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MEDICAL MARIHUANA FACILITIES ACT AND MARIHUANA TRACKING ACT

House Bill 4209 as enacted
Public Act 281 of 2016
Sponsor: Rep. Mike Callton, D.C.

House Bill 4210 as enacted
Public Act 283 of 2016
Sponsor: Rep. Lisa Posthumus Lyons

House Bill 4827 as enacted
Public Act 282 of 2016
Sponsor: Rep. Klint Kesto

House Committee: Judiciary
Senate Committee: Judiciary/Discharged
Complete to 10-20-16

OVERVIEW:

The package of bills deals with the production, transporting, and retail sale of medical marihuana.

It establishes a licensing and regulatory framework for medical marihuana provisioning centers (i.e., retail sellers to patients and caregivers), growers, processors, secure transporters, and safety compliance facilities, and imposes a 3% tax on retailers. It also creates a "seed-to-sale" tracking system for medical marihuana, and, among other things, allows for the manufacture and use of marihuana-infused products (such as products known as "edibles" or "medibles") by qualifying patients.

A five-member Medical Marihuana Licensing Board within the Department of Licensing and Regulatory Affairs (LARA) has responsibility for implementing and administering the new act, and the department and board would determine the application fees and regulatory assessments.

All three bills take effect December 20, 2016. However, applications for licenses could not be made for 360 days after that date (December 15, 2017).

The regulatory framework for marihuana draws on elements of the regulatory structures in place for alcohol under the Michigan Liquor Control Code and for gaming under the Michigan Gaming Control and Revenue Act. It involves creating **separate licenses** for persons engaged in different aspects of the commercial medical marihuana delivery system and for each location, as described below. Further, whether and how many licensed marihuana facilities are permitted in a municipality, and where located, would depend on local ordinances. (Municipality refers to a city, township, or village.) A registered primary caregiver or qualified registered patient is not required to be licensed under this act.

A **Grower** is licensed to cultivate, dry, trim, or cure and package marihuana for sale to a processor or provisioning center. There are three levels of Grower license based on the amount of product grown. A Grower could not be a registered primary caregiver.

A **Processor** is a licensed commercial facility 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.

A **Provisioning Center** (the retail seller or dispensary) is a licensed commercial entity 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 **Secure Transporter** is a licensed commercial entity that stores, transfers, and transports marihuana between separate marihuana facilities for a fee. Only these entities can transport marihuana in the regulated system. A transporter does not transport marihuana to a patient or caregiver.

A **Safety Compliance Center** is a licensed commercial entity that receives marihuana from a marihuana facility or a registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.

Marihuana delivered from a Grower to a Provisioning Center; from a Grower to a Processor; or from a Processor to a Provisioning Center must be delivered by a Secure Transporter. Also, marihuana within the regulated system that is delivered to and from a Safety Compliance Center must use a Secure Transporter.

Functions are kept separate as follows, as regards applicants and investors: Neither a grower nor a provisioning center can have an interest in a secure transporter or safety compliance facility, and a grower could not be a registered caregiver; a processor cannot be a registered caregiver or employ someone who is registered caregiver, and cannot have an interest in a secure transporter or a safety compliance facility; a secure transporter cannot have an interest in a grower, processor, provisioning center, or safety compliance facility, and also cannot be a patient or caregiver; and a safety compliance facility cannot have an interest in a grower, processor, provisioning center, or a secure transporter.

A **tax of 3%** is imposed on the gross retail income of each provisioning center (retail seller/dispensary). Retail sales will presumably be subject to the **state's 6% general sales tax**, although no mention of this is made in the legislation. Taxes will not apply to registered primary caregivers or qualified registered patients; as noted earlier, they are not required to be licensed under the new regulatory system.

Brief Fiscal Impact Statement: Revenues from the application fees, regulatory assessment, and fines are estimated to be sufficient to cover the regulatory costs LARA and other state departments will incur. Plus, an $8.5 million appropriation was made for FY 16 from the Marihuana Registry Fund to LARA. LARA estimates, based on a "worst case" scenario, are that ongoing costs will total approximately $21.1 million annually. The

department also estimates that there will be an additional $726,000 in one-time information technology costs associated with establishing a statewide marihuana monitoring system.

A reasonable estimate for the revenue Michigan can expect from the 3% tax on the gross retail income of each provisioning center (retail seller) would be in the vicinity of $24 million per year. Revenues from the 6% general sales tax, if levied on medical marihuana, could thus be expected to be around $50 million. Initial tax collections are likely to be lower than those estimates because they are based on Colorado's experience, and Michigan's market is unlikely to be as large as Colorado's when these taxes are initiated; thus these revenue estimates represent approximate expectations after Michigan's market has developed. For a more detailed discussion, see ***Fiscal Impact***, on Page 26.

House Bill 4209 creates the new Medical Marihuana Facilities Licensing Act and contains the extensive licensing and regulatory framework. A registered primary caregiver or qualified registered patient is not required to be licensed under this act. It appears that a registered primary caregiver could continue to cultivate 12 plants each for up to 5 patients without being part of the new commercial regulatory structure, but could not sell to a provisioning center.

There are two related bills. House Bill 4827 creates a second new act (the Marihuana Tracking Act) requiring the establishment of a "seed-to-sale" system to track marihuana.

House Bill 4210 amends the existing Michigan Medical Marihuana Act to allow for the manufacture and use of marihuana-infused products (such as products known as "medibles") by qualifying patients, among other things.

The remainder of the summary provides (1) brief summaries of the key provisions of each bill; (2) followed by more extensive summaries of the bills— in particular House Bill 4209, which is a very detailed new regulatory act; and (3) more comprehensive fiscal impact statements.

