

Legislative Analysis



MEDICAL MARIHUANA: PROHIBIT IN LEASE

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Senate Bill 783 with House committee amendment

Sponsor: Sen. Rick Jones

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (12-16-14)

BRIEF SUMMARY: The bill would allow landlords to include a prohibition on growing or smoking medical marihuana in the lease of rental properties.

FISCAL IMPACT: The bill would have no significant fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

Most leases for residential property contain a general clause prohibiting illegal activity; conduct constituting illegal activity is grounds for eviction. Apparently, there is a grey area regarding smoking or cultivating marihuana in rental properties by individuals who are certified under the Michigan Medical Marihuana Act (MMMA) to use marihuana for certain disabling conditions or to cultivate marihuana as licensed caregivers. For instance, on one hand, federal law still makes the use or cultivation of marihuana a criminal offense and thus appears to support a landlord's ability to prohibit its use or cultivation on the leased premises. On the other hand, medical marihuana card holders can claim that they have a disability that requires a reasonable accommodation and so some landlords fear having disability lawsuits filed against them.

Some states have addressed the issue by allowing property owners to prohibit –in a lease– the use or cultivation of medical marihuana, even by authorized persons. Legislation to adopt a similar law has been offered.

THE CONTENT OF THE BILL:

The Michigan Medical Marihuana Act authorizes the possession and use of limited amounts of marihuana by individuals suffering from certain conditions, and authorizes licensed caregivers to cultivate limited amounts of marihuana for specific medical marihuana patients, as specified in the act.

Senate Bill 783 would amend the MMMA to specify that nothing in the act could be construed to require a private property owner to lease residential property to any person who smokes or cultivates marihuana on the premises, if the prohibition against smoking or cultivating marihuana is in the written lease.

MCL 333.26427

HOUSE COMMITTEE ACTION:

As passed by the Senate, the bill would have prohibited a medical marijuana user from smoking marijuana on private property in violation of a prohibition established by the property owner; the House committee adopted an amendment that deleted this provision. In addition, the MMMA currently prohibits smoking marijuana in any public place; the Senate-passed version of the bill included any portion of private property that is open to the public as "a public place." The committee amendment also eliminated that provision.

ARGUMENTS:

For:

According to the bill's sponsor, property owners are reporting significant damage to rental homes and apartments by people smoking or growing medical marijuana. Apparently, damage has even included rental units being set on fire when hot lights used to grow marijuana tipped over. Even if a tenant were just smoking medical marijuana, the smoke can infiltrate other rental units through doors, windows, and the ventilation system. While it is clear under the law that marijuana possession or use, or cultivation, without authorization under the MMMA is generally illegal, it is not as clear if a tenant who has been certified to use or licensed to grow medical marijuana may do so in any rental unit or if a property owner can prohibit such conduct. Thus, there is confusion among property owners regarding the authority to evict tenants for medical marijuana-related activities.

The bill would address the issue by allowing a property owner to include a prohibition within the written lease on smoking or cultivating marijuana on the leased premises. Reportedly, other states have enacted similar laws. Further, by specifically referring to "smoking" marijuana, the bill could allow medical marijuana edibles to be ingested in rental units, if Michigan law that currently prohibits medical edibles is changed.

Against:

The bill as passed by the Senate would also have allowed private property owners such as hotels and business establishments to prohibit medical marijuana users from smoking on the premises or smoking in areas of private property that are open to the public. Reportedly, secondhand smoke from marijuana is potentially more carcinogenic than cigarette smoke, and so property owners should be able to protect their property and the comfort and health of their customers by not allowing anyone to smoke marijuana on the premises. Now, the bill only gives relief to landlords and not to business owners.

Response:

The amendment removing these provisions was intended to balance the rights of the property owners with the rights of the medical marijuana card holders. If those provisions had remained in the bill, then a person who was authorized under state law to smoke medical marijuana would be subject to criminal prosecution for smoking in his or her own apartment or on other private property. As the bill stands, property owners can prohibit smoking or cultivation of medical marijuana in rental units as long as the lease specifies that such activity is prohibited. If a renter violates the lease, the renter can be

evicted but would not be subject to arrest or criminal prosecution. A renter who smokes or cultivates marihuana, but is not a certified cardholder or licensed caregiver, would be prosecutable under the general ban on marihuana use as well as being subject to eviction.

POSITIONS:

The National Patients Rights Association indicated support for the bill. (12-11-14)

The ACLU of Michigan indicated support for the bill. (12-11-14)

The Property Management Association of Michigan indicated support for the bill. (12-11-14)

The Rental Property Owners Association indicated support for the bill. (12-11-14)

The Apartment Association of Michigan indicated opposition to the bill. (12-11-14)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.