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Liberties Union**

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Fund of Michigan**

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February 16, 2010

Christopher Jahnke, Chief of Police
221 E. Third Street
Royal Oak, MI 48067-2693

Dave Gillam, City Attorney
211 Williams Street
Royal Oak, MI 48067-2634

Re: Unlawful Seizure of Medical Marijuana by Royal Oak Police

Dear Chief Jahnke and Mr. Gillam:

Recently you made several public statements that reflect a misunderstanding of the Michigan Medical Marijuana Act, M.C.L. § 333.26421 *et seq.* Your statements may cause innocent people who suffer from painful diseases to fear that they will be unlawfully arrested, or their property unlawfully seized, by the Royal Oak Police Department. We are writing to request that you reconsider your position and provide us with assurances that Royal Oak police officers will not conduct searches and seizures prohibited by state law.

Facts

We were recently contacted by Christopher Frizzo, a resident of Royal Oak who suffers from the painful and debilitating symptoms of multiple sclerosis. Mr. Frizzo is officially registered as a medical marijuana patient with the Michigan Department of Community Health. On January 11, 2010, Mr. Frizzo was lawfully in possession of seven grams of marijuana when it was seized by a Royal Oak police officer during a traffic stop.

During the traffic stop, Mr. Frizzo truthfully told the police officer in response to questioning that he was a registered medical marijuana patient, that he had a small amount of medical marijuana in his possession, and that he did not grow the marijuana himself. Mr. Frizzo declined to tell the police officer the name or address of the person who gave him the marijuana. The officer told Mr. Frizzo that his possession of the marijuana was illegal because he obtained it from a person who was not officially registered as his caregiver. The officer did not arrest Mr. Frizzo, but he did confiscate the marijuana.

In the days and weeks following this incident, Mr. Frizzo called the police department and the city attorney's office to request that his medical marijuana be returned to him. He was told that his medical marijuana would not be returned because it is illegal for a registered patient to obtain marijuana from anyone other than that patient's registered caregiver. Mr. Frizzo was told that because he does not have a registered caregiver, he is required to grow his own marijuana.

On January 30, a newspaper article appeared in the *Detroit Free Press* describing Mr. Frizzo's experience. ("Cities Rush To Limit Medical Marijuana," attached as Exhibit A.) The article quotes City Attorney Gillam as saying that the police officer had to seize Mr. Frizzo's marijuana "or we're legitimizing an illegal drug purchase."

On February 3, the *Daily Tribune* published an article about the incident. ("Patient's Marijuana Seized," attached as Exhibit B.) That article quotes Chief Jahnke as saying that Mr. Frizzo's marijuana "was taken because he got it illegally." According to Chief Jahnke, "There are only two ways you can have medical marijuana: grow it yourself or get it from a registered caregiver and that person has to list you." Frizzo's marijuana "was illegally obtained" because he "told us he got it from someone other than a caregiver."* Chief Jahnke also said that Frizzo could have been arrested for possession of marijuana.

Police May Not Seize Marijuana from Registered Patients

The seizure of Mr. Frizzo's medical marijuana was unlawful, and your statements in the press expressing approval of that seizure are in direct conflict with the law. The Michigan Medical Marihuana Act (the "Act," attached as Exhibit C) clearly and directly prohibits police officers from seizing marijuana from registered patients -- regardless of where that marijuana originally came from. Section 4(h) of the Act plainly states: "Any marihuana . . . that is possessed, owned, or used in connection with the medical use of marihuana, as allowed under this act, or acts incidental to such use, shall not be seized or forfeited." M.C.L. § 333.26424(h). "Medical use," in turn, is specifically defined by the Act to include the "acquisition" of marijuana "to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition." *Id.* § 333.26423(e).

In light of this unambiguous language, we are surprised that you have endorsed the police officer's decision to confiscate Mr. Frizzo's medical marijuana and that you have refused to return the property unlawfully taken from him. There is simply no basis in the law for your position that a registered patient who does not have a registered caregiver must not obtain marijuana from an unregistered third party. The Act allows qualifying patients to register for the medical use of marijuana with or without a registered caregiver. *See id.* §§ 333.26424(a), 333.26426(a)(5)-(6). Nowhere does the Act state that patients who choose not to register a caretaker must grow their own marijuana. To the contrary, the Act provides that a registered patient's "acquisition" of medical marijuana is "medical use," *id.* § 333.26423(e), and that marijuana possessed in connection with such medical use shall not be seized or forfeited, *id.* § 333.26424(h).

