

**NEW MEDICAL MARIJUANA
LAW ALLOWS LARGE SCALE
GROWERS, DISPENSARIES...
AND MUCH MORE! UPDATE #8**

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INSIDE

Case Summaries, Wendy K. Walker, 2-3

Overview of Federal Regulation of Marijuana, Mark Wyckoff, 4-5

Overview of Regulation of Marijuana in the 50 States, Mark Wyckoff, 6-8

Local Regulation Under the Michigan Medical Marijuana Act 2009-2016, Doug Piggott, 9-12

Summaries of New Medical Marijuana Acts in Michigan, Wendy K. Walker, 13-15

Marijuana Growing, Processing, Testing, Transporting, and Sales Facilities are Now Legal in Michigan: What Action is Your Community Going to Take, Mark Wyckoff, 17-19

Jobs Available, Backcover

Calendar, Backcover

PLANNING & ZONING NEWS

A Monthly Magazine

SUMMARIES OF NEW MEDICAL MARIHUANA ACTS IN MICHIGAN

By Wendy K. Walker, J.D., MSU Extension Educator

MEDICAL MARIHUANA FACILITIES LICENSING ACT

PA 281 of 2016; Signed by Governor Sept. 21, 2016; **EFFECTIVE DATE:** December 20, 2016

Overview

This new act creates a licensing and regulatory structure for five types of medical marihuana facilities: *growers, processors, provisioning centers, secure transporters, and safety compliance facilities*. The act provides immunity from criminal and civil prosecution for marihuana-related offenses to persons conducting marihuana-related activities in compliance with the act. The act generally vests implementation and enforcement in the Michigan Department of Licensing and Regulatory Affairs (LARA) and a new medical marihuana licensing board (MML board) to be appointed by the governor. *Of particular note to local officials, the act allows municipalities to either adopt an ordinance that authorizes licensed marihuana facilities in their jurisdiction or exclude such facilities by taking no action.*

Medical Marihuana Licensing Board

Creates 5-member MML board within LARA to be appointed by the governor (Sec. 301(1-2)). Requires 1 member appointed from 3 nominees by the senate majority leader and 1 from 3 nominees by the speaker of the house, but prohibits more than 3 from the same political party (Sec. 301(2)). Establishes certain eligibility rules regarding criminal backgrounds and potential conflicts of interest (Sec. 301). Grants the MML board general responsibility for administering, implementing, and enforcing the act, including all licensing actions, consultation with LARA on promulgating rules, and reporting to the governor and legislature (Sec. 302). Requires LARA, in conjunction with the MML board, to employ a full-time executive director and other necessary personnel (Sec. 301(8)).

About the Author

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Marihuana Advisory Panel

Creates a 17-member marihuana advisory panel within LARA to make recommendations to the MML board regarding administration, implementation, and enforcement of this act and the marihuana tracking act (Sec. 801(1), (10)). Includes various state agency members and governor-appointed representatives of registered patients or caregivers, licensees, physicians, townships, cities and villages, counties, sheriffs, and local police (Sec. 801(2)).

License Types

Establishes grower license for a commercial entity that cultivates, dries, trims, or cures and packages marihuana for sale (Sec. 102(f)). Defines three grower classes by maximum plant numbers of 500, 1000, and 1500 (Sec. 501(1)). Authorizes sale of seeds or plants to only a grower and sale of marihuana, other than seeds, to only a processor or provisioning center (Sec. 501(2-3)).

Establishes processor license for a commercial entity that purchases marihuana from a grower, extracts resin or creates a packaged marihuana-infused product, and sells marihuana-infused products or marihuana to only a provisioning center. (Sec. 102(q), 502(1)).

Establishes provisioning center license for a commercial entity or that purchases or transfers marihuana from only a grower or processor and sells or provides marihuana to only registered qualifying patients or primary caregivers but excludes noncommercial locations authorized under MMMA (Sec. 102(r), 504(1)). Also authorizes provisioning center transfers of marihuana to and from a safety compliance facility for required testing (Sec. 504(2)). Prohibits the sale, consumption, or use of alcohol or tobacco products on the premises (Sec. 504(4)(d)). Also prohibits a physician from conducting a medical examination or issuing a medical certification document on the premises for a registry identification card (Sec. 504(4)(e)).

Establishes secure transporter license for a commercial entity that stores and transports marihuana, or money associated with its purchase or sale, between marihuana facilities but not to registered qualifying patients or primary caregivers (Sec. 102(x), 503(1)). Requires use of secure transporter for all authorized transfers between other licensees (Part 5). Establishes other requirements to ensure secure transportation and subjects it to inspection by law enforcement (Sec. 503(3-5)).

