

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4851

A bill to amend 2008 IL 1, entitled
"Michigan medical marihuana act,"
by amending sections 3, 4, and 8 (MCL 333.26423, 333.26424, and
333.26428).

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
8 HISTORY AND CURRENT MEDICAL CONDITION, INCLUDING A RELEVANT, IN-
9 PERSON, MEDICAL EVALUATION OF THE PATIENT.

1 (2) THE PHYSICIAN HAS CREATED AND MAINTAINED RECORDS OF THE
2 PATIENT'S CONDITION IN ACCORD WITH MEDICALLY ACCEPTED STANDARDS.

3 (3) THE PHYSICIAN HAS A REASONABLE EXPECTATION THAT HE OR SHE
4 WILL PROVIDE FOLLOW-UP CARE TO THE PATIENT TO MONITOR THE EFFICACY
5 OF THE USE OF MEDICAL MARIHUANA AS A TREATMENT OF THE PATIENT'S
6 DEBILITATING MEDICAL CONDITION.

7 (4) IF THE PATIENT HAS GIVEN PERMISSION, THE PHYSICIAN HAS
8 NOTIFIED THE PATIENT'S PRIMARY CARE PHYSICIAN OF THE PATIENT'S
9 DEBILITATING MEDICAL CONDITION AND CERTIFICATION FOR THE USE OF
10 MEDICAL MARIHUANA TO TREAT THAT CONDITION.

11 (B) ~~(a)~~-"Debilitating medical condition" means 1 or more of
12 the following:

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

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

24 (3) Any other medical condition or its treatment approved by
25 the department, as provided for in section ~~5(a)~~-6(K).

26 (C) ~~(b)~~-"Department" means the ~~state department of community~~
27 ~~health~~. **DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS.**

(D) ~~(e)~~—"Enclosed, locked facility" means a closet, room, or other **COMPARABLE, STATIONARY, AND FULLY** enclosed area equipped with **SECURED** locks or other **FUNCTIONING** security devices that permit access only by a registered primary caregiver or registered qualifying patient. **MARIHUANA PLANTS GROWN OUTDOORS ARE CONSIDERED TO BE IN AN ENCLOSED, LOCKED FACILITY IF THEY ARE NOT VISIBLE TO THE UNAIDED EYE FROM AN ADJACENT PROPERTY WHEN VIEWED BY AN INDIVIDUAL AT GROUND LEVEL OR FROM A PERMANENT STRUCTURE AND ARE GROWN WITHIN A STATIONARY STRUCTURE THAT IS ENCLOSED ON ALL SIDES, EXCEPT FOR THE BASE, BY CHAIN-LINK FENCING, WOODEN SLATS, OR A SIMILAR MATERIAL THAT PREVENTS ACCESS BY THE GENERAL PUBLIC AND THAT IS ANCHORED, ATTACHED, OR AFFIXED TO THE GROUND; LOCATED ON LAND THAT IS OWNED, LEASED, OR RENTED BY EITHER THE REGISTERED QUALIFYING PATIENT OR A PERSON DESIGNATED THROUGH THE DEPARTMENTAL REGISTRATION PROCESS AS THE PRIMARY CAREGIVER FOR THE REGISTERED QUALIFYING PATIENT OR PATIENTS FOR WHOM THE MARIHUANA PLANTS ARE GROWN; AND EQUIPPED WITH FUNCTIONING LOCKS OR OTHER SECURITY DEVICES THAT RESTRICT ACCESS TO ONLY THE REGISTERED QUALIFYING PATIENT OR THE REGISTERED PRIMARY CAREGIVER WHO OWNS, LEASES, OR RENTS THE PROPERTY ON WHICH THE STRUCTURE IS LOCATED. ENCLOSED, LOCKED FACILITY INCLUDES A MOTOR VEHICLE IF BOTH OF THE FOLLOWING CONDITIONS ARE MET:**

(1) THE VEHICLE IS BEING USED TEMPORARILY TO TRANSPORT LIVING MARIHUANA PLANTS FROM 1 LOCATION TO ANOTHER WITH THE INTENT TO PERMANENTLY RETAIN THOSE PLANTS AT THE SECOND LOCATION.

(2) AN INDIVIDUAL IS NOT INSIDE THE VEHICLE UNLESS HE OR SHE IS EITHER THE REGISTERED QUALIFYING PATIENT TO WHOM THE LIVING

1 MARIHUANA PLANTS BELONG OR THE INDIVIDUAL DESIGNATED THROUGH THE
2 DEPARTMENTAL REGISTRATION PROCESS AS THE PRIMARY CAREGIVER FOR THE
3 REGISTERED QUALIFYING PATIENT.

4 (E) ~~(d)~~—"Marihuana" means that term as defined in section 7106
5 of the public health code, 1978 PA 368, MCL 333.7106.