In short, marijuana from any source enters a "safe harbor" once it is possessed by a registered patient. It cannot be taken away.

* In fact, the person from whom Mr. Frizzo obtained the marijuana is a registered caregiver, but he is not officially registered as Mr. Frizzo's caregiver.

Relief Requested

Because Mr. Frizzo's possession of medical marijuana was clearly legal and protected from seizure by the Act, we ask that you take the following steps to remedy the violation of his rights.

First, as a matter of your legal obligations to Mr. Frizzo, you should return the medical marijuana that was unlawfully confiscated from him or compensate him for his loss of personal property.

Second, in order to relieve the reasonable fears of all law-abiding medical marijuana patients in and near Royal Oak who do not have a registered caregiver, we ask that you provide us with assurances that Royal Oak police will not seize medical marijuana in the possession of registered patients even if the marijuana was originally obtained from an unregistered third party. We also ask that you assure us that you do not intend to arrest registered patients simply for being in possession of marijuana obtained from an unregistered third party.

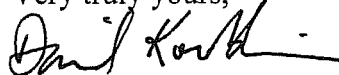
Third, and in connection with providing us with assurances that you will comply with the law, we ask that you properly train your subordinate law enforcement officers to do so as well.

Conclusion

We understand that the Michigan Medical Marijuana Act marks a change in Michigan drug law and requires local officials to make adjustments to their law enforcement practices. As Chief Jahnke noted in the *Tribune* article, "This is a very new law and everyone is learning about it." However, it is also vitally important that law enforcement officials follow the law as it is written, not as they may wish it to be. We hope that you will take appropriate measures to correct the unfortunate incident experienced by Mr. Frizzo and make sure that similar incidents do not recur.

Please contact us as soon as possible to discuss our request. We ask that you respond no later than March 2, 2010.

Very truly yours,



Daniel S. Korobkin, Staff Attorney
Michael J. Steinberg, Legal Director
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Cc: Christopher Frizzo
Dick Lobenthal, President, Oakland County Branch of the ACLU of Michigan

Exhibit A

Cities Rush To Limit Medical Marijuana
Detroit Free Press, Jan. 30, 2010



January 30, 2010

Cities rush to limit medical marijuana

BY KORIE WILKINS AND BILL LAITNER
FREE PRESS STAFF WRITERS

Christopher Frizzo of Royal Oak said marijuana helps him battle symptoms of his multiple sclerosis.

But during a routine traffic stop Jan. 11, police took his medical marijuana and refused to return it, said Frizzo, 47.

Although he was approved by the state to use medical marijuana, he didn't register for a state-approved caregiver to be his supplier, Frizzo admitted. His state registration card is stamped "No Caregiver."

When the cop saw that, he had to seize Frizzo's seven grams of grass -- roughly seven cigarettes' worth -- "or we're legitimizing an illegal drug purchase," City Attorney Dave Gillam said. Frizzo said he got the drug from a licensed caregiver, but not from anyone he'd named in his state paperwork.

The dispute highlights one of the ways local governments are struggling to deal with Michigan's new law on medicinal marijuana. Another dispute has communities across metro Detroit debating whether to pass local ordinances on who can dispense medical marijuana, and where.

The law has led to "disagreements all across the state," Michigan Department of Community Health spokesman James McCurtis said.

"The law needs changes," Frizzo said.

Communities seek to regulate marijuana

Communities in Michigan are passing or considering zoning changes and ordinances to regulate the distribution of medical marijuana from within their borders.

Livonia passed an ordinance last fall. Grosse Pointe and Huntington Woods did so this month. Clawson, Royal Oak and Hazel Park are drafting ordinances.

The state's medical marijuana law, overwhelmingly passed by voters in 2008, is vague on where and how state-approved providers of the drug -- called caregivers -- can dispense marijuana to state-certified patients.

"I suspect over the coming months, virtually every city will pass some type of ordinance" on marijuana, Huntington Woods City Manager Alex Allie said.

Many local officials said it is imperative to get something on the books that regulates or bans dispensaries, a term in other states for shops that sell marijuana to anyone approved for using it as

medicine.

Michigan's act does not mention dispensaries, and the Michigan Department of Community Health, in a statement last week, said "it is illegal to operate a marijuana dispensary here."

