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House Bill 4271 (Substitute H-3 as passed by the House)
Sponsor: Representative Mike Callton
House Committee: Judiciary
Senate Committee: Government Operations

Date Completed: 7-15-14

CONTENT

The bill would enact the "Medical Marihuana Provisioning Center Regulation Act" to provide that criminal, civil, or other sanctions would not apply to a medical marihuana provisioning center or its agents, a safety compliance facility, a registered qualifying patient, a visiting qualifying patient, or a registered primary caregiver, for specified activities involving the purchase, receipt, sale, possession, or transfer of marihuana, including those described below:

- A medical marihuana provisioning center could purchase, receive, sell, or transfer marihuana to or from registered qualifying patients, registered primary caregivers, or other provisioning centers, if it had been granted any applicable municipal registration or license and were operating in compliance with the Act.
- A safety compliance facility could acquire or possess medical marihuana obtained from, and return it to, registered qualifying patients, registered primary caregivers, and provisioning centers, if the facility had been granted any applicable required municipal registration or license and were operating in compliance with the Act.
- A registered qualifying patient, a visiting qualifying patient, or a registered primary caregiver could purchase or acquire usable marihuana or marihuana-infused products from a provisioning center.
- A registered qualifying patient or a registered primary caregiver could supply or sell medical marihuana to a provisioning center.

The bill also would do the following:

- Allow a municipality (a city, village, or township) to prohibit the operation of provisioning centers or safety compliance facilities within the municipality.
- Allow a municipality to enact an ordinance imposing additional requirements, including registration or licensure requirements, on provisioning centers and safety compliance facilities.
- Limit the proximity of a provisioning center or safety compliance facility to a school.
- Prohibit a provisioning center from selling or providing a preparation that included usable marihuana for ingestion or topical application unless it had been tested by a safety compliance facility and was in a container that met labeling requirements.
- Prohibit a provisioning center from providing more usable marihuana or marihuana-infused products to an individual in any 10-day period than allowed

under the Michigan Medical Marihuana Act, and require the center to maintain records to ensure compliance with this limit.

- Require a provisioning center agent to verify that an individual requesting medical marihuana was a qualifying patient or a provisioning center agent.**
- Prohibit a provisioning center or safety compliance facility from employing a person who was under 21 years old or who had been convicted of a felony involving illegal drugs within the previous 10 years, and prohibit such a person from serving as a center or facility agent.**
- Prohibit a provisioning center or safety compliance facility agent from transporting medical marihuana in a motor vehicle unless certain conditions were met, and provide that a violation would be a misdemeanor.**
- Provide that other violations of the proposed Act would be State civil infractions.**
- Provide that a provisioning center or safety compliance center would not be exempt from criminal or civil prosecution or sanctions for cultivating marihuana.**
- Prohibit a laboratory from handling or testing marihuana after March 31, 2015, unless it was licensed as a safety compliance facility by a local municipality and met other conditions.**
- Prohibit a provisioning center from distributing or selling any product containing marihuana after March 31, 2015, unless it had been tested for mold, mildew, fungi, and pesticides by a licensed safety compliance facility and did not contain any of those substances.**
- Require a provisioning center to comply with various requirements if it elected to manufacture and distribute a marihuana-infused product.**

Definitions

"Medical marihuana provisioning center" would mean a commercial entity located in this State that acquires, possesses, manufactures, delivers, transfers, or transports medical marihuana and sells, supplies, or provides medical marihuana to registered qualifying patients, directly or through their registered primary caregivers. The term would include any commercial property where medical marihuana was sold to registered qualifying patients and registered primary caregivers. The location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the medical marihuana registration process in accordance with the Michigan Medical Marihuana Act (MMMA) would not be a provisioning center for purposes of the proposed Act.

"Registered qualifying patient" would mean a person who meets either of the following requirements:

- Has a valid, unexpired registry identification card as a qualifying patient.
- Satisfies the qualifications under the MMMA for a person who is deemed to have a valid registry ID card and possesses the documentation that constitutes such a card.

