

MEDICAL MARIHUANA FACILITIES ACT REVISIONS

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House Bill 5144 as enacted

Public Act 10 of 2018

Sponsor: Rep. Klint Kesto

House Committee: Law and Justice

Senate Committee: Judiciary

Complete to 2-18-19

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

BRIEF SUMMARY: House Bill 5144 makes numerous revisions to the Medical Marihuana Facilities Licensing Act (MMFLA), 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 they engage in the practice of public accounting for an applicant or a licensee or provide a financial service to a licensee, respectively.
- 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 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 the Freedom of Information Act (FOIA).
- Allowing certain transfers of marihuana between licensees to be done without a secure transporter if specified conditions are met.
- Requiring monthly purchasing limits for medical marihuana patients and caregivers at provisioning centers to be established by rule.

FISCAL IMPACT: House Bill 5144 does not appear to have any significant fiscal impact on LARA or any other state agency or local units of government.

THE APPARENT PROBLEM:

On December 15, 2017, the Medical Marihuana Bureau within LARA began accepting applications for the five types of licenses available under the MMFLA. As that date approached and LARA continued its progress in finalizing rules and emergency rules to implement the act, it became clear that certain technical amendments were 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 prequalification, that applicants submit certain financial forms that include CPA-attested active bank and financial statements. Some CPAs 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 could be hired by growers and processors if they stopped being a registered caregiver, but it was not 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 was 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

Under the bill, except as otherwise provided in the act, a Michigan-licensed CPA who is engaging in the practice of public accounting for an applicant for a license or a licensee who is in compliance with the act, or a financial institution that provides a financial service to a person or entity licensed under the act, is not 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” includes 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, or that is a member of the National Association of Securities Dealers, that collects money from the public; or any other entity that collects money from the public.

A “financial service” means a deposit, withdrawal, transfer between accounts, exchange of currency, 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

Previously under the act, a marihuana facility could not operate in a municipality unless the municipality had adopted an ordinance authorizing that type of facility. The bill specifies instead that the Medical Marihuana Licensing Board cannot 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.

Previously, the act prohibited a municipality from imposing regulations that would interfere or conflict with *statutory regulations* for licensing marihuana facilities. The bill deletes the italicized text and instead prohibits municipal regulations that interfere or conflict with the act or rules for licensing marihuana facilities.

The bill also revises 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 LARA all of the following on a form prescribed and provided by the LARA:

- 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 allows 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 (MMMA).
- 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.

Previously under the act, information a municipality obtained from an applicant was exempt from disclosure under FOIA. The bill makes information a municipality provides to LARA (except for the information from an applicant) subject to disclosure under FOIA.

Departmental rules

The MMFLA requires LARA, in consultation with the Board, to promulgate rules and emergency rules as necessary to implement, administer, and enforce the act. One rule that must be included would establish daily purchasing limits at provisioning centers for registered qualifying patients and registered primary caregivers to ensure compliance with the MMMA. The bill also requires monthly purchasing limits to be established.

Grower license

Previously under the act, the definition of "grower" limited sales of marihuana by a licensee to a licensed processor or provisioning center. The bill revises the definition to allow a grower to sell marihuana to another grower.

Previously, the act allowed a grower to sell "marihuana seeds or marihuana plants only to a grower by means of a secure transporter." The bill revises this provision to allow "the sale of marihuana plants to a grower only by means of a secure transporter." However, the sale or transfer of seeds, seedlings, or tissue cultures to a grower from a registered primary caregiver or another grower may be done under the bill without using a secure transporter.

The bill also allows a licensed 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.

Under the act, a grower may sell marihuana—but not marihuana seeds—to a processor or provisioning center. The bill further prohibits the sale by a grower to a processor or provisioning center of marihuana seedlings, tissue cultures, or cuttings.

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 may 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, “seed” means the fertilized, ungerminated, matured ovule, containing an embryo or rudimentary plant, of a marihuana plant that is flowering.

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

“Tissue culture” means 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.

“Cutting” means a section of a lead stem or root stock used for vegetative asexual propagation.

Processor licensee

By definition, a licensed processor may extract resin from marihuana or create marihuana-infused products for sale and transfer in packaged form to a provisioning center. The MMFLA also specifies that a processor license authorizes a processor to purchase marihuana only from a grower and sell marihuana-infused products or marihuana only to a provisioning center. Transfer of marihuana by a processor must be done only by means of a secure transporter. The bill expands the entities to whom the processor may sell marihuana or marihuana-infused products to include another processor. Further, a processor does 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 occupies 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 may 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 allows 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

A provisioning center license allows for the purchase or transfer of marihuana only from a grower or processor and sale or transfer to only a registered qualifying patient or registered primary caregiver. With few exceptions, all transfers of marihuana to a provisioning center from a separate marihuana facility must be by means of a secure transporter.

The bill allows 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.

In addition, before selling or transferring marihuana to a patient or caregiver, a provisioning center is required under the act to check with the statewide monitoring system to determine whether the patient or caregiver holds a valid registry identification card and that the sale or transfer will not exceed the daily purchasing limit established under the act. The bill requires a provisioning center to determine if the sale or transfer would exceed the patient's or caregiver's monthly limit, as well.

Safety compliance facility

A safety compliance facility tests marihuana from marihuana facilities or registered primary caregivers for contaminants and for THC and other cannabinoids, returns the test results, and may return the marihuana to a marihuana facility.

The bill allows 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 specifies 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 changes the deadline for the governor to appoint the first members to the panel from “within 30 days after the act takes effect” to March 1, 2018.

House Bill 5144 took effect January 26, 2018.

MCL 333.27102 et al.

ARGUMENTS:

For:

The bill addresses several issues highlighted by LARA. For example, some localities may allow a secure transporter licensee within their jurisdictions, but others may not. The bill clarifies that a licensed secure transporter may travel freely throughout the state and does not have to avoid roads going through communities that do not approve any of the license types. The bill also allows a grower to package marihuana for sale to another grower and a processor to sell or transfer a packaged, infused product or marihuana 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 arose as the department worked to finalize the rules and emergency rules and in preparing for the applications that began to be submitted at the end of 2017.

Against:

A concern was raised that, although the bill adds 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 MMFLA.

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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.