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BILL ANALYSIS

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House Bill 4209 (as enacted)

House Bill 4210 (as enacted)

House Bill 4827 (as enacted)

Sponsor: Representative Mike Callton, D.C. (H.B. 4209)  
Representative Lisa Posthumus Lyons (H.B. 4210)  
Representative Klint Kesto (H.B. 4827)

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 9-23-16

**PUBLIC ACT 281 of 2016**

**PUBLIC ACT 283 of 2016**

**PUBLIC ACT 282 of 2016**

### **CONTENT**

**House Bill 4209** enacts the "Medical Marihuana Facilities Licensing Act" to do the following:

- Provide for the licensure of marihuana growers, processors, secure transporters, provisioning centers, and safety compliance facilities.
- Establish the licensure process within the Department of Licensing and Regulatory Affairs (LARA).
- Create the Medical Marihuana Licensing Board within LARA to implement the Act, including the licensing process, and give the Board jurisdiction over the operation of all marihuana facilities.
- Require applicants for a license to pay an application fee and require licensees to pay an annual regulatory assessment, which will be deposited in a new "Marihuana Regulatory Fund".
- Require money in that Fund to be used for implementing, administering, and enforcing the Act.
- Require provisioning centers to pay a tax on their retail gross income, and require the tax to be deposited in a new "Medical Marihuana Excise Fund".
- Require money in the Excise Fund to be distributed to municipalities and counties where marihuana facilities are located, the Michigan Commission on Law Enforcement Standards, the State Police, and, until September 30, 2017, the State General Fund.
- Require money in the Excise Fund to be distributed to the First Responder Presumed Coverage Fund, rather than the State General Fund, beginning October 1, 2017.
- Authorize the Board to impose license sanctions and civil fines for violations of the Act or rules.
- Impose various restrictions on Board members, employees, and agents related to conflicts of interests and relationships with licensees, and require members, employees, and agents to make certain disclosures.
- Exempt licensees from marihuana-related criminal or civil prosecution and penalties, and other sanctions, for performing activities within the scope of their license.
- Provide that a registered qualifying patient or registered primary caregiver will not be subject to criminal prosecution or sanctions for purchasing marihuana from a provisioning center.
- Require LARA to promulgate rules and emergency rules in consultation with the Board.

- Require licensees to adopt and use a third-party inventory control and tracking system.
- Require licensees to file with LARA proof of financial responsibility for liability for bodily injury to a lawful user from adulterated marihuana.
- Create the Marihuana Advisory Panel to make recommendations to the Board.

**House Bill 4210** amends the Michigan Medical Marihuana Act (MMMA) to do the following concerning marihuana-infused products:

- Prevent a person from being penalized for manufacturing a marihuana-infused product if the person is a qualified registered patient or a registered primary caregiver.
- Prohibit a patient from transferring a marihuana-infused product or marihuana to another individual, and prohibit a caregiver from transferring a marihuana-infused product to someone other than a qualifying patient of the caregiver.
- Prohibit a qualifying patient or primary caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle, unless certain conditions are satisfied, and prescribe a maximum civil fine of \$250 for a violation.

Also, where the Act allows a qualifying patient or primary caregiver to possess 2.5 ounces of usable marihuana, the bill allows a combined total of 2.5 ounces of usable marihuana and usable marihuana equivalents (which refers to the amount of usable marihuana in a marihuana-infused product).

In addition, the bill extends criminal and civil immunity to a person for the transfer, purchase, or sale of marihuana pursuant to the Medical Marihuana Facilities Licensing Act.

The bill also does the following:

- Specifies that the MMMA does not permit a person to separate plant resin from a marihuana plant by butane extraction in any public place or motor vehicle or inside or within the curtilage of a residential structure, or in a manner that that fails to exercise reasonable care or a disregard for the safety of others.
- Requires LARA to verify the authenticity of a registry ID card to the database created in the Marihuana Tracking Act.
- Appropriates \$8.5 million to LARA for its initial costs of implementing the Marihuana Facilities Licensing Act and the Marihuana Tracking Act.
- Includes statements of intent and retroactivity.

**House Bill 4827** enacts the "Marihuana Tracking Act" to:

- Require LARA to establish a statewide internet-based monitoring system for integrated tracking, inventory, and verification.
- Require the system to have specified capabilities.
- Require LARA to seek bids to establish, operate, and maintain the system.
- Require the awardee to deliver the functioning system within 180 days after the contract is awarded.
- Allow LARA to terminate the contract for a violation of the Act.
- Provide for the confidentiality of information in the system.

Each bill will take effect on December 20, 2016.

(Two other bills are related to this legislation: Senate Bill 1014, which is tie-barred to House Bill 4209, and Senate Bill 141, which is tie-barred to House Bill 4210. Senate Bill 1014 would

amend the Administrative Procedures Act to exclude from the definition of "rule" a rule or order promulgated or issued before January 1, 2017, under authority granted by the Medical Marihuana Facilities Licensing Act. Senate Bill 141 would amend the sentencing guidelines in the Code of Criminal Procedure to revise the citation to a section of the Michigan Compiled Laws that House Bill 4210 changes.)

## **House Bill 4209**

### Licenses

Categories; Definitions. Beginning 360 days after the effective date of the Medical Marihuana Facilities Licensing Act, a person may apply to the proposed Medical Marihuana Licensing Board for State operating licenses in the following categories:

- Class A, B, or C grower.
- Processor.
- Provisioning center.
- Secure transporter.
- Safety compliance facility.

"State operating license" means a license issued under the Act that allows the licensee to operate as a grower, processor, secure transporter, provisioning center, or safety compliance facility.

"Grower" means a licensee that is a commercial entity located in this State that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.

"Processor" means a licensee that is a commercial entity located in this State that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.

"Provisioning center" means a licensee that is a commercial entity located in this State that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through their registered primary caregivers. The term includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers. A noncommercial location used by a primary caregiver to assist a qualifying patient connected to the caregiver through the marihuana registration process of the Department of Licensing and Regulation in accordance with the Michigan Medical Marihuana Act will not be a provisioning center for purposes of the Licensing Act.

"Secure transporter" means a licensee that is a commercial entity located in this State that stores marihuana and transports it between marihuana facilities for a fee.

"Safety compliance facility" would mean a licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol (THC) and other cannabinoids, returns the test results, and may return the marihuana to the facility.

"Marihuana facility" means a location from which a license holder is licensed to operate.

"Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. Marihuana-infused products will not be considered a food for purposes of the Food Law.

"Registered qualifying patient" means a qualifying patient who has been issued a current registry identification card under the Michigan Medical Marihuana Act (MMMA) or a visiting qualifying patient as that term is defined in the MMMA.

"Registered primary caregiver" means a primary caregiver who has been issued a current registry identification card under the MMMA.

Grower License. A grower license will authorize the grower to grow not more than the following number of marihuana plants under the indicated class for each license the grower holds in that class:

- Class A: 500 plants
- Class B: 1,000 plants
- Class C: 1,500 plants

A grower license will authorize the sale of marihuana seeds or marihuana plants only to a grower by means of a secure transporter and authorize the grower to transfer marihuana only by means of a secure transporter.

The license will authorize the sale of marihuana, other than seeds, only to a processor or provisioning center.

To be eligible for a grower license, the applicant and each investor in the grower may not have an interest in a secure transporter or a safety compliance facility.

Until December 31, 2021, a grower must have a minimum of two years' experience as a registered primary caregiver, or have an individual with that experience as an active employee.

While holding a license as a grower, the grower may not be a registered primary caregiver or employ an individual who is simultaneously a registered primary caregiver.

A grower must enter all transactions, current inventory, and other information into the statewide monitoring system as required in the Licensing Act, rules, and the Marihuana Tracking Act.

A grower license will not authorize the grower to operate in an area unless the area is zoned for industrial or agricultural uses or is unzoned and otherwise meets local requirements.

Processor License. A processor license will authorize the purchase of marihuana only from a grower and the sale of marihuana-infused products or marihuana only to a provisioning center.

A processor license will authorize the processor to transfer marihuana only by means of a secure transporter.

To be eligible for a processor license, the applicant and each investor in the processor may not have an interest in a secure transporter or safety compliance facility.

Until December 31, 2021, a processor must have a minimum of two years' experience as a registered primary caregiver, or have an individual with that experience as an active employee.

While holding a license as a processor, the processor may not be a registered primary caregiver or employ an individual who is simultaneously a registered primary caregiver.

A processor must enter all transactions, current inventory, and other information into the statewide monitoring system.

