

MICHIGAN MEDICAL MARIHUANA ACT
Initiated Law 1 of 2008

AN INITIATION of Legislation to allow under state law the medical use of marihuana; to provide protections for the medical use of marihuana; to provide for a system of registry identification cards for qualifying patients and primary caregivers; to impose a fee for registry application and renewal; to provide for the promulgation of rules; to provide for the administration of this act; to provide for enforcement of this act; to provide for affirmative defenses; and to provide for penalties for violations of this act.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

The People of the State of Michigan enact:

333.26421 Short title.

1. Short Title.

Sec. 1. This act shall be known and may be cited as the Michigan Medical Marihuana Act.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26422 Findings, declaration.

2. Findings.

Sec. 2. The people of the State of Michigan find and declare that:

(a) Modern medical research, including as found by the National Academy of Sciences' Institute of Medicine in a March 1999 report, has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions.

(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.

(c) Although federal law currently prohibits any use of marihuana except under very limited circumstances, states are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. The laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Mexico, Oregon, Vermont, Rhode Island, and Washington do not penalize the medical use and cultivation of marihuana. Michigan joins in this effort for the health and welfare of its citizens.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

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333.26423 Definitions.

3. Definitions.

Sec. 3. As used in this act:

(a) "Debilitating medical condition" means 1 or more of the following:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.

(2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.

(3) Any other medical condition or its treatment approved by the department, as provided for in section 5(a).

(b) "Department" means the state department of community health.

(c) "Enclosed, locked facility" means a closet, room, or other enclosed area equipped with locks or other security devices that permit access only by a registered primary caregiver or registered qualifying patient.

(d) "Marihuana" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL

333.7106.

(e) "Medical use" means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

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

(g) "Primary caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs.

(h) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(i) "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

(j) "Usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

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

(l) "Written certification" means a document signed by a physician, stating the patient's debilitating medical condition and stating that, in the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

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333.26424 Qualifying patient or primary caregiver; arrest, prosecution, or penalty prohibited; conditions; presumption; compensation; physician subject to arrest, prosecution, or penalty prohibited; marihuana paraphernalia; person in presence or vicinity to medical use of marihuana; registry identification issued outside of department; sale of marihuana as felony; penalty.

4. Protections for the Medical Use of Marihuana.

4. Protections for the Medical Use of Marihuana.

Sec. 4. (a) A qualifying patient who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or 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, for the medical use of marihuana in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana, and, if the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount.

(b) A primary caregiver who has been issued and possesses a registry identification card shall not be subject to arrest, prosecution, or penalty in any manner, or 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, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with this act, provided that the primary caregiver possesses an amount of marihuana that does not exceed:

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

(2) for each registered qualifying patient who has specified that the primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility; and

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

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

articulated and substantiated.

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

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

(2) is in possession of an amount of marihuana that does not exceed the amount allowed under this act. The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act.

(e) A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana. Any such compensation shall not constitute the sale of controlled substances.

(f) A physician shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by the Michigan board of medicine, the Michigan board of osteopathic medicine and surgery, or any other business or occupational or professional licensing board or bureau, solely for providing written certifications, in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the qualifying patient's medical history, or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.

(g) A person shall not be subject to arrest, prosecution, or penalty in any manner, or 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, for providing a registered qualifying patient or a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana.

(h) Any marihuana, marihuana paraphernalia, or licit property that is possessed, owned, or used in connection with the medical use of marihuana, as allowed under this act, or acts incidental to such use, shall not be seized or forfeited.

(i) A person shall not be subject to arrest, prosecution, or penalty in any manner, or 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, solely for being in the presence or vicinity of the medical use of marihuana in accordance with this act, or for assisting a registered qualifying patient with using or administering marihuana.

(j) A registry identification card, or its equivalent, that is issued under the laws of another state, district, territory, commonwealth, or insular possession of the United States that allows the medical use of marihuana by a visiting qualifying patient, or to allow a person to assist with a visiting qualifying patient's medical use of marihuana, shall have the same force and effect as a registry identification card issued by the department.

(k) Any registered qualifying patient or registered primary caregiver who sells marihuana to someone who is not allowed to use marihuana for medical purposes under this act shall have his or her registry identification card revoked and is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both, in addition to any other penalties for the distribution of marihuana.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26425 Rules.

5. Department to Promulgate Rules.

Sec. 5. (a) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which the department shall consider the addition of medical conditions or treatments to the list of debilitating medical conditions set forth in section 3(a) of this act. In promulgating rules, the department shall allow for petition by the public to include additional medical conditions and treatments. In considering such petitions, the department shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The department shall, after hearing, approve or deny such petitions within 180 days of the submission of the petition. The approval or denial of such a petition shall be considered a final department

action, subject to judicial review pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(b) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which it shall consider applications for and renewals of registry identification cards for qualifying patients and primary caregivers. The department's rules shall establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering this act. The department may establish a sliding scale of application and renewal fees based upon a qualifying patient's family income. The department may accept gifts, grants, and other donations from private sources in order to reduce the application and renewal fees.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:
10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26426 Administration and enforcement of rules by department.

