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MEDICAL MARIHUANA FACILITIES ACT AND MARIHUANA TRACKING ACT

House Bill 4209 (passed by the House as H-5)
Sponsor: Rep. Mike Callton, D.C.

House Bill 4210 (passed by the House as H-2)
Sponsor: Rep. Lisa Posthumus Lyons

House Bill 4827 (passed by the House as H-1)
Sponsor: Rep. Klint Kesto

Committee: Judiciary
Complete to 1-4-16

SUMMARY:

House Bill 4209 creates the Medical Marihuana Facilities Licensing Act to establish a licensing and regulation framework for medical marihuana growers, processors, secure transporters, provisioning centers, and safety compliance facilities. The regulatory framework created by the bill for marihuana draws on elements of the regulatory structure in place for alcohol under the Michigan Liquor Control Code and gaming under the Michigan Gaming Control and Revenue Act.

House Bill 4827 creates the Marihuana Tracking Act to require the establishment of a "seed-to-sale" system to track marihuana grown, processed, transferred, stored, or disposed of under the Medical Marihuana Facilities Licensing Act (House Bill 4209).

House Bills 4209 and 4827 are tie-barred to each other, meaning neither could take effect unless both are enacted.

House Bill 4210 amends the Michigan Medical Marihuana Act to, among other things, allow for the manufacture and use of marihuana-infused products by qualifying patients and manufacture and transfer of such products by primary caregivers to their patients.

All three bills would take effect 90 days after enactment.

BRIEF SUMMARY OF HB 4209:

The bill is tie-barred to the Marihuana Tracking Act (House Bill 4827). A brief summary of significant provisions of House Bill 4209 follows:

- A state operating license, renewed annually, would be required to operate as a grower, processor, provisioning center, secure transporter, or safety compliance facility. The application process for licensure requires written approval of the

applicant and of the marihuana facility location by the municipality (city, township, or village) in which the marihuana facility is to be located.

- A municipality could enact an ordinance to authorize one or more types of marihuana facilities, and limit the number of each type of facility, within its boundaries; charge an annual local licensing fee up to $5,000; and enact other ordinances related to marihuana facilities such as zoning ordinances.

- The Medical Marihuana Licensing Board would be created within the Department of Licensing and Regulatory Affairs (LARA). The Board would have general responsibility for implementing the act and all powers necessary and proper to fully and effectively implement and administer the act.

- Licensees, registered qualifying patients, and registered primary caregivers (hereinafter "patient" and "caregiver") would receive specified protection from criminal or civil prosecutions or sanctions ***if*** they were in compliance with the act. "A registered qualifying patient" would include a visiting qualifying patient.

- A tax rate of 3% would be imposed on the gross retail income of each provisioning center.

- Rather than annual renewal license fees, an annual regulatory assessment would be imposed on licensees to pay for medical-marihuana-related services or expenses of certain state agencies.

- Two new funds would be created to receive revenue from taxes, application fees, annual regulatory assessments, fines, and other charges.

- Rules would be required to be promulgated as specified in the bill, including the establishment of maximum THC levels for medical edibles sold at provisioning centers and daily purchasing limits by patients and caregivers to ensure compliance with the Michigan Medical Marihuana Act.

- Licensees would have to file annual financial statements, prepared by a certified public accountant, of their total operations.

- A Marihuana Advisory Panel would be created within LARA to make recommendations concerning rules and the administration of the act.

BRIEF SUMMARY OF HOUSE BILL 4827:

Briefly, the bill would:

- Require the system to track, among other things, lot and batch information throughout the chain of custody; all sales and refunds; plant, batch, and product destruction; inventory discrepancies; loss, theft, or diversion of products containing marihuana; and adverse patient responses.

- Require the system to track patient purchase limits and flag purchases in excess of authorized limits.
- Provide real-time access to the system to local law enforcement agencies, state agencies, and the Department of Licensing and Regulatory Affairs (LARA).
- Require operation of the system to comply with HIPAA and exempt information in the system from disclosure under FOIA.
- Require licensees under the proposed Medical Marihuana Facilities Licensing Act (House Bill 4209) to supply LARA with tracking or testing information regarding each plant, product, package, batch, test, sale, or recall in or from the licensee's possession or control. A provisioning center would have to include information identifying the patient to, or for whom, the sale was made and the primary caregiver, if applicable, to whom the sale was made.
- Create penalties for a licensee who willfully fails to comply with the reporting requirements: a civil infraction for a first offense and a misdemeanor penalty for a second or subsequent offense.

BRIEF SUMMARY OF HOUSE BILL 4210:

The bill would, among other things:

- Revise the definitions of "medical use" and "usable marihuana" to include products using extracts and plant resins (known as "edibles").
- Define "marihuana-infused product" and "usable marihuana equivalent."
- Provide immunity to a qualifying patient or caregiver from arrest or prosecution or penalty for certain conduct.
- Prohibit transporting or possessing a marihuana-infused product in a vehicle except as specified. Create a civil fine for a violation.
- Prohibit using butane to separate resin from a marihuana plant in a residential structure.
- Specify the bill is curative and the provisions retroactive.

DETAILED SUMMARY OF HB 4209

Legislative Findings/Emergency Rules

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.