Secure Transporter License. A secure transporter license will authorize the licensee to store and transport marihuana and money associated with the purchase or sale of marihuana between marihuana facilities for a fee upon request of a person with legal custody of that marihuana or money. It will not authorize transport to a registered qualifying patient or registered primary caregiver.

To be eligible for a secure transporter license, the applicant and each investor with an interest in the secure transporter may not have an interest in a grower, processor, provisioning center, or safety compliance facility, and may not be a registered qualifying patient or a registered primary caregiver.

A secure transporter must enter all transactions, current inventory, and other information into the statewide monitoring system.

A secure transporter must comply with all of the following:

- Each driver transporting marihuana must have a chauffeur's license issued by the State.
- Each vehicle must be operated with a two-person crew with at least one individual remaining with the vehicle at all times during the transportation of marihuana.
- A route plan and manifest must be entered into the statewide monitoring system, and a copy must be carried in the vehicle and presented to a law enforcement officer upon request.
- The marihuana must be transported in one or more sealed containers and may not be accessible while in transit.
- A secure transporting vehicle may not bear markings or other indication that it is carrying marihuana or a marihuana-infused product.

Also, within the past five years, each employee who has custody of marihuana or money that is related to a marihuana transaction must not have been convicted of or released from incarceration for a felony under the laws of any state or the United States or have been convicted of a misdemeanor involving a controlled substance.

A secure transporter will be subject to administrative inspection by a law enforcement officer at any point during the transportation of marihuana to determine compliance with the Act.

Provisioning Center License. A provisioning center license will authorize the purchase or transfer of marihuana only from a grower or processor and the sale or transfer only to a registered qualifying patient or registered primary caregiver. All transfers of marihuana to a provisioning center from a separate marihuana facility must be by means of a secure transporter.

A provisioning center license will authorize the licensee to transfer marihuana to or from a safety compliance facility for testing by means of a secure transporter.

To be eligible for a provisioning center license, the applicant and each investor in the center may not have an interest in a secure transporter or safety compliance facility.

A provisioning center may sell or transfer marihuana to a registered qualifying patient or registered primary caregiver only after it has been tested and bears the label required for retail sale.

A provisioning center must enter all transactions, current inventory, and other information into the statewide monitoring system.

Before selling or transferring marijuana to a registered qualifying patient or to a registered primary caregiver, a provisioning center must inquire of the statewide monitoring system to determine whether the patient and, if applicable, the caregiver holds a valid and current registry identification card and that the sale or transfer will not exceed the daily purchasing limit established by the Board.

A provisioning center may not allow the sale, consumption, or use of alcohol or tobacco products on the premises. It also may not allow a physician to conduct a medical exam or issue a medical certification document on the premises for the purpose of obtaining a registry ID card.

Safety Compliance Facility License. A safety compliance facility license will authorize the facility to receive marijuana from, test marijuana for, and return marijuana to only a marijuana facility.

A safety compliance facility must be accredited by an entity approved by the Board within one year after the date the license is issued or have previously provided drug testing services to the State or its court system and be a vendor in good standing in regard to those services. The Board may grant a variance from this requirement if it finds that the variance is necessary to protect and preserve the public health, safety, or welfare.

To be eligible for a safety compliance facility license, the applicant and each investor with an interest in the facility may not have any interest in a grower, secure transporter, processor, or provisioning center.

A safety compliance facility must do all of the following:

- Perform tests to certify that marijuana is reasonably free of chemical residues such as fungicides and insecticides.
- Use validated test methods to determine THC, THC acid, cannabidiol (CBD), and CBD acid levels.
- Perform tests that determine whether marijuana complies with the standards the Board establishes for microbial and mycotoxin contents.
- Perform other tests necessary to determine compliance with any other good manufacturing practices as prescribed by rules.
- Enter all transactions, current inventory, and other information into the statewide monitoring system.
- Have a secured laboratory space to which the general public cannot have access.
- Retain and employ at least one staff member with a relevant advanced degree in medical or laboratory science.

### Licensing Process

Application. A license application must be made under oath on a form prescribed by the Medical Marijuana Licensing Board. It must contain information prescribed by the Board, including all of the following:

- The name, business address and telephone number, Social Security number, and, if applicable, Federal tax ID number of the applicant.
- The identity of every person having any ownership interest in the applicant, as well the names and addresses of the following: beneficiaries if the applicant is a trust; all shareholders, officers, and directors if the applicant is a corporation; all partners if the applicant is a partnership or limited liability partnership; and the managers, if the applicant is a limited liability company.
- An identification of any business that is directly or indirectly involved in the growing, processing, testing, transporting, or sale of marijuana.

- Whether an applicant has been indicted for, charged with, arrested for, or convicted of, pleaded guilty or no contest to, or forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or controlled substance-related misdemeanor, not including traffic violations, regardless of whether the offense has been reversed on appeal or otherwise.
- Whether an applicant has ever applied for or been granted any commercial license or certificate by a licensing authority in Michigan or any other jurisdiction that has been denied, restricted, suspended, revoked, or not renewed.
- Whether an applicant has filed, or been served with, a complaint or other notice filed with any public body regarding the delinquency in payment of, or a dispute over the filings concerning the payment of, any tax required under Federal, state, or local law.
- A statement listing the names and titles of all public officials or officers of any unit of government, and their spouses, parents, and children, who directly or indirectly own any financial interest in, have any beneficial interest in, are creditors of, or hold any interest in any contractual or service relationship with an applicant.
- A description of the type of marijuana facility; anticipated or actual number of employees; and projected or actual gross receipts.
- A paper copy of electronic posting website reference for the ordinance that the municipality adopted to authorize operation of one or more licensed marijuana facilities in the municipality.
- Financial information in the manner and form prescribed by the Board.
- A copy of the notice informing the municipality by registered mail that the applicant has applied for a license under the Act.
- Any other information the Board requires by rule.

In addition, each applicant must submit with its application, on forms provided by the Board, a passport quality photograph and one set of fingerprints for each person having any ownership interest in the facility and each person who is an officer, director, or managerial employee of the applicant. The Department may designate an entity or agent to collect fingerprints, and the applicant will be responsible for the costs.

The Board must use information on an application as a basis to conduct a thorough background investigation on the applicant. Information the Board obtains from the background investigation will be exempt from disclosure under the Freedom of Information Act (FOIA).

A false application will be cause for the Board to deny a license.

The Board may not consider an incomplete application but, within a reasonable time, must return it to the applicant with notification of the deficiency and instructions for submitting a corrected application.

An applicant must provide written consent to the inspections, examinations, searches, and seizures provided for in the Licensing Act and to the disclosure to the Board and its agents of otherwise confidential records, including tax records, while applying for and holding a license. Information the Board receives under this provision will be exempt from FOIA.

An applicant must certify that the applicant does not have an interest in any other State operating license that is prohibited under the Act.

Application Fee. A nonrefundable application fee must be paid at the time an application is filed, to defray the costs associated with the background investigation. In consultation with the Board, LARA must set the amount of the fee for each category and class of license by rule. If the costs of investigation and processing exceed the fee, the applicant will have to pay the additional amount to the Board.

Eligibility. An applicant will be ineligible to receive a license if any of the following applies:

- The applicant has been convicted of or released from incarceration for a felony under the laws of this or any other state or the United States within the past five years or has been convicted of a controlled substance-related felony within the past 10 years.
- Within the past five years, the applicant has been convicted of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or has been found responsible for violating a substantially corresponding local ordinance in any state.
- The applicant has knowingly submitted a license application that contains false information.
- The applicant is a member of the Board.
- The applicant fails to demonstrate the ability to maintain adequate premises liability and casualty insurance for its proposed facility.
- The Board determines that the applicant is not in compliance with the provision prohibiting a marijuana facility from operating in a municipality that has not adopted an ordinance authorizing that type of facility.
- The applicant fails to meet other criteria established by rule.

An applicant also will be ineligible for a license if he or she holds an elective office of a governmental unit of this or another state or the Federal government; is a member of or employed by a regulatory body of a governmental unit in this or another state or the Federal government; or is employed by a governmental unit of this State. This provision does not apply to an elected officer or employee of a federally recognized Indian tribe or to an elected precinct delegate.

Until June 30, 2018, an applicant will be ineligible if he or she has not been a Michigan resident for the two-year period immediately before the date the application is filed.

In determining whether to grant a license, the Board also may consider various specified factors, including the following:

- The sources and total amount of the applicant's capitalization to operate and maintain the proposed marijuana facility.
- Whether the applicant has filed, or had filed against it, a bankruptcy proceeding within the past seven years.
- Whether the applicant has a history of noncompliance with any regulatory requirements in this State or any other jurisdiction.
- Whether at the time of application the applicant is a defendant in litigation involving its business practices.