Establishes safety compliance facility license for a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver for safety and quality testing and returns marihuana to only a marihuana facility (Sec. 102(w), 505(1)). Requires a secured laboratory space not accessible to the general public, at least 1 employee with a relevant advanced degree in a medical or laboratory science, and other specified qualifications (Sec. 505(4)).

Municipal Control and Zoning

Prohibits a marihuana facility in a municipality (city, township, or village) that has not adopted an ordinance authorizing that facility type (Sec. 102(m), 205(1)). Allows a municipality to adopt an ordinance authorizing 1 or more facility types, limiting the number of each type, and establishing an annual license fee not exceeding \$5,000.00 to help defray associated administrative and enforcement costs (Sec. 205(1, 3)). Allows a municipality to adopt other ordinances relating to marihuana facilities, including zoning, that do not regulate marihuana purity or pricing or conflict with statutory regulations for marihuana facility licensing (Sec. 205(1)). Authorizes growers only in areas zoned for industrial or agricultural uses or unzoned areas that otherwise meet the municipality's requirements established under this act (Sec. 501(7)).

Requires license applicants to provide the MML board with a copy or website posting reference for the municipal ordinance or zoning regulations (Sec. 401(1)(j)). Also requires license applicants to give notice of the application to the municipality by registered mail within 10 days of the application (Sec. 401(1)(k), 401(6)).

Requires a municipality, within 90 days of receiving the required notice from a license applicant, to provide the MML board with the local ordinance, any applicable zoning regulations, and a description of any applicant violations of the ordinance or applicable zoning regulations (Sec. 205(1)). Also provides that the municipality's failure to submit the information cannot be used against the applicant (Sec. 205(2)).

State Licensing

Authorizes applications for state operating licenses beginning December 15, 2017 (Sec. 401(1)). Grants MML board exclusive authority to grant, deny, suspend, or revoke licenses (but may not limit the number or type of licenses granted) (Sec. 301, 302, 303(1), 407(1)).

Requires certain specified application information and defines certain specified licensee eligibility criteria including prohibited criminal backgrounds, residency requirements that apply until June 30, 2018, and exclusions from holding elective office and specified government employment (Sec. 401(1), 402(2)).

Makes licenses valid for 1-year with annual renewal (Sec. 402(6)). Requires MML board to consider any specific written input from an individual or entity within the location's local unit of government for renewals (Sec. 402(10)).

Makes a license a revocable privilege and not a property right (Sec. 409). Requires approval of MML board and municipality before a license is transferred, sold, or purchased (Sec. 406, 409).

Other License Limitations

Requires licensees to conduct pre-employment background checks (Sec. 405). Requires written permission of the MML board to hire an employee with a pending charge or conviction for a controlled substance-related felony less than 10 years old (Sec. 405).

Requires until December 31, 2021, that growers and processors have, or employ an individual with, at least 2 years' registered primary caregiver experience but prohibits a grower, processor, or secure transporter from being or employing an individual who is a simultaneous registered primary caregiver (Sec. 501(6)).

Prohibits growers, processors, or pro-

visioning centers and their investors from having an interest in a secure transporter or safety compliance facility (Sec. 501(5), 502(3), 504(3)). Prohibits secure transporters or their investors from having an interest in any other facility type or being a registered qualifying patient (Sec. 503(2)). Prohibits safety compliance facility licensees or their investors from having an interest in any other facility type (Sec. 505(3)).

Tracking

Requires that licensees use a secure third-party inventory control system capable of interfacing with the statewide monitoring system to track by unique identification numbers all marijuana plants, products, packages, patient and primary caregiver purchase totals, waste, destruction, conversions, derivatives, transfers, sales, transportation, returns, refunds, and recalls (Sec. 207). Also requires reporting loss, theft, or diversion of product; inventory discrepancies; and adverse patient responses or dose-related efficacy issues (Sec. 207). Provides licensees, LARA, state agencies, and law enforcement with database access only as authorized (Sec. 207).

Requires processors and provisioning centers to enter all transactions, current inventory, and specified other information into the statewide monitoring system (Sec. 502(4), 504(4)(b)). Requires checking the statewide monitoring system to determine whether a registered qualifying patient or primary caregiver hold a valid, current,

unexpired, and unrevoked registry ID card and whether the sale or transfer will exceed the established daily purchasing limit (Sec. 504(4)(c)).

Enforcement

Requires LARA, with MML board consultation, to promulgate rules necessary to implement, administer, and enforce the act, including operating regulations for each license category (Sec. 206).

