

# Legislative Analysis



## MEDICAL MARIJUANA

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### House Bill 5470

**Sponsor: Rep. LaMar Lemmons, III**

**Committee: Government Operations**

**Complete to 11-27-06**

### A SUMMARY OF HOUSE BILL 5470 AS INTRODUCED 12-1-05

The bill would amend the Public Health Code (MCL 333.7212 et al.) to allow persons with debilitating medical conditions who have obtained a written certification from their physician to use marijuana to alleviate the symptoms or effects of their conditions.

[Note: this summary uses the most commonly-used spelling of marijuana. The bill and the Public Health Code use the spelling "marihuana."]

Physician certification. The person's physician would have to certify in writing that the patient has a debilitating medical condition and that the medical benefits of marijuana use would likely outweigh the medical risks for the person. A physician could only issue a certification in the context of a bona fide physician-patient relationship after making a full assessment of the patient's medical history and condition. The bill would protect a physician from arrest, prosecution, or penalty for providing a certification.

Debilitating medical condition. "Debilitating medical condition," means one or more of the following:

- Cancer, glaucoma, positive HIV status, or AIDS.
- A chronic or debilitating disease or medical condition that produces one or more of the following: cachexia or wasting syndrome; severe pain; severe nausea; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of Multiple Sclerosis or Crohn's Disease.
- Any other similar medical condition certified by rules promulgated by the Department of Community Health.

Permissible quantity. Eligible persons could obtain, possess, cultivate, use, transfer, or transport marijuana only in amounts reasonably necessary to ensure an uninterrupted supply for their medical needs. Three mature plants or four immature plants or three ounces of dried leaves or flowers would be presumed reasonable.

Protection from arrest and prosecution for patients and their caregivers. A patient having a written certification in his or her possession would be protected from arrest and prosecution so long as the amount of marijuana possessed was not excessive under the test set forth in the bill. A patient's primary caregivers would be similarly protected when

it was necessary for them to act on the patient's behalf. (Primary caretakers would have to be at least 18 years old.)

Special requirements for minors under the age of 18. A minor could receive a certification for medical marijuana if the minor's physician has explained the risks and benefits to the minor and to the minor's parent or legal guardian *and* the parent or guardian has consented in writing to the minor's marijuana use. The parent or guardian would have to serve as the minor's primary caretaker and supervise the minor's use of marijuana.

Seizure of medical marijuana and related property. State and local law enforcement officials who seize medical marijuana or related property could not harm or destroy it, and such property would not be forfeited under state or local laws except as a sentence imposed after a conviction or guilty plea. Seized property would have to be returned immediately if a court or prosecuting attorney determined that a patient's or caregiver's possession of the marijuana or related property was protected.

Protection for nearby persons. A person who was simply in the presence or vicinity of permitted medical marijuana use would not be subject to arrest or prosecution for any offense.

Defense against criminal prosecutions for marijuana. The bill provides a presumptively-valid defense for patients and their primary caregivers against marijuana prosecutions if:

- A person's medical records indicate, or a physician has stated, that in the physician's professional opinion, the person's medical condition justified the use of marijuana. Before issuing an opinion, the physician would have to complete a full assessment of the person's medical history and current condition in the course of a bona fide physician-patient relationship.
- The quantity of marijuana that the person and the person's caregivers collectively possessed was permissible.

Restrictions on medical marijuana use. The following would remain unlawful even for persons possessing a medical marijuana certification:

- Marijuana use that endangers the health or well-being of another person, such as driving or operating heavy machinery under the influence of marijuana.
- Marijuana smoking in or on school buses, public buses, and other public vehicles; workplaces; school grounds; correctional facilities; and public parks, public beaches, public recreation centers, and youth centers.
- Using marijuana for non-medical purposes.

New misdemeanor of fraudulent representations regarding medical marijuana use. A person who fraudulently represents to a law enforcement official any fact or circumstance relating to the use of medical marijuana to avoid arrest or prosecution would be guilty of

a misdemeanor punishable by imprisonment for up to 30 days, a fine of not more than \$500, or both.

Exemptions from criminal penalties. The Public Health Code would be amended to exempt the medical use of marijuana from penalties under Sections 7403 and 7404 applicable to marijuana.

Repealers. The bill would repeal two obsolete sections of the code, eliminating references to a medical marijuana program that expired on November 1, 1987.

#### **FISCAL IMPACT:**

The bill's fiscal impact on state and local correctional systems would depend on how it affected numbers of marijuana-related convictions, as well as how many misdemeanor convictions were obtained under the bill's prohibition against fraudulently claiming medical use. Where additional misdemeanor convictions were obtained under the bill, costs of any jailing or misdemeanor probation supervision would be borne by the local unit of government; such costs vary with jurisdiction.

The bill would have no apparent fiscal impact on the Department of Community Health.

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