

As you are aware, we have continued to see strong support for legalizing responsible marijuana use in Michigan. Several organizations have joined together to form a drafting committee to determine options for bringing an initiative to the Nov. 2018 ballot that would legalize, regulate and tax the adult use of marijuana in Michigan.

A working draft of the ballot language has been developed with input from MIIlegalize, the Michigan Cannabis Coalition, the National Patient Rights Association, lawyers representing the Marijuana Law Section of the Michigan Bar, the ACLU and others.

We are encouraging the public to provide feedback to help us ensure that the final language reflects the will of Michigan voters. If you have comments or feedback on the draft ballot language please send them to [info@regulatemichigan.org](mailto:info@regulatemichigan.org) before February 25<sup>th</sup>.

Your input will be used to update the draft and a second version is tentatively scheduled to be shared on March 22, with the goal of submitting a final draft to the State Board of Canvassers later in April 2017 so that a signature collection drive can begin this spring.

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The people of the State of Michigan enact:

#### **Short Title**

Sec. 1. This act shall be known and may be cited as the Michigan Regulation and Taxation of Marihuana Act.

#### **Intent**

Sec. 2. The purpose of this act is to make marihuana legal for adults 21 years of age or older and to control the production and distribution of marihuana under a system that licenses, regulates, and taxes the businesses involved. The intent is to remove the production and distribution of marihuana from the illicit market; prevent revenue generated from commerce in marihuana from going to criminal enterprises or gangs; prevent the distribution of marihuana to persons under 21 years of age; prevent the diversion of marihuana to illicit markets; ensure safety of marihuana and marihuana-infused products; prevent adverse public health consequences; and ensure security of marihuana establishments. To the fullest extent possible, this act shall be interpreted in accordance with the purpose and intent set forth in this section.

#### **Definitions**

Sec. 3. As used in this act:

- (a) "Cultivate" means to propagate, breed, grow, harvest, dry, cure, or separate parts of the marihuana plant by manual or mechanical means.
- (b) "Department" means the department of licensing and regulatory affairs.
- (c) "Industrial hemp" means a plant of the genus Cannabis and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration that does not exceed 1% on a dry-weight basis, or per volume or weight of marihuana-infused product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant of the genus Cannabis regardless of moisture content.

- (d) “Manufacture” means to separate or otherwise prepare parts of the marihuana plant and to compound, blend, extract, infuse, or otherwise make or prepare marihuana or a marihuana-infused product.
- (e) “Marihuana” means all parts of the plant of the genus Cannabis, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including marihuana concentrate. Marihuana does not include:
- (1) the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination;
  - (2) industrial hemp; or
  - (3) the weight of any other ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.
- (f) “Marihuana accessories” means any equipment, product, material, or combination of equipment, products, or materials, which is designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, ingesting, inhaling, or otherwise introducing marihuana into the human body.
- (g) “Marihuana establishment” means a marihuana grower, safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, secure transporter, or any other type of marihuana-related business licensed by the department.
- (h) “Marihuana grower” means a person licensed to cultivate marihuana and sell or otherwise transfer marihuana to marihuana establishments.
- (i) “Marihuana-infused product” means a topical formulation, tincture, beverage, edible substance, or similar product containing marihuana or an extract from marihuana.
- (j) “Marihuana microbusiness” means a person licensed to cultivate not more than 250 marihuana plants; manufacture and package marihuana-infused products; and sell or otherwise transfer marihuana and marihuana-infused products to individuals who are 21 years of age or older, but not to other marihuana establishments.
- (k) “Marihuana processor” means a person licensed to obtain marihuana from marihuana establishments; manufacture and package marihuana and marihuana-infused products; and sell or otherwise transfer marihuana and marihuana-infused products to marihuana establishments.
- (l) “Marihuana retailer” means a person licensed to obtain marihuana and marihuana-infused products from marihuana establishments and to sell or otherwise transfer marihuana and marihuana-infused products to marihuana establishments and to individuals who are 21 years of age or older.
- (m) “Marihuana secure transporter” means a person licensed to obtain marihuana from marihuana establishments; remit tax payments on marihuana pursuant to section 14 of this act; and transport or otherwise transfer marihuana to marihuana establishments.

