

# Legislative Analysis

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## **MEDICAL MARIHUANA FACILITIES ACT AND MARIHUANA TRACKING ACT**

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4209 (Proposed Substitute H-1, Draft 8)**  
**Sponsor: Rep. Mike Callton, D.C.**

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

**House Bill 4827 (proposed for introduction)**  
**Sponsor: Rep. Klint Kesto**  
**Committee: Judiciary**  
**Complete to 8-18-15**

### **SUMMARY:**

House Bill 4209 (Proposed Substitute H-1, Draft 8) creates the Medical Marihuana Facilities Licensing Act to establish a licensing and regulation framework for medical marihuana growers, processors, secure transporters, provisioning centers, and safety compliance facilities. The regulatory framework created by the bill for marihuana draws on elements of the regulatory structure in place for alcohol under the Michigan Liquor Control Code and gaming under the Michigan Gaming Control and Revenue Act.

House Bill 4827 (as proposed) creates the Marihuana Tracking Act to require the establishment of a system to track marihuana grown, processed, transferred, stored, or disposed of under the Medical Marihuana Facilities Licensing Act (House Bill 4209)

In their current form, the two bills are tie-barred, meaning neither could take effect unless both are enacted.

### **BRIEF SUMMARY OF HB 4209:**

The proposed, would take effect 90 days after enactment and is tie-barred to the Marihuana Tracking Act (proposed House Bill 4827). A brief summary of significant provisions of Substitute H-1, Draft 8 of House Bill 4209 follows:

- A state operating license, renewed annually, would be required to operate as a grower, processor, provisioning center, secure transporter, or safety compliance facility. The application process for licensure requires written approval by the municipality (city, township, or village) in which the marihuana facility is to be located.
- A municipality could enact an ordinance to authorize, and limit the number of, one or more types of marihuana facilities within its boundaries; charge a one-time local licensing fee; and enact other ordinances related to marihuana facilities such as zoning ordinances.

- The Medical Marihuana Licensing Board would be created within the Department of Licensing and Regulatory Affairs (LARA). The Board would have general responsibility for implementing the act and all powers necessary and proper to fully and effectively implement and administer the act.
- Licensees, registered qualifying patients, and registered primary caregivers (hereinafter "patient" and "caregiver") would receive specified protection from criminal or civil prosecutions or sanctions *if* they were in compliance with the act.
- A tax rate of 8 percent of the purchase price would be imposed on the transfer of marihuana to a provisioning center.
- An annual regulatory assessment would be imposed on licensees to pay for medical-marihuana-related services or expenses of certain state agencies.
- Two new funds would be created to receive revenue from taxes, application fees, annual regulatory assessments, fines, penalties and other charges.
- Licensees would have to file annual financial statements, prepared by a CPA, of their total operations.
- A Marihuana Advisory Panel would be created within LARA to make recommendations concerning rules and the administration of the act.

#### **BRIEF SUMMARY OF HOUSE BILL 4827:**

Briefly, the bill would:

- Require the system to track, among other things, lot and batch information throughout the chain of custody; all sales and refunds; plant, batch, and product destruction; inventory discrepancies; loss, theft, or diversion of products containing marihuana; and adverse patient responses.
- Require the system to track patient purchase limits and flag purchases in excess of authorized limits.
- Provide real-time access to the system to local law enforcement agencies, state agencies, and the Department of Licensing and Regulatory Affairs (LARA).
- Require operation of the system to comply with HIPAA and exempt information in the system from disclosure under FOIA.
- Require licensees under the proposed Medical Marihuana Facilities Licensing Act (House Bill 4209) to supply LARA with tracking or testing information regarding each plant, product, package, batch, test, sale, or recall in or from the licensee's possession or control. A provisioning center would have to include information identifying the patient or primary caregiver to whom the sale was made.
- Create penalties for a licensee who willfully fails to comply with the reporting requirements: a civil infraction for a first offense and a misdemeanor penalty for a second or subsequent offense.

## DETAILED SUMMARY OF HB 4209

### Legislative Findings/Emergency Rules

The Legislature finds that the necessity for access to safe sources of marihuana for medical use and the immediate need for growers, processors, secure transporters, provisioning centers, and safety compliance facilities to operate under clear requirements establish the need to promulgate emergency rules to preserve the public health, safety, or welfare.