BRIEF SUMMARY OF HOUSE BILL 4209:

House Bill 4209 creates the Medical Marihuana Facilities Licensing Act to create a licensing and regulation framework for medical marihuana growers, processors, secure transporters, provisioning centers (retail sellers), and safety compliance facilities.

Significant provisions include the following:

- A state operating license, renewed annually, will be required to operate as a grower, processor, provisioning center, secure transporter, or safety compliance facility. Applicants may begin submitting applications for licensure as a grower, processor, provisioning center, secure transporter, or safety compliance facility beginning December 15, 2017, (360 days from the bill's effective date of December 20, 2016). *A registered primary caregiver or qualified registered patient is not required to be licensed under the act.*

- Until June 30, 2018, a two-year residency requirement is imposed on applicants.

- A municipality may 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 fee up to $5,000 on licensees; and enact other ordinances related to marihuana facilities such as zoning ordinances. A marihuana facility cannot operate in a municipality unless the municipality adopts an ordinance authorizing that type of facility.

- In case of conflicts with certain business organization-related statutes, provisions in the act regulating the five new licensee classifications will supersede.

- A five-member Medical Marihuana Licensing Board is created within the Department of Licensing and Regulatory Affairs (LARA). The Board has general responsibility for implementing the act and all powers necessary and proper to fully and effectively implement and administer the act as specified.

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

- The medical purpose defense for patients and caregivers provided under Section 8 of the MMMA will be preserved for any prosecution involving marihuana.

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

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

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

- Rules must 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 must file annual financial statements of their total operations, reviewed by a certified public accountant.

- A 17-member Marihuana Advisory Panel is created within LARA to make recommendations concerning rules and the administration of the act.

BRIEF SUMMARY OF HOUSE BILL 4827:

Briefly, the bill creates the Marihuana Tracking Act, and does the following:

- ❖ Requires the creation of a 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.
- ❖ Requires the system to track patient purchase limits and flag purchases in excess of authorized limits.
- ❖ Provides real-time access to the system to local law enforcement agencies, state agencies, and LARA.
- ❖ Requires operation of the system to comply with HIPAA and exempt information in the system from disclosure under FOIA.
- ❖ Requires licensees under the 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.
- ❖ Creates 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, among other things:

- ❖ Revises the definitions of "medical use" and "usable marihuana" to include products using extracts and plant resins (known as "edibles").
- ❖ Defines "marihuana-infused product" and "usable marihuana equivalent."
- ❖ Provide immunity to a qualifying patient or caregiver from arrest or prosecution or penalty for certain conduct.
- ❖ Prohibits transporting or possessing a marihuana-infused product in a vehicle except as specified and create a civil fine for a violation.
- ❖ Prohibits using butane to separate plant resin from a marihuana plant inside a residential structure.
- ❖ Specifies the bill is curative and the provisions retroactive.
- ❖ Renames the *Michigan Medical Marihuana Fund* as the *Marihuana Registry Fund* and, for the fiscal year ending September 30, 2016, appropriate $8.5 million from the Fund to LARA for its initial costs of implementing the Medical Marihuana Facilities Licensing Act and the Marihuana Tracking Act.

DETAILED SUMMARY OF HB 4209

A detailed summary of the Legislative findings and Parts 1–8 of the Medical Marihuana Facilities Licensing Act (MMFLA), follows:

<u>Legislative Findings/Emergency Rules</u>

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

Part 1 contains key definitions, the most important of which are described in the initial portion of the summary. A few others include:

"Licensee" is a person holding a state operating license, and a "state operating license" or "license" means a license issued under the act that allows the licensee to operate as one of the following, as specified in the license: a grower, processor, secure transporter, provisioning center, safety compliance facility. A "marihuana facility" is a location at which a license holder is licensed to operate under the act.

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

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

Part 2. Application of Other Laws

Licensees

The act specifies that for the purposes of regulating the commercial entities established under it, any provisions of the following acts that are inconsistent with the MMFLA do not apply to a grower, processor, secure transporter, provisioning center, or safety compliance facility operating in compliance with the act:

- Business Corporation Act and Nonprofit Corporation Act.
- Public Act 327 of 1931 (Michigan general corporation statute).
- Michigan Revised Uniform Limited Partnership Act.
- Michigan Limited Liability Company Act.
- Public Act 101 of 1907 (re: carrying on business under an assumed or fictitious name).
- Public Act 164 of 1913 (re: copartnerships)
- Uniform Partnership Act

Protection from civil, criminal, and administrative sanctions

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,* will not be subject to state or local 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.

Such 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; transferring, testing, infusing, extracting, altering, or studying marihuana; and receiving or providing compensation for products or services.

Landlords
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, will be protected from state or local laws regulating marihuana, state or local civil or criminal prosecution based on a marihuana-related offense, certain searches or inspections, 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.

Patients and caregivers
A patient or caregiver will 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). In addition, a caregiver may transfer up to 2.5 ounces of marihuana to a safety compliance facility for testing without being subject to criminal prosecution or sanctions.

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

Municipalities
A marihuana facility may not operate in a municipality unless an ordinance authorizing that type of facility has been adopted. A municipality could enact an ordinance to authorize one or more types of marihuana facilities within its boundaries and could also limit the number of each type of facility. (Municipality refers to a township, city, or village.)

The ordinance could establish an annual, nonrefundable fee of not more than $5,000 for a licensee, to help 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 regarding the purity or pricing of marihuana or that interfere or conflict with statutory regulations for licensing marihuana facilities could not be imposed.

Within 90 days after a municipality receives notification from an applicant of a license application, the municipalities must provide all of the following to the Medical Marihuana Licensing Board:

- A copy of the local ordinance authorizing the marihuana facility and of the zoning regulations that apply to the proposed facility.

