

**MICHIGAN MEDICAL MARIJUANA REGULATION:
From Home Remedy to Criminalization
to State Regulated Industry**

Outline of Presentation to the Ann Arbor City Council Work Session*

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* This paper is a general educational overview and is not intended to provide legal advice to the public. Any person or entity should consult their attorney for legal advice in this complicated area of the law.

I. SOCIAL/LEGAL CONTEXT OF MEDICAL MARIJUANA

- A. Medical History
- B. Criminalization of Sale and Production of Marijuana in the United States
 - 1. First State Ban – 1911
 - 2. Federal Ban – 1937
 - 3. Controlled Substances Act of 1970
 - 4. Anti-Drug Abuse Act
- C. Legislative Reform Efforts
 - 1. Medical Defense to criminal prosecution.
 - 2. First state to adopt medical marijuana law, California, 1997.
 - 3. Twenty-eight states (plus District of Columbia) now have medical marijuana laws. (Michigan was the 13th state to do so.)
 - 4. National Quinnipiac public opinion poll: 93% adults favor medical marijuana legalization. February 23, 2017
- D. Broader Context of Marijuana Legalization Efforts
 - 1. Eight states (and the District of Columbia) have decriminalized recreational use of marijuana since 2012. (Colorado first state.)
 - 2. Concern over cost of mass incarceration of persons for possession.
 - 3. National Quinnipiac public opinion poll: 57% adults favor legalization of recreational marijuana. February 23, 2017

II. MICHIGAN MEDICAL MARIJUANA ACT PASSED BY VOTERS IN 2008.

- A. Protects from arrest and prosecution for:
 - 1. “Medical use” of marijuana by “registered qualifying patient.”
 - 2. Assistance with “medical use” of marijuana by “registered primary caregiver.”

- B. Protects patients and caregivers only if they follow all the rules.
 - 1. **Does not *legalize*** marijuana-related activities.
 - 2. ***Immunizes patients and caregivers*** who follow all of the rules.
 - 3. Failure to follow the rules means possible arrest and prosecution for violating the Public Health Code (state counterpart to the Controlled Substances Act).

- C. Provides only two ways for a patient to obtain marijuana.
 - 1. Patients can grow plants and process the marijuana for himself/herself,

OR

 - 2. Patients can designate a caregiver to do so.

- D. Commercial “dispensary” business (similar to a pharmacy) violates the PHC; MMMA does not enable “dispensaries” due to limitations on distribution.
 - 1. A patient may designate only one caregiver. A caregiver can have no more than 5 patients.
 - 2. Does not use “dispensary” or any similar word.
 - 3. Large grow facility also not possible (maximum of 12 plants kept in an enclosed, locked facility with limited access grown by patient **OR** by patient’s caregiver kept in enclosed, locked facility separate from other patients’ plants).

III. PROBLEMS WITH THE 2008 MMMA ACT.

- A. Michigan Supreme Court ruled that the MMMA did not allow for dispensaries to operate under a “patient to patient” business model. *State of Michigan v. McQueen* (2013).
- B. There were likely no viable business models for a dispensary that would be protected by the MMMA.
- C. There were serious inefficiencies in the patient/caregiver delivery system although it worked for some patients and caregivers.

IV. THE MEDICAL MARIHUANA LICENSING FACILITIES ACT PASSED IN SEPTEMBER 2016 (EFFECTIVE DECEMBER, 2016).

A. Overview

1. Allows five different types of facilities.
2. Provides for a state Medical Marihuana Licensing Board (MMLB) which has authority to enforce licensing. Sec. 301
3. Provides a “seed to sale” tracking process. Sec. 207.
4. Provides for tax and fee structure on facilities. Sec 205.

B. Provides for 5 types of commercial facilities related to marijuana for medical use; state-license required, but state will not grant until January 2018 at the earliest.

1. Does **NOT** require a municipality to allow a state-licensed facility within its borders.
2. Permits a state-licensed facility in a municipality **ONLY IF** it has an ordinance permitting it.

In other words: **If City does nothing, none of these commercial entities are able to operate.**

3. In part, fills the “dispensary” void by providing for state-licensed “provisioning centers;” is not an amendment to the MMMA.

C. The five types of facilities and their limitations: each is a “commercial entity.”

1. **Grower.** (Classes: A, max 500 plants; B, max 1,000; C, max 1,500). Cultivates and prepares for sale to a processor or provisioning center. Can operate only in an area zoned industrial, agricultural or unzoned. May not have interest in a secure transport of safety compliance facility described below. Sec. 501
2. **Processor.** Purchases from grower and extracts resin or creates marijuana-infused products for provisioning centers. May not have an interest in a secure transport or safety compliance facility. Sec. 502
3. **Secure transporter.** Stores and transports between facilities. May not have interest in any of the four other facilities. Sec. 502

