

HOUSE BILL No. 4271

February 19, 2013, Introduced by Reps. Callton, McMillin, Pettalia, Bumstead, Foster, Daley, Irwin, Dillon, Stanley, Hovey-Wright, MacMaster, Ananich, Stallworth, Cavanagh, Singh, Yonker and Potvin and referred to the Committee on Judiciary.

A bill to regulate medical marihuana provisioning centers and other related entities; to provide for the powers and duties of certain state and local governmental officers and entities; to provide immunity for persons engaging in certain activities in compliance with this act; to prescribe penalties and sanctions and provide remedies; and to allow the promulgation of rules.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "medical marihuana provisioning center regulation act".

3 Sec. 2. As used in this act:

4 (a) "Debilitating medical condition" means that term as
5 defined in section 3 of the Michigan medical marihuana act, MCL
6 333.26423.

7 (b) "Excluded felony offense" means a felony involving illegal

1 drugs. Excluded felony offense does not include a conviction for
2 activity allowed under the Michigan medical marihuana act or this
3 act, even if the activity occurred before the enactment of this act
4 or the Michigan medical marihuana act.

5 (c) "Marihuana" means that term as defined in section 3 of the
6 Michigan medical marihuana act, MCL 333.26423.

7 (d) "Medical marihuana" means marihuana for medical use as
8 that term is defined in section 3 of the Michigan medical marihuana
9 act, MCL 333.26423.

10 (e) "Medical marihuana provisioning center" or "provisioning
11 center" means a commercial entity located in this state that
12 acquires, possesses, cultivates, manufactures, delivers, transfers,
13 or transports medical marihuana and sells, supplies, or dispenses
14 medical marihuana to registered qualifying patients, directly or
15 through the patients' registered primary caregivers. Provisioning
16 center includes any commercial property where medical marihuana is
17 sold to registered qualifying patients and registered primary
18 caregivers.

19 (f) "Michigan medical marihuana act" means the Michigan
20 medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430.

21 (g) "Municipality" means a city, township, or village.

22 (h) "Paraphernalia" means drug paraphernalia as defined in
23 section 7451 of the public health code, 1978 PA 368, MCL 333.7451,
24 that is or may be used in association with medical marihuana.

25 (i) "Provisioning center agent" means a principal officer,
26 board member, employee, or operator, or any other individual acting
27 as an agent of a provisioning center.

1 (j) "Registered primary caregiver" means a person who has a
2 valid, unexpired registry identification card as a primary
3 caregiver or who satisfies the criteria listed in section 9(b) or
4 (c) of the Michigan medical marihuana act, MCL 333.26429, and
5 possesses the documentation that constitutes a valid registry
6 identification card under that section.

7 (k) "Registered qualifying patient" means a person who meets
8 any of the following requirements:

9 (i) Has a valid, unexpired registry identification card as a
10 qualifying patient.

11 (ii) Satisfies the criteria listed in section 9(b) or (c) of
12 the Michigan medical marihuana act, MCL 333.26429, and possesses
13 the documentation that constitutes a valid registry identification
14 card under that section.

15 (l) "Registry identification card" means that term as defined
16 in section 3 of the Michigan medical marihuana act, MCL 333.26423.

17 (m) "Safety compliance facility" means an entity that tests
18 marihuana produced for medical use for contaminants or potency.

19 (n) "Safety compliance facility agent" means a principal
20 officer, board member, employee, operator, or agent of a safety
21 compliance facility.

22 (o) "Seedling" means a marihuana plant that has no flowers, is
23 less than 12 inches in height, and is less than 12 inches in
24 diameter.

25 (p) "Usable marihuana" means the completely dried leaves and
26 flowers of the marihuana plant but does not include the seeds,
27 stalks, nondried leaves, or roots of the plant. Any cooking mixture

1 or preparation used to prepare marihuana infused ingestible or
2 topical products is not usable marihuana, if the ingestible or
3 topical product has or will have the amount of actual marihuana
4 plant material used in its preparation clearly marked on its
5 packaging.

6 (q) "Visiting qualifying patient" means a patient who is not a
7 resident of this state or who has been a resident of this state for
8 less than 30 days and who possesses a registry identification card,
9 or its equivalent, that was issued under the laws of another state,
10 district, territory, commonwealth, or insular possession of the
11 United States and that allows the use of medical marihuana by the
12 patient.

