

Introduction

This paper is intended to provide municipal attorneys and their clients an idea of what to expect and the issues to be addressed should Michigan voters approve a proposal to legalize marihuana on November 6, 2018. The scope of this paper will outline the provisions of the initiated proposal and address some of the practical consequences for municipalities while raising concerns that local governmental officials should be prepared to confront in the event the proposal is adopted. It is assumed that the reader has a working knowledge of both the Michigan Medical Marihuana Act (MMMA), MCL 333.26421 *et seq.*, and in particular the Michigan Marihuana Facilities Licensing Act (MMFLA), MCL 333.27101 *et seq.*

While the proposed initiated law, titled the Michigan Regulation and Taxation of Marihuana Act (MRTMA), uses some of the same terms found in the MMFLA, the language between the two acts is not consistent. This circumstance alone, as well as other features of the initiated proposal, requires a thoughtful and thorough review of the language being proposed for adoption by Michigan voters and its potential impact at the local municipal level.

At its core, the MRTMA authorizes the possession and nonmedical use of marihuana by individuals 21 years of age and older while establishing a regulatory framework to control the commercial production and distribution of marihuana outside of the medical context. While the regulatory scheme of the proposed statute is similar to that of the MMFLA, it also differs in significant ways.

When would the proposed law become effective if approved?

Under the provisions of Article II, § 9 of the Michigan Constitution, an initiated law takes effect 10 days after the official declaration of the vote. The State Board of Canvassers will meet between November 20 and 27 to certify the results, so the effective date of the law will likely be near the end of the first week of December 2018. Given this relatively short period to adjust to the change in the legal status of marihuana in Michigan, law enforcement officers should be provided training in advance of the possible change so as to avoid claims of false arrest and allegations of Fourth Amendment unlawful search violations.

Another constitutional feature of a voter-initiated law is that it can only be amended by a vote of the electors or by $\frac{3}{4}$ vote of each house of the legislature. This likely makes amending the statute difficult, but not impossible, as the MMMA has been amended at least twice since its adoption by the voters in 2008.

As for the actual licensure of business authorized to grow, process, and sell recreational marihuana, the proposed act requires that the Michigan Department of Licensing and Regulatory Affairs (LARA) begin to issue licenses no later than a year after the effective date of

the law. There is no specific licensing board created to review and grant recreational marihuana establishment licenses. Given the deliberate speed of LARA and the Medical Marihuana Licensing Board in processing and authorizing licenses under the MMFLA, it is an open question whether this deadline can be met. If it can't, then the burden of licensing will fall to local municipalities, because the MRTMA specifically provides that if LARA does not timely promulgate rules or accept or process applications, "beginning one year after the effective date of this act", an applicant may seek licensure directly from the municipality where the marihuana business will be located.

Under this scenario, a municipality has 90 days to after receipt of an application to issue a license or deny licensure. Grounds for denial of a license are limited to an applicant not being in compliance with an ordinance whose provisions are not "unreasonably impracticable" or a LARA rule issued pursuant to the MRTMA. If a municipality issues a license under these circumstances, it must notify LARA that a municipal license has been issued. The holder of a municipally-issued license is not subject to LARA regulation during the term of the license; in other words, the municipality becomes the licensing and regulatory body for recreational marihuana businesses in the community.

What does the proposed initiated statute seek to do?

The purposes actually stated in the MRTMA are many and varied. In addition to legalizing the recreational use of marihuana by persons 21 years and older, the proposed statute at Section 2 seeks to 1) legalize industrial hemp (cannabis with a THC concentration not exceeding 0.3%), and 2) license, regulate, and tax the businesses involved in the commercial production and distribution of nonmedical marihuana. According to the text of the proposal the intent of the law is to:

- prevent arrest and penalty for personal possession and cultivation of marihuana by adults 21 years of age and older;
- remove the commercial production and distribution of marihuana from the illicit market;
- prevent revenue generated from commerce and marihuana from going to criminal enterprises or gangs;
- prevent the distribution of marihuana to persons under 21 years of age;
- prevent the diversion of marihuana to illicit markets;
- ensure the safety of marihuana and marihuana infused products; and
- ensure the security of marihuana establishments.

Whether the proposal will actually live up to all of these intentions is open to question as many of the areas mentioned are not directly addressed in the proposed law. For instance, since the

establishments that will be authorized to grow, process, and sell recreational marihuana may not receive licensure for another year, how is it that individuals can lawfully obtain and possess marihuana upon the effective date of the proposed act?

What the proposed statute permits

Under Section 5 of the MRTMA, persons 21 years of age and older are specifically permitted to:

- possess, use, consume, purchase, transport, or process 2.5 ounces or less of marihuana, of which not more than 15 grams (0.53 oz.) may be in the form of marihuana concentrate;
- within a person's residence, possess, store, and process not more than a) 10 ounces of marihuana; b) any marihuana produced by marihuana plants cultivated on the premises; and c) for one's personal use, cultivate up to 12 plants at any one time, on one's premises;
- give away or otherwise transfer, without remuneration, up to 2.5 ounces of marihuana except that not more than 15 g 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
- assist another person who is 21 years of age or more in any of the acts described above
- use, manufacture, possess, and purchase marihuana accessories and distribute or sell marihuana accessories to persons who are 21 years of age and older.

