

HOUSE BILL No. 5580

May 1, 2012, Introduced by Reps. Callton, Daley and Cavanagh and referred to the Committee on Judiciary.

A bill to regulate medical marihuana provisioning centers; to provide for powers and duties of local units of government concerning medical marihuana provisioning centers; to provide for certain immunities for persons engaging in activities in accordance with this act; and to provide for penalties and sanctions for violations of this act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "medical marihuana provisioning center regulation act".

3 Sec. 2. As used in this act:

4 (a) "Excluded felony offense" means a felony involving illegal
5 drugs. It does not include a conviction for activity allowed under
6 the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to
7 333.26430, or this act, even if the activity occurred prior to the

1 enactment of the Michigan medical marihuana act, 2008 IL 1, MCL
2 333.26421 to 333.26430, or this act.

3 (b) "Medical marihuana provisioning center" or "provisioning
4 center" means a commercial entity located in this state that
5 acquires, possesses, cultivates, manufactures, delivers, transfers,
6 or transports marihuana and sells, supplies, or dispenses marihuana
7 to registered qualifying patients, directly or through the
8 patients' registered primary caregivers. Provisioning center
9 includes any commercial property where marihuana is sold to
10 qualifying patients and their registered primary caregivers.

11 (c) "Municipality" means a city, township, or village.

12 (d) "Paraphernalia" means drug paraphernalia as defined in
13 section 7451 of the public health code, 1978 PA 368, MCL 333.7451,
14 that is or may be used in association with medical marihuana.

15 (e) "Provisioning center agent" means a principal officer,
16 board member, employee, operator, or agent of a provisioning
17 center.

18 (f) "Registered primary caregiver" means a person who has been
19 issued a valid, unexpired registry identification card pursuant to
20 section 6(d) of the Michigan medical marihuana act, 2008 IL 1, MCL
21 333.26426, or who satisfies the criteria listed in section 9(b) or
22 (c) of the Michigan medical marihuana act, 2008 IL 1, MCL
23 333.26429, and possesses the documentation that constitutes a valid
24 registry identification card under that section.

25 (g) "Registered qualifying patient" means a person who meets
26 any of the following requirements:

27 (i) Has been issued a valid qualifying patient registry

1 identification card pursuant to section 6(a) or (b) of the Michigan
2 medical marihuana act, 2008 IL 1, MCL 333.26426.

3 (ii) Satisfies the criteria listed in section 9(b) or (c) of
4 the Michigan medical marihuana act, 2008 IL 1, MCL 333.26429, and
5 possesses the documentation that that section establishes as a
6 valid registry identification card.

7 (h) "Safety compliance facility" means an entity that tests
8 marihuana produced for medical use for contaminants or potency.

9 (i) "Safety compliance facility agent" means a principal
10 officer, board member, employee, operator, or agent of a safety
11 compliance facility.

12 (j) "Secure cultivation facility" means a nonresidential
13 building or location within a nonresidential building that is
14 equipped with locks or other security devices to prevent
15 unauthorized entry. A secure cultivation facility shall allow
16 access only to the following:

17 (i) A registered primary caregiver or provisioning center agent
18 of the provisioning center that controls the secure cultivation
19 facility.

20 (ii) A municipal employee performing inspections, if
21 inspections are authorized by municipal law.

22 (iii) Emergency personnel while responding to an emergency.

23 (iv) If accompanied by a provisioning center agent and by
24 permission or request of the provisioning center, a member of the
25 media or a government official.

26 (v) If accompanied by a provisioning center agent, a
27 registered qualifying patient or registered primary caregiver.

1 (vi) If accompanied by a provisioning center agent, a
2 contractor who is not engaged in the provisioning center's
3 cultivation, distribution, or possession of marihuana.

4 (k) "Seedling" means a marihuana plant that has no flowers, is
5 less than 12 inches in height, and is less than 12 inches in
6 diameter.

7 (l) "Usable marihuana" means the completely dried leaves and
8 flowers of the marihuana plant but does not include the seeds,
9 stalks, nondried leaves, or roots of the plant. Any cooking mixture
10 or preparation used to prepare marihuana infused ingestible or
11 topical products is not usable marihuana, if the ingestible or
12 topical product has or will have the amount of actual marihuana
13 plant material used in its preparation clearly marked on its
14 packaging.