(n) "Marihuana safety compliance facility" means a person licensed to test marihuana and marihuana-infused products, including certification for potency and the presence of contaminants.

(o) "Municipality" means a city, township, or village.

(p) "Person" means an individual, corporation, limited liability company, partnership of any type, trust, or other legal entity.

(q) "Unreasonably impracticable" means that the measures necessary to comply with the regulations or ordinances adopted pursuant to this act subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent businessperson would not operate a marihuana establishment.

### **Limitations**

Sec. 4. 1. This act does not authorize:

(a) operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marihuana;

(b) transfer of marihuana, marihuana-infused products, or marihuana accessories to a person under the age of 21;

(c) any person under the age of 21 to possess, consume, purchase or otherwise obtain, cultivate, manufacture, transport, or sell marihuana or marihuana-infused products;

(d) separation of plant resin by butane extraction or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within the curtilage of any residential structure, unless done pursuant to a marihuana processor license;

(e) consuming marihuana in a public place or smoking marihuana where smoking tobacco is prohibited by the Michigan clean indoor air act, 1978 PA 368, MCL 33312601 to MCL 333.12616, except for purposes of this subdivision a public place does not include an area designated for consumption within a marihuana establishment located within a municipality that has authorized consumption on the premises;

(f) cultivating marihuana plants if the plants are visible from a public place without the use of binoculars, aircraft, or other optical aids or outside of an area that is equipped with a lock;

(g) consuming marihuana or marihuana-infused products within the passenger area of a vehicle upon a public way;

(h) possessing a container of marihuana or marihuana-infused product that is open or upon which the seal is broken and from which contents have been partially removed within the passenger area of a vehicle upon a public way;

(i) possessing or consuming marihuana, marihuana-infused products, or marihuana accessories on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1-12, in a school bus, or on the grounds of any correctional facility; or

(j) Possessing more than 2.5 ounces of marihuana within a person's place of residence unless the excess marihuana is secured by a lock.

2. This act does not limit any privileges, rights, immunities, or defenses of a person as provided in the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430, the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801, or any other law of this state regulating marihuana for medical use.
3. This act does not require an employer to accommodate conduct otherwise allowed by this act in any workplace or any employee working while under the influence of marihuana.
4. This act does not prevent a person from prohibiting or otherwise regulating the consumption, cultivation, manufacture, sale, or display of marihuana, marihuana-infused products, and marihuana accessories on property the person owns, occupies, or manages, except that a lease agreement shall not prohibit a tenant from possessing and consuming marihuana by means other than smoking.
5. This act does not prevent the state or a subdivision of the state from prohibiting or otherwise regulating the possession or consumption of marihuana, marihuana-infused products, or marihuana accessories within a building it owns, leases, or manages.
6. All other laws inconsistent with this act do not apply to conduct as provided for by this act.

#### **Personal Use of Marihuana**

Sec. 5. 1. Notwithstanding any other law or provision of this act, and except as otherwise provided in section 4 of this act, the following acts by a person 21 years of age or older are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner, are not grounds for disciplinary action by a professional licensing board, are not grounds for search or inspection, and are not grounds to deny any other right or privilege:

- (a) possessing, using or consuming, internally possessing, purchasing, transporting, or manufacturing 2.5 ounces or less of marihuana or marihuana-infused products, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate;
- (b) within the person's primary residence, cultivating not more than 12 marihuana plants for personal use and possessing marihuana, including marihuana produced by marihuana plants cultivated on the premises;
- (c) assisting another person who is 21 years of age or older in any of the acts described in this section;
- (d) giving away or otherwise transferring without remuneration up to 2.5 ounces of marihuana or marihuana-infused products, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate, to a person 21 years of age or older, as long as the transfer is not advertised or promoted to the public; and
- (e) if the import or export of marihuana to or from the state is not prohibited by federal law, possessing, consuming, purchasing, cultivating, or manufacturing any amount of marihuana or marihuana-infused products for personal and noncommercial use.