13 Sec. 3. (1) Except as otherwise provided in this act, if a
14 provisioning center has been granted any applicable required
15 municipal registration or license and is operating in compliance
16 with this act and any applicable municipal ordinance, the
17 provisioning center and the provisioning center agents acting on
18 its behalf are not subject to any of the following for engaging in
19 activities described in subsection (2):

20 (a) Criminal penalties under state law or local ordinances.

21 (b) State or local civil prosecution.

22 (c) Search or inspection, except for an inspection authorized
23 by the municipality.

24 (d) Seizure.

25 (e) Any sanction, including disciplinary action or denial of a
26 right or privilege, by a business or occupational or professional
27 licensing board or bureau.

1 (2) Activities that are exempt from regulation and sanctions
2 under subsection (1) include all of the following:

3 (a) Purchasing or receiving marihuana seeds to grow medical
4 marihuana from visiting qualifying patients, registered qualifying
5 patients, registered primary caregivers, or provisioning centers.

6 (b) Purchasing or receiving medical marihuana, including
7 seedlings, from 1 or more other provisioning centers if purchasing
8 or receiving medical marihuana from the provisioning center is not
9 prohibited by the municipality where the provisioning center is
10 located.

11 (c) Purchasing or receiving medical marihuana from a
12 registered qualifying patient or a registered primary caregiver if
13 purchasing or receiving medical marihuana from a registered
14 qualifying patient or registered primary caregiver is not
15 prohibited by the municipality where the provisioning center is
16 located and if the amount purchased does not exceed the registered
17 qualifying patient's or registered primary caregiver's medical
18 marihuana possession limits under the Michigan medical marihuana
19 act.

20 (d) Cultivating or manufacturing medical marihuana.

21 (e) Possessing or manufacturing paraphernalia.

22 (f) Possessing or processing medical marihuana produced by the
23 provisioning center or obtained pursuant to subdivision (a) or (b)
24 on the provisioning center premises or while the medical marihuana
25 is being transported pursuant to this section.

26 (g) If not prohibited by municipal law, transporting medical
27 marihuana, including seedlings, between the provisioning center and

1 another provisioning center or a safety compliance facility.

2 (h) Transporting or delivering medical marihuana or
3 paraphernalia to the residence of a registered qualifying patient
4 or a registered primary caregiver if transportation and delivery
5 are not prohibited by the municipality in which the transportation
6 and delivery occur.

7 (i) Supplying, selling, dispensing, transferring, or
8 delivering medical marihuana, paraphernalia, or related supplies
9 and educational materials in compliance with the procedures and
10 limitations detailed in section 7(11) to (13).

11 Sec. 3a. An entity that, on the effective date of this act, is
12 operating in this state as a provisioning center, is operating and
13 continues to operate in compliance with this act, and is not
14 prohibited by any applicable municipal ordinance may continue to
15 operate as a provisioning center under this act. An entity
16 described in this section is considered a provisioning center under
17 this act, and the entity and the agents acting on its behalf are
18 eligible for the immunity provided in this act and are subject to
19 the penalties, sanctions, and remedies prescribed or provided in
20 this act.

21 Sec. 4. (1) Except as otherwise provided in this act, a safety
22 compliance facility that has been granted any applicable required
23 municipal registration or license and is operating in compliance
24 with any applicable municipal ordinance and this act is not subject
25 to any of the following for engaging in activities described in
26 subsection (2):

27 (a) Criminal penalties under state law or local ordinances.

1 (b) State or local civil prosecution.

2 (c) Search or inspection, except for an inspection authorized
3 by the municipality.

4 (d) Seizure.

5 (e) Any sanction, including disciplinary action or denial of a
6 right or privilege, by a business or occupational or professional
7 licensing board or bureau.

8 (2) Activities that are exempt from regulation and sanction
9 under subsection (1) include all of the following:

10 (a) Acquiring or possessing medical marihuana obtained from
11 registered qualifying patients, registered primary caregivers, or
12 provisioning centers.

13 (b) Returning the medical marihuana to the registered
14 qualifying patient, registered primary caregiver, or provisioning
15 center that delivered the medical marihuana to the safety
16 compliance facility.

17 (c) Transporting medical marihuana to or from a registered
18 qualifying patient, registered primary caregiver, or provisioning
19 center.

20 (d) Possessing medical marihuana on the safety compliance
21 facility's premises for testing, if the medical marihuana was
22 obtained pursuant to subdivision (a) or (b).

23 (e) Receiving compensation for actions permitted pursuant to
24 this section and municipal law.