Grants MML board jurisdiction over marijuana facilities, including investigating applicants and employees, conducting periodic audits, certifying revenue, requesting other information, receiving public complaints, conducting investigations into the overall safety, security, and integrity of operations, and ensuring that marijuana-infused products meet health and safety standards (Sec. 302, 303).

Authorizes warrantless searches, without notice, of facilities, persons, records, or licensee's other places of business if evidence of compliance or noncompliance with this act or rules is likely to be found (Sec. 303(c)). Authorizes MML board to take appropriate disciplinary action against a licensee for violations, including ejecting or excluding an individual from a marijuana facility (Sec. 303(1)).

Makes a marijuana facility and all property in it subject to examination at any time by local or state police (Sec. 208).

Allows MML board to deny, suspend, revoke, or restrict a license: if an applicant or licensee fails to comply with this act, rules, the marijuana tracking act, or any applicable municipal ordinance; if a licensee no longer meets license eligibility requirements; or if an applicant or licensee fails to provide information the MML board requests in any investigation, inquiry, or hearing (Sec. 407). Authorizes MML board to impose civil fines up to \$5,000 against an individual and up to \$10,000, or equal to the daily gross receipts, whichever is greater, against a licensee for each violation of this act, rules, or an order of the MML board (Sec. 407(1)). Specifies hearing requirements for the MML board's license actions (Sec. 407).

Immunity From Prosecution

Provides licensees and their agents immunity from criminal or civil prosecution for marijuana-related offenses under state law or local ordinances if acting in compliance with this act, rules under it, and any local ordinance adopted under section 205 (Sec. 201(1-2)). Prohibits searches and seizures except as authorized by this act (Sec. 201(1)). Provides innocent property owner immunity (Sec. 201).

Provides registered qualifying patients and primary caregivers immunity for provisioning center purchases within MMMA limits (Sec. 203). Provides caregivers immunity for certain transfers to a safety compliance facility (Sec. 203). Preserves

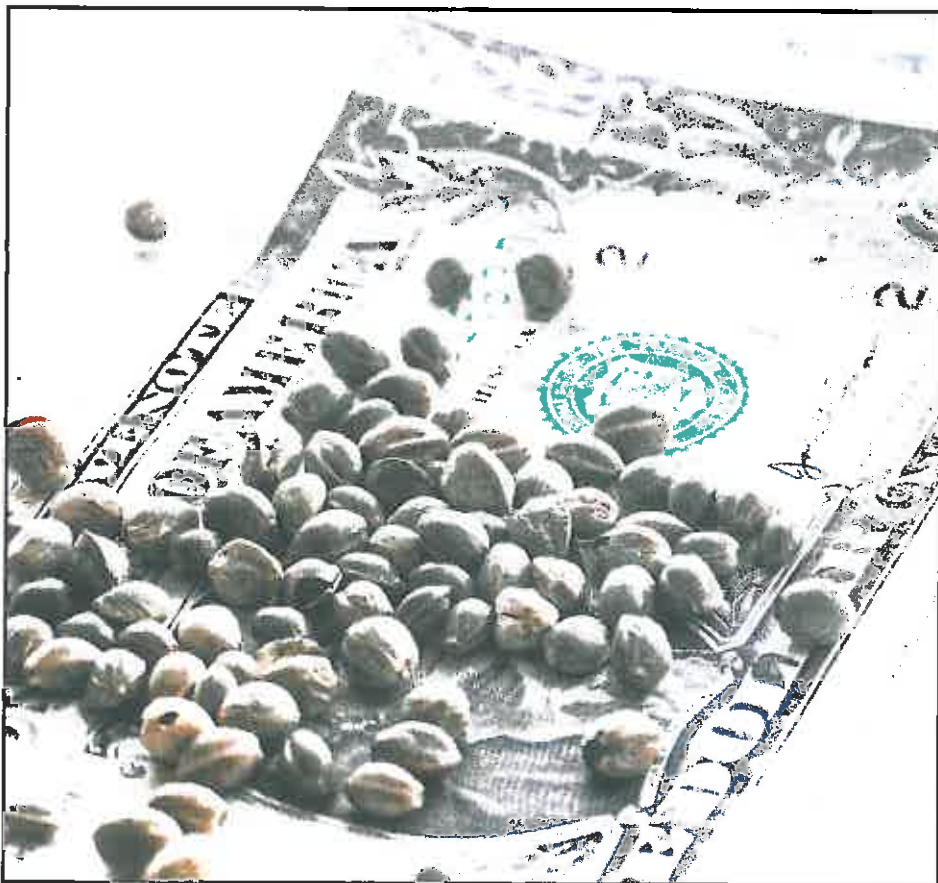


Photo by Deposit Photos

PA 282 requires tracking marijuana from seeds to sale.

the medical purpose defense in MMMA's section 8 (Sec. 204).

