

# Legislative Analysis

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## **MEDICAL MARIHUANA: ALLOW TO PROHIBIT IN LEASE**

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<http://www.house.mi.gov/hfa>

**Senate Bill 72 reported from House committee as H-1**  
**Sponsor: Sen. Rick Jones**  
**House Committee: Judiciary**  
**Senate Committee: Judiciary**  
**Complete to 4-29-15**

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

**BRIEF SUMMARY:** The bill would allow landlords to include a prohibition on growing or smoking medical marihuana in the lease of rental properties.

**FISCAL IMPACT:** The bill would have no significant fiscal impact on the state or local units of government.

### ***THE APPARENT PROBLEM:***

Most leases for residential property contain a general clause prohibiting illegal activity; conduct constituting illegal activity is grounds for eviction. Apparently, there is a grey area regarding smoking or cultivating marihuana in rental properties by individuals who are certified under the Michigan Medical Marihuana Act (MMMA) to use marihuana for certain disabling conditions or to cultivate marihuana as licensed caregivers. For instance, on one hand, federal law still makes the use or cultivation of marihuana a criminal offense and thus appears to support a landlord's ability to prohibit its use or cultivation on the leased premises. On the other hand, medical marihuana card holders can claim that they have a disability that requires a reasonable accommodation and so some landlords fear having disability lawsuits filed against them.

In a 2012 opinion, the state attorney general wrote that qualifying registered patients are prohibited under the MMMA "from smoking marihuana in the public areas of food service establishments, hotels, motels, apartment buildings, and any other place open to the public." (Highlight added) In addition, the attorney general concluded, after an analysis of Michigan civil rights laws, the MMMA, and the federal Persons with Disabilities Civil Rights Act, that an owner of an apartment building or similar facility "can prohibit the smoking of marihuana and the growing of marihuana plants anywhere within the facility, and imposing such a prohibition does not violate the Michigan Medical Marihuana Act..." (OAG, 2012, No. 7261)

In light of continuing confusion and disagreement between rental property owners and tenants, some believe it would be helpful to codify the attorney general opinion. In addition, some states have addressed the issue by allowing property owners to prohibit—in a lease—the use or cultivation of medical marihuana, even by authorized persons. Legislation to adopt a similar law has been offered.

### ***THE CONTENT OF THE BILL:***

The Michigan Medical Marihuana Act authorizes the possession and use of limited amounts of marihuana by individuals suffering from certain conditions, and authorizes licensed caregivers to cultivate limited amounts of marihuana for specific medical marihuana patients, as specified in the act.

Senate Bill 783 would amend the MMMA (MCL 333.26427) to specify that nothing in the act could be construed to require a private property owner to lease residential property to any person who smokes or cultivates marihuana on the premises, if the prohibition against smoking or cultivating marihuana is in the written lease.

The bill would take effect 90 days after enactment.

### ***HOUSE COMMITTEE ACTION:***

The H-1 substitute removed a provision prohibiting a person from possessing marihuana, or otherwise engaging in the medical use of marihuana on private property in violation of a prohibition established by the property owner.

### ***BACKGROUND INFORMATION:***

The bill is a reintroduction of SB 783 of last session; it was reported from House committee toward the end of the 2013-2014 Legislative Session but failed to see House floor action before the Session ended.

### ***ARGUMENTS:***

#### ***For:***

Property owners and managers are reporting significant damage to rental homes and apartments by people smoking or growing medical marihuana. Apparently, damage has even included rental units being set on fire when hot lights used to grow marihuana tipped over. Concentrating the oil into wax has led to multiple explosions around the country and has resulted in both injury and death to occupants. Even if a tenant were just smoking medical marihuana, the smoke can infiltrate other rental units through doors, windows, and the ventilation system. While it is clear under the law that marihuana possession or use, or cultivation, without authorization under the MMMA is generally illegal, it is not as clear if a tenant who has been certified to use or licensed to grow medical marihuana may do so in any rental unit or if a property owner can prohibit such conduct. Thus, there is confusion among property owners regarding the authority to evict tenants for medical marihuana-related activities.

The bill would address the issue by codifying an attorney general opinion and allowing a property owner to include a prohibition within the written lease on smoking or cultivating marihuana on the leased premises. Reportedly, other states have enacted similar laws. Further, by specifically referring to "smoking" marihuana, the bill could allow medical

marihuana edibles to be ingested in rental units, if Michigan law that currently prohibits medical edibles is changed.

***Against:***

The bill as passed by the Senate also would have allowed private property owners such as hotels and business establishments to prohibit medical marihuana users from smoking on the premises or smoking in areas of private property that are open to the public. According to some sources, secondhand smoke from marihuana may carry health risks similar or worse than cigarette smoke, and so property owners should be able to protect their property and the comfort and health of their customers by not allowing anyone to smoke marihuana on the premises. Now, the bill only gives relief to landlords and not to business owners.

***Response:***

The amendment removing these provisions was intended to balance the rights of the property owners with the rights of the medical marihuana card holders. If those provisions had remained in the bill, then a person who was authorized under state law to smoke medical marihuana would be subject to criminal prosecution for smoking in his or her own apartment or on other private property. As the bill stands, property owners can prohibit smoking or cultivation of medical marihuana in rental units as long as the lease specifies that such activity is prohibited. If a renter violates the lease, the renter can be evicted but would not be subject to arrest or criminal prosecution. A renter who smokes or cultivates marihuana, but is not a certified cardholder or licensed caregiver, would be prosecutable under the general ban on marihuana use as well as being subject to eviction. According to the attorney general, owners of a hotel, motel, or other facilities can prohibit the smoking and/or cultivation of marihuana anywhere within the facility. Thus, the deleted provision is not needed.

***POSITIONS:***

A representative of Property Management Association of Michigan testified in support of the bill. (3-24-15)

A representative of Property Management Association of Mid-Michigan testified in support of the bill. (3-23-15)

A representative of the Michigan Cannabis Development Association testified in support of the bill. (4-21-15)

Rental Property Owner Association of Michigan indicated support for the bill. (3-24-15 and 4-21-15)

Apartment Association of Michigan indicated support for the bill. (3-24-15 and 4-21-15)

Autumn Ridge Townhouses indicated support for the bill. (3-24-15)

First Housing Corporation indicated support for the bill. (3-24-15)

KMG Prestige indicated support for the bill. (3-24-15)

A representative of National Patients' Rights Association testified it was neutral on the bill. (3-24-15)

Cannabis Patients United indicated neutrality on the bill. (3-23-15)

A representative of Cannabis Counsel, a law firm, testified in opposition to the bill. (3-24-15)

A representative of Michigan Parents for Compassion testified in opposition to the bill. (3-24-15)

A representative of Students for Sensible Drug Policy testified in opposition to the bill. (3-24-15)

A member of Sons and Daughters United testified in opposition to the bill. (3-24-15)

A representative of Michigan NORML testified in opposition to the bill as being unnecessary. (4-21-15)

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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.