

On November 6, 2018, Michigan voters will have the opportunity to vote on Proposal 18-1, which would allow under State law the personal possession and use of marijuana by individuals 21 years of age or older. The result of a petition to initiate legislation, Proposal 18-1 will appear on the ballot as follows:

A proposed initiated law to authorize and legalize possession, use and cultivation of marijuana products by individuals who are at least 21 years of age and older, and commercial sales of marijuana through state-licensed retailers.

This proposal would:

- Allow individuals 21 and older to purchase, possess and use marijuana and marijuana-infused edibles, and grow up to 12 marijuana plants for personal consumption.
- Impose a 10-ounce limit for marijuana kept at residences and require amounts over 2.5 ounces be secured in locked containers.
- Create a state licensing system for marijuana businesses and allow municipalities to ban or restrict them.
- Permit retail sales of marijuana and edibles subject to a 10% tax, dedicated to implementation costs, clinical trials, schools, roads, and municipalities where marijuana businesses are located.
- Change several current violations from crimes to civil infractions.

Should this proposal be adopted?

If a majority of the electors vote "yes" on Proposal 18-1, the "Michigan Regulation and Taxation of Marijuana Act" will be enacted.

Current State and Federal Law

Under Article 7 (Controlled Substances) of the Public Health Code, marijuana, except that used for the purpose of treating a debilitating medical condition under the Michigan Medical Marihuana Act (MMMA), is listed as a Schedule 1 controlled substance, which means that it has high potential for abuse and has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision. Marijuana used to treat a debilitating medical condition is listed as a Schedule 2 controlled substance. Under the Code, manufacturing, creating, or delivering marijuana or possessing it with intent to manufacture, create, or deliver it is a felony. Knowingly or intentionally possessing marijuana, or using it, is a misdemeanor.

The MMMA, which was approved by the voters in 2008, allows qualifying patients to possess up to 2.5 ounces of marijuana (and 12 plants), and to use it for medicinal purposes. In 2016, the Legislature modified the medical marijuana framework in Michigan by enacting the Medical Marijuana Facilities Licensing Act (MMFLA). The MMFLA established, among other things, the Medical Marijuana Licensing Board and license categories for entities that grow, process, transport, test, and sell medical marijuana.

At the Federal level, marijuana is listed as a Schedule 1 drug, and the Federal government prohibits, and prescribes criminal penalties for, the importation, exportation, manufacture, distribution, possession, and use of marijuana.

The Proposal

Individual Conduct. The proposal would allow an individual 21 years of age or older to do any of the following:

- Possess, use, consume, purchase, transport, or process 2.5 ounces or less of marijuana.
- Within his or her residence, possess, store, and process not more than 10 ounces and any marijuana produced by plants cultivated on the premises, and cultivate not more than 12 plants for personal use, provided that no more than 12 plants were possessed, cultivated, or processed at once.
- Transfer without remuneration up to 2.5 ounces to an individual 21 years of age or older, if the transfer were not advertised or promoted to the public.
- Use, manufacture, possess, and purchase marijuana accessories.

The proposal would prescribe civil and criminal penalties for violations.

An employer would not have to allow or accommodate conduct authorized under the proposal in a workplace or on an employer's property. The proposed Act would not prohibit an employer from disciplining an employee or refusing to hire a candidate for violation of a workplace drug policy or for working under the influence of marijuana.

Municipalities. The proposal would allow a municipality to prohibit or limit the number of marijuana establishments within its boundaries. Individuals could petition to initiate an ordinance to provide for the number of marijuana establishments allowed, or to prohibit marijuana establishments within, a municipality. The proposed ordinance would appear on the next general election ballot if the petition received a sufficient number of signatures.

A municipality also could adopt other ordinances establishing reasonable restrictions on signage, or time, place, and manner restrictions, provided they were not unreasonably impracticable and did not conflict with the Act or its rules.

Department of Licensing and Regulatory Affairs (LARA). The Department would be responsible for implementing the Act. Among other things, LARA would have to promulgate rules establishing procedures for issuing a State license, establishing a schedule of fees, and prescribing qualifications for licensure.

The Department would have to begin accepting applications for marijuana establishments within 12 months after the Act's effective date. For 24 months after it began accepting applications, LARA could accept applications only from specified entities. After receiving the application and the application fee, LARA would have to forward a copy of the application to the municipality where the establishment would be located, determine whether the applicant and premises qualified for the license, and issue the license or send the applicant a notice of rejection within 90 days.

The Department would have to issue the following license types:

- Marijuana retailer-could purchase marijuana from marijuana establishments, and sell it to other establishments or individuals 21 years of age or older.
- Marijuana safety compliance facility-could test marijuana for potency, contaminants.
- Marijuana secure transporter could obtain marijuana from marijuana establishments to transport it to other establishments.
- Marijuana processor-could obtain marijuana from marijuana establishments, process and package it, and sell or transfer it to other marijuana establishments.
- Marijuana microbusiness- could cultivate up to 150 plants, process and package marijuana, and sell it to individuals 21 years of age or older.
- Marijuana grower- could cultivate marijuana and sell it to establishments; Class A-up to 100 plants; Class B-up to 500 plants; Class C-up to 2,000 plants.

