

SUMMARIES OF NEW MEDICAL MARIHUANA ACTS IN MICHIGAN

By Wendy K. Walker, J.D., MSU Extension Educator



PA 281 of 2016; Signed by Governor Sept. 21, 2016; EFFECTIVE DATE: December 20, 2016

Overview

This new act creates a licensing and regulatory structure for five types of medical marihuana facilities: growers, processors, provisioning centers, secure transporters, and safety compliance facilities. The act provides immunity from criminal and civil prosecution for marihuana-related offenses to persons conducting marihuana-related activities in compliance with the act. The act generally vests implementation and enforcement in the Michigan Department of Licensing and Regulatory Affairs (LARA) and a new medical marihuana licensing board (MML board) to be appointed by the governor. *Of particular note to local officials, the act allows municipalities to either adopt an ordinance that authorizes licensed marihuana facilities in their jurisdiction or exclude such facilities by taking no action.*

Medical Marihuana Licensing Board

Creates 5-member MML board within LARA to be appointed by the governor (Sec. 301(1-2)). Requires 1 member appointed from 3 nominees by the senate majority leader and 1 from 3 nominees by the speaker of the house, but prohibits more than 3 from the same political party (Sec. 301(2)). Establishes certain eligibility rules regarding criminal backgrounds and potential conflicts of interest (Sec. 301). Grants the MML board general responsibility for administering, implementing, and enforcing the act, including all licensing actions, consultation with LARA on promulgating rules, and reporting to the governor and legislature (Sec. 302). Requires LARA, in conjunction with the MML board, to employ a full-time executive director and other necessary personnel (Sec. 301(8)).

About the Author

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Marihuana Advisory Panel

Creates a 17-member marihuana advisory panel within LARA to make recommendations to the MML board regarding administration, implementation, and enforcement of this act and the marihuana tracking act (Sec. 801(1), (10)). Includes various state agency members and governor-appointed representatives of registered patients or caregivers, licensees, physicians, townships, cities and villages, counties, sheriffs, and local police (Sec. 801(2)).

License Types

Establishes grower license for a commercial entity that cultivates, dries, trims, or cures and packages marihuana for sale (Sec. 102(f)). Defines three grower classes by maximum plant numbers of 500, 1000, and 1500 (Sec. 501(1)). Authorizes sale of seeds or plants to only a grower and sale of marihuana, other than seeds, to only a processor or provisioning center (Sec. 501(2-3)).

Establishes processor license for a commercial entity that purchases marihuana from a grower, extracts resin or creates a packaged marihuana-infused product, and sells marihuana-infused products or marihuana to only a provisioning center. (Sec. 102(q), 502(1)).

Establishes provisioning center license for a commercial entity or that purchases or transfers marihuana from only a grower or processor and sells or provides marihuana to only registered qualifying patients or primary caregivers but excludes noncommercial locations authorized under MMA (Sec. 102(r), 504(1)). Also authorizes provisioning center transfers of marihuana to and from a safety compliance facility for required testing (Sec. 504(2)). Prohibits the sale, consumption, or use of alcohol or tobacco products on the premises (Sec. 504(4)(d)). Also prohibits a physician from conducting a medical examination or issuing a medical certification document on the premises for a registry identification card (Sec. 504(4)(e)).

Establishes secure transporter license for a commercial entity that stores and transports marihuana, or money associated with its purchase or sale, between marihuana facilities but not to registered qualifying patients or primary caregivers (Sec. 102(x), 503(1)). Requires use of secure transporter for all authorized transfers between other licensees (Part 5). Establishes other requirements to ensure secure transportation and subjects it to inspection by law enforcement (Sec. 503(3-5)).

Establishes safety compliance facility license for a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver for safety and quality testing and returns marihuana to only a marihuana facility (Sec. 102(w), 505(1)). Requires a secured laboratory space not accessible to the general public, at least 1 employee with a relevant advanced degree in a medical or laboratory science, and other specified qualifications (Sec. 505(4)).