[The emergency rule process, governed under MCL 24.248, eliminates some of the procedures (e.g., certain notice and participation procedures) and thus is much shorter than the traditional process. The emergency rule is effective on filing and remains in effect until a date fixed in the rule or six months after the date of its filing, whichever is earlier. The rule may be extended once for not more than six months.]

Part 1. General Provisions

"Grower" would mean a licensee that is a commercial grower entity located in the state that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center.

"Marihuana" means that term as defined in Section 7106 of the Public Health Code.

"Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana that is intended for human consumption in a manner other than smoke inhalation.

"Person" means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, trust, or other legal entity.

"Processor" means a licensee that is a commercial facility located in the 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 the state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to patients, directly or through the patient's caregiver. The term includes any commercial property where marihuana is sold at retail to patients or caregivers. A noncommercial location used by a caregiver to assist a patient connected to the caregiver through LARA's marihuana registration process in accordance with the Michigan Medical Marihuana Act is not a provisioning center.

"Registered primary patient," which means a qualifying patient who has been issued a current registry identification card under the Michigan Medical Marihuana Act (MMMA), would be expanded to include a visiting qualifying patient as that term is defined in Section 3 of the MMMA.

"Safety compliance center" is a licensee that is a commercial entity that receives marihuana from a marihuana facility or a registered qualifying patient or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, and returns it to the marihuana facility or a registered qualifying patient or registered primary caregiver with the test results.

"Secure transporter" means a licensee that is a commercial entity located in the state that stores, transfers, and transports marihuana between separate marihuana facilities for a fee.

"State operating license" or "license" means a license issued under the act that, except for mobile secure transporter licensees, allows the licensee to operate at a single site as **any** of the following, specified in the license: a grower, processor, secure transporter, provisioning center, safety compliance facility.

Part 2. Application of Other Laws

Licensees: In general, when engaging in certain protected activities, *a person granted a state operating license who is operating within the scope of the license, and the licensee's agents*, are not subject to criminal penalties regulating marihuana; state or local criminal or civil prosecution for marihuana-related offenses; certain searches or inspections; seizure of marihuana, real or personal property, or anything of value based on a marihuana-related offense; or license or other sanctions by a business, occupational, or professional licensing board or bureau based on a marihuana-related offense.

Protected activities include growing marihuana; purchasing, receiving, selling, transporting, or transferring marihuana from or to a licensee or its agent, a patient, or a caregiver; possessing, processing, or transporting marihuana; possessing or manufacturing marihuana paraphernalia for medical use; testing, infusing, extracting, altering, transferring, or studying marihuana; and receiving or providing compensation for products or services.

A person who owns or leases real property upon which a licensed facility is located, and who had no knowledge that the licensee violated the act, would be protected from certain marihuana-related criminal penalties, state or local civil or criminal prosecution based on a marihuana-related offense, seizure of real or person property based on a marihuana-related offense, and sanctions by a business or occupational or professional licensing board or bureau.

Any other state law that is inconsistent with the act would not apply to a marihuana facility operating in compliance with the act.

Patients and caregivers: A patient or caregiver would not be subject to criminal prosecution or sanctions for purchases of marihuana from a provisioning center *if* the quantity purchased is within the limits established under the Michigan Medical Marihuana Act (MMMA).

Further, the act would not limit the medical purpose defense provided in Section 8 of the MMMA to any prosecution involving marihuana.

Municipalities: A municipality could enact ordinances to authorize one or more types of marihuana facilities within its boundaries and could also limit the number of each type of facility. A facility could not be licensed unless an authorizing ordinance has been adopted.

The ordinance could establish an annual, nonrefundable licensing fee of not more than $5,000 to defray administrative and enforcement costs associated with the operation of a marihuana facility. Other ordinances relating to facilities, including zoning restrictions, could also be adopted. However, regulations that interfere or conflict with uniform statewide regulation of licensees could not be imposed.

Municipalities adopting authorizing ordinances must approve each applicant for a new state operating license before the Medical Marihuana Licensing Board can consider the

application. Information obtained by the municipality from an applicant for this purpose would be exempt from disclosure under the Freedom of Information Act.

Rules: LARA, in consultation with the Board, is required to 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.

The rules must include, among other things, appropriate standards for facilities; minimum levels of insurance for licensees; establish testing standards; provide for the levy and collection of fines for violations of the act or rules; establish chain of custody standards and standards for waste disposal; establish procedures for securely and safely transporting marihuana between marihuana facilities; and establish labeling and packaging standards, procedures, and requirements for marihuana sold or transferred through provisioning centers (including a prohibition on labeling or packaging intended to appeal to or has the effect of appealing to minors), and marketing and advertising restrictions for marihuana products and facilities.

The rules must also establish daily purchasing limits at provisioning centers for patients and caregivers to ensure compliance with the Michigan Medical Marihuana Act. Further, the rules must establish the maximum tetrahydrocannabinol (THC) levels for marihuana-infused products sold of transferred through provisioning centers as well as restrictions on edible marihuana-infused products to prohibit shapes that would appeal to minors.

Part 3. Medical Marihuana Licensing Board

The Medical Marihuana Licensing Board is created within LARA and consists of five members who are residents of the state, appointed by the governor, not more than three of whom could be members of the same political party. One member must be appointed from a list of three nominees submitted by the Senate Majority Leader and one from three nominees submitted by the Speaker of the House. The chairperson would be appointed by the governor. Other than initial appointees, board members would serve for four years. Members would be reimbursed for all actual and necessary expenses and disbursements incurred in carrying out official duties. Board members could not hold any other public office for which they received compensation other than necessary travel or other incidental expenses.