2. Notwithstanding any other law or provision of this act, except as otherwise provided in section 4 of this act, the following acts are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or

penalty in any manner, are not grounds for disciplinary action by a professional licensing board, and are not grounds to deny any other right or privilege:

- (a) leasing or otherwise allowing the use of property owned, occupied, or managed for any of the activities allowed under this act;
- (b) enrolling or employing a person who engages in marihuana-related activities allowed under this act;
- (c) possessing, cultivating, manufacturing, obtaining, transferring, or transporting industrial hemp; or
- (d) providing professional services to prospective or licensed marihuana establishments related to activity under this act.

3. Notwithstanding any other law or provision of this act, except as otherwise provided in section 4 of this act, the manufacture, possession, and purchase of marihuana accessories by a person 21 years of age or older and the distribution or sale of marihuana accessories to a person 21 years of age or older is authorized, is not unlawful, is not an offense, is not grounds for seizing or forfeiting property, is not grounds for arrest, prosecution, or penalty in any manner, is not grounds for disciplinary action by a professional licensing board, and is not grounds to deny any other right or privilege.

4. Absent clear, convincing, and articulable evidence that the person's actions related to marihuana are creating an unreasonable danger to the safety of a minor child, neither the presence of cannabinoid components or metabolites in a person's bodily fluids nor conduct permitted under this act related to the possession, consumption, transfer, cultivation, manufacture, or sale of marihuana, marihuana-infused products or marihuana accessories by a person charged with the well-being of a child shall be considered the sole or primary basis for restricting, denying, or imposing conditions on custody, parenting time, or parental rights.

5. For the purposes of this section, "marihuana concentrate" shall mean the resin extracted from any part of the plant of the genus *Cannabis* intended for smoking or vaporization but shall not include the weight of any other ingredient combined with that resin.

Sec. 6. A person who has been convicted, but would not have been guilty or would have been guilty of a lesser offense if this act had been in effect at the time of the offense, may file an application with the court that entered the judgment of conviction to redesignate the conviction as a misdemeanor or civil infraction or to set aside the conviction. This section does not create a right to commence an action for damages. A record shall not be maintained of any conviction that is set aside under this section. Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under this section.

### **Regulation and Licensing of Marihuana Establishments**

Sec. 7. 1. A municipality may prohibit any type of marihuana establishment within its boundaries or limit the number of each type of marihuana establishment within its boundaries by ordinance or an initiated or referred measure at a regularly scheduled election.

2. A municipality may adopt other ordinances that are not unreasonably impracticable and do not conflict with this act or with any regulation promulgated pursuant to this act and that:
  - (a) establish reasonable restrictions on public signs related to marihuana establishments;
  - (b) regulate the time, place, and manner of a marihuana grower, marihuana processor, marihuana retailer, marihuana microbusiness, and marihuana safety compliance facility operation, and of any business dealing in marihuana accessories;
  - (c) authorize the sale of marihuana and marihuana-infused products for consumption on the premises where sold or at special events in limited areas and for a limited time; and
  - (d) designate a violation of the ordinance and provide for a penalty for that violation, provided that such violation shall be a civil infraction and such penalty shall be a civil fine of not more than \$1,000.
3. A municipality may adopt an ordinance requiring a marihuana establishment with a physical location within the municipality to obtain a municipal license and may charge an annual fee of not more than \$5,000 to defray administrative and enforcement costs associated with the operation of the marihuana establishment in the municipality.
4. A municipality may not adopt an ordinance that prohibits a marihuana grower, a marihuana processor, and a marihuana retailer from operating within a single facility or from operating at a shared location of a marihuana facility operating pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.