Municipal Control and Zoning

Prohibits a marihuana facility in a municipality (city, township, or village) that has not adopted an ordinance authorizing that facility type (Sec. 102(m), 205(1)). Allows a municipality to adopt an ordinance authorizing 1 or more facility types, limiting the number of each type, and establishing an annual license fee not exceeding \$5,000.00 to help defray associated administrative and enforcement costs (Sec. 205(1, 3)). Allows a municipality to adopt other ordinances relating to marihuana facilities, including zoning, that do not regulate marihuana purity or pricing or conflict with statutory regulations for marihuana facility licensing (Sec. 205(1)). Authorizes growers only in areas zoned for industrial or agricultural uses or unzoned areas that otherwise meet the municipality's requirements established under this act (Sec. 501(7)).

Requires license applicants to provide the MML board with a copy or website posting reference for the municipal ordinance or zoning regulations (Sec. 401(1)(j)). Also requires license applicants to give notice of the application to the municipality by registered mail within 10 days of the application (Sec. 401(1)(k), 401(6)).

Requires a municipality, within 90 days of receiving the required notice from a license applicant, to provide the MML board with the local ordinance, any applicable zoning regulations, and a description of any applicant violations of the ordinance or applicable zoning regulations (Sec. 205(1)). Also provides that the municipality's failure to submit the information cannot be used against the applicant (Sec. 205(2)).

State Licensing

Authorizes applications for state operating licenses beginning December 15, 2017 (Sec. 401(1)). Grants MML board exclusive authority to grant, deny, suspend, or revoke licenses (but may not limit the number or type of licenses granted) (Sec. 301, 302, 303(1), 407(1)).

Requires certain specified application information and defines certain specified licensee eligibility criteria including prohibited criminal backgrounds, residency requirements that apply until June 30, 2018, and exclusions from holding elective office and specified government employment (Sec. 401(1), 402(2)).

Makes licenses valid for 1-year with annual renewal (Sec. 402(6)). Requires MML board to consider any specific written input from an individual or entity within the location's local unit of government for renewals (Sec. 402(10)).

Makes a license a revocable privilege and not a property right (Sec. 409). Requires approval of MML board and municipality before a license is transferred, sold, or purchased (Sec. 406, 409).

Other License Limitations

Requires licensees to conduct pre-employment background checks (Sec. 405). Requires written permission of the MML board to hire an employee with a pending charge or conviction for a controlled substance-related felony less than 10 years old (Sec. 405).

Requires until December 31, 2021, that growers and processors have, or employ an individual with, at least 2 years' registered primary caregiver experience but prohibits a grower, processor, or secure transporter from being or employing an individual who is a simultaneous registered primary caregiver (Sec. 501(6)).

Prohibits growers, processors, or pro-

visioning centers and their investors from having an interest in a secure transporter or safety compliance facility (Sec. 501(5), 502(3), 504(3)). Prohibits secure transporters or their investors from having an interest in any other facility type or being a registered qualifying patient (Sec. 503(2)). Prohibits safety compliance facility licensees or their investors from having an interest in any other facility type (Sec. 505(3)).

Tracking

Requires that licensees use a secure third-party inventory control system capable of interfacing with the statewide monitoring system to track by unique identification numbers all marijuana plants, products, packages, patient and primary caregiver purchase totals, waste, destruction, conversions, derivatives, transfers, sales, transportation, returns, refunds, and recalls (Sec. 207). Also requires reporting loss, theft, or diversion of product; inventory discrepancies; and adverse patient responses or dose-related efficacy issues (Sec. 207). Provides licensees, LARA, state agencies, and law enforcement with database access only as authorized (Sec. 207).

Requires processors and provisioning centers to enter all transactions, current inventory, and specified other information into the statewide monitoring system (Sec. 502(4), 504(4)(b)). Requires checking the statewide monitoring system to determine whether a registered qualifying patient or primary caregiver hold a valid, current,

unexpired, and unrevoked registry ID card and whether the sale or transfer will exceed the established daily purchasing limit (Sec. 504(4)(c)).