[The emergency rule process, governed under MCL 24.248, eliminates some of the procedures (e.g., certain notice and participation procedures) and thus is much shorter than the traditional process. The emergency rule is effective on filing and remains in effect until a date fixed in the rule or six months after the date of its filing, whichever is earlier. The rule may be extended once for not more than six months.]

### **Part 1. General Provisions**

"Grower" would mean a licensee that is a commercial grower entity located in the state that cultivate marihuana for sale to a processor or provisioning center.

"Marihuana" includes all of the following that are grown, processed, or sold for medical use as described in the Michigan Medical Marihuana Act:

- All parts of the plant *Cannabis sativa* L., its seeds or seedlings, and the resin extracted from part of it.
- Every compound, manufacture, salt, derivative, mixture, or preparation of *Cannabis sativa* L. or its seeds or resin.

"Processor" means a licensee that is a commercial facility located in the state that purchases marihuana from a grower and extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer to a provisioning center.

"Marihuana-infused product" means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana that is intended for human consumption in a manner other than smoke inhalation.

"Provisioning center" means a licensee that is commercial entity located in the state that acquires or possesses and sells, supplies, or provides marihuana to patients, directly or through the patient's caregiver. The term includes any commercial property where marihuana is sold at retail to patients or caregivers. A noncommercial location used by a caregiver to assist a patient connected to the caregiver through LARA's marihuana registration process in accordance with the Michigan Medical Marihuana Act is not a provisioning center.

"Safety compliance center" is a licensee that is a commercial entity that receives marihuana from a marihuana facility, tests it for contaminants, tetrahydrocannabinol, and other cannabinoids, and returns it to the marihuana facility with the test results.

"Secure transporter" means a licensee that is a commercial entity located in the state that physically stores, transfers, and transports marihuana between separate marihuana facilities for a fee.

## **Part 2. Application of Other Laws**

Licensees: In general, when engaging in certain protected activities, *a person granted a state operating license who is operating within the scope of the license and the licensee's agents* are not subject to criminal penalties regulating marihuana; state or local criminal or civil prosecution for marihuana-related offenses; certain searches or inspections; seizure of marihuana, real or personal property, or anything of value based on a marihuana-related offense; or license or other sanctions by a business, occupational, or professional licensing board or bureau based on a marihuana-related offense.

Protected activities include growing marihuana; purchasing, receiving, selling, transporting, or transferring marihuana from or to a licensee or its agent, a patient, or a caregiver; possessing or processing marihuana; possessing or manufacturing marihuana paraphernalia for medical use; testing, infusing, extracting, altering, transferring, or studying marihuana; and receiving or providing compensation for products or services.

A person who owns or leases real property upon which a licensed facility is located would also be protected from certain criminal or civil penalties for violations of the act by the licensed facility if the person had no knowledge of the violations.

Any other state law that is inconsistent with the act would not apply to a licensee operating in compliance with the act.

Patients and caregivers: A patient or caregiver would not be subject to criminal prosecution or sanctions for purchase of marihuana from a provisioning center *if* the quantity purchased is within the limits established under the Michigan Medical Marihuana Act.

Further, the act would not limit the medical purpose defense provided in Section 8 of the MMMA to any prosecution involving marihuana.

Municipalities: Municipalities could enact ordinances to authorize one or more types of marihuana facilities within its boundaries and could also limit the number of each type. A facility could not be licensed unless an authorizing ordinance has been adopted.

The ordinance could establish a one-time local licensing fee of not more than \$1,000 to defray administrative and enforcement costs associated with the operation of a marihuana facility. Other ordinances relating to facilities, including zoning restrictions, could also be adopted. However, restrictions that interfere or conflict with uniform statewide regulation of licensees could not be imposed.

Municipalities adopting authorizing ordinances must give preliminary approval to each applicant for a new state operating license before the Medical Marihuana Licensing Board can consider the application. Information obtained by the municipality from an applicant would be exempt from disclosure under the Freedom of Information Act.

