

MICHIGAN ASSOCIATION OF PLANNING

Michigan Medical Marihuana

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ENACTMENT

The Act: Michigan Medical Marihuana Act,
enacted by the process of initiative in
2008

ENACTMENT – BALLOT PROPOSAL

PROPOSAL 08-1

The proposed law would:

- Permit physician approved use of marihuana by registered patients with debilitating medical conditions including cancer, glaucoma, HIV, AIDS, Hepatitis C, MS, and other conditions as may be approved by the Michigan Department of Community Health.
- Permit registered individuals to grow limited amounts of marihuana for qualifying patients in an enclosed, locked facility.
- Require Department of Community Health to establish an identification card system for patients qualified to use marihuana and individuals qualified to grow marihuana.
- Permit registered and unregistered patients and primary caregivers to assert medical reasons for using marihuana as a defense to any prosecution involving marihuana.

ACTION BY THE LEGISLATURE

AMENDMENT OR REPEAL. “no law adopted by the people at the polls under the initiative provisions of this [initiative] section shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative measure or by *three-fourths of the members elected to and serving in each house of the legislature.*” Michigan Constitution, Art 2, § 9 (Emphasis supplied).

KEY PLAYERS IN THE MMMA (MCL 333.26424)

- **A QUALIFYING PATIENT**
- **A PRIMARY CAREGIVER**
- **BUT, A PERSON 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 a business or occupational or professional licensing board or bureau, solely for being in the presence or vicinity of the medical use of marihuana in accordance with this act, or for assisting a registered qualifying patient with using or administering marihuana. MCL 333.26424(i)**

CONTROVERSIAL PROVISIONS

- **MCL 333.26423. Definition of “DEBILITATING MEDICAL CONDITION”**
- **MCL 333.26426(h) CONFIDENTIALITY RULES**
- **MCL 333.26423(e) ‘MEDICAL USE’ means the acquisition, possession, cultivation, manufacture, use, internal possession, delivery, transfer, or transportation of marihuana or paraphernalia relating to the administration of marihuana to treat or alleviate a registered qualifying patient’s debilitating medical condition or symptoms associated with the debilitating medical condition.”**

IMPORTANT ISSUES

Definition of "compensation for costs." What does this mean and include? May a caregiver make a *profit* in the cultivation and distribution of marihuana?

MCL 333.26424: (e) A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana

BEGINNINGS OF JUDICIAL CLARIFICATION

What is an "enclosed, locked facility," and who has access to it, "a" or "the" cultivating caregiver and patient?

- 333.26423(c) "Enclosed, locked facility" means a closet, room, or other enclosed area equipped with locks or other security devices that permit access *only* by a registered primary caregiver or registered qualifying patient.

People vs. King (S.Ct.)

BEGINNINGS OF JUDICIAL CLARIFICATION

Is it permissible for a patient sell marihuana to another patient?

This is an important issue relating to a practice that apparently prevailed at so-called "dispensaries."

People vs. McQueen

BEGINNINGS OF JUDICIAL CLARIFICATION

A person may be named as a caregiver by not more than 5 patients. Is it permissible for a caregiver to provide marihuana to individuals other than his or her 5 patients?

This is also an important issue relating to the viability of so-called "dispensaries."

People vs. Blysm

BEGINNINGS OF JUDICIAL CLARIFICATION

If a person qualifies as a patient because he or she has a debilitating medical condition (as defined in the MMMA), may such person become certified after being arrested, and then assert the MMMA as a defense to the charge of unlawful use or possession of marihuana?

People vs. Redden
People vs. Kolanek (S.Ct.)

BEGINNINGS OF JUDICIAL CLARIFICATION

Is the MMMA preempted (legally prohibited) by the Supremacy Clause of the United States Constitution?

... the Laws of the United States . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, . . .

Art VI, Clause 2

People vs. Lott
People vs. Finney
People vs. Brandon

IMPORTANT ISSUES

What is the real impact upon lives and futures of children: academically, socially, and occupationally?

IMPORTANT ISSUES

HOW CAN A COMMUNITY ENFORCE ELECTRICAL, PLUMBING, AND FIRE CODES TRIGGERED BY THE INSTALLATION OF GROW-FACILITIES IN A HOME OR NON-RESIDENTIAL BUILDING

IMPORTANT ISSUES

Reconciling the legitimate concerns of all interested parties relative to the confidentiality provisions suppressing the name and location of cultivation and distribution:

- **Danger and inefficiency for law enforcement;**
- **Potential jeopardy for caregivers.**

MANY OTHER IMPORTANT ISSUES

- **Exposure to federal prosecution based on use, cultivation, and distribution, and based on state and local approvals relating to marihuana.**
- **Medical marihuana in jails**
- **Patient authorization if he/she is a defendant on probation/parole**
- **Use at children's day care centers**
- **Use and administration at adult foster care homes**
- **Use and administration at nursing homes**
- **Use, cultivation, and distribution at colleges and universities**
- **Use in school zones**
- **Use in the work-place**
- **Relationship between MMMA and CCW Permits**

POTENTIAL RESPONSES BY MUNICIPALITIES

LOCAL ORDINANCES

POTENTIAL ACTION: DO NOT ADOPT AN ORDINANCE

POTENTIAL RESPONSES BY MUNICIPALITIES

LOCAL ORDINANCES

ONE ALTERNATIVE EMPLOYED: ADOPT A REGULATORY OR ZONING ORDINANCE RECOGNIZING THE TOTAL PROHIBITION UNDER FEDERAL LAW, AND TAKE NO AFFIRMATIVE ACTION GRANTING PERMITS OR OTHER AUTHORIZATIONS

POTENTIAL RESPONSES BY MUNICIPALITIES

LOCAL ORDINANCES

ADOPT A ZONING ORDINANCE AMENDMENT PROVIDING BASIC RESTRICTIONS

E.g. restricting distribution activities to one or more specified zoning districts

POTENTIAL RESPONSES BY MUNICIPALITIES

LOCAL ORDINANCES

ADOPT A REGULATORY ORDINANCE AMENDMENT PROVIDING BASIC RESTRICTIONS

E.g. restricting distribution activities to buildings not used for dwelling purposes

POTENTIAL RESPONSES BY MUNICIPALITIES

LOCAL ORDINANCES

ADOPT A ZONING ORDINANCE AMENDMENT PROVIDING DETAILED RESTRICTIONS

E.g. restricting distribution activities to specified zoning districts and providing distance requirements from schools, residential zones, and other places frequented by children

POTENTIAL RESPONSES BY MUNICIPALITIES

LOCAL ORDINANCES

ADOPT A REGULATORY ORDINANCE AMENDMENT PROVIDING DETAILED RESTRICTIONS

E.g. restricting distribution activities to buildings not used for dwelling purposes, establishing minimum distance requirements, and mandating licensure of the building for such activity – after inspection.

THE MMMA:
WHERE DO WE GO FROM HERE?

- *Clarification of the law by the courts.*
- *Resolution of ambiguities by the Legislature*
- *Negotiation of a compromise by representative stakeholders*