Enforcement

Requires LARA, with MML board consultation, to promulgate rules necessary to implement, administer, and enforce the act, including operating regulations for each license category (Sec. 206).

Grants MML board jurisdiction over marijuana facilities, including investigating applicants and employees, conducting periodic audits, certifying revenue, requesting other information, receiving public complaints, conducting investigations into the overall safety, security, and integrity of operations, and ensuring that marijuana-infused products meet health and safety standards (Sec. 302, 303).

Authorizes warrantless searches, without notice, of facilities, persons, records, or licensee's other places of business if evidence of compliance or noncompliance with this act or rules is likely to be found (Sec. 303(c)). Authorizes MML board to take appropriate disciplinary action against a licensee for violations, including ejecting or excluding an individual from a marijuana facility (Sec. 303(1)).

Makes a marijuana facility and all property in it subject to examination at any time by local or state police (Sec. 208).

Allows MML board to deny, suspend, revoke, or restrict a license: if an applicant or licensee fails to comply with this act, rules, the marijuana tracking act, or any applicable municipal ordinance; if a licensee no longer meets license eligibility requirements; or if an applicant or licensee fails to provide information the MML board requests in any investigation, inquiry, or hearing (Sec. 407). Authorizes MML board to impose civil fines up to \$5,000 against an individual and up to \$10,000, or equal to the daily gross receipts, whichever is greater, against a licensee for each violation of this act, rules, or an order of the MML board (Sec. 407(1)). Specifies hearing requirements for the MML board's license actions (Sec. 407).

Immunity From Prosecution

Provides licensees and their agents immunity from criminal or civil prosecution for marijuana-related offenses under state law or local ordinances if acting in compliance with this act, rules under it, and any local ordinance adopted under section 205 (Sec. 201(1-2)). Prohibits searches and seizures except as authorized by this act (Sec. 201(1)). Provides innocent property owner immunity (Sec. 201).

Provides registered qualifying patients and primary caregivers immunity for provisioning center purchases within MMA limits (Sec. 203). Provides caregivers immunity for certain transfers to a safety compliance facility (Sec. 203). Preserves

