

Medical and Adult-Use Marijuana Licensing in Michigan



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35+ years of corporate legal experience in:

- Cannabis law (last 6 years)
- Commercial contracting
- Entity formation
- Real estate
- Tax planning

Background: Federal Regulation

- Cannabis (which describes both marijuana and hemp) over 0.3% THC is a Schedule I drug under the federal Controlled Substances Act of 1970 (CSA).
- 2018 farm bill descheduled hemp, removing cannabis under 0.3% from the CSA.
- From 2013 to 2018, US Department of Justice operated under the Cole memorandum stating that the Department could decline to enforce federal marijuana prohibition in states that "legalized marijuana in some form and ... implemented strong and effective regulatory and enforcement systems..."
- U.S. Attorney General Sessions rescinded the Cole Memorandum in 2018, but most AUSA's continue to apply its principles to marijuana law enforcement.



Michigan Marijuana Legalization

- Michigan took three steps to legalize marijuana: two ballot initiatives and one legislative action.
- Historically Michigan law broadly prohibited marijuana related activity.
 - even with state legalization, unless activity is permitted, it is still probably prohibited under the broad provisions of Michigan's controlled substances act.
- While consumption of marijuana by adults or medical patients generally does not require state licensure, most other state-permitted marijuana activity does require a license.



Michigan Medical Marijuana Act

In 2008, Michigan voters adopted the Michigan Medical Marijuana Act ("MMMA"), which allowed a limited class of individuals the medical use of marijuana.

- Physician-approved use of marijuana by registered patients with debilitating medical conditions.
- "Debilitating" medical condition includes cancer, HIV, ALS, and other conditions that cause wasting syndrome, chronic pain, severe nausea, or spasms.
- Physician must have a *bona-fide* patient relationship and must provide written certification (not a prescription).
- A patient may designate a caregiver to cultivate marijuana for the patient.



Michigan Medical Marijuana Act (cont.)

- The MMMA did not provide a basis for commercial cultivation, distribution or retail delivery of medical marijuana.
- Medical Marijuana Facilities Licensing Act ("MMFLA") was adopted by the legislature in 2016.
 - Provides for licensing of commercial medical marijuana growers, processors, transporters, and provisioning centers
 - Created Medical Marijuana Licensing Board - since abolished; now vested in Marijuana Regulatory Agency.
- The MMFLA became effective in December 2017 and licenses began to issue about nine months later.



Licenses Under the MMFLA

Grower: authorized to grow a limited number of marijuana plants:

- Class A – 500 plants
- Class B – 1,000 plants
- Class C – 1,500 plants (this license is "stackable" – each license permits up to 1,500 plants)

Processor: authorizes purchase of marijuana from a grower; allows the sale of marijuana or marijuana-infused products to a licensed provisioning center.



Licenses Under the MMFLA (cont.)

Secure Transporter: authorizes the storage and transportation of marijuana and money associated with the purchase or sale of marijuana between marijuana facilities.

- Not authorized to transport to a registered qualifying patient or registered primary caregiver.
- Growers and processors are generally required to use secure transporters for moving marijuana and cash except in limited circumstances.
- Must hold a chauffeur's license and operate with a 2-person crew.

Provisioning Center: authorizes the purchase of marijuana from a grower or processor and sale to a registered qualifying patient or registered primary caregiver.

Safety Compliance Facility (testing lab): authorizes the facility to receive marijuana from, test marijuana for, and return marijuana to only a marijuana facility.



2018 Ballot Initiative: Adult Use Recreational

In 2018, the people of Michigan approved the Michigan Regulation and Taxation of Marihuana Act ("MRTMA").

- Legalized recreational use for adults 21+.
- Provides for licensing, regulation, and taxation of commercial production, processing, and distribution of nonmedical marijuana.
- In 2019, Gov. Whitmer eliminated the Medical Marihuana Licensing Board and transferred its authority to the Marijuana Regulatory Agency ("MRA"). The MRA oversees licensing for medical and adult use marijuana.



The MRTMA

Core purposes:

- Legal recreational use by adults 21+.
- Distinguish industrial hemp (THC <0.3%) from marijuana (which also occurred at the federal level).
- License and regulate production, processing, testing and distribution.
- Eliminate the black market and prevent revenue from supporting criminals/gangs.



The MRTMA (cont.)