6 (F) ~~(e)~~—"Medical use" means the acquisition, possession,
7 cultivation, manufacture, use, internal possession, delivery,
8 transfer, or transportation of marihuana or paraphernalia relating
9 to the administration of marihuana to treat or alleviate a
10 registered qualifying patient's debilitating medical condition or
11 symptoms associated with the debilitating medical condition.

12 (G) ~~(f)~~—"Physician" means an individual licensed as a
13 physician under Part 170 of the public health code, 1978 PA 368,
14 MCL 333.17001 to 333.17084, or an osteopathic physician under Part
15 175 of the public health code, 1978 PA 368, MCL 333.17501 to
16 333.17556.

17 (H) ~~(g)~~—"Primary caregiver" OR "CAREGIVER" means a person who
18 is at least 21 years old and who has agreed to assist with a
19 patient's medical use of marihuana and who has ~~never been convicted~~
20 ~~of a felony involving illegal drugs.~~ NOT BEEN CONVICTED OF ANY
21 FELONY WITHIN THE PAST 10 YEARS AND HAS NEVER BEEN CONVICTED OF A
22 FELONY INVOLVING ILLEGAL DRUGS OR A FELONY THAT IS AN ASSAULTIVE
23 CRIME AS DEFINED IN SECTION 9A OF CHAPTER X OF THE CODE OF CRIMINAL
24 PROCEDURE, 1927 PA 175, MCL 770.9A.

25 (I) ~~(h)~~—"Qualifying patient" OR "PATIENT" means a person who
26 has been diagnosed by a physician as having a debilitating medical
27 condition.

(J) ~~(i)~~—"Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

(K) ~~(j)~~—"Usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

(L) ~~(k)~~—"Visiting qualifying patient" means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.

(M) ~~(l)~~—"Written certification" means a document signed by a physician, stating ~~the~~ **ALL OF THE FOLLOWING:**

(1) **THE** patient's debilitating medical condition. ~~and stating that, in~~

(2) **THE PHYSICIAN HAS COMPLETED A FULL ASSESSMENT OF THE PATIENT'S MEDICAL HISTORY AND CURRENT MEDICAL CONDITION, INCLUDING A RELEVANT, IN-PERSON, MEDICAL EVALUATION.**

(3) **IN** the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

4. Protections for the Medical Use of Marihuana.

Sec. 4. (a) A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional

1 licensing board or bureau, for the medical use of marihuana in
2 accordance with this act, provided that the qualifying patient
3 possesses an amount of marihuana that does not exceed 2.5 ounces of
4 usable marihuana, and, if the qualifying patient has not specified
5 that a primary caregiver will be allowed under state law to
6 cultivate marihuana for the qualifying patient, 12 marihuana plants
7 kept in an enclosed, locked facility. Any incidental amount of
8 seeds, stalks, and unusable roots shall also be allowed under state
9 law and shall not be included in this amount. **THE PRIVILEGE FROM**
10 **ARREST UNDER THIS SUBSECTION APPLIES ONLY IF THE QUALIFYING PATIENT**
11 **PRESENTS BOTH HIS OR HER REGISTRY IDENTIFICATION CARD AND A VALID**
12 **DRIVER LICENSE OR GOVERNMENT-ISSUED IDENTIFICATION CARD THAT BEARS**
13 **A PHOTOGRAPHIC IMAGE OF THE QUALIFYING PATIENT.**

14 (b) A primary caregiver who has been issued and possesses a
15 registry identification card shall not be subject to arrest,
16 prosecution, or penalty in any manner, or denied any right or
17 privilege, including but not limited to civil penalty or
18 disciplinary action by a business or occupational or professional
19 licensing board or bureau, for assisting a qualifying patient to
20 whom he or she is connected through the department's registration
21 process with the medical use of marihuana in accordance with this
22 act. ~~provided that~~ **THE PRIVILEGE FROM ARREST UNDER THIS**
23 **SUBSECTION APPLIES ONLY IF THE PRIMARY CAREGIVER PRESENTS BOTH HIS**
24 **OR HER REGISTRY IDENTIFICATION CARD AND A VALID DRIVER LICENSE OR**
25 **GOVERNMENT-ISSUED IDENTIFICATION CARD THAT BEARS A PHOTOGRAPHIC**
26 **IMAGE OF THE PRIMARY CAREGIVER. THIS SUBSECTION APPLIES ONLY IF** the
27 primary caregiver possesses an amount of marihuana that does not

1 exceed:

2 (1) 2.5 ounces of usable marihuana for each qualifying patient
3 to whom he or she is connected through the department's
4 registration process; and

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

9 (3) any incidental amount of seeds, stalks, and unusable
10 roots.

11 (c) A person shall not be denied custody or visitation of a
12 minor for acting in accordance with this act, unless the person's
13 behavior is such that it creates an unreasonable danger to the
14 minor that can be clearly articulated and substantiated.