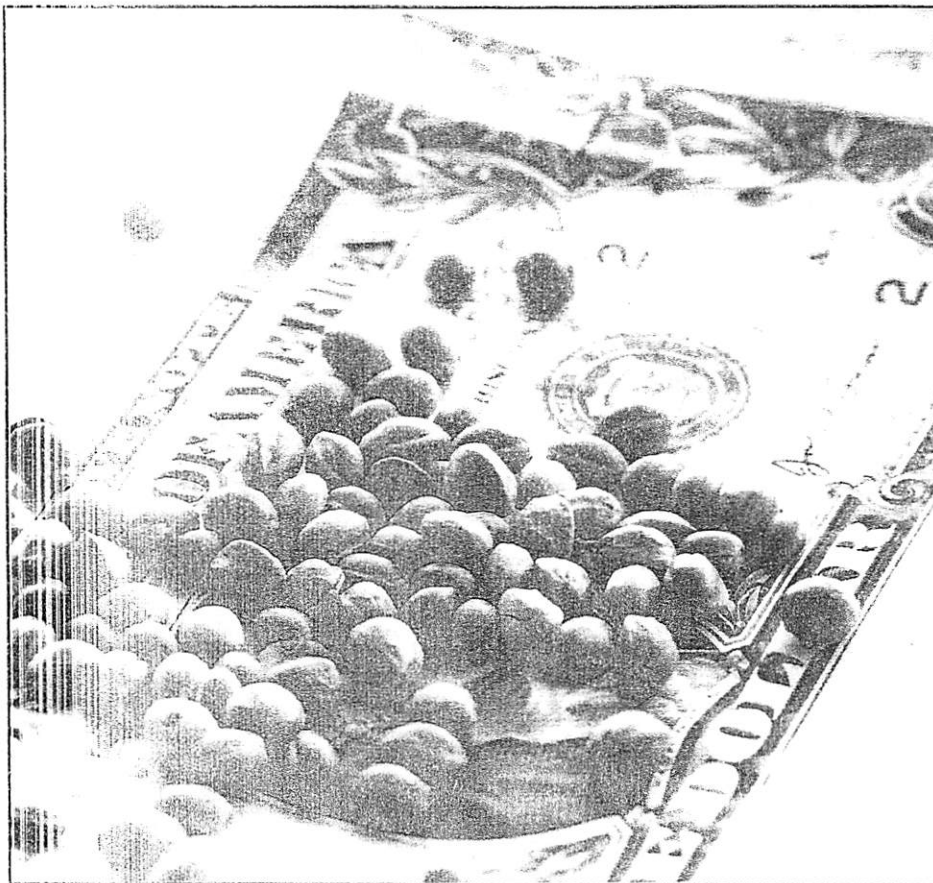


Photo by Deposit Photos

PA 282 requires tracking marijuana from seeds to sale.

the medical purpose defense in MMA's section 8 (Sec. 204).

Taxes, Fees, and Assessments

Imposes a 3% tax on provisioning centers' gross retail receipts (Sec. 601(1)). Eliminates this tax 90 days after the effective date of a law authorizing recreational or nonmedical use of marijuana in the state (Sec. 601(1)).

Creates medical marijuana excise fund in the state treasury for all taxes and other fees, fines, and charges except application fees, regulatory assessments, and any local licensing fees (Sec. 602(1-2)). Allocates the money as follows: (a) 25% to municipalities with a marijuana facility, in proportion to the number of facilities within the municipality; (b) 30% to counties with a marijuana facility, in proportion to the number of facilities within the county; (c) 5% to counties with a marijuana facility, in proportion to the number of facilities within the county, to be used exclusively to support the county sheriffs and not in replacement of any other funding received by the county sheriffs; (d) 30% to the state's general fund until September 30, 2017, and then to the first responder presumed coverage fund beginning October 1, 2017; (e) 5% for local law enforcement training; and (f) 5% to the state police (Sec. 602(5)).

Requires that LARA establish an application fee in an amount to cover specified costs of background investigations and application processing (Sec. 401(5)).

Imposes a regulatory assessment on certain licensed growers, processors, provisioning centers, and secure transporters, in an amount set by LARA to defray LARA's specified costs to implement, administer, and enforce the act, including substance use disorder prevention, education, and treatment programs. (Sec. 603).

Reporting

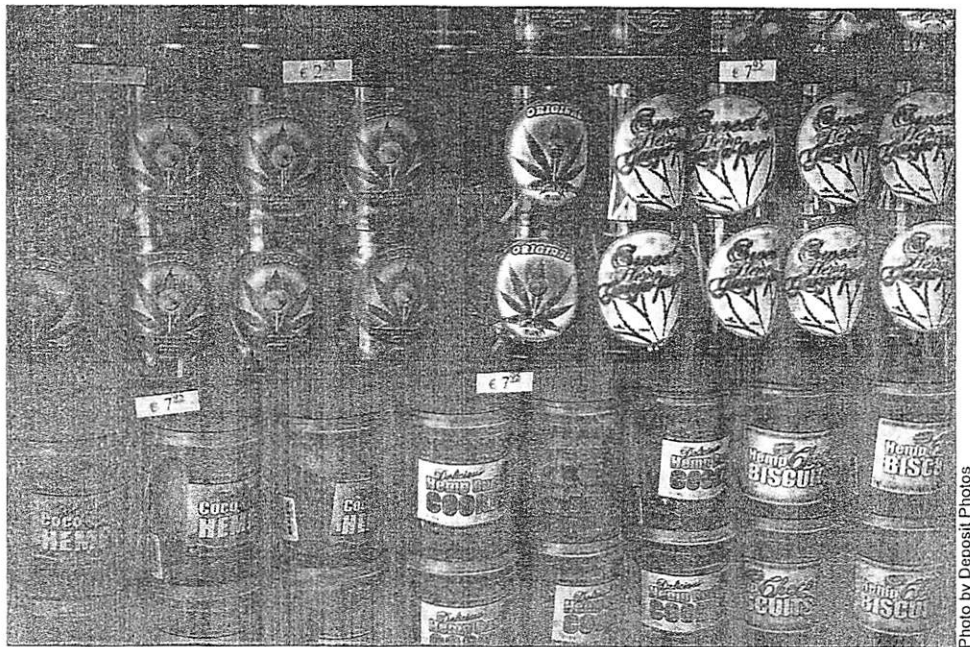
Exempts certain specified records from FOIA, including information a municipality obtains from an applicant (Sec. 205(4), 401(2-3)). Requires licensees to submit an annual financial statement to the MML board and municipality (Sec. 701).



