

# HOUSE BILL No. 5104

October 29, 2013, Introduced by Reps. Kowall, Shirkey, Callton, Goike, Daley, Crawford, Irwin, McMillin, Cavanagh, LaVoy, Lipton, Geiss, Bumstead, Singh, Switalski and Barnett and referred to the Committee on Judiciary.

A bill to amend 2008 IL 1, entitled "Michigan medical marihuana act," by amending sections 3, 4, 7, and 8 (MCL 333.26423, 333.26424, 333.26427, and 333.26428), sections 3, 4, and 8 as amended by 2012 PA 512.

**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 **MEDICAL** use of ~~medical~~-marihuana as a treatment of the  
6 patient's 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 **MEDICAL**  
10 use of ~~medical~~-marihuana to treat that condition.

11 (b) "Debilitating medical condition" means 1 or more of the  
12 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 6(k).

26 (c) "Department" means the department of licensing and  
27 regulatory affairs.

1 (d) "Enclosed, locked facility" means a closet, room, or other  
2 comparable, stationary, and fully enclosed area equipped with  
3 secured locks or other functioning security devices that permit  
4 access only by a registered primary caregiver or registered  
5 qualifying patient. Marihuana plants grown outdoors are considered  
6 to be in an enclosed, locked facility if they are not visible to  
7 the unaided eye from an adjacent property when viewed by an  
8 individual at ground level or from a permanent structure and are  
9 grown within a stationary structure that is enclosed on all sides,  
10 except for the base, by chain-link fencing, wooden slats, or a  
11 similar material that prevents access by the general public and  
12 that is anchored, attached, or affixed to the ground; located on  
13 land that is owned, leased, or rented by either the registered  
14 qualifying patient or a person designated through the departmental  
15 registration process as the primary caregiver for the registered  
16 qualifying patient or patients for whom the marihuana plants are  
17 grown; and equipped with functioning locks or other security  
18 devices that restrict access to only the registered qualifying  
19 patient or the registered primary caregiver who owns, leases, or  
20 rents the property on which the structure is located. Enclosed,  
21 locked facility includes a motor vehicle if both of the following  
22 conditions are met:

23 (1) The vehicle is being used temporarily to transport living  
24 marihuana plants from 1 location to another with the intent to  
25 permanently retain those plants at the second location.

26 (2) An individual is not inside the vehicle unless he or she  
27 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) "Marihuana" means that term as defined in section 7106 of  
5 the public health code, 1978 PA 368, MCL 333.7106.

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

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

17 (h) "Primary caregiver" or "caregiver" means a person who is  
18 at least 21 years old and who has agreed to assist with a patient's  
19 medical use of marihuana and who has not been convicted of any  
20 felony within the past 10 years and has never been convicted of a  
21 felony involving illegal drugs or a felony that is an assaultive  
22 crime as defined in section 9a of chapter X of the code of criminal  
23 procedure, 1927 PA 175, MCL 770.9a.

24 (i) "Qualifying patient" or "patient" means a person who has  
25 been diagnosed by a physician as having a debilitating medical  
26 condition.

27 (j) "Registry identification card" means a document issued by

1 the department that identifies a person as a registered qualifying  
2 patient or registered primary caregiver.

3 (k) "Usable marihuana" means the dried leaves, ~~and~~ flowers,  
4 **PLANT RESIN, OR EXTRACT** of the marihuana plant, and any mixture or  
5 preparation thereof, but does not include the seeds, stalks, and  
6 roots of the plant **OR ANY INACTIVE SUBSTANCE USED AS A DELIVERY**  
7 **MEDIUM FOR USABLE MARIHUANA.**

8 (l) "Visiting qualifying patient" means a patient who is not a  
9 resident of this state or who has been a resident of this state for  
10 less than 30 days.

11 (m) "Written certification" means a document signed by a  
12 physician, stating all of the following:

13 (1) The patient's debilitating medical condition.

14 (2) The physician has completed a full assessment of the  
15 patient's medical history and current medical condition, including  
16 a relevant, in-person, medical evaluation.

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

22 4. Protections for the Medical Use of Marihuana.

23 Sec. 4. (a) A qualifying patient who has been issued and  
24 possesses a registry identification card shall not be subject to  
25 arrest, prosecution, or penalty in any manner, or denied any right  
26 or privilege, including but not limited to civil penalty or  
27 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. The privilege from arrest under this subsection applies only  
23 if the primary caregiver presents both his or her registry  
24 identification card and a valid driver license or government-issued  
25 identification card that bears a photographic image of the primary  
26 caregiver. This subsection applies only if the primary caregiver  
27 possesses an amount of **USABLE** marihuana that does not exceed:

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

4           (2) for each registered qualifying patient who has specified  
5 that the 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; and

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

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

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

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

19           (2) is in possession of an amount of marihuana **AND USABLE**  
20 **MARIHUANA** that does not exceed the amount allowed under this act.