Rules: LARA, in consultation with the Board, is required to promulgate rules and emergency rules as necessary to implement, administer, and enforce the act. The rules must ensure the safety, security, and integrity of the operation of marihuana facilities and must include, among other things, rules to set appropriate standards for facilities; minimum levels of insurance for licensees; establish testing standards; provide for the levy and collection of penalties and fines; establish chain of custody standards and standards for waste disposal; and establish labeling and packaging standards, procedures, and requirements for marihuana sold through provisioning centers (including a prohibition on labeling or packaging intended to appeal to or has the effect of appealing to minors).

### **Part 3. Medical Marihuana Licensing Board**

The Medical Marihuana Licensing Board is created within LARA and would consist of five members appointed by the governor, not more than three of whom could be members of the same political party. One member must be appointed from a list of three nominees submitted by the Senate Majority Leader and one from three nominees submitted by the Speaker of the House. The chairperson would be appointed by the governor. Other than initial appointees, board members would serve for four years. Members would be reimbursed for all actual and necessary expenses and disbursements incurred in carrying out official duties. Board members could not hold any other public office for which they received compensation other than necessary travel or other incidental expenses.

The bill establishes qualifications and disqualifications for appointment, grants the governor authority to remove a member for neglect of duty or other just causes, requires the employment of an executive director and other personnel as necessary to assist the Board, and lists circumstances that would disqualify persons from appointment or employment and other restrictions on and responsibilities for Board members, the executive director, and employees similar to those in place for corresponding positions under the Michigan Gaming Control and Revenue Act.

The board has the power and duties specified in the act and all other powers necessary and proper to fully and effectively implement and administer the act for the purpose of licensing, regulating, and enforcing the licensing and regulation system for marihuana growth, processing, testing, and transporting. It is subject to the Administrative Procedures Act and its duties include, but are not limited to, the following:

- Granting or denying applications for a state operating license within a reasonable time.
- Conducting public meetings in accordance with the Open Meetings Act.
- Implementing, in conjunction with LARA, the assessment and collection of all license and registration fees, assessments, and taxes imposed by the act and rules.
- Providing for the levy and collection of penalties and fines for violations of the act or rules.
- Providing oversight of a marihuana facility through the Board's inspectors, agents, and auditors and through the state police or attorney general for the purpose of certifying the revenue, receiving complaints from the public, or conducting investigations into the operation of a marihuana facility as considered necessary

- and proper to ensure compliance with the act and rules and to protect and promote the overall safety, security, and integrity of the operation of a marijuana facility.
- Reviewing the patterns of marijuana transfers by licensees and making recommendations to the governor and the Legislature in a written annual report.

The Board also has the authority to investigate applicants for state operating licenses, determine license eligibility, and grant licenses and investigate employees of licensees. The Board may seek and must receive the cooperation and assistance of the Department of State Police and Department of Attorney General in conducting background investigations of applicants and in fulfilling its responsibilities. It may investigate alleged violations of the act or rules and take appropriate disciplinary action against licensees. Under certain circumstances, and without a warrant or notice, the Board through its investigators, auditors, or state police may enter the premises of a licensee for specified purposes such as inspection and examination of the premises and inspect, examine, and audit relevant records and impound or seize records, etc., if the licensee fails to cooperate.

The Board is also authorized to conduct investigative and contested case hearings; issue subpoenas for the attendance of witnesses as well as for the production of books, ledgers, records and other pertinent documents; and administer oaths and affirmations. The executive director or his or her designee could also issue subpoenas and administer oaths and affirmations.

Certain conduct by Board members, employees, and licensees and applicants are prohibited, such as offering or taking bribes; a violation could result in expulsion from the board, termination from employment, or license sanctions as applicable.

#### **Part 4. Licensing**

A person may apply to the Board for a state operating license beginning 180 days after the bill's effective date. The application must be made under oath on a form provided by the Board and contain information as specified in the bill. Required information includes a description of the type of marijuana facility, written approval of the facility location from the municipality, anticipated or actual number of employees, and projected or actual gross receipts, among other things.

The application must be accompanied by a nonrefundable application fee to defray costs associated with the background investigation conducted by the Board. LARA, in consultation with the Board, must set the amount of the application fee for each category and class of license by rule. If the costs of the investigation and processing the application exceed the application fee, the applicant must pay the additional amount to the Board.

