

TRANSPORT OF USABLE MARIHUANA: REPEAL

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House Bill 4606 as reported from committee w/o amendment

Sponsor: Rep. Peter J. Lucido

Committee: Law and Justice

Analysis available at
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Complete to 10-16-17

BRIEF SUMMARY: House Bill 4606 would amend the Michigan Penal Code to repeal Section 474 which regulates the transport of usable marihuana in a vehicle or any self-propelled vehicle designed for land travel.

FISCAL IMPACT: Repealing section 474 of the Michigan Penal Code could result in a decrease in costs for local units of government. Reduced misdemeanor charges would result in reduced costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. There could also be a decrease in penal fine revenues, which would decrease funding for local libraries, the constitutionally designated recipients of those revenues.

THE APPARENT PROBLEM:

Medical marihuana is regulated under the Michigan Medical Marihuana Act (MMMA) and, generally speaking, the act provides that if another statute is inconsistent with the MMMA, the conflicting statute would not apply to the medical use of marihuana. In this way, registered patients and caregivers who are complying with the MMMA are protected from being prosecuted under other laws.

However, a provision restricting how usable marihuana is to be transported in a vehicle was placed within the Michigan Penal Code several years after the MMMA was enacted. A medical marihuana patient recently challenged his conviction under the Penal Code provision. The Michigan Court of Appeals agreed that it is impermissible to prosecute a defendant who is in compliance with the MMMA, which is silent on how usable marihuana is to be transported in a vehicle, for violating the Penal Code provision. *People v Latz* (Docket No. 328274, Decided December 20, 2016).

Since the possession and use of marihuana is illegal under state law for anyone without authorization as a registered patient or caregiver, it is already illegal for anyone other than medical marihuana patients and caregivers to transport the substance in a vehicle, whether it is done so in accordance with the Penal Code provision or not. Thus, some believe the Penal Code provision should be repealed.

THE CONTENT OF THE BILL:

Section 474 of the Michigan Penal Code prohibits a person from transporting or possessing usable marihuana in or upon a vehicle unless the usable marihuana is enclosed in a case carried in the vehicle's trunk or enclosed in a case that is not readily accessible from the interior of the vehicle (if the vehicle does not have a trunk). "*Usable marihuana*" is defined in Section 3 of the Michigan Medical Marihuana Act (MMMA) as 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 violation is a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500.

Under House Bill 4606, Section 474 would be repealed 90 days after the bill took effect.

(Note: Section 474 references the term "usable marihuana" as defined in the Michigan Public Health Code at MCL 333.26423. However, MCL 333.26423 is contained within the Michigan Medical Marihuana Act, not the Public Health Code.)

MCL 750.474

ARGUMENTS:

For:

The bill would simply repeal a statute that a higher court has ruled does not apply to a medical marihuana patient or caregiver who is in compliance with the Michigan Medical Marihuana Act. Since marihuana in general is prohibited for anyone else, the statute is not needed to effectively punish a person who is transporting it in a vehicle as doing so would come under other laws. In addition, no other pharmaceutical is treated in this way.

Against:

The provision restricting how usable marihuana is to be transported in a vehicle may just have been placed in the wrong statute. After all, the MMMA was recently amended to include a similar provision specifying how marihuana-infused products (often referred to as medical edibles) are to be lawfully transported in a vehicle by a registered patient or caregiver. Smokable forms should be treated in the same manner. Further, alcohol, though allowed for use by the general population, is also restricted to being transported in unopened containers in the trunk. It may be appropriate to repeal Section 474, but, to ensure conformity with the transportation of other forms of marihuana by patients and caregivers, the provision should be inserted into the MMMA.

As to the argument that smokable forms of marihuana should not be relegated to the trunk because other pharmaceuticals aren't, marihuana is not a legal, scheduled pharmaceutical like a prescription picked up at the drugstore. It is still an illegal substance under state and federal law and can impair a driver's ability to safely operate a vehicle. Thus, mitigating the chance of a driver operating under the influence similar to what is in place for alcohol and for marihuana-infused products is appropriate.

POSITIONS:

The Michigan State Police indicated support for the bill. (9-26-17)

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