- A description of any violation of the local ordinance or zoning regulation described above committed by the applicant—but only if the violations relate to activities licensed under the act or the MMMA.

The Board may consider the information provided under this provision in the license application process. However, a municipality's failure to provide the Board with the required information could not be used against the applicant.

Information obtained by the municipality from an applicant related to licensure is 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.

Among other things the rules must address: appropriate standards for facilities; minimum levels of insurance for licensees; testing standards, procedures, and requirements for marihuana sold through provisioning centers; the use of the statewide monitoring system to track marihuana transfers and provide for a funding mechanism to support the system; the levy and collection of fines for violations of the act or rules; the chain of custody standards and standards for waste disposal; procedures for securely and safely transporting marihuana between marihuana facilities; 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 health standards to ensure the safe preparation of products intended for human consumption in a manner other than smoke inhalation as well as the maximum tetrahydrocannabinol (THC) levels for marihuana-infused products sold of transferred through provisioning centers and restrictions on edible marihuana-infused products to prohibit shapes that appeal to minors.

Inventory control and tracking system
Licensees are required to adopt and use a third-party inventory control and tracking system capable of interfacing with the statewide monitoring system to allow the licensee to enter or access information in the system as required in the act and rules. The act details the extensive list of capabilities an inventory and tracking system must have in order for the licensee to comply with requirements applicable to its type of license. The list includes the capability to track all marihuana plants, products, patient and primary caregiver purchase totals, waste, transfers, sales, and returns linked to unique identification numbers. Moreover, the licensee's system must be able to report and track adverse patient responses or dose-related efficacy issues, and provide analytics to LARA regarding key performance indicators such as total daily sales, total plants in production or destroyed, and total inventory adjustments. (See the act for a complete list.)

Examination
A marihuana facility, and all articles of property within it, are subject to examination at any time by a local police agency or the Michigan State Police.

Part 3. Medical Marihuana Licensing Board

Membership
The Medical Marihuana Licensing Board is created within LARA and consists of five state residents, appointed by the governor. Not more than three 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 governor appoints the chairperson. Other than initial appointees, terms will be four years. Actual and necessary expenses and disbursements incurred in carrying out official duties will be reimbursed. Board members could not hold any other public office for which they receive compensation other than necessary travel or other incidental expenses.

Qualifications and disqualifications for appointment are established in the act; for example, a person who is not of good moral character or who had been convicted of, pleaded guilty to, or forfeited bail for any felony or a misdemeanor involving controlled substances, theft, dishonesty, or fraud under any state, federal, or local laws could not serve as a Board member.

The act also 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 disqualify persons from appointment or employment by the Board, as well as 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. However, the Board could not employ an individual who has a direct or indirect interest in a licensee or marihuana facility.

Duties and powers of the Board
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. The Board is subject to the Administrative Procedures Act, and its duties include the following:

- Granting or denying applications for a state operating license within a reasonable time and deciding applications in reasonable order.

- Conducting public meetings in accordance with the Open Meetings Act.

- Consulting with LARA in promulgating rules and emergency rules. The Board cannot promulgate a rule establishing a limit on the number or type of marihuana facility licenses that may be granted.

- Implementing and collecting the application fee and, in conjunction with the Department of Treasury, the tax and regulatory assessment described in 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.

- Providing oversight of marihuana facilities to ensure that marihuana-infused products (e.g., edible or topical preparations) meet health and safety standards that protect the public to a comparable degree with state and federal standards applicable to similar food and drugs.

- Reviewing and ruling on complaints by licensees regarding investigative procedures of the state believed to be unnecessarily disruptive of marihuana facility operations, though the need to inspect and investigate is presumed at all times. In order to prevail, a licensee must establish by a preponderance of the evidence that the procedures unreasonably disrupted its marihuana facility operations.

- Holding at least two public meetings per year, and maintaining records that are separate and distinct from the records of other state boards. Records must be available for public inspections subject to the act's confidentiality and nondisclosure provisions. Further, three votes are required in support of final determinations on license applications and other license determinations, except that four votes are required to support a license suspension or revocation.

- Reviewing the patterns of marihuana transfers by licensees and making recommendations to the governor and the Legislature in a written annual report due April 15 of each year.

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 monitoring system is not be subject to FOIA; neither is information used by the Board for background investigations of applicants or licensees.

<u>Jurisdiction of Board</u>

The act grants jurisdiction to the Board to oversee the operation of all marihuana facilities, including, among other things, the following:

- Investigate applicants, determine eligibility, and grant state operating licenses.
- Investigate employees of marihuana facilities.
- Conduct (through its investigators, agents, auditors, or the State Police) warrantless searches, without notice, of a licensee's premises consistent with constitutional

limitations, for specified purposes, including to inspect, examine, and audit relevant records and impound or seize records, etc., if the licensee fails to cooperate.
- Investigate alleged violations of the act or rules.
- Require each licensee to submit a list of stockholders or other persons having a one percent or greater beneficial interest in the marihuana facility.
- Eject or exclude an individual from a facility for a violation of the act, rules, or a final order of the Board.
- Conduct periodic audits of licensed marihuana 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 subject to discipline by a regulatory body in another jurisdiction for 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 (MSP) in conducting background investigations of applicants and in fulfilling its responsibilities. The MSP may recover its costs of cooperation.

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.

Disclosures and prohibited conduct
Board members and employees will be subject to numerous requirements regarding disclosure of certain information. For instance, by January 31 of each year, each Board member must prepare and file with the governor's office and the Board a disclosure form affirming that the member (or members of that person's family) are not members of a board of a licensee, or financially interested in or employed by a licensee or applicant; that the member continues to meet criteria for board membership; and must disclose any legal or beneficial interests in real property that is or may be directly or indirectly involved with marihuana operations.

