By Representatives Ball, Hill (M), Sessions, Martin, Johnson (K), Wood, Brown, McCutcheon, Hubbard, Williams (JD), Sanderford, Todd, Hall, Farley, Daniels, Butler, Fridy, Shedd, Patterson, Whorton (R), Williams (P), Tuggle, Whorton (I), Coleman, Robinson, Rogers, Moore (M), Nordgren, Greer, Garrett, Howard and Scott

RFD: Judiciary

First Read: 02-FEB-16
SYNOPSIS: Under existing law, it is an affirmative defense to a prosecution for the unlawful possession of marijuana if the defendant has a debilitating epileptic condition and he or she, or a parent or caretaker, used or possessed cannabidiol (CBD) pursuant to a prescription by a health care practitioner employed by the Department of Neurology at the University of Alabama at Birmingham (UAB). The availability of the affirmative defense is repealed on July 1, 2019.

This bill would revise the affirmative defense to include a defendant who is prosecuted for unlawful possession of marijuana in the second degree if the defendant used the cannabidiol (CBD) because he or she was diagnosed with a debilitating medical condition, as defined in the bill, by a physician with whom he or she had a bona fide physician-patient relationship and the CBD provides the defendant with therapeutic or palliative relief.
This bill would provide that the affirmative defense is also available to parents or legal guardians possessing CBD for a minor who was prescribed CBD to treat a debilitating medical condition and would eliminate the requirement that CBD be prescribed by health care practitioners employed by UAB.

This bill would also remove the repeal of the affirmative defense on July 1, 2019.

Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to
become effective because it comes within one of the specified exceptions contained in the amendment.

A BILL

TO BE ENTITLED

AN ACT

To amend Section 13A-12-214.2, Code of Alabama 1975, relating to the possession and use of cannabidiol; to further provide for an affirmative defense for the use or possession of cannabidiol for certain debilitating conditions; to eliminate the requirement that cannabidiol be prescribed by a health care practitioner employed by UAB; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act may be cited and shall be known as Leni's Law.

Section 2. Section 13A-12-214.2, Code of Alabama 1975, is amended to read as follows:

"§13A-12-214.2.

"(a) This section shall be known and may be cited as "Carly's Law."

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"(b) As used in this section, the following words shall have the following meanings:

"(1) AUTHORIZED BY THE UAB DEPARTMENT. Authorized by the UAB Department means that Cannabidiol (CBD) has been prescribed by a health care practitioner employed by or on behalf of the UAB Department BONA FIDE PHYSICIAN-PATIENT RELATIONSHIP. A relationship in which a physician has ongoing responsibility for the assessment, care, and treatment of a patient's medical condition.

"(2) DEBILITATING MEDICAL CONDITION. A chronic or debilitating disease or medical condition or the treatment of a chronic or debilitating disease or medical condition that produces one or more of the following, as documented by a physician with whom the patient has a bona fide physician-patient relationship:

"a. Cachexia or wasting syndrome.
"b. Severe or chronic pain.
"c. Severe nausea.
"d. Seizures.
"e. Severe and persistent muscle spasms.
"f. Any other condition that is severe and resistant to conventional medicine.

"(2) CANNABIDIOL (CBD). [13956-29-1]. A (nonpsychoactive) cannabinoid found in the plant Cannabis sativa L. or any other preparation thereof that is essentially free from plant material, and has a THC level of no more than 3 percent. Also known as (synonyms):
2-[(1R,6R)-3-Methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol;
trans-(-)-2-p-mentha-1,8-dien-3-yl-5-pentylresorcinol;
(-)-Cannabidiol; (-)-trans-Cannabidiol; Cannabidiol (7CI);
D1(2)-trans-Cannabidiol.

"(3) DEBILITATING EPILEPTIC CONDITION. Epilepsy or other neurological disorder, or the treatment of epilepsy or other neurological disorder that, as diagnosed by a board certified neurologist under the employment or authority of the UAB Department, produces serious, debilitating, or life threatening seizures.

"(4) UAB DEPARTMENT. The Department of Neurology at the University of Alabama at Birmingham, its successors, or any subdivisions.

"(c) In a prosecution for the unlawful possession of marijuana under the laws of this state in the second degree under Section 13A-12-214, it is an affirmative and complete defense to the prosecution that the defendant has a debilitating epileptic condition and used or possessed cannabidiol (CBD) pursuant to a prescription authorized by the UAB Department because the defendant has a debilitating medical condition that has been diagnosed by a physician with whom the defendant has a bona fide physician-patient relationship and the cannabidiol is likely to provide the defendant with therapeutic or palliative relief from the debilitating medical condition.
(d) In a prosecution for the unlawful possession of marijuana under the laws of this state in the second degree under Section 13A-12-214, it is an affirmative and complete defense to the prosecution that the defendant possessed cannabidiol (CBD) because he or she is the parent or caretaker of an individual who has a debilitating epileptic condition and who has a prescription for the possession and use of cannabidiol (CBD) as authorized by the UAB Department, and where the parent or caretaker's possession of the CBD is on behalf of and otherwise for the prescribed person's use only legal guardian of a minor who was prescribed cannabidiol for therapeutic or palliative relief from a debilitating medical condition by a physician with whom the minor has a bona fide physician-patient relationship.

(e) An agency of this state or a political subdivision thereof, including any law enforcement agency, may not initiate proceedings to remove a child from the home of a parent based solely upon the parent's or child's possession or use of cannabidiol (CBD) as authorized by this section.

(f) A prescription for the possession or use of cannabidiol (CBD) as authorized by this section shall be provided exclusively by the UAB Department for a debilitating epileptic condition. Health care practitioners of the UAB Department shall be the sole authorized source of any prescription for the use of cannabidiol (CBD), and shall be the sole authorized source to use cannabidiol (CBD) in or as a part of the treatment of a person diagnosed with a
debilitating epileptic condition. A health care practitioner of the UAB Department shall have the sole authority to determine the use or amount of cannabidiol (CBD), if any, in the treatment of an individual diagnosed with a debilitating epileptic condition.

"(g) The UAB Department and any UAB School of Medicine affiliated pediatric training entity, including any authorized physician, nurse, attendant, or agent thereof, shall not be subject to prosecution for the unlawful possession, use, distribution, or prescription of marijuana under the laws of this state for its activities arising directly out of or directly related to the prescription or use of cannabidiol (CBD) in the treatment of individuals diagnosed with a debilitating epileptic condition.

"(h) The UAB Department will establish a research and development study purposed to determine medical uses and benefits of cannabidiol (CBD) for individuals with debilitating epileptic conditions.

"(i) The UAB Department and any UAB School of Medicine affiliated pediatric training entity, including any authorized physician, nurse, attendant or agent thereof, shall not be subject to prosecution for the unlawful possession, use, or distribution of marijuana under the laws of this state for its activities arising directly out of or directly related to the department's research and development activities in pursuit of medical benefits and uses of cannabidiol (CBD), as long as the prescription, treatment or use of cannabidiol
(CBD) is provided only to individuals diagnosed with a debilitating epileptic condition.

"(j) Pursuant to the filing requirements of Rule 15.3 of the Alabama Rules of Criminal Procedure, the defendant shall produce a valid prescription, certification of a debilitating epileptic condition, and the name of the prescribing health care professional authorized by the UAB Department.

"(k) This section is repealed July 1, 2019.

"(l) (e) Nothing in this section shall be construed to allow or accommodate the prescription, testing, medical use, or possession of any other form of Cannabis other than that defined by this section."

Section 3. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

Section 4. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.