) the low THC oil is in a manufacturer-labeled pharmaceutical container indicating the substance’s tetrahydrocannabinol percentage.¹⁰¹ Further, possession of twenty fluid ounces or less is lawful if the possessor is involved in a clinical research program under Chapter 51 of Title 31 of the Official Code of Georgia, as a participant,¹⁰² a participant’s guardian,¹⁰³ an employee,¹⁰⁴ a program agent,¹⁰⁵ or a number of other enumerated positions involved directly with such clinical research programs.¹⁰⁶ Possession of twenty fluid ounces or

94. 2015 Ga. Laws 49, § 1-2, at 50–52.

95. O.C.G.A. § 16-12-190 (Supp. 2015).

96. O.C.G.A. § 16-12-191 (Supp. 2015).

97. O.C.G.A. § 16-12-190 (Supp. 2015).

98. See Senate Recording, *supra* note 72, at 11 min., 23 sec. (remarks by Rep. Allen Peake (R-141st)).

99. O.C.G.A. § 16-12-191(a)(1)(A) (Supp. 2015).

100. O.C.G.A. § 16-12-191(a)(1)(B) (Supp. 2015).

101. O.C.G.A. § 16-12-191(a)(1)(C) (Supp. 2015).

102. O.C.G.A. § 16-12-191(b)(1)(A)(i) (Supp. 2015).

103. O.C.G.A. § 16-12-191(b)(1)(A)(ii) (Supp. 2015).

104. O.C.G.A. § 16-12-191(b)(1)(A)(iii) (Supp. 2015).

105. O.C.G.A. § 16-12-191(b)(1)(A)(iv) (Supp. 2015).

106. O.C.G.A. § 16-12-191(b)(1)(A) (Supp. 2015).

less without complying with these provisions is a misdemeanor offense.¹⁰⁷

Possession of more than twenty fluid ounces but less than 160 fluid ounces of low THC oil is a felony offense, punishable by one- to ten-year imprisonment, a fine up to \$50,000, or both.¹⁰⁸ Possession of more than 160 fluid ounces is a felony offense of trafficking low THC oil, punishable according to one of three tiers depending on the amount of low THC oil in possession.¹⁰⁹ These potential felony charges do not apply to those involved in a Chapter 51 clinical research program.¹¹⁰

Subsections 16-12-191(a)(1), (a)(2), (b)(1), (b)(2), (c), and (d) begin with “[n]otwithstanding any provision of Chapter 13 of this title.”¹¹¹ Thus, this Code section exists despite Chapter 13’s ban on controlled substances, which includes marijuana.¹¹² Further, Article 5 of Chapter 13 of Title 16 of the Official Code of Georgia outlines sanctions against licensed persons for offenses involving controlled substances or marijuana.¹¹³ Notably, this Code section also conflicts with federal laws outlawing marijuana possession and distribution.¹¹⁴

Code section 16-12-191 concludes by specifying that it does not require any employer to permit the “use, consumption, possession, transfer, display, transportation, sale, or growing” of any form of marijuana and allows employers to have a zero-tolerance policy for such actions.¹¹⁵

107. O.C.G.A. § 16-12-191(a)(2), (b)(2) (Supp. 2015).

108. O.C.G.A. § 16-12-191(c) (Supp. 2015).

109. O.C.G.A. § 16-12-191(d) (Supp. 2015). If the amount in possession is between 160 and 31,000 fluid ounces, possession is punishable by five to ten years imprisonment, a fine under \$100,000, or both. O.C.G.A. § 16-12-191(d)(1) (Supp. 2015). If the amount is between 31,000 and 154,000 fluid ounces, seven to fifteen years and a fine no more than \$250,000. O.C.G.A. § 16-12-191(d)(2) (Supp. 2015). If then amount is 154,000 fluid ounces or more, ten to twenty years and a fine no more than \$1,000,000. O.C.G.A. § 16-12-191(d)(3) (Supp. 2015).

110. O.C.G.A. § 16-12-191(e) (Supp. 2015).

111. O.C.G.A. § 16-12-191 (Supp. 2015).

112. O.C.G.A. § 16-13-30 (2011 & Supp. 2015).

113. O.C.G.A. §§ 16-13-110, -111, -112, -113 (2011).

114. *See, e.g.*, 21 U.S.C. § 841 (2012).