4. **Provisioning center.** Purchases from grower or processor to make product available to registered qualifying patients, directly or through the patients' registered primary caregivers. May not have an interest in a secure transport or safety compliance facility. Sec. 504
 5. **Safety compliance facility.** Receives marijuana from another facility or a registered primary caregiver for testing. May not have an interest in any of the four other facilities. Sec. 505
- D. Broad Authority of the Michigan Marijuana Licensing Board. Sec. 301
1. Statewide Monitoring and Licensing rules are established by Michigan Department of Licensing and Regulatory Affairs.
 2. License Applications Cannot be submitted until December 15, 2017
 3. LARA Regulatory Responsibilities
 - Evaluating licenses
 - Background checks
 - Pre-licensure and facility compliance inspections
 - Collection of fees
 - Complaint Investigations
 - Administrative hearings
 - Public Meetings
 4. Medical Marijuana Licensing Board
 5. Significant Budget and Implementation Issues
 6. When a municipality receives a notification that a business has applied for a license to the MMLB there are obligations of a municipality to provide information to the MMLB within 90 days. This information includes:
 - a. Copy of local ordinance allowing this type of facility
 - b. Copy of zoning regulations that are applicable
 - c. Description of any violations of ordinances by business applicant.

V. ISSUES FOR THE CITY TO DECIDE.

- A. Pass ordinance to allow one or more types of facilities?
 - 1. Just because one type of facility is allowed, does not mean others are automatically allowed.
- B. Pass ordinance to zone permitted facilities?
 - 1. Permitted zones for each type?
 - 2. Distance between facilities?
 - 3. Distance of facility from other uses (residential, schools, churches, adult entertainment, liquor establishment, etc.)?
 - a. Federal law prohibits drugs within 1000 ft. of a school, playground or public housing. 21 USC 860
- C. Required City permit?
 - 1. Charge a fee (up to \$5,000 annually)?
 - 2. Limit number of permits for each facility? Sec. 205.
 - 3. Permitting process?
- D. Other local regulations (regulation of purity and pricing governed by LARA)?
 - 1. Hours of operation? Is this within LARA authority to establish operating regulations for each type of license? Sec. 206(c)
 - 2. Days of operation?
 - 3. Signage? LARA is charged with establishing marketing and advertising restrictions. Sec. 206(p).

VI. HOW DOES THE MICHIGAN LICENSING FRAMEWORK FIT INTO FEDERAL DRUG POLICY?

- A. Marijuana is still illegal under federal law. The Drug Enforcement Agency as recently as July 19, 2016 denied a petition to reschedule marijuana. (81 FR 53767).
- B. In 2005, the U.S. Supreme Court held that Congress had the constitutional authority to prohibit the local cultivation and use of marijuana, despite state law to the contrary.

- C. Nevertheless, the prior administration under President Obama indicated that it would not pursue actions against marijuana businesses and users who comply with a state regulatory scheme. (Dept. of Justice, DAG 8-29-13).
- D. The current administration has been inconsistent in their statements on marijuana. Federal law does not distinguish between recreational use and medical use of marijuana, however the Trump administration has not stated whether enforcement activity will vary based on the type of use. Carrie Johnson, *Legal Marijuana Advocates Are Uneasy With Sessions' Stance*, NPR (April 6, 2017), <http://www.npr.org/2017/04/06/522821701/legal-marijuana-advocates-are-uneasy-with-sessions-stance>.
- E. Congress has banned, through budgetary restrictions, the Department of Justice from federal enforcement actions against states that implement a medical marijuana regulatory framework. That ban is still in effect and is being watched very carefully with each budget extension.
- F. Unlikely future federal intervention in state medical marijuana laws even with change of Administration.

VII. WHY ARE CITIES CONSIDERING OPTING INTO THE STATE REGULATORY NETWORK DESPITE FEDERAL LAW?

- A. Policy choice that access to properly processed medical marijuana for its residents with medical problems is available, particularly given the federal government's implicit allowance of medical marijuana in states with a statutory regulatory scheme.
- B. Additionally, residents will not be required to travel far to obtain treatment that a physician has deemed medically necessary.
- C. A city may create revenue from licensing of marijuana facilities at a cost of up to \$5,000 per license annually. Additionally, the state will tax each provisioning center 3% of its gross receipts; from this tax, 25% will go to municipalities where marijuana facilities are located. (M.C.L. § 333.27601; M.C.L. § 333.27602).
- D. Other states with a comprehensive marijuana regulatory scheme have profited greatly. For example, Colorado reported \$1.1 billion from the sale of medical and recreational marijuana for 2016. (Tom Huddleston, Jr., *Colorado Topped \$1 Billion in Legal Marijuana Sales in 2016*, Fortune (Dec. 13, 2016) <http://fortune.com/2016/12/13/colorado-billion-legal-marijuana-sales/>).

- E. Economic development of significant range of commercial business, including safety compliance facilities.
- F. This type of state licensing scheme is likely the template if recreational marijuana use is legalized by federal and/or state law in the future.