15 (m) "Visiting qualifying patient" means a patient who is not a
16 resident of this state or who has been a resident of this state for
17 less than 30 days and who possesses a registry identification card,
18 or its equivalent, that was issued under the laws of another state,
19 district, territory, commonwealth, or insular possession of the
20 United States that allows the medical use of marihuana by the
21 patient.

22 Sec. 3. (1) Except as provided in this act, if a provisioning
23 center has been granted any applicable required municipal
24 registration or license and is operating in accordance with this
25 act and any applicable municipal ordinance, the provisioning center
26 and the provisioning center agents acting on its behalf are not
27 subject to any of the following for engaging in activities

1 described in subsection (2):

2 (a) Criminal penalties under state law or local ordinances.

3 (b) State or local civil prosecution.

4 (c) Search or inspection, except for an inspection authorized
5 by the municipality.

6 (d) Seizure.

7 (e) Any sanction, including disciplinary action or denial of a
8 right or privilege, by a business or occupational or professional
9 licensing board or bureau.

10 (2) Activities that are exempt from the regulation and
11 sanctions under subsection (1) include all of the following:

12 (a) Purchasing or receiving marihuana seeds from visiting
13 qualifying patients, registered qualifying patients, registered
14 primary caregivers, or provisioning centers.

15 (b) Purchasing or receiving marihuana, including seedlings,
16 from 1 or more other provisioning centers if purchasing or
17 receiving marihuana from the provisioning center is not prohibited
18 by the municipality where the provisioning center is located.

19 (c) Purchasing or receiving marihuana from a registered
20 qualifying patient or a registered primary caregiver if purchasing
21 or receiving marihuana from a registered qualifying patient or
22 registered primary caregiver is not prohibited by the municipality
23 where the provisioning center is located and if the amount
24 purchased does not exceed the registered qualifying patient's or
25 registered primary caregiver's possession limits under the Michigan
26 medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430.

27 (d) Cultivating or manufacturing marihuana in a secure

1 cultivation facility, except that seedlings need not be in a secure
2 cultivation facility when they are transported.

3 (e) Possessing or manufacturing marihuana paraphernalia.

4 (f) Possessing or processing marihuana produced by the
5 provisioning center or obtained pursuant to subdivision (a) or (b)
6 on the provisioning center premises, at a secure cultivation
7 facility, or while the marihuana is being transported pursuant to
8 this section.

9 (g) If not prohibited by municipal law, transporting
10 marihuana, including seedlings, between the provisioning center and
11 another provisioning center, the provisioning center and a secured
12 cultivation facility, or the provisioning center and a safety
13 compliance facility.

14 (h) Transporting or delivering marihuana or paraphernalia to
15 the residence of a registered qualifying patient or a registered
16 primary caregiver if delivery is not prohibited by the municipality
17 or municipalities where the delivery and transportation occur.

18 (i) Supplying, selling, dispensing, transferring, or
19 delivering marihuana, paraphernalia, or related supplies and
20 educational materials in accordance with the procedures and
21 limitations detailed in section 7(12) to (14).

22 Sec. 4. (1) Except as provided in this act, a safety
23 compliance facility that has been granted any applicable required
24 municipal registration or license and is operating in accordance
25 with any applicable municipal ordinance and this act is not subject
26 to any of the following for engaging in activities described in
27 subsection (2):

1 (a) Criminal penalties under state law or local ordinances.

2 (b) State or local civil prosecution.

3 (c) Search or inspection, except for an inspection authorized
4 by the municipality.

5 (d) Seizure.

6 (e) Any sanction, including disciplinary action or denial of a
7 right or privilege, by a business or occupational or professional
8 licensing board or bureau.

9 (2) Activities that are exempt from regulation and sanction
10 under subsection (1) include all of the following:

11 (a) Acquiring or possessing marihuana obtained from registered
12 qualifying patients, registered primary caregivers, or provisioning
13 centers.

14 (b) Returning the marihuana to the registered qualifying
15 patient, registered primary caregiver, or provisioning center that
16 delivered the marihuana to the safety compliance facility.

17 (c) Transporting marihuana to or from a registered qualifying
18 patient, registered primary caregiver, or provisioning center.

19 (d) Possessing marihuana on the safety compliance facility's
20 premises for testing, if the marihuana was obtained pursuant to
21 subdivision (a) or (b).