Taxes, Fees, and Assessments

Imposes a 3% tax on provisioning centers' gross retail receipts (Sec. 601(1)). Eliminates this tax 90 days after the effective date of a law authorizing recreational or nonmedical use of marijuana in the state (Sec. 601(1)).

Creates medical marijuana excise fund in the state treasury for all taxes and other fees, fines, and charges except application fees, regulatory assessments, and any local licensing fees (Sec. 602(1-2)). Allocates the money as follows: (a) 25% to municipalities with a marijuana facility, in proportion to the number of facilities within the municipality; (b) 30% to counties with a marijuana facility, in proportion to the number of facilities within the county; (c) 5% to counties with a marijuana facility, in proportion to the number of facilities within the county, to be used exclusively to support the county sheriffs and not in replacement of any other funding received by the county sheriffs; (d) 30% to the state's general fund until September 30, 2017, and then to the first responder presumed coverage fund beginning October 1, 2017; (e) 5% for local law enforcement training; and (f) 5% to the state police (Sec. 602(5)).

Requires that LARA establish an application fee in an amount to cover specified costs of background investigations and application processing (Sec. 401(5)).

Imposes a regulatory assessment on certain licensed growers, processors, provisioning centers, and secure transporters, in an amount set by LARA to defray LARA's specified costs to implement, administer, and enforce the act, including substance use disorder prevention, education, and treatment programs. (Sec. 603).

Reporting

Exempts certain specified records from FOIA, including information a municipality obtains from an applicant (Sec. 205(4), 401(2-3)). Requires licensees to submit an annual financial statement to the MML board and municipality (Sec. 701).

MARIHUANA TRACKING ACT

PA 282 of 2016; Signed by Governor Sept. 21, 2016; Effective Date: December 20, 2016

Overview

Requires Michigan Dept. of Licensing and Regulatory Affairs (LARA) to establish a statewide internet-based system to verify medical marijuana registry ID cards, monitor MMMA limits, and track marijuana and marijuana products in commercial trade. Makes it available to the state, law enforcement, and licensees as authorized



Photo by Gregorik Photos

PA 283 regulates "marijuana infused products," aka "medibles."

to administer, enforce, or comply with the MMMA and Medical Marijuana Licensing Act. Requires interface with third-party inventory and tracking systems mandatory for licensees. Exempts the system from FOIA.

MICHIGAN MEDICAL MARIHUANA ACT AMENDMENT

PA 283 of 2016; Signed by Governor Sept. 21, 2016; Effective Date: December 20, 2016

Overview

Amends the Michigan Medical Marijuana Act to regulate manufacturing and transporting of marijuana-infused products.

Definitions

Defines "marijuana-infused product" as a topical formulation, tincture, beverage, edible substance, or similar product containing any usable marijuana that is intended for human consumption in a manner other than smoke inhalation and exempts it from food law (MCL 333.26423(f)).

Defines "usable marijuana equivalent" to calculate the amount of usable marijuana in marijuana-infused products (MCL 333.26423(o), 26424(c)).

Adds plant resin and extract to definition of usable marijuana (MCL 333.26423(n)). Adds extraction and marijuana-infused products to definition of medical use of marijuana (MCL 333.26423(h)).

Defines "marijuana plant" as any plant of the species *Cannabis sativa* L (MCL 333.26423(g)). Defines "plant" as any living organism that produces its own food through photosynthesis and has observable root formation or is in growth material (MCL 333.26423(j)).

Immunity

Amends immunity provision for qualifying patients to possess marijuana not exceeding a 2.5 ounce combined total of usable marijuana and usable marijuana equivalents (MCL 333.26424(a)). Amends immunity provision for primary caregivers to possess the same for each connected qualifying patient (MCL 333.26424(b)).

Adds immunity provision for manufacturing marijuana-infused products by a qualifying patient for personal use or by a primary caregiver for a connected patient's use (MCL 333.26424(m)). Prohibits qualifying patients from transferring marijuana-infused products or marijuana (MCL 333.26424(n)). Allows primary caregivers to transfer marijuana-infused products to only connected qualifying patients (MCL 333.26424(o)).

Adds immunity provision for qualifying patients or primary caregivers transferring or purchasing authorized amounts from provisioning centers, transferring or selling seeds or seedlings to licensed growers, or transferring marijuana to safety compliance facilities for testing (MCL 333.26424a).

Prohibits qualifying patients or primary caregivers from transporting or possessing marijuana-infused products in a motor vehicle except as specifically provided (MCL 333.26424b). Establishes civil fine not exceeding \$250 for violations (MCL 333.26424b).

