



Senate Fiscal Agency  
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## BILL ANALYSIS



Telephone: (517) 373-5383  
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Senate Bill 81 (as reported without amendment)  
Sponsor: Senator Peter J. Lucido  
Committee: Judiciary and Public Safety

Date Completed: 4-12-19

### **RATIONALE**

The Michigan Medical Marihuana Act (MMMA), among other things, governs the use of marihuana for medical purposes. Under Section 7 of the MMMA, all other acts and parts of acts that are inconsistent with the MMMA do not apply to the medical use of marihuana. Accordingly, registered patients and caregivers who comply with the MMMA generally are immune from prosecution under other State laws. However, in 2012 (four years after the MMMA was approved by the voters), Section 474 of the Michigan Penal Code was enacted to restrict the transportation of usable marihuana.

Subsequently, a medical marihuana patient challenged his conviction under Section 474 of the Code. In a 2016 opinion, *People v. Latz* (318 Mich App 380), the Michigan Court of Appeals noted that, under the MMMA, "medical use of marihuana" includes "transportation of marihuana...relating to the administration of marihuana to treat or alleviate a registered qualifying patient's debilitating medical condition" or associated symptoms. The MMMA is otherwise silent on the transportation of medical marihuana. Because Section 474 places additional requirements on the transportation of medical marihuana beyond those imposed by the MMMA, and subjects people who are complying with the MMMA to prosecution despite their compliance, the Court held that Section 474 is impermissible and that a MMMA-compliant defendant cannot be prosecuted for violating it.

Accordingly, it has been suggested that Section 474 be repealed in order to align Michigan statute with the court's decision in the *Latz* case.

### **CONTENT**

**The bill would repeal Section 474 of the Penal Code, which prohibits the transportation or possession of usable marihuana in a motor vehicle except under certain conditions.**

Specifically, Section 474 prohibits a person from transporting or possessing usable marihuana in or upon a motor vehicle or any self-propelled vehicle designed for land travel unless the usable marihuana is one or both of the following: a) enclosed in a case that is carried in the trunk of the vehicle, or b) enclosed in a case that is not readily accessible from the interior of the vehicle, if the vehicle in which the individual is traveling does not have a trunk. "Usable marihuana" means the dried leaves, flowers, plant resin, or extract of the marihuana plant, but does not include the seeds, stalks, and roots of the plant. A person who violates Section 474 is guilty of a misdemeanor punishable by up to 93 days' imprisonment or a maximum fine of \$500, or both.

The bill would repeal Section 474, effective 90 days after its effective date.

MCL 750.474

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Section 474 of the Michigan Penal Code imposes additional requirements on the transportation of medical marihuana beyond those imposed by the MMMA. It is unreasonable to require medical marihuana be transported in a manner in which no other pharmaceutical drug must be transported.

Furthermore, the Michigan Medical Marihuana Act specifies that if any other statute is inconsistent with the MMMA, that statute does not apply to the use of medical marihuana. In *Latz*, the Court of Appeals specified that "if another statute is inconsistent with the MMMA such that it punishes the proper use of medical marihuana, the MMMA controls and that person properly using medical marihuana is immune from punishment".<sup>1</sup> Since the Court ultimately held that Section 474 subjects an individual who is in compliance with the MMMA to prosecution despite his or her compliance, and therefore is "impermissible",<sup>2</sup> Section 474 should be repealed.

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

The bill would have no fiscal impact on the State. The bill also would have no fiscal impact on local government because, according to the Michigan Court of Appeals, the section that the bill would repeal is "impermissible".

Fiscal Analyst: Joe Carrasco

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<sup>1</sup> *Latz*, 318 Mich App at 385.

<sup>2</sup> *Id.* at 387.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.