The bill establishes qualifications and disqualifications for appointment, grants the governor authority to remove a member for neglect of duty or other just causes, requires the employment of an executive director and other personnel as necessary to assist the Board, and lists circumstances that would disqualify persons from appointment or employment and other restrictions on and responsibilities for Board members, the executive director, and employees similar to those in place for corresponding positions under the Michigan Gaming Control and Revenue Act. For example, the Board could not employ an individual if the individual's interest in a licensee or marihuana facility constituted a controlling interest in that licensee or facility.

The board has the power 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 act's licensing and regulation system for marihuana growth, processing, testing, and transporting. It is subject to the Administrative Procedures Act and its duties include, but are not limited to, the following:

- Granting or denying applications for a state operating license within a reasonable time.
- Conducting public meetings in accordance with the Open Meetings Act.
- Implementing and collecting the application fee and, in conjunction with the Department of Treasury, the tax and regulatory assessment described by the act.
- Providing for the levy and collection of fines for violations 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 purpose of certifying the revenue, receiving complaints from the public, or conducting investigations into the operation of a marihuana facility as considered necessary and proper to ensure compliance with the act and rules and to protect and promote the overall safety, security, and integrity of the operation of a marihuana facility.
- Reviewing and ruling on any complaint by a licensee regarding any investigative procedures of the state believed to be unnecessarily disruptive of marihuana facility operations. In order to prevail, a licensee must establish by a preponderance of the evidence that the procedures unreasonably disrupted its marihuana facility operations.
- Reviewing the patterns of marihuana transfers by licensees and making recommendations to the governor and the Legislature in a written annual report.

With some exceptions, all information, records, interviews, reports, statements, memoranda, or other data supplied to or used by the Board are subject to the Freedom of Information Act. For example, information in the statewide database of marihuana transactions would not be subject to FOIA, neither would information used by the Board for background investigations of applicants or licensees.

The Board also has the authority to investigate applicants for state operating licenses, determine license eligibility, and grant licenses, as well as investigate employees of licensees. The Board may seek and must receive the cooperation and assistance of the Department of State Police and Department of Attorney General in conducting background investigations of applicants and in fulfilling its responsibilities. It may investigate alleged violations of the act or rules and take appropriate disciplinary action against licensees. Under certain circumstances, and without a warrant or notice, the Board through its investigators, auditors, or state police may enter the premises of a licensee for specified purposes such as inspection and examination of the premises and inspect, examine, and audit relevant records and impound or seize records, etc., if the licensee fails to cooperate.

The Board is also authorized to conduct investigative and contested case hearings; issue subpoenas for the attendance of witnesses as well as for the production of books, ledgers, records and other pertinent documents; and administer oaths and affirmations. The executive director or a designee could also issue subpoenas and administer oaths and affirmations.

Certain conduct by Board members, employees, and licensees and applicants is prohibited, such as offering or taking bribes. A violation could result in expulsion from the board, termination from employment, or license sanctions as applicable.

Part 4. Licensing

A person may apply to the Board for state operating licenses in the categories of Class A, B, or C grower; processor; provisioning center; secure transporter; or safety compliance facility beginning 180 days after the bill's effective date. A license would be valid for one year. The application must be made under oath on a form provided by the Board and contain information as specified in the bill. Required information includes a description of the type of marihuana facility, written approval of the facility location from the municipality, certain criminal history information pertaining to the applicant, financial information, projected or actual gross receipts, and the identity of every person having a greater than one percent direct or indirect ownership interest in the applicant, among other things. The board would be required to use information provided on the application as a basis to conduct a thorough background investigation on the applicant.

The application must be accompanied by a nonrefundable application fee to defray costs associated with the background investigation conducted by the Board. LARA, in consultation with the Board, must set the amount of the application fee for each category and class of license by rule. If the costs of the investigation and processing the application exceed the application fee, the applicant must pay the additional amount to the Board. If a deficiency in an application is identified, the Board must provide the applicant with a reasonable period of time to correct the deficiency.

If the Board determines the applicant is qualified, it must issue a license to an applicant who submits a complete application and pays both the nonrefundable application fee and the regulatory assessment established for the first year of operation. The bill lists numerous disqualifying circumstances, such as a conviction within the past five years of a misdemeanor or a similar local ordinance involving a controlled substance, theft, dishonesty, or fraud.

The bill also lists circumstances and factors that the Board may consider in determining an applicant's eligibility for licensure, such as moral character and reputation, relevant criminal history, or bankruptcy filings within the past seven years.

An applicant must also submit a passport quality photograph and set of fingerprints for each person having a greater than one percent ownership interest in the facility or who is an officer, director, or managerial employee of the applicant.

Licensees must consent in writing to inspections, examinations, searches, and seizures that are permitted under the act and must provide a sample of handwriting, fingerprints, photographs, and information as authorized in the act or by rules.

A state operating license is issued only in the name of the true party of interest, and, except for mobile secure transporter licensees, allows the licensee to operate at a single site as a

grower, processor, secure transporter, provisioning center, or safety compliance facility. Board approval must be obtained before a license is transferred, sold, or purchased.