Although not a direct concern of municipalities, law enforcement and social service agencies need to be cognizant that the act specifically provides that "a person shall not be denied custody of or visitation with the minor for conduct that is permitted by the act, unless the person's behavior such that it creates an unreasonable danger to the minor they can be clearly articulated and substantiated." MRTMA § 5. Exactly what this phrase means will likely be a source of litigation in the family division of the circuit courts.

The possession limits under the MRTMA would be the most generous in the nation. Most other states that have legalized marihuana permit possession of only 1 ounce, limit the number of plants to 4-6, and do not permit possession of an extra amount within one's residence. An additional concern arises as to how these limits will be applied. It will be argued that the limits are "per every individual age 21 or older who resides at the premises". So these amounts are ostensibly doubled for a married couple, and perhaps quadrupled or more for a group of college students or an extended family sharing a residence. While this same concern is also present under the MMMA, the quantity of marihuana permitted to be possessed under the

MMMA is significantly less than under the MRTMA, and lawful possessors (patients and caregivers) are required to be registered with the State.

Further the MRTMA does not neatly fit with the MMMA. It only says at Section 4.2 that it “does not limit any privileges, rights, immunities or defenses of a person as provided” by the MMMA. This raises the question whether registered patients and caregivers may lawfully possess marihuana exceeding the amounts permitted under the MMMA. However, this may become a moot point, since in all probability, if the MRTMA is adopted, the number of registered patients and caregivers under the MMMA could reasonably be expected to drop significantly, as its practical application would largely be limited to registered patients under the age of 21 and their caregivers.

What is “Not Authorized” under the proposed statute

The proposed initiated law does not set forth outright prohibitions, but instead cleverly explains what is not authorized. Specifically, under the terms of Section 4 of the proposal, one is not authorized to:

- operate while under the influence of marihuana or consume marihuana while operating a motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat, or smoke marihuana while in the passenger area of the vehicle on a public way
- transfer marihuana or marihuana accessories to a person under the age of 21
- process, consume, purchase, or otherwise obtain, cultivate, process, transport, or sell marihuana if under the age 21
- separation of plant resin by butane extraction or other method that utilizes a substance with the flashpoint below 100° Fahrenheit in any public place motor vehicle or within the curtilage of any residential structure (This prohibition is actually broader than the one limited solely to butane extraction found in the MMMA.)
- consume marihuana in a public place or smoke marihuana where prohibited by a person who owns occupies or manages property; however, a public place does not include an area designated for consumption within the municipality that has authorized consumption in a designated area not accessible to persons under 21 years of age
- cultivate marihuana plants if 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

- possess marihuana accessories or possess or consume marihuana on the grounds of a public or private school where children attend preschool, kindergarten, or grades one through 12; in a school bus; or on the grounds of any correctional facility
- possess more than 2.5 ounces of marihuana within a person's place of residence unless any 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

MRTMA § 4.5 then provides that “All other laws inconsistent with this act do not apply to conduct that is permitted by this act.” This general statement does not provide for a total repeal of existing marihuana laws, but its lack of specificity to other statutes being impacted, something that the Legislative Service Bureau helps the Legislature avoid, may portend problems in its application.

Differences in Terminology

The lack of consistency between those statutes addressing medical marihuana and the proposed recreational marihuana statute were alluded to at the beginning of this article; the following chart points out some of those differences.

Key Differences between Medical Marihuana & Proposed Recreational Marihuana Statutes			
	MMFLA	MMMA	Proposed MRTMA
Grower Limits			
Class A	500 plant limit		100 plant limit (limited to Michigan residents for first 2 years)
Class B	1000 plant limit		500 plant limit
Class C	1500 plant limit; stackable		2000 plant limit; not clear if stackable
Microbusiness	-----		150 plant limit (limited to Michigan residents for first 2 years)
Secure Transporter	Required to move marihuana between licensed facilities; may move money		No specific requirement to use; no authority to transport money
Compliance with Marihuana Tracking Act	Required		No reference or requirement
Plant Resin Separation	-----	Butane extraction	Butane extraction or

		prohibited in a public place, motor vehicle or inside a residence or within curtilage of a residential structure or in a reckless manner	another method that utilizes a substance with a flashpoint below 100° F prohibited in a public place, motor vehicle or within curtilage of any residential structure
Possession Limits			
Registered Patient (18 years and older, but can be less than 18)		2.5 oz. useable marihuana & 12 plants*	
Registered Caregiver (5 patient limit)		2.5 oz. useable marihuana & 12 plants per patient*	
Other Persons (21 years and older under MRTMA)		Not permitted	(a) 2.5 oz. of marihuana, of which not more than 15 grams may be concentrate; (b) 10 oz. within one's residence; (c) any amount produced by plants cultivated on the premises; and (d) 12 plants
Inconsistent Terms			
Licensed marihuana businesses	marihuana facility		marihuana establishment
Equipment to grow, process or use marihuana	paraphernalia		marihuana accessories
Business that sells marihuana	provisioning center		marihuana retailer
Certain parts of marihuana plant	Usable marihuana and usable marihuana equivalencies		Term not used
Marihuana-infused products	Excludes products consumed by smoking; exempts products from food law		Does not exclude products consumed by smoking or provide food law exemption
Enclosed, locked facility		Specifically defined to address a	Container or area with a person's residence