22 (e) Receiving compensation for actions permitted pursuant to
23 this section and municipal law.

24 Sec. 5. (1) A municipality may prohibit the operation of
25 provisioning centers or safety compliance facilities within the
26 municipality. A provisioning center is not exempt under section 3
27 from state criminal and civil penalties if it operates in a

1 municipality that prohibits provisioning centers. A safety
2 compliance facility is not exempt under section 4 from state
3 criminal and civil penalties if it operates in a municipality that
4 prohibits safety compliance facilities.

5 (2) A municipality may enact an ordinance to impose and
6 enforce additional local requirements on provisioning centers or
7 safety compliance facilities. A municipality may require and issue
8 a registration or license to a provisioning center or safety
9 compliance facility and may regulate operations and impose civil or
10 criminal penalties for the violations of the local ordinance. A
11 municipality may charge a registration or licensing fee for a
12 provisioning center or safety compliance facility that does not
13 exceed the costs to the municipality of regulation, licensing,
14 testing, and inspection.

15 (3) A provisioning center or safety compliance facility
16 located in a municipality that requires a registration or license
17 is exempt under section 3 or 4 from criminal penalties only if the
18 provisioning center or safety compliance facility holds that
19 license or registration.

20 (4) A municipality may require, as a condition of registration
21 or licensure, that a provisioning center or a safety compliance
22 facility provide results of testing of its marihuana and marihuana
23 products for quality control, purity, contaminants, or any other
24 analysis to protect the health and safety of medical marihuana
25 patients and to assure compliance with this act and a municipal
26 ordinance adopted under this act.

27 Sec. 6. (1) The exemptions for a provisioning center or safety

1 compliance facility under section 3 or 4 apply only if the
2 indicated activities are carried out in accordance with this act.

3 (2) All other acts and parts of acts inconsistent with this
4 act do not apply to the medical use of marihuana as provided for by
5 this act.

6 Sec. 7. (1) Except as explicitly allowed by a municipal
7 ordinance predating the effective date of this act, a provisioning
8 center, a secure cultivation facility, or a safety compliance
9 facility shall not be located within 1,000 feet of the property
10 line of a pre-existing primary or secondary school.

11 (2) A secure cultivation facility shall not be located on
12 residential property.

13 (3) A provisioning center shall not share office space with a
14 physician.

15 (4) Each provisioning center location and secure cultivation
16 facility shall have a security alarm system that is enabled
17 whenever provisioning center agents are not present.

18 (5) A provisioning center shall not sell, transfer, or
19 dispense a marihuana infused product unless it is labeled with both
20 of the following:

21 (a) The weight of marihuana contained.

22 (b) The words - "WARNING: This product contains marihuana. For
23 a qualifying patient's medical use only." or substantially similar
24 text.

25 (6) A provisioning center shall not advertise marihuana for
26 sale on a billboard, television, or radio. The department of
27 licensing and regulation may promulgate additional rules

1 restricting advertising of marihuana. The rules shall not prohibit
2 appropriate signs on the property of the provisioning center,
3 websites for the provisioning center or registered primary
4 caregiver, listings in business directories or telephone books,
5 listings in trade or medical print or online publications, or
6 advertising the sponsorship of health or not-for-profit charity or
7 advocacy events.

8 (7) A provisioning center or safety compliance facility shall
9 not knowingly employ an agent with an excluded felony offense or
10 who is under 21 years of age. A provisioning center or safety
11 compliance facility shall perform a background check on an
12 individual before he or she is offered employment to verify that he
13 or she does not have a conviction for an excluded felony offense.

14 (8) Each provisioning center shall maintain records listing
15 each agent for the provisioning center, including the beginning
16 employment date and the date a background check was performed.

17 (9) A provisioning center shall not allow on-site consumption
18 of marihuana, except that a provisioning center employee who is a
19 medical marihuana patient may be permitted to use a marihuana
20 infused topical product.

21 (10) A provisioning center shall not dispense more than 2.5
22 ounces of useable marihuana in any 10-day day period to a
23 registered qualifying patient, directly or through his or her
24 primary caregiver.