License renewal. Licenses would be renewable annually. Except as otherwise provided in the bill, the Board would be required to renew a license **if all** of the following requirements were met:

- The renewal application is made on a form provided by the Board that requires information prescribed in rules.
- The application is received by the Board on or before the expiration date of the current license.
- The regulatory assessment is paid (payment of an annual regulatory assessment replaces the annual renewal fee typical of state licenses).
- The licensee meets any other renewal requirements set forth in rules.

LARA must notify the licensee by mail or email advising of the time, procedure, and regulatory assessment under Section 603 of the bill. However, failure to receive notice under this provision would not relieve the licensee of the responsibility to renew the license.

If not submitted by the current license's expiration date, the license could be renewed within the following 60 days upon application, payment of the regulatory assessment, and satisfaction of any renewal requirement and late fee set forth in rules. The licensee could continue to operate during the 60 days after the license expired **if** the license were renewed by the end of that 60-day period. The Board would retain authority to impose sanctions on a licensee whose license has expired.

Further, in making a decision on an application for renewal, the Board is required to consider any specific written input it receives from an individual or entity within the local unit of government in which the renewal applicant is located.

License sanctions. Failure to transfer, sell, or otherwise convey an interest of more than one percent in a license without Board approval is grounds for suspension or revocation of the license, or any other sanction considered appropriate by the Board.

If an applicant or licensee fails to comply with the act or rules, fails to comply with the Marihuana Tracking Act (HB 4827), no longer meets the eligibility requirements for a license, or fails to provide information as requested by the Board to assist in any investigation, inquiry, or Board hearing, then the board may suspend, deny, revoke, or restrict the license.

The Board may suspend, revoke, or restrict a license and require the removal of a licensee or an employee for a violation of the act, rules, the Marihuana Tracking Act, or any local ordinance.

Each violation of the act, rules, or an order of the Board may result in the imposition of civil fines 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.

The Board must comply with the Administrative Procedures Act when imposing a license sanction, fine, or penalty. A license could be suspended without notice or hearing if the safety or health of patrons or employees is jeopardized by continuing a marihuana facility's operation. If a license is suspended without notice or hearing, a prompt post-suspension hearing must be held to determine if the suspension should remain in effect. If the licensee does not make satisfactory progress toward abating the hazard, the Board may revoke the license or approve a transfer or sale of the license. In addition, the bill provides for hearings, upon request, for license denials and for any party aggrieved by an action of the Board imposing a license sanction or fine or failing to renew a license.

Employees: A licensee must conduct a background check of a prospective employee before the person is hired. Written permission must be obtained from the Board before hiring a person who has a pending charge or conviction within the past five years for a controlled substance-related felony.

(Note: The bill does not specify if this would be a fingerprint or name-based background check. If a name-based check through ICHAT, the state's Internet Criminal History Access Tool, only the public criminal history record information maintained by the Michigan State Police would be accessible. The following information would not be included: federal, tribal, traffic, or juvenile records; local misdemeanors; and criminal history from other states.)

Part 5. Licensees

The license categories are as follows:

Grower License: The license authorizes the grower to grow not more than the following number of plants under the indicated license class:

- Class A–500 plants.
- Class B–1,000 plants.
- Class C–1,500 plants.

A grower license authorizes sales of marihuana seeds or seedlings only to a grower by means of a secure transporter and the purchase of marihuana seeds or seedlings only from a grower, patient, or caregiver. The sale of marihuana, other than seeds or seedlings, can be made only to a processor or provisioning center. Other than transferring marihuana to and from a safety compliance facility for testing or to or from a processor or provisioning center located within the same marihuana facility, a grower could only transfer marihuana by means of secure transporter.

The license applicant and each investor in the grower could not have a greater than 10 percent interest in a secure transporter or a safety compliance facility. In addition, a grower would have to comply with the following requirements:

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

- While holding a license as a grower, not be a registered primary caregiver and not employ an individual who is simultaneously a registered primary caregiver.
- Enter each transfer of marihuana into the state's database for marihuana tracking, as provided in the Marihuana Tracking Act (House Bill 4827).

Processor License: The license authorizes purchase of marihuana only from a grower and sale of processed marihuana or marihuana-infused products only to a provisioning center. Other than transferring marihuana to and from a safety compliance facility for testing or to or from a grower or provisioning center located within the same marihuana facility, a processor could only transfer marihuana by means of secure transporter.

The applicant for a processor license and each investor in the processor could not have a greater than 10 percent interest in a secure transporter or a safety compliance facility. In addition, a processor would have to comply with the following requirements:

- Until December 31, 2021, have a minimum of two years' experience as a registered primary caregiver or have an active employee with such experience.
- While holding a license as a processor, not be a registered primary caregiver and not employ an individual who is simultaneously a registered primary caregiver.
- Enter each transfer of marihuana into the state's database for marihuana tracking, as provided in the Marihuana Tracking Act (House Bill 4827).

Secure Transporter License: This license authorizes the licensee to store and transport marihuana and money associated with the purchase or sale of marihuana between separate marihuana facilities for a fee upon request of a person with legal custody of that marihuana or money.

