

## **Business Owner’s Guide to the Medical Marihuana Facilities Licensing Act (“MMFLA”)**

This guide was prepared by [Scott F. Roberts](#), managing partner of [Renaissance Business Consulting](#) and managing member of [Scott F. Roberts Law](#). Contact Scott F. Roberts Law today for a free consultation and evaluation of your cannabis business!

This Business Owner’s Guide to the Medical Marihuana Facilities Licensing Act (“MMFLA”) is a high-level summary of the Michigan Legislature Public Act 281 of 2016, Michigan’s Department of Licensing and Regulatory Affairs Emergency Rules, and subsequent modifications by [2018 PA 10](#); pertaining to the descriptions, conflicts of interest and requirements for legally establishing and operating the five types of Medical Marijuana Businesses: Growers, Processors, Secure Transporters, Provisioning Centers and Safety Compliance Facilities.

### **Licenses and Activities Regulated by the MMFLA**

The law requires the following five types of medical marijuana companies to obtain a license with Michigan’s Department of Licensing and Regulatory Affairs (“LARA”):

#### **1. Growers:**

- Description:
  - A business entity that grows, dries and packages marijuana
  - 3 classes of grower licenses
    - Class A (500 plants)
    - Class B (1,000 plants)
    - Class C (1,500 plants)
  - Can only sell or transport marijuana using a licensed secure transporter
- Conflict(s) of Interest:
  - Any owner of a grower cannot have a financial stake in a transporter or compliance facility
- Requirements:
  - Growing can only take place in areas zoned industrial or agriculture (or are unzoned)
  - A licensed grower must have two years of experience as a primary caregiver or employ someone who does

**2. Processors:**

- Description:
  - A business entity that uses marijuana from a grower to make extracts, edibles and marijuana infused products
- Conflict(s) of Interest:
  - Any owner of a processor cannot have a financial stake in a transporter or compliance facility
- Requirements:
  - Can only transport marijuana using a secure transporter
  - A licensed processor must have two years of experience as a primary caregiver or employ someone who does (but cannot be owned by a registered caregiver)

**3. Secure Transporters:**

- Description:
  - A business entity that stores and transports marijuana and money between licensed facilities
- Conflict(s) of Interest:
  - Any owner of a secure transportation business cannot have a financial stake in a grower, processor, provisioning center or safety compliance facility and cannot be a registered patient or caregiver
- Requirements:
  - A driver must be a licensed chauffeur
  - A vehicle must be operating by at least two people, with one remaining with the marijuana at all times
  - The route and manifest of each trip must be entered into the online system
  - A vehicle cannot have any indication that it is carrying marijuana
  - Any driver or other employee who would have custody of marijuana cannot have been convicted of any felony or any misdemeanor involving a controlled substance in the last five years
  - Subject to random inspections

**4. Provisioning Centers (a.k.a. Dispensaries):**

- Description:
  - A business entity that purchases marijuana from a grower or processor and sells it to a patient
- Conflict(s) of Interest:
  - Any owner of a provisioning center cannot have a financial stake in a secure transporter or safety compliance facility
- Requirements:
  - May sell marijuana only after it has been tested
  - Cannot sell alcohol or tobacco products
  - Cannot have a physician in-house
  - Dispensaries will be assessed a special tax of 3% on their retail gross income (it is currently unclear whether this applies just to marijuana products or all retail products sold at the outlet)

**5. Safety Compliance Facilities (a.k.a. Testing Labs):**

- Description:
  - A business entity that tests marijuana for THC content, other cannabinoids, and contaminants
- Conflict(s) of Interest:
  - Any owner of a safety compliance facility cannot have any interest in a grower, secure transporter, processor or provisioning center
- Requirements:
  - Test that marijuana is reasonably free from chemical residues (e.g. pesticides)
  - Determine THC, THC acid, CBD and CBD acid levels in marijuana
  - Determine microbial and mycotoxin content
  - Employ at least one person with a relevant advanced degree in medical or laboratory science
  - Must be accredited by an entity approved by the Medical Marijuana Licensing Board within one year of licensing

