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BILL



ANALYSIS

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Senate Bill 17 (Substitute S-1 as reported)  
Sponsor: Senator Rick Jones  
Committee: Health Policy

Date Completed: 3-8-11

## **RATIONALE**

In 2008, Michigan voters approved the Michigan Medical Marihuana Act, which allows a person who has been diagnosed with a debilitating medical condition to possess and use marihuana to alleviate his or her symptoms or side effects of treatment. (The Act is described below, under **BACKGROUND**.) Since the Act went into effect, a number of establishments for the use of medical marihuana have opened throughout the State. Evidently, some people who are authorized to use the drug under the Act pay a fee to visit these marihuana clubs or bars. Some local governments are experiencing uncertainty regarding zoning and other regulatory issues associated with these facilities, and people have raised concerns about public safety. It has been suggested that the organization or operation of marihuana bars and clubs should be prohibited, and that violators should be subject to a misdemeanor penalty.

## **CONTENT**

**The bill would amend the Public Health Code to prohibit a person from organizing or operating a marihuana club or bar; or knowingly allowing land or a structure on land he or she owned or possessed to be used as a marihuana club or bar.**

A person who violated the prohibition would be guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of \$500. The bill would not prohibit the person from being charged with, convicted of, or punished for any other violation of law committed while violating the ban.

"Marihuana club" would mean an association of individuals with membership restricted to those who pay money or any other thing of value to become members, whose purpose is to allow more than one individual to use marihuana under the Michigan Medical Marihuana Act at the same time in the same place.

"Marihuana bar" would mean property where an individual is allowed to use marihuana under the Michigan Medical Marihuana Act, if the use of marihuana on the property is conditioned on the payment of a fee. "Payment of a fee" would mean the payment of money or any other thing of value. It would include the purchase of goods or services, including those that are not incidental to the use of marihuana, and the payment of money or any other thing of value to belong to an association of individuals.

The terms "marihuana bar" and "marihuana club" would not include any of the following:

- Property used as a licensed hospice.
- Property used as a licensed nursing home or skilled nursing facility.
- Property where marihuana is legally dispensed under the Michigan Medical Marihuana Act.

Proposed MCL 333.7421

## **BACKGROUND**

The Michigan Medical Marihuana Act is an initiated law approved by voters in 2008. Under the Act, a qualifying patient who has been issued and possesses a registry identification card from the Department of

Community Health (DCH) is not subject to penalty for the medical use of marihuana if the amount he or she possesses does not exceed 2.5 ounces of usable marihuana (dried leaves and flowers) and 12 marihuana plants kept in an enclosed, locked facility. A primary caregiver who has a registry ID card may not be penalized for assisting a qualifying patient in the medical use of marihuana, subject to the same maximum quantities per patient. A physician is not subject to penalty solely for providing a written certification for a patient who, in the physician's professional opinion, is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with it.

The Act defines "qualifying patient" as a person who has been diagnosed by a physician as having a debilitating medical condition, i.e., one or more of the following:

- Cancer, glaucoma, positive HIV status, AIDS, hepatitis C, ALS, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of those conditions.
- A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including those characteristic of epilepsy; or severe and persistent muscle spasms, including those characteristic of multiple sclerosis.
- Any other medical condition or its treatment approved by the DCH.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Although the initiated law legalizes the medical use of marihuana and extends limited protections to caregivers and physicians, the law does not actually address the procurement of medical marihuana or the conditions of use. The bars and clubs established in the wake of enactment can present a threat to safety, both for patrons and for the general public. In particular, this is of concern because

some people use marihuana in a group setting, and then get in their cars and drive away.

Some also question whether these establishments are operating in full compliance with the law. For example, the operator of a Williamston medical marihuana cooperative currently is facing felony drug charges related to the large quantity of marihuana he purchased for distribution to club members. Some people are concerned that these establishments are fronts for criminal activity and provide a venue for drug dealing. In addition, the Williamston club operator reportedly allowed people to use his computer, for a fee of several hundred dollars, to connect with a doctor to obtain the required certification for a medical marihuana card. It is unclear whether a patron who received a registration card under these circumstances genuinely qualifies for one.

Under the Medical Marihuana Act, registered individuals may use the drug in their homes; the social atmosphere of a bar is not necessary to fulfill the spirit of the law. In light of the safety concerns, as well as the potentially questionable business practices of the operators, prohibiting marihuana bars and clubs would be prudent.

**Response:** The bill's definitions of "marihuana bar" and "marihuana club" would exclude property where marihuana is legally dispensed under the Medical Marihuana Act. That Act, however, makes no reference to the dispensing of the drug.

### **Opposing Argument**

With regard to concerns about people driving after using marihuana at bars and clubs, the bill is unnecessary. Michigan law already prohibits, and prescribes criminal penalties for, driving under the influence of drugs, regardless of the location of consumption. Also, banning marihuana bars and clubs would not address people who operate vehicles after using the drug at home. Furthermore, users of other medications sometimes gather for group therapy sessions. Like marihuana, some of these drugs can present similar safety threats if a patient drives while under the influence. The bill, however, would single out group marihuana users as presenting a heightened risk.

Also, the bill's definitions of "marihuana bar" and "marihuana club" are overly broad. Local groups, deemed "compassion clubs" by supporters, consisting of medical marihuana users and their families and caregivers, have been established throughout the State. According to the Michigan Medical Marijuana Association, the compassion clubs' purposes include education, social networking, and support. Some of these clubs meet in private spaces, including businesses, churches, and the facilities of fraternal organizations, such as the Knights of Columbus or the Elks. Under the bill, virtually any location where a compassion club met could be considered a marihuana bar or club, if an entry fee were charged and any consumption occurred on the premises.

The bill embodies discrimination toward sick and dying people who gather in private establishments to engage in a legal form of medication approved by Michigan voters. There are various reasons that people might prefer to use medical marihuana in a location other than their homes, and bars and clubs provide safe places to do that. The State should not penalize all marihuana club operators and patrons based on the actions of a few people who appear to be functioning outside of the law. People who use marihuana lawfully should not be treated differently from people who use other types of medication, and law enforcement resources should be focused on genuine public safety concerns rather than a new class of nonviolent criminals.

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed misdemeanor. Local governments would incur the costs of incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Matthew Grabowski

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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.