Similar affirmations must be made by Board employees and filed with the Board by January 31 of each year. Employees, with the exception of the executive director or a key employee must also file a financial disclosure statement listing all personal assets and liabilities, property and business interests, and sources of income and also disclose whether a spouse, parent, child, or child's spouse has a financial interest in or is employed by a licensee or applicant.

A Board member, employee, or agent of the Board who within the previous 10 years has been indicted for, charged with, or convicted of, pled guilty to, or forfeited bail concerning a misdemeanor involving a controlled substance, dishonesty, theft, or fraud or a local ordinance in any state involving those crimes, or conduct that is a felony under the laws of any state, the U.S., or other jurisdiction must immediately provide detailed written notice of the conviction or charge to the chairperson of the Board.

Further, Section 305 of the act places numerous restrictions on conduct and communications by Board members, employees, and agents of the Board and requires these individuals to immediately report certain events; these center primarily on conduct that could create conflicts of interest, that restrict disclosure of information possessed by the Board considered confidential, or that involve outside employment. Further, the act prohibits certain conduct by Board members, employees, and licensees and applicants, such as offering or taking bribes.

A violation of Section 305 by a licensee or applicant could result in a license denial, revocation, or suspension, or other allowable disciplinary action. A violation by a Board member could result in removal from the Board or other disciplinary action as recommended by the Board to the governor. A violation by an employee or agent of the Board could lead to termination from employment, depending on the circumstances. A violation of Section 305 does not create a civil cause of action.

Part 4. Licensing

Application

Beginning December 15, 2017, (360 days after the bill's effective date of December 20, 2016), a complete application must be submitted 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. Both the nonrefundable application fee and the regulatory assessment established for the first year of operation must accompany the application. If a deficiency in an application is identified, the Board must provide the applicant with a reasonable period of time to correct the deficiency.

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, certain criminal history information pertaining to the applicant, financial information, projected or actual gross receipts, any past commercial license sanctions, and the identity of every person having any ownership interest in the applicant, among other things.

An applicant must also notify the municipality in which the marihuana facility will be located that the applicant has applied for a state operating license; the municipality must be notified by registered mail within 10 days after the application was submitted. Certification that the notice has been delivered or will be within 10 days after submission of the application must be included with the application.

An applicant must also submit a passport quality photograph and 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. LARA may designate an entity or agent to collect the fingerprints; the applicant is responsible for the cost associated with the fingerprint collection. (Currently, a fingerprint-based criminal history search of the MSP and FBI databases is $50; the entity taking the fingerprints and submitting the prints to the MSP may charge an additional fee.)
Further, an applicant must provide written consent to inspections, examinations, searches, and seizures as authorized in the act and also to disclosure to the Board of otherwise confidential records. (This includes federal, state, and local tax records and credit bureau

or financial institution records). An applicant must also certify that it does not have an interest in any other state operating license prohibited under the act.

The Board is required to use information provided on the application as a basis to conduct a thorough background investigation on the applicant; this information is exempt from disclosure under FOIA. A false application is grounds for denial of the license.

Application fee

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, sets 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. Disclosure of information included with the application will be restricted as provided in the act.

Disqualifiers for licensure

The following circumstances will disqualify an applicant from license approval:

- Being convicted of, or released from incarceration for, a felony under federal, Michigan, or other states' laws within the past 10 years, or convicted of a controlled substance-related felony within the past 10 years.
- Being convicted of a misdemeanor within the past 5 years involving a controlled substance, theft, dishonesty, or fraud in any state, or been found responsible for violating a local ordinance in any state for any of those offenses that substantially corresponds to a misdemeanor in that state.
- Knowingly submitting an application containing false information.
- Being a member of the Board.
- Failure to demonstrate ability to maintain adequate premises liability and casualty insurance for the proposed marihuana facility.
- Certain public employment or holding an elective office (e.g., holding an elective governmental office or being employed by a state or federal regulatory body). This does not apply to an elected precinct delegate or elected officer or employee of a federally recognized Indian tribe.
- Until after June 30, 2018, having less than a continuous two-year period of residency in the state immediately preceding the date of filing the application.
- A local ordinance has not been adopted to approve the type of facility for which licensure is sought.
- Failure by the applicant to meet other criteria established by rule.

Further, the Board may consider other factors as detailed in the act, including an applicant's moral character, integrity, and reputation; ability to purchase and maintain the required types and level of insurance; sources and total amount of capitalization to operate and maintain the proposed marihuana facility; criminal history of relevant offenses, including arrests, charges, expungements, pardons, or reversals of convictions (felony or misdemeanor); whether an applicant had filed, or had filed against it, a proceeding for bankruptcy within the past seven years; history of delinquent taxes or noncompliance with regulatory requirements in any jurisdiction; whether, at the time of license application, the applicant is a defendant in litigation involving its business practices; and whether the applicant meets other standards in rules applicable to the license category.

Issuance of license
If the Board determines the applicant is qualified, it must issue the license. A state operating license is valid for one year and issued only in the name of the true party of interest. Board approval must be obtained before a license is transferred, sold, or purchased.

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.

Transfer, sale, or purchase of license/loan against a license
A state operating license is a revocable privilege under the act granted by the state and is not a property right. Granting a license does not create or vest any right, title, franchise, or other property interest. The act specifies that the license is exclusive to the licensee; before a license is transferred, sold, or purchased, the licensee or any other person must *apply for and receive the Board's and the municipality's approval*. Further, a licensee or any other person is prohibited from leasing, pledging, or borrowing or loaning money against a license.

The attempted transfer, sale, or other conveyance of an interest in a license without prior Board approval is grounds for suspension or revocation of the license or other sanction considered appropriate by the Board.

