



# An Introduction to the Ballot Initiative of the Coalition to Regulate Marijuana Like Alcohol in Michigan

By Matthew Abel

**A**s a result of a petition filed in Michigan by the Coalition to Regulate Marijuana Like Alcohol,<sup>1</sup> voters will have the opportunity on November 6 to vote on a proposal to legalize marijuana in Michigan. The Board of State Canvassers certified the petitions in April, and since the Michigan legislature was not able to garner the votes to pass the initiative it had to be placed on the ballot.<sup>2</sup>

A statewide poll commissioned by Michigan NORML found that 61 percent of Michigan voters supported legalization of marijuana for adult recreational use.<sup>3</sup>

The proposed Michigan Regulation and Taxation of Marijuana Act allows possession and use of marijuana by persons at least 21 years of age, provides for the cultivation and

sale of marijuana and industrial hemp, taxes the revenue, provides for promulgation of administrative rules, and prescribes penalties for violations.<sup>4</sup> The overriding intent of the act is to prevent arrest and penalty for personal possession and cultivation, remove marijuana from the illicit market, ensure the safety of marijuana products, and ensure security of marijuana establishments.<sup>5</sup>

The act defines industrial hemp as cannabis with a THC concentration that does not exceed 0.3 percent.<sup>6</sup> Hemp is considered exempt from the excise tax, and the act allows licensing of a “Marihuana establishment,” which includes a marijuana grower, safety compliance facility, processor, micro business, retailer, secure transporter, or any other business.<sup>7</sup>

The act also allows creation of an entity not previously established in the United States—a “Marihuana micro business” licensee that would be allowed to cultivate not more than 150 marijuana plants and sell that cannabis only at that location.<sup>8</sup>

Section 4 of the act regulates use of marijuana as follows:

- Prohibits driving while under the influence, consuming in a public place, or smoking if prohibited by the person who controls the property
- Prohibits cultivating marijuana plants if the plants are visible from a public place or outside an enclosed secure area
- Prohibits smoking marijuana in a vehicle on a public way or possessing or consuming marijuana on the grounds of a school, in a school bus, or at a correctional facility
- Outlaws the possession of more than 2.5 ounces of marijuana within a person’s place of residence unless the excess marijuana is stored in a locked container
- Allows adults to possess up to 2.5 ounces of marijuana, not more than 15 grams of which is in concentrated form
- Within the person’s residence, allows an adult to possess up to 10 ounces of marijuana and any marijuana produced by plants cultivated on the premises from not more than 12 marijuana plants per household
- Allows transfer without remuneration of up to 2.5 ounces of marijuana to another adult, provided the transfer is not advertised or promoted
- Allows an employer to prohibit marijuana in a workplace
- Prohibits denial of custody of or visitation with a minor unless the person’s behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated—language identical to that in the Michigan Medical Marihuana Act<sup>9</sup>

## Licensing

As with the current Medical Marihuana Facilities Licensing Act, under the proposed Michigan Regulation and Taxation of Marihuana Act a municipality may completely prohibit or limit the number of marijuana establishments within its boundaries as well as authorize the sale of marijuana for consumption in areas that are not accessible to persons under 21 years of age or at special events.<sup>10</sup> Any violation of such a municipal ordinance would be a civil infraction with a fine of not more than \$500.<sup>11</sup> The act provides for several license types: retailer, testing facility, secure transporter, processor, micro business, class A grower up to 100 marijuana plants, class B grower up to 500 plants, and class C grower up to 2,000 plants.<sup>12</sup>

For 24 months after the Michigan Department of Licensing and Regulatory Affairs (LARA) begins receiving applications for marijuana establishments, it may only accept applications for licensure for:

- a class A marijuana grower or for a marijuana micro business from persons who are residents of Michigan;
- a marijuana retailer, processor, class B grower, class C grower, or a marijuana secure transporter from persons holding a state operating license under the Medical Marihuana Facilities Licensing Act; and
- a testing facility, from any applicant.

One year later, the department can accept applications from any applicant if it determines that additional licenses are necessary to minimize the illegal market, efficiently meet demand, or provide for reasonable access in rural areas.<sup>13</sup>

Under the act, no establishment may transfer marijuana that was not produced, distributed, and taxed. No marijuana retailer may sell edible marijuana-infused candy in shapes or packages that are attractive to children or easily confused with commercially sold candy. Childproof packaging is required, and no marijuana establishment may sell or otherwise transfer tobacco products.<sup>14</sup>

## Taxes and penalties

The act imposes a 10 percent excise tax at the point of sale, and all excise tax money and fees collected will be deposited into a special “marihuana regulation fund.”<sup>15</sup> The fund