If the Board determines the applicant is qualified, it must issue a license to an applicant who submits a complete application and pays both the nonrefundable application fee and the regulatory assessment established for the first year of operation. The bill lists numerous disqualifying circumstances, such as a conviction within the past five years of a misdemeanor or a similar local ordinance involving a controlled substance, theft, dishonesty, or fraud.

The bill also lists circumstances and factors that the Board may consider in determining an applicant's eligibility for licensure, such as moral character and reputation, relevant criminal history, or bankruptcy filings within the past seven years.

An applicant must also submit a passport quality photograph and set of fingerprints for each person having a greater than one percent ownership interest in the facility or who is an officer, director, or managerial employee of the applicant.

Licenses would be valid for one year and renewed annually upon payment of the regulatory assessment and any local license fee. In its renewal decision, the Board may consider written and specific input it receives from the locality in which the facility is located. If a licensee ceased business operations for 60 consecutive days, the licensee must return the license to the Board. If the licensee demonstrates good cause and all required fees are paid, the Board may place the license in escrow for up to three years. The licensee could remove the license from escrow by submitting a written request to the Board and any other information required by rule.

Licenses are issued only in the name of the true party of interest, and, except for mobile secure transporter licensees, allows the licensee to operate at a single site as a grower, processor, secure transporter, provisioning center, or safety compliance facility. Board approval must be obtained before a license is transferred, sold, or purchased.

License sanctions: Failure to transfer, sell, or otherwise convey an interest of more than one percent in a license without Board approval is grounds for suspension or revocation of the license, or any other sanction considered appropriate by the Board.

An applicant or licensee who fails to comply with the act or rules, no longer meets the eligibility requirements for a license, or fails to provide information as requested by the Board to assist in any investigation, inquiry, or Board hearing, the board may suspend, or revoke a license.

The Board may suspend, revoke, or restrict a license and require the removal of a licensee or an employee for a violation of the act or rules.

Each violation of the act, rules, or an order of the Board may result in the imposition of civil fines up to \$5,000 against an individual and up to \$10,000 or an amount equal to the daily gross receipts, whichever is greater, against a licensee.

The Board must comply with the Administrative Procedures Act when imposing a license sanction, fine, or penalty. A license could be suspended without notice or hearing if the safety or health of patrons or employees is jeopardized by continuing a marijuana facility's operation. If a license is suspended without notice or hearing, a prompt postsuspension hearing must be held to determine if the suspension should remain in effect. If the licensee does not make satisfactory progress toward abating the hazard, the Board may revoke the license or approve a transfer or sale of the license.

Employees: A licensee must conduct a background check of a prospective employee before the person is hired. Written permission must be obtained from the Board before

hiring a person who has a pending charge or conviction within the past five years for a controlled substance-related felony.

### **Part 5. Licensees**

To be eligible for a marijuana facility license, an applicant and each investor must have been a resident of the state for the past two years. The license categories are as follows:

Grower License: The license authorizes the grower to grow not more than the following number of plants under the indicated license class:

- Class A—500 plants.
- Class B—1,000 plants.
- Class C—1,500 plants.

A grower license authorizes sales of marijuana seeds or seedlings only to a grower by means of a secure transporter and purchase of marijuana seeds or seedlings only from a grower, patient, or caregiver. The sale of marijuana, other than seeds or seedlings, can be made only to a processor or provisioning center. Other than transferring marijuana to and from a safety compliance facility for testing, a grower could only transfer marijuana by means of secure transporter to or from any separate location or facility.

A grower licensee could not have a greater than 10 percent interest in a secure transporter or a safety compliance facility. In addition, a grower would have to comply with the following requirements:

- Until December 31, 2021, have, or have as an active employee an individual who has, a minimum of two years' experience as a registered primary caregiver.
- While holding a license as a grower, not be a registered primary caregiver and not employ an individual who is simultaneously a registered primary caregiver.
- Enter each transfer of marijuana into the state's database for marijuana tracking, as provided in the Marijuana Tracking Act.

Processor License: The license authorizes purchase of marijuana only from a grower and sale of processed marijuana or marijuana-infused products only to a provisioning center. Other than transferring marijuana to and from a safety compliance facility for testing, a processor could only transfer marijuana by means of secure transporter to or from any separate location or facility.