The applicant for a secure transporter license and each investor with a greater than 10 percent interest in the secure transporter could not have a greater than 10 percent interest in a grower, processor, provisioning center, or a safety compliance facility. Each transfer of marihuana must be entered into the state's database for marihuana tracking, as provided in the Marihuana Tracking Act.

Provisioning Center License: The license authorizes the purchase and transfer of marihuana only from a grower or processor, and sale and transfer to only 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. The license also authorizes the transfer of marihuana to or from a safety compliance facility for testing.

To be eligible for a provisioning center license, an applicant and each investor in the provisioning center could not have more than a 10 percent interest in a secure transporter or safety compliance facility. Further, a provisioning center would have to comply with the following requirements:

- Sell or transfer marihuana to a patient or caregiver only after it has been tested and bears the label required for retail sale.

- Enter each transfer of marihuana into the state's database for marihuana tracking as provided in the Marihuana Tracking Act (proposed by House Bill 4827).

In addition, the bill prohibits alcoholic beverages from being sold or distributed on the premises of a provisioning center.

Safety Compliance Facility License: The license authorizes the facility to receive, test, and return marihuana. The facility must be accredited by an entity approved by the Board by one year after the date the license is issued. The Board may grant a variance from this requirement upon a finding 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 a greater than 10 percent interest in the safety compliance facility, could not have a greater than 10 percent interest in a grower, secure transporter, processor, or provisioning center.

A safety compliance facility would have to comply with the following requirements:

- Perform tests to certify that marihuana is reasonably free of chemical residues such as fungicides and insecticides.
- Use validated test methods to determine levels of tetrahydrocannabinol, tetrahydrocannabinol acid, cannabidiol, and cannabidiol acid.
- Perform tests that determine whether the marihuana complies with the standards established by LARA for microbial and mycotoxin contents.
- Perform other tests necessary to determine compliance with any other good manufacturing practices as prescribed in rules.
- Enter each transfer of marihuana into the state's database for marihuana tracking under the Marihuana Tracking Act, along with test results.

Part 6. Taxes and Fees

A tax would be imposed on each provisioning center at the rate of 3 percent of the provisioning center's gross retail income. If a law authorizing the recreational or non-medical use of marihuana in the state is enacted, Section 601 imposing this tax cease to apply beginning 90 days after that law's effective date.

Taxes imposed under this provision would be administered by the Department of Treasury, and in case of a conflict with the Revenue Act (Public Act 122 of 1941), the provisions of the Medical Marihuana Facilities Licensing Act would prevail.

Medical Marihuana Excise Fund: The fund would be created in the state treasury. Except for the license application fee, the annual regulatory assessment, and any local licensing fees, all money collected under the 3 percent tax described above and all other fees, fines, and charges imposed under the act must be deposited in the Fund.

All interest and earnings from Fund investments would be credited to the Fund and money remaining in the Fund at the close of a fiscal year must remain in the Fund and not lapse to the General Fund. LARA would be the administrator of the Fund for auditing purposes.

Money in the Fund would be allocated, upon appropriation, as follows:

- 30 percent to the municipalities in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the municipality.
- 40 percent to the counties in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the county.
- 5 percent to the sheriffs of the counties in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the county. Money allocated under this subdivision must be used exclusively to support county sheriffs and shall be in addition to and not a replacement for any other funding received by the county sheriffs.
- 25 percent to the state to be deposited in the state General Fund.

Regulatory Assessment: A regulatory assessment would be imposed on certain licensees. All of the following must be included in establishing the total amount of the regulatory assessment established under this provision (Section 603):

- LARA's costs to implement, administer, and enforce the act (except for the costs to process and investigate applications for an initial license, which is supported by its own fee structure).
- Expenses of medical-marihuana-related legal services provided by the attorney general.
- Expenses of medical-marihuana services provided to LARA by the Department of State Police.
- $500,000 to be allocated to LARA expenditures for licensing substance use disorder programs.
- An amount equal to 5 percent of the sum of the amounts provided for under the above allocations to be allocated to the Department of Health and Human Services for marihuana-related expenditures including, but not limited to, substance use disorder prevention, education, and treatment programs.

The regulatory assessment is in addition to the initial license application fees, the 3 percent excise tax on provisioning centers, and any local licensing fees. It will be collected annually from licensed growers, processors, provisioning centers, and secure transporters. The regulatory assessment for a Class A grower license (no more than 500 plants) could not exceed $10,000.

Beginning in the first year that marihuana facilities are authorized to operate in the state, and annually thereafter, LARA (in consultation with the Board), would be required to establish the total regulatory assessment at an amount that is estimated to be sufficient to cover the actual costs and support the expenditures listed above.

Further, on or before the date a licensee begins operating and annually thereafter, 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 in the preceding provision. (Presumably this would

mean that larger businesses would bear the greater burden of the regulatory assessment since they may require more oversight than would a smaller operation.)

Marihuana Regulatory Fund. The MRF would be created in the state treasury, with the state treasurer as the administrator for auditing purposes. Revenue collected under the annual regulatory assessment and the initial license application fee must be deposited in the MRF. Fund interest and earnings from investments would be credited to the MRF and money in the Fund at the close of the fiscal year would remain in the Fund and not lapse to the General Fund. Money from the MRF would be expended upon appropriation, and only for implementing, administering, and enforcing the act.

