

## MEDICAL MARIHUANA ACT AMENDMENTS

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**House Bill 4834 (Substitute H-3)**  
**Sponsor: Rep. Gail Haines**

**House Bill 4853 (Substitute H-1)**  
**Sponsor: Rep. Ed McBroom**

**House Bill 4851 (Substitute H-2)**  
**Sponsor: Rep. Philip M. Cavanagh**

**House Bill 4856 (Substitute H-1)**  
**Sponsor: Rep. Ben Glardon**

**Committee: Judiciary**  
**Complete to 2-29-12**

## A SUMMARY OF PROPOSED SUBSTITUTES FOR HOUSE BILLS 4834, 4851, 4853, AND 4856

The bills would amend various acts related to medical marihuana to:

- Require a patient registry identification card to contain a photo ID.
- Require registry identification cards to be valid for two years.
- Require LARA to privatize portions of the application process for a registry ID card.
- Revise confidentiality provisions to apply to private vendors.
- Define "bona fide physician-patient relationship" to include an in-person, physical examination of the patient, and revise other definitions, as well.
- Place the penalty for selling marihuana in violation of registry identification card restrictions within the sentencing guidelines.
- Regulate the transportation of medical marihuana in a motor vehicle and prescribe penalties for a violation.

### **House Bill 4834**

The bill would amend Section 6 of the Medical Marihuana Act (MMA) to require a photo for the patient registry identification card, make the card valid for two years, require the privatization of some of the registry process, and revise confidentiality provisions as described in more detail (MCL 333.26426).

(Note: The Medical Marihuana Act defines "department" as the Department of Community Health, but Executive Order No. 2011-4 transferred the Bureau of Health Professions, which has oversight of the Medical Marihuana Program, from the Department of Community Health to the Department of Licensing and Regulatory Affairs.)

#### ***Photo for patient registry identification card***

The bill would require an applicant, as part of the application for a registry identification card, to submit two identical color photographs or submit a waiver allowing the Secretary

of State to issue the Department of Licensing and Regulatory Affairs (LARA) a copy of the photograph contained on the qualifying patient's driver license or state personal identification card. If the applicant submitted a photograph, it must show the applicant's current appearance, have been taken within the immediately preceding six months, comply with the size requirements specified in the bill, and be a full-face, front view against a plain, white or off-white background. In addition, the person's hair or hairline could not be obscured by a hat or headgear, nor could the person wear dark or nonprescription glasses unless medically necessary.

***Expiration date of registry identification card***

The bill would require a patient or caregiver registry identification card to expire two years, instead of one year, after issuance.

***Privatization***

The bill would require LARA to enter into a contract with a private contractor to assist it in performing its duties regarding issuing registry ID cards to qualifying patients and caregivers. The contract could provide for assistance in processing and issuing registry ID cards, but LARA would retain the authority to make the final determination as to issuing the registry ID card. The contract would also have to preserve the confidentiality of information in conformity with the bill's requirements.

***Confidentiality***

Currently, LARA must maintain a confidential list of the persons issued registry identification cards. LARA is required to verify to law enforcement personnel whether a registry ID card is valid but without disclosing more information than is reasonably necessary to verify the authenticity of the card. This requirement would be deleted and replaced with an expanded confidentiality requirement.

Under the bill, LARA could not allow any person access to any information about patients in the confidential list of persons to whom LARA issued registry ID cards or from whom an application had been received, or access to any information otherwise maintained by the LARA concerning physicians who provide written certification and primary caregivers.

The only exceptions would be for the following:

- Authorized LARA employees or of a contractor described above in the course of their official duties.
- State or local law enforcement officers or officials, but only if: (1) the officer or official provides a registry ID number and that officer or official is acting in the course of official duties; or (2) the officer or official provides a name and a date of birth or address for an individual and disclosure by the LARA is needed either to confirm or refute the officer's or official's reasonable suspicion that a violation of this act was committed by that individual or at that address.

A contractor who violated the confidentiality provisions would be subject to existing criminal penalties for disclosing information in violation of the act—a misdemeanor punishable by not more than six months in jail and/or a fine of not more than \$1,000.

[Note: Administrative Rule 333.121(2) provides that "[n]ames and other identifying information made confidential under subrule (1) of this rule may only be accessed or released to authorized employees of the department as necessary to perform official duties of the department pursuant to the act, including the production of any reports of non-identifying aggregate data or statistics."

According to Attorney General Opinion No. 7250 dated August 31, 2010, the rule precludes the department (at that time, the Department of Community Health) from giving a private vendor access to the necessary information. The attorney general suggested as a remedy that the department either promulgate a new rule or issue an emergency rule if appropriate, or that the Legislature amend or rescind the rule or specifically amend the MMA to allow the department to pursue contracts with outside vendors.]

