

MEDICAL MARIHUANA PROVISIONING CENTER REGULATION ACT

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House Bill 4209 as introduced
Sponsor: Rep. Mike Callton, D.C.
Committee: Judiciary
Complete to 5-6-15

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The bill creates the Medical Marihuana Provisioning Center Regulation Act to establish a licensing and regulation framework for medical marihuana provisioning centers and safety compliance facilities. As introduced, the bill's effective date is April 1, 2015. A brief summary of significant provisions follows:

- A state license, issued by the Department of Licensing and Regulatory Affairs (LARA), would be required to operate a provisioning center or safety compliance facility (entities). The approval process would include an affirmative recommendation by the municipality (city, township, or village) in which the entity is located.
- Municipalities would be allowed to enact and enforce ordinances imposing additional local requirements on entities, including, but not limited to, zoning restrictions and caps on the number of provisioning centers in the jurisdiction. A municipality could also adopt an ordinance, make a violation of the ordinance a civil infraction with a civil fine, and charge an entity a fee.

Legislative Findings

The Legislature finds that the necessity for access to safe sources of marihuana for medical use and the immediate need to establish provisioning centers and safety compliance facilities that operate under defined rules establish the need to preserve the public health, safety, or welfare sufficient to support the promulgation of emergency rules.

General Provisions

- The bill would not limit the medical purpose defense provided in Section 8 of the Michigan Medical Marihuana Act (MMMA).
- The bill would not require the violation of federal law and would not give immunity from prosecution under federal law, nor would it prevent federal enforcement of federal law.
- An entity could not be located within 1,000 feet of a preexisting primary or secondary school as measured from property line to property line.

- Not later than October 1, 2015, LARA must promulgate rules or emergency rules. LARA must consult with the Provisioning Center Regulation Panel (described below) after it is established, but has the ultimate discretion regarding the rules implementing the act.
- Rules must address the manner in which municipalities, provisioning centers, and safety compliance facilities engage in the following:
 - Labeling and packaging marihuana and marihuana-infused products.
 - Testing marihuana-infused products.
 - Submitting and maintaining database records.
 - Advertising marihuana sales.
 - Transactions with visiting qualifying patients.
- A provisioning center or safety compliance facility:
 - Could not hire as an agent a person under 21 years of age or who was convicted of an excluded felony offense during the immediately preceding 10-year period. Only U.S. citizens or persons with a work visa could be hired. Background checks would have to be performed before the offer of employment (the bill does specify if these would be name-based or fingerprint-based checks).
 - Could not allow a physician to advertise on the premises or hold a financial interest or receive compensation.
 - Could only transport or possess marihuana in or upon a motor vehicle as provided in the bill, e.g., in a locked container or trunk of the vehicle and with the required documentation.

Immunity

- Immunity would be granted to a provisioning center in compliance with the act and its agents from criminal penalties or local ordinances, state or local civil prosecution, certain searches or inspections, seizure, and sanctions issued by a licensing board or bureau for certain activities that include:
 - Purchasing, receiving, selling, or transferring marihuana from or to registered qualifying patients (patient), registered primary caregivers (caregiver), or provisioning centers.
 - Purchasing or receiving medical marihuana from a patient or a caregiver if the amount does not exceed the possession limits under the Michigan Medical Marihuana Act (MMMA).
 - Processing marihuana.
 - Possessing or manufacturing paraphernalia.
 - Manufacturing nonsmokable forms of medical marihuana.
 - Transporting medical marihuana between a provisioning center and another center or safety compliance facility or to the residence of a patient or caregiver.

- The bill would similarly grant immunity to a safety compliance facility operating in compliance with the bill and its agents for:
 - Acquiring or possessing medical marihuana obtained from patients, caregivers, or provisioning centers.
 - Transporting medical marihuana to or from a patient, caregiver, or provisioning center.
 - Possessing medical marihuana on the facility's premises for testing, if obtained from patients, caregivers, or provisioning centers.
 - Receiving compensation for actions permitted under the bill and municipal law.
 - However, immunity would not apply for activities associated with handling, testing, or analyzing marihuana unless, after October 1, 2015, the facility is licensed; persons with a direct or indirect interest in the facility do not have a financial interest in a provisioning center, marihuana producer, certifying physician, or any other entity that may financially benefit from the production, manufacture, dispensing, sale, purchase, or use of marihuana; at least one employee has a Bachelor's degree or higher in the chemical or biological sciences and a minimum of one year postgraduate laboratory experience to provide oversight and responsibility for testing; and the entity is accredited by a private laboratory accreditation service.

- The bill would similarly grant immunity to a patient or caregiver when:
 - Purchasing or acquiring usable marihuana or marihuana-infused products in solid, gaseous, or liquid form from one or more provisioning centers if, in any 10-day period, they do not exceed the amount for which immunity is granted under the MMMA.
 - Supplying, selling, transferring, or delivering medical marihuana to a provisioning center with a state operating license (in regards to caregivers, the bill still refers to a center "registered, licensed, or otherwise allowed by the municipality") if produced by the patient or caregiver, the transferred amount does not exceed the amount allowed under the MMMA, and, in the case of caregivers, is excess medical marihuana above the amount necessary to satisfy the needs of the designated patient.

