

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4982**

A bill to amend 1965 PA 213, entitled
"An act to provide for setting aside the conviction in certain
criminal cases; to provide for the effect of such action; to
provide for the retention of certain nonpublic records and their
use; to prescribe the powers and duties of certain public agencies
and officers; and to prescribe penalties,"
(MCL 780.621 to 780.624) by adding section 1e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 1e. (1) Beginning on January 1, 2020, a person convicted**
2 **of 1 or more misdemeanor marihuana offenses may apply to set aside**
3 **the conviction or convictions under this subsection.**

4 **(2) An application under subsection (1) must contain all of**
5 **the following information:**

6 **(a) The full name and current address of the applicant.**



1 (b) A certified record of each conviction that is to be set
2 aside.

3 (3) A copy of the application under subsection (1) must be
4 served upon the agency that prosecuted the offense or offenses the
5 applicant seeks to set aside.

6 (4) A rebuttable presumption that a conviction for a
7 misdemeanor marihuana offense sought to be set aside by an
8 applicant was based on activity that would not have been a crime if
9 committed on or after December 6, 2018 arises upon the filing of an
10 application under subsection (1). The presumption described in this
11 subsection may be rebutted by the presentation of evidence by the
12 prosecuting agency that prosecuted the case that demonstrates by a
13 preponderance of the evidence that the conduct on which the
14 applicant's conviction was or convictions were based would
15 constitute a criminal violation of the laws of this state or a
16 political subdivision of this state if it had been committed on or
17 after December 6, 2018. An answer made under this subsection must
18 be filed no later than 60 days from the date of service of the
19 application. If an answer is filed with the convicting court, the
20 answering party must serve the answer upon the other parties to the
21 matter.

22 (5) Upon the expiration of the 60-day period under subsection
23 (4), if the prosecuting agency has not filed an answer to the
24 application addressing the rebuttable presumption described in
25 subsection (4), the convicting court must within 21 days enter an
26 order setting aside the conviction or convictions and serve a copy
27 of the order upon the applicant, the arresting agency, the
28 prosecuting agency, and the department of the state police.

29 (6) If the prosecuting agency files an answer addressing the



1 rebuttable presumption in subsection (4), the convicting court must
2 promptly set the matter for a hearing no later than 30 days from
3 its receipt of the answer, and serve a notice of the hearing upon
4 the applicant. At the hearing, the prosecuting agency must prove by
5 a preponderance of the evidence that a conviction or convictions
6 sought to be set aside by an applicant were based upon conduct that
7 would constitute a criminal violation of the laws of this state or
8 a political subdivision of this state if it had been committed on
9 or after December 6, 2018. An applicant is not required to present
10 evidence that his or her conviction was based upon conduct that
11 would not constitute a criminal violation of the laws of this state
12 or a political subdivision of this state on or after December 6,
13 2018. The evidentiary burden under this subsection rests solely on
14 the objecting prosecuting agency. After a hearing under this
15 subsection, the court shall enter an order denying or granting the
16 application no later than 14 days after completion of the hearing
17 and serve any written opinions and orders, including an order
18 setting aside the conviction or convictions, upon the parties,
19 including the department of state police. The rules of evidence do
20 not apply to a hearing under this subsection.

21 (7) As used in this section, "misdemeanor marihuana offense"
22 means a violation of section 7403(2)(d), 7404(2)(d), or a marihuana
23 paraphernalia violation of section 7453 of the public health code,
24 1978 PA 368, MCL 333.7403, 333.7404, and 333.7453, or a violation
25 of a local ordinance substantially corresponding to section
26 7403(2)(d), 7404(2)(d), or the prohibition regarding marihuana
27 paraphernalia of section 7453 of the public health code, 1978 PA
28 368, MCL 333.7403, 333.7404, and 333.7453.

29 Enacting section 1. This amendatory act takes effect 180 days



1 after the date it is enacted into law.

2 Enacting section 2. This amendatory act does not take effect
3 unless all of the following bills of the 100th Legislature are
4 enacted into law:

5 (a) House Bill No. 4980.

6 (b) House Bill No. 4981.

7 (c) House Bill No. 4983.

8 (d) House Bill No. 4984.

9 (e) House Bill No. 4985.

10 (f) House Bill No. 5120.

