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House Bill 5104 (Substitute H-2 as passed by the House)
Sponsor: Representative Eileen Kowall
House Committee: Judiciary
Senate Committee: Government Operations

Date Completed: 3-11-14

CONTENT

The bill would amend the Michigan Medical Marihuana Act (MMMA) to do the following with respect to marihuana-infused products and usable marihuana:

- **Prevent a person from being penalized for manufacturing a marihuana-infused product if the person were a registered patient, a primary caregiver, or a medical marihuana provisioning center.**
- **Establish felony penalties for the transfer of a marihuana-infused product by a patient to another individual, by a caregiver to someone other than a qualifying patient of the caregiver, or by a provisioning center to someone other than a qualifying patient or registered caregiver.**
- **Specify packaging and labeling requirements for marihuana-infused products.**
- **Refer to usable marihuana and usable marihuana equivalents in various provisions of the MMMA.**

The bill also provides that a person could not be prosecuted for a transfer or use of marihuana or usable marihuana equivalents in an amount authorized by law and in conformity with the MMMA or the Medical Marihuana Provisioning Center Regulation Act, if that Act were enacted.

(The Medical Marihuana Provisioning Center Regulation Act is proposed by House Bill 4271.)

Definitions

House Bill 5104 (H-2) would define "marihuana-infused product" as 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. A medical-marihuana product could not be considered a food for purposes of the Food Law.

Currently, "usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation of them, but does not include the seeds, stalks, and roots of the plant. The bill would define "usable marihuana" as the dried leaves, flowers, plant resin, or extract of the marihuana plant, not including the seeds, stalks, or roots.

The bill would define "usable marihuana equivalent" as the amount of usable marihuana in a marihuana-infused product calculated as follows: one ounce of usable marihuana would be considered equivalent to the following:

- Sixteen ounces of marihuana-infused product if in a solid form.

- Seven grams of marihuana-infused product if in a gaseous form.
- Sixty-two fluid ounces of marihuana-infused product if in a liquid form.

Manufacturing Marihuana-Infused Product

Under the bill, a person would not be subject to arrest, prosecution, or penalty in any manner, and could not be denied any right or privilege, including civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for manufacturing a medical-infused product if the person were any of the following:

- A registered patient, manufacturing for his or her own personal use.
- A primary caregiver, manufacturing for the use of a patient to whom the caregiver was connected through the registration process of the Department of Licensing and Regulatory Affairs (LARA).
- A medical marihuana provisioning center.

(The MMMA authorizes the Department to issue a registry identification card to a qualifying patient (a person who has been diagnosed by a physician as having a "debilitating medical condition"), if the person submits a written certification from a physician, a fee, and specified information. A registered patient is not subject to arrest, prosecution, or penalty for the medical use of marihuana if the amount does not exceed quantities specified in the Act and the possession and use of marihuana meet particular standards. The Act also extends privileges against arrest, prosecution, or other penalty to primary caregivers who assist qualifying patients with the medical use of marihuana, if they register with LARA, are connected with qualifying patients through the registration process, and comply with various restrictions.)

Illegal Transfer of Marihuana-Infused Product

The bill would prohibit the transfer of a marihuana-infused product as follows:

- By a qualifying patient to any individual.
- By a registered caregiver to any individual who was not a qualifying patient to whom the caregiver was connected through LARA's registration process.
- By a medical marihuana provisioning center to any individual who was not a qualifying patient or a registered caregiver.

The offense would be a felony punishable by imprisonment for up to two years or a maximum fine of \$2,000, or both.

Labeling & Packaging Requirements

Except when a medical-infused product was being manufactured or consumed, the bill would require the product to be individually packaged and clearly labeled with all of the following:

- The weight of the product in ounces.
- The name of the individual who manufactured the product.
- The date on which the product was manufactured.
- The date in which the transaction occurred, if the patient received the product from his or her primary caregiver or a medical marihuana provisioning center.
- The name of the caregiver or provisioning center, if the patient received the product from his or her primary caregiver or a provisioning center.

There would be a rebuttable presumption that the listed weight of the product was true and correct.

In addition, the bill provides that, in a public place, the MMMA's privilege from arrest for qualifying patients and primary caregivers would not apply unless 1) the usable marijuana and marijuana-infused product were packaged and each package was labeled with the weight of the usable marijuana, and 2) the total weight indicated on the package labels was not more than the amount permitted under the Act. The indicated weight would be presumed to be true and correct, although this presumption would not prohibit a law enforcement official from arresting an individual if there were an articulable suspicion that the indicated weight was not correct and the total weight was greater than the amount permitted.

Criminal Immunity for Transfer or Use

Under the bill, a person would not be subject to arrest, prosecution, or criminal penalty for a transfer or use of marijuana or usable marijuana equivalents in an amount authorized by law and in conformity with any restrictions in the MMMA or the proposed Medical Marijuana Provisioning Center Regulation Act.

A qualifying patient or registered caregiver, however, could not transfer more than 50 ounces of usable marijuana to a provisioning center during a 60-day period.

These provisions would not apply unless the proposed Act were enacted.

Usable Marijuana; Marijuana Equivalents

The bill would include references to "usable marijuana", in addition to marijuana, in provisions that do the following:

- Establish a presumption that a qualifying patient or primary caregiver is engaged in the medical use of marijuana if he or she is in possession of an amount of marijuana that does not exceed the amount allowed.
- Prohibit the seizure or forfeiture of any marijuana that is possessed, owned, or used in connection with the medical use of marijuana, as allowed under the MMMA.
- Specify that a person is not subject to arrest, prosecution, or penalty for assisting a registered qualifying patient with using or administering marijuana.
- Provide that a qualifying patient's or primary caregiver's registry ID card must be revoked, and the patient or caregiver is guilty of a felony, if he or she sells marijuana to someone who is not allowed to use it for medical purposes.
- State that the Act does not permit a person to possess marijuana in a school bus, on the grounds of a school, or in a correctional facility, or to use marijuana if he or she does not have a serious or debilitating medical condition.
- State that the Act does not require an employer to accommodate the ingestion of marijuana in any workplace or any employee working while under the influence of marijuana.
- Allow a qualifying patient and a primary caregiver to assert the medical purpose for using marijuana as a defense to any prosecution involving marijuana, and in a motion to dismiss charges.

The bill also would refer to "usable marijuana equivalents", as well as usable marijuana, in provisions that limit the amount of usable marijuana that a qualifying patient or primary caregiver may possess.

FISCAL IMPACT

The bill would expand the allowable defenses to prosecution for consuming usable marihuana types and associated derivative products under the Michigan Medical Marihuana Act. Additionally, the bill would create a new felony penalty for the unauthorized transfer of a marihuana-infused product. At this time, the number of potential offenders is indeterminate. Any person convicted of a felony and placed in prison would cost the State an average of \$35,000 per person per year.

For local government, there could be added administrative costs in interpreting what would become legal consumption of usable marihuana under this bill and what would remain illegal.

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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.