6. Administering the Department's Rules.

Sec. 6. (a) The department shall issue registry identification cards to qualifying patients who submit the following, in accordance with the department's rules:

- (1) A written certification;
- (2) Application or renewal fee;
- (3) Name, address, and date of birth of the qualifying patient, except that if the applicant is homeless, no address is required;
- (4) Name, address, and telephone number of the qualifying patient's physician;
- (5) Name, address, and date of birth of the qualifying patient's primary caregiver, if any; and
- (6) If the qualifying patient designates a primary caregiver, a designation as to whether the qualifying patient or primary caregiver will be allowed under state law to possess marihuana plants for the qualifying patient's medical use.

(b) The department shall not issue a registry identification card to a qualifying patient who is under the age of 18 unless:

- (1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marihuana to the qualifying patient and to his or her parent or legal guardian;
- (2) The qualifying patient's parent or legal guardian submits a written certification from 2 physicians; and
- (3) The qualifying patient's parent or legal guardian consents in writing to:
 - (A) Allow the qualifying patient's medical use of marihuana;
 - (B) Serve as the qualifying patient's primary caregiver; and
 - (C) Control the acquisition of the marihuana, the dosage, and the frequency of the medical use of marihuana by the qualifying patient.

(c) The department shall verify the information contained in an application or renewal submitted pursuant to this section, and shall approve or deny an application or renewal within 15 days of receiving it. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, or if the department determines that the information provided was falsified. Rejection of an application or renewal is considered a final department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(d) The department shall issue a registry identification card to the primary caregiver, if any, who is named in a qualifying patient's approved application; provided that each qualifying patient can have no more than 1 primary caregiver, and a primary caregiver may assist no more than 5 qualifying patients with their medical use of marihuana.

(e) The department shall issue registry identification cards within 5 days of approving an application or renewal, which shall expire 1 year after the date of issuance. Registry identification cards shall contain all of the following:

- (1) Name, address, and date of birth of the qualifying patient.
- (2) Name, address, and date of birth of the primary caregiver, if any, of the qualifying patient.
- (3) The date of issuance and expiration date of the registry identification card.
- (4) A random identification number.
- (5) A photograph, if the department requires 1 by rule.

(6) A clear designation showing whether the primary caregiver or the qualifying patient will be allowed under state law to possess the marihuana plants for the qualifying patient's medical use, which shall be determined based solely on the qualifying patient's preference.

(f) If a registered qualifying patient's certifying physician notifies the department in writing that the patient has ceased to suffer from a debilitating medical condition, the card shall become null and void upon notification by the department to the patient.

(g) Possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any local, county or state governmental agency.

(h) The following confidentiality rules shall apply:

(1) Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential.

(2) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) The department shall verify to law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) A person, including an employee or official of the department or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months, or a fine of not more than \$1, 000.00, or both. Notwithstanding this provision, department employees may notify law enforcement about falsified or fraudulent information submitted to the department.

(i) The department shall submit to the legislature an annual report that does not disclose any identifying information about qualifying patients, primary caregivers, or physicians, but does contain, at a minimum, all of the following information:

(1) The number of applications filed for registry identification cards.

(2) The number of qualifying patients and primary caregivers approved in each county.

(3) The nature of the debilitating medical conditions of the qualifying patients.

(4) The number of registry identification cards revoked.

(5) The number of physicians providing written certifications for qualifying patients.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

In subsection (h)(4), the dollar amount "\$1, 000.00" contains a space between the comma and first zero, and evidently should read "\$1,000.00".

333.26427 Scope of act; limitations.

7. Scope of Act.

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

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

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

(2) Possess marihuana, or otherwise engage in the medical use of marihuana:

(A) in a school bus;

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

(C) in any correctional facility.

(3) Smoke marihuana:

(A) on any form of public transportation; or

(B) in any public place.

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

(5) Use marihuana if that person does not have a serious or debilitating medical condition.

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

(1) A government medical assistance program or commercial or non-profit health insurer to reimburse a

person for costs associated with the medical use of marihuana.

(2) An employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.

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

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

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26428 Defenses.

8. Affirmative Defense and Dismissal for Medical Marihuana.

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

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

(2) The patient and the patient's primary caregiver, if any, were collectively in possession of a quantity of marihuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition; and

(3) The patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

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

(c) If a patient or a patient's primary caregiver demonstrates the patient's medical purpose for using marihuana pursuant to this section, the patient and the patient's primary caregiver shall not be subject to the following for the patient's medical use of marihuana:

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

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

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26429 Failure of department to adopt rules or issue valid registry identification card.

9. Enforcement of this Act.

Sec. 9. (a) If the department fails to adopt rules to implement this act within 120 days of the effective date of this act, a qualifying patient may commence an action in the circuit court for the county of Ingham to compel the department to perform the actions mandated pursuant to the provisions of this act.

(b) If the department fails to issue a valid registry identification card in response to a valid application or renewal submitted pursuant to this act within 20 days of its submission, the registry identification card shall be deemed granted, and a copy of the registry identification application or renewal shall be deemed a valid registry identification card.

(c) If at any time after the 140 days following the effective date of this act the department is not accepting applications, including if it has not created rules allowing qualifying patients to submit applications, a notarized statement by a qualifying patient containing the information required in an application, pursuant to

section 6(a)(3)-(6) together with a written certification, shall be deemed a valid registry identification card.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

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333.26430 Severability.

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Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

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