

Medical Marihuana Facilities Licensing Act (MMFLA) compared with Proposal 1—the Michigan Regulation and Taxation of Marihuana Act (MRTMA)

Votes required for future amendments:

- MMFLA (PA 281 of 2016) requires a simple majority of vote of the Legislature (56 House votes and 20 Senate votes).
- Proposed MRTMA will require a 3/4 vote of the Legislature (83 House votes and 29 Senate votes).

Local Control:

- MMFLA requires municipality to OPT IN.
- Proposed MRTMA requires a municipality to OPT OUT. Municipal decision to limit the number of marihuana establishments or opt out is subject to override by the voters of that municipality through initiative petition.
- MMFLA, a state operating license may not be issued to an applicant unless the municipality in which the proposed facility will be located in has adopted an ordinance authorizing that type of license.
 - If municipality does nothing, no marihuana facilities can be licensed/operate in that municipality.
 - If municipality adopts ordinance (opts in), then it may:
 - Authorize any specific or all license types
 - Limit the number of each license type
- Proposed MRTMA, a state operating license shall be issued to operate in every municipality unless a municipality enacts an ordinance to opt out.
 - Municipality can completely prohibit all license types or limit the types of establishments allowed and the total number of each license type.
 - If the municipal limit on licenses prevents the State from issuing a license to all qualifying applicants, the municipality, not the State, is required to select from the competing applicants using a competitive process intended to identify those who are best suited to operate in compliance with the Act.
- Nothing under the MMFLA nor the proposed MRTMA has direct effect on the Michigan Medical Marihuana Act (MMMA, Initiated Law 1 of 2008; patient caregiver model).
- Proposed MRTMA broadens the prohibition on the separation of plant resin by butane extraction on residential premises under the MMMA to include methods using a substance with a flash point below 100 degrees Fahrenheit within the curtilage of a residence.
- Proposed MRTMA substantially increases the amount of marihuana that may be lawfully possessed from 2.5 ounces and 12 plants by a qualifying patient to 2.5 ounces on one's person, 10 ounces secured in one's residence, and no more than 12 plants at a time.
- While a municipality may regulate the time, place and manner of operation of marihuana establishments, the State must approve and issue a license to a proposed marihuana establishment that is not within an area exclusively zoned for residential use and is not within 1000 feet of a pre-existing K-12 public or private school. A municipality may reduce this distance by ordinance.

License Types:

- MMFLA has five license types:
 1. Grower
 - Class A – 500 plant limit
 - Class B – 1,000 plant limit
 - Class C – 1,500 plant limit

2. Processor
 3. Secure transporter
 4. Provisioning center
 5. Safety compliance facility
- Proposed MRTMA has six “marihuana establishment” license types:
 1. Grower (plant limits are different than MMFLA)
 - Class A – 100 plant limit
 - Class B – 500 plant limit
 - Class C – 2,000 plant limit
 2. Processor
 3. Secure transporter
 - Provides for license, but nowhere in the language is there a requirement that marihuana must only be transported by a secure transporter.
 4. Retailer
 - MMFLA license is a provisioning center, not retailer.
 5. Safety compliance facility
 6. Microbusiness
 - Person licensed to cultivate not more than 150 plants; process and package; and sell or otherwise transfer marihuana to individuals who are 21 years of age or older or to a safety compliance facility, but not to other marihuana establishments.
 - MRTMA also defines an “establishment” as, “any other type of marihuana-related business licensed” by the State, which would include licensed “marihuana facilities” under the MMFLA.
 - MMFLA prohibits a caregiver from grower, processor, or secure transporter license types.
 - Proposed MRTMA does not prohibit a caregiver from holding any of the six license types.
 - A person may be licensed under both the MMFLA as well as the proposed MRTMA.

Unreasonably Impracticable:

- MMFLA does not reference this term, found in proposed MRTMA.
- Proposed MRTMA prohibits any administrative rule or municipal ordinance that subjects the licensee to unreasonable risk or requires such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate the marihuana establishment.
 - Any rule or ordinance could be legally challenged if a person considers it to require too much time, money, etc.

Additional information:

- Definitions of key statutory terms are not consistent between the MMFLA and the proposed MRTMA.
- Grower license plant limits are not consistent between the MMFLA and the proposed MRTMA.
- Application process is not consistent between the MMFLA and the proposed MRTMA.
 - If the State does not begin accepting/processing MRTMA applications within one year of the effective date of the Act, applicants can submit an application to a municipality that has not opted out of the act. Municipality shall issue a municipal license to applicant within 90 days. Municipal license has same force and effect as state license, but the municipal license holder is not subject to regulation or enforcement by the State during the municipal license term.
- If proposed MRTMA passes, the MMFLA requirement that a three percent tax is imposed on each provisioning center’s gross retail receipts is no longer applicable. However, a 10 percent tax will be imposed on marihuana retailers on sales price of marihuana sold or otherwise transferred to anyone other than a marihuana establishment.
- The percent of the municipal portion of the excise tax collected is reduced from 25 percent under the MMFLA to 15 percent under the MRTMA and is paid only after the State is compensated for its implementation, administration, and enforcement of the Act; and until 2022 or for at least two years, \$20 million annually is provided to FDA-approved clinical trials researching the efficacy of marihuana in treating U.S. armed services veterans for medical conditions and suicide prevention.
- If proposed MRTMA passes, it goes in to effect 10 days after the election is certified by the State Board of Canvassers.