The number of people who want to use marijuana for medical purposes -- and are required to get a doctor's approval -- is swelling. More than 7,000 patients and 3,000 caregivers -- those licensed to grow marijuana for patients -- have registered with Lansing.

What some call Michigan's first dispensary began selling pot this month in Ypsilanti.

But operator Anthony Freed, founder and CEO of the Michigan Marijuana Chamber of Commerce, calls it "a compassion center." He compared it to a private club.

"We had our first 100 patients within five hours with no advertising," Freed, 31, of Brooklyn, Mich., said Friday.

Livonia has prohibited dispensaries, though City Attorney Don Knapp said cities don't want to stop legitimate users from alleviating their suffering.

"There are physicians advertising for patients just to approve them for using marijuana," Knapp said.

Huntington Woods' ordinance, passed Jan. 19, forbids dispensaries and regulates caregivers, case by case.

"Basically, we will allow what the state allows for an individual cultivating this in their own house, for their own use," Allie said.

The ordinances someday will be challenged in state courts, said Detroit lawyer Matthew Abel, who said he specializes in advising caregivers of their rights.

Ordinances in Livonia and other cities amount to "a paranoid attempt to keep out all illegal drugs while stifling the legitimate medical use of marijuana," Abel said.

Tammy Stables Battaglia contributed to this report.

Related content

Expo this weekend

The First Annual Marijuana Caregivers Cup Expo is being held from 10 a.m. to 6 p.m. today and Sunday at the Ann Arbor Marriott Ypsilanti at Eagle Crest, 1275 S. Huron in Ypsilanti. The expo, with classes and exhibits both days, is open to the public.

Tickets are \$15 for one day or \$25 for both days. For tickets or information, go to www.micaregiverscup.org. Tickets also can be purchased at the event.

Exhibit B

Patient's Marijuana Seized
***Daily Tribune*, Feb. 3, 2010**

The Daily Tribune (dailytribune.com), Serving Southeastern Oakland County

News

Patient's marijuana seized

Wednesday, February 3, 2010

By Catherine Kavanaugh, Daily Tribune Staff Writer

Chief says it was obtained illegally; ACLU says city misinterpreting law.

ROYAL OAK — Christopher Frizzo has a state-issued card to use medical marijuana, but it wasn't enough to prevent police from seizing his leafy relief for multiple sclerosis during a routine traffic stop.

The 46-year-old Royal Oak man isn't listed with a registered caregiver — someone authorized to grow marijuana for patients — so police said they had no choice but to confiscate the 7 grams Frizzo had when he was pulled over last month for an improper lane change.

Police Chief Christopher Jahnke said the marijuana Frizzo possessed wasn't for medical use in the eyes of the law.

"There are only two ways you can have medical marijuana: grow it yourself or get it from a registered caregiver and that person has to list you," Jahnke said. "(Frizzo) told us he got it from someone other than a caregiver. His marijuana — not his medical marijuana — was taken because he got it illegally."

The American Civil Liberties Union of Michigan disagrees with Royal Oak police. ACLU attorney Daniel Korobkin said patients aren't required to register with caregivers.

"I think Royal Oak has it wrong," Korobkin said. "If you have less than 2.5 ounces, it doesn't matter whether you got it from a supplier who isn't registered or it dropped from the sky. If you're a registered patient, it can't be taken from you. You can't be arrested. You can't be prosecuted. It's not contraband."

Frizzo said he hasn't decided whether or not to file a lawsuit. He does think police went too far because he was carrying only a small amount of marijuana — about a tenth of what a patient can possess — and he had a cane and walker in his car that has a license plate for disabled drivers.

"There was no question I was legit," Frizzo said. "I think the officer should have said you have the card that gives you the right to possess it; have a nice night. That's what upsets me. I was treated like a criminal and not a sick person."

The Michigan Medical Marijuana Act passed in 2008 is creating enforcement and zoning issues around the state. In addition to the possession questions surrounding Frizzo's case, some communities passed or are considering ordinances to limit dispensaries to business districts or ban them outright as businesses in violation of a federal law, which makes dispensing marijuana illegal.

Patients are facing their own issues from feeling fearful about being prosecuted for possession to learning how to grow plants, Frizzo said.

"Master growers have crop failures," he added. "It's not like instant ice tea."

When he was pulled over on Woodward Avenue, Frizzo said he refused to answer police questions about the name, address and phone number of his marijuana provider. The officer then confiscated it.