A processor licensee could not have a greater than 10 percent interest in a secure transporter or a safety compliance facility. In addition, a processor would have to comply with the following requirements:

- Until December 31, 2021, have, or have as an active employee an individual who has, a minimum of two years' experience as a registered primary caregiver.
- While holding a license as a processor, not be a registered primary caregiver and not employ an individual who is simultaneously a registered primary caregiver.

- Enter each transfer of marihuana into the state's database for marihuana tracking, as provided in the Marihuana Tracking Act.

Secure Transporter License: The license authorizes the licensee to physically store, transfer, and transport marihuana between separate marihuana facilities for a fee upon request of a person with legal custody of the marihuana.

A secure transporter licensee could not have a greater than 10 percent interest in a grower, processor, provisioning center, or a safety compliance facility. Each transfer of marihuana must be entered into the state's database for marihuana tracking, as provided in the Marihuana Tracking Act.

A secure transporter must collect and promptly remit to the state treasurer the tax imposed under Section 601 of the act for each transfer of marihuana to a provisioning center.

Provisioning Center License: The license authorizes the purchase and transfer of marihuana only from a grower or processor, and sale and transfer to only a registered qualifying patient or registered primary caregiver. All transfers of marihuana to a provisioning center from a separate grower or processor must be by means of a secure transporter. The license also authorizes the transfer of marihuana to or from a safety compliance facility for testing.

A provisioning center licensee could not have more than a 10 percent interest in a secure transporter or safety compliance facility. Further, a provisioning center would have to comply with the following requirements:

- Sell marihuana only after it has been tested and bears the label required for retail sale.
- Enter each transfer of marihuana into the state's database for marihuana tracking.

Safety Compliance Facility License: The license authorizes the facility to receive, test, and return marihuana. The applicant and each investor in the safety compliance facility could not have a greater than 10 percent interest in a grower, secure transporter, processor, or provisioning center.

A safety compliance facility would have to comply with the following requirements:

- Perform tests to certify that marihuana is free of chemical residues such as fungicides and insecticides.
- Use validated test methods to determine levels of tetrahydrocannabinol, tetrahydrocannabinol acid, cannabidiol, and cannabidiol acid.
- Perform tests that determine whether the marihuana complies with the standards set forth in Section 8303 of the Public Health Code for microbial and mycotoxin contents.
- Perform other tests necessary to determine compliance with any other good manufacturing practices as prescribed in rules.
- Enter each transfer of marihuana into the state's database for marihuana tracking under the Marihuana Tracking Act, along with test results.

## **Part 6. Taxes and Fees**

A tax at the rate of 8 percent of the purchase price would be imposed on the transfer of marihuana to a provisioning center. Taxes imposed under this provision would be administered by the Department of Treasury and in case of conflict with the Revenue Act (Public Act 122 of 1941), the provisions of the Medical Marihuana Facilities Licensing Act would prevail.

**Medical Marihuana Regulatory Fund:** The fund would be created in the state treasury. Except for the license application fee, the regulatory assessment, and any local licensing fee, all money collected under the 8 percent tax described above and all other fees, fines, charges, and penalties imposed under the act must be deposited in the Fund.

All interest and earnings from Fund investments would be credited to the Fund and money remaining in the Fund at the close of a fiscal year must remain in the Fund and not lapse to the General Fund. LARA would be the administrator of the Fund for auditing purposes.

Money in the Fund would be allocated, upon appropriation, as follows:

- 27.5 percent to the municipalities in which a marihuana facility is located.
- 27.5 percent to the counties in which a marihuana facility is located.
- 5 percent to the sheriffs of the counties in which a marihuana facility is located.
- 40 percent to the state to be deposited in the state General Fund.

**Regulatory Assessment:** An annual regulatory assessment on licensees would pay for all regulatory and enforcement costs, medical-marihuana-related legal services provided by the attorney general, medical-marihuana-related expenses of services provided by the Department of Health and Human Services, and medical-marihuana-related expenses of the Department of State Police. The assessment is in addition to taxes, application fees, and local licensing fees.

For the first year in which marihuana facilities are licensed, the total annual assessment would be \$9 million. LARA must adjust the assessment amount yearly to produce the revenue proportionately from growers, processors, secure transporters, and provisioning centers. On or before the date a licensee begins operations and on that date annually thereafter, each grower, processor, secure transporter, and provisioning center licensee (but not safety compliance facility) must pay the amount determined by LARA to produce an equal share of the total assessment from the four categories of licensees (the aggregate assessment from each category would be calculated to produce 1.4 of the total annual assessment).