License Issuance & Renewal. The Board must issue a license to an applicant who submits a complete application and pays both the application fee and a regulatory assessment established by the Board for the first year of operation, if the Board determines that the applicant is qualified to receive a license. The Board must review all applications and inform each applicant of its decision.

A license will be issued for a one-year period and be renewable annually. Except as otherwise provided in the Act, the Board must renew a license if all of the following are met:

- The licensee applies to the Board on a renewal form provided by the Board that requires information prescribed by rules.
- The Board receives the application on or before the expiration date of the current license.
- The licensee pays the regulatory assessment required under the Act.
- The licensee meets any other renewal requirements set forth in rules.



If a renewal application is not submitted by the license's expiration date, the license may be renewed within 60 days after that date upon application, payment of the regulatory assessment, and satisfaction of any renewal requirement and late fee set forth in rules. The licensee may continue to operate during the 60-day period if the license is renewed by the end of that period.

The expiration of a license will not terminate the Board's authority to impose sanctions on the licensee.

In deciding on a renewal application, the Board must consider any specific written input it receives from an individual or entity within the local unit of government where the applicant is located.

Provision of Consent & Information. A licensee must consent in writing to inspections, examinations, searches, and seizures that are permitted under the Act, and provide a handwriting exemplar, fingerprints, photographs, and information as authorized in the Act and rules.

An applicant or licensee will have a continuing duty to provide information requested by the Board and to cooperate in any investigation, inquiry, or hearing conducted by the Board.

True Party of Interest. The Board may issue a license only in the name of the true party of interest.

For the following true parties of interest, information concerning the indicated individuals must be included in the disclosures required of an applicant or licensee:

- For an individual or sole proprietorship: the proprietor and spouse.
- For a partnership and limited liability partnership: all partners and their spouses.
- For a limited partnership and limited liability limited partnership: all general and limited partners and their spouses.
- For a limited liability company: all members, managers, and their spouses.
- For a privately held corporation: all corporate officers or people with equivalent titles and their spouses and all stockholders and their spouses.
- For a publicly held corporation: all corporate officers or people with equivalent titles and their spouses.
- For a multilevel ownership enterprise: any entity or person that receives or has the right to receive a percentage of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.
- For a nonprofit corporation: all individuals and entities with membership or shareholder rights in accordance with the articles of corporation or the bylaws, and their spouses.

License Exclusivity. Each license will be exclusive to the licensee, and a licensee or any other person must apply for and receive the Board's approval before a license is transferred, sold, or purchased. The attempted transfer, sale, or other conveyance of an interest of more than 1% in a license without prior Board approval will be grounds for suspension or revocation of the license or other sanction considered appropriate by the Board.

A licensee or other person may not lease, pledge, or borrow money against a license.

A State operating license will be a revocable privilege granted by the State and not a property right.

Proof of Financial Responsibility. Before the Board grants or renews a license, the licensee or applicant must file with LARA proof of financial responsibility for liability for bodily injury to a lawful user resulting from the manufacture, distribution, transportation, or sale of adulterated

marihuana or adulterated marihuana-infused product, in an amount of at least \$100,000. The proof of financial responsibility may be in the form of cash, unencumbered securities, a liability insurance policy, or a constant value bond executed by a surety company authorized to do business in the State. ("Bodily injury" does not include expected or intended effect or long-term adverse effect of smoking, ingesting, or consuming marihuana or marihuana-infused product.)

An insured licensee may not cancel liability insurance unless the licensee 1) gives 30 days prior written notice to LARA, and 2) procures new proof of financial responsibility and delivers that proof to LARA within 30 days after the Department receives the notice.

### Licensing Board

The five-member Medical Marihuana Licensing Board will be created within LARA. The members must be residents of the State appointed by the Governor. Not more than three may be from the same political party. One member must be appointed from three nominees submitted by the Senate Majority Leader and one from three nominees submitted by the Speaker of the House. The Governor must designate one member as the chairperson.

The members will be appointed for terms of four years, except, of those first appointed, one will be appointed for two years and two will be appointed for three years. The Governor may remove a member for neglect of duty, misfeasance, malfeasance, nonfeasance, or any other just cause.

A board member may not hold any other public office for which he or she receives compensation, except necessary travel or other incidental expenses.

A person will not be eligible to serve on the Board if he or she is not of good moral character or has been indicted for, charged with, or convicted of, pleaded guilty or no contest to, or forfeited bail concerning any felony or a misdemeanor involving a controlled substance violation, theft, dishonesty, or fraud.

Members must be reimbursed for all actual and necessary expenses and disbursements incurred in carrying out official duties.

In conjunction with the Board, LARA must employ an executive director and other personnel as necessary to assist the Board in carrying out its duties. The executive director may not hold any other office or employment.

### Board Responsibilities

The Board will have general responsibility for implementing the Act. The Board will have the powers and duties specified in the Act and all other powers necessary and proper to fully and effectively implement and administer the Act for the purpose of licensing, regulating, and enforcing the licensing and regulation system established under the Act for marihuana growth, processing, testing, and transportation. The Board will be subject to the Administrative Procedures Act.

The Board's duties will include the following:

- Granting or denying each application for a State operating license within a reasonable time.
- Deciding all license applications in reasonable order.
- Implementing and collecting the application fee, the regulatory assessment, and the tax on provisioning centers.
- Providing for the levy and collection of fines for a violation of the Act or rules.

- Providing oversight of a marihuana facility through the Board's inspectors, agents, and auditors and through the State Police or Attorney General for the purposes of certifying revenue, receiving complaints from the public, or conducting investigations into the operation of the facilities.
- Reviewing and ruling on any complaint by a licensee regarding investigative procedures of the State that are believed to be unnecessarily disruptive of marihuana facility operations.
- Holding at least two public meetings each year.

The Board also will be required to review the patterns of marihuana transfers by the licensees under the Act as recorded in a statewide database established for use in administering and enforcing the Act, and making recommendations to the Governor and the Legislature in a written annual report and additional reports requested by the Governor.

In addition, the Board will be required to provide oversight of marihuana facilities to ensure that marihuana-infused products meet health and safety standards that protect the public to a degree comparable to State and Federal standards applicable to similar food and drugs.

The Board may not promulgate a rule establishing a limit on the number or type of marihuana facility licenses that may be granted.

Except as otherwise provided in the Act and as described below, all information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the Board will be subject to FOIA.

Unless presented during a public hearing or requested by the licensee or applicant who is the sole subject of the data, all of the information, records, interviews, reports, statements, memoranda, or other data supplied to, created by, or used by the Board related to background investigations of applicants or licensees and to trade secrets, internal controls, and security measures of the licensees and applicants will not be subject to FOIA.

All information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the Board that have been received from another jurisdiction or local, state, or Federal agency under a promise of confidentiality, or whose release is otherwise barred by the statutes, rules, or regulations of that jurisdiction or agency or by an intergovernmental agreement, will not be subject to FOIA.

In addition, all information in the statewide monitoring system will not be subject to FOIA.

#### Board Jurisdiction over Facilities; Examination by Police

The Medical Marihuana Licensing Board will have jurisdiction over the operation of all marihuana facilities. The Board will have all powers necessary and proper to fully and effectively oversee the operation of marihuana facilities, including the authority to do all the following:

- Investigate applicants for State operating licenses, determine the eligibility for licenses, and grant licenses to applicants according to the Act and rules.
- Investigate all individuals employed by marihuana facilities.
- Enter the premises, offices, facilities, or other places of business of a licensee, at any time and without a warrant or notice to the licensee, if evidence of compliance or noncompliance with the Act or rules is likely to be found and consistent with constitutional limitations, for specified purposes.
- Investigate alleged violations of the Act or rules and take appropriate disciplinary action against a licensee.

- Require all relevant records of licensees to be kept on the premises authorized for operation of the marihuana facility of the licensee or in the manner prescribed by the Board.
- Require each licensee of a marihuana facility to submit to the Board a list of the stockholders or other people having a 1% or greater beneficial interest in the facility, in addition to any other information the Board considers necessary.
- Eject or exclude, or authorize the ejection or exclusion of, an individual from a marihuana facility if he or she violates the Act, rules, or final orders of the Board, subject to a subsequent hearing by the Board concerning the propriety of the ejection or exclusion.
- Conduct periodic audits of licensed facilities.
- Take disciplinary action as the Board considers appropriate to prevent practices that violate the Act and rules.
- Review a licensee that is under review or the subject of discipline by a regulatory body in any other jurisdiction for a violation of a controlled substance or marihuana law or regulation in that jurisdiction.

