



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bills 616, 617, and 618 (as introduced 6-3-09)

Sponsor: Senator Gerald Van Woerkom (S.B. 616)

Senator Roger Kahn, M.D. (S.B. 617)

Senator Wayne Kuipers (S.B. 618)

Committee: Judiciary

Date Completed: 1-15-10

**CONTENT**

**Senate Bill 616** would amend the Michigan Medical Marihuana Act to do all of the following:

- Allow qualifying patients and primary caregivers to possess marihuana that was dispensed as a Schedule 2 controlled substance, rather than to possess specified amounts of marihuana.
- Extend a protection from arrest or other penalty or sanction to physicians who prescribed marihuana.
- Enact a protection from arrest or other penalty or sanction for pharmacists who dispensed marihuana as a Schedule 2 controlled substance for medical purposes.

**Senate Bill 617** would amend the Code of Criminal Procedure to include a felony violation of the Michigan Medical Marihuana Act in the sentencing guidelines.

**Senate Bill 618** would amend the Public Health Code to do the following:

- Regulate marihuana as a Schedule 2, rather than Schedule 1, controlled substance, if it were dispensed for use under the Michigan Medical Marihuana Act.
- Prohibit medical marihuana from being grown, sold, distributed,

possessed, used, transported, or delivered unless it were grown and sold through a licensed medical marihuana growing facility.

- Allow the Department of Community Health (DCH) to license up to 10 medical marihuana growing facilities in any one-year period, and prohibit a license from being assigned or transferred.
- Establish licensure and annual license renewal requirements, including an initial and annual fee of \$2,500, for medical marihuana growing facilities.
- Require the DCH or local health departments to inspect medical marihuana growing facilities annually.
- Prohibit a local unit of government from enacting or enforcing an ordinance regarding medical marihuana growing facilities.
- Require the DCH to promulgate rules and enforce the licensure program for medical marihuana growing facilities.
- Prescribe a misdemeanor penalty for an owner, operator, or agent of a medical marihuana growing facility who failed to comply with licensure requirements, or who illegally established a growing facility.

Senate Bill 616 is tie-barred to Senate Bill 618. Senate Bill 618 is tie-bared to Senate Bills 616 and 617.

## **Senate Bill 616**

### **Possession of Marihuana**

Under the Michigan Medical Marihuana Act, a "qualifying patient" who has been issued and possesses a "registry identification card" is not subject to arrest, prosecution, or penalty in any manner, and may not be denied any right or privilege, for the medical use of marihuana in accordance with the Act if the following apply:

- The qualifying patient possesses not more than 2.5 ounces of usable marihuana.
- If the qualifying patient has not specified that a primary caregiver will be allowed under State law to cultivate marihuana for him or her, the qualifying patient possesses not more than 12 marihuana plants kept in an enclosed, locked facility.

In addition, a "primary caregiver" who has been issued and possesses a registry identification card is not subject to arrest, prosecution, or penalty, and may not be denied any right or privilege, for assisting a qualifying patient to whom he or she is connected through the DCH registration process with the medical use of marihuana in accordance with the Act, if the following apply:

- The primary caregiver possesses not more than 2.5 ounces of usable marihuana for each qualifying patient to whom he or she is connected through the DCH registration process.
- The primary caregiver cultivates not more than 12 marihuana plants kept in an enclosed, locked facility for each registered qualifying patient who has specified that the primary caregiver will be allowed under State law to cultivate marihuana for the qualifying patient.

For both qualifying patients and primary caregivers, incidental amounts of seeds, stalks, and unusable roots are allowed and are not included in the maximum possession amount.

Under the bill, instead, a qualifying patient who had been issued and possessed a registry identification card would not be subject to arrest, prosecution, or penalty and could not be denied any right or

privilege, for the medical use of marihuana in accordance with the Act, if he or she possessed marihuana that was dispensed as a Schedule 2 controlled substance under the Public Health Code for his or her medical use. A primary caregiver who had been issued and possessed a registry identification card would not be subject to arrest, prosecution, or penalty, and could not be denied any right or privilege, for assisting a qualifying patient to whom he or she was connected through the DCH registration process if the primary caregiver possessed marihuana that was dispensed as a Schedule 2 controlled substance under the Public Health Code for the medical use of a qualifying patient to whom he or she was connected through the registration process.

Under the Act, there is a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marihuana in accordance with the Act, if the patient or caregiver is in possession of a registry identification card and possesses an amount of marihuana that does not exceed "the amount allowed under this act". The bill instead would refer to the amount that a qualified patient would reasonably be expected to need over a period of 60 days for his or her own personal medical use.

