

# Legislative Analysis

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## USABLE MARIHUANA: INCLUDE EXTRACTS

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**House Bill 5104 (Substitute H-2)**

**Sponsor: Rep. Eileen Kowall**

**Committee: Judiciary**

**Complete to 12-11-13**

## A SUMMARY OF HOUSE BILL 5104 AS REPORTED FROM COMMITTEE 12-10-13

The bill would, among other things, revise the definitions of "medical use" and "usable marihuana" to include products using extracts and plant resins, define "marihuana-infused product" and "usable marihuana equivalent," provide immunity from prosecution for manufacturing marihuana-infused products under certain conditions, create criminal penalties for certain acts, and allow a qualifying patient or caregiver to assert a "Section 8" defense when using usable marihuana.

House Bill 5104 would amend the Michigan Medical Marihuana Act to do the following:

### Definitions

- Change the term "medical use" to "medical use of marihuana" and revise the definition to include the extraction of marihuana and usable marihuana.
- Revise the definition of "usable marihuana" to include, in addition to dried leaves and flowers, the plant resin or extract of the marihuana plant. Currently, the term does not include the seeds, stalks, or roots of the plant; the bill would also not include any inactive substance used as a delivery medium for usable marihuana.
- Define "marihuana-infused product" to mean 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.
- Define "usable marihuana equivalent" as the amount of usable marihuana in a marihuana-infused product. To determine usable marihuana equivalency, the bill would specify that one ounce of usable marihuana would be considered equivalent to (1) 16 ounces of marihuana-infused product if in a solid form; (2) 7 grams if in a gaseous form; and (3) 74 fluid ounces if in a liquid form. In determining whether a patient or primary caregiver did not exceed the 2.5 ounces per patient possession limit, both usable marijuana equivalents and usable marihuana would have to be considered.

### Marihuana-infused product

A registered patient who was manufacturing a marihuana-infused product for his or her own personal use; a primary caregiver manufacturing for the use of his or her qualifying patient; or a medical marihuana provisioning center would not be subject to arrest,

prosecution, or penalty in any manner, and could not be denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau.

Except when being manufactured, or when being consumed, any marijuana-infused product would have to be individually packaged and clearly labeled with all of the following:

- The weight of the product.
- The name of the individual who manufactured it.
- The date it was manufactured.
- If the patient received the product from a primary caregiver or a medical marijuana provisioning center, the date on which the transaction occurred as well as the name of the primary caregiver or provisioning center.

It would be a misdemeanor punishable by up to 93 days' imprisonment and/or a fine of not more than \$500 for any of the following:

- A qualifying patient transferred a marijuana-infused product to any individual.
- A registered caregiver transferred a marijuana-infused product to any individual who is not one of the caregiver's qualifying patients.
- A medical marijuana provisioning center transferred a marijuana-infused product to any individual who is not a qualifying patient or registered caregiver.

#### Usable marijuana

- Include "usable marijuana" in provisions prohibiting certain conduct involving marijuana.
- Apply the presumption that a qualifying patient or primary caregiver is in compliance with the act if the amount of marijuana and usable marijuana possessed does not exceed the amount allowed by the act, and allow that presumption to be rebutted by evidence that conduct related to marijuana and usable marijuana was not for the purpose of alleviating the patient's debilitating medical condition.
- Allow a "Section 8" affirmative defense and dismissal to be asserted for using usable marijuana.

#### Miscellaneous provisions

- Allow a patient or caregiver registry identification card to be revoked and the person subject to criminal penalties for selling marijuana or usable marijuana to someone not allowed medical use of marijuana under the act.
- Replace the term "use of medical marijuana" with "medical use of marijuana."

- Specify that a person would not be subject to arrest, prosecution, or criminal penalty for a transfer or use of marihuana or usable marihuana equivalents in an amount authorized by law and in conformity with any restrictions in this act or the Medical Marihuana Provisioning Center Regulation Act (proposed by House Bill 4172). However, this provision would not apply unless House Bill 4172 were enacted into law.

MCL 333.26423 et al.

### **FISCAL IMPACT:**

**House Bill 4271 (H-3)** would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). HB 4271 (H-3) would have an indeterminate fiscal impact on local units of government, if a local unit of government elects to sanction the operation of provisioning centers and/or safety compliance facilities within its jurisdiction. Whether the fiscal impact is positive or negative and the extent of the impact would be dependent on the costs of implementing and enforcing state and local regulatory requirements and whether fees established and charged by local units of governments would be sufficient to support the regulatory costs.

Misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

### **POSITIONS:**

The following organizations and associations testified in or indicated support for earlier versions of the bill on 12-5-13 or 12-10-13:

ACLU of Michigan  
Criminal Defense Attorneys of Michigan  
Michigan Medical Marihuana Association  
Phoenix Consulting  
Safer Michigan Coalition  
Cannabis Patients United  
The Compassion Chronicles  
Sharpe Extracts  
Michigan Chapter of Americans for Safe Access  
3<sup>rd</sup> Coast Compassion Center  
Students for Sensible Drug Policy  
Michigan Moms United  
Cannabis Stakeholders Group  
Patients of Capitol City Compassion  
Pediatric Cannabis Therapy

National Patients' Rights Association  
Michigan NORML  
Advanced Hydroponic Growers Supply

The Department of State Police indicated opposition to the bill. (12-10-13)

The Department of Attorney General indicated opposition to the bill. (12-5-13)

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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.