Proposal 18-1 also would establish a process through which an applicant would apply to a municipality for a license if, beginning a year after the Act's effective date, the Department did not timely promulgate rules or accept or process applications.

Excise Tax & Distribution. In addition to all other taxes, marijuana retailers and microbusinesses would

have to pay an excise tax of 10% on the sales price of marijuana transferred to anyone other than a marijuana establishment. The Department would have to spend the money collected first for implementation, administration, and enforcement, and next, for at least two years, \$20.0 million each year to one or more clinical trials researching the efficacy of marijuana in treating veterans and preventing veteran suicide. The unspent balance would have to be allocated as follows:

- 15% to municipalities in which a marijuana retail store or microbusiness was located, allocated in proportion to the number of those establishments within the municipality.
- 15% to counties in which a marijuana retail store or microbusiness was located, allocated in proportion to the number of those establishments within the county.
- 35% to the School Aid Fund for K-12 education.
- 35% to the Michigan Transportation Fund for repair and maintenance of roads and bridges.

Discussion

Proponents of Proposal 18-1 contend that prohibition efforts have cost billions of dollars and have failed to reduce the possession, sale, and use of marijuana. According to *The War on Marijuana in Black and White*, a 2013 American Civil Liberties Union (ACLU) report, several hundred thousand individuals are arrested for possession of marijuana each year. The same report indicates that in 2010, Michigan spent roughly \$91.4 million on these efforts. Despite these arrests, proponents note that marijuana use has remained relatively constant.

Proponents note that these efforts are to control a substance that is safer than other substances that can be purchased legally. According to the Trust for American's Health, in 2015, Michigan's alcohol-induced death rate was 9.9 per 100,000 (ignoring alcohol-attributable deaths related to injury and violence). Preliminary data from the Michigan Department of Health and Human Services shows that, of the 2,729 overdose deaths in Michigan in 2017, over 1,900 were from opioids. In contrast, there have been no recorded deaths resulting from an overdose on marijuana. Moreover, proponents state that several studies have shown positive associations between legalized recreational marijuana and a reduction in opioid-related deaths. Legalizing marijuana and taxing it would save money on enforcement efforts, and allow police to focus on more important public safety issues.

Opponents of legalization maintain that Proposal 18-1, if passed, would contribute to decreased public safety. Driving under the influence of alcohol and/or drugs



Senate Fiscal Agency

NOVEMBER 2018 BALLOT PROPOSAL 18-1

An Overview

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(including marijuana) impairs an individual's ability to drive safely. Increased availability of marijuana, opponents claim, would increase the numbers of individuals who drive while impaired. Few reliable tools exist to determine when someone is impaired from marijuana use. Also, according to opponents, the legalization of marijuana likely would not reduce costs for public safety. In states that have legalized marijuana, law enforcement agencies have reported increases in public consumption of marijuana, illegal grow operations, property crimes, and drug trafficking.

Proposal 18-1 also could have negative impacts on public health. According to the National Academies of Sciences, Engineering, and Medicine, marijuana poses a number of possible health risks, including respiratory issues (if smoked), negative effects on mental health (such as a schizophrenia or psychosis), negative impacts on fetal health, and an impaired ability to operate heavy machinery or automobiles.

Opponents of the proposal also contend that legalization would have a negative impact on the labor force and businesses. Employers often test job candidates for drugs because it is required under State or Federal law for the position in question, or because their insurance provider requires it. An impaired individual at work is a risk to his or her fellow employees, and a liability to his or her employer if that person's impairment causes an injury, property damage, or death. If more people consumed marijuana, it would be harder to find individuals who could pass a drug test. This would make it more difficult to find qualified applicants for positions. Conversely, if a business that was not bound by law to test opted not to do so, then it could see increased insurance costs from implementing such a policy.

Fiscal Impact

LARA. The initiated law would have a significant but indeterminate fiscal impact on LARA. The Department would use existing staff and resources currently directed towards the administration and enforcement of the MMA and the MMFLA to begin implementation, including management of applications for licensing. The Department anticipates a need for an additional 27.0 full-time equated positions (FTEs) at an estimated cost of \$2.5 million. In addition, the implementation and administration of the proposal would require increased information technology (IT) expenditures and additional facility space for associated operations. Funding for operations likely would be derived from licensing and other fees. Analyses of recreational marijuana legalization in other states suggest that revenue would be sufficient to fund recreational marijuana-related operations within LARA.