From the amount collected from the annual regulatory assessment, a minimum of 5 percent must be allocated to the Department of Health and Human Services for marihuana-related expenditures such as substance use disorder services, prevention, education, and treatment programs. A minimum of \$250,000 must be allocated to LARA for licensing substance abuse facilities.

Marihuana Facilities Regulatory Restricted Fund. All money collected under the annual regulatory assessment and the license application fee must be deposited in the MFRRF. The MFRRF would also be created in the state treasury, with LARA as the administrator for auditing purposes. Fund interest and earnings from investments would be credited to the MFRRF and money in the Fund at the close of the fiscal year would remain in the Fund and not lapse to the General Fund.

Money from the MFRRF would be expended upon appropriation, and only for implementing, administering, and enforcing the act.

FY 2016 Appropriation. The bill requires an appropriation for the fiscal year ending September 30, 2013, of \$6.5 million for funding LARA's and the Board's operations in implementing, administering, and enforcing the act. The appropriation will be reimbursed by the uniform assessment of each type of marihuana facility licensee licensed under the act. Each licensee must pay the amount it owes not later than the day the facility first opens for operation. The amount the licensee reimburses the state under this provision will be credited against the annual assessment.

### **Part 7. Reports**

By 30 days after the end of each state fiscal year, each licensee must transmit to the Board and to the municipality compiled financial statements of the licensee's total operations. The financial statements must be compiled by a state-licensed certified public accountant (CPA) in a manner and form prescribed by the Board. The licensee would bear the cost of compensation for the CPA.

On or before April 15 of each year, the Board must submit to the governor and the chairs of the legislative committees that govern issues related to marihuana facilities a report, with the annual report, covering the previous year and include an account of the Board actions, its financial position, results of operation under the act, and any recommendations for legislation that the Board considers advisable.

### **Part 8. Marihuana Advisory Panel**

The Marihuana Advisory Panel would be created within LARA. The 13-member panel would include the director of the Department of State Police, director of the Department of Health and Human Services, director of LARA, the attorney general, and the director of the Michigan Department of Agriculture and Rural Development, or their designees. The rest of the membership would be appointed by the governor as follows:

- One registered medical marihuana patient or medical marihuana primary caregiver.
- One representative of provisioning centers.
- One representative of safety compliance centers.
- One representative of townships.
- One representative of cities and villages.
- One representative of the Department of Corrections or a sheriff.
- One state-licensed physician.

The bill would establish the process for appointments and filling vacancies, and how often the panel would meet. Business would be conducted at a public meeting in compliance with the Open Meetings Act. Writings prepared, owned, used, in the possession of, or retained by the panel in the performance of official duties would be subject to the Freedom of Information Act. Panel members would serve without compensation but could be reimbursed for actual and necessary expenses.

The panel would make recommendations to the Board concerning promulgation of rules, and as requested by the Board or LARA, administration of the new act. State departments and agencies must cooperate with the panel and upon request, provide it with meeting space and other resources to assist it in the performance of its duties.

## **DETAILED SUMMARY OF HB 4827**

**House Bill 4827** requires the Department of Licensing and Regulatory Affairs (LARA) to establish, maintain, and utilize a system to track marihuana that is grown, processed, transferred, stored, or disposed of under the Medical Marihuana Facilities Licensing Act (House Bill 4209). This could be accomplished either directly or by contract. The system would be operated in compliance with the federal Health Insurance Portability and Accountability Act (HIPAA).

"Marihuana" is defined to include all of the following that are grown, processed, or sold for medical use as described in the Michigan Medical Marihuana Act and the Medical Marihuana Facilities Licensing Act (House Bill 4209):

- All parts of the plant *Cannabis sativa* L.
- The seeds or seedlings, or the resin extracted from any part, of *Cannabis sativa* L.
- Every compound, manufacture, salt, derivative, mixture, or preparation of *Cannabis sativa* L. or its seeds or resin.

### System Platform

The bill requires the system to be hosted on a platform that allows dynamic allocation of resources, data redundancy, and recovery from a natural disaster within hours.