25 (11) A provisioning center shall ensure compliance with the
26 dispensing limit under subsection (10) by maintaining internal,
27 confidential records that specify the amount of marihuana dispensed

1 to each registered qualifying patient and registered primary
2 caregiver and whether it was dispensed directly to the registered
3 qualifying patient or the registered primary caregiver. Each entry
4 shall include the date and time the marihuana was dispensed.
5 Entries shall be maintained for at least 90 days. For any
6 registered qualifying patient or registered qualifying caregiver in
7 possession of a registry identification card, a record shall be
8 kept using the patient's or caregiver's registry identification
9 number instead of the patient's or caregiver's name. Confidential
10 dispensing records are subject to reasonable inspection by a
11 municipal employee authorized to inspect provisioning centers under
12 municipal law to ensure compliance with this act, but may be stored
13 off-site. Confidential dispensing records are exempt from
14 disclosure under the freedom of information act, 1976 PA 442, MCL
15 15.231 to 15.246. Except as required by a court order, a
16 provisioning center may not disclose confidential dispensing
17 records to any person other than a municipal employee performing an
18 inspection in accordance with this subsection or a provisioning
19 center agent.

20 (12) A provisioning center agent shall not dispense, transfer,
21 or sell marihuana to a person knowing that the person is not a
22 registered qualifying patient, registered primary caregiver, or
23 dispensary agent working on behalf of a provisioning center that is
24 not prohibited from operating or obtaining marihuana from other
25 provisioning centers under municipal law.

26 (13) Before marihuana is dispensed or sold from a provisioning
27 center, in addition to complying with subsection (14), a

1 provisioning center agent shall do 1 of the following:

2 (a) Verify that the person requesting marihuana holds what the
3 provisioning center agent reasonably believes to be an unexpired
4 primary caregiver or a qualifying patient registry identification
5 card.

6 (b) Require the person requesting marihuana to do all of the
7 following:

8 (i) Certify that he or she is a qualifying patient who
9 submitted a valid, complete application for a registry
10 identification card at least 20 days earlier.

11 (ii) Certify that to the best of his or her knowledge, the
12 state has not denied the application or issued a registry
13 identification card.

14 (iii) Present a copy of the completed registry identification
15 card application and proof of receipt by the state department that
16 processes medical marihuana applications at least 20 days before
17 the date of the requested sale or transaction.

18 (c) If the person requesting marihuana purports to be a
19 provisioning center agent, make a diligent, good-faith effort to
20 verify that the person is a provisioning center agent for a
21 provisioning center that is allowed to operate by a municipality.

22 (14) Before marihuana is dispensed or sold from a provisioning
23 center, a provisioning center agent shall make a diligent, good-
24 faith effort to determine that the person named in the registry
25 identification card or other documentation submitted under
26 subsection (13) is the person seeking to obtain marihuana, by
27 examining what the provisioning center agent reasonably believes to

1 be valid government-issued photo identification.

2 (15) A person who is under 21 years of age or who has been
3 convicted of an excluded felony offense shall not serve as a
4 provisioning center agent or safety compliance facility agent. A
5 person who has not maintained a residence in this state for 2 years
6 or more shall not serve as a principal officer, board member, or
7 operator of a provisioning center or of a safety compliance
8 facility.

9 (16) A provisioning center agent shall not, for monetary
10 compensation, refer an individual to a physician.

11 (17) A provisioning center or safety compliance facility shall
12 not permit a physician to advertise in a dispensary or safety
13 compliance facility or to hold any financial interest in or receive
14 any compensation from the provisioning center or secure cultivation
15 facility.

16 (18) A provisioning center agent or safety compliance facility
17 agent shall not transport or possess marihuana on behalf of the
18 provisioning center or safety compliance facility in or upon a
19 motor vehicle or any self-propelled vehicle designed for land
20 travel unless all of the following conditions are met:

21 (a) The agent possesses a document signed and dated by a
22 manager or operator of the provisioning center or safety compliance
23 facility that employs the agent, stating the agent's name, the date
24 the marihuana will be transported, the approximate amount of
25 marihuana transported, and the name of the provisioning center or
26 safety compliance facility from which the marihuana is being
27 transported.

1 (b) The marihuana is located in 1 or more of the following:

2 (i) An enclosed locked container, such as a safe, briefcase, or
3 other case.

4 (ii) The trunk of the vehicle.

5 (iii) A space that is inaccessible from the passenger
6 compartment of the vehicle.