115. O.C.G.A. § 16-12-191(f) (Supp. 2015).

The Department of Public Health's Low THC Oil Patient Registry

Part II, Section 2-1 of the Act adds Code section 31-2A-18 to Chapter 2A of Title 31.¹¹⁶ Code section 31-2A-18 establishes the Low THC Oil Patient Registry (Registry) within the Department of Public Health (DPH).¹¹⁷ This entity establishes and operates the registration process and the dispensing of registration cards for individuals and caregivers.¹¹⁸ The Registry may register individuals and issue registration cards when an individual's physician certifies to the DPH that the physician diagnosed the individual with a condition and has authorized the individual to use low THC oil as treatment for that condition.¹¹⁹ Code section 31-2A-18(a)(3) defines "condition" to include: cancer,¹²⁰ amyotrophic lateral sclerosis,¹²¹ seizure disorders related to epilepsy or traumatic head injuries,¹²² multiple sclerosis,¹²³ Crohn's disease,¹²⁴ mitochondrial disease,¹²⁵ Parkinson's disease,¹²⁶ and sickle cell disease.¹²⁷ Cancer qualifies "when such diagnosis is end stage or the treatment produces related wasting illness, recalcitrant nausea and vomiting."¹²⁸ Amyotrophic lateral sclerosis, multiple sclerosis, Parkinson's disease, and sickle cell disease must be "severe or end stage."¹²⁹

The Act sets forth eight conditions, ultimately in order to (1) keep the doctor-patient relationship as the Act's central focus, and (2) allow doctors to be the final gatekeepers and decision-makers in patients' potential low THC oil use.¹³⁰ The Act provides certain conditions, particularly related to cancer, to ensure that low THC oil is helping treat severe pain, vomiting, or nausea, rather than THC oil

116. 2015 Ga. Laws 49, § 2-1, at 52–54.

117. O.C.G.A. § 31-2A-18(b) (Supp. 2015).

118. O.C.G.A. § 31-2A-18(c) (Supp. 2015).

119. O.C.G.A. § 31-2A-18(d) (Supp. 2015).

120. O.C.G.A. § 31-2A-18(a)(3)(A) (Supp. 2015).

121. O.C.G.A. § 31-2A-18(a)(3)(B) (Supp. 2015).

122. O.C.G.A. § 31-2A-18(a)(3)(C) (Supp. 2015).

123. O.C.G.A. § 31-2A-18(a)(3)(D) (Supp. 2015).

124. O.C.G.A. § 31-2A-18(a)(3)(E) (Supp. 2015).

125. O.C.G.A. § 31-2A-18(a)(3)(F) (Supp. 2015).

126. O.C.G.A. § 31-2A-18(a)(3)(G) (Supp. 2015).

127. O.C.G.A. § 31-2A-18(a)(3)(H) (Supp. 2015).

128. O.C.G.A. § 31-2A-18(a)(3)(A) (Supp. 2015).

129. O.C.G.A. § 31-2A-18(a)(3) (Supp. 2015).

130. See Senate Recording, *supra* note 72, at 11 min., 0 sec. (remarks by Rep. Allen Peake (R-141st)).

being available to any level of cancer patient.¹³¹ These conditions are meant to be objectively diagnosable conditions, thus lowering the chances of potential abuse or deception in low THC oil use.¹³²

Physicians must prepare quarterly reports for the Georgia Composite Medical Board including—but not limited to—recommended dosages for particular conditions, clinical responses, side effects, and drug interactions.¹³³ The DPH’s records are confidential, except (1) upon written request of a registered individual or caregiver or (2) for peace officers and prosecutors determining and verifying registration.¹³⁴ The DPH is also to develop a waiver form, which a patient or caregiver must sign prior to registration, informing patients and caregivers of low THC oil’s unknown clinical benefits and lack of FDA approval.¹³⁵

The Georgia Commission on Medical Cannabis

Part III, Section 3-1 of the Act adds Chapter 50 to Title 31.¹³⁶ Chapter 50 includes Code sections 31-50-1, -2, -3, -4, and -5¹³⁷ and creates the Georgia Commission on Medical Cannabis.¹³⁸ This Commission is integral to the Act, as the Commission recommends the best form of in-state delivery for low THC oil, without which patients would still face obstacles in actually acquiring low THC oil in Georgia.¹³⁹

The Commission includes six permanent members: “[t]he Commissioner of public health, the Director of the Georgia Bureau of Investigation, the Director of the Georgia Drugs and Narcotics Agency, the Commissioner of agriculture, the Chairperson of the Georgia Composite Medical Board, and the Governor’s executive counsel”¹⁴⁰ The remaining eleven members, appointed by the

131. *Id.* at 11 min., 42 sec.