The Board may seek and must receive the cooperation and assistance of the Department of State Police in conducting background investigations of applicants and fulfilling its responsibilities under the Act. The Department of State Police may recover its costs of cooperation.

In addition, a marihuana facility and all articles of property in it will be subject to examination at any time by a local police agency or the Department of State Police.

#### Sanctions & Hearings

If an applicant or a licensee fails to comply with the Medical Marihuana Facilities Licensing Act or rules, if a licensee no longer meets the eligibility requirements for a license under the Act, if a licensee fails to comply with the Marihuana Tracking Act, or if an applicant or licensee fails to provide information the Board requests to assist in any investigation, inquiry, or Board hearing, the Board may deny, suspend, revoke, or restrict a license. The Board also may suspend, revoke, or restrict a license and require the removal of a licensee or an employee of a licensee for a violation of the Licensing Act, rules, the Marihuana Tracking Act, or any ordinances adopted by a municipality under the Licensing Act.

The Board may impose civil fines of up to \$5,000 against an individual and up to \$10,000 or an amount equal to the daily gross receipts, whichever is greater, against a licensee for each violation of the Licensing Act, rules, or an order of the Board.

The Board must comply with the Administrative Procedures Act when denying, revoking, suspending, or restricting a license or imposing a fine.

The Board may suspend a license without notice or hearing upon a determination that the safety or health of patrons or employees is jeopardized by continuing a marihuana facility's operation. If the Board does so, a prompt postsuspension hearing must be held to determine if the suspension should remain in effect. The suspension may remain in effect until the Board determines that the cause for suspension has been removed. The Board may revoke the license or approve a transfer or sale of the license upon determining that the licensee has not made satisfactory progress toward abating the hazard.

After denying an application for a license, the Board, upon request, must provide a public investigative hearing at which the applicant will be given the opportunity to present testimony and evidence to establish its suitability for a license. Other testimony and evidence may be presented, but the Board's decision must be based on the whole record before the Board and not be limited to testimony and evidence submitted at the hearing.

Except for license applicants who may be granted a hearing at the discretion of the Board, any party aggrieved by an action of the Board suspending, revoking, restricting, or refusing to renew a license, or imposing a fine, must be given a hearing before the Board upon request. A written request for a hearing must be made to the Board within 21 days after notice of the Board's action is served.

In addition, the Board may conduct investigative and contested case hearings, issue subpoenas for the attendance of witnesses; and issue subpoenas for the production of books, ledgers, records, memoranda, electronically retrievable data, and other pertinent records.

### Rules

In consultation with the Board, LARA must promulgate rules and emergency rules as necessary to implement, administer, and enforce the Act. The rules must ensure the safety, security, and integrity of the operation of marihuana facilities, and include rules to do the following:

- Set appropriate standards for marihuana facilities and associated equipment.
- Provide for the levy and collection of fines for a violation of the Act or rules.
- Prescribe use of the statewide monitoring system to track all marihuana transfers, and provide a funding mechanism to support the system.

The rules also must establish the following:

- Operating regulations for each category of licensee.
- Qualifications and restrictions for people participating in or involved with operating marihuana facilities.
- Testing standards, procedures, and requirements for marihuana sold through provisioning centers.
- Quality control standards, procedures, and requirements for marihuana facilities.
- Chain of custody standards, procedures, and requirements for facilities.
- Daily purchasing limits at provisioning centers for registered qualifying patients and registered primary caregivers to ensure compliance with the MMMA.
- Marketing and advertising restrictions for marihuana products and facilities.
- Maximum THC levels for marihuana and marihuana-infused products sold or transferred through provisioning centers.
- Restrictions on edible marihuana-infused products to prohibit shapes that would appeal to minors.
- Minimum levels of insurance that licensees must maintain.
- Health standards to ensure the safe preparation of products containing marihuana that are intended for human consumption in a manner other than smoke inhalation.

In addition, the rules must establish standards, procedures, and requirements for the following:

- Waste product disposal and storage by facilities.
- Chemical storage.
- The secure and safe transportation of marihuana between facilities.
- Storage of marihuana.

### Taxes, Fees, Funds, & Use of Appropriated Funds

Tax on Provisioning Center. A tax will be imposed on each provisioning center at the rate of 3% of its gross retail receipts. Within 30 days after the end of the calendar quarter, a provisioning center must remit the tax for the preceding quarter to the Department of

Treasury, along with a form showing the gross quarterly retail income of the center and the amount of tax due, and submit a copy to LARA.

The Department must administer the tax in accordance with the Licensing Act and the revenue Act. In the event of a conflict between those statutes, the Licensing Act will prevail.

If a law authorizing the recreational or nonmedical use of marihuana in the State is enacted, these provisions will not apply beginning 90 days after the effective date of that law.

Medical Marihuana Excise Fund. This Fund will be created in the State Treasury. Except for the application fee, the regulatory assessment, and any local licensing fees, all money collected from the tax on provisioning centers and all other fees, fines, and charges imposed under the Licensing Act must be deposited in the Medical Marihuana Excise Fund.

The money in the Fund must be allocated, upon appropriation, as follows:

- 25% to municipalities in which a marihuana facility is located, allocated in proportion to the number of facilities within the municipality.
- 30% to counties in which a marihuana facility is located, allocated in proportion to the number of facilities within the county.
- 5% to counties in which a marihuana facility is located, allocated in proportion to the number of facilities within the county, to be used exclusively to support the county sheriffs.
- 30% to the State for deposit in the State General Fund until September 30, 2017, and for deposit in the First Responder Presumed Coverage Fund beginning on October 1, 2017.
- 5% to the Michigan Commission on Law Enforcement Standards (MCOLES) for training local law enforcement officers.
- 5% to the Department of State Police.

The State Treasurer must direct the investment of the Medical Marihuana Excise Fund and credit to it interest and earnings from Fund investments. For auditing purposes, LARA will be the administrator of the Fund. Money in the Fund at the close of the fiscal year must remain in the Fund and not lapse to the General Fund.

Regulatory Assessment. A regulatory assessment must be collected annually from licensed growers, processors, provisioning centers, and secure transporters. Beginning in the first year in which marihuana facilities are authorized to operate in the State, and then annually, LARA, in consultation with the Board, must establish the total regulatory assessment at an amount that is estimated to be sufficient to cover the actual costs and support the expenditures listed below:

- The Department's costs to implement, administer, and enforce the Act, except for the costs to process and investigate license applications supported with the application fee.
- Expenses of medical marihuana-related legal services provided to LARA by the Department of Attorney General.
- Expenses of medical marihuana-related services provided to LARA by the State Police.
- Expenses of medical marihuana-related services provided by the Department of Treasury.
- \$500,000 to be allocated to LARA for expenditures of the Department for licensing substance use disorder programs.
- An amount equal to 5% of the sum of the preceding amounts (except the \$500,000) to be allocated to the Department of Health and Human Services (DHHS) for marihuana-related expenditures, including substance use disorder prevention, education, and treatment programs.
- Expenses related to the standardized field sobriety tests administered in enforcing the Michigan Vehicle Code.
- An amount sufficient to provide for the administrative costs of MCOLES.

By the date a licensee begins operating and then annually, each grower, processor, provisioning center, and secure transporter must pay to the State Treasurer an amount determined by LARA to reasonably reflect the licensee's share of the total regulatory assessment established by the Department.

The regulatory assessment for a Class A grower license may not exceed \$10,000.

Marihuana Regulatory Fund. The application fee and the regulatory assessment must be deposited in the Marihuana Regulatory Fund, which will be created in the State Treasury.

Except as provided for the allocation of \$500,000 of the regulatory assessment to LARA and a portion to the DHHS, LARA must spend money from the Fund, upon appropriation, only for implementing, administering, and enforcing the Act.

The State Treasurer must direct the investment of the Fund and credit to it interest and earnings from Fund investments. The Treasurer will be the administrator of the Fund for auditing purposes. Money in the Fund at the close of the fiscal year must remain in the Fund and not lapse to the General Fund.

Use of Appropriated Funds. The Department of Licensing and Regulatory Affairs may use any money appropriated to it from the Marihuana Registry Fund created in the MMMA for the purpose of funding the Department's and Board's operations in the initial implementation and subsequent administration and enforcement of the Medical Marihuana Facilities Licensing Act.