"He felt bad," Jahnke said of the patrolman. "However, it was illegally obtained and we can't put illegal drugs back on the street."

The ACLU is concerned about Royal Oak's interpretation of the law.

"This law was enacted as a compassionate measure to help people who are ill," Korobkin said. "If you're a patient, once you get it you're sort of a safe harbor. You have medicine that's protected from seizure."

In retrospect, Frizzo said he will tell police he grows his own medical marijuana if he is ever stopped again.

"I know there's a fine line for law enforcement," Frizzo said. "They are used to arresting people for illegal use; they're worried about people making money off this and the black market. That's justifiable, but with sick people you have to take a different attitude."

For Frizzo, medical marijuana relieves muscle spasms and increases his appetite. He has lost 40 pounds since being diagnosed with the debilitating disease about three years ago.

The police chief said he and his officers have empathy for patients.

"We're not looking for medical marijuana users. It's not our goal to single them out or focus on them," Jahnke said. "We felt bad for this man. He was trying to do the right thing. That's why we didn't arrest him. He was missing one of the prongs to have it legally and that's getting it from a registered caregiver or himself."

Frizzo could have been arrested for marijuana possession, which is a misdemeanor, Jahnke said.

"He could have made his case that he had the marijuana legally at trial, but I didn't go that route," Jahnke said. "That doesn't mean we will do this in the future. This is a very new law and everyone is learning about it."

Still, the ACLU contends not all provisions of the law are gray areas.

"The law is quite clear on this point," Korobkin said. "If you are registered, once you have it, you're legal and police can't take it away. I'm quite alarmed that it sounds like Royal Oak is under a serious misimpression of what the law allows."

He points to a section that says: "Any marihuana, marihuana paraphernalia, or licit property that is possessed, owned, or used in connection with the medical use of marihuana, as allowed under this act, or acts incidental to such use, shall not be seized or forfeited."

As patients, caregivers, law enforcement, legal departments and legislators deal with the law passed by 60 percent of Michigan voters — 72 percent in Royal Oak — Frizzo said a summit should be planned to educate everyone.

"Let's find solutions to help sick people," he said. "That's my goal. We need to get through all of this."

URL: <http://www.dailytribune.com/articles/2010/02/03/news/srv0000007505415.prt>

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Exhibit C

**Michigan Medical Marihuana Act
M.C.L. § 333.26421 *et seq.***

MICHIGAN MEDICAL MARIHUANA ACT
Initiated Law 1 of 2008

AN INITIATION of Legislation to allow under state law the medical use of marihuana; to provide protections for the medical use of marihuana; to provide for a system of registry identification cards for qualifying patients and primary caregivers; to impose a fee for registry application and renewal; to provide for the promulgation of rules; to provide for the administration of this act; to provide for enforcement of this act; to provide for affirmative defenses; and to provide for penalties for violations of this act.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

The People of the State of Michigan enact:

333.26421 Short title.

1. Short Title.

Sec. 1. This act shall be known and may be cited as the Michigan Medical Marihuana Act.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26422 Findings, declaration.

2. Findings.

Sec. 2. The people of the State of Michigan find and declare that:

(a) Modern medical research, including as found by the National Academy of Sciences' Institute of Medicine in a March 1999 report, has discovered beneficial uses for marihuana in treating or alleviating the pain, nausea, and other symptoms associated with a variety of debilitating medical conditions.

(b) Data from the Federal Bureau of Investigation Uniform Crime Reports and the Compendium of Federal Justice Statistics show that approximately 99 out of every 100 marihuana arrests in the United States are made under state law, rather than under federal law. Consequently, changing state law will have the practical effect of protecting from arrest the vast majority of seriously ill people who have a medical need to use marihuana.

(c) Although federal law currently prohibits any use of marihuana except under very limited circumstances, states are not required to enforce federal law or prosecute people for engaging in activities prohibited by federal law. The laws of Alaska, California, Colorado, Hawaii, Maine, Montana, Nevada, New Mexico, Oregon, Vermont, Rhode Island, and Washington do not penalize the medical use and cultivation of marihuana. Michigan joins in this effort for the health and welfare of its citizens.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26423 Definitions.

3. Definitions.

Sec. 3. As used in this act:

(a) "Debilitating medical condition" means 1 or more of the following:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, hepatitis C, amyotrophic lateral sclerosis, Crohn's disease, agitation of Alzheimer's disease, nail patella, or the treatment of these conditions.