Provisioning Centers

- Among other things, a provisioning center:
 - Could not provide, transfer, or sell medical marihuana to an individual knowing that the individual was not a patient, caregiver, or agent of a provisioning center allowed to operate or obtain medical marihuana from other centers under a municipal ordinance.
 - Could not share office space with a physician or conduct any other business at or in association with the center.
 - Must have a security alarm system enabled when an agent is not present.

- Could not sell, transfer, or provide a marijuana-infused product unless it was tested by a safety compliance facility, marked with a warning that the product contains marijuana, and enclosed in a container marked with certain information as specified in the bill (e.g., the total weight of the product and the weight of the usable marijuana in the container, as calculated according to the bill's requirements).
- Could not operate unless each licensee and provisioning center agent was a state resident and had been a resident for the preceding two years.
- Must maintain certain records as specified in the bill, including confidential records (not subject to FOIA) regarding the amount of medical marijuana provided to each patient and caregiver, and date and time it was provided, and transfers to or from another provisioning center. Records would be kept for six months and data from the records entered into a statewide database when it becomes operational.
- Could not refer an individual to a physician for compensation.
- Beginning October 1, 2015, could not sell or distribute any marijuana-infused product unless it had been tested for mold, mildew, fungi, and pesticides by a licensed safety compliance center and must make the test results available to a patient, caregiver, municipality, or physician who certified a patient upon request.
- If a facility were to manufacture and distribute a marijuana-infused product, must comply with a long list of requirements to ensure the product was made under sanitary conditions and that would prevent, or in some cases, minimize certain contaminants. A municipality could impose additional regulations.
- Must be inspected at least annually for compliance with sanitary and other safety requirements by the local county health department. Costs for the inspection would be borne by the provisioning center.

Licensing

- An entity could submit applications for licensure beginning July 1, 2015; the application must include an affirmative recommendation by the municipality in which the entity intends to locate, an application fee as established by departmental rule, and the applicant's criminal background check (the bill does not specify if this a name-based check or a fingerprint-based check).
- LARA may issue a state operating license to an entity if, in the department's discretion, the license would be in the state's best interests. In making that determination, LARA would have to consider the applicant's character (including any history of criminal or civil violations of law), business skills and experience related to the potential for success in operating the entity, and the feasibility of the business plan and financial stability of and resources available to the applicant to conduct the business in compliance with the bill.

If the application is incomplete, LARA must notify the applicant within 30 days and describe the deficiency and request the additional information. Otherwise, LARA must approve or deny an application within 90 days of receipt; however, the 90-day period may be tolled while waiting for the requested information or such things as completion of

construction or renovation of the licensed premises, criminal history check, financial or court record checks, or other actions required by the bill or departmental rules.

A denial must be accompanied by the reasons. Denials may not be appealed and an applicant must wait at least one year to submit another application.

Licenses would expire on January 1 of the year following the year it was issued and the bill would establish a renewal process. For a transfer of a license to be valid, approval must be given by LARA and the municipality in which the entity is located. Transfer requests would be treated by LARA in the same manner as for new applications.

LARA could promulgate rules to implement the licensing, renewal, and transfer approval process, as well as to implement the process of license sanctions, assessing administrative fines for violations, and conducting appeals as necessary for due process.

- A safety compliance facility could be issued a license by LARA but would be prohibited from operating unless it could accurately determine if mold, mildew, or fungi or pesticides were present in marijuana-infused products sold or that may be sold at provisioning centers.
- LARA may require fees, as necessary, from licensees and applicants for licenses to carry out its duties under the act.

Administrative Penalties

Upon due notice and hearing, LARA could suspend or revoke an entity's license for a violation of the bill, departmental rules, or an applicable local ordinance.

An administrative fine could be assessed against a provisioning center of not more than \$2,000 for each sale in violation of the bill or rule and not more than \$1,000 for any other violation. A safety compliance center could be assessed an administrative fine of not more than \$10,000 for knowingly providing false or fraudulent test results for mold, mildew, fungi, or pesticides.

Administrative fines could be in lieu of or in addition to license revocation. Revenue from fines would go the state general fund.

Civil Infractions and Criminal Penalties

- A provisioning center violating Section (7)(1) or (2) would be responsible for a state civil infraction and could be ordered to pay a civil fine of not more than \$5,000.
- A person violating Sections 7(3) to (10), (15), or (16) would be responsible for a state civil infraction and could be ordered to pay a civil fine of not more than \$1,000.
- A person transferring medical marijuana in violation of Sections 7(11) to (13) or working in violation of Section 7(14) would not be exempt under the immunity granted

to provisioning centers or safety compliance centers from arrest, prosecution, or criminal or other penalties.