Department of State Police. Proposal 18-1 would require the MSP to cooperate with and assist LARA in conducting background investigations of applicants, the amount of effort and cost of which cannot be determined at this time. It also is unknown whether the proposal's adoption would result in a net increase or decrease in resource demands on law enforcement. For example, if marijuana were legalized, there would be the potential for increased incidences of impaired driving (which could require more patrols and arrests). Alternatively, there likely would be fewer arrests for adult possession and use of marijuana. These and other effects of legalization would depend on, among other things, individual behavior and whether legalization resulted in increased availability of marijuana. These and other variables make it difficult to project with any accuracy the fiscal impact of Proposal 18-1 on the MSP.

Judiciary & Department of Corrections. Proposal 18-1 could have a positive fiscal impact on State and local government. Fewer felony arrests and convictions could decrease resource demands on court systems, community supervision, jails, and correctional facilities. In 2016, 199 people were sentenced to prison for a marijuana-related felony conviction, and 3,620 were sentenced to jail, probation, or a combination of both. For any decrease in prison intakes, in the short term, the marginal cost to State government is approximately \$5,315 per prisoner per year. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. Any associated decrease in fine revenue would decrease funding to public libraries.

Department of Treasury. Adoption of Proposal 18-1 would result in additional administrative costs to the Department of Treasury. According to the Department, the costs would include IT and tax processing costs. The IT costs would include one-time implementation costs of over \$1.9 million to set up the new tax system and \$1.2 million in ongoing costs to support 4.0 FTEs in the Department of Technology, Management, and Budget, and to manage the tax flow. Because the recreational marijuana industry is primarily cash-based, additional support and staff would be necessary for the tax process and business service units within the Department of Treasury. These costs would depend on the volume of sales, and would start with 12.0 FTEs and \$1.75 million and remain at that level if the volume of sales were low, but could be as high as 22.0 FTEs and \$3.1 million.

The table below shows revenue projections from the sales tax, excise tax, and fees levied under the initiated law. The estimates are based upon per capita sales data from states that have adopted similar laws,

and account for a provision of the MMFLA which eliminates the current 3% tax on provisioning centers should recreational marijuana be legalized. Differences in the degree of establishment of the medical marijuana industry as well as cultural, social, and economic factors between states likely will result in significant differences for the revenue collected. The impact presumes a one-year time frame for initial implementation activities.

Estimates of Revenue and Distributions, FY 2019-20 - FY 2022-23 (millions)				
	2019-20	2020-21	2021-22	2022-23
Sales Tax Revenue	\$ 35.5	\$ 66.5	\$ 98.9	\$ 105.6
School Aid Fund	26.0	48.7	72.5	77.4
Constitutional Revenue Sharing	3.6	6.6	9.9	10.6
General Fund/General Purpose	5.9	11.1	16.5	17.6
Marihuana Regulation Fund (MRF)	\$ 64.0	\$ 114.4	\$ 167.2	\$ 182.3
Excise Tax Revenue	53.8	100.7	149.9	160.0
License Application Fee Revenue	10.2	13.7	17.3	22.3
Distribution:				
Administration/Enforcement	\$ 2.5	\$ 2.6	\$ 2.7	\$ 2.8
Research	20.0	20.0	20.0	-
Counties	6.2	13.8	21.7	26.9
Municipalities	6.2	13.8	21.7	26.9
School Aid Fund	14.5	32.1	50.6	62.8
Michigan Transportation Fund	14.5	32.1	50.6	62.8
Total MRF Distribution	\$ 64.0	\$ 114.4	\$ 167.2	\$ 182.3
Medical Marihuana Excise Fund	\$ (22.4)	\$ (23.5)	\$ (24.7)	\$ (25.9)
1st Responder Presumed Coverage	(6.7)	(7.1)	(7.4)	(7.8)
Counties	(6.7)	(7.1)	(7.4)	(7.8)
Municipalities	(5.6)	(5.9)	(6.2)	(6.5)
Sheriffs	(1.1)	(1.2)	(1.2)	(1.3)
MCOLCS	(1.1)	(1.2)	(1.2)	(1.3)
State Police	(1.1)	(1.2)	(1.2)	(1.3)
Total Med Marihuana Excise Distribution	\$ (22.4)	\$ (23.5)	\$ (24.7)	\$ (25.9)
Total Revenue	\$ 77.1	\$ 157.4	\$ 241.4	\$ 262.0

Local Governments. The proposal could have a negative fiscal impact on local units that prohibited marijuana establishments, or had no establishments within their boundaries, if those local units currently have medical marijuana provisioning centers, as they would lose excise tax revenue tied to those centers. Municipalities that did have marijuana establishments likely would see a positive fiscal impact.

Each municipality would be allowed to charge an annual fee of up to \$5,000 per establishment to defray the application, administrative, and enforcement costs associated with the operation of the marijuana establishments. In addition, municipalities would receive 15% of the unspent balance of the Marihuana Regulation Fund in proportion to the number of retail stores and microbusinesses within the municipality. Counties with those establishments also would receive 15% of the unspent balance of the Fund in proportion to the number of those establishments within the county. Cities, villages, and townships also would see additional revenue from the projected increase in constitutional revenue sharing.