

MICHIGAN “MEDICAL” MARIJUANA INITIATIVE

COMMENTS ARE IN BOLD

INITIATION OF LEGISLATION

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.

The People of the State of Michigan enact:

1. Short Title.

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

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.

COMMENT

This statement implies that the Institute of Medicine supports smoked marijuana. The initiative will permit smoked marijuana as medicine. However, according to John A. Benson, M.D. of the Institute of Medicine, research on cannabinoids is underway but they “see little future in smoked marijuana as a medicine.” SOURCE: John A. Benson, co-principal investigator, in releasing *Marijuana and Medicine: Assessing the Science Base*. Janet E. Joy, Stanley J. Watson, Jr., and John A. Benson, Jr., Editors. Division of Neuroscience and Behavioral Health. Institute of Medicine, National Academy of Sciences. National Academy Press, Washington D.C., 1999; www.nap.edu/html/marimed

Many prominent national health organizations do not support crude smoked marijuana for medicinal use. Crude marijuana as medicine has been rejected by the American Medical Association, the National Multiple Sclerosis Society, the American Glaucoma Society, the American Academy of Ophthalmology, the American Cancer Society, the National Eye Institute, the National Institute for Neurological Disorders and Stroke and the Federal Food and Drug Administration. SOURCE: Bonner, R., Marijuana Rescheduling Petitions, 57 Federal Register 10499-10508; Alliance for Cannabis Therapeutics v. DEA and NORML v. DEA, 15 F.3d 1131 (D.C.

Cir 1994); Inter-agency advisory regarding claims that smoked marijuana is medicine - the U.S. Food and Drug Administration, 20 April 2006, www.fda.gov/bbs/topics/news/2006/new01362.html

Some medical organizations, such as the American College of Physicians (ACP), support research into cannabinoids. This has been used by marijuana legalization advocates as proof that these organizations support crude smoked marijuana - but this is not accurate. For example, the ACP supported research into cannabinoids such as THC but they specifically stated “the ACP encourages the use of nonsmoked forms of THC that have proven therapeutic value.” It should be non-smoked and it must have proven value such as being approved by the FDA. SOURCE: Supporting research into the therapeutic role of marijuana, American College of Physicians, 2008

END OF COMMENT

(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 marijuana 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 marijuana.

(c) Although federal law currently prohibits any use of marijuana 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 marijuana. Michigan joins in this effort for the health and welfare of its citizens.

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).

COMMENT

The “medical” marijuana advocates claim that marijuana is good for many medical conditions. Before these claims are upheld, they must answer some fundamental questions:

What peer-reviewed scientific research exists on marijuana for the above conditions that shows:

- 1. The effectiveness of marijuana use for the condition?**
- 2. The risks of marijuana use for that condition?**
- 3. The benefits of marijuana use for that condition?**
- 4. The dosage of marijuana for adults and children for that condition?**
- 5. The interactions with other drugs and marijuana for that condition?**
- 6. The impact of marijuana use on other pre-existing conditions?**
- 7. The alternatives to marijuana use for that condition?**

What studies exist that show the frequency of administration, duration of administration, time of administration, in relation to time of meals, time of onset of symptoms, or other time factors, route or method of administration of marijuana for all these medical conditions?

These questions must be answered before a drug can be used for medicine. If these studies do not exist, all these conditions should not be included.

END OF COMMENT

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

"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.

COMMENT

How will Michigan determine what is “medical grade” marijuana? How will “medical grade” marijuana be planted, cultivated, harvested, manufactured, processed, tested, analyzed, packed, stored, labeled and shipped? What quality controls will be placed on growing marijuana?

How will they determine how much marijuana a user can smoke in a day or by the hour? Prescriptions must tell the user how much drug to use per day. What if the user smokes more marijuana in a day or in a week than he was given permission for? Can he go back and get some more? Studies on marijuana do not exist that show the quantity of dose, frequency of administration, duration of administration, time of administration, in relation to time of meals, time of onset

of symptoms, or other time factors, route or method of administration for all the medical conditions in the initiative.