Sec. 8. 1. The department is responsible for implementing this act and has the powers and duties necessary to control the commercial production and distribution of marihuana. The department shall employ any personnel and may contract with advisors and consultants as necessary to adequately perform its duties. No employee, advisor, or consultant involved in the implementation of this act may be pecuniarily interested, directly or indirectly, in any marihuana establishment. The department is subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328 and shall conduct public meetings in compliance with the open meetings act, 1976 PA 267, MCL 15.231 to 15.246. An employee, advisor, or consultant of the department shall not be personally liable for any action at law for damages sustained by a person because of an action performed or done in the performance of their duties in the administration of this act. The department may seek and shall receive the cooperation and assistance of the department of state police in conducting background investigations of applicants. Except as otherwise provided in this act, the department shall have the sole right, power, and duty to control marihuana traffic within this state. Responsibilities of the department include:

- (a) promulgating rules pursuant to section 9 of this act that are necessary to implement, administer, and enforce this act;
- (b) granting or denying each application for licensure and investigating each applicant to determine eligibility for licensure pursuant to section 10 of this act;
- (c) ensuring compliance with this act and the rules promulgated pursuant to this act by marihuana establishments by performing investigations of compliance and regular inspections of marihuana establishments and by taking appropriate

disciplinary action against a licensee, including prescribing civil fines for violations of this act or rules and suspending, restricting, or revoking a license;

(d) holding at least 4 public meetings each calendar year for the purpose of hearing complaints and receiving the views of the public with respect to administration of this act;

(e) collecting fees for licensure and fines for violations of this act or rules, depositing all fees collected in the marihuana regulation fund established by section 15 of this act, and remitting all fines collected to be deposited in the general fund; and

(f) submitting an annual report to the governor covering the previous year and containing the number of licenses of each class issued, a description of enforcement and disciplinary actions taken against licensees, and a statement of revenues and expenses of the department.

Sec. 9. 1. The department shall promulgate rules to implement and administer this act. The rules shall include:

(a) procedures for issuing a license pursuant to section 10 of this act and for renewing, suspending, and revoking a license to operate a marihuana establishment;

(b) a schedule of fees in amounts not more than necessary to pay for implementation and enforcement costs of this act and that relate to the size of each licensee or the volume of business conducted by the licensee;

(c) qualifications and requirements for licensure that are directly and demonstrably related to the operation of a marihuana establishment, provided that:

(1) a prior conviction solely for a marihuana-related offense shall not disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor;

(2) a background investigation shall be conducted on each person holding an ownership interest in an applicant for a marihuana establishment; and

(3) no qualification or requirement is more restrictive than any qualifications or requirements for licensure pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801;

(d) health and safety standards for cultivation, manufacture, and distribution of marihuana and marihuana-infused products;

(e) testing, packaging, and labeling standards, procedures, and requirements for marihuana and marihuana-infused products;

(f) security requirements, including lighting, physical security, and alarm requirements, and requirements for securely storing and transporting marihuana between marihuana establishments, provided that requirements do not prohibit cultivation of marihuana outdoors or in greenhouses;

(g) record keeping requirements for marihuana establishments and monitoring requirements to track the transfer of marihuana and marihuana-infused products by licensees;

(h) reasonable restrictions on advertising, marketing, and display of marihuana, marihuana-infused products, and marihuana establishments, including prohibiting advertising, marketing, or display with a high likelihood of reaching minors;