### System Capabilities

All of the following capabilities would be required:

- Tracking all plants, products, packages, patient and primary caregiver purchase totals, waste, transfers, conversions, sales, and returns that, if practicable, are linked to unique ID numbers.
- Tracking lot and batch information, as well as all products, conversions, and derivatives, throughout the entire chain of custody.
- Tracking plant, batch, and product destruction.
- Tracking transportation of product.
- Performing complete batch recall tracking that clearly identifies certain details specified in the bill relating to the specific batch subject to the recall; e.g., sold product, product available for sale, and product being processed into another form.

- Reporting and tracking loss, theft, or diversion of products containing marihuana; all inventory discrepancies; adverse patient responses or dose-related efficacy issues; and all sales and refunds.
- Tracking patient purchase limits and flagging purchases in excess of authorized limits.
- Receiving electronically submitted information required to be reported under the bill.
- Receiving testing results electronically from a safety compliance facility via a secured application program interface into the system and directly linking the testing results to each applicable source batch and sample.
- Flagging test results having characteristics indicating that they may have been altered.
- Providing information to cross-check that product sales are made to a qualified patient or designated primary caregiver and that the product received the required testing.
- Providing real-time access to information in the database to LARA, local law enforcement agencies, and state agencies.
- Providing LARA with real-time analytics regarding key performance indicators such as total daily sales, total plants in production, total plants destroyed, and total inventory adjustments.

#### Supplying Information to the System

Persons licensed under the Medical Marihuana Facilities Licensing Act (House Bill 4209) would be required to supply LARA with the relevant tracking or testing information in the form required by the department regarding each plant, product, package, batch, test, transfer, conversion, sale, recall, or disposition of marihuana in or from the person's possession or control. A provisioning center would be required to include information identifying the patient to whom or for whom the sale was made and, if applicable, the primary caregiver to whom the sale was made. LARA could require this information to be submitted electronically.

#### Penalties

A person (licensee under the Medical Marihuana Facilities Licensing Act) who willfully violates the reporting requirements described above would be responsible for a state civil infraction and could be ordered to pay a civil fine of not more than \$1,000.

A second or subsequent willful violation would be a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$2,500, or both.

#### Confidentiality

The information in the system established by LARA would be confidential and not subject to disclosure under the Freedom of Information Act. However, information could be disclosed in order to enforce the Michigan Medical Marihuana Act and the Medical Marihuana Facilities Licensing Act (House Bill 4209).

The bill would take effect 90 days after enactment and is tie-barred to House Bill 4209 (Medical Marihuana Facilities Licensing Act).

## **FISCAL IMPACT:**

House Bill 4209 would have a fiscal impact on the state government to the extent that the bill would establish a regulatory regime for the medical marijuana market implemented, administered, and enforced by the Department of Licensing and Regulatory Affairs, or LARA, (with support from the Departments of Attorney General, Health and Human Services, and State Police) and authorize LARA to prescribe and impose licensure application fees, regulatory assessments, and fines and penalties. The bill would also have a fiscal impact on local units of government to the extent that municipalities opt to permit marijuana facilities to operate within their jurisdiction, establish and enforce additional regulatory provisions, and levy initial licensure application fees. Lastly, the bill could have a fiscal impact on the state and local units of government to the extent that the excise tax on marijuana purchased by provisioning centers generates revenue that would be distributed to municipalities, counties, sheriffs, and the state's General Fund.

The bill would grant LARA the authority to prescribe annual licensure application fees and amounts in excess of the fees charged to (aspirant) marijuana facilities to offset the costs of processing applications and investigating applicants for state operating licenses. Similarly, the bill would authorize LARA to adjust the annual regulatory assessment, initially established to generate \$9.0 million, levied on marijuana facilities to offset the regulatory and enforcement costs of LARA, including the expenses of the Departments of Attorney General, Health and Human Services, and State Police related to medical marijuana; and statutory allocations to the Department of Health and Human Services for substance use disorder services, prevention, education; and LARA for the licensing of substance abuse facilities pursuant to Part 62 of 1978 PA 368. Consequently, the revenues generated by the application fees and regulatory assessment would likely be sufficient to adequately support LARA's costs to implement, administer, and enforce its duties under the bill.