"Visiting qualifying patient" would mean a patient who is not a Michigan resident or who has been a resident of this State for less than 30 days, and who possesses a registry identification card, or its equivalent, that was issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States and that allows the use of medical marihuana by the patient.

"Registered primary caregiver" would mean a person who has a valid, unexpired registry ID card as a primary caregiver or who satisfies the criteria for someone who is deemed to have a valid registry ID card and possesses the documentation that constitutes such a card.

"Safety compliance facility" would mean an entity that tests marihuana produced for medical use for contaminants.

"Safety compliance facility agent" or "provisioning center agent" would mean a principal officer, board member, employee, operator, or agent of a safety compliance facility or provisioning center, as applicable.

"Medical marihuana" would mean marihuana for medical use as that term is defined in the MMMA.

"Usable marihuana" would mean the dried leaves, flowers, plant resin, or extract of the marihuana plant and any mixture or preparation of those items, but would not include the seeds, stalks, or roots of the plant or any inactive substance used as a delivery medium for usable marihuana.

(The MMMA authorizes the possession and use of marihuana by a person who has been diagnosed by a physician as having a "debilitating medical condition". A person may become a registered qualifying patient and receive a registry identification card from the Department of Licensing and Regulatory Affairs if he or she submits a written certification from a physician, a fee, and specified information. A registered patient is not subject to arrest, prosecution, or other penalty for the medical use of marihuana if the amount does not exceed quantities specified in the Act and the possession and use meet particular standards. The Act also extends privileges against arrest, prosecution, and other penalty to primary caregivers who assist qualifying patients with the medical use of marihuana, if the caregivers register with the Department, are connected with qualifying patients through the Department's registration process, and comply with various restrictions.)

Exemption from Penalties for Center or Facility

Except as otherwise provided in the proposed Act, if a provisioning center or a safety compliance facility had been granted any applicable required municipal registration or license, and were operating in compliance with the Act and any applicable municipal ordinance, the center and its agents, or the safety compliance facility, would not be subject to any of the following for engaging in specified activities:

- Criminal penalties under State law or local ordinances.
- State or local civil prosecution.
- Search or inspection, except for an inspection authorized by the municipality.
- Seizure.
- Any sanction, including disciplinary action or denial of a right or privilege, by a business or occupational or professional licensing board or bureau.

Activities of a provisioning center that would be exempt from sanctions and regulation include all of the following:

- Purchasing, receiving, selling, or transferring marihuana from or to registered qualifying patients, visiting qualifying patients, registered primary caregivers, or provisioning centers.
- Purchasing or receiving medical marihuana from one or more other provisioning centers if the purchase or receipt were not prohibited by the municipality where the center was located.
- Purchasing or receiving medical marihuana from a registered qualified patient or a registered primary caregiver if the purchase or receipt were not prohibited by the municipality where the center was located and if the amount purchased did not exceed the patient's or caregiver's medical marihuana possession limits under the MMMA.
- Processing medical marihuana.

- Possessing or manufacturing paraphernalia (i.e., drug paraphernalia as defined in the Public Health Code, that is or may be used in association with medical marihuana).
- Possessing medical marihuana processed by the provisioning center or obtained from a patient, caregiver, or center as described above, on its premises or while the marihuana was being transported.
- Processing or manufacturing nonsmokable forms of medical marihuana.
- Transporting medical marihuana between the provisioning center and another provisioning center or a safety compliance facility, if not prohibited by municipal law.
- Transporting or delivering medical marihuana or paraphernalia to the residence of a registered qualifying patient or a registered primary caregiver, if transportation or delivery were not prohibited by the municipality where it would occur.
- Supplying, selling, providing, transferring, or delivering medical marihuana, paraphernalia, or related supplies and educational materials in compliance with the procedures and limitations detailed in the proposed Act and its testing and labeling requirements.

Activities of a safety compliance facility that would be exempt from regulation and sanction would include all of the following:

- Acquiring or possessing medical marihuana obtained from registered qualified patients, registered primary caregivers, or provisioning centers.
- Returning the medical marihuana to the patient, caregiver, or center that delivered it to the facility.
- Transporting medical marihuana to or from a registered qualifying patient, registered primary caregiver, or provisioning center.
- Possessing medical marihuana on the facility's premises for testing, if it were obtained as described above.
- Receiving compensation for actions permitted under these provisions and municipal law.