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### **Licensing**

#### General License Requirements:

- You must adopt and use third party inventory control and tracking systems
- You are responsible for injuries caused by “adulterated” marijuana
- Payment of an application fee and annual fee set by LARA.
- You must conduct a background check on all employees and need a special waiver to hire someone with a controlled substance related felony in the last ten years
- You can only operate in a municipality that has specifically authorized one or more of the license classes of marijuana activities you are engaging in

### **Regulatory Framework under the MMFLA**

As of the time of publishing, LARA is still developing a regulatory framework that will allow it to (1) sanction licenses and impose fines for violating the law, (2) require disclosures and ban conflicts of interests between a businesses’ board members, employees and agents, (3) implement a statewide internet based monitoring system to track inventory to track marijuana from plant to patient. As of December 4, 2017, LARA has implemented Emergency Rules to regulate the licensing procedures of the MMFLA, however these Emergency Rules are set for only 6 months, and may not be extended past December 4, 2018. Until permanent rules are adopted, medical marijuana business owners must follow the licensing procedures under both the MMFLA and the application process pursuant to the Emergency Rules.

### **Applying for a License**

If you receive a license, you cannot be prosecuted by the State of Michigan or any municipality if you abide by the license requirements, which means that you and your patients are protected from criminal liability.

The application process under the Emergency Rules has been divided into a two-step application process. This allows individuals and business entities to prequalify for a state license without establishing a location for the proposed medical marijuana facility. If applicants already have a location secured, they will be able to submit both parts of the application at the same time.

The application process is detailed and time-intensive. The Step 1 Prequalification application is 40 pages alone, not including all of the supplemental materials LARA requires prior to approving your application. You must disclose if you have been indicted, charged with, arrested

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for, or convicted of any felony or a misdemeanor involving a controlled substance.

You are ineligible for a license if:

- You were convicted of or released from incarceration for a felony within the past 10 years or convicted of a controlled substance-related felony within the past 10 years
- You were convicted of a misdemeanor involving a controlled substance, theft, or dishonesty in the last 5 years
- You provided false information on a previous application
- You hold elective office or are a state employee
- Unable to cover at least \$100,000.00 in liability through assets or insurance
- You are not a resident of Michigan or recently moved to Michigan (must be a resident for two years, though this requirement expires on June 30, 2018)

Other factors that go into the decision to grant a license:

- The source and amount of capital available to operate the business
- A history of filing bankruptcy
- A history of litigation

Currently, under [LARA Emergency Rule 11\(2\)](#), the total amounts of capitalization and per-license assessments based on the type of marijuana facility are as follows:

- (a) Grower: Class A—\$150,000.00
  - Annual Regulatory Assessment: \$10,000.00
- (b) Grower: Class B—\$300,000.00
  - Annual Regulatory Assessment: \$48,000.00
- (c) Grower: Class C—\$500,000.00
  - Annual Regulatory Assessment: \$48,000.00
- (d) Processor: \$300,000.00
  - Annual Regulatory Assessment: \$48,000.00
- (e) Provisioning Center: \$300,000.00
  - Annual Regulatory Assessment: \$48,000.00
- (f) Secure Transporter: \$200,000.00
  - Annual Regulatory Assessment: \$48,000.00
- (g) Safety Compliance Facility: \$200,000.00

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- Annual Regulatory Assessment: \$0.00

It is important to note that you are not required to have this amount of capital in cash – only 25 percent of the assets need be liquid. [Rule 11](#) also states that the capitalization amounts and sources must be verified by a CPA financial attestation. While the amounts seem high, it may be to show the board that the licensee can operate the business without resorting to illegal means.

Other protections to consider:

- Landlords unaware of a violation of one of its tenants cannot be prosecuted.
- The law protects licensees not only from prosecution but also from local government asset seizure

Now that you know what laws and rules to worry about, email us at [scott.f.roberts@gmail.com](mailto:scott.f.roberts@gmail.com) or give us a call today at 248-234-4060 to schedule a free phone or in office consultation!