132. *Id.* at 3 hr., 28 min., 0 sec. (remarks by Sen. Ben Watson (R-1st)). The Act does not include fibromyalgia because of its more difficult, subjective diagnosis. *Id.*

133. O.C.G.A. § 31-2A-18(e) (Supp. 2015).

134. O.C.G.A. § 31-2A-18(f) (Supp. 2015).

135. O.C.G.A. § 31-2A-18(g) (Supp. 2015).

136. 2015 Ga. Laws 49, § 3-1, at 54.

137. 2015 Ga. Laws 49, § 3-1, at 54–56.

138. O.C.G.A. § 31-50-1(a) (Supp. 2015).

139. See Senate Recording, *supra* note 72, at 12 min., 2 sec. (remarks by Rep. Allen Peake (R-141st)).

140. O.C.G.A. § 31-50-2(a) (Supp. 2015).

Governor, are: two members of the Senate,¹⁴¹ two members of the House of Representatives,¹⁴² a hematologist-oncologist,¹⁴³ a neurologist,¹⁴⁴ a gastroenterologist,¹⁴⁵ a pharmacist,¹⁴⁶ a prosecuting attorney,¹⁴⁷ a sheriff,¹⁴⁸ and a police chief.¹⁴⁹ These memberships do not constitute public office.¹⁵⁰ “The Commission [is] attached for administrative purposes only to the Department of Public Health”¹⁵¹

The Commission’s duties include the following: (1) establishing comprehensive recommendations regarding potential regulation of medical cannabis in Georgia by submitting a detailed report no later than December 31, 2015, “including a review of the conditions, needs, issues, and problems related to medical cannabis and any recommended action or proposed legislation which the commission deems necessary or appropriate,”¹⁵² and (2) evaluating and considering the best practices, experiences, and results of legislation in other states regarding medical cannabis.¹⁵³ The Commission has certain responsibilities under the Act: (1) evaluating how medical cannabis laws and programs should operate in Georgia,¹⁵⁴ (2) requesting and receiving data from appropriate state agencies as allowed by law,¹⁵⁵ (3) authorizing contractual agreements necessary to performance of the Commission’s duties,¹⁵⁶ (4) establishing the Commission’s business operations’ rules and procedures,¹⁵⁷ and (5)

141. O.C.G.A. § 31-50-2(a)(1) (Supp. 2015).

142. O.C.G.A. § 31-50-2(a)(2) (Supp. 2015).

143. O.C.G.A. § 31-50-2(a)(3) (Supp. 2015).

144. O.C.G.A. § 31-50-2(a)(4) (Supp. 2015).

145. O.C.G.A. § 31-50-2(a)(5) (Supp. 2015).

146. O.C.G.A. § 31-50-2(a)(6) (Supp. 2015).

147. O.C.G.A. § 31-50-2(a)(7) (Supp. 2015).

148. O.C.G.A. § 31-50-2(a)(8) (Supp. 2015).

149. O.C.G.A. § 31-50-2(a)(9) (Supp. 2015).

150. O.C.G.A. § 31-50-2(c) (Supp. 2015).

151. O.C.G.A. § 31-50-2(f) (Supp. 2015).

152. O.C.G.A. § 31-50-4(a)(1) (Supp. 2015). The Commission must submit this report to the Governor’s executive counsel; the Office of Planning and Budget; the Chairpersons of the House Committee on Appropriations; the Senate Appropriations Committee; the House Committee on Judiciary, Non-civil; the Senate Judiciary, Non-civil Committee; the House Committee on Health and Human Services; and the Senate Health and Human Services Committee. *Id.*