25 Sec. 5. (1) A municipality may prohibit the operation of
26 provisioning centers or safety compliance facilities within the
27 municipality. A provisioning center is not exempt under section 3

1 from state criminal and civil penalties if it operates in a
2 municipality that prohibits provisioning centers. A safety
3 compliance facility is not exempt under section 4 from state
4 criminal and civil penalties if it operates in a municipality that
5 prohibits safety compliance facilities.

6 (2) A municipality may enact an ordinance to impose and
7 enforce additional local requirements on provisioning centers or
8 safety compliance facilities. A municipality may require and issue
9 a registration or license to a provisioning center or safety
10 compliance facility and may regulate operations and impose civil or
11 criminal penalties for the violations of the local ordinance. A
12 municipality may charge a registration or licensing fee for a
13 provisioning center or safety compliance facility that does not
14 exceed the costs to the municipality of regulation, licensing,
15 testing, and inspection.

16 (3) A provisioning center or safety compliance facility
17 located in a municipality that requires a registration or license
18 is exempt under section 3 or 4 from criminal penalties only if the
19 provisioning center or safety compliance facility holds that
20 license or registration.

21 (4) A municipality may require, as a condition of registration
22 or licensure, that a provisioning center or a safety compliance
23 facility provide results of testing of its medical marihuana and
24 medical marihuana products for quality control, purity,
25 contaminants, or any other analysis to protect the health and
26 safety of registered qualifying patients and to assure compliance
27 with this act and an ordinance adopted by the municipality as

1 described in this section.

2 Sec. 6. (1) The exemptions for a provisioning center or safety
3 compliance facility under section 3 or 4 apply only if the
4 indicated activities are carried out in compliance with this act.

5 (2) Except for the Michigan medical marihuana act, all other
6 acts and parts of acts inconsistent with this act do not apply to
7 the use of medical marihuana as provided for by this act.

8 Sec. 7. (1) Unless explicitly allowed by a municipal ordinance
9 that was in effect before the effective date of this act, a
10 provisioning center or a safety compliance facility shall not be
11 located within 1,000 feet of the property line of a preexisting
12 primary or secondary school.

13 (2) A provisioning center shall not share office space with a
14 physician.

15 (3) The premises of a provisioning center shall have a
16 security alarm system that is enabled when a provisioning center
17 agent is not present.

18 (4) A provisioning center shall not sell, transfer, or
19 dispense a marihuana-infused product for use as medical marihuana
20 unless it is labeled with both of the following:

21 (a) The weight of marihuana contained in the product.

22 (b) The words "WARNING: This product contains marihuana. For a
23 registered qualifying patient's medical use only." or substantially
24 similar text.

25 (5) A provisioning center shall not advertise medical
26 marihuana for sale on a billboard, television, or radio. The
27 department of licensing and regulatory affairs may promulgate rules

1 restricting advertising of medical marihuana. The rules shall not
2 prohibit appropriate signs on the property of a provisioning
3 center, internet websites for a provisioning center or registered
4 primary caregiver, listings in business directories or telephone
5 books, listings in trade or medical print or online publications,
6 or advertising the sponsorship of health or not-for-profit charity
7 or advocacy events.

8 (6) A provisioning center or safety compliance facility shall
9 not knowingly employ an individual who has been convicted of an
10 excluded felony offense during the immediately preceding 10-year
11 period or who is under 21 years of age. A provisioning center or
12 safety compliance facility shall perform a background check on an
13 individual before he or she is offered employment to verify that he
14 or she has not been convicted of an excluded felony offense during
15 the immediately preceding 10-year period.

16 (7) A provisioning center shall maintain records listing each
17 individual employed by the provisioning center, including the
18 beginning employment date and the date a background check was
19 performed.

20 (8) A provisioning center shall not allow on-site consumption
21 of medical marihuana, except that a provisioning center agent or
22 employee who is a registered qualifying patient may be permitted to
23 use a medical marihuana-infused topical product.

24 (9) A provisioning center shall not dispense more than 2.5
25 ounces of useable marihuana in any 10-day period to a registered
26 qualifying patient, directly or through his or her registered
27 primary caregiver.