15 (d) There shall be a presumption that a qualifying patient or
16 primary caregiver is engaged in the medical use of marihuana in
17 accordance with this act if the qualifying patient or primary
18 caregiver:

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

20 (2) is in possession of an amount of marihuana that does not
21 exceed the amount allowed under this act. The presumption may be
22 rebutted by evidence that conduct related to marihuana was not for
23 the purpose of alleviating the qualifying patient's debilitating
24 medical condition or symptoms associated with the debilitating
25 medical condition, in accordance with this act.

26 (e) A registered primary caregiver may receive compensation
27 for costs associated with assisting a registered qualifying patient

1 in the medical use of marihuana. Any such compensation shall not
2 constitute the sale of controlled substances.

3 (f) A physician shall not be subject to arrest, prosecution,
4 or penalty in any manner, or denied any right or privilege,
5 including but not limited to civil penalty or disciplinary action
6 by the Michigan board of medicine, the Michigan board of
7 osteopathic medicine and surgery, or any other business or
8 occupational or professional licensing board or bureau, solely for
9 providing written certifications, in the course of a bona fide
10 physician-patient relationship and after the physician has
11 completed a full assessment of the qualifying patient's medical
12 history, or for otherwise stating that, in the physician's
13 professional opinion, a patient is likely to receive therapeutic or
14 palliative benefit from the medical use of marihuana to treat or
15 alleviate the patient's serious or debilitating medical condition
16 or symptoms associated with the serious or debilitating medical
17 condition, provided that nothing shall prevent a professional
18 licensing board from sanctioning a physician for failing to
19 properly evaluate a patient's medical condition or otherwise
20 violating the standard of care for evaluating medical conditions.

21 (g) A person shall not be subject to arrest, prosecution, or
22 penalty in any manner, or denied any right or privilege, including
23 but not limited to civil penalty or disciplinary action by a
24 business or occupational or professional licensing board or bureau,
25 for providing a registered qualifying patient or a registered
26 primary caregiver with marihuana paraphernalia for purposes of a
27 qualifying patient's medical use of marihuana.

1 (h) Any marihuana, marihuana paraphernalia, or licit property
2 that is possessed, owned, or used in connection with the medical
3 use of marihuana, as allowed under this act, or acts incidental to
4 such use, shall not be seized or forfeited.

5 (i) A person shall not be subject to arrest, prosecution, or
6 penalty in any manner, or denied any right or privilege, including
7 but not limited to civil penalty or disciplinary action by a
8 business or occupational or professional licensing board or bureau,
9 solely for being in the presence or vicinity of the medical use of
10 marihuana in accordance with this act, or for assisting a
11 registered qualifying patient with using or administering
12 marihuana.

13 (j) A registry identification card, or its equivalent, that is
14 issued under the laws of another state, district, territory,
15 commonwealth, or insular possession of the United States that
16 allows the medical use of marihuana by a visiting qualifying
17 patient, or to allow a person to assist with a visiting qualifying
18 patient's medical use of marihuana, shall have the same force and
19 effect as a registry identification card issued by the department.

20 (k) Any registered qualifying patient or registered primary
21 caregiver who sells marihuana to someone who is not allowed to use
22 marihuana for medical purposes under this act shall have his or her
23 registry identification card revoked and is guilty of a felony
24 punishable by imprisonment for not more than 2 years or a fine of
25 not more than \$2,000.00, or both, in addition to any other
26 penalties for the distribution of marihuana.

27 8. Affirmative Defense and Dismissal for Medical Marihuana.

1 Sec. 8. (a) Except as provided in section ~~7~~**7(B)**, a patient
2 and a patient's primary caregiver, if any, may assert the medical
3 purpose for using marihuana as a defense to any prosecution
4 involving marihuana, and this defense shall be presumed valid where
5 the evidence shows that:

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

14 (2) The patient and the patient's primary caregiver, if any,
15 were collectively in possession of a quantity of marihuana that was
16 not more than was reasonably necessary to ensure the uninterrupted
17 availability of marihuana for the purpose of treating or
18 alleviating the patient's serious or debilitating medical condition
19 or symptoms of the patient's serious or debilitating medical
20 condition; and

21 (3) The patient and the patient's primary caregiver, if any,
22 were engaged in the acquisition, possession, cultivation,
23 manufacture, use, delivery, transfer, or transportation of
24 marihuana or paraphernalia relating to the use of marihuana to
25 treat or alleviate the patient's serious or debilitating medical
26 condition or symptoms of the patient's serious or debilitating
27 medical condition.

House Bill No. 4851 as amended December 5, 2012

1 (b) A person may assert the medical purpose for using
2 marihuana in a motion to dismiss, and the charges shall be
3 dismissed following an evidentiary hearing where the person shows
4 the elements listed in subsection (a).

5 (c) If a patient or a patient's primary caregiver demonstrates
6 the patient's medical purpose for using marihuana pursuant to this
7 section, the patient and the patient's primary caregiver shall not
8 be subject to the following for the patient's medical use of
9 marihuana:

10 (1) disciplinary action by a business or occupational or
11 professional licensing board or bureau; or

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

<<Enacting section 1. This amendatory act takes effect
April 1, 2013.>>