Created seven categories of establishments:

1. Growers
2. Processors
3. Secure transporters
4. Safety compliance facilities
5. Retailers
6. Microbusiness
7. Other types as may be created by LARA
 - (Including, among others, Designated Consumption Establishment and Marijuana Event Organizer)



Adult-Use Licenses

Grower: authorizes cultivation of up to the following number of marijuana plants:

- Class A – 100 plants
- Class B – 500 plants
- Class C – 2,000 plants (stackable, with a limit of five)

Processor: authorizes purchase of marijuana from a grower and sale of marijuana and marijuana-infused products to a retailer.

Secure transporter: authorizes storage and transportation of marijuana and money associated with the purchase or sale of marijuana between marijuana facilities.

- Growers and processors are generally required to use secure transporters for moving marijuana and cash except in limited circumstances.



Adult-Use Licenses (cont.)

Retailer: can buy from licensed establishments and sell to adults 21+. Licensees must:

- Test products in compliance with MRTMA.
- Ensure that products bear required labels.
- Verify customer identification/age.

Microbusiness: authorizes:

- Cultivation of up to 150 mature plants.
- Processing of marijuana products.
- Retail sales to adults 21+ from a single location.
Licensed microbusinesses cannot purchase from or sell marijuana to other licensed establishments.



Adult-Use Licenses (cont.)

Safety compliance facility (testing lab): authorizes the facility to receive marijuana, test it, and return it to a licensed marijuana facility.

Designated Consumption Establishment: allows adults 21+ to consume marijuana at the licensed location.

Marijuana Event Organizer: allows for a temporary marijuana event



Special Limitations for MRTMA Licenses

- Until December 6, 2021:
 - Applicants for MRTMA licenses must be Michigan residents (if they are individuals), and must have a state operating license under the MMFLA to apply for a retailer, processor, class B or C grower, or a marijuana secure transporter license.
 - The restriction to those holding MMFLA licenses was terminated by MRA, effective March 1, 2021.
- A holders of a license may be restricted from holding an ownership interest in a different type of licensed establishment.
 - Holder of a grower license cannot own an interest in a safety compliance facility, secure transporter, or microbusiness, or hold an interest in more than five growers.
 - Holder of a microbusiness license is restricted to one license and cannot have ownership in a grower, processor, retailer, safety compliance facility, or secure transporter.



Municipal Regulation of Marijuana

- Municipalities are defined as cities, villages and townships. Approximately 1750 “municipalities” in the state of Michigan.
- Under the MMFLA, municipalities which desire to allow medical marijuana facilities within their jurisdictions must "opt in."
 - a license will only be granted if the municipality has affirmatively approved that type of medical marijuana establishment.
- In contrast, MRTMA requires a municipality which desires to prohibit adult use marijuana establishments to "opt out."
 - A license may be granted unless the municipality has adopted an ordinance against it.
 - At least 1,400 municipalities have prohibited adult use marijuana businesses.
- Municipalities can also limit the number of recreational facilities, and/or impose a local license requirement that does not conflict with MRTMA.



Application Process

- MRA uses a two-step application process for licenses under the MRTMA and MMMA.
 - Step 1: vetting the applicants
 - Step 2: vetting the facility
- “Applicants” are broadly defined to include most ownership participants (holding more than 10% equity) and managerial employees. Spouses are often also included.
- Application fee is \$6,000, but reduced fees may be available under a social equity program.



Application Process (cont.)

Step 1: Prequalification of the main applicant and any "supplemental applicants."

- This step involves background checks of the relevant persons.
- The category of "Supplemental Applicant" is expansive: includes managerial employees, 10% owners, LLC members, managers (and spouses), partners and spouses, corporate officers and directors and their spouses, etc.
- Prequalification is valid for 2 years.

MRA advises not to proceed to step 2 until facility is ready to pass an inspection because MRA must issue a decision within 90 days.



Application Process (cont.)

Step 2: Vetting the physical establishment.

- This step involves review of business specifications, proof of financial responsibility, municipality information, and general employee information.
- Must pass inspections conducted by MRA and Bureau of Fire Safety.
- Must pass MRA inspection within 60 days of application submission.



Annual Regulatory Assessments and License Renewal Fees

MMFLA imposes an annual regulatory assessment on all licensees except the testing labs.

- The assessment is intended to impose the financial burden of regulation on the medical marijuana industry.
- For fiscal year 2021, this assessment ranges from \$4,667 to \$28,000.

Pursuant to rule, MRTMA imposes a similar annual license fee ranging between \$3,000 and \$50,000.



Questions?



Contact Bob Hendricks at:
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Conclusion



Thank you!

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