"Qualifying patient" means a person who has been diagnosed by a physician as having a "debilitating medical condition". "Primary caregiver" means a person who is at least 21 years old, has agreed to assist with a patient's medical use of marihuana, and has never been convicted of a felony involving illegal drugs. "Registry identification card" means a document issued by the DCH that identifies a person as a registered qualifying patient or registered primary caregiver.

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

- Cancer, glaucoma, positive status for HIV, AIDS, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of those conditions.
- A chronic or debilitating disease or medical condition or its treatment that produces one or more the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including those characteristic of

epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis.

#### Compensation of Primary Caregiver

The Act allows a registered primary caregiver to receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana, and specifies that the compensation does not constitute the sale of controlled substances. Under the bill, the compensation would not constitute the sale of controlled substances unless it otherwise violated the Public Health Code.

#### Physician Protection for Marihuana Prescription

Under the Act, a physician is not subject to arrest, prosecution, or penalty, and may not be denied any right or privilege, solely for providing written certifications in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the qualifying patient, or for otherwise stating that a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana. The bill would refer to a physician's providing written certifications "or prescriptions".

#### Pharmacist Protection for Dispensing Marihuana

Under the bill, a pharmacist would not be subject to arrest, prosecution, or penalty in any manner, and could not be denied any right or privilege, including civil penalty or disciplinary action by the Michigan Board of Pharmacy or any other business or occupational or professional licensing board or bureau, solely for dispensing marihuana as a Schedule 2 controlled substance under the Public Health Code, for medical purposes under the Act. This protection, however, would not prevent a professional licensing board from sanctioning a pharmacist for violating the standard of care for dispensing Schedule 2 controlled substances.

#### **Senate Bill 617**

The bill would add a felony violation of the Michigan Medical Marihuana Act to the sentencing guidelines in the Code of Criminal Procedure. Under the Act, any registered qualifying patient or registered

primary caregiver who sells marihuana to someone who is not allowed to use marihuana for medical purposes under the Act must have his or her registry identification card revoked and is guilty of a felony punishable by up to two years' imprisonment and/or a maximum fine of \$2,000, in addition to any other penalties for the distribution of marihuana.

Under the bill, that offense would be designated in the sentencing guidelines as a Class G felony against the public safety, with a statutory maximum sentence of two years' imprisonment.

#### **Senate Bill 618**

#### Controlled Substance Schedule Designation

The Public Health Code includes marihuana as a Schedule 1 controlled substance. Under the bill, marihuana would be regulated as provided in Schedule 2, if it were dispensed for use in the manner provided in the Michigan Medical Marihuana Act.

(Under the Code, a controlled substance is in Schedule 1 if it has high potential for abuse and has no accepted medical use in treatment in the U.S. or lacks accepted safety for use in treatment under medical supervision. A controlled substance is in Schedule 2 if it has high potential for abuse; it has currently accepted medical use in treatment in the U.S., or currently accepted medical use with severe restrictions; and the abuse of the substance may lead to severe psychic or physical dependence.)

#### Licensed Medical Marihuana Growing Facilities

Medical marihuana could not be grown, sold, distributed, possessed, used, transported, or delivered for use under the Michigan Medical Marihuana Act unless grown and sold through a medical marihuana growing facility licensed under the bill. A pharmacist could not dispense medical marihuana as a Schedule 2 controlled substance unless it had been grown at a licensed medical marihuana growing facility.

A person could not operate a medical marihuana growing facility in Michigan until issued a license under the bill. Not more than 10 medical marihuana growing facilities

could be issued a license during any one-year period. A license would not be assignable or transferable.

Before a medical marijuana growing facility was established, the owner or operator of the proposed facility would have to submit complete drawings to the DCH for examination and approval. The drawings would have to drawn to an indicated scale, give the relative location of the facility, and illustrate all rooms, buildings, facilities, and equipment to be used in the medical marijuana growing operations. Specifications prescribed by rules promulgated under the bill would have to accompany the drawings. When construction and establishment of a proposed growing facility were finished, its owner or operator would have to notify the DCH, which then would have to inspect the buildings and premises. If they conformed to the approved plans or rules and a license were available to be issued, the DCH would have to issue the applicant a license to conduct a medical marijuana growing facility.