#### Inventory Control & Tracking System

A licensee must adopt and use a third-party inventory control and tracking system that is capable of interfacing with the statewide monitoring system to allow the licensee to enter or obtain information in that system, as required under the Act and rules. The inventory and control system must be capable of all of the following as necessary for the licensee to comply with the requirements applicable to the type of license:

- Track all marihuana plants, products, packages, patient and primary caregiver purchase totals, waste, transfers, conversions, sales, and returns that are linked to unique identification numbers.
- Track lot and batch information throughout the entire chain of custody.
- Track all products, conversions, and derivatives throughout the chain of custody.
- Track marihuana plant, batch, and product destruction.
- Track transportation of product.
- Report and track loss, theft, or diversion of product containing marihuana.
- Report and track adverse patient responses or dose-related efficacy issues.
- Report and track all sales and refunds.
- Electronically receive and transmit information as required under the Licensing Act, the MMMA, and the Marihuana Tracking Act.
- Receive test results electronically from a safety compliance facility via a secured application program interface into the system and directly link the testing results to each applicable source batch and sample.
- Identify test results that might have been altered.
- Provide the licensee with access to information in the tracking system that is necessary to verify that the licensee is carrying out the marihuana transactions authorized under the license according to the Licensing Act.
- Provide information to cross-check that product sales are made to a registered qualifying patient or registered primary caregiver and that the product received the required testing.
- Give LARA and State agencies access to information in the database to which they are authorized to have access.

- Give law enforcement agencies access to only the information in the database that is necessary to verify that an individual possesses a valid and current registry ID card.
- Give licensees access only to the information in the system that they are required to receive before a sale, transfer, transport, or other activity authorized under a license.
- Secure the confidentiality of information in the database by preventing access by an unauthorized person.
- Give LARA analytics regarding key performance indicators such as total daily sales, total plants in production, total plants destroyed, and total inventory adjustments.

The inventory control and tracking system also must be capable of performing complete batch recall tracking that clearly identifies all of the following details related to the specific batch subject to the recall:

- Sold product.
- Product inventory that is finished and available for sale.
- Product that is in the process of transfer.
- Product being processed into another form.
- Postharvest raw product, such as that in the drying, trimming, or curing process.

#### Protection from Prosecution & Other Sanctions

Licensees. Except as otherwise provided, if a person has been granted a State operating license and is operating within its scope, the licensee and its agents will not be subject to any of the following for activities described below:

- Criminal penalties under State law or a local ordinance regulating marihuana.
- State or local criminal prosecution for a marihuana-related offense.
- State or local civil prosecution for a marihuana-related offense.
- Search or inspection, except for an inspection authorized under the Act by law enforcement officers, the municipality, or LARA.
- Seizure of marihuana, real or personal property, or anything of value based on a marihuana-related offense.
- Any sanction, including disciplinary action or denial of a right or privilege, by a business or occupational or professional licensing board or bureau based on a marihuana-related offense.

The activities that will be protected are as follows:

- Growing, possessing, processing, or transporting marihuana.
- Purchasing, receiving, selling, transporting, or transferring marihuana from or to a licensee, a licensee's agent, a registered qualifying patient, or a registered primary caregiver.
- Possessing or manufacturing marihuana paraphernalia for medical use.
- Testing, transferring, infusing, extracting, altering, or studying marihuana.
- Receiving or providing compensation for products or services.

Property Owner or Lessor. Except as otherwise provided, a person who owns or leases real property on which a licensed facility is located and who has no knowledge that the licensee violated the Act, will not be subject to criminal penalties, prosecution, search or inspection, seizure, or other sanction (as listed above) for a marihuana-related offense.

Patient or Caregiver. A registered qualifying patient or registered primary caregiver will not be subject to criminal prosecution or sanctions for purchasing marihuana from a provisioning center if the quantity purchased is within the limits established under the MMMA. A registered primary caregiver will not be subject to criminal prosecution or sanctions for any transfer of 2.5 ounces or less of marihuana to a safety compliance facility for testing.



Affirmative Defense. The Act will not limit the medical purpose defense provided in Section 8 of the MMMA to any prosecution involving marihuana. (Section 8 allows a patient and a patient's primary caregiver, if any, to assert the medical purpose for using marihuana as a defense to any prosecution involving marihuana.)

Other Acts. For the purposes of regulating the commercial entities established under the Medical Marihuana Facilities Licensing Act, any provisions of the following acts that are inconsistent with that Act will not apply to a grower, processor, secure transporter, provisioning center, or safety compliance facility operating in compliance with the Licensing Act:

- The Business Corporation Act.
- The Nonprofit Corporation Act.
- Public Act 327 of 1931, which provides for the organization, regulation, and classification of corporations.
- The Michigan Revised Uniform Limited Partnership Act.
- The Michigan Limited Liability Company Act.
- Public Act 101 of 1907 (which regulates the conducting of business under an assumed or fictitious name).
- Public Act 164 of 1913 (which regulates copartnerships).
- The Uniform Partnership Act.

#### Marihuana Advisory Panel

The Marihuana Advisory Panel will be created in LARA and may make recommendations to the Board concerning promulgation of rules and, as requested by the Board or the Department, the administration, implementation, and enforcement of the Licensing Act and the Marihuana Tracking Act.

The Panel must consist of 17 members, including the following individuals or their designees: the Director of State Police, the DHHS Director, the LARA Director, the Attorney General, and the Director of the Department of Agriculture and Rural Development. In addition, the panel must include one registered medical marihuana patient or medical marihuana primary caregiver and one representative of each of the following, appointed by the Governor:

- Growers.
- Processors.
- Provisioning centers.
- Safety compliance facilities.
- Townships.
- Cities and villages.
- Counties.
- Sheriffs.
- Local police.
- Licensed physicians.
- Secure transporters.

The first appointed members must be appointed within three months after the Act's effective date. Appointed members will serve for terms of three years or until a successor is appointed, whichever is later.

The LARA Director must call the first meeting of the Panel within one month after it is appointed. At that meeting, the Panel must elect a chairperson and any other officers it considers necessary. After the first meeting, the Panel must meet at least twice each year, or more frequently at the call of the chairperson. The Panel will be subject to the Open Meetings Act, and its writings will be subject to FOIA.

Panel members must serve without compensation but may be reimbursed for their actual and necessary expenses incurred in performing their official duties as Panel members.

State departments and agencies must cooperate with the Panel and, upon request, provide it with meeting space and other necessary resources.

### Reports

Within 30 days after the end of each State fiscal year, each licensee must transmit to the Board and the municipality financial statements of the licensee's total operations. The financial statements must be reviewed by a certified public accountant in a manner and form prescribed by the Board. The CPA must be licensed in this State under the Occupational Code. His or her compensation must be paid directly by the licensee.

With its annual report concerning patterns of marihuana transfers by licenses, the Board must submit a report covering the previous year to the Governor and to the chairpersons of the legislative committees governing issues related to marihuana facilities. The report must include an account of Board actions, its financial position, results of operation under the Act, and any recommendations for legislation that the Board considers advisable.

### Licensee Employees

Subject to the laws of the State, before hiring a prospective employee, the holder of a license must conduct a background check of the individual. If the background check indicates a pending charge or conviction within the past 10 years for a controlled substance-related felony, a licensee may not hire the prospective employee without written permission of the Board.

### Municipal Ordinance

A municipality (a city, township, or village) may adopt an ordinance authorizing one or more types of marihuana facilities within its boundaries and limiting the number of each type of facility. A marihuana facility may not operate in a municipality unless the municipality has adopted an ordinance authorizing that type of facility.

A municipality also may adopt other ordinances related to marihuana facilities within its jurisdiction, including zoning regulations, but may not impose regulations regarding the purity or pricing of marihuana or interfering or conflicting with statutory regulation for licensing marihuana facilities.

A municipality must provide the following information to the Board within 90 days after the municipality receives notification from the applicant that he or she has applied for a license under the Act:

- A copy of the local ordinance that authorizes the marihuana facility within the municipality.
- A copy of any zoning regulations that apply to the proposed marihuana facility within the municipality.
- A description of any violation of the local ordinance or zoning regulations committed by the applicant, but only if those violations relate to activities licensed under the Act or the MMMA.

The Board may consider the information provided to it from the municipality in the application process. The municipality's failure to provide the information to Board, however, may not be used against the applicant.

A municipal ordinance may establish an annual, nonrefundable fee of up to \$5,000 on a licensee to help defray administrative and enforcement costs associated with the operation of a marihuana facility in the municipality.

Information a municipality obtains from an applicant under these provisions will be exempt from disclosure under FOIA.