- (i) a plan to promote and encourage participation in the marihuana industry by people from communities that have been disproportionately harmed by marihuana prohibition and enforcement and to positively impact those communities; and
  - (j) penalties for failure to comply with any regulation promulgated pursuant to this section or for any violation of section 12 of this act, including civil fines and suspension, revocation, or restriction of a license to operate a marihuana establishment that allows for the continued maintenance and security of any marihuana or marihuana products.
2. In furtherance of the intent of this act, the department may promulgate rules which:
- (a) provide for issuance of additional types or classes of licenses to operate marihuana-related businesses, including licenses that authorize only limited cultivation, manufacture, transportation, delivery, storage, sale, or purchase of marihuana or marihuana-infused products, licenses that authorize the consumption of marihuana or marihuana-infused products on the premises where sold, licenses that authorize the consumption of marihuana at special events in limited areas and for a limited time, and licenses intended to facilitate scientific research or education;
  - (b) regulate the cultivation, manufacture, distribution, and sale of industrial hemp; and
  - (c) limit the total amount of marihuana cultivated in the state, if the department reasonably determines after an analysis of the current and anticipated supply of and demand for marihuana and marihuana-infused products, that a limit on the amount of marihuana cultivated within the state is necessary to minimize illicit markets for marihuana. If the department limits the total amount of marihuana that may be cultivated within the state, the department shall reconsider that determination at least biannually and shall not set the limit at a level below that which is necessary to provide an adequate supply of marihuana and marihuana-infused products in the state. No such limit shall be imposed if the import or export of marihuana to or from the state is not prohibited by federal law.
3. The department shall not promulgate a rule that:
- (a) establishes a limit on the number of any type of marihuana establishment license that may be granted, except as provided in section 9(2)(c) of this act;
  - (b) requires a customer to provide a marihuana retailer with identifying information other than identification to determine the customer's age or requires the marihuana retailer to acquire or record personal information about customers other than information typically required in a retail transaction;
  - (c) prohibits a marihuana establishment from operating at a shared location of a marihuana facility operating pursuant to the medical marihuana licensing act, 2016 PA 281, MCL 333.27101 to 333.27801 or prohibits a marihuana grower, marihuana processor, or marihuana retailer from operating within a single facility; or
  - (d) is unreasonably impracticable.

Sec. 10. 1. Each application for a license to operate a marihuana establishment shall be submitted to the department. Upon receipt of a complete application and application fee, the department shall forward a copy of the application to the municipality in which the marihuana establishment is to be located, determine whether the applicant and the premises qualify for the license and has complied with this act, and issue the



appropriate license or send the applicant a notice of rejection setting forth specific reasons why the department did not approve the license application within 90 days.

2. The department shall issue the following license types: marihuana retailer; marihuana safety compliance facility; marihuana secure transporter; marihuana processor; marihuana microbusiness; class A marihuana grower authorizing cultivation of not more than 100 marihuana plants; class B marihuana grower authorizing cultivation of not more than 500 marihuana plants; and class C marihuana grower authorizing cultivation of not more than 2,000 marihuana plants.

3. Except as provided in subdivision 4 of this section, the department shall approve a marihuana establishment license application and issue a license if:

(a) the applicant has submitted an application in compliance with rules made by the department, is in compliance with this act and the rules made pursuant to it, and has paid the required fee;

(b) the municipality in which the proposed marihuana establishment will be located does not notify the commission that the proposed marihuana establishment is not in compliance with an ordinance consistent with section 7 of this act and in effect at the time of application;

(c) the property where the proposed marihuana establishment is to be located is not within an area zoned exclusively for residential use and is not within 1,000 feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, unless a municipality adopts an ordinance that reduces this distance requirement;

(d) a person who holds any ownership interest in a proposed marihuana establishment:

(1) will not hold an ownership interest in more than 5 marihuana growers, regardless of class;

(2) will not hold an ownership interest in a safety compliance facility or in a marihuana secure transporter and an ownership interest in a marihuana grower, a marihuana processor, a marihuana retailer, or a marihuana microbusiness; and

(3) will not hold an ownership interest in a marihuana microbusiness and an ownership interest in a marihuana grower, a marihuana processor, a marihuana retailer, or another marihuana microbusiness;

(e) [special qualifications for licensure?]

(f) [residency restriction? Inclusion and scope to be determined]

4. If a municipality limits the number of marihuana establishments that may be licensed in the municipality pursuant to section 7 of this act and that limit prevents the department from issuing a license to all applicants who meet the requirements of subdivision 3 of this section, the department shall decide among competing applications by a competitive process intended to select applicants who are best suited to operate in compliance with this act within the municipality and that favors the municipality's preferred applicant or applicants for licensure.

