

# State Notes

## TOPICS OF LEGISLATIVE INTEREST

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### **Michigan Regulation and Taxation of Marihuana Act** **By Elizabeth Raczkowski, Fiscal Analyst**

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#### **Introduction**

The Michigan Regulation and Taxation of Marihuana Act was approved by voters on November 6, 2018. The Act legalizes possession of certain amounts of marihuana for adults 21 years of age or older, allows individuals to cultivate limited amounts of marihuana, and otherwise governs the growth, sale, distribution, use, and taxation of recreational marihuana in Michigan. The Act includes new taxes on marihuana sales and allocates license fee revenue to the new Marihuana Regulation Fund.

The effect legalization will have on the medical marihuana regulatory system and associated funds implemented with the Act's passage and subsequent legislation is unknown. However, because of a provision within the Medical Marihuana Facilities Licensing Act (MMFLA), legalization of recreational marihuana also has resulted in the elimination of the Medical Marihuana Excise Tax (see the Spring 2018 Senate Fiscal Agency *State Notes* article *Overview: Michigan's Medical Marihuana Laws and Funding* for more information on medical marihuana laws, funding, and participation data). The elimination of this tax, as well as potential changes in user behavior and licensing trends, will have a significant impact on the magnitude and distribution of marihuana-related revenue in Michigan.

#### **Policy Overview: Legalization and Regulation of Marihuana**

##### *Possession and Cultivation*

The Michigan Regulation and Taxation of Marihuana Act allows individuals 21 years of age or older to possess, purchase, use, transport, and process up to 2.5 ounces of marihuana, of which up to 0.5 ounces (15 grams) may be in the form of marihuana concentrate. An individual may possess, store, and process up to 10 ounces of marihuana and up to 12 marihuana plants at a time within his or her personal residence. The Act also allows an individual to give away or otherwise transfer up to 2.5 ounces of marihuana to another individual 21 or older so long as he or she does not receive remuneration and does not advertise the transfer to the public. Individuals aged 21 and older may possess and engage in the manufacture, use, and purchase of marihuana accessories.

The Act specifies that employers need not accommodate an employee's use of marihuana, and it generally allows a person to prohibit or regulate the cultivation, use, possession, and transfer of marihuana on property the person owns or manages, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marihuana by means other than smoking. The Act also contains numerous other prohibitions, including those against marihuana use on school grounds and the cultivation of plants visible from public places.

The Department of Licensing and Regulatory Affairs (LARA) has primary responsibility for the administration and enforcement of the Act. Activities associated with both recreational and medical marihuana were organized under the Bureau of Marijuana Regulation in late 2018. In March 2019, Governor Whitmer issued Executive Order 2019-7, which would create the Marijuana Regulatory Agency within LARA. The Order would transfer most of the powers,

responsibilities, and functions of the Bureau to the new Agency. This Order is expected to take effect April 30, 2019.

### *Departmental Responsibilities*

The Act requires LARA to promulgate rules to implement and administer the Act. This includes establishing a license fee schedule, licensee qualifications, and safety procedures. The Department also is required to prepare an annual report for the Governor, which must include the number of licenses granted, demographic information on licensees, and an accounting of revenues and expenditures related to the Act.

### *Licenses*

As described in Section 9 of the Act, the following licenses are available:

1. Marihuana Retailer
2. Marihuana Safety Compliance Facility
3. Marihuana Secure Transporter
4. Marihuana Processor
5. Marihuana Microbusiness (permitted to cultivate 150 or fewer plants)
6. Marihuana Grower - Class A (up to 100 plants)
7. Marihuana Grower - Class B (up to 500 plants)
8. Marihuana Grower - Class C (up to 2,000 plants)

These licenses are in addition to those authorized for medical marihuana licenses. License fees must be deposited into the Marihuana Regulation Fund and used exclusively for the implementation, administration, and enforcement of the Act. As previously noted, these fees will be established under rules promulgated by LARA.

The Department must begin accepting applications for marihuana establishments within twelve months of December 6, 2018, the Act's effective date. Generally, for the first 24 months after the application period begins, LARA may only accept applications for a Class A marihuana grower license or a microbusiness license only from Michigan residents and applications for license as a retailer, processor, Class B or Class C grower, or secure transporter license only from individuals who already hold a State operating license under the Medical Marihuana Facilities Licensing Act. Anyone may apply for a marihuana safety compliance facility license.

The Michigan Regulation and Taxation of Marihuana Act authorizes municipalities to prohibit or limit the number of marihuana establishments within their borders. Municipalities also are allowed to regulate aspects of marihuana sales and establishments insofar as those regulations do not conflict with the MRTMA or associated departmental rules. Municipalities also may develop their own licenses and may assess a civil fine of up to \$500 for a violation of a municipal ordinance. A municipality also is authorized to charge an annual fee of up to \$5,000 to defray costs associated with the operation of a marihuana business within its boundaries.



**Taxes under the Michigan Regulation and Taxation of Marihuana Act**

The Act created the Marihuana Regulation Fund within the State Treasury. The Fund is administered by LARA. In addition to fees, revenue from the new marihuana excise tax must be deposited into the Fund.

The Michigan Regulation and Taxation of Marihuana Act imposes on each marihuana retailer and microbusiness a 10% excise tax on marihuana on the sales price for marihuana sold or otherwise transferred to anyone other than a marihuana establishment. Excise tax revenue must be used first for administration and enforcement. The law then requires \$20.0 million to be spent on research for at least two years or until 2022. The sales of marihuana also are subject to the 6.0% sales tax.