#### Provisions Concerning Board Members, Appointees, Employees & Agents

Interest in Licensee; Disclosure Statements & Forms. The Board may not appoint or employ an individual if, during the three years immediately before appointment or employment, he or she held any direct or indirect interest in, or was employed by, a person who is licensed to operate under the Licensing Act or under a corresponding license in another jurisdiction or a person with an application for an operating license pending before the Board or in any other jurisdiction. The Board also may not employ an individual who has a direct or indirect interest in a licensee or marihuana facility.

In addition, the Board may not appoint or employ an individual if the individual or his or spouse, parent, child, child's spouse, sibling, or spouse of a sibling has an application for a license pending before the Board or is a member of the board of directors of, or an individual financially interested in, any licensee or marihuana facility.

Each member of the Board, the executive director, and each key employee as determined by LARA must file with the Governor a financial disclosure statement listing all assets and liabilities, property and business interests, and sources of income of the individual and his or her spouse, if any, affirming that the member, executive director, and key employee are in compliance with provisions described above.

Other than the executive director and a key employee, each Board employee must file with the Board a financial disclosure statement listing all assets and liabilities, property and business interests, and sources of income of the employee and his or her spouse.

In addition, each Board member must prepare and file with the Governor's office and the Board a disclosure form, making certain affirmations and disclosures regarding various interests. Each Board employee also must file with the Board an annual employee disclosure form, making certain affirmations and disclosures. The forms must be filed by January 31 each year.

Additional Disclosures & Limitations. If a Board member, employee, or agent within the previous 10 years has been indicted for, charged with, or convicted of, pleaded guilty or no contest to, or forfeited bail concerning a misdemeanor involving controlled substances, dishonesty, theft, or fraud, or a substantially corresponding local ordinance in any state involving controlled substances, dishonesty, theft, or fraud, or a felony under Michigan law, the laws of any other state, or the laws of the United States or any other jurisdiction, the Board member, employee, or agent immediately must provide detailed written notice to the chairperson.

Any Board member, employee, or agent who is negotiating for, or who acquires by any means, any interest in any person who is a licensee or an applicant, or anyone affiliated with such a person, immediately must provide written notice of the details of that interest to the chairperson, and may not act on behalf of the Board with respect to that person.

A Board member, employee, or agent may not enter into any negotiations for employment with any person or affiliate of any person who is a licensee or an applicant, and immediately must give the chairperson written notice of the details of any such negotiations or discussions in progress. The member, employee, or agent may not take action on behalf of the Board with respect to that person.

The same notice requirement and restriction apply if a Board member, employee, or agent receives an invitation to initiate a discussion concerning employment with a person or an affiliate of a person who is a licensee or an applicant.

A licensee or applicant may not knowingly initiate a negotiation for or discussion of employment with a Board member, employee, or agent. A licensee or applicant who does so must notify the chairperson upon becoming aware that the negotiation or discussion has been initiated.

A Board member, employee, or agent may not disseminate or otherwise disclose any material or information in possession of the Board that it considers confidential unless specifically authorized to do so by the chairperson.

Additional restrictions apply to the acceptance of a gift, gratuity, compensation, travel, lodging, or anything of value from a licensee or applicant, by a Board member, employee, or agent or his or her parent, spouse, sibling, spouse of a sibling, child, or spouse of a child. A licensee or applicant also may not offer to give a Board member, employee, or agent anything that he or she may not accept.

A Board member, employee, or agent may not engage in any conduct that constitutes a conflict of interest and must advise the chairperson immediately of any incident or circumstances that would present a conflict of interest with respect to performing Board-related work or duties.

A Board member, employee, or agent who is approached and offered a bribe immediately must provide a written account of the details to the chairperson and to a law enforcement officer of an agency having jurisdiction.

A member, employee, or agency must disclose his or her past involvement with any marijuana enterprise in the past five years and may not engage in political activity or politically related activity during his or her appointment or employment.

Additional prohibitions and reporting requirements apply to ex parte communications between a licensee or applicant, or an affiliate or representative of a licensee or applicant, and a Board member. (An "ex parte" communication refers to a communication without notice to or participation of another party.)

A Board employee or agent must receive permission from the executive director before continuing outside employment held at the time of beginning work for the Board. If permission is granted, the employee or agent may not conduct any business or perform any activities related to outside employment on premises used by the Board or during the employee's working hours for the Board.

Except as allowed under the MMMA, a Board member, employee, or agent may not enter into any personal transaction involving marijuana with a licensee or applicant.

If a licensee or applicant, or an affiliate or representative of a licensee or applicant, violates these provisions, the Board may deny a license application, revoke or suspend a license, or take other disciplinary action, as provided above.

A violation by a Board member may result in disqualification or constitute cause for removal or other disciplinary action, as recommended by the Board to the Governor.

A violation by an employee or agent will not require termination of employment if the Board determines that the conduct did not violate the purpose of the Act. Termination will be required, however, under certain circumstances involving an employee or agent who acquires

a financial interest in a licensee or applicant, or if the employee or agent is a spouse, parent, child, or spouse of a child of a Board member.

Subsequent Employment, Interest, or Contract; Representation. A member of the Board, the executive director, or a key employee may not hold any direct or indirect interest in, be employed by, or enter into a contract for services with an applicant, a Board licensee, or a marihuana facility for a period of four years after the date his or her employment or Board membership terminates.

For two years after the date his or her employment with the Board is terminated, an employee may not acquire any direct or indirect interest, be employed by, or enter into a contract for services with any applicant, licensee, or marihuana facility.

For two years after the termination of his or her office or employment with the Board, a Board member or employee may not represent any person or party other than the State before or against the Board.

A business entity in which a former Board member, employee, or agent has an interest, or any partner, officer, or employee of the business entity, may not make any appearance or represent a party that the former member, employee, or agent is prohibited from appearing for or representing.

#### Legislative Finding

The Act states the following: "The legislature finds that the necessity for access to safe sources of marihuana for medical use and the immediate need for growers, processors, secure transporters, provisioning centers, and safety compliance facilities to operate under clear requirements establish the need to promulgate emergency rules to preserve the public health, safety, or welfare."

### **House Bill 4210**

#### Definitions

The bill defines "marihuana-infused product" as a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marihuana that is intended for human consumption in a manner other than smoke inhalation. A marihuana-infused product may not be considered a food for purposes of the Food Law.

Currently, "usable marihuana" means the dried leaves and flowers of the marihuana plant, and any mixture or preparation of them, but does not include the seeds, stalks, and roots of the plant. The bill defines "usable marihuana" as the dried leaves, flowers, plant resin, or extract of the marihuana plant, not including the seeds, stalks, or roots.

The bill defines "marihuana plant" as any plant of the species *cannabis sativa* L, and defines "plant" as any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.

Currently, "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 associated symptoms. Under the bill, this definition applies to the term "medical use of marihuana", and includes the extraction of marihuana, as well as its acquisition, possession, cultivation, etc. The term also applies to marihuana-infused products, in addition to marihuana and paraphernalia.

### Manufacturing Marihuana-Infused Product

The MMMA authorizes the Department of Licensing and Regulatory Affairs to issue a registry identification card to a qualifying patient (a person who has been diagnosed by a physician as having a debilitating medical condition), if the person submits a written certification from a physician, a fee, and specified information. A registered patient is not subject to arrest, prosecution, or penalty for the medical use of marihuana if the amount does not exceed quantities specified in the Act and the possession and use of marihuana meet particular standards. The Act also extends privileges against arrest, prosecution, or other penalty to primary caregivers who assist qualifying patients with the medical use of marihuana, if they register with the Department, are connected with qualifying patients through the registration process, and comply with various restrictions.

Under the bill, a person will not be subject to arrest, prosecution, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for manufacturing a marihuana-infused product if the person is either of the following:

- A registered qualifying patient, manufacturing for his or her own personal use.
- A registered primary caregiver, manufacturing for the use of a patient to whom the caregiver is connected through LARA's registration process.

### Illegal Transfer of Marihuana-Infused Product or Marihuana

The bill prohibits a qualifying patient from transferring a marihuana-infused product or marihuana to any individual.

The bill also prohibits a primary caregiver from transferring a marihuana-infused product to any individual who is not a qualifying patient to whom the caregiver is connected through LARA's registration process.

### Transportation or Possession of Marihuana-Infused Product in Motor Vehicle

Except as provided below, the bill prohibits a qualifying patient or primary caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle.

The prohibition will not apply to a qualifying patient if the marihuana-infused product is in a sealed and labeled package that is carried in the trunk of the vehicle or, if the vehicle does not have a trunk, carried so as not to be readily accessible from the interior of the vehicle. The label must state the weight of the marihuana-infused product in ounces, name of the manufacturer, date of manufacture, name of the person from whom the product was received, and date of receipt.