The DCH could receive license applications for the operation of a medical marijuana growing facility and would have to establish procedures to follow if more applications were received than licenses available to be issued. Upon an applicant's compliance with the bill, and rules promulgated under it, and if a license were available to be issued, the DCH would have to issue a medical marijuana growing facility license. A license would be issued for a period of one year. The initial application and annual license fee for a medical marijuana growing facility license would be \$2,500.

A person operating a licensed medical marijuana growing facility would have to apply for license renewal and pay a \$2,500 fee within 30 days before an annual license expired. A person operating a licensed medical marijuana growing facility who did not apply for licensure renewal, as required, would not be entitled to renew the license. Upon compliance with the renewal requirements and payment of the license renewal fee, the DCH would have to issue a renewal license.

### Annual Inspection of Growing Facilities

The DCH would have to conduct annual inspections of medical marijuana growing facilities to ensure compliance with the bill and rules promulgated under it. The DCH could delegate the duty of inspecting licensed facilities to a local health department that had the technical and other capabilities to protect the public health, safety, and welfare in that field. Delegation could not occur unless the DCH first consulted with an ad hoc committee appointed by the Department for the purpose of advising on the delegation of inspection duties. The ad hoc committee would have to include representatives of the DCH, local public health agencies, and an association that represented the medical marijuana growing facilities that would be subject to the inspections. The State would have to reimburse each local health department the full amount of the fees collected, as reimbursement for the cost of inspection, on vouchers certified by the local health officer and approved by the DCH.

### Pre-emption

A local governmental unit could not enact or enforce an ordinance regarding medical marijuana growing facilities. Except as otherwise provided in the bill, a medical marijuana growing facility that had been issued a license would not be subject to arrest, prosecution, or penalty in any manner, and could not be denied any right or privilege, including civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for growing, transporting, and delivering medical marijuana for use as prescribed in the Michigan Medical Marijuana Act.

### Emergency Order

Upon finding the existence of an emergency requiring immediate action to protect occupational or public health and safety, the DCH could issue an order, without notice or hearing, reciting the existence of the emergency and providing for the protection of public health and safety. Notwithstanding the bill or the Administrative Procedures Act, the order would be effective immediately. A person to whom the order was directed would have to comply immediately but, on application to the DCH, would have to be

given a hearing within 15 days. On the basis of a hearing, the emergency order would have to be continued, modified, or revoked within 30 days after the hearing.

#### Enforcement & Rule-Making

The DCH would have to enforce the bill and rules promulgated under it, and could suspend, revoke, or deny a growing facility's license for a violation.

The DCH would have to promulgate rules necessary to carry out the bill's licensure requirements, and could appoint an advisory committee to assist in rule development. The rules would have to include plans, drawings, specifications, construction, installation of equipment standards, inspections, and other matters necessary to protect the health, safety, and welfare of the public.

An owner, operator, or agent of a medical marijuana growing facility who failed to comply with the bill or rules promulgated under it within the time specified by the DCH, or who established or operated a medical marijuana growing facility in violation of a detailed statement of specifications, plans, or a DCH-approved license, would be guilty of a misdemeanor. The violation would be punishable by up to 90 days' imprisonment, and/or a maximum fine of \$1,000, for each violation or noncompliance.

#### Repealer

The bill would repeal Sections 7335 and 7336 of the Public Health Code (which have not been in effect since November 1, 1987).

Sections 7335 and 7336 were enacted in 1982 and provided for the establishment of a marijuana controlled substances therapeutic research program and a patient qualification review board for the program. Section 7336 specified that both of those sections, as well as other sections of the Code referring to them, do not apply after November 1, 1987.

MCL 333.26424 (S.B. 616)  
777.13n (S.B. 617)  
333.7212 et al. (S.B. 618)

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

### **Senate Bill 616**

The bill would have no fiscal impact on State or local government.

### **Senate Bill 617**

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of a felony violation of the Medical Marijuana Act. An offender convicted of the Class G offense under the bill would receive a sentencing guidelines minimum sentence range of 0-3 months to 7-23 months. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$3,000, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue would benefit public libraries.

### **Senate Bill 618**

The bill would impose separate application and annual license fees of \$2,500 for each of up to 10 medical marijuana growing facilities. The State would take on the responsibility to issue licenses, examine facility drawings, inspect premises, and promulgate rules. The cost of these new responsibilities is indeterminate.

The bill also would make the owners and/or operators of medical marijuana growing facilities subject to misdemeanor penalties in the event of noncompliance with the stated regulations. An individual found guilty of the proposed misdemeanor would be subject to imprisonment for up to 90 days and a fine of up to \$1,000. Local governments would incur the costs of incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.