

An Overview of the Michigan Regulation and Taxation of Marihuana Act (“MRTMA”)

On November 6, 2018, Michigan voters legalized recreational marihuana.

When Will Take It Effect:

The Michigan Department of State will certify the vote count, which usually takes 30 days. Ten days after certification it becomes law, which will be in early December 2018. Article 2, Section 9 on the Michigan Constitution (Any law submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon at any election shall take effect 10 days after the date of the official declaration of the vote).

The Law Allows the Following:

1. Allows a person, 21 years of age or older to possess, use or consume, internally possess, purchase, transport, or process 2.5 ounces or less of marihuana, except that not more than 15 grams of marihuana may be in the form of marihuana concentrate. Section 5. 1(a).
2. Allows a person 21 and older to possess, store, and process not more than 10 ounces of marihuana produced by marihuana plants cultivated on the premises and cultivate not more than 12 marihuana plants for personal use, provided that no more than 12 marihuana plants are possessed, cultivated, or processed on the premises at once. Section 5. 1(b).
3. Allows a person to assist another person who is 21 years of age or older. Section 5. 1(c).
4. Allows a person to give away or otherwise transfer without remuneration up to 2.5 ounces of marihuana, 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. Section 5. 1(d).

What is Prohibited:

1. Operate, navigate, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road vehicle, or motorboat while under the influence of marihuana;
2. Transfer of marihuana or marihuana accessories to a person under the age of 21;
3. Any person under the age of 21 to possess, consume, purchase or otherwise obtain, cultivate, process, transport, or sell marihuana;
4. 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;
5. Consuming marihuana in a public place or smoking marihuana where prohibited by the person who owns, occupies, or manages the property, except for purposes of this subdivision a public place does not include an area designated for consumption within a

municipality that has authorized consumption in designated areas that are not accessible to persons under 21 years of age;

6. 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 enclosed area equipped with locks or other functioning security devices that restrict access to the area;
7. Consuming marihuana while operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoking marihuana within the passenger area of a vehicle upon a public way;
8. Possessing marihuana accessories or possessing or consuming marihuana on the grounds of a public or private school where children attend classes in preschool programs, kindergarten programs, or grades 1 through 12, in a school bus, or on the grounds of any correctional facility; or
9. Possessing more than 2.5 ounces of marihuana within a person's place of residence unless the excess marihuana is stored in a container or area equipped with locks or other functioning security devices that restrict access to the contents of the container or area. Sections 4. 1(a) – 4. 1(i).

Municipality's Role:

1. Allows municipalities to limit the number of marihuana establishments within their boundaries or prohibit them altogether. Municipalities may also adopt other ordinances regulating marihuana establishments within their boundaries. Section 6. 1.
2. Allows individuals to petition to initiate an ordinance to provide for the number of marihuana establishments allowed within a municipality or to completely prohibit marihuana establishments within a municipality. Section 6. 1.

Michigan Department of Licensing and Regulatory Affairs Role:

1. Implements the act, including developing a process for state licensure and writing rules for administering the act for the following licenses:
 - a. Marihuana retailer;
 - b. Marihuana safety compliance facility;
 - c. Marihuana secure transporter;
 - d. Marihuana processor;
 - e. Marihuana microbusiness;
 - f. Class A marihuana grower authorizing cultivation of not more than 100 marihuana plants;
 - g. Class B marihuana grower authorizing cultivation of not more than 500 plants;
 - h. Class C grower authorizing cultivation of not more than 2,000 plants. Section 9. 1.

Landlord/Employer Rights:

1. This act does not require an employer to permit or accommodate conduct otherwise allowed by this act in any workplace or on the employer's property. This act does not prohibit an employer from disciplining an employee for violation of a workplace drug policy or for working while under the influence of marihuana. This act does not prevent an employer from refusing to hire, discharging, disciplining, or otherwise taking an adverse employment action against a person with respect to hire, tenure, terms, conditions, or privileges of employment because of that person's violation of a workplace drug policy or because that person was working while under the influence of marihuana. Section 4. 1. 3.
2. This act allows a person to prohibit or otherwise regulate the consumption, cultivation, distribution, processing, sale, or display of marihuana and marihuana accessories on property the person owns, occupies, or manages, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marihuana by means other than smoking. Section 4. 1. 4.

Civil/Criminal Penalties:

Section 15. 1 of the act provides as follows:

A person who commits any of the following acts, and is not otherwise authorized by this act to conduct such activities, may be punished only as provided in this section and is not subject to any other form of punishment or disqualification, unless the person consents to another disposition authorized by law:

1. Except for a person who engaged in conduct described in sections 4(1)(a), 4(1)(b), 4(1)(c), 4(1)(d), 4(1)(g), or 4(1)(h), a person who possesses not more than the amount of marihuana allowed by section 5, cultivates not more than the amount of marihuana allowed by section 5, delivers without receiving any remuneration to a person who is at least 21 years of age not more than the amount of marihuana allowed by section 5, or possesses with intent to deliver not more than the amount of marihuana allowed by section 5, is responsible for a civil infraction and may be punished by a fine of not more than \$100 and forfeiture of the marihuana.

2. Except for a person who is engaged in conduct described in section 4, a person who possesses not more than twice the amount of marihuana allowed by section 5, cultivates not more than twice the amount of marihuana allowed by section 5, delivers without receiving any remuneration to a person who is at least 21 years of age not more than twice the amount of marihuana allowed by section 5, or possesses with intent to deliver not more than twice the amount of marihuana allowed by section 5:

(a) 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;

(b) 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;

(c) 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.

3. Except for a person who engaged in conduct described by section 4(1)(a), 4(1)(d), or 4(1)(g), 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:

(a) for a first violation, is responsible for a civil infraction and may be punished as follows:

(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; or

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

(b) for a second violation, is responsible for a civil infraction and may be punished as follows:

(1) if the person is less than 18 years of age, by a fine of not more than \$500 or community service, forfeiture of the marihuana, and completion of 8 hours of drug education or counseling; or

(2) if the person is at least 18 years of age, by a fine of not more than \$500 and forfeiture of the marihuana.

4. Except for a person who engaged in conduct described in section 4, a person who possesses more than twice the amount of marihuana allowed by section 5, cultivates more than twice the amount of marihuana allowed by section 5, or delivers without receiving any remuneration to a person who is at least 21 years of age more than twice the amount of marihuana allowed by section 5, shall be responsible for a misdemeanor, but shall not be subject to imprisonment unless the violation was habitual, willful, and for a commercial purpose or the violation involved violence.

All Other Laws:

All other laws inconsistent with this act do not apply to conduct that is permitted by this act.

Section 4. 1. 5.