Other

Requires LARA to verify registry ID cards in the Marijuana Tracking Act database (MCL 333.26426(h)(3)).

Appropriates \$8.5 million to LARA for FY2016 from the marijuana registry fund for costs of implementing the licensing and tracking acts (MCL 333.26426(l)). □

MARIJUANA GROWING, PROCESSING, TESTING, TRANSPORT, AND SALES FACILITIES ARE NOW LEGAL IN MICHIGAN: What Action is Your Community Going to Take?

By Mark A. Wyckoff, FAICP, Editor

If you feel like you fell down the rabbit hole in **Alice in Wonderland** and you woke up to the Mad Hatter trying to explain things in that strange place, then do not get too upset, a lot of other folks are also waking up to the new world of marijuana facility regulation in Michigan. Where does your community fit in? Well, it does have choices and they are outlined at the end of this article, but first let me take you on a walk through some of the actions that led us to this new world in order to provide greater background and context so that your community can make choices that best reflects its community values.

The Michigan Legislature passed HB 4209 on September 14th, and the Governor signed PA 281 of 2016 on Sept. 21st. The new law allows "provisioning centers" (aka dispensaries) to sell marijuana to registered persons who hold a Michigan medical marijuana card allowing them to use marijuana to relieve various pain and suffering that conventional drugs do not seem to remedy as well. Companion laws PA 282 and PA 283 together with PA 281 establish a comprehensive new system for tracking marijuana seeds from growing to sale through a system of licensing the growing, processing, testing, transport, and distribution of medical marijuana. See summaries of those new laws by Wendy Walker on pages 13-15.

While the particulars of these new laws reveal that a lot of thought went into the structure of the new system, readers of the article on pages 6-8 will quickly spot many similarities to the structure of systems now in place in the states of Colorado and Washington. What is a bit peculiar, is that the regulatory system in those two states is not only for medical marijuana purposes, but also for recreational marijuana purposes. That is significant because marijuana is illegal under federal law for medical AND recreational purposes, and in Michigan based on the Michigan Medical Marijuana Act (MMMA), it is lawful to be used only by medical marijuana cardholders for medical purposes. So why did the Legislature pass HB 4209?

A case can be made that the Legislature passed the new law at least in part, to have a system in place for regulation of the sale of marijuana *for recreational purposes* in the event that Michigan voters or the federal government make it lawful (see articles on pages 4-5 and 6-8 for more background on trends in this area and the states that will vote on whether to authorize recreational marijuana this November). It could also be that the challenges of not having dispensary regulations in place became an untenable situation with over 20 Michigan communities having decriminalizing marijuana possession (some did so several decades ago), some communities permitting dispensaries, and law enforcement in some counties like Oakland, aggressively shutting dispensaries down as soon as they opened. All of this unevenness and uncertainty greatly inhibits the ability of legitimate medical marijuana cardholders to obtain medical marijuana when they need it. They may have trouble growing it, be unable to find a satisfactory caregiver, or uncomfortable with either of those and prefer to buy it in a

"store" like they do other goods. Perhaps these problems were in existence in other states, since, according to the Marijuana Policy Project in Washington, D.C. that tracks state marijuana legislation, Michigan was one of only two states that allowed medical marijuana but did not have a law allowing dispensaries. Much of that uncertainty has now been erased – or at least will be when the new system is fully operational.

A year ago, Michigan was poised to potentially have three ballot measures to vote on related to authorizing recreational use of marijuana. Now it has none. The Michigan Responsibility Council talked about one, but never sought formal approval to collect signatures. Their approach was based on a design tried in Ohio that would have permitted a very small number of growing centers and retail operations operated by a legal monopoly. There was strong public opposition to the monopoly dimensions of the proposal. The Michigan Cannabis Coalition proposed a more market-based approach, but ran into conflict on signature qualifications with the Bureau of Elections. The broadest proposal was by the Michigan Comprehensive Cannabis Law Reform Committee. It turned in roughly 350,000 signatures, but about half were collected outside the 180-day time frame required by law. Court decisions and quick passage of a new law by the Legislature affirmed the limited signature collection window and Michigan's citizens will NOT be voting this November on that or any proposal to authorize recreational marijuana. But because of legislative and executive action in September, we now have PA's 281-283 to regulate medical marijuana. With a few amendments Michigan is statutorily ready for what increasingly looks like an eventuality (due to changing public opinion), the legalization of marijuana for recreational purposes. The question is how soon.

