

## MEDICAL MARIHUANA FACILITIES ACT REVISIONS

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**House Bill 5144 reported from committee w/o amendment**  
**Sponsor: Rep. Klint Kesto**  
**Committee: Law and Justice**  
**Complete to 11-28-17**

Analysis available at  
<http://www.legislature.mi.gov>

**BRIEF SUMMARY:** House Bill 5144 would make numerous revisions to the Medical Marihuana Facilities Licensing Act, many of which are technical in nature. Significant amendments include the following:

- Creating protection for certified public accountants (CPAs) and financial institutions from certain civil, criminal, and administrative sanctions when, respectively, they review a financial statement for or provide a financial service to a licensee.
- Prohibiting the Medical Marihuana Licensing Board from issuing a facility license unless the municipality in which an applicant intends to operate has adopted an ordinance allowing that type of facility.
- Revising the information a municipality must provide if it adopts ordinances that allow facilities to operate in its jurisdiction, and requiring that the information be provided to the Department of Licensing and Regulatory Affairs (LARA) and not to the Board.
- Allowing a grower to sell marihuana to another grower, and allowing a processor to sell and transfer marihuana or marihuana-infused products to another processor.
- Allowing, with some exceptions, information provided to LARA by a municipality to be subject to FOIA.
- Allowing certain transfers of marihuana between licensees to be done without a secure transporter if specified conditions are met.

**FISCAL IMPACT:** House Bill 5144 does not appear to have any significant fiscal impact for the Department of Licensing and Regulatory Affairs or any other state agency or local units of government.

### **THE APPARENT PROBLEM:**

On December 15, 2017, the Medical Marihuana Bureau within the Department of Licensing and Regulatory Affairs (LARA) will begin accepting applications for the 5 types of licenses available under the Medical Marihuana Facilities Licensing Act (MMFLA). As the deadline approaches and LARA continues its progress in finalizing rules and emergency rules to implement the act, it has become clear that certain technical amendments are needed for clarification or to fill gaps overlooked when the legislation that became the MMFLA was being considered. For instance, the application process requires, as a pre-qualification, that applicants submit certain financial forms that include CPA-attested active bank and financial statements. Some CPAs have expressed concerns that, since marihuana is still a prohibited drug under federal law even for medicinal purposes,

preparing such documents for a client could subject them to criminal or civil penalties. As another example, caregivers may be hired by growers and processors if they stop being a registered caregiver, but it isn't clear how they should dispose of the plants they were cultivating for patients. Also: would a secure transporter licensee be restricted to travel only in jurisdictions that adopted ordinances allowing medical marihuana businesses? Legislation has been offered to address these and other concerns needed for smooth implementation of the MMFLA.

## ***THE CONTENT OF THE BILL:***

### ***Protections for CPAs and financial institutions***

Except as otherwise provided in the act, a Michigan-licensed CPA who reviews a financial statement under Section 701 of the act, or a financial institution that provides a financial service to a person or entity licensed under the act, would not be subject to the following based on a marihuana-related offense:

- Criminal penalties under state law or local ordinances regulating marihuana.
- State or local civil or criminal prosecution.
- Seizure of any real or personal property or anything of value.
- Any sanction, including disciplinary action or denial of a right or privilege, imposed by a business or occupational or professional licensing board or bureau.

For purposes of the bill, a “financial institution” would include a state or national bank; a state or federally chartered savings and loan association, savings bank, or credit union; an insurance company; an entity offering certain products to a state resident such as a mutual fund or money market account or a securities brokerage account; an entity regulated by the federal Securities and Exchange Commission that collects money from the public; or any other entity that collects money from the public.

A “financial service” would mean a deposit, withdrawal, transfer between accounts, currency exchange, loan, or extension of credit; the purchase or sale of a stock, bond, certificate of deposit, or other monetary instrument; or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

### ***Local ordinance requirements***

Currently, a marihuana facility cannot operate in a municipality unless the municipality has adopted an ordinance authorizing that type of facility. *The bill* would specify instead that the Medical Marihuana Licensing Board could not issue a state operating license to an applicant unless the municipality in which the applicant's proposed marihuana facility will operate has adopted an ordinance authorizing that type of facility.

Currently, the act prohibits a municipality from imposing regulations that conflict with “statutory regulations” for licensing marihuana facilities. *The bill* would prohibit municipal regulations that conflict with the act or rules for licensing marihuana facilities.

*The bill* would also revise a provision regarding certain information a municipality is required to provide to the Board, to instead require a municipality that adopts an ordinance authorizing a marihuana facility to provide to the Department of Licensing and Regulatory Affairs (LARA) all of the following on a form prescribed and provided by the department:

- An attestation that the municipality has adopted an ordinance authorizing the marihuana facility.
- A description of any zoning regulations that apply to the proposed facility within the municipality.
- The signature of the clerk of the municipality or his or her designee.
- Any other information required by LARA.

In addition, *the bill* would allow LARA to require a municipality to provide the following information, on a form prescribed and provided by the department, regarding a licensee who submits an application for a *license renewal*:

- Information the Board declares necessary to determine whether the licensee's license should be renewed.
- A description of a violation of an ordinance or a zoning regulation adopted by the municipality under the act's provisions committed by the licensee, but only if the violation relates to activities licensed under the act and rules or the Michigan Medical Marihuana Act (MMA).
- Whether a change has been made to an ordinance or a zoning regulation since the license was issued to the licensee, and a description of the change.