FY 2016 Appropriation. The bill requires an appropriation to LARA from the Marihuana Regulatory Fund for the fiscal year ending September 30, 2016, of $8.5 million for funding LARA's and the Board's operations in implementing, administering, and enforcing the act.

Part 7. Reports

By 30 days after the end of each state fiscal year, each licensee must transmit to the Board and to the municipality compiled financial statements of the licensee's total operations. The financial statements must be compiled by a state-licensed certified public accountant (CPA) in a manner and form prescribed by the Board. The licensee would bear the cost of compensation for the CPA.

The Board must submit a report to the governor and the chairs of the legislative committees that govern issues related to marihuana facilities covering the previous year, and include in the report an account of the Board actions, its financial position, results of operation under the act, and any recommendations for legislation that the Board considers advisable. This report must be included as part of an annual report that must be prepared for the governor and legislature and submitted by April 15 of each year. This annual report would include recommendations by the Board, a statement of receipts and disbursements by the Board, actions taken by the Board, and any additional information and recommendations that the Board considers appropriate or that the governor requests.

Part 8. Marihuana Advisory Panel

The Marihuana Advisory Panel would be created within LARA. The 15-member panel would include the director of the Department of State Police, director of the Department of Health and Human Services, director of LARA, the attorney general, and the director of the Michigan Department of Agriculture and Rural Development, or their designees. The rest of the membership would be appointed by the governor as follows:

- One registered medical marihuana patient or medical marihuana primary caregiver.
- One representative of growers.
- One representative of provisioning centers.
- One representative of safety compliance facilities.
- One representative of townships.
- One representative of cities and villages.
- One representative of counties.

- One representative of sheriffs.
- One representative of local police.
- One state-licensed physician.

The bill would establish the process for appointments and filling vacancies, and how often the panel would meet. The panel would be subject to the Open Meetings Act and the Freedom of Information Act. Panel members would serve without compensation but could be reimbursed for actual and necessary expenses.

The panel would make recommendations to the Board concerning promulgation of rules, and as requested by the Board or LARA, administration of the new act. State departments and agencies must cooperate with the panel and upon request, provide it with meeting space and other resources to assist it in the performance of its duties.

DETAILED SUMMARY OF HB 4827

House Bill 4827 requires the Department of Licensing and Regulatory Affairs (LARA) to establish, maintain, and utilize a system to track marihuana that is grown, processed, transferred, stored, or disposed of under the Medical Marihuana Facilities Licensing Act (House Bill 4209). This could be accomplished either directly or by contract. The system would be operated in compliance with the federal Health Insurance Portability and Accountability Act (HIPAA).

System Platform*:* The bill requires the system to be hosted on a platform that allows dynamic allocation of resources, data redundancy, and recovery from a natural disaster within hours.

System Capabilities: All of the following capabilities would be required:

- Tracking all plants, products, packages, patient and primary caregiver purchase totals, waste, transfers, conversions, sales, and returns that, if practicable, are linked to unique ID numbers.
- Tracking lot and batch information, as well as all products, conversions, and derivatives, throughout the entire chain of custody.
- Tracking plant, batch, and product destruction.
- Tracking transportation of product.
- Performing complete batch recall tracking that clearly identifies certain details specified in the bill relating to the specific batch subject to the recall; e.g., sold product, product available for sale, and product being processed into another form.
- Reporting and tracking loss, theft, or diversion of products containing marihuana; all inventory discrepancies; adverse patient responses or dose-related efficacy issues; and all sales and refunds.
- Tracking patient purchase limits and flagging purchases in excess of authorized limits.
- Receiving electronically submitted information required to be reported under the bill.

- Receiving testing results electronically from a safety compliance facility via a secured application program interface into the system and directly linking the testing results to each applicable source batch and sample.
- Flagging test results having characteristics indicating that they may have been altered.
- Providing information to cross-check that product sales are made to a qualified patient or designated primary caregiver and that the product received the required testing.
- Providing real-time access to information in the database to LARA, local law enforcement agencies, and state agencies.
- Providing LARA with real-time analytics regarding key performance indicators such as total daily sales, total plants in production, total plants destroyed, and total inventory adjustments.

Supplying Information to the System: Persons licensed under the Medical Marihuana Facilities Licensing Act (House Bill 4209) would be required to supply LARA with the relevant tracking or testing information in the form required by the department regarding each plant, product, package, batch, test, transfer, conversion, sale, recall, or disposition of marihuana in or from the person's possession or control. A provisioning center would be required to include information identifying the patient to whom or for whom the sale was made and, if applicable, the primary caregiver to whom the sale was made. LARA could require this information to be submitted electronically.

Penalties: A licensee under the Medical Marihuana Facilities Licensing Act who willfully violates the reporting requirements described above would be responsible for a state civil infraction and could be ordered to pay a civil fine of not more than $1,000.

A second or subsequent willful violation would be a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $2,500, or both.

Confidentiality: The information in the system established by LARA would be confidential and not subject to disclosure under the Freedom of Information Act. However, information could be disclosed in order to enforce the Michigan Medical Marihuana Act and the Medical Marihuana Facilities Licensing Act (House Bill 4209).

DETAILED SUMMARY OF HB 4210

House Bill 4210 would amend the Michigan Medical Marihuana Act (MMMA) to do the following (MCL 333.26423 et al.).