The above clause of the initiative provides that drug paraphernalia used for smoking marijuana will be legal. How will it be determined that drug paraphernalia was used for a “medical” marijuana purpose? For example, if there are three people in a house and one can use “medical” marijuana, and two cannot, and the police raid the house and find three “bongs” for smoking marijuana, how will it be decided which one is the “designated medical bong?” How will the Department of Community Health decide which drug paraphernalia is approved for administering “medical” marijuana? Is it better to use a bong or a pipe or a joint or mix it in brownies?

Under this initiative drug paraphernalia can be used to ingest, inhale or otherwise introduce the marijuana into the human body. This now makes drug paraphernalia into medical devices for the delivery of a medical drug. Medical devices are strictly regulated by the federal Food and Drug Administration (FDA). In order for a “bong” or marijuana smoking pipe or other such device to be used it will have to be approved as a medical device by the FDA. It will also have to be properly labeled under federal law. See, 21 C.F.R. § 801.5 (medical devices - labeling - adequate directions for use means directions under which the layman can use a device safely and for the purposes for which it is intended. This includes quantity of dose, frequency of administration or application, duration of administration or application, time of administration or application, in relation to time of meals, time of onset of symptoms, or other time factors, route or method of administration or application, preparation for use, i.e., adjustment of temperature, or other manipulation or process. See also: 21 C.F.R. § 803.3 (medical device reporting); 21 C.F.R. § 807.93 (pre-market notification procedures); 21 C.F.R. § 808.3 (medical device classification); 21 C.F.R. § 860.7 (determination of safety and effectiveness includes the conditions of use for the device, the probable benefit to health from the use of the device weighed against any probable injury or illness from such use and the reliability of the device and there is reasonable assurance that a device is safe when it can be determined, based upon valid scientific evidence).

END OF COMMENT

(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 marijuana 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.

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.

COMMENT

This clause would appear to allow marijuana users to maintain medical, veterinary, nursing, physical therapy, etc. licenses so that they may continue in practice and the treatment of patients. This would include surgeons as well. These provisions will force courts to interpret this law - but only after the dangers have become reality.

This clause will permit persons or their caregivers to possess and grow 12 marijuana plants. The clause will permit plants to be grown or possessed at home. They can be grown or kept in a room or closet. A college student who had a locked closet in his room could grow plants there under grow lights.

How much pot can 12 plants produce?

The typical marijuana plant produces 1 to 5 pounds of smokeable materials (leaves and buds). Maybe more if grown indoors under the right conditions. The 12 plants permitted by the initiative can thus produce a minimum of 12 to 60 pounds of marijuana per year. SOURCE: Drug Identification Bible, third edition, page 606, Tim Marnell editor, Denver, CO, 800-772-2539 (a book for law enforcement, parents and educators)

How many joints are in 12 to 60 pounds of pot?

A typical marijuana joint is estimated to weigh about 0.4 grams. If a standard joint is 0.4 grams of average-quality 6% marijuana buds, an ounce of "standard pot" equals more than 60 joints. An ounce of more potent 12% sinsemilla is 120 joints. Thus an ounce is from 60 to 120 joints. There are 16 ounces in a pound. A pound of marijuana can thus produce from 960 to 1,920 joints. SOURCE: Economics of cannabis legalization, written by Dale Gieringer, Ph.D., coordinator, California NORML (National Organization for the Reform of Marijuana Laws). Reprinted from Ed Rosenthal, ed., Hemp Today pp. 311-24. (Quick American Archives, Oakland, CA 1994)

The plants can produce 12 to 60 pounds. Thus, at a minimum, the 12 plants will produce approximately 11,520 joints (12 x 960). If the plants can produce up to 5 pounds each this is 60 pounds of marijuana or 57,600 joints per year.

This initiative will permit the possession of at least 11,520 to 57,600 joints per person or caregiver. What other medicine is dispensed in such huge quantities?

