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2 Councilmember Kenyan McDuffie

Councilmember Mary M. Cheh

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7 A BILL  
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12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
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17 To declare the existence of an emergency with respect to the need to amend the Legalization of  
18 Marijuana for Medical Treatment Initiative of 1999 to allow individuals 21 years of age  
19 and older to self-certify that they are utilizing marijuana for medical purposes.  
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21 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
22 resolution may be cited as the “Medical Marijuana Self-Certification Emergency Declaration  
23 Resolution of 2022”.

24 Sec. 2. (a) Currently, District law permits and regulates the possession, use, and sale of  
25 marijuana for medical purposes. It is further legal to possess, use, and “transfer . . . without  
26 remuneration” (i.e., gift) marijuana for recreational use. However, due to a 2014 Congressional  
27 budget rider imposed on the District by Congress (since it was proposed by Representative Andy  
28 Harris, it is commonly referred to as the “Harris Rider”), the District is prohibited from spending  
29 funds to legalize and regulate the sale of recreational marijuana (i.e., marijuana not used for  
30 medical purposes).

31 (b) This unique state of the law has led to the development of what has been termed a  
32 “gray” market for the purchase of marijuana. Over the past 7 years, a number of “gifting” shops  
33 have opened in the District, which incorrectly purport to legally sell marijuana by including

34 marijuana as a gift accompanying the purchase of (generally significantly overpriced) digital art,  
35 stickers, clothing, food, or other items. Because these shops are operating outside of the law,  
36 there is no requirement or enforcement of customer registration, including verification that  
37 purchasers are of legal age. In addition, for gray market products, there is no assurance that the  
38 marijuana has been tested or adequately labeled, raising concerns that products could be  
39 contaminated or otherwise unsafe for consumers, and that the potency of the marijuana  
40 purchased could differ from what was advertised.

41 (c) On the other hand, a patient wishing to buy legal marijuana for medical purposes from  
42 the existing regulated dispensaries must adhere to numerous regulatory requirements. Patients  
43 must submit an application to the Alcoholic Beverage Regulation Administration (“ABRA”),  
44 which requires the patient to provide a recommendation from an authorized practitioner issued  
45 within the past 2 years—a requirement made all the more burdensome by the fact that only 620  
46 authorized practitioners (out of thousands of healthcare providers in the District) are registered  
47 with ABRA and able to provide these recommendations. Lack of access means treatment may be  
48 delayed as patients work to identify and secure an appointment with an authorized practitioner,  
49 and later wait for the authorized practitioner to provide their recommendation. This requirement  
50 also creates barriers for the underinsured, low-income residents, and other vulnerable  
51 communities, who may not have the time or financial resources to obtain an authorized  
52 practitioner’s recommendation, despite having medical need. This has had real consequences for  
53 legal medical dispensaries; because gray market shops do not require customers to provide an  
54 authorized practitioner’s recommendation, many patients choose to shop at these illegal gifting  
55 stores.

56 (d) Due to the aforementioned lower barriers to access in the gray market, a significant  
57 number of customers have shifted from purchasing from legal medical dispensaries to the illicit  
58 gray market, creating a significant risk to the long-term viability of the District’s legal medical  
59 marijuana industry. The gray market is estimated to log a staggering \$600 million in sales  
60 annually, sapping patients from legal businesses; ABRA reports that the number of patients  
61 purchasing marijuana from medical dispensaries in the District has been in decline since  
62 December 2021. This loss of sales is calamitous for the District’s legal market: even under the  
63 best of circumstances, the medical marijuana industry faces extremely slim profit margins due to  
64 the federal government’s prohibition on these businesses claiming deductions accessible to most  
65 other businesses, in effect requiring these businesses to pay taxes on their *revenue*, rather than  
66 their profit. If this trend continues, it is possible that gray market sales could wipe out the  
67 District’s legal marijuana dispensaries. Given the aforementioned benefits that regulated and safe  
68 legal dispensaries provide to medical marijuana users in the District, it is vital that the industry  
69 survive until the District can stand up a regulated recreational market and transition toward full  
70 regulation of recreational marijuana products.

71 (e) On April 5, 2022, the Council considered the Medical Marijuana Patient Access  
72 Supplemental Extension and Civil Enforcement Emergency Amendment Act of 2022, as  
73 introduced on April 4, 2022 (Bill 24-747), which would have established an enforcement scheme  
74 against gray market businesses and would have allowed certain residents to self-certify in order  
75 to access medical marijuana products. That legislation failed, with several members raising  
76 concerns about the impact the enforcement provisions would have on employees and business  
77 owners participating in the gray market.

78 (f) This emergency legislation moves only the portion of that prior legislation regarding  
79 self-certification. Specifically, it would allow patients 21 years of age and older to self-certify  
80 that they are utilizing marijuana for medical purposes. Patients will still be formally registered in  
81 the medical marijuana program, issued a patient identification number, and recorded in ABRA’s  
82 private and secure “Metrc” track-and-trace system. This will allow patients to go directly to  
83 medical dispensaries, rather than seek out an authorized practitioner and spend time and money  
84 trying to obtain a recommendation. While not a panacea to the issues facing our legal marijuana  
85 market, this emergency legislation provides a small amount of relief by putting our legal medical  
86 marijuana dispensaries on more even footing with gray market businesses in terms of ease of  
87 access for patients. This language mirrors the self-certification provision in permanent legislation  
88 pending before the Committee on the Judiciary and Public Safety, Committee on Business and  
89 Economic Development, and Committee of the Whole, which hopefully will move before the  
90 end of this Council Period.

91 (g) In the meantime, however, permitting patients to self-certify now will provide a  
92 critical stopgap measure to help legal marijuana dispensaries retain and even win back patients.  
93 While the Council heard concerns from gray market businesses last April regarding the  
94 emergency legislation being proposed at that time, and the effect enforcement would have on  
95 their businesses and employees, the same concerns cannot be raised regarding this measure.  
96 Unlike the prior legislation, this bill does not include any enforcement provisions, and therefore  
97 will not have a direct effect on the gray market businesses or their employees beyond perhaps  
98 increasing competition for services. That is, instead of attempting to constrain the gray gifting  
99 market, this legislation aims to expand access to the legal medical market. Of note, where this  
100 legislation does result in patients choosing legal dispensaries over gray market stores, that shift

101 should result in better health outcomes for patients due to those dispensaries selling only  
102 regulated marijuana products, which have a lower risk of contamination and higher rates of  
103 consistent labeling and potency compared to unregulated marijuana.

104           Sec. 3. The Council of the District of Columbia determines that the circumstances in  
105 section 2 constitute emergency circumstances, making it necessary that the Medical Marijuana  
106 Self-Certification Emergency Amendment Act of 2022 be adopted after a single reading.

107           Sec. 4. This resolution shall take effect immediately.