Goal of act and retroactivity: The bill specifies that it clarifies ambiguities in the law in accordance with the original intent of the people, as expressed in Section 2(b) of the MMMA. Further, the bill states that it is curative and applies retroactively as 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.

- Excluding an added inactive substrate component of a preparation in determining the amount of marihuana, medical marihuana, or usable marihuana that constitutes an offense.

Definitions.

- Change the term "medical use" to "medical use of marihuana" and revise the definition to include the extraction of marihuana and marihuana-infused products.

- Revise the definition of "usable marihuana" to include, in addition to dried leaves and flowers, the plant resin or extract of the marihuana plant. (The term does not include the seeds, stalks, or roots of the plant.)

- Define "marihuana-infused product" to mean 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 would not be considered a food for purposes of the Food Law.

- Define "usable marihuana equivalent" as the amount of usable marihuana in a marihuana-infused product as calculated under Section 4(c). Section 4(c) provides that in determining usable marihuana equivalency, one ounce of usable marihuana would be considered equivalent to (a) 16 ounces of marihuana-infused product if in a solid form; (b) 7 grams if in a gaseous form; and (c) 36 fluid ounces if in a liquid form.

  The MMMA sets a 2.5 ounces of marihuana-per patient possession limit. In determining whether a patient or primary caregiver did not exceed the per-patient possession limit, the combined total of both usable marijuana equivalents and usable marihuana would have to be considered.

Marihuana-infused product: A registered qualifying patient who was manufacturing a marihuana-infused product for personal use, or a registered primary caregiver manufacturing for the use of his or her qualifying patient, would not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including, but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau.

The following would be prohibited:

- A qualifying patient transferring a marihuana-infused product to any individual.
- A primary caregiver transferring a marihuana-infused product to any individual who is not one of the caregiver's qualifying patients.

Immunity for transferring, purchasing, or selling to licensees under House Bill 4209.

IF the Medical Marihuana Facilities Licensing Act (House Bill 4209) is enacted into law, a registered qualifying patient or registered primary caregiver would not be subject to arrest, prosecution or penalty in any manner, or denied any right or privilege, including but not limited to, civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, for any of the following:

- Transferring or purchasing marihuana in an amount authorized by the MMMA from a provisioning center licensed under the Medical Marihuana Facilities Licensing Act (House Bill 4209).
- Transferring or selling marihuana seeds or seedlings to a grower licensed under the Medical Marihuana Facilities Licensing Act (House Bill 4209).
- Transferring marihuana for testing to and from a safety compliance facility licensed under the Medical Marihuana Facilities Licensing Act.

Transporting or possessing marihuana-infused product in a motor vehicle. A qualifying patient or primary caregiver would be prohibited from transporting or possessing a marihuana-infused product in or upon a motor vehicle except as follows:

- For a qualifying patient:
  - The product is in a sealed and labeled package carried in the trunk of the vehicle (or if there is no 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.

- For a primary caregiver:
  - The product is accompanied by an accurate marihuana transportation manifest and enclosed in a case carried in the trunk of the vehicle (or if no trunk, enclosed in a case and carried so as not to be readily accessible from the interior of the vehicle).
  - The manifest form must state the weight of each 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.

The bill would not prohibit a caregiver from transporting or possessing a marihuana-infused product in or upon a motor vehicle for the use of the caregiver's own child, spouse, or parent who is 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 carried so as not to be readily accessible from the interior of the vehicle if it does not have a trunk). The label must state the weight of the 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 marihuana-infused product was received and date of receipt.

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

A qualifying patient or primary caregiver who violates the provisions regarding transport or possession of a marihuana-infused product in a motor vehicle would be responsible for a civil fine of not more than $250.

Miscellaneous provisions: The bill also would:

- Prohibit using butane extraction inside a residential structure to separate plant resin from a marihuana plant.

- Prohibit the operation, navigation, or actual physical control of a snowmobile or off-road recreational vehicle while under the influence of marihuana.

- Replace the term "use of medical marihuana" with "medical use of marihuana."

- Rename the *Michigan Medical Marihuana Fund* as the *Marihuana Registry Fund*.

FISCAL IMPACT:

House Bills 4209 (H-5) and 4827 (H-1), as passed by the House, would have a fiscal impact on the state government to the extent that the bills would establish a regulatory regime for the medical marihuana market implemented, administered, and enforced by LARA (with support from the Departments of Attorney General, Health and Human Services, and State Police) and would authorize LARA to prescribe and impose licensure application fees, regulatory assessments, and fines and penalties. The bills would also have a fiscal impact on local units of government to the extent that municipalities opt to permit marihuana facilities to operate within their jurisdiction, establish and enforce additional regulatory provisions, and levy initial licensure application fees of up to $5,000 per annum. Lastly, the bills could have a fiscal impact on the state and local units of government to the extent that the excise tax on marihuana purchased by provisioning centers generates revenue that would be distributed to municipalities, counties, sheriffs, and the state's General Fund.

The bills would grant LARA the authority to prescribe annual licensure application fees for, and charge amounts in excess of the fees to, (aspirant) marihuana facilities to offset the costs of processing applications and investigating applicants for state operating licenses.

