



# Michigan's Adult-Use Marijuana Regulation Law

On November 6, 2018, Michigan voters approved Proposal 18-1 to legalize, tax, and regulate marijuana similarly to alcohol. Below is a summary of the measure.

## Adult-Use Possession and Cultivation Limits

Adults who are 21 or older may:

- possess, use, purchase, or give away (to other adults) up to 2.5 ounces of marijuana;
- within a residence, grow up to 12 marijuana plants and/or possess up to 10 ounces of marijuana (provided that any amount greater than 2.5 ounces is stored under lock and key);
- possess up to 10 ounces at one's primary residence (provided that any amount greater than 2.5 ounces is stored under lock and key); and
- possess, manufacture, or purchase marijuana paraphernalia or accessories, or sell them to other adults.

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## Other Legal Protections for Marijuana Consumers

**Child custody:** State-legal marijuana-related conduct and testing positive for marijuana may not form the sole or primary basis for negative actions related to child custody, visitation, or similar rights unless there is clear evidence that the person's actions related to marijuana created an unreasonable danger to the minor's safety.

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## Prohibited Conduct and Penalties

- **Public use:** Apart from consumption allowed under the medical marijuana law, marijuana cannot be consumed in public places, except a municipality that has authorized consumption in designated areas. A violation carries a civil fine of up to \$100.
- **Secure storage:** If a person possesses more than 2.5 ounces of marijuana at their residence, the amount exceeding this amount must be secured with a lock. A violation carries a civil fine of up to \$100.
- **Sensitive locations:** The law does not allow marijuana to be possessed or consumed at a preschool or K-12 school, nor on the grounds of any correctional facility.
- **Personal cultivation restrictions:** Cannabis plants may not be visible from a public place without the use of optical aids. Cannabis may only be cultivated in locations equipped with locks or other security devices.
- **Dangerous extractions:** Other than a licensed processor, no one may extract marijuana resin

using butane or another method that utilizes a substance with a flashpoint below 100 degrees Fahrenheit in any public place, motor vehicle, or within any residential structure.

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## **Marijuana and Employers**

- Employers do not have to allow marijuana-related conduct at the workplace.
  - Employers' authority to restrict employees' marijuana consumption is not affected.
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## **Private Property and Tenants**

- A property owner may prohibit (or regulate) the consumption, display, manufacture, or sale of marijuana or accessories on property they own or manage.
  - A lease may not prohibit the possession or non-smoked consumption of marijuana.
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## **Cannabis Businesses Licensing**

- **Regulatory authority:** The department of licensing and regulatory affairs (LARA) is charged with licensing and regulating marijuana businesses. No person with direct or indirect financial interests may be an employee, advisor, or consultant involved in the implementation, administration, or enforcement of the law.
- **Types of licenses:**
  - The statute establishes six categories of licenses for marijuana businesses: cultivators, processors, testing facilities, secure transporters, retail stores, and microbusinesses.
  - The initiative creates three classes of cultivator licenses: the Class A "microgrower" license will allow for the cultivation of up to 100 marijuana plants; the Class B license will allow for the cultivation of up to 500 plants; and the Class C license will allow for the cultivation of up to 2,000 plants.
  - The department is authorized to issue additional kinds of licenses, including those that permit:
    - the consumption of marijuana within designated areas;
    - the consumption of marijuana at special events in limited areas and for a limited time;
    - cultivation for purposes of propagation; and
    - marijuana-related scientific research and education.
- **Social equity:** Regulators are instructed to develop a plan to promote and encourage participation in the marijuana industry by people from communities that have been disproportionately impacted by prohibition.
- **Small businesses and market structure:**
  - Microbusinesses – similar to microbreweries or microdistilleries – can be licensed to cultivate up to 150 marijuana plants and process, package, and sell directly to consumers.
  - No entity will be allowed to hold more than five grower licenses of any type at the same time. The department may issue a rule after January 1, 2023 lifting this restriction.

- The department may not limit the number of any type of state licenses that may be granted.
  - For 24 months after the department begins to receive applications for marijuana establishments, the department may only accept applications for licensure for a class A marijuana grower or for a marijuana microbusiness from persons who are residents of Michigan.
  - For 24 months after the department begins to receive applications for marijuana establishments, the department may only accept applications for licensure for a marijuana retailer, processor, class B grower, class C grower, or a marijuana secure transporter from persons holding a state operating license pursuant to the medical marijuana facilities licensing act.
  - **Applications and disqualifying factors:**
    - The department will promulgate rules outlining qualifications for licensure that are directly and demonstrably related to the operation of marijuana establishments.
    - No person who holds an ownership interest in a proposed marijuana establishment may hold an ownership interest in both a safety compliance facility or in a secure transporter and in a grower, processor, retailer, or microbusiness.
    - No person who holds an ownership interest in a proposed marijuana establishment may hold an ownership interest in both a marijuana microbusiness and in a marijuana grower, processor, retailer, safety compliance facility, or secure transporter.
    - Background checks are required for each person holding an ownership interest in the marijuana business applicant.
    - A prior conviction solely for a marijuana-related offense cannot disqualify an individual or otherwise affect eligibility for licensure, unless the offense involved distribution of a controlled substance to a minor.
  - **Licenses and renewals:** All state licenses are effective for one year, unless the department issues the state license for a longer term. A state license is renewed upon receipt of a complete renewal application and a renewal fee from any marijuana establishment in good standing.
  - **Timeline:** Within 90 days of the license application, the department is directed to either issue the license or a rejection setting forth specific reasons why the department did not approve the state license application. The department shall begin accepting applications for marijuana establishments within 12 months after the effective date of the statute.
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## Cannabis Businesses Regulations