153. O.C.G.A. § 31-50-4(a)(2) (Supp. 2015).

154. O.C.G.A. § 31-50-4(b)(1) (Supp. 2015).

155. O.C.G.A. § 31-50-4(b)(2) (Supp. 2015).

156. O.C.G.A. § 31-50-4(b)(3) (Supp. 2015).

157. O.C.G.A. § 31-50-4(b)(4) (Supp. 2015).

any other actions the Commission deems necessary to fulfill its responsibilities.¹⁵⁸

The Commission may retain attorneys, consultants, experts, and other individuals or organizations as the Commission deems appropriate.¹⁵⁹ Finally, Code section 31-50-5 repeals Chapter 50 on June 30, 2016.¹⁶⁰

Low THC Oil Research Program

Part IV, Section 4-1 of the Act adds Chapter 51 to Title 31.¹⁶¹ Chapter 51 includes Code sections 31-51-1, -2, -3, -4, -5, -6, -7, -8, -9, and -10¹⁶² and allows the Board of Regents of the University System of Georgia to create a low THC oil research program.¹⁶³

The Board of Regents may “cause to be designed, developed, implemented, and administered a low THC oil research program to develop rigorous data that will inform and expand the scientific community’s understanding of potential treatments for individuals under eighteen years of age with medication-resistant epilepsies.”¹⁶⁴ This program must adhere to federal laws and regulations for the development of new medications containing controlled substances.¹⁶⁵

This program is designed for voluntary enrollment of individuals under eighteen years of age with medication-resistant epilepsies.¹⁶⁶ These program participants must be Georgia residents (1) for the twenty-four month period immediately preceding their entry into the program,¹⁶⁷ or (2) continuously since birth if under twenty-four months old at the time of entry into the program.¹⁶⁸

Any nonprofit research institute that the Board of Regents approves to participate in the research program must have the necessary “experience, expertise, industry standards and security

158. O.C.G.A. § 31-50-4(b)(5) (Supp. 2015).

159. O.C.G.A. § 31-50-4(c) (Supp. 2015).

160. O.C.G.A. § 31-50-5 (Supp. 2015).

161. 2015 Ga. Laws 49, § 4-1, at 56.

162. 2015 Ga. Laws 49, § 4-1, at 56–59.

163. O.C.G.A. § 31-51-1(b) (Supp. 2015).

164. *Id.*

165. O.C.G.A. § 31-51-1(c) (Supp. 2015).

166. O.C.G.A. § 31-51-2 (Supp. 2015).

167. O.C.G.A. § 31-51-2(1) (Supp. 2015).

168. O.C.G.A. § 31-51-2(2) (Supp. 2015).

procedures, and infrastructure” to implement such research.¹⁶⁹ The Board of Regents designates an FDA-approved supplier of low THC oil for the research program; this supplier is required to supply low THC oil that is standardized and tested to those standards.¹⁷⁰ The Board of Regents may commit personnel and resources to such collaborations with low THC oil suppliers as agreed upon.¹⁷¹

Code section 31-51-7 provides that program participants, their guardians, physicians, researchers, personnel, and others involved in such research programs are immune from state prosecution for low THC oil possession.¹⁷² The Board of Regents or its program administrators shall provide permits for these immune persons to carry.¹⁷³ This immunity was included to provide a workable system in which the Act’s permissible low THC oil can coexist with enforcement of marijuana prohibitions.¹⁷⁴

Public records produced pursuant to Chapter 51 are exempt from disclosure to the extent provided by Code section 50-18-72.¹⁷⁵ All activities under Chapter 51 are pursuant to the availability of funds appropriated to the Board of Regents or the state’s academic or research institutions.¹⁷⁶ “The [B]oard of [R]egents may establish fees for program participants,” but only for “amounts as are reasonable to offset program costs.”¹⁷⁷ The Board of Regents is permitted to promulgate rules and regulations necessary to further the purposes of Chapter 51 of Title 31.¹⁷⁸ Finally, Code section 31-51-10 repeals Chapter 51 on July 1, 2020.¹⁷⁹

169. O.C.G.A. § 31-51-3(b) (Supp. 2015).

170. O.C.G.A. § 31-51-4(a) (Supp. 2015).

171. O.C.G.A. § 31-51-4(b) (Supp. 2015).

172. O.C.G.A. § 31-51-7(a) (Supp. 2015).

173. O.C.G.A. § 31-51-7(b) (Supp. 2015).

174. *See* Senate Recording, *supra* note 72, at 9 min., 46 sec. (remarks by Rep. Allen Peake (R-141st)).