### **House Bill 4851**

The bill would amend the MMA (MCL 333.26423) to add a definition of the term "bona fide physician-patient relationship" and revise the definitions of other terms. The bill would define "bona fide physician-patient relationship" to mean a treatment or counseling relationship between a physician and patient to which all of the following apply:

- The physician reviewed the patient's relevant medical records and completed a full assessment of the patient's medical history and current medical and psychological condition, including a relevant, in-person, physical examination of the patient.
- The physician created and maintains records of the patient's condition in accord with medically accepted standards.
- The physician has a reasonable expectation to provide follow-up care, examination, and treatment to monitor the efficacy of the use of medical marihuana as a treatment of the patient's debilitating medical condition.
- With permission by the patient, the physician notifies the primary care physician of the patient's debilitating medical condition and certification for the use of medical marihuana to treat that condition.
- The issue of whether the affirmative defense under Section 8 of the act applies would be a question to be determined by the trier of fact (a jury or a judge in a bench trial) if the person presents prima facie evidence of a bona fide physician-patient relationship under the act.

The bill would also revise the definition of "enclosed, locked facility" to mean a closet, room, or other comparable, stationary, and fully-enclosed area equipped with secured locks or other functioning security devices that permit access only by a registered primary caregiver or registered qualifying patient. (Underlining denotes changes.)

In addition, the definition of "written certification" means a document signed by a physician stating the patient's debilitating medical condition. The bill would also require the written certification to include a statement that "the physician has completed a full assessment of the patient's medical and psychological history and current medical and psychological condition, including a relevant, in-person, physical examination."

### **House Bill 4853**

The bill would amend the Code of Criminal Procedure (MCL 777.13n) to place the penalty for a registered qualifying patient or caregiver who sells marihuana to an unauthorized person within the sentencing guidelines. The current penalty is a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000, or both, in addition to any other penalties for the distribution of marihuana. The person's registry identification card would also be revoked.

The bill would specify that selling marihuana in violation of registry identification card restrictions would be a Class G felony against the Public Trust with a maximum term of imprisonment of two years.

### **House Bill 4856**

The bill would add a new section to the Michigan Penal Code (MCL 750.474). Under the bill, a person could not transport or possess medical marihuana in or upon a motor vehicle or any self-propelled vehicle designed for land travel unless it is one or more of the following:

- Enclosed in a case.
- Carried in the trunk of the vehicle.
- Inaccessible from the interior of the vehicle.

A person who violated the bill's provision would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500, or both. "Medical marihuana" would mean marihuana regulated under the Michigan Medical Marihuana Act (MCL 333.26421-333.26430).

### **FISCAL IMPACT:**

House Bill 4834 would have the following fiscal impacts on the Bureau of Health Professions (BHP) in the administration of the Medical Marihuana Program (MMP).

(1) The BHP has procured a high-volume printer (costing approximately \$800,000) that will be able to print registry identification cards with the photograph that, presumably, would be required on the cards under House Bill 4834. However, HB 4834 would create additional costs for the BHP in the digitization of photographs submitted. Further, the BHP is uncertain how to verify that a submitted photograph was taken within the past six months and anticipates that such verification could create additional costs.

(2) By extending the period during which a registry identification card is valid from 1 year to 2 years, House Bill 4834 would reduce both the annual revenue generated by and annual expenditures for the MMP by the BHP. Revenue would likely decline by about half from an estimated \$7.5 million in FY 11-12. Expenditures would also likely decline by about half from an estimated \$3.9 million in FY 11-12. Thus, the extension of the renewal period for registry identification cards would likely have a neutral fiscal impact on the BHP as long as legal requirements for the MMP remain constant.

(3) Finally, House Bill 4834 requires the BHP to contract with a private entity to "assist the Department in performing its duties under this section." The Department of Community Health issued a report on March 1, 2010, which estimated the costs of outsourcing the processing of data-entry and creation of registry identification cards. The outsourcing estimates were based on annual program cost projections from the BHP and informal information submitted by two private vendors. The report estimated that outsourcing portions of the MMP would exceed the cost of retaining the program within the BHP by between \$212,162 and \$1,224,162 annually.

House Bill 4851 would not have a significant fiscal impact on the Bureau of Health Profession (BHP) in the administration of the Medical Marijuana Program (MMP) since the definitions which it amends do not substantively change the BHP's administration of the act.

House Bill 4853 adds the felony violation outlined in MCL 333.26424 related to the sale of medical marijuana to persons without valid identification cards to the sentencing guidelines statute. Since the violation already exists in current law, the bill would have no fiscal impact on the State or on local units of government.

House Bill 4856 creates a new misdemeanor offense for transporting or possessing medical marijuana in a vehicle under certain circumstances. To the extent that the bill leads to an increase in misdemeanor convictions, it could increase local corrections costs. The average cost of incarceration in local jails and of misdemeanor probation supervision varies by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

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