(2) A chronic or debilitating disease or medical condition or its treatment that produces 1 or more of the following: cachexia or wasting syndrome; severe and chronic pain; severe nausea; seizures, including but not limited to those characteristic of epilepsy; or severe and persistent muscle spasms, including but not limited to those characteristic of multiple sclerosis.

(3) Any other medical condition or its treatment approved by the department, as provided for in section 5(a).

(b) "Department" means the state department of community health.

(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.

(d) "Marihuana" means that term as defined in section 7106 of the public health code, 1978 PA 368, MCL

333.7106.

(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.

(f) "Physician" means an individual licensed as a physician under Part 170 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084, or an osteopathic physician under Part 175 of the public health code, 1978 PA 368, MCL 333.17501 to 333.17556.

(g) "Primary caregiver" means a person who is at least 21 years old and who has agreed to assist with a patient's medical use of marihuana and who has never been convicted of a felony involving illegal drugs.

(h) "Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

(i) "Registry identification card" means a document issued by the department that identifies a person as a registered qualifying patient or registered primary caregiver.

(j) "Usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

(k) "Visiting qualifying patient" means a patient who is not a resident of this state or who has been a resident of this state for less than 30 days.

(l) "Written certification" means a document signed by a physician, stating the patient's debilitating medical condition and stating that, in the physician's professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's debilitating medical condition or symptoms associated with the debilitating medical condition.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26424 Qualifying patient or primary caregiver; arrest, prosecution, or penalty prohibited; conditions; presumption; compensation; physician subject to arrest, prosecution, or penalty prohibited; marihuana paraphernalia; person in presence or vicinity to medical use of marihuana; registry identification issued outside of department; sale of marihuana as felony; penalty.

4. Protections for the Medical Use of Marihuana.

4. Protections for the Medical Use of Marihuana.

Sec. 4. (a) A qualifying patient who has been issued and possesses a registry identification card 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, for the medical use of marihuana in accordance with this act, provided that the qualifying patient possesses an amount of marihuana that does not exceed 2.5 ounces of usable marihuana, and, if the qualifying patient has not specified that a primary caregiver will be allowed under state law to cultivate marihuana for the qualifying patient, 12 marihuana plants kept in an enclosed, locked facility. Any incidental amount of seeds, stalks, and unusable roots shall also be allowed under state law and shall not be included in this amount.

(b) A primary caregiver who has been issued and possesses a registry identification card 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, for assisting a qualifying patient to whom he or she is connected through the department's registration process with the medical use of marihuana in accordance with this act, provided that the primary caregiver possesses an amount of marihuana that does not exceed:

(1) 2.5 ounces of usable marihuana for each qualifying patient to whom he or she is connected through the department's registration process; and

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

(3) any incidental amount of seeds, stalks, and unusable roots.

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

articulated and substantiated.

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

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

(2) is in possession of an amount of marihuana that does not exceed the amount allowed under this act. The presumption may be rebutted by evidence that conduct related to marihuana was not for the purpose of alleviating the qualifying patient's debilitating medical condition or symptoms associated with the debilitating medical condition, in accordance with this act.

(e) A registered primary caregiver may receive compensation for costs associated with assisting a registered qualifying patient in the medical use of marihuana. Any such compensation shall not constitute the sale of controlled substances.

(f) A physician 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 medicine, the Michigan board of osteopathic medicine and surgery, or any other business or occupational or professional licensing board or bureau, solely for providing written certifications, in the course of a bona fide physician-patient relationship and after the physician has completed a full assessment of the qualifying patient's medical history, or for otherwise stating that, in the physician's professional opinion, a patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms associated with the serious or debilitating medical condition, provided that nothing shall prevent a professional licensing board from sanctioning a physician for failing to properly evaluate a patient's medical condition or otherwise violating the standard of care for evaluating medical conditions.

(g) 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, for providing a registered qualifying patient or a registered primary caregiver with marihuana paraphernalia for purposes of a qualifying patient's medical use of marihuana.

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

(i) 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.

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

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

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26425 Rules.