175. O.C.G.A. § 31-51-5 (Supp. 2015).

176. O.C.G.A. § 31-51-6 (Supp. 2015).

177. O.C.G.A. § 31-51-8 (Supp. 2015).

178. O.C.G.A. § 31-51-9 (Supp. 2015).

179. O.C.G.A. § 31-51-10 (Supp. 2015).

Tort Immunity

Part V, Section 5-1 of the Act adds Code section 51-1-29.6 to Title 51.¹⁸⁰ Title 51 of the Georgia Code pertains to torts, and Chapter 1 includes the general provisions.¹⁸¹ Code section 51-1-29.6 immunizes a healthcare institution or provider from civil liability, professional penalties, or other detrimental action for allowing an individual or caregiver to possess, administer, or use low THC oil on that institution’s premises or in that provider’s offices.¹⁸²

*Analysis**Intended Consequences and Public Policy*

Lawmakers had two main objectives behind HB 1.¹⁸³ First, they sought to make medical cannabis available to certain registered patients with specific health conditions so that the families who relocated to other states to obtain medical cannabis oil for their children could return home.¹⁸⁴ Second, lawmakers sought to create a comprehensive regulatory structure to provide a safe, timely, and secure way for medical cannabis to be administered in Georgia with strict State oversight.¹⁸⁵

Prior to the 2015 legislative session, Representative Allen Peake (R-141st) spoke about the bill and its intended consequences in Georgia, calling attention to Georgia’s young people, some of whom have tragically passed away from disorders that might have been helped by medical marijuana.¹⁸⁶ In addition to helping such

180. 2015 Ga. Laws 49, § 5-1, at 59.

181. *Id.*

182. O.C.G.A. § 51-1-29.6 (Supp. 2015).

183. Tom Sabulis, *Medical Marijuana Lives*, AJC.COM (Jan. 22, 2015), <http://atlantaforward.blog.ajc.com/2015/01/22/medical-marijuana-lives/>.

184. When Georgia failed to pass the medical marijuana bill during the 2014 legislative session, families had to make the difficult decision to split up to move to a state where medical marijuana was legal. *Competing Marijuana Legalization Bills Show Georgia is in Play*, PEACHTREE NORML (Nov. 25, 2015), <http://www.peachtreenorml.org/news/georgia-marijuana-legalization-2015> [hereinafter *Competing Marijuana Legalization*]; Sabulis, *supra* note 183.

185. *Competing Marijuana Legalization*, *supra* note 184; Sabulis, *supra* note 183.

186. Maggie Lee, *Peake Bill on Medical Cannabis is First in the Hopper*, MACON TEL. (Nov. 17, 2014), <http://www.macon.com/news/local/politics-government/article30155097.html> [hereinafter Lee, *First in the Hopper*] (“‘We cannot move fast enough’ on the bill ‘in honor and memory of Abe

individuals, Representative Peake envisioned that the legal amounts of THC approved under the Act would not be sufficient to cause someone to fail a drug test and would protect employees from their employers' drug-free workplace policies.¹⁸⁷

Under federal law, marijuana remains illegal as a Schedule I substance under the Controlled Substances Act, where such substances are considered to have a high potential for dependency and no medical use.¹⁸⁸ As such, certain facilities, including nursing homes and hospitals, have been cautious and reluctant to allow a federally banned substance on the premises.¹⁸⁹ However, in October of 2009, the Obama Administration sent a memorandum to federal prosecutors to encourage them not to prosecute those distributing medical marijuana under state law.¹⁹⁰ Representative Peake's aim in drafting the legislation was to specifically address this issue for Georgia patients suffering from certain medical conditions and provide protections in such environments.¹⁹¹

Unresolved Issues by the Act

Critics of the Act claim that it will take another year before Georgians suffering from maladies can obtain medical marijuana.¹⁹² These complaints stem from Governor Nathan Deal's (R) decision prior to the 2015 legislative session to send a portion of the medical marijuana bill back to a study group to determine how to cultivate the plant in Georgia for its cannabis oil.¹⁹³ As a result, Georgia did not legalize or regulate the in-state production, manufacturing, or sale of cannabis oil.¹⁹⁴ Instead, the Act's protections extend only to qualified patients who possess a certain amount of the oil.¹⁹⁵ There is no

(Hopkins), Trinity (Sumlin) and Mary Elizabeth (Hopkins),' [Sen. Peake] said.'").