The whole concept of a provisioning center was not anticipated in the MMMA, passed by Michigan voters in 2008. The Michigan Supreme Court (MSC) confirmed that in **Michigan v McQueen** saying that medical marijuana dispensaries engaged in patient-to-patient sales were not protected by the MMMA (were illegal), and that communities could shut them down as public nuisances (and did not need to permit new ones). The MSC also later said that municipalities could not simply outlaw some activities by citing the illegality of marijuana under federal law (see **Ter Beek v Wyoming**) since medical marijuana use by registered persons and grown by registered caregivers was legal under Michigan law per the MMMA. Under **McQueen** and the MMMA, municipal attorneys and county prosecutors were free to prosecute dispensary owners under either federal or Michigan law. Since **PZN's** last special issue on this topic in August 2015, based on news reports, raids to close down dispensaries have occurred in Oakland County, Plainfield Twp. in Kent County, and in Haring Twp. in Wexford County. This even happened in Otsego County in March 2016 when law enforcement raided 10 dispensaries at the same time, nine of which were in Gaylord that had recently enacted an ordinance amendment regulating, and permitting dispensaries. In

the absence of specific state law, communities that did not want dispensaries, just said "No" when a prospective dispensary came to town. Those that did want dispensaries, either said "Yes" or nothing, and the Wild West for dispensary siting began, driven only by market demand.

As Doug Piggott points out in his article (pages 9-12), not all communities were opposed to marijuana dispensaries or growing operations and did not want to close them down. About a year after the MMMA took effect, dispensaries began popping up in communities around the state. After the Court of Appeals first ruled against them, and the MSC confirmed in **McQueen**, many closed. But in communities that were happy seeing vacant storefronts occupied, and to hear positive support from medical marijuana users who did not want to grow their own, or engage the services of a qualified grower/caregiver, dispensaries were viewed a good thing – they enhanced the tax base and refilled empty storefronts, if nothing else.



Photo by Mark Wyckoff

The uncertainty of regulation resulted in the Legislature being lobbied by advocates and opponents and HB 4209 took three years to go through the legislative process and the basic regulatory approach changed several times. Each change until the version that passed, either incurred the wrath of marijuana advocates (who want minimum regulation), or of law enforcement agencies (who desire a strong regulatory system) or of local governments who want to preserve the ability to choose whether or not to permit growing, processing, testing, transport or sales facilities in their community and the specific land use standards they may apply. According to several reports (the best by Andy Balaskovitz writing for *MiBiz*, October 3, 2016), the final result was a compromise and no side is completely happy. Complaints from marijuana advocates include:

- Over regulation and the potential to provide an incentive for an underground market (according to Balaskovitz, Representative Jeff Irwin, an initial co-sponsor of the bill withdrew his support of the bill once it added red tape and cost to licensed growers, processors, transporters and sellers);
- Taxation of the sale of marijuana to licensed cardholders since it is being used for medical purposes (although that is set to sunset if recreational use of marijuana is authorized);
- No "mini-license" allowance for qualified caregivers to sell excess supply of marijuana to provisioning centers, something fought by law enforcement (this raises the question of where excess supply is presently going—is it being destroyed, sold illegally or given away?);
- Caregivers now have to decide whether to stay with their designated patients, or apply for a grow license, but they cannot do both; and
- Allowing local governments to ban medical marijuana facilities, rather than simply put a cap on their number.

Proponents argue that the entire system will be much safer with licensing of all aspects of growing, processing, testing, transport and sale. New requirements for labs to certify the active THC in each plant will inform buyers of the potency of the marijuana they are buying. Under the current system, home growers and most caretakers do not know the potency of what they are growing, and buyers at dispensaries do not know what they are buying. Under the new system there is also an expanded role for law enforcement and revenues to pay for it, at each stage in the growing through distribution cycle. When Governor Snyder signed PA's 281-283 into law on Sept. 21st he released a statement which said:

"This new law will help Michiganders of all ages and with varying medical conditions access safe products to relieve their suffering. We can finally implement a solid framework that gives patients a safe source from which to purchase and utilize medical marijuana."

In the end, groups that supported the legislation included the National Patient's Rights Association, the Michigan Epilepsy Foundation and Michigan Parents for Compassion. Most of the other stakeholders simply remained neutral or removed their opposition making it easy for legislators on both sides of the aisle to move the legislation forward. Each bill passed handily in each house.

While safety was a clear objective of the legislation, the strong revenue flows being achieved in Colorado and Washington were likely an equally important consideration. Below is an excerpt from the last Michigan Senate Fiscal Agency Bill analysis released on 9-23-16.

