

SUBSTITUTE FOR
HOUSE BILL NO. 4851

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

10 (2) THE PHYSICIAN HAS CREATED AND MAINTAINED RECORDS OF THE

1 PATIENT'S CONDITION IN ACCORD WITH MEDICALLY ACCEPTED STANDARDS.

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

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

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

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

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

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

25 (C) ~~(b)~~—"Department" means the state department of community
26 health.

27 (D) ~~(e)~~—"Enclosed, locked facility" means a closet, room, or

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1 other **COMPARABLE, STATIONARY, AND FULLY**-enclosed area equipped with

2 **SECURED** locks or other **FUNCTIONING** security devices that permit

3 access only by a registered primary caregiver or registered

4 qualifying patient. **[MARIHUANA PLANTS GROWN OUTDOORS ARE CONSIDERED TO BE**
5 **IN AN ENCLOSED, LOCKED FACILITY IF THEY ARE GROWN WITHIN A STATIONARY**
6 **STRUCTURE THAT IS ALL OF THE FOLLOWING:**

7 (1) **ANCHORED, ATTACHED, OR AFFIXED TO THE GROUND.**

8 (2) **LOCATED ON LAND THAT IS OWNED, LEASED, OR RENTED BY EITHER:**

9 (A) **THE REGISTERED QUALIFYING PATIENT TO WHOM THE MARIHUANA PLANTS**
10 **BELONG.**

(B) **THE PERSON DESIGNATED THROUGH THE DEPARTMENTAL REGISTRATION**
PROCESS AS THE PRIMARY CAREGIVER FOR THE REGISTERED PATIENT OR PATIENTS.

(3) **EQUIPPED WITH FUNCTIONING LOCKS OR OTHER SECURITY DEVICES THAT**
PERMIT ACCESS ONLY BY THE REGISTERED PRIMARY CAREGIVER OR REGISTERED
QUALIFYING PATIENT WHOSE PROPERTY THE STRUCTURE IS LOCATED UPON.

(4) **ENCLOSED ON ALL SIDES, EXCEPT FOR THE BASE, BY CHAIN-LINK**
FENCING, WIRE MESH, WOODEN SLATS, OR A SIMILAR MATERIAL THAT PREVENTS
ACCESS BY THE GENERAL PUBLIC.]

11 **ENCLOSED, LOCKED FACILITY INCLUDES A MOTOR VEHICLE IF BOTH OF THE**
12 **FOLLOWING CONDITIONS ARE MET:**

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

16 (2) **A PERSON IS NOT IN THE VEHICLE UNLESS THE PERSON IS EITHER**
17 **THE REGISTERED QUALIFYING PATIENT TO WHOM THE LIVING MARIHUANA**
18 **PLANTS BELONG OR THE PERSON DESIGNATED THROUGH THE DEPARTMENTAL**
19 **REGISTRATION PROCESS AS THE PRIMARY CAREGIVER FOR THE REGISTERED**
20 **QUALIFYING PATIENT.**

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

23 (F) ~~(e)~~-"Medical use" means the acquisition, possession,
24 cultivation, manufacture, use, internal possession, delivery,
25 transfer, or transportation of marihuana or paraphernalia relating
26 to the administration of marihuana to treat or alleviate a
27 registered qualifying patient's debilitating medical condition or

1 symptoms associated with the debilitating medical condition.

2 (G) ~~(f)~~—"Physician" means an individual licensed as a
3 physician under Part 170 of the public health code, 1978 PA 368,
4 MCL 333.17001 to 333.17084, or an osteopathic physician under Part
5 175 of the public health code, 1978 PA 368, MCL 333.17501 to
6 333.17556.

7 (H) ~~(g)~~—"Primary caregiver" OR **"CAREGIVER"** means a person who
8 is at least 21 years old and who has agreed to assist with a
9 patient's medical use of marihuana and who has never been convicted
10 of a felony involving illegal drugs OR **AN ASSAULTIVE CRIME AS**
11 **DEFINED IN SECTION 9A OF CHAPTER X OF THE CODE OF CRIMINAL**
12 **PROCEDURE, 1927 PA 175, MCL 770.9A.**

13 (I) ~~(h)~~—"Qualifying patient" OR **"PATIENT"** means a person who
14 has been diagnosed by a physician as having a debilitating medical
15 condition.

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

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

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

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

27 (1) **THE** patient's debilitating medical condition. ~~and stating~~

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1 ~~that, in~~

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

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

10 8. Affirmative Defense and Dismissal for Medical Marihuana.

11 Sec. 8. (a) ~~[Except as provided in section 7, EXCEPT IF HE OR SHE~~
12 ~~VIOLATES SECTION 4(K), SECTION 7(B), OR SECTION 7(D),]~~ a patient and a
13 patient's primary caregiver, if any, may assert the medical purpose
14 for using marihuana as a defense to any prosecution involving
15 marihuana, and this defense shall be presumed valid where the
16 evidence shows that:

17 (1) A physician has stated that, in the physician's
18 professional opinion, after having completed a full assessment of
19 the patient's medical history and current medical condition made in
20 the course of a bona fide physician-patient relationship, the
21 patient is likely to receive therapeutic or palliative benefit from
22 the medical use of marihuana to treat or alleviate the patient's
23 serious or debilitating medical condition or symptoms of the
24 patient's serious or debilitating medical condition;

25 (2) The patient and the patient's primary caregiver, if any,
26 were collectively in possession of a quantity of marihuana that was
27 not more than was reasonably necessary to ensure the uninterrupted
availability of marihuana for the purpose of treating or

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1 alleviating the patient's serious or debilitating medical condition
2 or symptoms of the patient's serious or debilitating medical
3 condition; and

4 (3) The patient and the patient's primary caregiver, if any,
5 were engaged in the acquisition, possession, cultivation,
6 manufacture, use, delivery, transfer, or transportation of
7 marihuana or paraphernalia relating to the use of marihuana to
8 treat or alleviate the patient's serious or debilitating medical
9 condition or symptoms of the patient's serious or debilitating
10 medical condition.

11 (b) A person may assert the medical purpose for using
12 marihuana in a motion to dismiss, and the charges shall be
13 dismissed following an evidentiary hearing where the person shows
14 **BY A PREPONDERANCE OF EVIDENCE** the elements listed in subsection
15 (a) .

16 **(C) REGARDLESS OF WHETHER A PERSON ASSERTS THE MEDICAL PURPOSE**
17 **IN A MOTION TO DISMISS, A PERSON MAY ASSERT THE MEDICAL PURPOSE FOR**
18 **USING MARIHUANA TO THE TRIER OF FACT [UNLESS NO REASONABLE FACTFINDER**
19 **COULD FIND IN FAVOR OF THAT PERSON ON THE ELEMENTS LISTED IN SUBSECTION**
20 **(A) .**

21]

22 **(D) ~~(e)~~**—If a patient or a patient's primary caregiver
23 demonstrates the patient's medical purpose for using marihuana
24 pursuant to this section, the patient and the patient's primary
25 caregiver shall not be subject to the following for the patient's
26 medical use of marihuana:

27 (1) disciplinary action by a business or occupational or

- 1 professional licensing board or bureau; or
- 2 (2) forfeiture of any interest in or right to property.