### *At a Glance*

**Voters will have the opportunity to legalize marijuana in Michigan this year.**

**The medical marijuana law will remain in effect, but patients will be relieved of paying taxes.**

**Adults over 21 will be able to grow 12 marijuana plants, with a maximum of 12 plants per household.**





**All excise tax money collected will be deposited into a special “marihuana regulation fund”—specifically earmarked to provide \$20 million annually for FDA-approved clinical trials on the efficacy of marijuana in treating the medical conditions of U.S. armed services veterans.**

is specifically earmarked to provide \$20 million annually for FDA-approved clinical trials on the efficacy of marijuana in treating the medical conditions of U.S. armed services veterans and preventing veteran suicide.<sup>16</sup> The fund expires in 2022, but must last at least two years. Additional allocations include 15 percent to municipalities in which a marijuana retail outlet is located, 15 percent to counties in which a marijuana outlet is located, 35 percent for K–12 education, and 35 percent to the Michigan transportation fund to be used for the repair and maintenance of roads and bridges.<sup>17</sup>

The act reduces minor offenses to civil infractions. A person who possesses or cultivates not more than twice the amount of marijuana allowed is responsible for a civil infraction and may be punished by a fine of not more than \$500. For a second violation of a civil infraction, a fine of up to \$1,000 may be charged. A third or subsequent violation is a misdemeanor and may be punished by a fine of up to \$2,000.<sup>18</sup>

If LARA does not promulgate rules or accept or process applications as provided within one year of passage of the ballot initiative, an applicant may submit an application for a marijuana establishment license directly to the municipality in which the establishment will be located. The municipality must then issue a municipal license to the applicant within 90 days unless it notifies the applicant of noncompliance with an ordinance or rule adopted under the act. If a municipality issues a license under this section, it has the same force and effect as a state license and the license holder is not subject to regulation or enforcement by LARA during the term of that license.<sup>19</sup>

The act legalizes (or at least decriminalizes) marijuana under state law in Michigan, even though marijuana will remain illegal under applicable federal law. Lawyers should be ready, willing, and able to advise clients about the legalization of marijuana if the initiative passes in November. ■



*Matthew Abel served on the drafting committee for the Michigan Regulation and Taxation of Marihuana Act. He is executive director of Michigan NORML ([minorml.org](http://minorml.org)) and founded Cannabis Counsel, PLC, a boutique cannabis law firm ([cannabiscounsel.com](http://cannabiscounsel.com)). He is a lifetime member of the NORML Legal Committee and the National Cannabis Bar Association, where he is a founding member and serves on the board of directors, and is secretary/treasurer of the SBM Marijuana Law Section.*

## ENDNOTES

1. Mich Secretary of State, *Michigan Committee Statement of Organization: Coalition to Regulate Marijuana Like Alcohol* <<https://ctrsearch.nictusa.com/committees/518010>>. All websites cited in this article were accessed June 28, 2018.
2. Const 1963, art II, § 9 and MCL 168.477(2); Regulate Marijuana Like Alcohol, *Press Release: Marijuana Legalization Campaign Turns in 360,000 Signatures to Place Issue on 2018 Michigan Ballot* (November 20, 2017) <<https://www.regulatemi.org/press/marijuana-legalization-campaign-turns-in-360,000-signatures-to-place-issue-on-2018-michigan-ballot/>>.
3. Michigan NORML, *EPIC-MRA/MINORML 2018 POLL: 2018 Legalization Poll* (February 2018) <<https://minorml.org/about-us/polling-data/epic-mra-minorml-2018-poll/>>.
4. Regulate Marijuana Like Alcohol, *Initiative Language* <<https://www.regulatemi.org/initiative/>>. A version of this initiative is also available at MLegalize, *2018 Proposal Language* <[http://www.milegalize.com/2018\\_proposal\\_language](http://www.milegalize.com/2018_proposal_language)>.
5. *Initiative Language* at § 2.
6. *Id.* at § 3(c) and Bradford, *What is THC?*, Live Science (May 18, 2017) <[https://www.ch.ic.ac.uk/vchemlib/mim/bristol/thc/thc\\_text.htm](https://www.ch.ic.ac.uk/vchemlib/mim/bristol/thc/thc_text.htm)>.
7. *Initiative Language* at §§ 3(c), 3(h), and 8.2.
8. *Id.* at § 3(k).
9. MCL 333.26424(d).
10. *Initiative Language* at § 9.
11. *Id.* at § 15.
12. *Id.* at § 9.
13. *Id.* at § 9(6).
14. *Id.* at § 11.
15. *Id.* at §§ 13 and 14.
16. *Id.* at § 14(3).
17. *Id.*
18. *Id.* at § 15.
19. *Id.* at § 16.