5. All licenses under this act shall be effective for 1 year, unless the department issues the license for a longer term. A license shall be renewed upon receipt of a renewal application and a renewal fee from any marihuana establishment in good standing.

6. The department shall begin accepting applications for marihuana establishments within 9 months after the effective date of this act. For 24 months after the department

begins to receive applications for marihuana establishments, the department shall only accept applications for licensure:

(a) for a class A marihuana cultivator, from persons with experience cultivating marihuana in compliance with the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430;

(b) for a marihuana retailer, marihuana processor, class B marihuana cultivator, or class C marihuana cultivator, from persons holding a state operating license pursuant to the medical marihuana licensing act, 2016 PA 281, MCL 333.27101 to 333.27801;

(c) for a marihuana microbusiness, from persons holding a state operating license pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801; and

(d) for a marihuana secure transporter, from persons with experience cultivating marihuana in compliance with the Michigan medical marihuana act, 2008 IL 1, MCL 333.26421 to 333.26430 or from persons holding a state operating license for a secure transporter pursuant to the medical marihuana facilities licensing act, 2016 PA 281, MCL 333.27101 to 333.27801.

### **Marihuana Commerce**

Sec. 11. 1. Notwithstanding any other law or provision of this act, and except as otherwise provided in section 4 of this act or the rules promulgated pursuant to this act, the following acts performed by persons 21 years of age or older are not unlawful, are not an offense, are not grounds for seizing or forfeiting property, are not grounds for arrest, prosecution, or penalty in any manner, are not grounds for disciplinary action by a professional licensing board, are not grounds for search or inspection except as authorized by this act, and are not grounds to deny any other right or privilege:

(a) a marihuana grower or an agent acting on behalf of a marihuana grower cultivating not more than the number of marihuana plants authorized by the license class; possessing, packaging, storing, or testing marihuana; or selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment;

(b) a marihuana processor or agent acting on behalf of a marihuana processor manufacturing, possessing, packaging, storing, or testing marihuana or marihuana-infused products; or selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana or marihuana-infused products to or from a marihuana establishment;

(c) a marihuana secure transporter or an agent acting on behalf of a marihuana secure transporter possessing, storing, or testing marihuana or marihuana-infused products; selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for services;

(d) a safety compliance facility or an agent acting on behalf of a safety compliance facility testing, possessing, repackaging, or storing marihuana or marihuana-infused products; transferring, obtaining, or transporting marihuana to or from a marihuana establishment; or receiving compensation for services;

(e) a marihuana retailer or an agent acting on behalf of a marihuana retailer possessing, storing, or testing marihuana or marihuana-infused products; selling or otherwise transferring, purchasing or otherwise obtaining, or transporting marihuana to or from a marihuana establishment; or selling or otherwise transferring marihuana or marihuana-infused products to a person 21 years of age or older; or  
(f) a marihuana microbusiness or an agent acting on behalf of a marihuana microbusiness, cultivating not more than 250 marihuana plants; possessing, packaging, storing or testing marihuana and marihuana-infused products produced on the premises where the marihuana plants were cultivated; manufacturing marihuana and marihuana-infused products from marihuana plants cultivated on the premises; or selling or otherwise transferring marihuana or marihuana-infused products cultivated or manufactured on the premises to a person 21 years of age or older.

2. A person acting as an agent of a marihuana retailer who sells or otherwise transfers marihuana or marihuana accessories to a person under 21 years of age shall not be subject to arrest, prosecution, forfeiture of property, disciplinary action by a professional licensing board, denial of any right or privilege, or penalty in any manner, if the person reasonably verified that the recipient appeared to be 21 years of age or older by means of government-issued photographic identification containing a date of birth and the person complied with any rules promulgated pursuant to this act.