187. *Id.*

188. 21 U.S.C. § 812 (2012); *State Medical Marijuana Laws*, NAT'L CONFERENCE OF STATE LEGISLATURES (Sept. 14, 2015), <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>.

189. Lee, *First in the Hopper*, *supra* note 186.

190. NAT'L CONFERENCE OF STATE LEGISLATURES, *supra* note 188.

191. Lee, *First in the Hopper*, *supra* note 186.

192. See Sabulis, *supra* note 183.

193. *Id.*

194. Matt Pearl, *Georgia Governor OKs Legalization of Cannabis Oil*, USA TODAY (Apr. 17, 2015), <http://www.usatoday.com/story/news/politics/2015/04/17/georgia-cannabis-oil/25923559/>.

195. *Id.*

provision addressing how a patient in Georgia would ultimately obtain the cannabis oil.¹⁹⁶

In addition, patients who need medical cannabis would have to break federal law or other state laws to ship, drive, or fly it to Georgia.¹⁹⁷ As one commentator noted, “decriminalizing possession of this oil unfortunately won’t bring most families like ours home.”¹⁹⁸ These families are still not immune from prosecution if they decide to carry the cannabis oil across state lines and are stopped in a state that does not have a medical marijuana bill.¹⁹⁹ It is still dangerous for these families to cross state lines, risking federal prosecution, to retrieve cannabis oil.²⁰⁰

HB 1 Compared to Other States

When Governor Deal signed HB 1 into law, Georgia became the thirty-sixth state, plus Washington, D.C., to legalize marijuana extracts for the purpose of treating certain illnesses.²⁰¹ These state laws vary in their restrictions and implementations, with many states experiencing internal debates about the safety and legality of their medical marijuana laws.²⁰² Some local governments are creating zoning ordinances to prevent marijuana dispensaries from opening in their communities.²⁰³ In addition, in some states, marijuana regulations for medical use may also exist at the county and city level.²⁰⁴

In 1996, California became the first state to legalize medical marijuana when it passed Proposition 215, also known as the Compassionate Use Act.²⁰⁵ “In response to California’s [Proposition]

196. See Sabulis, *supra* note 183.

197. *Gonzales v. Raich*, 545 U.S. 1, 27–28 (2005) (holding it is illegal to use, sell, or possess marijuana, even for medical purposes).

198. Sabulis, *supra* note 183.

199. *Id.*

200. *Id.*

201. Bill Hendrick, *Georgia Governor Signs Medical Marijuana Bill*, INS. J. (Apr. 20, 2015), <http://www.insurancejournal.com/news/southeast/2015/04/20/364965.htm>.

202. OFFICE OF NAT’L DRUG CONTROL POLICY, MARIJUANA RESOURCE CENTER: STATE LAWS RELATED TO MARIJUANA, *available at* <https://www.whitehouse.gov/ondcp/state-laws-related-to-marijuana> (last visited Oct. 14, 2015).

203. *Id.*

204. *Id.*

205. CAL. HEALTH & SAFETY CODE § 11362.5 (West, Westlaw through 2015).

215, the Institute of Medicine issued a report . . . examin[ing] potential therapeutic uses for marijuana.”²⁰⁶ The report concluded that scientific data had shown potential therapeutic uses for cannabinoid drugs for pain relief, control of nausea and vomiting, and appetite stimulation.²⁰⁷ Other “studies have found that marijuana is effective in relieving some of the symptoms of HIV/AIDS, cancer, glaucoma, and multiple sclerosis.”²⁰⁸