The prohibition also will not apply to a primary caregiver if the marihuana-infused product is accompanied by an accurate marihuana transportation manifest and enclosed in a case carried in the trunk of the vehicle or, if the vehicle does not have a trunk, carried so as not to be readily accessible from the interior of the vehicle. The manifest must state the weight of the marihuana-infused product in ounces, name and address of the manufacturer, date of manufacture, destination name and address, date and time of departure, estimated date and time of arrival, and, if applicable, name and address of the person from whom the product was received and date of receipt.

In addition, the prohibition will not prohibit a primary caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle for the use of his or her child, spouse, or parent who is a qualifying patient if the product is in a sealed and labeled package that is carried in the trunk of the vehicle or, if the vehicle does not have a trunk,

carried so as not to be readily accessible from the interior of the vehicle. The label must state the weight of the marijuana-infused product in ounces, name of the manufacturer, date of manufacture, name of the qualifying patient, and, if applicable, name of the person from whom the product was received and date of receipt.

For purposes of determining compliance with quantity limitations under the MMMA, the bill creates a rebuttable presumption that the weight of a marijuana-infused product listed on its package label or on a marijuana transportation manifest is accurate.

A qualifying patient or primary caregiver who violates these provisions will be responsible for a maximum civil fine of \$250.

#### Maximum Amount of Marijuana Allowed for Possession

The MMMA provides that a qualifying patient who has been issued and possesses a registry identification card may not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, for the medical use of marijuana in accordance with the Act, provided the qualifying patient possesses an amount of marijuana that does not exceed 2.5 ounces of usable marijuana.

The MMMA extends the same protections to a primary caregiver who assists a qualifying patient to whom the caregiver is connected through LARA's registration process with the medical use of marijuana in accordance with the Act. This applies only if the primary caregiver possesses an amount of marijuana that does not exceed 2.5 ounces of usable marijuana for each qualifying patient to whom he or she is connected through the registration process.

Under the bill, the amount that a qualifying patient or a primary caregiver may possess may not exceed "a combined total of 2.5 ounces of usable marijuana and usable marijuana equivalents".

For purposes of determining usable marijuana equivalency, the following must be considered equivalent to one ounce of usable marijuana:

- Sixteen ounces of marijuana-infused product if in a solid form.
- Seven grams of marijuana-infused product if in a gaseous form.
- Thirty-six fluid ounces of marijuana-infused product if in a liquid form.

The bill defines "usable marijuana equivalent" as the amount of usable marijuana in a marijuana-infused product calculated as provided above.

#### Immunity for Transfer, Purchase, or Sale Pursuant to Licensing Act

Under the bill, a registered qualifying patient or registered primary caregiver will not be subject to arrest, prosecution, or penalty in any manner, and may not be denied any right or privilege, including civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for any of the following:

- Transferring or purchasing marijuana in an amount authorized by the MMMA from a provisioning center licensed under the Medical Marijuana Facilities Licensing Act.
- Transferring or selling marijuana seeds or seedlings to a grower licensed under that Act.
- Transferring marijuana for testing to and from a safety compliance facility licensed under that Act.

## Scope of the MMMA

The MMMA states that it does not allow a person engage in certain activities. These include operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marihuana. The bill extends this to operating, navigating, or being in actual physical control of a snowmobile or off-road recreational vehicle.

Also, under the bill, the Act will not permit a person to separate plant resin from a marihuana plant by butane extraction in any public place or motor vehicle, or inside or within the curtilage of any residential structure. A person also will not be permitted to separate plant resin from a marihuana plant by butane extraction in a manner that demonstrates either a failure to exercise reasonable care or reckless disregard for the safety of others.

## Verification of Registry ID Card

The Act requires LARA to verify to law enforcement personnel whether a registry ID card is valid, without disclosing more information that is reasonably necessary to verify the authenticity of the card. The bill also requires such verification to the necessary database created in the Marihuana Tracking Act as established by the Medical Marihuana Facilities Licensing Act.

## Appropriation

The Act created the Michigan Medical Marihuana Fund. The bill refers to that Fund as the "Marihuana Registry Fund".

For the fiscal year ending September 30, 2016, the bill appropriates \$8.5 million from the Marihuana Registry Fund to LARA for its initial costs of implementing the Medical Marihuana Facilities Licensing Act and the Marihuana Tracking Act.

## Statements of Intent & Retroactivity

The bill contains the following language:

This amendatory act clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in section 2(b) of the Michigan medical marihuana act...:

"(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.*" [Emphasis added.]

(Please note: The emphasis is added in the bill.)

The bill also states, "This amendatory act is curative and applies retroactively to the following: clarifying the quantities and forms of marihuana for which a person is protected from arrest, precluding an interpretation of 'weight' as aggregate weight, and excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense."

The bill also specifies, "Retroactive application of this amendatory act does not create a cause of action against a law enforcement officer or any other state or local governmental officer, employee, department, or agency that enforced this act under a good-faith interpretation of its provision at the time of enforcement."



## **House Bill 4827**

### Tracking System

The Marihuana Tracking Act required the Department of Licensing and Regulatory Affairs to establish a statewide monitoring system for use as an integrated marihuana tracking, inventory, and verification system. "Statewide monitoring system" means an internet-based, statewide database established, implemented, and maintained directly or indirectly by LARA that is available to licensees under the Medical Marihuana Facilities Licensing Act, law enforcement agencies, and authorized State departments and agencies on a 24-hour basis for all of the following:

- Verifying registry identification cards.
- Tracking marihuana transfer and transportation by licensees, including the transferee, date, quantity, and price.
- Verifying in a commercially reasonable time that a transfer will not exceed the limit that a registered qualifying patient or registered primary caregiver is authorized to receive under the MMMA.

The system must allow for interface with third-party inventory and tracking systems, as described in the Licensing Act, to provide for access by the State, licensees, and law enforcement personnel, to the extent they need and are authorized to receive or submit the information, to comply with, enforce, or administer the Marihuana Tracking Act, the MMMA, or the Licensing Act.

At a minimum, the system must be capable of storing and providing access to information that, in conjunction with one or more third-party inventory control and tracking systems under the Licensing Act, allows all of the following:

- Verification that a registry ID card is current and valid and has not been suspended, revoked, or denied.
- Retention of a record of the date, time, quantity, and price of each sale or transfer of marihuana to a registered qualifying patient or registered primary caregiver.
- Determination of whether a particular sale or transfer transaction will exceed the permissible limit established under the MMMA.
- Effective monitoring of marihuana seed-to-sale transfers.
- Receipt and integration of information from third-party inventory control and tracking systems under the Licensing Act.

### Rules for Incorporating Information

The Department must promulgate rules to govern the process for incorporating information concerning registry ID card renewal, revocation, suspension, and changes and other information applicable to licensees, registered primary caregivers, and registered qualifying patients that must be included and maintained in the statewide monitoring system.

### LARA Bids & Contract

The Department must seek bids to establish, operate, and maintain the statewide monitoring system. It must evaluate bids based on the cost of the service and the ability to meet all of the requirements of the Marihuana Tracking Act, the MMMA, and the Licensing Act.

The Department must give strong consideration to the bidder's ability to prevent fraud, abuse, and other unlawful or prohibited activities associated with the commercial trade in marihuana in Michigan, and the ability to provide additional tools for the administration and enforcement of the Marihuana Tracking Act, the MMMA, and the Licensing Act.

The Department also must ensure that the contract awardee does not disclose or use the information in the system for any use or purpose except the enforcement, oversight, and implementation of the MMMA or the Licensing Act.

In addition, LARA must require the contract awardee to deliver the functioning system within 180 days after the contract is awarded.

The Department may terminate a contract with an awardee for a violation of the Marihuana Tracking Act. An awardee may be barred from award of other State contracts under the Act for a violation.

### Information Disclosure

The information in the system will be confidential and exempt from disclosure under FOIA. Information in the system may be disclosed for purposes of enforcing the Marihuana Tracking Act, the Michigan Medical Marihuana Act, and the Medical Marihuana Facilities Licensing Act.

MCL 333.27101-333.27801 (H.B. 4209)  
333.26423 et al. (H.B. 4210)  
333.27901-333.27904 (H.B. 4827)

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### **FISCAL IMPACT**

#### **House Bills 4209 and 4827**

In total, the bills would have a potentially positive fiscal impact on State government, and an indeterminate fiscal impact on local units of government.

