

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 6049 Medical Marijuana Growers  
**SPONSOR(S):** Jones  
**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 1134

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	15 Y, 0 N	Royal	McElroy
2) Health & Human Services Committee	20 Y, 0 N	Royal	Calamas

### SUMMARY ANALYSIS

On November 8, 2016, Florida voters approved an amendment to the Florida Constitution (Fla. Const. art. X, s. 29) which allows the medical use of marijuana by patients with an enumerated debilitating medical condition. The amendment authorizes entities known as Medical Marijuana Treatment Centers (MMTCs) to be marijuana providers. During the 2017A Special Session, the legislature passed SB8-A which implements Fla. Const. art. X, s. 29.

Current law requires the Department of Health (DOH) to grant MMTC licenses to dispensing organizations licensed by July 3, 2017. Current law also requires DOH to grant ten additional MMTC licenses by October 3, 2017. Among these, one of the licenses must be awarded to an applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and is a Florida member of the Florida Black Farmers and Agriculturalists Association (Recognized Class Member License).

HB 6049 repeals the requirement that a Recognized Class Member License applicant be a member of the Florida Black Farmers and Agriculturalists Association. An applicant must only be a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011) to be eligible for the Recognized Class Member License.

The bill also repeals the requirement that the license be awarded by October 3, 2017.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

##### Compassionate Medical Cannabis Act

The Compassionate Medical Cannabis Act (CMCA) was enacted in 2014.<sup>1</sup> The CMCA legalized a low-THC and high-CBD form of low-THC cannabis<sup>2</sup> for medical use<sup>3</sup> by patients suffering from cancer or a physical medical condition that chronically produces symptoms of seizures or severe and persistent muscle spasms. In 2016, the legislature also amended the Right to Try Act (RTTA) to allow eligible patients with a terminal condition to receive a form of cannabis with no THC limit or CBD mandate referred to as medical cannabis.<sup>4</sup>

Under the CMCA, the Department of Health (DOH) was required to approve by January 1, 2015, five dispensing organizations to cultivate, process, transport, and dispense low-THC cannabis or medical cannabis with one dispensing organization in each of the following regions: northwest Florida, northeast Florida, central Florida, southeast Florida, and southwest Florida.

The CMCA also required DOH to approve three additional dispensing organizations upon the registration of 250,000 active qualified patients in the compassionate use registry.<sup>5</sup> The CMCA required one of these additional dispensing organizations to be owned and operated by a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and be a member of the Black Farmers and Agriculturalists Association.

##### Amendment 2

On November 8, 2016, Florida voters approved Amendment 2, Use of Marijuana for Debilitating Medical Conditions as Art. X, Sec. 29 of the Florida Constitution. The amendment authorizes patients with an enumerated debilitating medical condition to obtain medical marijuana from MMTCs.

The amendment requires DOH to register MMTCs to provide medical marijuana and related supplies to patients or their caregivers. MMTCs may acquire, cultivate, possess process, transfer, transport, sell, distribute, dispense, or administer marijuana and products containing marijuana. MMTCs may also provide related supplies and educational materials.

The amendment requires DOH to establish procedures for the registration of MMTCs that include procedures for the issuance, renewal, suspension and revocation of registration. The amendment also requires DOH to establish regulatory standards for security, record keeping, testing, labeling, inspection, and safety.

The amendment states that the legislature may enact laws consistent with the amendment.

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<sup>1</sup> See ch. 2014-157, L.O.F., ch. 2016-123, L.O.F. and s. 381.986, F.S.

<sup>2</sup> The act defined "low-THC cannabis," as the dried flowers of the plant *Cannabis* which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight, or the seeds, resin, or any compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. See s. 381.986(1)(b), F.S.(2014)

<sup>3</sup> Section 381.986(1)(c), F.S. (2014), defined "medical use" as "administration of the ordered amount of low-THC cannabis. The term does not include the possession, use, or administration by smoking. The term also does not include the transfer of low-THC cannabis to a person other than the qualified patient for whom it was ordered or the qualified patient's legal representative on behalf of the qualified patient." Section 381.986(1)(e), F.S. (2014), defined "smoking" as "burning or igniting a substance and inhaling the smoke. Smoking does not include the use of a vaporizer."

<sup>4</sup> Section 499.0295, F.S. (2016)

<sup>5</sup> Section 381.986(5)(c), F.S. (2016)

## SB 8-A

During the 2017A Special Session, the legislature passed SB8-A which implements Fla. Const. art. X, s. 29 by significantly amending the CMCA.

Current law requires DOH to grant MMTC licenses to dispensing organizations previously licensed under the CMCA by July 3, 2017.<sup>6</sup> Current law also requires DOH to grant ten additional MMTC licenses.<sup>7</sup> Among these, licenses were to be awarded by August 1, 2017, to any dispensing organization applicant denied under the CMCA whose application was scored by DOH and had one or more administrative or legal challenges pending as of January 1, 2017, or had a final ranking within one point of the highest final ranking applicant in its region, and proves to DOH that it has the infrastructure and ability to begin cultivating marijuana within 30 days after registration as a MMTC.<sup>8</sup> The remaining licenses were to be awarded by October 3, 2017, one of which must be awarded to an applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011), and is a Florida member of the Florida Black Farmers and Agriculturalists Association (Recognized Class Member License).<sup>9</sup>

DOH must grant 4 additional MMTC licenses when the patient population reaches 100,000 and 4 additional MMTC licenses for every additional 100,000 patients thereafter.<sup>10</sup>

On September 22, 2017, Columbus Smith (Smith) filed a lawsuit challenging the requirement that a Recognized Class Member License applicant be a member of the Florida Black Farmers and Agriculturalists Association.<sup>11</sup> Smith is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011) but is not a member of the Florida Black Farmers and Agriculturalists Association. Smith sought an injunction to enjoin DOH from awarding a Recognized Class Member License. On January 9, 2018, the injunction was granted. DOH has not granted any of the 10 additional MMTC licenses that it was required to grant by October 3, 2017, due to this lawsuit.

### **Effect of the Bill**

HB 6049 repeals the requirement that a Recognized Class Member License applicant be a member of the Florida Black Farmers and Agriculturalists Association. An applicant must only be a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011) to be eligible for the Recognized Class Member License.

Members of the Florida Black Farmers and Agriculturalists Association can still apply for the remaining MMTC licenses.<sup>12</sup>

The bill also repeals the requirement that the license be awarded by October 3, 2017.

### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 381.986, F.S., relating to Medical Marijuana Treatment Centers.

**Section 2:** Provides an effective date of July 1, 2018.

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<sup>6</sup> Section 381.986(8)(a)1, F.S.

<sup>7</sup> Section 381.986(8)(a)2, F.S.

<sup>8</sup> Section 381.986(8)(a)2.a, F.S.

<sup>9</sup> Section 381.986(8)(a)2.b, F.S.

<sup>10</sup> Section 381.986(8)(a)4, F.S.

<sup>11</sup> *Smith v. Florida Department of Health*, case number 17-CA-1972, in the Circuit Court for the Second Judicial Circuit of Florida.

<sup>12</sup> Florida Black Farmers and Agriculturalists Association members that apply for the remaining MMTC licenses will not be eligible for the exemptions granted to the Recognized Class Member License applicants. Recognized Class Member License applicants are exempt from the requirements to have been a registered Florida business for the previous five years and hold a nurseryman certificate from the Department of Agriculture and Consumer Services. See Section 381.986(8)(a)2.b, F.S.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

Not applicable.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES