

**SUBSTITUTE FOR
HOUSE BILL NO. 5104**

A bill to amend 2008 IL 1, entitled
"Michigan medical marihuana act,"
by amending sections 3, 4, 7, and 8 (MCL 333.26423, 333.26424,
333.26427, and 333.26428), sections 3, 4, and 8 as amended by 2012
PA 512, and by adding section 4a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 3. Definitions.

2 Sec. 3. As used in this act:

3 (a) "Bona fide physician-patient relationship" means a
4 treatment or counseling relationship between a physician and
5 patient in which all of the following are present:

6 (1) The physician has reviewed the patient's relevant medical
7 records and completed a full assessment of the patient's medical

1 history and current medical condition, including a relevant, in-
2 person, medical evaluation of the patient.

3 (2) The physician has created and maintained records of the
4 patient's condition in accord with medically accepted standards.

5 (3) The physician has a reasonable expectation that he or she
6 will provide follow-up care to the patient to monitor the efficacy
7 of the use of medical marihuana as a treatment of the patient's
8 debilitating medical condition.

9 (4) If the patient has given permission, the physician has
10 notified the patient's primary care physician of the patient's
11 debilitating medical condition and certification for the **MEDICAL**
12 use of ~~medical~~-marihuana to treat that condition.

13 (b) "Debilitating medical condition" means 1 or more of the
14 following:

15 (1) Cancer, glaucoma, positive status for human
16 immunodeficiency virus, acquired immune deficiency syndrome,
17 hepatitis C, amyotrophic lateral sclerosis, Crohn's disease,
18 agitation of Alzheimer's disease, nail patella, or the treatment of
19 these conditions.

20 (2) A chronic or debilitating disease or medical condition or
21 its treatment that produces 1 or more of the following: cachexia or
22 wasting syndrome; severe and chronic pain; severe nausea; seizures,
23 including but not limited to those characteristic of epilepsy; or
24 severe and persistent muscle spasms, including but not limited to
25 those characteristic of multiple sclerosis.

26 (3) Any other medical condition or its treatment approved by
27 the department, as provided for in section 6(k).

1 (c) "Department" means the department of licensing and
2 regulatory affairs.

3 (d) "Enclosed, locked facility" means a closet, room, or other
4 comparable, stationary, and fully enclosed area equipped with
5 secured locks or other functioning security devices that permit
6 access only by a registered primary caregiver or registered
7 qualifying patient. Marihuana plants grown outdoors are considered
8 to be in an enclosed, locked facility if they are not visible to
9 the unaided eye from an adjacent property when viewed by an
10 individual at ground level or from a permanent structure and are
11 grown within a stationary structure that is enclosed on all sides,
12 except for the base, by chain-link fencing, wooden slats, or a
13 similar material that prevents access by the general public and
14 that is anchored, attached, or affixed to the ground; located on
15 land that is owned, leased, or rented by either the registered
16 qualifying patient or a person designated through the departmental
17 registration process as the primary caregiver for the registered
18 qualifying patient or patients for whom the marihuana plants are
19 grown; and equipped with functioning locks or other security
20 devices that restrict access to only the registered qualifying
21 patient or the registered primary caregiver who owns, leases, or
22 rents the property on which the structure is located. Enclosed,
23 locked facility includes a motor vehicle if both of the following
24 conditions are met:

25 (1) The vehicle is being used temporarily to transport living
26 marihuana plants from 1 location to another with the intent to
27 permanently retain those plants at the second location.

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1 (2) An individual is not inside the vehicle unless he or she
2 is either the registered qualifying patient to whom the living
3 marihuana plants belong or the individual designated through the
4 departmental registration process as the primary caregiver for the
5 registered qualifying patient.

6 (e) "Marihuana" means that term as defined in section 7106 of
7 the public health code, 1978 PA 368, MCL 333.7106.

8 (F) **"MARIHUANA-INFUSED PRODUCT" MEANS A TOPICAL FORMULATION,**
9 **TINCTURE, BEVERAGE, EDIBLE SUBSTANCE, OR SIMILAR PRODUCT CONTAINING**
10 **ANY USABLE MARIHUANA THAT IS INTENDED FOR HUMAN CONSUMPTION IN A**
11 **MANNER OTHER THAN SMOKE INHALATION. [MARIHUANA-INFUSED PRODUCT SHALL NOT**
BE CONSIDERED A FOOD FOR PURPOSES OF THE FOOD LAW, 2000 PA 92, MCL
289.1101 TO 289.8111.]

12 (G) ~~(f)~~—"Medical use **OF MARIHUANA**" means the acquisition,
13 possession, cultivation, manufacture, **EXTRACTION**, use, internal
14 possession, delivery, transfer, or transportation of marihuana,
15 **USABLE MARIHUANA**, or paraphernalia relating to the administration
16 of **USABLE** marihuana to treat or alleviate a registered qualifying
17 patient's debilitating medical condition or symptoms associated
18 with the debilitating medical condition.

19 (H) ~~(g)~~—"Physician" means an individual licensed as a
20 physician under Part 170 of the public health code, 1978 PA 368,
21 MCL 333.17001 to 333.17084, or an osteopathic physician under Part
22 175 of the public health code, 1978 PA 368, MCL 333.17501 to
23 333.17556.

24 (I) ~~(h)~~—"Primary caregiver" or "caregiver" means a person who
25 is at least 21 years old and who has agreed to assist with a
26 patient's medical use of marihuana and who has not been convicted
27 of any felony within the past 10 years and has never been convicted

1 of a felony involving illegal drugs or a felony that is an
2 assaultive crime as defined in section 9a of chapter X of the code
3 of criminal procedure, 1927 PA 175, MCL 770.9a.

4 (J) ~~(i)~~—"Qualifying patient" or "patient" means a person who
5 has been diagnosed by a physician as having a debilitating medical
6 condition.

7 (K) ~~(j)~~—"Registry identification card" means a document issued
8 by the department that identifies a person as a registered
9 qualifying patient or registered primary caregiver.

10 (L) ~~(k)~~—"Usable marihuana" means the dried leaves, ~~and flowers,~~
11 **PLANT RESIN, OR EXTRACT** of the marihuana plant, ~~and any mixture or~~
12 ~~preparation thereof,~~ but does not include the seeds, stalks, and
13 roots of the plant.

14 (M) **"USABLE MARIHUANA EQUIVALENT" MEANS THE AMOUNT OF USABLE**
15 **MARIHUANA IN A MARIHUANA-INFUSED PRODUCT THAT IS CALCULATED AS**
16 **PROVIDED IN SECTION 4(C).**

17 (N) ~~(l)~~—"Visiting qualifying patient" means a patient who is
18 not a resident of this state or who has been a resident of this
19 state for less than 30 days.

20 (O) ~~(m)~~—"Written certification" means a document signed by a
21 physician, stating all of the following:

22 (1) The patient's debilitating medical condition.

23 (2) The physician has completed a full assessment of the
24 patient's medical history and current medical condition, including
25 a relevant, in-person, medical evaluation.

26 (3) In the physician's professional opinion, the patient is
27 likely to receive therapeutic or palliative benefit from the

1 medical use of marihuana to treat or alleviate the patient's
2 debilitating medical condition or symptoms associated with the
3 debilitating medical condition.

4 4. Protections for the Medical Use of Marihuana.

5 Sec. 4. (a) A qualifying patient who has been issued and
6 possesses a registry identification card shall not be subject to
7 arrest, prosecution, or penalty in any manner, or denied any right
8 or privilege, including but not limited to civil penalty or
9 disciplinary action by a business or occupational or professional
10 licensing board or bureau, for the medical use of marihuana in
11 accordance with this act, provided that the qualifying patient
12 possesses an amount of marihuana that does not exceed 2.5 ounces of
13 usable marihuana **AND USABLE MARIHUANA EQUIVALENTS**, and, if the
14 qualifying patient has not specified that a primary caregiver will
15 be allowed under state law to cultivate marihuana for the
16 qualifying patient, 12 marihuana plants kept in an enclosed, locked
17 facility. Any incidental amount of seeds, stalks, and unusable
18 roots shall also be allowed under state law and shall not be
19 included in this amount. The privilege from arrest under this
20 subsection applies only if the qualifying patient presents both his
21 or her registry identification card and a valid driver license or
22 government-issued identification card that bears a photographic
23 image of the qualifying patient.

24 (b) A primary caregiver who has been issued and possesses a
25 registry identification card shall not be subject to arrest,
26 prosecution, or penalty in any manner, or denied any right or
27 privilege, including but not limited to civil penalty or

1 disciplinary action by a business or occupational or professional
2 licensing board or bureau, for assisting a qualifying patient to
3 whom he or she is connected through the department's registration
4 process with the medical use of marihuana in accordance with this
5 act. The privilege from arrest under this subsection applies only
6 if the primary caregiver presents both his or her registry
7 identification card and a valid driver license or government-issued
8 identification card that bears a photographic image of the primary
9 caregiver. This subsection applies only if the primary caregiver
10 possesses an amount of **USABLE marihuana AND USABLE MARIHUANA**
11 **EQUIVALENTS** that does not exceed:

12 (1) 2.5 ounces ~~of usable marihuana~~ for each qualifying patient
13 to whom he or she is connected through the department's
14 registration process; and

15 (2) for each registered qualifying patient who has specified
16 that the primary caregiver will be allowed under state law to
17 cultivate marihuana for the qualifying patient, 12 marihuana plants
18 kept in an enclosed, locked facility; and

19 (3) any incidental amount of seeds, stalks, and unusable
20 roots.

21 **(C) FOR PURPOSES OF DETERMINING USABLE MARIHUANA EQUIVALENCY,**
22 **1 OUNCE OF USABLE MARIHUANA SHALL BE CONSIDERED EQUIVALENT TO THE**
23 **FOLLOWING:**

24 (1) 16 OUNCES OF MARIHUANA-INFUSED PRODUCT IF IN A SOLID FORM.

25 (2) 7 GRAMS OF MARIHUANA-INFUSED PRODUCT IF IN A GASEOUS FORM.

26 (3) 72 FLUID OUNCES OF MARIHUANA-INFUSED PRODUCT IF IN A
27 LIQUID FORM.

1 (D) ~~(e)~~—A person shall not be denied custody or visitation of
2 a minor for acting in accordance with this act, unless the person's
3 behavior is such that it creates an unreasonable danger to the
4 minor that can be clearly articulated and substantiated.

5 (E) ~~(d)~~—There shall be a presumption that a qualifying patient
6 or primary caregiver is engaged in the medical use of marihuana in
7 accordance with this act if the qualifying patient or primary
8 caregiver:

9 (1) is in possession of a registry identification card; and

10 (2) is in possession of an amount of marihuana **AND USABLE**
11 **MARIHUANA** that does not exceed the amount allowed under this act.
12 The presumption may be rebutted by evidence that conduct related to
13 marihuana **AND USABLE MARIHUANA** was not for the purpose of
14 alleviating the qualifying patient's debilitating medical condition
15 or symptoms associated with the debilitating medical condition, in
16 accordance with this act.

17 (F) ~~(e)~~—A registered primary caregiver may receive
18 compensation for costs associated with assisting a registered
19 qualifying patient in the medical use of marihuana. Any such
20 compensation shall not constitute the sale of controlled
21 substances.

22 (G) ~~(f)~~—A physician shall not be subject to arrest,
23 prosecution, or penalty in any manner, or denied any right or
24 privilege, including but not limited to civil penalty or
25 disciplinary action by the Michigan board of medicine, the Michigan
26 board of osteopathic medicine and surgery, or any other business or
27 occupational or professional licensing board or bureau, solely for

1 providing written certifications, in the course of a bona fide
2 physician-patient relationship and after the physician has
3 completed a full assessment of the qualifying patient's medical
4 history, or for otherwise stating that, in the physician's
5 professional opinion, a patient is likely to receive therapeutic or
6 palliative benefit from the medical use of marihuana to treat or
7 alleviate the patient's serious or debilitating medical condition
8 or symptoms associated with the serious or debilitating medical
9 condition, provided that nothing shall prevent a professional
10 licensing board from sanctioning a physician for failing to
11 properly evaluate a patient's medical condition or otherwise
12 violating the standard of care for evaluating medical conditions.

13 (H) ~~(g)~~—A person shall not be subject to arrest, prosecution,
14 or penalty in any manner, or denied any right or privilege,
15 including but not limited to civil penalty or disciplinary action
16 by a business or occupational or professional licensing board or
17 bureau, for providing a registered qualifying patient or a
18 registered primary caregiver with marihuana paraphernalia for
19 purposes of a qualifying patient's medical use of marihuana.

20 (I) ~~(h)~~—Any marihuana, **USABLE MARIHUANA**, marihuana
21 paraphernalia, or licit property that is possessed, owned, or used
22 in connection with the medical use of marihuana, as allowed under
23 this act, or acts incidental to such use, shall not be seized or
24 forfeited.

25 (J) ~~(i)~~—A person shall not be subject to arrest, prosecution,
26 or penalty in any manner, or denied any right or privilege,
27 including but not limited to civil penalty or disciplinary action

1 by a business or occupational or professional licensing board or
2 bureau, solely for being in the presence or vicinity of the medical
3 use of marihuana in accordance with this act, or for assisting a
4 registered qualifying patient with using or administering marihuana
5 **OR USABLE MARIHUANA.**

6 (K) ~~(j)~~—A registry identification card, or its equivalent,
7 that is issued under the laws of another state, district,
8 territory, commonwealth, or insular possession of the United States
9 that allows the medical use of marihuana by a visiting qualifying
10 patient, or to allow a person to assist with a visiting qualifying
11 patient's medical use of marihuana, shall have the same force and
12 effect as a registry identification card issued by the department.

13 (I) ~~(k)~~—Any registered qualifying patient or registered primary
14 caregiver who sells marihuana **OR USABLE MARIHUANA** to someone who is
15 not allowed to use marihuana for medical purposes **MEDICAL USE OF**
16 **MARIHUANA** under this act shall have his or her registry
17 identification card revoked and is guilty of a felony punishable by
18 imprisonment for not more than 2 years or a fine of not more than
19 \$2,000.00, or both, in addition to any other penalties for the
20 distribution of marihuana.

21 (M) **A PERSON IS NOT SUBJECT TO ARREST, PROSECUTION, OR PENALTY**
22 **IN ANY MANNER, AND SHALL NOT BE DENIED ANY RIGHT OR PRIVILEGE,**
23 **INCLUDING, BUT NOT LIMITED TO, CIVIL PENALTY OR DISCIPLINARY ACTION**
24 **BY A BUSINESS OR OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR**
25 **BUREAU, FOR MANUFACTURING MARIHUANA-INFUSED PRODUCT IF THE PERSON**
26 **IS ANY OF THE FOLLOWING:**

27 (1) **A REGISTERED PATIENT, MANUFACTURING FOR HIS OR HER OWN**

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as amended December 12, 2013

1 PERSONAL USE.

2 (2) A PRIMARY CAREGIVER, MANUFACTURING FOR THE USE OF A
3 PATIENT TO WHOM HE OR SHE IS CONNECTED THROUGH THE DEPARTMENT'S
4 REGISTRATION PROCESS.

5 (3) A MEDICAL MARIHUANA PROVISIONING CENTER.

6 (N) EXCEPT WHEN BEING MANUFACTURED OR CONSUMED, ANY MARIHUANA-
7 INFUSED PRODUCT MUST BE INDIVIDUALLY PACKAGED AND CLEARLY LABELED
8 WITH ALL OF THE FOLLOWING:

9 (1) THE WEIGHT OF THE MARIHUANA-INFUSED PRODUCT [IN OUNCES. THERE
SHALL BE A REBUTTABLE PRESUMPTION THAT THE LISTED WEIGHT OF THE
MARIHUANA-INFUSED PRODUCT IS TRUE AND CORRECT].

10 (2) THE NAME OF THE INDIVIDUAL WHO MANUFACTURED THE MARIHUANA-
11 INFUSED PRODUCT.

12 (3) THE DATE ON WHICH THE MARIHUANA-INFUSED PRODUCT WAS
13 MANUFACTURED.

14 (4) IF THE PATIENT RECEIVED THE MARIHUANA-INFUSED PRODUCT FROM
15 HIS OR HER PRIMARY CAREGIVER OR A MEDICAL MARIHUANA PROVISIONING
16 CENTER, THE DATE ON WHICH THE TRANSACTION OCCURRED.

17 (5) IF THE PATIENT RECEIVED THE MARIHUANA-INFUSED PRODUCT FROM
18 HIS OR HER PRIMARY CAREGIVER OR A MEDICAL MARIHUANA PROVISIONING
19 CENTER, THE NAME OF THE PRIMARY CAREGIVER OR MEDICAL MARIHUANA
20 PROVISIONING CENTER.

21 (O) EACH OF THE FOLLOWING IS A [FELONY PUNISHABLE BY IMPRISONMENT
22 FOR NOT MORE THAN 2 YEARS, A FINE OF UP TO \$2,000.00], OR BOTH:

23 (1) A QUALIFYING PATIENT SHALL NOT TRANSFER A MARIHUANA-
24 INFUSED PRODUCT TO ANY INDIVIDUAL.

25 (2) A REGISTERED CAREGIVER SHALL NOT TRANSFER A MARIHUANA-
26 INFUSED PRODUCT TO ANY INDIVIDUAL WHO IS NOT A QUALIFYING PATIENT
27 TO WHOM HE OR SHE IS CONNECTED THROUGH THE DEPARTMENT'S

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 1 REGISTRATION PROCESS.

2 (3) A MEDICAL MARIHUANA PROVISIONING CENTER SHALL NOT TRANSFER
 3 A MARIHUANA-INFUSED PRODUCT TO ANY INDIVIDUAL WHO IS NOT A
 4 QUALIFYING PATIENT OR REGISTERED CAREGIVER.

[(P) IN A PUBLIC PLACE, THE PRIVILEGE FROM ARREST UNDER SUBSECTION
 (A) OR (B) DOES NOT APPLY UNLESS ALL OF THE FOLLOWING APPLY:

(1) THE USABLE MARIHUANA AND MARIHUANA-INFUSED PRODUCT ARE PACKAGED
 AND EACH PACKAGE IS LABELED WITH THE WEIGHT OF THE USABLE MARIHUANA.

(2) THE TOTAL WEIGHT INDICATED ON THE PACKAGE LABELS IS NOT MORE
 THAN THE AMOUNT PERMITTED UNDER SUBSECTION (A) OR (B). THE INDICATED
 WEIGHT IS PRESUMED TO BE TRUE AND CORRECT. HOWEVER, THIS PRESUMPTION DOES
 NOT PROHIBIT A LAW ENFORCEMENT OFFICIAL FROM ARRESTING AN INDIVIDUAL IF
 THERE IS AN ARTICULABLE SUSPICION THAT THE INDICATED WEIGHT IS NOT
 CORRECT AND THE TOTAL WEIGHT IS GREATER THAN THE AMOUNT PERMITTED UNDER
 SUBSECTION (A) OR (B).]

5 SEC. 4A. (1) THIS SECTION DOES NOT APPLY UNLESS THE MEDICAL
 6 MARIHUANA PROVISIONING CENTER REGULATION ACT IS ENACTED INTO LAW.

7 (2) [A] PERSON IS NOT SUBJECT TO
 8 ARREST, PROSECUTION, OR CRIMINAL PENALTY FOR A TRANSFER OR USE OF
 9 MARIHUANA OR USABLE MARIHUANA EQUIVALENTS IN AN AMOUNT AUTHORIZED
 10 BY LAW AND IN CONFORMITY WITH ANY RESTRICTIONS IN THIS ACT OR THE
 11 MEDICAL MARIHUANA PROVISIONING CENTER REGULATION ACT. [HOWEVER, A
 QUALIFYING PATIENT OR REGISTERED CAREGIVER SHALL NOT TRANSFER MORE THAN
 50 OUNCES OF USABLE MARIHUANA TO A MEDICAL MARIHUANA PROVISIONING CENTER
 DURING A 60-CALENDAR-DAY PERIOD.]

12 7. Scope of Act.

13 Sec. 7. (a) The medical use of marihuana is allowed under
 14 state law to the extent that it is carried out in accordance with
 15 the provisions of this act.

16 (b) This act shall not permit any person to do any of the
 17 following:

18 (1) Undertake any task under the influence of marihuana, when
 19 doing so would constitute negligence or professional malpractice.

20 (2) Possess marihuana OR USABLE MARIHUANA, or otherwise engage
 21 in the medical use of marihuana:

22 (A) in a school bus;

23 (B) on the grounds of any preschool or primary or secondary
 24 school; or

25 (C) in any correctional facility.

26 (3) Smoke marihuana:

27 (A) on any form of public transportation; or

1 (B) in any public place.

2 (4) Operate, navigate, or be in actual physical control of any
3 motor vehicle, aircraft, or motorboat while under the influence of
4 marihuana.

5 (5) Use marihuana **OR USABLE MARIHUANA** if that person does not
6 have a serious or debilitating medical condition.

7 (c) Nothing in this act shall be construed to require:

8 (1) A government medical assistance program or commercial or
9 non-profit health insurer to reimburse a person for costs
10 associated with the medical use of marihuana.

11 (2) An employer to accommodate the ingestion of marihuana **OR**
12 **USABLE MARIHUANA** in any workplace or any employee working while
13 under the influence of marihuana **OR USABLE MARIHUANA**.

14 (d) Fraudulent representation to a law enforcement official of
15 any fact or circumstance relating to the medical use of marihuana
16 to avoid arrest or prosecution shall be punishable by a fine of
17 \$500.00, which shall be in addition to any other penalties that may
18 apply for making a false statement or for the use of marihuana **OR**
19 **USABLE MARIHUANA** other than use undertaken pursuant to this act.

20 (e) All other acts and parts of acts inconsistent with this
21 act do not apply to the medical use of marihuana as provided for by
22 this act.

23 8. Affirmative Defense and Dismissal for Medical Marihuana.

24 Sec. 8. (a) Except as provided in section 7(b), a patient and
25 a patient's primary caregiver, if any, may assert the medical
26 purpose for using marihuana **OR USABLE MARIHUANA** as a defense to any
27 prosecution involving marihuana **OR USABLE MARIHUANA**, and this

1 defense shall be presumed valid where the evidence shows that:

2 (1) A physician has stated that, in the physician's
3 professional opinion, after having completed a full assessment of
4 the patient's medical history and current medical condition made in
5 the course of a bona fide physician-patient relationship, the
6 patient is likely to receive therapeutic or palliative benefit from
7 the medical use of marihuana to treat or alleviate the patient's
8 serious or debilitating medical condition or symptoms of the
9 patient's serious or debilitating medical condition;

10 (2) The patient and the patient's primary caregiver, if any,
11 were collectively in possession of a quantity of marihuana **AND**
12 **USABLE MARIHUANA** that was not more than was reasonably necessary to
13 ensure the uninterrupted availability of marihuana **OR USABLE**
14 **MARIHUANA** for the purpose of treating or alleviating the patient's
15 serious or debilitating medical condition or symptoms of the
16 patient's serious or debilitating medical condition; and

17 (3) The patient and the patient's primary caregiver, if any,
18 were engaged in the acquisition, possession, cultivation,
19 manufacture, use, delivery, transfer, or transportation of
20 marihuana, **USABLE MARIHUANA**, or paraphernalia, relating to the ~~use~~
21 ~~of marihuana to treat or alleviate the patient's serious or~~
22 ~~debilitating medical condition or symptoms of the patient's serious~~
23 ~~or debilitating medical condition.~~ **MEDICAL USE OF MARIHUANA.**

24 (b) A person may assert the medical purpose for using
25 marihuana **OR USABLE MARIHUANA** in a motion to dismiss, and the
26 charges shall be dismissed following an evidentiary hearing where
27 the person shows the elements listed in subsection (a).

1 (c) If a patient or a patient's primary caregiver demonstrates
2 the patient's medical purpose for using marihuana **OR USABLE**
3 **MARIHUANA** pursuant to this section, the patient and the patient's
4 primary caregiver shall not be subject to the following for the
5 patient's medical use of marihuana:

6 (1) disciplinary action by a business or occupational or
7 professional licensing board or bureau; or

8 (2) forfeiture of any interest in or right to property.