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BILL ANALYSIS



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House Bill 4210 (Substitute H-2 as passed by the House)
Sponsor: Representative Lisa Posthumus Lyons
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 12-8-15

CONTENT

The bill would amend the Michigan Medical Marihuana Act (MMMA) to do the following concerning marihuana-infused products:

- **Prevent a person from being penalized for manufacturing a marihuana-infused product if the person were a qualified registered patient or a registered primary caregiver.**
- **Prohibit a patient from transferring a marihuana-infused product or marihuana to another individual, and prohibit a caregiver from transferring a marihuana-infused product to someone other than a qualifying patient of the caregiver.**
- **Prohibit a qualifying patient or primary caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle, unless certain conditions were satisfied, and prescribe a maximum civil fine of \$250 for a violation.**

Also, where the Act allows a qualifying patient or primary caregiver to possess 2.5 ounces of usable marihuana, the bill would allow a combined total of 2.5 ounces of usable marihuana and usable marihuana equivalents (which would refer to the amount of usable marihuana in a marihuana-infused product).

In addition, the bill would extend criminal and civil immunity to a person for the transfer, purchase, or sale of marihuana pursuant to the Medical Marihuana Facilities Licensing Act (proposed by House Bill 4209), if that Act were enacted.

The bill would take effect 90 days after its enactment. The bill states that it "clarifies ambiguities in the law in accordance with the original intent of the people...".

The bill also states that it "is curative and applies retroactively to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of 'weight' as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense".

(The MMMA authorizes the Department of Licensing and Regulatory Affairs to issue a registry identification card to a qualifying patient (a person who has been diagnosed by a physician as having a debilitating medical condition), if the person submits a written certification from a physician, a fee, and specified information. A registered patient is not subject to arrest, prosecution, or penalty for the medical use of marihuana if the amount does not exceed quantities specified in the Act and the possession and use of marihuana meet particular

standards. The Act also extends privileges against arrest, prosecution, or other penalty to primary caregivers who assist qualifying patients with the medical use of marihuana, if they register with the Department, are connected with qualifying patients through the registration process, and comply with various restrictions.)

Definitions

The bill would define "marihuana-infused product" as a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. A marihuana-infused product could not be considered a food for purposes of the Food Law.

Currently, "usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation of them, but does not include the seeds, stalks, and roots of the plant. The bill would define "usable marihuana" as the dried leaves, flowers, plant resin, or extract of the marihuana plant, not including the seeds, stalks, or roots.

Currently, "medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana, or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or associated symptoms. Under the bill, this definition would apply to the term "medical use of marihuana". It would include the extraction of marihuana, as well as its acquisition, possession, cultivation, etc. It also would apply to marihuana-infused products, in addition to marihuana and paraphernalia.

Manufacturing Marihuana-Infused Product

Under the bill, a person 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 manufacturing a medical-infused product if the person were either of the following:

- A registered qualifying patient, manufacturing for his or her own personal use.
- A registered primary caregiver, manufacturing for the use of a patient to whom the caregiver was connected through the registration process of the Department of Licensing and Regulatory Affairs (LARA).

Illegal Transfer of Marihuana-Infused Product or Marihuana

The bill would prohibit a qualifying patient from transferring a marihuana-infused product or marihuana to any individual.

The bill also would prohibit a primary caregiver from transferring a marihuana-infused product to any individual who was not a qualifying patient to whom the caregiver was connected through LARA's registration process.

Transportation or Possession of Marihuana-Infused Product in Motor Vehicle

Except as provided below, the bill would prohibit a qualifying patient or primary caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle.

The prohibition would not apply to a qualifying patient if the marihuana-infused product were in a sealed and labeled package that was carried in the trunk of the vehicle or, if the vehicle did not have a trunk, carried so as not to be readily accessible from the interior of the vehicle. The label would have to state the weight of the marihuana-infused product in ounces, name

of the manufacturer, date of manufacture, name of the person from whom the product was received, and date of receipt.