House Bill 4209 creates the Medical Marihuana Licensing Board, which will be supported primarily by staff and resources from the Department of Licensing and Regulatory Affairs, as well as the Department of State Police and the Attorney General. In consultation with the Board, LARA will establish application fees for prospective licensees as well as an annual regulatory assessment. Revenue from these sources will be deposited into the Marihuana Regulatory Fund, which also will be established under the bill. It is unclear how much the fees will be for the various types of licenses, but the bill specifies that 1) application fees must reflect the actual costs associated with processing and investigating the application, and 2) the regulatory assessment must reflect the ongoing costs of implementation, administration, and enforcement of the Medical Marihuana Facilities Licensing Act, including costs incurred by LARA, the Department of State Police, and the Attorney General. The regulatory assessment also will include \$500,000 for LARA to use for substance abuse disorder programs, and a 5% surcharge on the regulatory assessment factors, which will be allocated to the Department of Health and Human Services for marihuana-related expenditures including substance use disorder prevention, education, and treatment programs. The regulatory assessment also will include expenses related to field sobriety tests and a sufficient amount for that Michigan Commission Law Enforcement Standards to provide training and oversight. The total regulatory assessment burden will then be split between each licensee to reasonably reflect the proportion of the total cost that each licensee represents.

The Department of Licensing and Regulatory Affairs has estimated the ongoing cost to administer the Act at about \$21.1 million annually. This figure includes \$13.2 million to hire 113.0 full-time equated employees (FTEs) within LARA for application processing, licensing, and enforcement, \$6.0 million to hire 34.0 FTEs within the Department of State Police for enforcement, and \$550,000 for Attorney General costs. The remaining \$1.5 million<sup>1</sup> is related

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<sup>1</sup> Estimates do not add due to rounding.

to ongoing information technology (IT) costs, contractual services, Civil Service assessments, travel, and other overhead expenses.

These estimates are likely on the high end, as LARA's portion of the costs was estimated based on the current staffing of the Michigan Liquor Control Commission (MLCC), which oversees licensing and enforcement of 17,250 unique locations statewide. Since the medical marijuana market in Michigan cannot support this number of licensees (i.e., 17,250 licensees would mean one grower, processor, provisioning center, secure transporter, or safety compliance facility for every 11.8 registered medical marijuana patients, assuming all patients participated in the market, which is unlikely), the actual number of unique locations will likely be significantly smaller. On the other hand, the amount of regulatory and enforcement work done under the Act on behalf of each unique location could be greater than what the MLCC currently does at each location it regulates.

Conversely, the cost estimate for the Department of State Police was made using the Michigan Gaming Control Board (MGCB) as a model. This estimate may be lower than actual costs, depending on the amount of work required. The responsibilities of the State Police as they pertain to the MGCB are very different than what will be required under the Act. In their work with the MGCB, State Troopers actively patrol and are responsible for police work at the casinos in Detroit, which are three very large establishments in a small geographical area. Under the Act, the work done by the State Police will be statewide, covering a large number of relatively small establishments. Ultimately, the final determination as to the resources from the Marijuana Regulatory Fund that will be dedicated to the Department of State Police will be made when the regulatory assessment is finalized each year.

To help put these estimates in context, in 2015 in Colorado, which has a 2.9% tax on medical marijuana sold at provisioning centers, registered patients each spent an average of \$3,487<sup>2</sup> on retail medical marijuana during the year. If Michigan patients follow similar buying patterns, based on 204,018 registered patients in FY 2015-16, the total medical marijuana market in Michigan will be about \$711.4 million. This assumes that medical marijuana prices, buying habits, availability, and other factors will be consistent with those in Colorado. Using LARA's estimates, the regulatory cost of this market will be about 3.0% of gross sales. This estimate additionally assumes that the number of registered patients remains static, and assumes a developed market. It is likely that the actual size of Michigan's market will be significantly smaller for some period of time as market participants enter the market.

The bill also establishes a 3% tax on the gross retail receipts of provisioning centers. Revenue from this tax will be deposited in the Medical Marijuana Excise Fund (created under the bill), and will be distributed as follows: 25% to municipalities with medical marijuana facilities in proportion to the number of facilities; 30% to counties with medical marijuana facilities in proportion to the number of facilities; 5% to counties with medical marijuana facilities in proportion to the number of facilities, solely to support county sheriffs (funds that may not supplant other funding received by the county sheriffs); until September 30, 2017, 30% to the State General Fund; beginning October 1, 2017, 30% to the First Responder Presumed Coverage Fund; 5% to the Michigan Commission on Law Enforcement Standards for training on enforcement of the Act; and 5% to the Department of State Police. Using the above estimate for the size of Michigan's medical marijuana market, this tax will raise about \$21.3 million per year, which will be distributed as follows: \$5.3 million to municipalities, \$6.4 million to counties, \$6.4 million to the State General Fund/First Responder Presumed Coverage Fund (before/after September 30, 2017), and \$1.1 million each to county sheriffs, the Michigan Commission on Law Enforcement Standards, and the Department of State Police. [Table 1](#), below, summarizes the revenue distribution.

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<sup>2</sup> Average is imputed using 2015 monthly patient count and excise tax revenue data from the Colorado Department of Public Health and Environment and the Colorado Department of Revenue.

Table 1  
Medical Marihuana Excise Fund Distribution

<b>Medical Marihuana Excise Fund Earmark</b>	<b>Percentage</b>	<b>Amount</b>
First Responder Presumed Coverage Fund (GF/GP prior to 10/1/2017)	30%	\$6,402,600
Counties	30%	6,402,600
Municipalities	25%	5,335,500
Sheriffs	5%	1,067,100
MCOLES	5%	1,067,100
State Police	5%	1,067,100
<b>TOTAL</b>	<b>100%</b>	<b>\$21,342,000</b>

The sale of medical marihuana at provisioning centers also could be subject to sales tax, as a recommendation that a patient would benefit from use of marihuana will not necessarily be interpreted as "dispensed by prescription", a necessary condition for exemption from the sales tax. If medical marihuana sold at provisioning centers is subject to sales tax, those sales will generate an additional \$42.7 million in sales tax revenue. Of that, about \$31.3 million will go to the School Aid Fund, \$4.3 million will be dedicated to constitutional revenue sharing, and \$7.1 million will go to the State General Fund.

In addition, House Bill 4209 will have a number of smaller fiscal impacts on the State and local units of government. The bill allows for a local licensing fee of up to \$5,000 annually for a marihuana facility, which will generate an unknown amount of revenue for local governments that elect to pursue that option. The bill also allows LARA to penalize violations of the Licensing Act by levying a civil fine of up to \$5,000 against individuals and \$10,000 against licensees. The bill does not specify who will receive this fine revenue, but in other similar cases, fine revenue is kept by the agency issuing the fine.

Finally, LARA has estimated that there will be \$726,000 in initial IT and database costs related to the marijuana and database tracking system established in House Bill 4827 and the initial purchase of IT equipment for the new employees. These costs will be covered by the funds appropriated under House Bill 4210.

### **House Bill 4210**

The bill will have a positive fiscal impact on the State and an indeterminate fiscal impact on local governments. It expands the allowable defenses to prosecution for consuming usable marihuana types and associated derivative products under the Michigan Medical Marihuana Act. For local government, there may be added administrative costs in interpreting what will become legal consumption of usable marihuana under the bill and what remains illegal. Additionally, the bill creates a new civil fine for the unauthorized transfer of a marihuana-infused product.

A decrease in misdemeanor or felony arrests and convictions may decrease resource demands on local court systems, law enforcement, and jails or prisons. For any decrease in prison intakes, in the short term, the marginal savings to State government will be approximately \$3,764 per prisoner per year. In the long term, if the decreased intake of prisoners reduced the total prisoner population enough to allow the Department of Corrections to close a housing unit or an entire facility, the marginal savings to State government would be approximately \$34,550 per prisoner per year. Any associated increase in fine revenue will increase funding to public libraries.

The bill also establishes a civil fine of up to \$250 for qualifying patients or primary caregivers who improperly transport a marihuana-infused product. It is unknown how much revenue this

fine will raise; additionally, the bill does not specify who will receive this fine revenue, but in other similar cases, fine revenue is kept by the agency issuing the fine.

Finally, House Bill 4210 renames the Michigan Medical Marihuana Fund to the Marihuana Registry Fund, and appropriates \$8.5 million from the Fund to the Department of Licensing and Regulatory Affairs for its initial costs related to the implementation of the Medical Marihuana Facilities Licensing Act and the Marihuana Tracking Act.

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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.