3. It is the public policy of this state that contracts related to the operation of marihuana establishments be enforceable. A contract entered into by a licensee or its agents or by those who allow property to be used by a licensee or its agents, shall not be unenforceable or void exclusively because the action or conduct permitted pursuant to the license is prohibited by federal law.

Sec. 12. (a) A marihuana establishment shall not allow cultivation, manufacture, sale, or display of marihuana or marihuana-infused products to be visible from a public place without the use of binoculars, aircraft, or other optical aids.

(b) A marihuana establishment shall not cultivate, manufacture, test, or store marihuana or marihuana-infused products at any location other than a physical address approved by the department and within an enclosed area that is secured in a manner that prevents access by persons not permitted by the marihuana establishment to access the area. A greenhouse or outdoor marihuana cultivation area shall not be readily accessible by unauthorized individuals.

(c) A marihuana establishment shall secure every entrance to the establishment so that access to areas containing marihuana is restricted to employees and others permitted by the marihuana establishment to access the area and to agents of the department or state and local law enforcement officers and emergency personnel and secure its inventory and equipment during and after operating hours to deter and prevent theft of marihuana, marihuana-infused products, and marihuana accessories.

(d) No marihuana establishment shall refuse representatives of the department the right at any time of operation to inspect the licensed premises or to audit the books and records of the marihuana establishment.

(e) No marihuana establishment shall allow any person under 21 years of age to volunteer or work for the marihuana establishment.

- (f) No marihuana establishment shall sell or otherwise transfer marihuana or marihuana-infused products that were not produced, distributed, and taxed in compliance with this act.
- (g) A marihuana grower, marihuana retailer, marihuana processor, or marihuana testing facility shall not transport marihuana, marihuana-infused products, or cash when:
- (1) the amount of marihuana exceeds **xx [weight to be determined]**; or
  - (2) an excise tax is due on the marihuana pursuant to section 14 of this act.
- (h) No marihuana processor may manufacture and no marihuana retailer may sell edible marihuana-infused candy in shapes or packages that are attractive to children or that are easily confused with commercially sold candy that does not contain marihuana.
- (i) No marihuana retailer may sell or otherwise transfer marihuana or a marihuana-infused product that is not contained in an opaque, re-sealable, child-resistant package designed to be significantly difficult for children under 5 years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995).

Sec. 13. Notwithstanding any law or regulation to the contrary, in computing net income for marihuana establishments, there shall be allowed as a deduction from state taxes all the ordinary and necessary expenses paid or incurred during the taxable year in carrying out a trade or business.

#### **Tax**

Sec. 14. 1. Marihuana sold or otherwise transferred by a marihuana grower or by a marihuana microbusiness is subject to an excise tax at a rate of:

- (a) **\$xx [to be determined]** per dry-weight ounce of marihuana flowers; and
- (b) **\$xx [to be determined]** per dry-weight ounce of marihuana leaves.

2. Taxes imposed under this section shall be administered by the department of treasury. The department of treasury may establish other categories of harvested marihuana or marihuana plants. These categories shall be taxed at their relative value compared with marihuana flowers. The department of treasury may adjust the rate for marihuana leaves annually to reflect fluctuations in the relative price of marihuana flowers to marihuana leaves and to account for inflation.

3. The department of treasury may promulgate rules that prescribe a method and manner for payment of the tax that utilizes stamping or other appropriate mechanisms to ensure proper tax collection.

4. The tax imposed by this section shall be remitted to the department of treasury by a marihuana secure transporter on behalf of a marihuana cultivator or directly by a marihuana microbusiness.

5. For purposes of this section:

- (a) "marihuana flowers" means the dried flowers of the marihuana plant as defined by the department of treasury; and
- (b) "marihuana leaves" means all parts of the marihuana plant other than marihuana flowers that are sold or otherwise transferred.