Existing Entity

An entity that, on the effective date of the proposed Act, was operating in this State as a provisioning center, was operating and continued to otherwise operate in compliance with the Act, and was not prohibited by any applicable municipal ordinance, could continue to operate as a provisioning center.

The entity and its agents would be eligible for the immunity provided in the Act and would be subject to the penalties, sanctions, and remedies prescribed in the Act.

Municipal Prohibitions & Requirements

A municipal could prohibit the operation of provisioning centers or safety compliance facilities within the city, village, or township. A provisioning center or a safety compliance facility would not be exempt from State criminal and civil penalties if it operated in a municipality that prohibited provisioning centers or safety compliance facilities.

A municipality also could do any of the following:

- Enact an ordinance to impose and enforce additional local requirements on provisioning centers or safety compliance facilities.
- Require and issue a registration or license to a provisioning center or safety compliance facility, regulate operations, and impose civil or criminal penalties for violations of the ordinance.
- Charge a provisioning center or safety compliance facility a registration or license fee that did not exceed costs to the municipality of regulation, licensing, testing, and inspection.

If a provisioning center or safety compliance facility were located in a municipality that required a registration or license, the center or facility would be exempt from criminal penalties only if it held that license or registration.

As a condition of registration or licensure, a municipality would have to require that a provisioning center or safety compliance facility provide results of testing of its medical marihuana and medical marihuana products for quality control, purity, contaminants, or any other analysis to protect the health and safety of registered qualifying patients, and to assure compliance with the proposed Act and a municipal ordinance.

Sale of Preparation Including Usable Marihuana

A provisioning center would be prohibited from selling, transferring, or providing a preparation that included usable marihuana for ingestion or topical application unless the preparation had been tested by a safety compliance facility and was enclosed in a container that bore a securely affixed label. The label would have to display all of the following information:

- The name of the registered qualifying patient or visiting qualifying patient for whom the preparation was obtained.
- Certification that the product had been tested by a licensed safety compliance facility as required by the proposed Act, and did not contain detectable mold, mildew, fungi, or pesticides.
- The total weight of the preparation and the weight of the usable marihuana in it.
- A warning that the product contained marihuana and was for a registered qualifying patient's use only.

Provision of Usable Marihuana; Confidential Records

A provisioning center could not provide usable marihuana or marihuana-infused products in solid form, gaseous form, or liquid form to an individual during any 10-day period in an amount that was more than the amount for which he or she was granted immunity for possession under the MMMA.

A center would have to ensure compliance with this limit by maintaining internal, confidential records that specified the amount of medical marihuana provided to each registered qualifying patient and registered primary caregiver, and whether it was provided to the caregiver or directly to the patient. Each entry would have to include the date and time the marihuana was provided. Entries would have to be maintained for at least 90 days.

For any registered qualifying patient or registered caregiver in possession of a registry identification card, the center would have to keep a record using the patient's or caregiver's name.

Confidential records under the proposed Act would be subject to reasonable inspection by a municipal employee authorized to inspect provisioning centers under municipal law to ensure compliance with the Act, but could be stored off-site. Confidential records would be exempt from disclosure under the Freedom of Information Act.

Except as otherwise required by a court order, a provisioning center could not disclose confidential records to any person other than a municipal employee performing an inspection in compliance with these provisions or to a provisioning center agent.

A provisioning center would be prohibited from providing, transferring, or selling medical marihuana to an individual knowing that he or she was not a registered qualifying patient,

registered primary caregiver, or provisioning center agent working on behalf of a center that was not prohibited from operating or obtaining medical marihuana from other centers under municipal law.

Verification of Individual Buying Marihuana

Before medical marihuana was provided or sold from a provisioning center, a center agent would have to take *one* of the three actions described below.

The agent would have to verify that the individual requesting medical marihuana held what the agent reasonably believed to be a valid, unexpired registry identification card.

The agent would have to require the individual to do all of the following:

- Certify that he or she was a qualifying patient who had submitted a valid, complete application for a registry ID card under the MMMA at least 20 days earlier.
- Certify that, to the best of his or her knowledge, the State had not denied the application or issued a registry ID card.
- Present a copy of the completed registry ID card application and proof of receipt by the Department of Licensing and Regulatory Affairs at least 20 days before the date of the requested sale or transaction.

If the individual requesting medical marihuana indicated that he or she was a provisioning center agent, the agent providing or selling the marihuana would have to make a diligent, good-faith effort to verify that the individual was an agent for a center that was allowed to operate by a municipality.

In addition to taking one of those actions, before medical marihuana was provided or sold from a provisioning center, a center agent would have to make a diligent, good-faith effort to determine that the individual named in the registry identification card or other documentation submitted was the individual seeking to obtain medical marihuana, by examining what the agent reasonably believed to be valid government-issued photo identification.

Transportation of Medical Marihuana

A provisioning center agent or safety compliance facility agent would be prohibited from transporting or possessing medical marihuana on behalf of the center or facility in or upon a motor vehicle or any self-propelled vehicle designed for land travel, unless both of the conditions described below were met.

The agent would have to possess a document signed and dated by a manager or operator of the center or facility that employed the agent, stating the agent's name, the date the marihuana would be transported, the approximate amount transported, and the name of the center or facility from which the marihuana was being transported.

The marihuana would have to be located in one or more of the following:

- An enclosed locked container, such as a safe or briefcase.
- The trunk of the vehicle.
- A space that was inaccessible from the vehicle's passenger compartment.

Employees & Agents

An individual who was under 21 years old or who had been convicted of an excluded felony offense during the preceding 10 years could not serve as a provisioning center agent or a safety compliance facility agent.

A provisioning center or safety compliance facility could not knowingly employ an individual who had been convicted of an excluded felony offense during the preceding 10-year period or who was under 21 years old. A center or facility would have to perform a background check on an individual before he or she was offered employment, to verify that the person did not have such a conviction.

("Excluded felony offense" would mean a felony involving illegal drugs. The term would not include a conviction for activity allowed under the MMMA or the proposed Act, even if the activity occurred before the enactment of either statute.)

A provisioning center would have to maintain records listing each individual it employed, including the beginning employment date and the date a background check was performed.

Additional Provisioning Center & Facility Regulations

Unless explicitly allowed by a municipal ordinance that was in effect before the effective date of the proposed Act, a provisioning center or a safety compliance facility could not be located within 1,000 feet of the property line of a preexisting primary or secondary school.

A provisioning center could not share office space with a physician. A provisioning center agent could not, for monetary gain, refer an individual to a physician.

A provisioning center or safety compliance facility could not permit a physician to advertise in a center or facility, or to hold any financial interest in or receive any compensation from the center or facility.

A provisioning center that advertised medical marihuana for sale could not include an image of a marihuana leaf or a marihuana cigarette, or depict favorably or promote nonmedical, social use of marihuana in the advertisement.

A provisioning center could not allow on-site consumption of medical marihuana, although a center agent or employee who was a registered qualifying patient could be allowed to use a medical marihuana-infused topical product.

The premises of a provisioning center would have to have a security alarm system that was enabled when a center agent was not present.

Violations & Penalties

A provisioning center that violated the restriction on proximity to a school or that shared office space with a physician would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$5,000. A municipality in which the center operated could petition a court for an injunction to close the center.

A person would be responsible for a State civil infraction and could be ordered to pay a maximum civil fine of \$1,000 for violating provisions concerning the following: having a security alarm system; testing and labeling a preparation that included usable marihuana for ingestion or topical application; advertising medical marihuana; employing an individual who was under 21 or had been convicted of an excluded felony offense within the past 10 years; maintaining employee records; prohibiting on-site consumption of medical

marihuana; providing an excessive amount of usable marihuana or marihuana-infused products; maintaining confidential records; referring an individual to a physician; or permitting a physician to advertise in or hold a financial interest in a center or facility.