Liability insurance for licensees and applicants
The act requires licensees and applicants to obtain liability insurance in the amount of $100,000. Specifically, before a license is granted or renewed, the licensee or applicant must file with LARA proof of financial responsibility for liability for bodily injury to lawful users resulting from the manufacture, distribution, transportation, or sale of adulterated marihuana or adulterated marihuana-infused products in an amount not less than $100,000. An insured licensee cannot cancel the liability insurance without first giving 30 days' prior written notice to LARA and procuring new proof of financial responsibility (in other words, a new policy) and delivering that proof to LARA within 30 days after giving notice of the impending cancellation of the other policy.

"Adulterated marihuana" means a product sold as marihuana that contains any unintended substance or chemical or biological matter other than marihuana that causes adverse reaction after ingestion or consumption. "Bodily injury" will not include expected or intended effect or long-term adverse effect of smoking, ingestion, or consumption of marihuana or marihuana-infused product.

License renewal
Licenses must be renewed annually. Except as otherwise provided in the act, the Board is required to renew a license **if all** of the following requirements are 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 the act's requirements and 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 does not relieve the licensee of the responsibility to renew the license.

If not submitted by the current license's expiration date, the license may be renewed within the following 60 days upon application, payment of the regulatory assessment, and the satisfaction of any renewal requirements and late fees set forth in rules. The licensee may continue to operate during the 60 days after the license expires **if** the license were renewed by the end of that 60-day period. The Board retains 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/Civil fines for violations

The following sanctions will apply:

- For a transfer, sale, or other conveyance of an interest of more than one percent without prior Board approval: license suspension or revocation, or other sanction considered by the Board to be appropriate.

- For an *attempted* transfer, sale, or other conveyance of an interest in a license without prior Board approval: license suspension or revocation, or other sanction considered by the Board to be appropriate.

- For failure by a licensee or applicant to comply with the act or rules or the Marihuana Tracking Act (HB 4827), failure to continue to meet eligibility requirements for a license, or failure to provide information as requested by the Board to assist in any investigation, inquiry, or Board hearing: license denial, suspension, revocation, or license restrictions.

- For a violation of the act, rules, the Marihuana Tracking Act, or any local ordinance approving the allowed type and number of marihuana facilities: suspension, revocation, or license restrictions and removal of a licensee or an employee

- For each violation of the act, rules, or an order of the Board: a civil fine 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. Assessment of a civil fine under this provision is not a bar to the investigation, arrest, charging, or prosecution of an individual for any other violation of the act and is not grounds to suppress evidence in any criminal prosecution that arises under the act or any other law of the state.

The Board must comply with the Administrative Procedures Act when imposing a license sanction or fine. 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 public, investigatory hearings, upon request, for license denials and for any party aggrieved by an action of the Board in imposing a license sanction or fine or refusing 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 10 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 is not included: federal, tribal, traffic, or juvenile records; local misdemeanors; and criminal history from other states.)

Part 5. License Categories

The license categories (as defined in Part 1) are as follows:

Grower License

This license authorizes the grower to grow not more than the following number of marihuana plants under the indicated license class for each license the grower holds in that class:

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

A grower is only authorized to operate in an area zoned for industrial or agricultural uses or in an area that is unzoned and authorized by a municipal ordinance for that type of facility. A grower license authorizes sales of marihuana seeds or marihuana plants only to a grower by means of a secure transporter. The sale of marihuana, other than seeds, can be made only to a processor or provisioning center. A grower may only transfer marihuana by means of secure transporter. The license applicant and each investor in the grower must not have an interest in a secure transporter or a safety compliance facility.

In addition, a grower must 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 all transactions, current inventory, and other information into the statewide monitoring system as required in the act, rules, and the Marihuana Tracking Act.

Processor License
A processor license authorizes purchase of marihuana only from a grower and sale of marihuana-infused products only to a provisioning center. A processor may transfer marihuana only by means of a secure transporter.

The applicant and each investor in the processor must not have an interest in a secure transporter or a safety compliance facility. In addition, a processor must 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 all transactions, current inventory, and other information into the statewide monitoring system as required in the act, rules, and the Marihuana Tracking Act.

Secure Transporter License
This license authorizes 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. The license does not authorize transport to a registered qualifying patient or registered primary caregiver.

The applicant for a secure transporter license and each investor with an interest in the secure transporter must not have an interest in a grower, processor, provisioning center, or a safety compliance facility and must not be a patient or a caregiver. All transactions, current inventory, and other information must be entered into the statewide monitory system as required in the Marihuana Tracking Act. During the transportation of marihuana, a secure transporter is subject to administrative inspection by a law enforcement officer at any point to determine compliance with the act.

Further, a secure transporter must comply with all of the following:

- Each driver transporting marihuana must have a Michigan chauffeur's license.
- Each employee having custody of marihuana or money related to a marihuana transaction must not have been convicted of or released from incarceration for a felony under Michigan, federal, or other states' laws within the past five years or been convicted of a misdemeanor involving a controlled substance within the past five years.
- During the transportation of marihuana, a two-person crew is required to operate each vehicle, with one of the individuals remaining with the vehicle at all times.
- A route plan and manifest must be entered into the statewide monitoring system and a copy carried in the transporting vehicle and presented to a law enforcement officer upon request.
- Marihuana must be transported in one or more sealed containers and not be accessible while in transit.

- The vehicles must be unmarked or have other indications it is carrying marihuana or a marihuana-infused product.

Provisioning Center License

This 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 by means of a secure transporter.