#### **Marihuana Regulation Fund**

Sec. 15. 1. The marihuana regulation fund is created in the state treasury. All money collected under section 14 of this act and all fees collected by the department shall be deposited in the fund. The state treasurer shall direct the investment of the fund and

shall credit the fund interest and earnings from fund investments. The department shall administer the fund for auditing purposes. Money in the fund shall not lapse to the general fund. The fund shall be expended first for the implementation, administration, and enforcement of this act. Upon appropriation, unexpended balances shall be allocated as follows:

- (a) [to be determined]; and
- (b) [to be determined]

2. Funds for the initial activities of the department under this act are appropriated from the general fund and shall be repaid to the general fund by proceeds from the fund.

### Penalties

Sec. 16. Notwithstanding any other law, and except as provided in section 5 or section 11 of this act, a person who commits any of the following acts may be punished only as provided in this section and shall not be subject to any other form of punishment or disqualification, including forfeiture of property, arrest, prosecution, or penalty, disciplinary action by a professional licensing board, or denial of any other right or privilege, unless the person consents to another disposition authorized by law:

(a) A person who engaged in the conduct described in section 4(1)(d) or section 4(1)(g) of this act is guilty of a misdemeanor and may be punished by a fine of not more than \$1,000 and forfeiture of the marihuana.

(b) A person who engaged in the conduct described in section 4(1)(e), section 4(1)(f), section 4(1)(h), section 4(1)(i), or section 4(1)(j) of this act is responsible for a civil infraction and may be punished by a fine of not more than \$100 and forfeiture of the marihuana.

(c) A person who possess an amount of marihuana or marihuana-infused product outside of his or her place of residence having a weight of not more than 15 ounces, who cultivates not more than xx [to be determined] marihuana plants, who delivers not more than 15 ounces of marihuana or marihuana-infused product without receiving any remuneration to a person who is at least 21 years of age, or who possesses with intent to deliver not more than 15 ounces of marihuana or marihuana-infused product:

(1) for a first violation, is responsible for a civil infraction and may be punished by a fine of not more than \$500 and forfeiture of the marihuana;

(2) for a second violation, is responsible for a civil infraction and may be punished by a fine of not more than \$1,000 and forfeiture of the marihuana;

(3) for a third or subsequent violation, is guilty of a misdemeanor and may be punished by a fine of not more than \$2,000 and forfeiture of the marihuana.

(d) A person under 21 years of age who possesses not more than 2.5 ounces of marihuana or who cultivates not more than 12 marihuana plants is responsible for a civil infraction and may be punished:

(1) If the person is less than 18 years of age, by a fine of not more than \$100 or community service, forfeiture of the marihuana, and completion of 4 hours of drug education or counseling.

(2) If the person is at least 18 years of age but less than 21 years of age, by a fine of not more than \$100 and forfeiture of the marihuana.

### **Licensing by Municipality**

- Sec. 17. 1. If the department does not timely promulgate rules as required by section 9 of this act or accept or process applications in accordance with section 10 of this act, beginning one year after the effective date of this act, an applicant may submit an application for a marihuana establishment directly to the municipality where the marihuana establishment will be located.
2. If a marihuana establishment submits an application to a municipality under this section, the municipality shall issue a license to the applicant within 90 days after receipt of the application unless the locality finds and notifies the applicant that the applicant is not in compliance with an ordinance or rule adopted pursuant to this act.
3. If a municipality issues a license pursuant to this section:
- (a) the municipality shall notify the department that the license has been issued;
  - (b) the license has the same force and effect as a license issued by the department pursuant to section 10 of this act; and
  - (c) the holder of the license is not subject to regulation or enforcement by the department during the license term but is subject to regulation and enforcement by the municipality.

### **Construction and Amendment**

Sec. 18. This act shall be broadly construed to accomplish its intent as stated in section 2 of this act. Nothing in this act purports to supersede any applicable federal law, except where allowed by federal law. All provisions of this act are self-executing. Any section of this act being held invalid as to any person or circumstances shall not affect the application of any other section of this act that can be given full effect without the invalid section or application. The legislature may pass laws implementing this act that are not in conflict with its provisions. The legislature may by majority vote to amend any provision of this act to further reduce any penalty.