A person who violated the provisions regarding the transportation of medical marihuana would be guilty of a misdemeanor punishable by imprisonment for up to 93 days or a maximum fine of \$500, or both.

A person would not be exempt from arrest, prosecution, or criminal or other penalties if he or she transferred medical marihuana in violation the restrictions on the provision of medical marihuana to a registered qualifying patient, registered caregiver, or provisioning center agent; or if the person worked as an agent while he or she was under 21 or after he or she had been convicted of an excluded felony offense in the past 10 years.

Municipal Sanctions

A municipality could establish procedures to suspend or revoke a registration, license, or other permission to operate if a provisioning center knowingly or negligently allowed medical marihuana to be provided to an individual who was not a registered qualifying patient or registered primary caregiver, or if a provisioning center or safety compliance facility committed multiple or serious violations of the proposed Act or one or more local ordinances.

Protections for Patients & Caregivers

Except as otherwise provided in the proposed Act, a registered qualifying patient, visiting qualifying patient, or registered primary caregiver who supplied, sold, transferred, or delivered medical marihuana to a provisioning center that was registered, licensed, or otherwise allowed by the municipality in which it operated in compliance with the Act, would not be subject to any of the following for engaging in that activity:

- Criminal penalties under State law or local ordinances.
- State or local civil prosecution.
- Search or inspection, except for an inspection authorized by the municipality.
- Seizure.
- Any sanction, including disciplinary action or denial of a right or privilege, by a business or occupational or professional licensing board or bureau.

A registered qualifying patient or a registered primary caregiver would not be subject to the listed sanctions or inspections for purchasing or acquiring usable marihuana or marihuana-infused products in solid form, gaseous form, or liquid form from one or more provisioning centers if the amount purchased or acquired in any 10-day period were not more than the amount for which the individual was granted immunity for possession under the MMMA.

A registered qualifying patient also would not be subject to the listed sanctions or inspections for supplying, selling, transferring, or delivering medical marihuana to a provisioning center that was registered, licensed, or otherwise allowed by the municipality in which it operated if all of the following requirements were met:

- The medical marihuana was produced by the patient or registered primary caregiver.
- The municipality where the center operated allowed the transfer of medical marihuana from a registered qualifying patient to a provisioning center.
- The amount of medical marihuana transferred did not exceed the amount the patient was allowed to possess under the MMMA.

A registered primary caregiver also would not be subject to the listed sanctions or inspections for supplying, selling, transferring, or delivering medical marihuana to a provisioning center that was registered, licensed, or otherwise allowed by the municipality where it operated if all of the following requirements were met:

- The medical marihuana was produced by the caregiver and was excess medical marihuana above the amount necessary to satisfy the needs of the registered qualifying patients the caregiver was designated to serve.
- The municipality where the center operated allowed the transfer of medical marihuana from a registered primary caregiver to a provisioning center.
- The amount of medical marihuana transferred did not exceed the amount the caregiver was allowed to possess under the MMMA.

Laboratory Requirements

A municipality would be prohibited from issuing a license to a laboratory as a safety compliance facility unless the lab was able to accurately determine whether any mold, mildew, fungi, or pesticides were present in marihuana, edible marihuana products, and marihuana-infused products that were or could be sold at medical marihuana provisioning centers in the State.

After March 31, 2015, a laboratory would be prohibited from handling, testing, or analyzing marihuana unless the lab met all of the following conditions:

- It was licensed as a safety compliance facility by a local municipality.
- A person with a direct or indirect interest in the lab did not have a direct or indirect financial interest in a provisioning center, marihuana producer, certifying physician, or any other entity that could financially benefit from the production, manufacture, dispensing, sale, purchase, or use of marihuana.
- The lab employed at least one individual who had earned a bachelor's degree or higher in the chemical or biological sciences and had at least one year of postgraduate laboratory experience, to oversee and be responsible for laboratory testing.
- The lab was accredited by a private laboratory accreditation service.