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Overview

Requires Michigan Dept. of Licensing and Regulatory Affairs (LARA) to establish a statewide internet-based system to verify medical marijuana registry ID cards, monitor MMA limits, and track marijuana and marijuana products in commercial trade. Makes it available to the state, law enforcement, and licensees as authorized



PA 283 regulates "marijuana infused products," aka "medibles."

to administer, enforce, or comply with the MMA and Medical Marijuana Licensing Act. Requires interface with third-party inventory and tracking systems mandatory for licensees. Exempts the system from FOIA.

MICHIGAN MEDICAL MARIJUANA ACT AMENDMENT

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Overview

Amends the Michigan Medical Marijuana Act to regulate manufacturing and transporting of marijuana-infused products.

Definitions

Defines "marijuana-infused product" as a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marijuana that is intended for human consumption in a manner other than smoke inhalation and exempts it from food law (MCL 333.26423(f)).

Defines "usable marijuana equivalent" to calculate the amount of usable marijuana in marijuana-infused products (MCL 333.26423(o), .26424(c)).

Adds plant resin and extract to definition of usable marijuana (MCL 333.26423(n)). Adds extraction and marijuana-infused products to definition of medical use of marijuana (MCL 333.26423(h)).

Defines "marijuana plant" as any plant of the species *Cannabis sativa* L (MCL 333.26423(g)). Defines "plant" as any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material (MCL 333.26423(j)).

Immunity

Amends immunity provision for qualifying patients to possess marijuana not exceeding a 2.5 ounce combined total of usable marijuana and usable marijuana equivalents (MCL 333.26424(a)). Amends immunity provision for primary caregivers to possess the same for each connected qualifying patient (MCL 333.26424(b)).

Adds immunity provision for manufacturing marijuana-infused products by a qualifying patient for personal use or by a primary caregiver for a connected patient's use ((MCL 333.26424(m)). Prohibits qualifying patients from transferring marijuana-infused products or marijuana ((MCL 333.26424(n)). Allows primary caregivers to transfer marijuana-infused products to only connected qualifying patients ((MCL 333.26424(o)).

Adds immunity provision for qualifying patients or primary caregivers transferring or purchasing authorized amounts from provisioning centers, transferring or selling seeds or seedlings to licensed growers, or transferring marijuana to safety compliance facilities for testing (MCL 333.26424a).

Prohibits qualifying patients or primary caregivers from transporting or possessing marijuana-infused products in a motor vehicle except as specifically provided (MCL 333.26424b). Establishes civil fine not exceeding \$250 for violations (MCL 333.26424b).

Other

Requires LARA to verify registry ID cards in the Marijuana Tracking Act database (MCL 333.26426(h)(3)).

Appropriates \$8.5 million to LARA for FY2016 from the marijuana registry fund for costs of implementing the licensing and tracking acts (MCL 333.26426(l)). □