Table 1 below shows the distribution of the sales and excise taxes to be collected under the Act. The distribution of the sales tax is the same as that levied on most other goods in Michigan.

**Table 1**

<b>Recreational Marihuana Taxes</b>		
<b>Revenue</b>	<b>Fund</b>	<b>Portion and Distribution</b>
6% Sales Tax	School Aid Fund	60% of collections levied at 4%; 100% of collections levied at 2%
	Constitutional Revenue Sharing	15% of the 4% tax
	General Fund/General Purpose	Any remaining sales tax revenue not dedicated to other purposes
10% Excise Tax	Marihuana Regulation Fund	35% - School Aid Fund, for K-12 education
		35% - Michigan Transportation Fund, for the repair and maintenance of roads and bridges
		15% - Municipalities in which a marihuana retail store or microbusiness is located, allocated in proportion to the number of those establishments within the municipality
		15% - Counties in which a marihuana retail store or microbusiness is located, allocated in proportion to the number of those establishments within the county

A Fall 2018 Senate Fiscal Agency estimate projected \$66.5 million in sales tax revenue and \$114.4 million in excise tax and license application fee revenue for fiscal year (FY) 2020-21.<sup>1</sup>

**Excise Tax Comparison**

The Medical Marihuana Excise Tax was a 3.0% tax on each medical marihuana provisioning center's gross sales receipts. The MMFLA specifies that this tax does not apply beginning 90 days after a law authorizing the recreational or nonmedical use of marihuana in Michigan takes effect.

<sup>1</sup> See the Senate Fiscal Agency publication "November 2018 Ballot Proposal 18-1: An Overview" for more in-depth analysis of the Act and associated revenue and cost projections.



The distribution of the revenue from the new excise tax will differ significantly from the distribution of the Medical Marihuana Excise Tax. Beneficiaries of Medical Marihuana Excise Tax revenue included the First Responder Presumed Coverage Fund, the Department of State Police, county sheriffs, and the Michigan Commission on Law Enforcement Standards. These entities do not receive funding under the new law. However, LARA will still administer grants to county sheriffs, which are funded through the Marihuana Registry Fund rather than the Medical Marihuana Excise Tax Fund.

New excise tax revenue recipients include the School Aid Fund and the Michigan Transportation Fund, both of which will receive 35.0% of the excise tax revenue. The remaining 30.0% will be distributed to counties and municipalities in which a marihuana retail store or microbusiness is located, and 15.0% will go to each type of local unit. Each 15% distribution will be allocated in proportion to the number of marihuana establishments within that local unit. Under the Medical Marihuana Excise Tax, counties and municipalities received a similar proportional distribution (30% and 25%, respectively).

Table 2 below compares the distribution of the eliminated Medical Marihuana Excise Tax to the new tax, referred to here as the "Recreational Marihuana Excise Tax".

**Table 2**

<b>Distribution of Medical and Recreational Marihuana Excise Taxes</b>	
<b>Medical Marihuana Excise Tax</b>	<b>Recreational Marihuana Excise Tax</b>
30% - First Responder Presumed Coverage Fund	35% - School Aid Fund, for K-12 education
30% - Counties in which a marihuana facility is located, allocated in proportion to the number of those establishments within the county	35% - Michigan Transportation Fund, for the repair and maintenance of roads and bridges
25% - Municipalities in which a marihuana facility is located, allocated in proportion to the number of those facilities within the municipality	15% - Municipalities in which a marihuana retail store or microbusiness is located, allocated in proportion to the number of those establishments within the municipality
5% - County sheriffs in counties in which a marihuana facility is located, allocated in proportion to the number of those facilities within the county	15% - Counties in which a marihuana retail store or microbusiness is located, allocated in proportion to the number of those establishments within the county
5% - Michigan Commission on Law Enforcement Standards for training local law enforcement officers	
5% - Department of State Police	

Because it will likely take significant time before the State's recreational system becomes fully functional, it is probable that there will be relatively low levels of tax revenue from the Recreational Excise Tax for several years. For FY 2017-18, appropriations of Medical Marihuana Excise Tax revenue totaled \$6.6 million, allocated as described in Table 2. This



amount increased to \$18.2 million for FY 2018-19. Revenue from the new tax will depend on the efficient establishment of the regulatory system, the number of approved licensees, and, ultimately, consumer behavior.

### **Conclusion**

The FY 2019-20 Executive Recommendation suggested approximately \$169.9 million in appropriations for the implementation, administration, and enforcement of the Act. This figure included \$59.0 million in sales tax revenue, \$13.1 million in fee revenue, and \$97.5 million in excise tax revenue. The Recommendation included 30.0 FTEs associated with MRTMA regulatory activities. \$10.0 million of Marihuana Regulation Fund appropriations were designated for reimbursement of the General Fund for initial costs, as required by the Act.

Supplemental appropriations through Public Act 618 of 2018 included \$5.0 million General Fund/General Purpose for these initial activities. Supplemental Letter 2019-4 requests an additional \$5.0 million for this purpose. While projected tax and licensing revenue from recreational marihuana are expected to fund regulatory activities sufficiently in the future, it is expected that revenue generation may be delayed as the regulatory regime is implemented.