To be eligible for a provisioning center license, an applicant and each investor in the provisioning center must not have an interest in a secure transporter or safety compliance facility. Further, a provisioning center must 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 all transactions, current inventory, and other information into the statewide monitoring system as required in the Marihuana Tracking Act.
- Require a check of the statewide monitoring system—before selling or transferring marihuana to a patient or caregiver on behalf of a patient—to determine whether the patient and, if applicable, the caregiver hold a valid, current, unexpired, and unrevoked registry identification card and that the sale or transfer will not exceed the daily purchasing limit established by the Board.
- Prohibit alcoholic beverages from being sold, consumed, or used on the premises of a provisioning center.
- Prohibit a physician from conducting a medical examination or issuing a medical certification document on the premises for the registry identification card purposes.

Safety Compliance Facility License

In addition to the transfer and testing of marihuana from a caregiver as authorized under the act, this license authorizes the facility to receive marihuana from, test it for, and return it to only a marihuana facility. The facility must be accredited by an entity approved by the Board by one year after the date the license is issued or that had previously provided drug testing services to the state or the state court system, and be a vendor in good standing in regard to those services. 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 in the facility must not have an interest in a grower, secure transporter, processor, or provisioning center.

A safety compliance facility must 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 all transactions, current inventory, and other information into the statewide monitoring system as required in the act, rules, and the Marihuana Tracking Act.
- Have a secured laboratory space that cannot be accessed by the general public.
- Retain and employ at least one staff member with a relevant advanced degree in a medical or laboratory science.

Part 6. Taxes and Fees

A tax is be imposed on each provisioning center at the rate of 3 percent of the provisioning center's gross retail income. Taxes will be remitted quarterly for the preceding calendar quarter to the Michigan Department of Treasury, by 30 days after the end of the quarter and accompanied by a form prescribed by Treasury that shows the center's gross quarterly retail income and the amount of the tax due; a copy of the form must also be submitted to LARA.

If a law authorizing the recreational or non-medical use of marihuana in the state is enacted, Section 601 imposing this tax ceases to apply, beginning 90 days after that law's effective date.

Taxes imposed under this provision is to 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 is 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 are 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. The State Treasurer is be the administrator of the Fund for auditing purposes.

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

- 25 percent to municipalities where the marihuana facilities are located, allocated in proportion to the number of marihuana facilities within the municipality.
- 30 percent to the counties where marihuana facilities are located, allocated in proportion to the number of marihuana facilities within the county.
- 5 percent to counties exclusively to support county sheriffs; this would be in addition to and not a replacement for any other funding received by the county sheriffs.
- 30 percent to the state for the following:
    - Until September 30, 2017, for deposit in the General Fund.

- Beginning October 1, 2017, for deposit in the First Responder Presumed Coverage Fund created in Section 405 of the Worker's Disability Compensation Act.

- 5 percent to the Michigan Commission on Law Enforcement Standards for training local law enforcement officers.
- 5 percent to the Department of State Police.

Regulatory Assessment

A regulatory assessment is to 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 Michigan State Police.
- Expenses of medical-marihuana-related services provided by the Department of Treasury.
- $500,000 to be allocated to LARA 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 substance-abuse-related expenditures including, but not limited to, 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 the Michigan Commission on Law Enforcement Standards.

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

Marihuana Regulatory Fund
The MRF is be created in the state treasury, with LARA 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 are to be credited to the MRF, and money in the Fund at the close of the fiscal year will remain in the Fund and not lapse to the General Fund. Money from the MRF is to be expended upon appropriation, and only for implementing, administering, and enforcing the act.

LARA may use any money appropriated to it from the Michigan Registry Fund created in Section 6 of the Michigan Marihuana Act for the purpose of funding the operations of LARA and the Board in the initial implementation and subsequent administration and enforcement of 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 financial statements of the licensee's total operations. The financial statements must be reviewed by a state-licensed certified public accountant (CPA) in a manner and form prescribed by the Board. The licensee bears 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 must 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 is created within LARA. The 17-member panel includes 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 is appointed by the governor as follows:

- One registered medical marihuana patient or medical marihuana primary caregiver.
- One representative of growers.
- One representative of processors.
- 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.
- One representative of a secure transporter.

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

The panel may make recommendations to the Board concerning promulgation of rules, and as requested by the Board or LARA, administration, implementation, and enforcement of the act and the Marihuana Tracking 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 creates the Marihuana Tracking Act and 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 must 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 are 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) must 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 is 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 is 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 is 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 is 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 amends the Michigan Medical Marihuana Act, MMMA (MCL 333.26423 et al.). This act was initiated by petition and approved by voters as Initiated Law 1 of 2008.

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 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.

Retroactive application of the bill's amendments 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 the MMMA under a good-faith interpretation of its provisions at the time of enforcement.

Definitions

- Define "marihuana plant" as any plant of the species Cannabis sativa L.

- Define "plant" as any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material.

- Change the terms "medical use" and "use of medical marihuana" to "medical use of marihuana" and revise the definition of "medical use" 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 are not 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 the bill.

Per-patient possession limit

In order to qualify for protection from arrest, prosecution, or penalty for possessing marihuana, the MMMA sets a possession limit of 2.5 ounces of marihuana-per-patient.

Under the bill, the combined total of both usable marijuana equivalents and usable marihuana must be considered when determining if the per-patient possession limit is or is not exceeded. In determining usable marihuana equivalency, one ounce of usable marihuana is considered equivalent to:
(1) 16 ounces of marihuana-infused product if in a solid form.
(2) 7 grams if in a gaseous form.
(3) 36 fluid ounces if in a liquid form.

Marihuana-infused product

The MMMA provides criminal, civil, and administrative protections for certain conduct related to medical marihuana. The bill adds similar protections to a registered qualifying patient (hereinafter "patient") manufacturing a marihuana-infused product for personal use,

or a registered primary caregiver (hereinafter "caregiver") manufacturing for the use of the patient, will 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.

However, the following are prohibited: (1) patient transferring a marihuana-infused product or marihuana to any individual; and (2) a caregiver transferring a marihuana-infused product to any individual who is not one of the caregiver's patients.