The prohibition also would not apply to a primary caregiver if the marihuana-infused product were accompanied by an accurate marihuana transportation manifest and enclosed in a case carried in the trunk of the vehicle or, if the vehicle did not have a trunk, carried so as not to be readily accessible from the interior of the vehicle. The manifest would have to state the weight of the marihuana-infused product in ounces, name and address of the manufacturer, date of manufacture, destination name and address, date and time of departure, estimated date and time of arrival, and, if applicable, name and address of the person from whom the product was received and date of receipt.

In addition, the prohibition would not prohibit a primary caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle for the use of his or her child, spouse, or parent who was a qualifying patient if the product were in a sealed and labeled package that was carried in the trunk of the vehicle or, if the vehicle did not have a trunk, carried so as not to be readily accessible from the interior of the vehicle. The label would have to state the weight of the marihuana-infused product in ounces, name of the manufacturer, date of manufacture, name of the qualifying patient, and, if applicable, name of the person from whom the product was received and date of receipt.

For purposes of determining compliance with quantity limitations under the MMMA, there would be a rebuttable presumption that the weight of a marihuana-infused product listed on its package label or on a marihuana transportation manifest was accurate.

A qualifying patient or primary caregiver who violated these provisions would be responsible for a maximum civil fine of \$250.

Maximum Amount of Marihuana Allowed for Possession

The MMMA provides that a qualifying patient who has been issued and possesses a registry identification card may not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, for the medical use of marihuana in accordance with the Act, provided the qualifying patient possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana.

The MMMA extends the same protections to a primary caregiver who assists a qualifying patient to whom the caregiver is connected through LARA's registration process with the medical use of marihuana in accordance with the Act. This applies only if the primary caregiver possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana for each qualifying patient to whom he or she is connected through the registration process.

Under the bill, the amount that a qualifying patient or a primary caregiver may possess could not exceed "a combined total of 2.5 ounces of usable marihuana and usable marihuana equivalents".

For purposes of determining usable marihuana equivalency, the following would have to be considered equivalent to one ounce of usable marihuana:

- Sixteen ounces of marihuana-infused product if in a solid form.
- Seven grams of marihuana-infused product if in a gaseous form.
- Thirty-six fluid ounces of marihuana-infused product if in a liquid form.

"Usable marihuana equivalent" would mean the amount of usable marihuana in a marihuana-infused product calculated as provided above.

Immunity for Transfer, Purchase, or Sale Pursuant to Licensing Act

The following provisions of the bill would not apply unless the proposed Medical Marihuana Facilities Licensing Act were enacted.

A registered qualifying patient or registered primary caregiver would not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for any of the following:

- Transferring or purchasing marihuana in an amount authorized by the MMMA from a provisioning center licensed under the proposed Act.
- Transferring or selling marihuana seeds or seedlings to a grower licensed under the proposed Act.
- Transferring marihuana for testing to and from a safety compliance facility licensed under the proposed Act.

Scope of the MMMA

The Act states that it does not allow a person engage in certain activities. These include operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marihuana. The bill would extend this to operating, navigating, or being in actual physical control of a snowmobile or off-road recreational vehicle.

Also, under the bill, the Act would not permit a person to separate plant resin from a marihuana plant by butane extraction inside a residential structure.

Statement of Intent

The bill contains the following language:

This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act...:

"(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. *Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.*" [Emphasis added.]

(Please note: The emphasis is added in the bill.)

MCL 333.26423 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have a positive fiscal impact on the State and an indeterminate fiscal impact on local governments. It would expand the allowable defenses to prosecution for consuming usable marihuana types and associated derivative products under the Michigan Medical Marihuana Act. For local government, there could be added administrative costs in interpreting what would become legal consumption of usable marihuana under the bill and what would remain illegal. Additionally, the bill would create a new civil fine for the unauthorized transfer of a marihuana-infused product.

A decrease in misdemeanor or felony arrests and convictions could decrease resource demands on local court systems, law enforcement, and jails or prisons. For any decrease in prison intakes, in the short term, the marginal savings to State government would be approximately \$3,764 per prisoner per year. In the long term, if the decreased intake of prisoners reduced the total prisoner population enough to allow the Department of Corrections to close a housing unit or an entire facility, the marginal savings to State government would be approximately \$34,550 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

Fiscal Analyst: Ryan Bergan

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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.