Similarly, the bills would authorize LARA to establish and annually adjust an annual regulatory assessment levied on marihuana facilities to offset the regulatory and enforcement costs of LARA; the expenses of the Departments of Attorney General and State Police related to medical marihuana; and statutory allocations to the Department of Health and Human Services for marihuana-related expenditures (e.g., substance use disorder prevention, education, and treatment programs) and LARA for the licensing of substance abuse facilities (a.k.a. substance use disorder programs) pursuant to Part 62 of the Public Health Code of 1978.[1]

[1] According to information provided by the State Budget Office during the FY 2015-16 budget development, there were approximately 1,275 licensed substance use disorder programs operating in the state. Historically and currently through the end of FY 2014-15, entities licensed to provide substance use disorder programs did not pay licensure fees to support the costs of inspecting and otherwise regulating substance use disorder programs. Such costs were borne by the existing resources of the department, which were insufficient to support full compliance with statutorily required inspections. As recommended by the Governor, the Legislature passed 2015 PA 104, which amended the Public Health Code of 1978 to establish a $500 annual licensure fee for substance use disorder programs and reduce the frequency of periodic inspections. At the time that the amendments were under deliberation by the Legislature,

Consequently, the revenues generated by the application fees and regulatory assessment would likely be sufficient to adequately offset LARA's costs to implement, administer, and enforce its duties under the bills.

LARA has estimated that the costs associated with the bills would total approximately $21.1 million annually with $726,000 in one-time information technology expenses. This estimate utilizes a "worst-case scenario" which assumes that:

- LARA would employ 113.0 FTEs for the licensing and enforcement duties under the bills at an annual cost of $13.3 million. This assumption is based on the personnel employed by the Licensing and Enforcement Divisions of the Michigan Liquor Control Commission (LCC) to oversee approximately 17,250 retail liquor licensees.
- The Department of State Police (MSP) would provide 34.0 FTEs for criminal enforcement activities related to medical marihuana at an annual cost of $6.0 million. This assumption is based on the personnel employed by the MSP to provide criminal enforcement activities for the Michigan Casino Gaming Board (MGCB).
- The Department of Attorney General (AG) would provide 4.0 FTEs for legal and prosecutorial support related to medical marihuana at an annual cost of $500,000.
- Remaining annual costs consist of telecom and information technology support ($380,000); contractual services ($350,000); travel ($250,000); equipment, supplies, and materials ($240,000); as well as one-time costs for development and implementation of the marihuana tracking information technology system ($500,000) and initial purchases of information technology equipment ($226,000).[2]

As mentioned above, the bills would authorize LARA to prescribe application fees and adjust the regulatory assessment to generate sufficient revenues to adequately offset the costs of implementing, administering, and enforcing the bills. However, LARA seems to have based its estimates of these costs on assumptions that appear to anticipate the legalization and regulation of marihuana for recreational use. Although the costs estimated by LARA could be appropriate, and potentially accurate, for a scenario in which the recreational use of marihuana is legalized, they do not seem strictly applicable to the provisions of the bills.

According to a statistical report prepared by the Bureau of Health Care Services, there were 147,421 qualifying medical marihuana patients at the close of FY 2013-14; these patients currently either grow their own marihuana or obtain it from their primary caregivers pursuant to the Michigan Medical Marihuana Act of 2008 and could continue to do so irrespective of whether the bills is enacted into law. If the costs estimated above were divided equally amongst medical marihuana patients, assuming that all patients opt to purchase marihuana from provisioning centers, which would certainly not be the case, the average amount ultimately incurred by each patient would be approximately $143 per year.

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the department stated that revenue generated by the new licensure fee (approximately $637,500 annually) would be sufficient to offset the costs of inspecting and otherwise regulating substance use disorder programs.

[2] The costs of developing, implementing, operating, and maintaining the marihuana tracking system would ultimately be dependent on the technical specifications and applications of the system; whether the system is provided by the Department of Technology, Management, and Budget (DTMB) or procured via contact a third-party vendor (e.g. Bio-Tech Medical Software, Inc., MJ Freeway Business Solutions, Franwell); and, if the latter, on the outcome of a competitive RFP process.

This amount would be in addition to the existing application fees for registry identification cards and the effects on marihuana prices of the costs of statutory testing and transportation requirements, wholesale and retail markups by marihuana facilities, and the 3.0% excise tax on retail sales. There is a possibility that the medical marihuana market envisioned under the bills would not bear the regulatory costs as estimated by LARA, as medical marihuana patients could opt to continue to produce marihuana or procure it from caregivers or on the black market rather than pay potentially higher prices charged by provisioning centers.

The amount of revenue that would be generated by the 3.0% excise tax imposed on the gross retail income of provision centers and distributed to local units of government (45.0% to counties, of which 5.0% would be earmarked for sheriffs' offices, and 30.0% to municipalities) and the state's General Fund (25.0%) is currently unknown and is dependent upon the numerous interrelated and dynamic factors affecting both the licit and illicit markets for marihuana, and whether the market envisioned under the bills could bear the regulatory costs estimated by LARA.

House Bill 4210 adds a civil fine for violations pertaining to the unlawful transport of marihuana-infused products in a motor vehicle. House Bill 4827 adds new misdemeanors offense and civil infractions. Misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Misdemeanor fines and civil infraction fines are constitutionally dedicated to public libraries.

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