Immunity for transferring, purchasing, or selling to licensees

A patient or caregiver will 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, MMFLA.
- Transferring or selling marihuana seeds or seedlings to a grower licensed under the MMFLA.
- Transferring marihuana for testing to and from a safety compliance facility licensed under the MMFLA.

Transporting or possessing marihuana-infused product in a motor vehicle

A patient or caregiver is 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, the 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.

- For a primary caregiver, if the patient is his or her child, spouse, or parent:
  - The 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 the 2.5 ounces 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 will be responsible for a civil fine of not more than $250.

Miscellaneous provisions
The bill also will:

- Require the Department of Licensing and Regulatory Affairs (LARA) to verify to the database created in the Marihuana Tracking Act (House Bill 4827) whether a registry ID card is valid (this is identical to an existing provision regarding verifying card validity to law enforcement).

- Prohibit using butane extraction to separate plant resin from a marihuana plant:
  - In any public place.
  - In a motor vehicle.
  - Inside or within the curtilage of any residential structure in a manner that demonstrates a failure to exercise reasonable care or reckless disregard for the safety of others. ("Curtilage" typically refers to the grounds and buildings surrounding a home; e.g., a garage, barn, or garden that is reasonably near the home.)

- Prohibit the operation, navigation, or actual physical control of a snowmobile or off-road recreational vehicle while under the influence of marihuana; this is already in place for a motor vehicle, aircraft, or motorboat.

- Rename the *Michigan Medical Marihuana Fund* as the *Marihuana Registry Fund* and, for the fiscal year ending September 30, 2016, appropriate $8.5 million from the Fund to LARA for its initial costs of implementing the Medical Marihuana Facilities Licensing Act and the Marihuana Tracking Act.

FISCAL IMPACT:

House Bills 4209 and 4827

House Bills 4209 and 4827, as enacted, will have significant and likely positive fiscal impacts on the Department of Licensing and Regulatory Affairs (LARA) and on other units of state and local government, due to the creation of a regulatory regime for the medical marihuana market in Michigan. The bills will primarily affect LARA, since that department is largely responsible for the implementation of the bills' provisions, though the Departments of State Police (MSP), Attorney General, and Health and Human Services (DHHS) will also experience fiscal impacts from the bills. The bills will likely have

significant, though indeterminate, fiscal impacts on local units of government through the creation of new taxes and fees on medical marihuana facilities.

LARA estimates that ongoing costs resulting from these bills will total approximately $21.1 million annually. The department estimates that there will be an additional $726,000 in one-time information technology costs associated with establishing a statewide marihuana monitoring system. The components of the department's "worst-case scenario" cost estimate are as follows (components do not sum to $21.1 million due to rounding):

- $13.2 million for the employment of 113.0 full-time equated employees (FTEs) who will handle application processing, licensing, and enforcement duties under the act. This estimate is based on staffing within the Licensing and Enforcement Divisions of the Michigan Liquor Control Commission (MLCC).
- $6.0 million for 34.0 FTEs in the MSP to assist with criminal enforcement activities. This estimate is based on the personnel required to provide enforcement assistance to the Michigan Gaming Control Board (MGCB).
- $550,000 for costs incurred by the Attorney General for legal and prosecutorial support.
- $1.5 million in miscellaneous costs, including: telecom and information technology support ($380,000); contractual services ($$350,000); travel ($250,000); equipment, supplies, and materials ($240,000); and other overhead expenses associated with initial development of the marihuana tracking IT system and other IT costs ($726,000).

The assumptions utilized to obtain the preceding estimates may not accurately reflect the regulatory environment that will develop in Michigan with respect to the medical marihuana market. As was previously mentioned, the cost estimate is a "worst-case scenario" estimate, representing a total cost that is likely higher than what will be incurred for the implementation of these bills. The estimated staffing figures for LARA are based on figures from the MLCC, causing this estimate to likely be overstated since the MLCC regulates a larger market (17,250 retail liquor stores) than the medical marihuana market. On the other hand, the quoted staffing figures for the Department of State Police are likely lower than the actual number that will be required for enforcement, since the nature of the department's responsibilities for policing gambling and marihuana are significantly different. There is also a possibility that the medical marihuana market may not bear the newly created regulatory costs, as medical marihuana users may choose to acquire marihuana from sources other than provisioning centers, since costs are likely to be lower at these alternative sources.

The acts authorize LARA to prescribe and impose license application fees for various classes of licensees, establish regulatory assessments, and collect fines and penalties described within the bill. House Bill 4209 enables the department, in consultation with the Medical Marihuana Licensing Board, to establish application fees and regulatory assessments, with revenues from these sources being deposited to the Marihuana Regulatory Fund. Application fees are intended to cover the department's costs of processing and investigating applications, but in the event that the costs of these activities exceed the collected application fees the applicant is responsible for paying the additional amount to the Board. The regulatory assessment is intended to offset the costs that will be experienced for administration, implementation, and enforcement of the various provisions

of House Bill 4209, and will be collected from licensed growers, processors, provisioning centers, and secure transporters. The total amount of the regulatory assessment includes the following components:

- Costs incurred by LARA for implementation, administration, and enforcement of House Bill 4209, except for expenses associated with application processing.
- Costs incurred the Department of Attorney General for medical-marihuana-related legal services.
- Costs incurred by the Department of State Police for medical-marihuana-related services.
- Costs incurred by the Department of Treasury for medical-marihuana-related services.
- Statutory allocation to the Department of Health and Human Services at a rate of 5% of the summed expenses of LARA (excluding application processing costs), the Department of Attorney General, the MSP, and the Department of Treasury; with the allocation being used for substance-abuse-related expenditures.
- $500,000 statutory allocation to LARA for the licensing of substance use disorder programs.
- Expenses related to the administering of standardized field sobriety tests.
- An amount sufficient to provide for the administrative costs to the Michigan Commission on Law Enforcement Standards (MCOLES).