1 (10) A provisioning center shall ensure compliance with the
2 dispensing limit under subsection (9) by maintaining internal,
3 confidential dispensing records that specify the amount of medical
4 marihuana dispensed to each registered qualifying patient and
5 registered primary caregiver and whether it was dispensed directly
6 to the registered qualifying patient or the registered primary
7 caregiver. Each entry shall include the date and time the medical
8 marihuana was dispensed. Entries shall be maintained for at least
9 90 days. For any registered qualifying patient or registered
10 qualifying caregiver in possession of a registry identification
11 card, a record shall be kept using the patient's or caregiver's
12 registry identification card number instead of the patient's or
13 caregiver's name. Confidential dispensing records under this act
14 are subject to reasonable inspection by a municipal employee
15 authorized to inspect provisioning centers under municipal law to
16 ensure compliance with this act, but may be stored off-site.
17 Confidential dispensing records under this act are exempt from
18 disclosure under the freedom of information act, 1976 PA 442, MCL
19 15.231 to 15.246. Except as otherwise required by a court order, a
20 provisioning center shall not disclose confidential dispensing
21 records to any person other than a municipal employee performing an
22 inspection in compliance with this subsection or to a provisioning
23 center agent.

24 (11) A provisioning center agent shall not dispense, transfer,
25 or sell medical marihuana to an individual knowing that the
26 individual is not a registered qualifying patient, registered
27 primary caregiver, or provisioning center agent working on behalf

1 of a provisioning center that is not prohibited from operating or
2 obtaining medical marihuana from other provisioning centers under
3 municipal law.

4 (12) Before medical marihuana is dispensed or sold from a
5 provisioning center, in addition to complying with subsection (13),
6 a provisioning center agent shall do 1 of the following:

7 (a) Verify that the individual requesting medical marihuana
8 holds what the provisioning center agent reasonably believes to be
9 a valid, unexpired registry identification card.

10 (b) Require the individual requesting medical marihuana to do
11 all of the following:

12 (i) Certify that he or she is a qualifying patient who
13 submitted a valid, complete application for a registry
14 identification card under the Michigan medical marihuana act at
15 least 20 days earlier.

16 (ii) Certify that, to the best of his or her knowledge, this
17 state has not denied the application described in subparagraph (i)
18 or issued a registry identification card.

19 (iii) Present a copy of the completed registry identification
20 card application and proof of receipt by the state department that
21 processes medical marihuana registry identification card
22 applications at least 20 days before the date of the requested sale
23 or transaction.

24 (c) If the individual requesting medical marihuana indicates
25 that he or she is a provisioning center agent, make a diligent,
26 good-faith effort to verify that the individual is a provisioning
27 center agent for a provisioning center that is allowed to operate

1 by a municipality.

2 (13) Before medical marihuana is dispensed or sold from a
3 provisioning center, a provisioning center agent shall make a
4 diligent, good-faith effort to determine that the individual named
5 in the registry identification card or other documentation
6 submitted under subsection (12) is the individual seeking to obtain
7 medical marihuana, by examining what the provisioning center agent
8 reasonably believes to be valid government-issued photo
9 identification.

10 (14) An individual who is under 21 years of age or who has
11 been convicted of an excluded felony offense during the immediately
12 preceding 10-year period shall not serve as a provisioning center
13 agent or safety compliance facility agent. An individual who has
14 not maintained a residence in this state for 2 years or more shall
15 not serve as a principal officer, board member, or operator of a
16 provisioning center or of a safety compliance facility.

17 (15) A provisioning center agent shall not, for monetary
18 compensation, refer an individual to a physician.

19 (16) A provisioning center or safety compliance facility shall
20 not permit a physician to advertise in a provisioning center or
21 safety compliance facility or to hold any financial interest in or
22 receive any compensation from the provisioning center or safety
23 compliance facility.

24 (17) A provisioning center agent or safety compliance facility
25 agent shall not transport or possess medical marihuana on behalf of
26 the provisioning center or safety compliance facility in or upon a
27 motor vehicle or any self-propelled vehicle designed for land

1 travel unless all of the following conditions are met:

2 (a) The agent possesses a document signed and dated by a
3 manager or operator of the provisioning center or safety compliance
4 facility that employs the agent, stating the agent's name, the date
5 the medical marihuana will be transported, the approximate amount
6 of medical marihuana transported, and the name of the provisioning
7 center or safety compliance facility from which the medical
8 marihuana is being transported.

9 (b) The medical marihuana is located in 1 or more of the
10 following:

11 (i) An enclosed locked container, such as a safe, briefcase, or
12 other case.

13 (ii) The trunk of the vehicle.

14 (iii) A space that is inaccessible from the passenger
15 compartment of the vehicle.