5. Department to Promulgate Rules.

Sec. 5. (a) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which the department shall consider the addition of medical conditions or treatments to the list of debilitating medical conditions set forth in section 3(a) of this act. In promulgating rules, the department shall allow for petition by the public to include additional medical conditions and treatments. In considering such petitions, the department shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The department shall, after hearing, approve or deny such petitions within 180 days of the submission of the petition. The approval or denial of such a petition shall be considered a final department

action, subject to judicial review pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(b) Not later than 120 days after the effective date of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, that govern the manner in which it shall consider applications for and renewals of registry identification cards for qualifying patients and primary caregivers. The department's rules shall establish application and renewal fees that generate revenues sufficient to offset all expenses of implementing and administering this act. The department may establish a sliding scale of application and renewal fees based upon a qualifying patient's family income. The department may accept gifts, grants, and other donations from private sources in order to reduce the application and renewal fees.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26426 Administration and enforcement of rules by department.

6. Administering the Department's Rules.

Sec. 6. (a) The department shall issue registry identification cards to qualifying patients who submit the following, in accordance with the department's rules:

- (1) A written certification;
- (2) Application or renewal fee;
- (3) Name, address, and date of birth of the qualifying patient, except that if the applicant is homeless, no address is required;
- (4) Name, address, and telephone number of the qualifying patient's physician;
- (5) Name, address, and date of birth of the qualifying patient's primary caregiver, if any; and
- (6) If the qualifying patient designates a primary caregiver, a designation as to whether the qualifying patient or primary caregiver will be allowed under state law to possess marihuana plants for the qualifying patient's medical use.

(b) The department shall not issue a registry identification card to a qualifying patient who is under the age of 18 unless:

- (1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marihuana to the qualifying patient and to his or her parent or legal guardian;
- (2) The qualifying patient's parent or legal guardian submits a written certification from 2 physicians; and
- (3) The qualifying patient's parent or legal guardian consents in writing to:
 - (A) Allow the qualifying patient's medical use of marihuana;
 - (B) Serve as the qualifying patient's primary caregiver; and
 - (C) Control the acquisition of the marihuana, the dosage, and the frequency of the medical use of marihuana by the qualifying patient.

(c) The department shall verify the information contained in an application or renewal submitted pursuant to this section, and shall approve or deny an application or renewal within 15 days of receiving it. The department may deny an application or renewal only if the applicant did not provide the information required pursuant to this section, or if the department determines that the information provided was falsified. Rejection of an application or renewal is considered a final department action, subject to judicial review. Jurisdiction and venue for judicial review are vested in the circuit court for the county of Ingham.

(d) The department shall issue a registry identification card to the primary caregiver, if any, who is named in a qualifying patient's approved application; provided that each qualifying patient can have no more than 1 primary caregiver, and a primary caregiver may assist no more than 5 qualifying patients with their medical use of marihuana.

(e) The department shall issue registry identification cards within 5 days of approving an application or renewal, which shall expire 1 year after the date of issuance. Registry identification cards shall contain all of the following:

- (1) Name, address, and date of birth of the qualifying patient.
- (2) Name, address, and date of birth of the primary caregiver, if any, of the qualifying patient.
- (3) The date of issuance and expiration date of the registry identification card.
- (4) A random identification number.
- (5) A photograph, if the department requires 1 by rule.

(6) A clear designation showing whether the primary caregiver or the qualifying patient will be allowed under state law to possess the marihuana plants for the qualifying patient's medical use, which shall be determined based solely on the qualifying patient's preference.

(f) If a registered qualifying patient's certifying physician notifies the department in writing that the patient has ceased to suffer from a debilitating medical condition, the card shall become null and void upon notification by the department to the patient.

(g) Possession of, or application for, a registry identification card shall not constitute probable cause or reasonable suspicion, nor shall it be used to support the search of the person or property of the person possessing or applying for the registry identification card, or otherwise subject the person or property of the person to inspection by any local, county or state governmental agency.

(h) The following confidentiality rules shall apply:

(1) Applications and supporting information submitted by qualifying patients, including information regarding their primary caregivers and physicians, are confidential.

(2) The department shall maintain a confidential list of the persons to whom the department has issued registry identification cards. Individual names and other identifying information on the list is confidential and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(3) The department shall verify to law enforcement personnel whether a registry identification card is valid, without disclosing more information than is reasonably necessary to verify the authenticity of the registry identification card.

(4) A person, including an employee or official of the department or another state agency or local unit of government, who discloses confidential information in violation of this act is guilty of a misdemeanor, punishable by imprisonment for not more than 6 months, or a fine of not more than \$1, 000.00, or both. Notwithstanding this provision, department employees may notify law enforcement about falsified or fraudulent information submitted to the department.

