

MICHIGAN'S NEW PUBLIC ACTS REGULATING MEDICAL MARIHUANA FACILITIES, AMENDING THE MICHIGAN MEDICAL MARIHUANA ACT AND PROVIDING A STATEWIDE TRACKING SYSTEM

I. Overview of Legislation

In September of this year, the Michigan Legislature passed, and Governor Snyder signed, three Public Acts regulating medical marihuana, providing licensing for various medical marihuana facilities and establishing a statewide internet-based monitoring system for use as an integrated marihuana tracking, inventory and verification system.

Public Act 282, the Marihuana Tracking Act, requires the Michigan Department of Licensing and Regulatory Affairs (“LARA”) to establish a statewide monitoring system to track marihuana transfers and transportation by licensees. The statewide monitoring system refers to an internet-based statewide database established, implemented and maintained directly or indirectly by LARA that is available to licensees, law enforcement agencies and authorized State departments on a 24-hour basis. Act 282 has no impact on local municipalities except for the ability of local law enforcement to access the statewide system.

Public Act 283 contains various amendments to the Michigan Medical Marihuana Act (“MMMA”). The amendments to the MMMA are largely technical, address the use and transportation of marihuana-infused products and extend criminal and civil immunity to certain persons for the transfer, purchase or sale of marihuana. Similar to Act 282, Act 283 has little impact on local municipalities.

Public Act 281, the Medical Marihuana Facilities Licensing Act (“Facilities Licensing Act”) establishes a comprehensive scheme for licensing and regulating marihuana growers, processors, secure transporters, provisioning centers and safety compliance facilities. The Facilities Licensing Act does impact local municipalities if they choose to enact local ordinances and allow such facilities within their municipal boundaries. Accordingly, it is necessary to understand the scope of the Facilities Licensing Act and its impact on local units of government.

II. Medical Marihuana Facilities Licensing Act

The Facilities Licensing Act licenses and regulates a variety of marihuana facilities within the State. Specifically, the Act licenses and regulates medical marihuana:

- Growers
- Processors

- Provisioning Centers
- Secure Transporters
- Safety Compliance Facilities

The five medical marihuana facilities set forth above are described in the Act as follows:

Growers – a grower is defined under the Act as a licensee that is a commercial entity that cultivates, dries, trims or cures and packages marihuana for sale to a processor or provisioning center.

- A grower 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 license does not authorize the grower to operate in an area unless the area is zoned for industrial or agricultural uses.

Processors – a processor is defined as a licensee that is a commercial entity that purchases marihuana from the grower and extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.

Provisioning Centers – a provisioning center is defined as a licensee that is a commercial entity that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients' registered primary caregivers.

Secure Transporters – a secure transporter is defined as a licensee that is a commercial entity that stores marihuana and transports marihuana between marihuana facilities for a fee.

Safety Compliance Facilities – a safety compliance facility is defined as a licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants, returns the test results and may return the marihuana to the marihuana facility.

In order to operate any of the above-listed facilities, the operator must obtain a license from the State.

A. Local Municipal Regulation

The Act specifically provides that a marihuana facility shall not operate in a municipality unless the municipality has adopted an ordinance that authorizes that type of facility. A municipality may adopt an ordinance to authorize 1 or more types of marihuana facilities within its municipal boundaries as well as to limit the number of each type of facility.

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

If a municipality adopts an ordinance authorizing one or more types of marihuana facilities, the ordinance may establish an annual, nonrefundable fee of not more than \$5,000 on a licensee to help defray administrative and enforcement costs associated with the operation of a marihuana facility within the municipality. It is important to understand that a marihuana facility may *not* operate in a municipality unless the municipality has adopted an ordinance authorizing that type of facility. In the absence of such an ordinance, medical marihuana, growers, processors, secure transporters, provisioning centers and safety compliance facilities will not be permitted to operate within a municipality.

B. State Licensure of Marihuana Facilities

In the event a municipality adopts an ordinance under Act 281 authorizing one or more of the five types of marihuana facilities, a potential licensee must obtain an operating license from the State of Michigan. A person may not apply to the State for an operating license until the expiration of 360 days after the effective date of the Act. Act 281 becomes effective December 20, 2016. If the State issues a license for a marihuana facility, the license shall be for a one-year period and is renewable annually. Each license is exclusive to the licensee and a licensee or any other person must apply for and receive State and local municipal approval before a license is transferred, sold or purchased.

C. Taxation

Under Act 281 a tax will be imposed on each provisioning center at the rate of 3% of the provisioning center's gross retail receipts. The Act defines a provisioning center as a commercial entity that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualified patients, directly or through their registered primary caregivers.

The Act also creates a medical marihuana excise fund. The fund is comprised of all money collected from the tax imposed on provisioning centers as well as all other fees, fines, and charges imposed under the Act. The fees do not include licensing fees charged by local municipalities. The money collected and placed in the medical marihuana excise fund is allocated, in part, to local municipalities. The Act provides that 25% of the monies in the excise fund at the close of every fiscal year shall be appropriated to municipalities in which a marihuana facility is located, allocated in proportion to the number of marihuana facilities within the municipality.

III. Summary

Local municipalities have absolute discretion in deciding whether to adopt an ordinance allowing marihuana facilities within their boundaries. In the absence of a specific ordinance allowing marihuana facilities under Act 281, no such facilities will be permitted. In the event a municipality wishes to allow one or more types of marihuana facilities within its boundaries, it will be necessary to adopt an ordinance allowing the facilities. The ordinance can take the form of either, or both, a regulatory and zoning ordinance. Since applicants for a State operating license cannot apply for a license for at least 360 days after December 20, 2016, local municipalities have a substantial period of time within which to evaluate whether to allow any of the facilities within their jurisdictions.