16 Sec. 8. (1) A provisioning center that violates section 7(1)
17 or (2) is responsible for a state civil infraction and may be
18 ordered to pay a civil fine of not more than \$5,000.00. A city or
19 county in which the provisioning center or safety compliance
20 facility operates in violation of section 7(1) or (2) may petition
21 the court for an injunction to close the provisioning center or
22 safety compliance facility.

23 (2) A person who violates section 7(3) to (10), (15), or (16)
24 is responsible for a state civil infraction and may be ordered to
25 pay a civil fine of not more than \$1,000.00.

26 (3) A person who transfers medical marihuana in violation of
27 section 7(11) to (13) or who works in violation of section 7(14) is

1 not exempt from arrest, prosecution, or criminal or other penalties
2 under section 3 or 4.

3 (4) A person who violates section 7(17) is guilty of a
4 misdemeanor punishable by imprisonment for not more than 30 days or
5 a fine of not more than \$500.00, or both.

6 Sec. 9. (1) A municipality may establish procedures to suspend
7 or revoke a registration, license, or other permission to operate
8 if a provisioning center knowingly or negligently allows medical
9 marihuana to be dispensed to an individual who is not a registered
10 qualifying patient or registered primary caregiver or if a
11 provisioning center or safety compliance facility commits multiple
12 or serious violations of this act or local ordinances.

13 (2) This act does not require the violation of federal law and
14 does not give immunity from prosecution under federal law.

15 (3) This act does not prevent federal enforcement of federal
16 law.

17 Sec. 10. (1) Except as otherwise provided in this act, a
18 visiting qualifying patient, registered qualifying patient, or
19 registered primary caregiver who supplies, sells, transfers, or
20 delivers marihuana seeds to a provisioning center that is
21 registered, licensed, or otherwise allowed by the municipality in
22 which it operates in compliance with this act is not subject to any
23 of the following for engaging in that activity:

24 (a) Criminal penalties under state law or local ordinances.

25 (b) State or local civil prosecution.

26 (c) Search or inspection, except for an inspection authorized
27 by the municipality.

1 (d) Seizure.

2 (e) Any sanction, including disciplinary action or denial of a
3 right or privilege, by a business or occupational or professional
4 licensing board or bureau.

5 (2) Except as otherwise provided in this act, a registered
6 qualifying patient is not subject to any of the inspections or
7 sanctions listed in subsection (1)(a) to (e) for any of the
8 following:

9 (a) Purchasing or acquiring not more than 2.5 ounces of usable
10 marihuana from 1 or more provisioning centers within a 10-day
11 period.

12 (b) Supplying, selling, transferring, or delivering medical
13 marihuana to a provisioning center that is registered, licensed, or
14 otherwise allowed by the municipality in which it operates if all
15 of the following requirements are met:

16 (i) The medical marihuana was produced by the registered
17 qualifying patient or registered primary caregiver.

18 (ii) The municipality in which the provisioning center operates
19 allows the transfer of medical marihuana from a registered
20 qualifying patient to a provisioning center.

21 (iii) The amount of medical marihuana transferred does not
22 exceed the amount of medical marihuana the registered qualifying
23 patient is allowed to possess under the Michigan medical marihuana
24 act.

25 (3) Except as otherwise provided in this act, a registered
26 primary caregiver is not subject to any of the inspections or
27 sanctions listed in subsection (1)(a) to (e) for any of the

1 following:

2 (a) Purchasing or acquiring from 1 or more provisioning
3 centers not more than 2.5 ounces of usable marihuana in a 10-day
4 period on behalf of a registered qualifying patient who has
5 designated the registered primary caregiver on his or her
6 application to the state department administering the medical
7 marihuana program under the Michigan medical marihuana act.

8 (b) Supplying, selling, transferring, or delivering medical
9 marihuana to a provisioning center that is registered, licensed, or
10 otherwise allowed by the municipality in which it operates if all
11 of the following requirements are met:

12 (i) The medical marihuana was produced by the registered
13 primary caregiver and is excess medical marihuana above the amount
14 necessary to satisfy the needs of the registered qualifying
15 patients the primary caregiver is designated to serve.

16 (ii) The municipality in which the provisioning center operates
17 allows the transfer of medical marihuana from a registered primary
18 caregiver to a provisioning center.

19 (iii) The amount of medical marihuana transferred does not
20 exceed the amount of medical marihuana the registered primary
21 caregiver is allowed to possess under the Michigan medical
22 marihuana act.