"To help put these estimates in context, in 2015 in Colorado, which has a 2.9% tax on medical marijuana sold at provisioning centers, registered patients each spent an average of \$3,4872 on retail medical marijuana during the year. If Michigan patients follow similar buying patterns, based on 204,018 registered patients in FY 2015-16, the total medical marijuana market in Michigan will be about \$711.4 million. This assumes that medical marijuana prices, buying habits, availability, and other factors will be consistent with those in Colorado. Using LARA's [Dept. of Licensing and Regulatory Affairs] estimates, the regulatory cost of this market will be about 3.0% of gross sales. This estimate additionally assumes that the number of registered patients remains static, and assumes a developed market. It is likely that the actual size of Michigan's market will be significantly smaller for some period of time as market participants enter the market.

The bill also establishes a 3% tax on the gross retail receipts of provisioning centers. Revenue from this tax will be deposited in the Medical Marijuana Excise Fund (created under the bill), and will be distributed as follows: 25% to municipalities with medical marijuana facilities in proportion to the number of facilities; 30% to counties with medical marijuana facilities in proportion to the number of facilities; 5% to counties with medical marijuana facilities in proportion to the number of facilities, solely to support county sheriffs (funds that may not supplant other funding received by the county sheriffs); until September 30, 2017, 30% to the State General Fund; beginning October 1, 2017, 30% to the First Responder Presumed Coverage Fund; 5% to the Michigan Commission on Law Enforcement Standards for training on enforcement of the Act; and 5% to the Department of State Police. Using the above estimate for the size of Michigan's medical marijuana market, this tax will raise about \$21.3 million per year, which will be distributed as follows: \$5.3 million to municipalities [with medical marijuana facilities], \$6.4 million to counties [with medical marijuana facilities], \$6.4 million to the State General Fund/First Responder Presumed Coverage Fund (before/after September 30, 2017), and \$1.1 million each to county sheriffs, the Michigan Commission on Law Enforcement Standards, and the Department of State Police. [Underline by editor.]

In March of 2016, Dr. Gary Wolfram, an economist at Hillsdale College released a study on the economic impact of the three bill package that became PA 281-283. At that time he estimated annual retail sales of medical marijuana in Michigan at about \$493 million (based on one oz. per month per registered patients at an average price of \$285/oz. plus sales of paraphernalia). That sales level would generate between \$44.3 and \$63.5 million annually in tax revenue for Michigan.

While these numbers are estimates and based only on sales to roughly 200,000 registered medical marijuana cardholders, imagine the revenue amounts if recreational marijuana were legalized (Michigan has roughly 10 million residents)? See page 8 for the actual revenues being generated in Colorado and Washington. In a state like Michigan that is routinely revenue short to meet current service needs, another "sin" tax must seem like a gift from "heaven."



Photo by Mark Wyckoff

What Options for Action?

Arguably the most important provision in the three new laws to many local governments is Section 205 of PA 281:

"Sec. 205. (1) A marijuana 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 marijuana facilities within its boundaries and to limit the number of each type of marijuana facility. A municipality may adopt other ordinances relating to marijuana facilities within its jurisdiction, including zoning regulations, but shall not impose regulations regarding the purity or pricing of marijuana or interfering or conflicting with statutory regulations for licensing marijuana facilities."

This provision allows municipalities to decide which medical marijuana facilities they want to allow, where, and in what number. If they decide against allowing any, they could reexamine that at a later time and reach a different conclusion. While the new laws take effect December 20th of this year, the state cannot accept license applications until Dec. 17, 2017. The administrative structure for guiding licensing by LARA has to be created, including the new Medical Marijuana Licensing board, the advisory committee and the hiring of a significant number of new staff. As a result, lo-

cal governments have some time to decide what course of action is appropriate for them. See sidebar on page 19. *Each community should decide whether to allow or not allow:*

- *Growing facilities:* three different scales are to be licensed (500, 1000, and 1500 plants);
- *Processing facilities;*
- *Marijuana testing facilities;*
- *Provisioning centers; and*
- *Transport facilities.*

Key questions that need to be asked and answered include: *Does your community want to allow one or more of these facilities by right, or by special land use permit? If by special permit, what standards must be met to obtain approval? Will zoning amendments be accompanied by a separate freestanding licensing ordinance? What provisions will it have? How will the two interconnect? What are adjoining communities likely to do? Will their decision impact yours? What if recreational marijuana is ultimately approved? Would that affect your decision now? In what way? Why?*