Currently, information a municipality obtains from an applicant is exempt from disclosure under the Freedom of Information Act (FOIA). *The bill* would make information a municipality provides to LARA (except for the information from an applicant) subject to disclosure under FOIA.

### ***Grower license***

Currently, the act only allows a grower to sell to a processor or provisioning center. *The bill* would revise the definition of "grower" to allow a grower to sell marihuana to another grower.

Currently, the act allows a grower to sell "marihuana seeds or marihuana plants only to a grower by means of a secure transporter." *The bill* would revise the provision to allow "the sale of marihuana plants to a grower only by means of a secure transporter."

*The bill* would authorize the sale or transfer of seeds, seedlings, or tissue cultures to a grower from a registered primary caregiver or another grower without using a secure transporter. Currently under the act, a grower may sell marihuana—but not marihuana seeds—to a processor or provisioning center. *Under the bill*, a grower could also not sell marihuana seedlings, tissue cultures, or cuttings to a processor or provisioning center.

*The bill* would also allow a grower to transfer marihuana without using a secure transporter to a processor or provisioning center if both of the following are met:

- The processor or provisioning center is at the same location as the grower and the marihuana is transferred using only private real property without accessing the public roadways.
- The grower enters each transfer into the statewide monitoring system.

Until December 31, 2018, but only for a period of 30 days after the issuance of a grower license and according to departmental rules, a grower could transfer marihuana plants, seeds, and seedlings lawfully possessed by an individual formerly registered as a primary caregiver who is actively employed by the grower.

For purposes of the bill, “cutting” would mean a section of a lead stem or root stock used for vegetative asexual propagation.

“Seed” would mean the fertilized, ungerminated, matured ovule, containing an embryo or rudimentary plant, of a marihuana plant that is flowering.

“Seedling” would mean a marihuana plant that has germinated but has not flowered and is not harvestable.

“Tissue culture” would mean a marihuana plant cell, cutting, tissue, or organ that is kept under a sterile condition on a nutrient culture medium of known composition and that does not have visible root formation. A tissue culture is not a marihuana plant for purposes of a grower.

### ***Processor licensee***

*The bill* would allow a licensed processor to sell marihuana or marihuana-infused products to another processor. Further, a processor would not have to use a secure transporter to transfer marihuana to a grower or provisioning center if both of the following conditions are met:

- The grower or provisioning center occupy the same location as the processor and the marihuana is transferred using only private real property without accessing public roadways.
- Each transfer is entered into the statewide monitoring system.

Until December 31, 2018, but only for a period of 30 days after the issuance of a processor license and according to departmental rules, a processor could transfer marihuana plants or usable marihuana that is lawfully possessed by an individual formerly registered as a primary caregiver who is actively employed by the processor.

***Secure transporter***

*The bill* would allow a licensed secure transporter to travel through any municipality in the state if the licensee has its primary place of business in a municipality that has adopted an ordinance authorizing that marihuana facility.

***Provisioning center***

*The bill* would allow the transfer of marihuana from a facility occupying the same location as the provisioning center without means of a secure transporter if the marihuana is transferred using only private real property without accessing public roadways.

***Safety compliance facility***

*The bill* would allow a safety compliance facility—without using a secure transporter—to take marihuana from, test marihuana for, and return the marihuana only to a marihuana facility, and also to collect a random sample of marihuana at the facility of a grower, processor, or provisioning center for testing.

***Marihuana Advisory Panel***

*The bill* would specify that members of the Marihuana Advisory Panel representing growers, processors, provisioning centers, safety compliance facilities, and secure transporters must be representatives of *the industry from that category*. Further, *the bill* would specify that the governor would appoint the first members of the panel, and that the first members would have to be appointed by March 1, 2018 (instead of within 30 days after the act takes effect).

MCL 333.27102 et al.

***ARGUMENTS:******For:***

The bill would address several issues highlighted by LARA. For example, some localities may allow a secure transporter licensee within their jurisdictions, but others may not. The bill would clarify that a licensed secure transporter could travel freely throughout the state and would not have to avoid roads going through communities that do not approve any of the license types. The bill would also allow a grower to package marihuana for sale to another grower, and a processor to sell or transfer a packaged infused product to another processor. This provision will enable a small processor, such as a licensee who bakes marihuana-infused products, to purchase oil or extracts from another processor rather than investing in the equipment needed to produce the oil or extracts. According to LARA, the provisions in the bill are seen as technical fixes to issues that have arisen as the department works to finalize the rules and emergency rules and in preparing for the applications that soon will be submitted.

***Against:***

A concern was raised that, although the bill would add protections for CPAs and financial institutions providing ancillary services to potential and eventual licensees, similar protections were not being offered for lawyers who may be advising applicants, and who

would likely advise licensees in the future, regarding the complexities of the Medical Marihuana Facilities Licensing Act.

***POSITIONS:***

A representative of the Department of Licensing and Regulatory Affairs (LARA) testified in support of the bill. (10-24-17)

The Michigan Responsibility Council indicated support for the bill. (10-24-17)

The Michigan Cannabis Development Association (MCDA) indicated support for the bill. (10-24-17)

The Evergreen Management Group indicated support for the bill. (10-24-17)

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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.