

Legislative Analysis



MARIHUANA-INFUSED PRODUCTS

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House Bill 4210 (Substitute H-1, Draft 2, as proposed)

Sponsor: Rep. Lisa Posthumus Lyons

Committee: Judiciary

Complete to 8-17-15

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

SUMMARY:

The bill would, among other things:

- Revise the definitions of "medical use" and "usable marihuana" to include products using extracts and plant resins (known as "edibles").
- Define "marihuana-infused product" and "usable marihuana equivalent".
- Provide immunity to a qualified patient or caregiver from arrest or prosecution or penalty for certain conduct.
- Prohibit transporting or possessing a marihuana-infused product in a vehicle except as specified. Create a misdemeanor penalty for a violation.
- Prohibit using butane to separate resin from a marihuana plant on residential property.
- Specify the bill is curative and the provisions retroactive.

House Bill 4210 would amend the Michigan Medical Marihuana Act (MMMA) to do the following:

Goal of act and retroactivity

The bill specifies that it clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in Section 2(b) of the MMMA. Further, the bill states that it is curative and applies retroactively as to the following:

- Clarifying the quantities and forms of marihuana for which a person is protected from arrest.
- Precluding an interpretation of "weight" as aggregate weight.
- Excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense.

Definitions

- Change the term "medical use" to "medical use of marihuana" and revise the definition to include the extraction of marihuana and marihuana-infused products.
- Revise the definition of "usable marihuana" to include, in addition to dried leaves and flowers, the plant resin or extract of the marihuana plant. (The term does not include the seeds, stalks, or roots of the plant.)

- Define "marihuana-infused product" to 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. Marihuana-infused products would not be considered a food for purposes of the Food Law.
- Define "usable marihuana equivalent" as the amount of usable marihuana in a marihuana-infused product. To determine usable marihuana equivalency, the bill would specify that one ounce of usable marihuana would be considered equivalent to (a) 16 ounces of marihuana-infused product if in a solid form; (b) 7 grams if in a gaseous form; and (c) 72 fluid ounces if in a liquid form. In determining whether a patient or primary caregiver did not exceed the 2.5 ounces-per-patient possession limit, the combined total of both usable marijuana equivalents and usable marihuana would have to be considered.

Marihuana-infused product

A registered qualifying patient who was manufacturing a marihuana-infused product for personal use, or a registered primary caregiver manufacturing for the use of his or her qualifying patient, would 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.

The following would be prohibited:

- A qualifying patient transferring a marihuana-infused product to any individual.
- A primary caregiver transferring a marihuana-infused product to any individual who is not one of the caregiver's qualifying patients.

Immunity

If the Medical Marihuana Facilities Licensing Act (House Bill 4209) is enacted into law, a registered qualifying patient or registered primary caregiver would 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 any of the following:

- Transferring or purchasing marihuana in an amount authorized by the MMMA.
- Transferring or selling marihuana seeds or seedlings to a grower licensed under the Medical Marihuana Facilities Licensing Act (House Bill 4209).
- Transferring marihuana for testing to and from a safety compliance facility licensed under the Medical Marihuana Facilities Licensing Act.

Transporting or possessing marihuana-infused product in a motor vehicle

Except as provided for testing purposes at a licensed safety compliance facility, a qualifying patient or primary caregiver would be prohibited from transporting or possessing a marihuana-infused product in or upon a motor vehicle except as follows:

- For a qualifying patient:

- The product is in a sealed and labeled package carried in the trunk of the vehicle (if there is no trunk, carried so as not to be readily accessible from the interior of the vehicle).
 - The label must state the weight of the marijuana-infused product in ounces, name of the manufacturer, date of manufacture, name of the person from whom the product was received, and date of receipt.
- For a primary caregiver:
 - The product is accompanied by an accurate marijuana transportation manifest and enclosed in a case carried in the trunk of the vehicle (if no trunk, enclosed in a case and carried so as not to be readily accessible from the interior of the vehicle).
 - The manifest form must state the weight of each marijuana-infused product in ounces, name and address of the manufacturer, date of manufacture, name and address of the person from whom the product was received, date of receipt, name and address of the destination, date and time of departure, and the estimated date and time of arrival.

For purposes of determining compliance with quantity limitations, there is a rebuttable presumption that the weight of a marijuana-infused product listed on its package label or on a marijuana transportation manifest is accurate.

A violation by a patient or caregiver would be a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500.

Miscellaneous provisions

The bill also would:

- Prohibit using butane extraction on residential property to separate plant resin from a marijuana plant.
- Replace the term "use of medical marijuana" with "medical use of marijuana."
- Require LARA to expend money from the Michigan Medical Marijuana Fund for the creation and maintenance of the system required under the Marijuana Tracking Act. Currently, the Department of Licensing and Regulatory Affairs is required to expend money, upon legislative appropriation, from the fund for the operation and oversight of the Michigan medical marijuana program.

The bill would take effect 90 days after enactment.

MCL 333.26423 et al.

FISCAL IMPACT:

House Bill 4210 would authorize the expenditure of money from the Michigan Medical Marijuana Fund (MMMMF) for the creation and maintenance of the marijuana tracking information technology system (System) required under House Bill 4827. Under current

law, LARA administers the MMMF, into which revenue generated by fees collected from applicants for medical marijuana registry identification cards are deposited and from which expenditures for the operation and oversight of the Michigan Medical Marijuana Program, including grants to county sheriffs' offices, are made.

The costs of developing, operating, and maintaining the System is dependent on the technical specifications and applications of the System; whether the System is provided by the Department of Technology, Management, and Budget (DTMB) or procured via contact a third-party vendor (e.g. Bio-Tech Medical Software, Inc., MJ Freeway Business Solutions, Franwell); and, if the latter, on the outcome of a competitive RFP process. The MMMF has historically received revenue in excess of expenditures, and the balance within the MMMF was \$26.4 million at the date this document was drafted; however, recent revisions to fee amounts and additional appropriations for grants to county sheriffs' offices will likely reduce the balance in future years.

The bill creates a new misdemeanor. 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. Misdemeanor fines are constitutionally dedicated to public libraries.

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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.