The revenues from the application fees and regulatory assessment should be sufficient to cover the regulatory costs that will be incurred by LARA and other state departments. The Board also has the authority to impose civil fines of $5,000 against an individual and the greater of $10,000 or an amount equal to the daily gross receipts against a licensee for violations of the act (House Bill 4209), rules, or an order of the Board.

The monies collected from application fees and the regulatory assessment will be deposited into the Marihuana Regulatory Fund, which is to be expended (upon appropriation) only for the implementation, enforcement, and administration of the act. House Bill 4209 also establishes a 3% tax on medical marihuana provisioning centers' gross retail receipts. This tax, along with other fees and charges not deposited into the Marihuana Regulatory Fund, will be deposited into the Medical Marihuana Excise Fund. Excise fund monies are to be allocated, upon appropriation, as follows:

- 30% to counties in which a medical marihuana facility is located.
- 30% to the State – prior to September 30, 2017, for deposit into the General Fund; after October 1, 2017, for deposit info the First Responder Presumed Coverage Fund.
- 25% to municipalities in which a medical marihuana facility is located.
- 5% to county sheriffs in counties in which a medical marihuana facility is located.
- 5% to MCOLES for local law enforcement training.
- 5% to the Department of State Police.

Estimating the potential revenue from the 3% tax is problematic, as the market's response to the increased regulatory fees cannot be known at present. The State of Colorado has instituted a 2.9% sales tax on medical marihuana, which is comparable to the 3% tax

instituted on marihuana provisioning centers in Michigan. Direct comparison of the taxes in Michigan and Colorado requires an assumption that consumption habits and market characteristics will be the same in both states, which may not be true. Nonetheless, an estimate can be made of the scale of revenue that the State of Michigan can expect from a 3% provisioning center tax, assuming that the vast majority of medical marihuana users obtain their marihuana from a provisioning center.

According to the Colorado Department of Public Health and Environment, as of August 2016, Colorado had 102,830 current and active medical marihuana users. In FY 2015-16, Michigan had 204,018 registered medical marihuana patients, meaning the Michigan market for medical marihuana should be roughly twice the size of Colorado's. Revenues for the medical marihuana tax in Colorado were roughly $12.1 million in FY 15-16, as reported by the Colorado Department of Revenue. Considering the difference in the size of the population of medical marihuana users between the states, a reasonable estimate for the revenue Michigan can expect from its tax would be in the vicinity of $24 million per year.

It is possible that medical marihuana sales could be subjected to the state's sales tax, as only prescription drugs are exempted from the sales tax by Article IX Section 8 of the Michigan Constitution. If Michigan's market is likely to be twice the size of Colorado's market this would imply that the size of the market in Michigan should be somewhere around $837 million[1]. Revenues from a sales tax levied on medical marihuana could thus be expected to be around $50 million. It should be noted that Michigan's market is unlikely to be as large as Colorado's market when these taxes are first initiated, thus these revenue estimates represent approximate expectations after Michigan's market has developed. Initial tax collections are likely to be lower than the aforementioned estimates.

House Bill 4827 requires LARA to establish a statewide monitoring system for medical marihuana. The department has estimated the cost of establishing this system at $726,000. This cost will be covered by the $8.5 million appropriation made in FY 16 to the Marihuana Registry Fund by House Bill 4210.

House Bill 4209 will have a significant impact on local units of government, as it allows municipalities to determine whether medical marihuana facilities are permitted to operate within their jurisdictions and it allows municipalities to establish an annual, nonrefundable fee of not more than $5,000.00 on a licensee to defray administrative and enforcement costs associated with the operation of a marihuana facility. Local units of government will also be affected by the remittance of tax revenues from the Medical Marihuana Excise Fund, with revenues going to counties, municipalities, and county sheriffs.

Further, regarding fiscal implications for the Department of Attorney General, expenditures for the oversight of marihuana facilities, whether provided by State Police or by the Department of Attorney General, is to be covered by the annually adjusted regulatory assessment imposed on licensees in Sec. 603 of HB 4209. A previous "worst-case scenario" cost estimate from LARA estimated service costs to the attorney general to be $550,000.

[1] This estimate of Michigan's market size was obtained by using Colorado's medical marihuana tax receipts to determine the size of the Colorado medical marihuana market, then multiplying the market by two to account for Michigan's larger number of medical marihuana users.

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House Bill 4210 will have an indeterminate fiscal impact on the state and on local units of government. Depending on the number of people that would no longer be charged with a criminal or civil offense under the provisions of the bill, the bill would result in a decrease in costs for state prisons, local jails, and local court systems. A reduction in the number of prison sentences would result in reduced costs related to the state correctional system, and fewer individuals sentenced to jail or community supervision sanctions would result in reduced costs related to county jails and/or local misdemeanor probation supervision. Further, in the future, if there is a sufficient reduction in the number of people sentenced to prison, resulting in a significant decline in prison population, the Department of Corrections could potentially close housing units within facilities, or close an entire facility. The average cost of prison incarceration in a state facility is roughly $34,900 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony supervision average about $3,400 per supervised offender per year.

The costs of local incarceration in county jails and local misdemeanor probation supervision vary by jurisdiction. Increases or decreases in penal fine revenues impact funding for local libraries, which are the constitutionally designated recipients of those revenues. With establishment of a civil fine for improperly transporting marihuana-infused products, there could be an increase in civil fine revenue, which would impact the state's Justice System Fund (JSF). The JSF supports various justice-related endeavors in the judicial branch, and the Departments of State Police, Corrections, and Health and Human Services.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.