

HOUSE BILL No. 5289

September 2, 2009, Introduced by Reps. Agema, Genetski, Rick Jones, Walsh, Kurtz, McMillin, Lori, Knollenberg, Meltzer, Calley, Proos, Marleau, Meekhof, Green and Pearce and referred to the Committee on Health Policy.

A bill to amend 2008 IL 1, entitled
"Michigan medical marihuana act,"
by amending section 4 (MCL 333.26424).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 4. Protections for the Medical Use of Marihuana.

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3 Sec. 4. (a) A qualifying patient who has been issued and
4 possesses a registry identification card shall not be subject to
5 arrest, prosecution, or penalty in any manner, or denied any

1 right or privilege, including but not limited to civil penalty or
 2 disciplinary action by a business or occupational or professional
 3 licensing board or bureau, for the medical use of marihuana in
 4 accordance with this act, provided that the qualifying patient
 5 ~~possesses an amount of marihuana that does not exceed 2.5 ounces~~
 6 ~~of usable marihuana, and, if the qualifying patient has not~~
 7 ~~specified that a primary caregiver will be allowed under state~~
 8 ~~law to cultivate marihuana for the qualifying patient, 12~~
 9 ~~marihuana plants kept in an enclosed, locked facility. Any~~
 10 ~~incidental amount of seeds, stalks, and unusable roots shall also~~
 11 ~~be allowed under state law and shall not be included in this~~
 12 ~~amount~~ **MARIHUANA THAT WAS DISPENSED AS A SCHEDULE 2 CONTROLLED**
 13 **SUBSTANCE UNDER THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.1101**
 14 **TO 333.25211, FOR HIS OR HER MEDICAL USE.**

15 (b) A primary caregiver who has been issued and possesses a
 16 registry identification card shall not be subject to arrest,
 17 prosecution, or penalty in any manner, or denied any right or
 18 privilege, including but not limited to civil penalty or
 19 disciplinary action by a business or occupational or professional
 20 licensing board or bureau, for assisting a qualifying patient to
 21 whom he or she is connected through the department's registration
 22 process with the medical use of marihuana in accordance with this
 23 act, provided that the primary caregiver possesses ~~an amount of~~
 24 ~~marihuana that does not exceed:~~ **WAS DISPENSED AS A SCHEDULE 2**
 25 **CONTROLLED SUBSTANCE UNDER THE PUBLIC HEALTH CODE, 1978 PA 368,**
 26 **MCL 333.1101 TO 333.25211,**

27 ~~—— (1) 2.5 ounces of usable marihuana for each~~ **THE MEDICAL USE**

1 OF A qualifying patient to whom he or she is connected through
2 the department's registration process. ~~and~~

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

7 ~~—— (3) any incidental amount of seeds, stalks, and unusable~~
8 ~~roots.~~

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

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

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

18 (2) is in possession of an amount of marihuana that does not
19 exceed the amount ~~allowed under this act~~ **THAT A QUALIFIED PATIENT**

20 **WOULD REASONABLY BE EXPECTED TO NEED OVER A PERIOD OF 60 DAYS FOR**
21 **HIS OR HER OWN PERSONAL MEDICAL USE.** The presumption may be

22 rebutted by evidence that conduct related to marihuana was not
23 for the purpose of alleviating the qualifying patient's
24 debilitating medical condition or symptoms associated with the
25 debilitating medical condition, in accordance with this act.

26 (e) A registered primary caregiver may receive compensation
27 for costs associated with assisting a registered qualifying

1 patient in the medical use of marihuana. ~~Any~~ **UNLESS IT OTHERWISE**
2 **VIOLATES THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.1101 TO**
3 **333.25211**, such compensation shall not constitute the sale of
4 controlled substances.

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

24 (g) A person shall not be subject to arrest, prosecution, or
25 penalty in any manner, or denied any right or privilege,
26 including but not limited to civil penalty or disciplinary action
27 by a business or occupational or professional licensing board or

1 bureau, for providing a registered qualifying patient or a
2 registered primary caregiver with marihuana paraphernalia for
3 purposes of a qualifying patient's medical use of marihuana.

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

8 (i) A person shall not be subject to arrest, prosecution, or
9 penalty in any manner, or denied any right or privilege,
10 including but not limited to civil penalty or disciplinary action
11 by a business or occupational or professional licensing board or
12 bureau, solely for being in the presence or vicinity of the
13 medical use of marihuana in accordance with this act, or for
14 assisting a registered qualifying patient with using or
15 administering marihuana.

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

24 (k) Any registered qualifying patient or registered primary
25 caregiver who sells marihuana to someone who is not allowed to
26 use marihuana for medical purposes under this act shall have his
27 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.

(L) A PHARMACIST 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 PHARMACY OR ANY OTHER BUSINESS OR OCCUPATIONAL OR PROFESSIONAL LICENSING BOARD OR BUREAU, SOLELY FOR DISPENSING MARIHUANA AS A SCHEDULE 2 CONTROLLED SUBSTANCE UNDER THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.1101 TO 333.25211, FOR MEDICAL PURPOSES UNDER THIS ACT. HOWEVER, THIS SUBSECTION SHALL NOT PREVENT A PROFESSIONAL LICENSING BOARD FROM SANCTIONING A PHARMACIST FOR VIOLATING THE STANDARD OF CARE FOR DISPENSING SCHEDULE 2 CONTROLLED SUBSTANCES.

Enacting section 1. This amendatory act does not take effect unless Senate Bill No. ____ or House Bill No. 5288(request no. 02584'09) of the 95th Legislature is enacted into law.