LARA has estimated that the costs associated with the bill would total approximately \$21.1 million annually with \$726,000 in one-time information technology expenses. This estimate utilized a "worst-case scenario" which assumes that:

- LARA would employ 113.0 FTEs for the licensing and enforcement duties under the bill at an annual cost of \$13.3 million; this assumption is based on the personnel employed by the Licensing and Enforcement Divisions of the Michigan Liquor Control Commission (LCC) to oversee approximately 17,250 retail liquor licensees.
- The Department of State Police (MSP) would provide 34.0 FTEs for criminal enforcement activities related to medical marijuana at an annual cost of \$6.0 million; this assumption is based on the personnel employed by the MSP to provide criminal enforcement activities for the Michigan Casino Gaming Board (MGCB).
- The Department of Attorney General (AG) would provide 4.0 FTEs for legal and prosecutorial support related to medical marijuana at an annual cost of \$500,000.

- Remaining annual costs consist of telecom and information technology support (\$380,000); contractual services (\$350,000); travel (\$250,000); equipment, supplies, and materials (\$240,000); as well as one-time costs for development and implementation of the marihuana tracking information technology system (\$500,000) and initial purchases of information technology equipment (\$226,000).

As mentioned above, the bill would authorize LARA to prescribe application fees and adjust the regulatory assessment to generate sufficient revenues to adequately offset the costs of implementing, administering, and enforcing the bill; however, LARA seems to have based its estimates of these costs on assumptions that appear to anticipate the legalization and regulation of marihuana for recreational use. Although the costs estimated by LARA could be appropriate, and potentially accurate, for a scenario in which the recreational use of marihuana is legalized, they do not seem strictly applicable to the provisions of the bill.

According to a statistical report prepared by the Bureau of Health Care Services, there were 96,408 qualifying medical marihuana patients at the close of FY 2013-14; these patients currently either grow their own marihuana or obtain it from their primary caregivers pursuant to the Michigan Medical Marihuana Act of 2008 and could continue to do so irrespective of whether the bill is enacted into law. If the costs estimated above (less the costs for the marihuana tracking information technology system supported by the Michigan Medical Marihuana Fund under HB 4210) were divided equally amongst medical marihuana patients, the average amount ultimately incurred by each patient would be \$227. This amount would be in addition to the existing application fees for registry identification cards and the effects on prices of any markups by marihuana facilities and the 8.0% marihuana excise tax. There is a possibility that the medical marihuana market envisioned under the bill would not bear the regulatory costs as estimated by LARA, as medical marihuana patients could opt to continue to grow marihuana or obtain it from caregivers or on the black market rather than pay potentially higher prices charged by provisioning centers.

The amount of revenue that would be generated by the 8.0% excise tax imposed on the purchase price of marihuana paid by provisioning centers to growers or processors and distributed to local units of government and the state's General Fund is currently unknown and is dependent upon the numerous interrelated and dynamic factors affecting both the legal and black markets for marihuana, and whether the market envisioned under the bill could bear the regulatory costs estimated by LARA.

House Bill 4827 would require the creation and maintenance of the marihuana tracking information technology system (System) which would be supported by expenditures of money from the Michigan Medical Marihuana Fund (MMMMF) under House Bill 4210. Under current law, LARA administers the MMMMF, into which revenue generated by fees collected from applicants for medical marihuana registry identification cards are deposited and from which expenditures for the operation and oversight of the Michigan Medical Marihuana Program, including grants to county sheriffs' offices, are made.

The costs of developing, operating, and maintaining the System is dependent on the technical specifications and applications of the System; whether the System is provided by the Department of Technology, Management, and Budget (DTMB) or procured via contact a third-party vendor (e.g. Bio-Tech Medical Software, Inc., MJ Freeway Business Solutions, Franwell); and, if the latter, on the outcome of a competitive RFP process. The MMMF has historically received revenue in excess of expenditures, and the balance within the MMMF was \$26.4 million at the date this document was drafted; however, recent revisions to fee amounts and additional appropriations for grants to county sheriffs' offices will likely reduce the balance in future years.

House Bill 4827 adds new misdemeanors and civil infractions. Misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Misdemeanor fines and civil infraction fines are constitutionally dedicated to public libraries.

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Paul B. A. Holland

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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.