The initiative will apply to persons over 18 years of age which includes high school and college students (or under 18 with parents' consent). The initiative appears to permit the plants to be grown or possessed in a person's locked closet.

Young children in the home or neighborhood will have access to the plants. You only have to be 18 years old to grow the plants. Many 18 year olds are in high school, thus the friends of these teenagers will have access to thousands of joints.

Where will the person get the first 12 seeds to plant? Will the state supply the seeds or the plants? If not, who will? The only source for the plants and seeds is illegal.

What potency of marijuana will they be allowed to plant?

Will annual surveys be conducted to measure an increase in marijuana use especially by children and teens?

Who will monitor the persons who are growing marijuana at home or a college dorm room closet?

Will this enormous amount of marijuana joints being generated in many homes and dorm rooms give rise to a black-market as has happened in other states?

END OF COMMENT

(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.

COMMENT

This section does not protect practitioners from medical malpractice suits. Insurance companies writing malpractice insurance are carefully scrutinizing ways to limit their malpractice exposure because of escalating plaintiffs' lawsuits. One attempt to limit exposure is to exclude claims arising from the use of a non-FDA approved medication. Smoked or other forms of crude marijuana are not approved by the FDA. Physicians who recommend marijuana will find it extremely difficult to show that they had "rendered quality care" or met the "standard of care" that other reasonably prudent, similarly trained and experienced physicians

would consider. This is because the necessary scientific research regarding marijuana and its effectiveness, risks, benefits, dosages, interactions with other drugs, and impact on pre-existing conditions is not available, and because there are no quality controls in the manufacturing process.

Historically, physicians rely upon the federal food and drug administration's (FDA) process for approving drugs to protect them from liability should a drug be unsafe. The FDA does not approve of smoked marijuana.

END OF COMMENT

(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 marijuana paraphernalia for purposes of a qualifying patient's medical use of marijuana.

(h) Any marijuana, marijuana paraphernalia, or licit property that is possessed, owned, or used in connection with the medical use of marijuana, 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 marijuana in accordance with this act, or for assisting a registered qualifying patient with using or administering marijuana.

(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 marijuana by a visiting qualifying patient, or to allow a person to assist with a visiting qualifying patient's medical use of marijuana, shall have the same force and effect as a registry identification card issued by the department.

COMMENT

This is asking Michigan to accept the standards and regulations on marijuana use of any other state – and such standards may be significantly more in scope than what Michigan wants. For example, Michigan would be required to accept marijuana use for any condition adopted by any other state issuing cards. Therefore, Michigan will not have control over who uses marijuana for purported “medical” reasons in Michigan. And what agency will be responsible for verifying if usage is appropriate by other states’ regulations? In Oregon alone, there are over 10,000 registered users.

END OF COMMENT

(k) Any registered qualifying patient or registered primary caregiver who sells marijuana to someone who is not allowed to use marijuana 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.

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.

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.

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.

COMMENT

Please note that the initiative applies to possession or smoking in a school bus or on school grounds. It does not say “being under the influence” will subject a person to penalties unless being under the influence would be “negligent.” This is a very vague standard. Marijuana is very different from most drugs in that it stays in the system and effects the system for much longer time periods.

END OF COMMENT

(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.

COMMENT

This clause only applies if the person ingests marijuana in the workplace or if they are under the influence in the workplace. However, if they are picked up on a drug test and have metabolites of marijuana in their blood they can argue that they are not under the influence but just have the metabolites from past use. However, Michigan DWI case law states that having metabolites is the same as being under the influence. Does this mean that all medical marijuana users who are employed and have metabolites can be fired if they test positive?

END OF COMMENT

(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.

COMMENT

This provides a very minimum penalty for lying to a police officer to avoid a drug charge. Why such a minimal penalty for committing fraud and lying to a police officer? This will only encourage fraud. This is going to be a real burden for law enforcement. Violators should at least be charged with a more serious crime.

END OF COMMENT

(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.

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.

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.

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.