- **Generally:** All licensees must comply with the department's regulations. Disciplinary actions for violations of the department's rules may include fines, suspension of a license, or revocation of a license.
- **Inspections:** Department representatives are authorized to conduct regular inspections of all marijuana establishments. No establishment may refuse representatives of the department the right during operating hours to inspect the licensed premises or to audit the establishment's business records.
- **Security:**
  - The department will promulgate rules for security requirements at marijuana establishments, including lighting, physical security, and alarm requirements, and requirements for securely transporting marijuana between establishments.
  - A marijuana establishment must secure every entrance to the establishment to prevent

- access by unauthorized persons.
  - A marijuana establishment must secure its inventory and equipment during and after operating hours to deter and prevent theft.
  - **Regulations:** The department is authorized to issue rules governing the operation of marijuana establishments, including:
    - Requirements and standards for safe cultivation, processing, and distribution of marijuana by marijuana establishments, including health standards to ensure the safe preparation of marijuana-infused products and prohibitions on pesticides that are not safe for use on marijuana.
    - Testing, packaging, and labeling standards, procedures, and requirements for marijuana, including a maximum THC level for infused products, a requirement that a sample of marijuana be tested by a safety compliance facility, and a requirement that the amount of marijuana be specified on the product label.
    - Record keeping requirements for marijuana establishments and monitoring requirements to track the transfer of marijuana.
    - Requirements for the operation of secure transporters.
    - Reasonable restrictions on advertising, marketing, and display of marijuana.
  - **Other rules:**
    - A marijuana establishment may not allow cultivation, processing, sale, or display of marijuana to be visible from a public place outside of the establishment without the use of optical aids.
    - No marijuana business may allow a person under 21 years of age to volunteer or work for them.
    - No marijuana processor may process and no retailer may sell edible marijuana-infused candy in shapes or packages that are attractive to children or that are easily confused with commercially sold candy that does not contain marijuana.
    - No retailer may sell marijuana that is not contained in an opaque, resealable, child-resistant package designed to be difficult for children under 5 years of age to open.
    - No marijuana establishment may sell or otherwise transfer tobacco.
    - No marijuana establishment may be located within 1,000 feet of a pre-existing public or private school, unless a municipality adopts an ordinance that reduces this distance requirement.
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## Local Control

- The statute allows cities and towns to regulate, ban, or limit the number of marijuana businesses in the community. Specifically, municipalities are authorized to:
  - establish restrictions on public signs related to marijuana establishments;
  - regulate the operating hours of marijuana establishments;
  - allow the sale or consumption of marijuana in designated areas that are not accessible to persons under 21 years of age, or at special events in limited areas and for a limited time; and
  - designate penalties for violations of ordinances, provided that such violation is a civil infraction and such penalty is a civil fine of not more than \$500.
- Individuals may petition to initiate an ordinance to establish a limit on the number of marijuana establishments allowed within a municipality or to completely prohibit marijuana establishments within a municipality.

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## Marijuana Business Fees

- The department will promulgate a schedule of fees in amounts not more than necessary to pay for implementation, administration, and enforcement costs of the statute and that relate to the size of each licensee or the volume of business conducted by the licensee
- A municipality may charge an annual fee of not more than \$5,000 to defray application, administrative, and enforcement costs associated with the operation of marijuana establishments.

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## Taxes and Tax Revenue Distribution

- **Excise tax:** Proposal 1 establishes a 10% tax on all marijuana products sold by retailers and microbusinesses.
- **Standard sales tax:** The state's standard 6% sales tax also applies to marijuana.
- **Distribution of revenue:** Much of the new revenue collected from the 6% standard sales tax on marijuana will go to Michigan's School Aid Fund. For the 10% excise tax, the law directs 35% to improving the state's roads, 35% to schools, and 15% to local governments with marijuana businesses within their jurisdictions.

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## Public comments and reporting

- The department is required to hold at least four public meetings each calendar year for the purpose of hearing complaints and receiving the views of the public with respect to administration of the statute.
- The department is required to submit an annual report to the governor covering the previous year, including the number of state licenses issued, demographic information on licensees, a description of enforcement and disciplinary actions taken against licensees, and a statement of revenues and expenses of the department related to the implementation, administration, and enforcement of the law.

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## Hemp

- The statute permits the department to promulgate rules to regulate the cultivation, processing, distribution, and sale of industrial hemp.