Because of the potential to receive new revenues from these newly legal land uses based on the share of the facilities of the state total that exist in each community with state licensed facilities, there is an incentive for some jurisdictions to allow a large number of marijuana facilities. Communities with an ordinance and a large number of facilities already in place are at an advantage. Detroit, for example, adopted a marijuana facility ordinance and amendments to the zoning ordinance early in 2016 that were expected to reduce the estimated 200+ dispensaries in place at adoption, to half or two-thirds of that once fully implemented due to spacing requirements and licensing ordinance requirements. Lansing has been working on an ordinance for several years and is expected to approve one soon. There are anywhere from 50 to 70 provisioning facilities already in operation in Lansing. And as the photo on the next page illustrates, there is even a phone/computer app to make it easy for residents and visitors to quickly find where provisioning centers are. [Ed. Note: with so many provisioning centers already in place in Lansing it is hard to believe that all of these provisioning centers are presently serving only registered cardholders and that the supply of marijuana comes only from the excess of registered caregivers. But I will leave that issue to law enforcement to sort out.]

Jackson and Ann Arbor as well as the cities of Flint and Burton are reported to have dispensary ordinances. Even some small communities like Haring Township have an ordinance that permits large growing facilities, but not dispensaries. These ordinances were all in place before the three new laws were enacted. Existing provisioning facilities will have to meet all state licensing and local regulatory requirements. But cities like Grand Rapids are reported to have no provisioning centers and have acted to prevent them from being located there. What decisions will your community make going forward?

PZN will continue to cover state and local responses to the new legislation and court responses as well. We will be closely looking at local regulatory approaches under consideration and those that are passed. Persons interested in writing articles on multiple local approaches should contact the editor if they have an interest in this. MSU Extension is preparing a training program for local government officials on the new laws and local regulatory options. Wendy Walker is heading that effort. The training is expected to be rolled out early in 2017. Stay tuned! □

What to Do Next?

Some communities have been following the marijuana legalization activities in Colorado, Washington, Oregon and Alaska, and the administrative efforts to implement them, as well as the progress of HB 4209, and have already decided their policy direction. The only job of this small group of communities will be to reexamine every existing medical marijuana regulation or other policy they have against PAs 281-283 to ensure they remain in compliance, and where they do not, to fix whatever problems they have.

However, for the vast bulk of Michigan communities, perhaps the best way to respond to the new legislation is by following a series of steps. Depending on the answers your community develops at each step, then it will move to the next step. There will be a point at which it is no longer necessary to move further. The steps that follow are for consideration by those communities.

General Steps to Take

1. **Get informed:** Read background information on the new Acts and the experiences of other jurisdictions. If you have read every article in this issue of *PZN*, then you will understand the big picture context within which your community needs to make some important decisions over the next year.
2. **Read even more and share information:** If you think your community needs to get into the marijuana regulating business, then read PAs 281-283 in detail, and ask that your municipal attorney read them as well. Share the background information you have with the planning staff, the planning commission and governing body. Find out what adjoining jurisdictions are doing. Engage other stakeholders as well (such as the local chamber of commerce or neighborhood groups) if they are prepared to engage.
3. **Engage in conversation:** Begin informal discussions with planning staff, other planning commissioners and members of the governing body on whether to allow, or not allow, the following new land uses in the community:
 - Marijuana growing facilities;

- Marijuana processing facilities;
- Marijuana testing facilities;
- Marijuana provisioning centers; and
- Marijuana transport facilities.

4. **Develop draft regulatory language:** If your community decides it should get into the marijuana regulatory business, then decide *which medical marijuana facilities it wants to allow, where, and in what number*. Seriously look at what other communities have adopted, and prepare draft language for consideration in your community. This is likely to first require amendment to the master plan, and then amendment of the zoning ordinance, and possibly involve adoption of a separate police power ordinance as well.
5. **Share draft new policies more broadly:** If other stakeholders have not yet been involved, then it is critical to involve them before going forward with public hearings. The community will likely need to refine the draft ordinances based on stakeholder input and for that reason, many communities will involve other groups earlier.
6. **Conduct formal adoption process:** Once consensus emerges on a course of action, then it is time to begin the formal adoption process by following all the requirements for public hearings before the master plan is amended, and then the zoning ordinance, as well as those that apply to adoption of a general police power ordinance by the governing body.
7. **Monitor results:** It may be that tweaks are needed to the local policies after adoption to address various local administrative or statutory considerations. Or the Legislature may change the law or the state Department of Licensing and Regulatory Affairs may change applicable rules that require some local policy modifications. Continue to stay well informed on the big picture. If marijuana is ever approved for recreational use, then changes to local policies are likely to be needed. □



Photo by Mark Wycioff

There are already 50-70 medical marijuana dispensaries in Lansing despite no lawful ordinance allowing them. Apparently this is enough dispensaries to support a cell phone app to make them easy to find.