Product Testing Requirements

Beginning April 1, 2015, a provisioning center would be prohibited from distributing or selling any product containing marihuana unless the product had been tested for mold, mildew, fungi, and pesticides by a licensed safety compliance facility and did not contain detectable mold, mildew, fungi, or pesticides. A provisioning center would have to make the test results available upon request to a qualifying patient, a primary caregiver, the licensing municipality, or a physician who had certified a qualifying patient.

Marihuana-Infused Product Manufacture & Distribution

If a medical marihuana provisioning center elected to manufacture and distribute a marihuana-infused product, as defined in the MMMA, the provisioning center would have to do all of the following:

- Keep the grounds of the center under the control of the operator free from improperly stored equipment, litter, waste, refuse, and uncut weeds or grass, and assure that floors, walls, ceilings, and equipment were kept clean and in good repair.
- Keep food preparation areas separated from poisons, undesirable microorganisms, chemicals, filth, or other extraneous material by partition, location, or other effective means.

- Ensure that the center was properly equipped with adequate sanitary facilities and accommodations.
- Conduct all operations in receiving, inspecting, transporting, packaging, segregating, preparing, processing, and food storage areas in accordance with good sanitation principles and take all reasonable precautions to assure the production procedures did not contribute contamination to the processed product.
- Conduct all food processing, packaging, storage, and transporting of food under conditions and controls that minimized the potential for undesirable bacterial or other microbiological growth, toxin formation, or deterioration or contamination of the processed product, product ingredients, or product containers.
- Not allow an individual who was affected by a communicable disease or afflicted with boils, sores, infected wounds, or other abnormal sources of microbiological contamination to work in the provisioning center in any capacity in which there was a reasonable probability that food or food ingredients would become contaminated or that the disease would be transmitted to other individuals.

The provisioning center also would have to comply with requirements concerning lighting, ventilation, equipment and utensils, water supply, waste disposal, toilets and hand-washing facilities, and physical facilities. In addition, the center would have to require all individuals working in direct contact with food preparation, food ingredients, or surfaces coming into contact with food ingredients to comply with requirements concerning cleanliness and hygiene, hand-washing, jewelry removal, gloves, hair restraints, and refraining from storing clothes or personal belongings, eating, drinking, or using tobacco in areas where food or food ingredients were exposed, or in areas for washing equipment or utensils.

These provisions would not prohibit a municipality from imposing additional regulations on medical marijuana provisioning centers that elected to manufacture and distribute a marijuana-infused product.

The local county health department would have to inspect a provisioning center at least annually for compliance with these requirements. The center would have to pay for all costs associated with the inspection.

Other Provisions

Except for the MMMA, all other acts and parts of acts inconsistent with the proposed Act would not apply to the use of medical marijuana as provided for by the Act.

The Act would not require the violation of Federal law or give immunity from prosecution under Federal law. The Act also would not prevent Federal enforcement of Federal law.

The sections of the Act protecting a provisioning center, safety compliance facility, agent, registered qualifying patient, or registered caregiver from criminal and other sanctions would not exempt a center, facility, agent, patient, or caregiver from criminal penalties or civil prosecution under a law of general application that would apply even if medical marijuana or paraphernalia were not involved.

The Act would not limit the ability of a primary caregiver to assert the medical purpose defense provided in the MMMA to any prosecution involving marijuana.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have no fiscal impact on State government. Any increase in fine revenue from the proposed State civil infractions would be allocated to public libraries.

There could be increased cost to local government for enforcement of the proposed misdemeanor. There also could be increased legal costs if a municipality petitioned the court for the closure of a center or facility or to ensure safety compliance.

In addition, a city, village, or township that chose to enact an ordinance regulating medical marihuana provisioning centers or safety compliance facilities would have additional administrative and enforcement responsibilities and, depending on the terms of the local ordinance, registration or license fee revenue to cover all or a portion of the costs of regulation. A municipality that chose to prohibit the operation of provisioning centers or safety compliance facilities would avoid the cost of the regulation of those facilities; however, it potentially would incur costs to enforce a local prohibition against those entities. A county with a provisioning center would have new responsibilities under the bill to inspect provisioning centers at least annually. The provisioning centers would be required to pay the cost of the inspection.

Fiscal Analyst: John Maxwell
Elizabeth Pratt

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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.