21 The presumption may be rebutted by evidence that conduct related to  
22 marihuana **AND USABLE MARIHUANA** was not for the purpose of  
23 alleviating the qualifying patient's debilitating medical condition  
24 or symptoms associated with the debilitating medical condition, in  
25 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, **USABLE MARIHUANA**, marihuana paraphernalia,  
2 or licit property that is possessed, owned, or used in connection  
3 with the medical use of marihuana, as allowed under this act, or  
4 acts incidental to 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 marihuana  
12 **OR USABLE 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 **OR USABLE MARIHUANA** to someone who is  
22 not allowed to use marihuana for medical purposes **MEDICAL USE OF**  
23 **MARIHUANA** under this act shall have his or her registry  
24 identification card revoked and is guilty of a felony punishable by  
25 imprisonment for not more than 2 years or a fine of not more than  
26 \$2,000.00, or both, in addition to any other penalties for the  
27 distribution of marihuana.

1           7. Scope of Act.

2           Sec. 7. (a) The medical use of marihuana is allowed under  
3 state law to the extent that it is carried out in accordance with  
4 the provisions of this act.

5           (b) This act shall not permit any person to do any of the  
6 following:

7           (1) Undertake any task under the influence of marihuana, when  
8 doing so would constitute negligence or professional malpractice.

9           (2) Possess marihuana **OR USABLE MARIHUANA**, or otherwise engage  
10 in the medical use of marihuana:

11           (A) in a school bus;

12           (B) on the grounds of any preschool or primary or secondary  
13 school; or

14           (C) in any correctional facility.

15           (3) Smoke marihuana:

16           (A) on any form of public transportation; or

17           (B) in any public place.

18           (4) Operate, navigate, or be in actual physical control of any  
19 motor vehicle, aircraft, or motorboat while under the influence of  
20 marihuana.

21           (5) Use marihuana **OR USABLE MARIHUANA** if that person does not  
22 have a serious or debilitating medical condition.

23           (c) Nothing in this act shall be construed to require:

24           (1) A government medical assistance program or commercial or  
25 non-profit health insurer to reimburse a person for costs  
26 associated with the medical use of marihuana.

27           (2) An employer to accommodate the ingestion of marihuana **OR**

1 **USABLE MARIHUANA** in any workplace or any employee working while  
2 under the influence of marihuana **OR USABLE MARIHUANA**.

3 (d) Fraudulent representation to a law enforcement official of  
4 any fact or circumstance relating to the medical use of marihuana  
5 to avoid arrest or prosecution shall be punishable by a fine of  
6 \$500.00, which shall be in addition to any other penalties that may  
7 apply for making a false statement or for the use of marihuana **OR**  
8 **USABLE MARIHUANA** other than use undertaken pursuant to this act.

9 (e) All other acts and parts of acts inconsistent with this  
10 act do not apply to the medical use of marihuana as provided for by  
11 this act.

12 8. Affirmative Defense and Dismissal for Medical Marihuana.

13 Sec. 8. (a) Except as provided in section 7(b), a patient and  
14 a patient's primary caregiver, if any, may assert the medical  
15 purpose for using marihuana **OR USABLE MARIHUANA** as a defense to any  
16 prosecution involving marihuana **OR USABLE MARIHUANA**, and this  
17 defense shall be presumed valid where the evidence shows that:

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

26 (2) The patient and the patient's primary caregiver, if any,  
27 were collectively in possession of a quantity of marihuana **AND**

1 **USABLE MARIHUANA** that was not more than was reasonably necessary to  
2 ensure the uninterrupted availability of marihuana **OR USABLE**  
3 **MARIHUANA** for the purpose of treating or alleviating the patient's  
4 serious or debilitating medical condition or symptoms of the  
5 patient's serious or debilitating medical condition; and

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

13 (b) A person may assert the medical purpose for using  
14 marihuana **OR USABLE MARIHUANA** in a motion to dismiss, and the  
15 charges shall be dismissed following an evidentiary hearing where  
16 the person shows the elements listed in subsection (a).

17 (c) If a patient or a patient's primary caregiver demonstrates  
18 the patient's medical purpose for using marihuana **OR USABLE**  
19 **MARIHUANA** pursuant to this section, the patient and the patient's  
20 primary caregiver shall not be subject to the following for the  
21 patient's medical use of marihuana:

22 (1) disciplinary action by a business or occupational or  
23 professional licensing board or bureau; or

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