(i) The department shall submit to the legislature an annual report that does not disclose any identifying information about qualifying patients, primary caregivers, or physicians, but does contain, at a minimum, all of the following information:

(1) The number of applications filed for registry identification cards.

(2) The number of qualifying patients and primary caregivers approved in each county.

(3) The nature of the debilitating medical conditions of the qualifying patients.

(4) The number of registry identification cards revoked.

(5) The number of physicians providing written certifications for qualifying patients.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

In subsection (h)(4), the dollar amount "\$1, 000.00" contains a space between the comma and first zero, and evidently should read "\$1,000.00".

333.26427 Scope of act; limitations.

7. Scope of Act.

Sec. 7. (a) The medical use of marihuana is allowed under state law to the extent that it is carried out in accordance with the provisions of this act.

(b) This act shall not permit any person to do any of the following:

(1) Undertake any task under the influence of marihuana, when doing so would constitute negligence or professional malpractice.

(2) Possess marihuana, or otherwise engage in the medical use of marihuana:

(A) in a school bus;

(B) on the grounds of any preschool or primary or secondary school; or

(C) in any correctional facility.

(3) Smoke marihuana:

(A) on any form of public transportation; or

(B) in any public place.

(4) Operate, navigate, or be in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marihuana.

(5) Use marihuana if that person does not have a serious or debilitating medical condition.

(c) Nothing in this act shall be construed to require:

(1) A government medical assistance program or commercial or non-profit health insurer to reimburse a

person for costs associated with the medical use of marihuana.

(2) An employer to accommodate the ingestion of marihuana in any workplace or any employee working while under the influence of marihuana.

(d) Fraudulent representation to a law enforcement official of any fact or circumstance relating to the medical use of marihuana to avoid arrest or prosecution shall be punishable by a fine of \$500.00, which shall be in addition to any other penalties that may apply for making a false statement or for the use of marihuana other than use undertaken pursuant to this act.

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

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26428 Defenses.

8. Affirmative Defense and Dismissal for Medical Marihuana.

Sec. 8. (a) Except as provided in section 7, a patient and a patient's primary caregiver, if any, may assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana, and this defense shall be presumed valid where the evidence shows that:

(1) A physician has stated that, in the physician's professional opinion, after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship, the patient is likely to receive therapeutic or palliative benefit from the medical use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition;

(2) The patient and the patient's primary caregiver, if any, were collectively in possession of a quantity of marihuana that was not more than was reasonably necessary to ensure the uninterrupted availability of marihuana for the purpose of treating or alleviating the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition; and

(3) The patient and the patient's primary caregiver, if any, were engaged in the acquisition, possession, cultivation, manufacture, use, delivery, transfer, or transportation of marihuana or paraphernalia relating to the use of marihuana to treat or alleviate the patient's serious or debilitating medical condition or symptoms of the patient's serious or debilitating medical condition.

(b) A person may assert the medical purpose for using marihuana in a motion to dismiss, and the charges shall be dismissed following an evidentiary hearing where the person shows the elements listed in subsection (a).

(c) If a patient or a patient's primary caregiver demonstrates the patient's medical purpose for using marihuana pursuant to this section, the patient and the patient's primary caregiver shall not be subject to the following for the patient's medical use of marihuana:

(1) disciplinary action by a business or occupational or professional licensing board or bureau; or

(2) forfeiture of any interest in or right to property.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26429 Failure of department to adopt rules or issue valid registry identification card.

9. Enforcement of this Act.

Sec. 9. (a) If the department fails to adopt rules to implement this act within 120 days of the effective date of this act, a qualifying patient may commence an action in the circuit court for the county of Ingham to compel the department to perform the actions mandated pursuant to the provisions of this act.

(b) If the department fails to issue a valid registry identification card in response to a valid application or renewal submitted pursuant to this act within 20 days of its submission, the registry identification card shall be deemed granted, and a copy of the registry identification application or renewal shall be deemed a valid registry identification card.

(c) If at any time after the 140 days following the effective date of this act the department is not accepting applications, including if it has not created rules allowing qualifying patients to submit applications, a notarized statement by a qualifying patient containing the information required in an application, pursuant to

section 6(a)(3)-(6) together with a written certification, shall be deemed a valid registry identification card.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

333.26430 Severability.

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.

History: 2008, Initiated Law 1, Eff. Dec. 4, 2008.

Compiler's note: MCL 333.26430 of Initiated Law 1 of 2008 provides:

10. Severability.

Sec. 10. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application.