California’s Proposition 215 is more expansive than Georgia’s medical marijuana law, allowing for the possession and cultivation of marijuana for medical purposes.²⁰⁹ Other states, however, have laws that are more restrictive than Georgia’s.²¹⁰ For example, in Alabama, essentially all forms of marijuana possession, sale, or trafficking are illegal.²¹¹ Under Alabama’s medical cannabidiol (CBD) law, only patients with debilitating medical conditions can use cannabis extracts that are high in CBD and low in THC.²¹² During the 2015 legislative session, the Alabama legislature moved forward with a more comprehensive medical marijuana bill, Senate Bill 326 or the Medical Marijuana Patient Safe Access Act, but it eventually failed.²¹³

Marijuana Bill Creates Banking Issues

“Some people like to argue that legalizing [marijuana] will be a magic wand to wipe away marijuana-related crime, but that is not likely to be the case.”²¹⁴ One reason for this limitation is that

206. NAT’L CONFERENCE OF STATE LEGISLATURES, *supra* note 188.

207. *Id.*

208. *Id.*

209. CAL. HEALTH & SAFETY CODE § 11362.5 (West, Westlaw through 2015).

210. NAT’L CONFERENCE OF STATE LEGISLATURES, *supra* note 188.

211. ALA. CODE §§ 13A-12-211 to -14, -231 (West, Westlaw through 2015); *Alabama Marijuana Laws*, FINDLAW, <http://statelaws.findlaw.com/alabama-law/alabama-marijuana-laws.html> (last visited Oct. 14, 2015).

212. ALA. CODE § 13A-12-214.2 (West, Westlaw through 2015).

213. Philip Ross, *Marijuana Legalization Alabama 2015: Senate to Consider First Medical Marijuana Bill After Committee Approval*, INT’L BUS. TIMES (Apr. 23, 2015), <http://www.ibtimes.com/marijuana-legalization-alabama-2015-senate-consider-first-medical-marijuana-bill-1893870>; see *Alabama Senate Bill 326: 2015 Regular Session*, LEGISCAN, <https://legiscan.com/AL/bill/SB326/2015> (last visited Oct. 14, 2015).

214. Dayna J. Sondervan, *Could Marijuana Be a New Cash Crop?*, GROWING GEORGIA (Mar. 26, 2014), <http://growinggeorgia.com/features/2014/03/could-marijuana-be-new-cash-crop/>.

financial institutions cannot accept proceeds of marijuana because it is still illegal under Federal law.²¹⁵ Some financial institutions fear that they will expose themselves to charges for federal money-laundering if they accept money generated by marijuana sales.²¹⁶ In addition, “traditionally the federal government has made it very difficult for banks, credit card companies, and other financial institutions to work with marijuana-related businesses.”²¹⁷

Therefore, the marijuana producers and dispensaries cannot obtain bank accounts, credit cards, or loans; instead, when they make sales or pay taxes, their transactions are delivered through payments in cash.²¹⁸ This ultimately leaves marijuana dispensaries and those businesses and governmental entities, such as tax commissions, with which they transact business susceptible to crime.²¹⁹ As a result, some states that allow the sale of recreational marijuana have spent hundreds of thousands of dollars to upgrade security in their main tax offices.²²⁰ Thus, while the Act is a step in the right direction, it is only the beginning of the legislature attempting to make medical marijuana truly feasible in Georgia.

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215. Reid Wilson, *Rising Marijuana Sales Leave Pot Shops Flush With Cash They Can’t Deposit*, WASH. POST (Apr. 27, 2015), <https://www.washingtonpost.com/blogs/govbeat/wp/2015/04/27/rising-marijuana-sales-leave-pot-shops-flush-with-cash-they-cant-deposit/> (“Despite assurances from the Treasury Department that they would not be prosecuted, banks have been reluctant to open accounts for weed-related businesses.”).

216. *Id.*

217. *How to Buy Legal Recreational Marijuana*, AIRSAFE.COM, <http://www.airsafe.com/issues/marijuana/buying.htm> (last updated Sept. 1, 2015).

218. *Id.* “[Oregon] has taken note of trends in Washington, where Smith estimated that about a quarter of all marijuana-related businesses are paying their taxes in cash, and Colorado, where a spokeswoman for the state Department of Revenue said cash ‘seems to be the primary method of payment for marijuana businesses.’” Wilson, *supra* note 215.

219. Wilson, *supra* note 215 (“‘There are real public safety concerns any time you have to handle large sums of cash,’ said Brian Smith, a spokesman for Washington State’s Liquor Control Board.”).

220. *Id.*