7 Sec. 8. (1) A provisioning center that violates section 7(1)
8 to (3) is responsible for a state civil infraction and may be
9 ordered to pay a civil fine of not more than \$5,000.00. A city or
10 county in which the dispensary, secure cultivation facility, or
11 safety compliance facility operates in violation of section 7(1) to
12 (3) may petition the court for an injunction to close the
13 provisioning center or facility.

14 (2) A violation of section 7(4) to (11) is a state civil
15 infraction for which a violator may be ordered to pay a civil fine
16 of not more than \$1,000.00.

17 (3) A person who transfers marihuana in violation of section
18 7(12) to (14) or who works in violation of section 7(15) is not
19 exempt from arrest, prosecution, or criminal or other penalties
20 under section 3 or 4.

21 (4) A person who violates section 7(16) or (17) is responsible
22 for a civil infraction and may be ordered to pay a civil fine of
23 not more than \$1,000.00.

24 (5) A person who violates section 7(18) is guilty of a
25 misdemeanor punishable by imprisonment for not more than 30 days or
26 a fine of not more than \$500.00, or both.

27 Sec. 9. (1) Municipalities are encouraged to establish

1 procedures to suspend or revoke a registration, license, or other
2 permission to operate if a provisioning center knowingly or
3 negligently allows marihuana to be dispensed to a person who is not
4 a registered qualifying patient or registered primary caregiver or
5 if a provisioning center or safety compliance facility commits
6 multiple or serious violations of this act or municipal
7 regulations.

8 (2) Nothing in this act requires the violation of federal law
9 or purports to give immunity from prosecution under federal law.

10 (3) Nothing in this act poses an obstacle to federal
11 enforcement of federal law.

12 Sec. 10. (1) Except as provided in this act, a visiting
13 qualifying patient, registered qualifying patient, or registered
14 primary caregiver who supplies, sells, transfers, or delivers
15 marihuana seeds to a provisioning center that is registered,
16 licensed, or otherwise allowed by the municipality in which it
17 operates in accordance with this act is not subject to any of the
18 following for engaging in that activity:

19 (a) Criminal penalties under state law or local ordinance.

20 (b) State or local civil prosecution.

21 (c) Search or inspection, except for an inspection authorized
22 by the municipality.

23 (d) Seizure.

24 (e) Any sanction, including disciplinary action or denial of a
25 right or privilege, by a business or occupational or professional
26 licensing board or bureau.

27 (2) Except as provided in this act, a registered qualifying

1 patient is not subject to any of the inspections or sanctions
2 listed in subsection (1)(a) to (e) for any of the following:

3 (a) Purchasing or acquiring not more than 2.5 ounces of usable
4 marihuana from 1 or more provisioning centers within a 10-day
5 period.

6 (b) Supplying, selling, transferring, or delivering marihuana
7 to a provisioning center that is registered, licensed, or otherwise
8 allowed by the municipality in which it operates if all of the
9 following conditions are met:

10 (i) The marihuana was produced by the registered qualifying
11 patient or registered primary caregiver.

12 (ii) The municipality in which the provisioning center operates
13 allows the transfer of marihuana from a registered qualifying
14 patient to a dispensary.

15 (iii) The amount of marihuana transferred does not exceed the
16 amount of marihuana the registered qualifying patient is allowed to
17 possess.

18 (3) Except as provided in this act, a registered primary
19 caregiver is not subject to any of the inspections or sanctions
20 listed in subsection (1)(a) to (e) for any of the following:

21 (a) Purchasing or acquiring from 1 or more provisioning
22 centers not more than 2.5 ounces of usable marihuana in a 10-day
23 period for a registered qualifying patient who has designated the
24 registered primary caregiver on his or her application to the state
25 department administering the medical marihuana program.

26 (b) Supplying, selling, transferring, or delivering marihuana
27 to a provisioning center that is registered, licensed, or otherwise

1 allowed by the municipality in which it operates in compliance with
2 all of the following:

3 (i) The marihuana is produced by the registered primary
4 caregiver and is excess marihuana above the amount necessary to
5 satisfy the registered qualifying patients the primary caregiver is
6 designated to serve.

7 (ii) The municipality in which the provisioning center is
8 located allows the transfer of marihuana from a registered primary
9 caregiver to a provisioning center.

10 (iii) The amount of marihuana transferred does not exceed the
11 amount of marihuana the registered primary caregiver is allowed to
12 possess.