- A person who violates Section 7(17), transporting medical marihuana by motor vehicle, would be guilty of misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500, or both.
- The civil and criminal sanctions would apply beginning July 1, 2015.
- Sections 3, 4, and 10 of the new act would not exempt an entity or its agents, a patient, or caregiver from criminal penalties or civil prosecution under a law of general application that would apply even if medical marihuana or paraphernalia were not involved.
- An entity would not be exempt from criminal or civil prosecution or sanctions for cultivating marihuana.

Statewide Confidential Database

LARA must create and maintain a statewide confidential database to ensure compliance with the time and quantity limitations on transfers set forth in Section 7(9). Each provisioning center would submit required records to LARA for entry into the database. LARA would have to ensure each center has access to the database to allow provisioning center agents to maintain proper statewide record keeping to assure that transfers of marihuana and marihuana-infused products are within the permitted maximums.

Provisioning Center Regulation Panel

The Provisioning Center Regulation Panel would be created within LARA. The 17-member panel would include the director of the Department of State Police and the president of the Michigan Association of Chiefs of Police (or their designees) and two patients, a physician, two caregivers, two representatives each of provisioning centers and safety compliance facilities, two representatives of municipalities (one nominated by the Michigan Municipal League and one by the Michigan Township Association), one from LARA, one from the Prosecuting Attorneys Association of Michigan, and one member of the general public – all appointed by the governor.

The bill would establish the process for appointments and filling vacancies, and how often the panel would meet. Business would be conducted at a public meeting in compliance with the Open Meetings Act. Writings prepared, owned, used, in the possession of, or retained by the panel in the performance of official duties would be subject to the Freedom of Information Act. Panel members would serve without compensation but could be reimbursed for actual and necessary expenses.

The panel would make recommendations to LARA concerning promulgation of rules, and as requested by LARA, administration of the new act. State departments and agencies must

cooperate with the panel and upon request, provide it with meeting space and other resources to assist it in the performance of its duties.

Definitions

The bill defines numerous terms, including the following:

"Marihuana" would have the same meaning as in the MMMA.

"Marihuana-infused product" would 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. It would not be considered a food for purposes of the Michigan Food Law.

"Usable marihuana" would mean the dried leaves, flowers, plant resin, or extract of the marihuana plant and any mixture or preparation, but does not include the seeds, stalks, or roots of the plant or any inactive substance used as a delivery medium for usable marihuana.

"Excluded felony offense" would mean a felony involving illegal drugs, but would not include a conviction for activity allowed under the MMMA or the bill, even if the activity occurred before the enactment of the bill or the MMMA.

"Medical marihuana provisioning center" or "provisioning center" would mean a commercial entity located in the state that acquires, possesses, manufactures, delivers, transfers, or transports medical marihuana and sells, supplies, or provides medical marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers. The term also includes any commercial property where medical marihuana is sold to patients or caregivers. A non-commercial location used by a caregiver to assist a patient connected to the caregiver through LARA's medical marihuana registration process in accordance with the MMMA would not be a provisioning center for purposes of the new act.

"Safety compliance facility" would mean an entity that tests for contaminants in marihuana produced for medical use.

FISCAL IMPACT:

House Bill 4209, as introduced, would have a neutral fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) to the extent LARA would encounter operational costs to comply with statutory requirements to:

- Promulgate administrative rules to implement the requirements of HB 4209
- provide staff support for the Provisioning Center Regulation Panel
- Develop, maintain, and monitor a statewide database pertaining to the provision and transfer of marihuana and marihuana-infused products

- Administer, implement, and enforce licensure programs for provisioning centers and safety compliance facilities (including the development of LARA's capacity to assess applicants' business skills and experience, the feasibility of applicants' business plans, and applicants' financial stability in the issuance of discretionary licenses)

However, HB 4209 authorizes LARA to establish necessary fees levied on applicants and licensees to offset the costs associated with the abovementioned requirements.

Additionally, HB 4209 stipulates that revenue generated by administrative fines assessed by LARA for violations of the requirements of HB 4209 would be credited to the General Fund.

HB 4209 would also have an indeterminate fiscal impact on local units of governments to the extent that municipalities would receive and consider recommending approval by LARA of applications for licensure as provisioning centers and safety compliance facilities. The bill would authorize municipalities to enact and enforce local ordinances pertaining to for provisioning centers and safety compliance facilities, designate violation of those ordinances as municipal civil infractions and assess civil fines, and levy fees on provisioning centers and safety compliance facilities.

Furthermore, local public health departments will have increased costs under HB 4209 for new responsibilities for required annual inspections of provisioning centers; however, the bill establishes that provisioning centers are responsible for payment for the costs associated with the required inspections.

To the extent that House Bill 4209 results in a greater number of convictions, it could have an indeterminate fiscal impact on the state and local units of government. The fiscal impact would depend on the number of and types of sentences for people who are held responsible for state civil infractions and found guilty of misdemeanors. Increases in applicable fines would benefit local libraries, which are the constitutionally designated recipients of such revenues. Civil infraction penalties would increase revenues going to the state Justice System Fund, which supports various justice-related endeavors in the judicial branch, and the Departments of State Police, Corrections, and Human Services. New misdemeanor convictions would 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. Also, the bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bill affected caseloads and related administrative costs.

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