		structure, an outdoor grow area, and motor vehicles	equipped with locks or other functioning security device that restricts access to the area or container's contents.
Limitations on scope of local regulation	Purity, pricing or conflict with MMFLA or LARA rules		"Unreasonably Impracticable"
Zoning	Municipalities specifically authorized to zone, but growers limited to industrial, agricultural or unzoned areas	Municipalities may not limit caregiver operations to residential districts as a "home occupation" <i>Deruiter v Byron Twp. (2018)</i>	Municipal regulation limited to: (a) reasonable sign restrictions; (b) time, place & manner of operation of marihuana establishments and the production, manufacture, sale and display of marihuana accessories; and (c) authorizing sale of marihuana for consumption in designated areas or at special events
Taxation	3% on gross retail receipts of provisioning centers		10% on sales price for marihuana sold or transferred by marihuana retailers & micro businesses

*Under § 8 of the MMMA a patient and patient's caregiver may also collectively possess a quantity of marihuana that is not more than reasonably necessary to ensure an uninterrupted availability of marihuana for the purpose of treatment.

What may a Municipality do?

Unlike the MMFLA, where municipalities must "opt in", under the MRTMA, a municipality must "opt out". The proposed statute permits a municipality to "completely prohibit" or "limit the number of marihuana establishments". Given the language used in Section 6, a municipality should not rely upon prior ordinances or resolutions adopted in response to the MMFLA, but should affirmatively opt-out of the MRTMA or set limits by ordinance, not by resolution. Further, by petition signatures of qualified electors of the

municipality in an amount greater than 5% of votes cast for governor in the most recent gubernatorial election, may initiate an ordinance to completely prohibit or provide for the number of marihuana establishments within the municipality.

The initiative language in the MRTMA is problematic. Given the wording, it cannot be assumed that voters can initiate an ordinance to "opt in" should the local governing body choose to exempt the municipality from the act. Rather, the initiative options are either to "completely prohibit" or "limit the number" of marihuana establishments. It is an open question whether the initiative authority to provide for the number of establishments could be an avenue for voters to override a governing body's action, by ordinance or resolution, to "opt out" of the statute. Additionally, the vague wording of the statute leaves it open to question as to whether an initiative providing for the number of marihuana establishments must (or should) set forth proposed numbers or limits for each separate type of marihuana establishment.

An opt-out for recreational marihuana will impact existing medical marihuana facilities in a municipality because for the first 24 months of the act, only persons holding a MMFLA license may apply for a recreational retailer, class B or C grower, or secure transporter license under the MRTMA unless after the first 12 months of accepting applications LARA determines that additional recreational marihuana establishment licenses are needed. MRTMA §9.6.

A municipality may adopt certain other ordinances addressing recreational marihuana and recreational marihuana establishments provided that they "are not unreasonably impractical" and do not conflict with the proposed act or any rule promulgated pursuant to the act. The statutory definition of the redundant term "unreasonably impracticable" found at Section 3(u) almost begs to be litigated. As defined by the proposal the term means:

"that the measures necessary to comply with the rules or ordinances adopted pursuant to this act subject licensees to unreasonable risk or require such a high investment of money, time, or any other resource or asset that a reasonably prudent business person would not operate the marihuana establishment."

Unfortunately, given that the possession, cultivation, processing, and sale of marihuana remains a crime under federal law, how does one assess an "unreasonable risk" or determine what constitutes such a high investment of time or money so as to deter a reasonably prudent to business person from going forward? Further, does this definition remove the judicial deference and presumption of reasonableness that accompanies ordinances? As an aside, are "reasonably impracticable" regulations acceptable?

Specifically, an ordinance may establish reasonable restrictions on public signs related to marihuana establishments, regulate the time place and manner of operation of marihuana

establishments as well as the production manufacture sale or display of marihuana accessories and authorize the sale of marihuana for consumption in designated areas that are not accessible to persons under 21 years of age or special events in limited areas and for a limited time. A violation of ordinances regulating marihuana establishments is limited to a civil fine of not more than \$500. MRTMA § 6.

However, some of these regulations are problematic. The ability to establish reasonable restrictions on public signs related to recreational marihuana, being content-based, likely runs afoul of the holding in *Reed v. Town of Gilbert*, 135 S.Ct. 2218 (2015). Further, MRTMA does not, unlike the MMFLA, specifically authorize a municipality to exercise its zoning powers to regulate the location of marihuana establishments. Rather, the MRTMA authorizes ordinances that “regulate the time, place, and manner of operation of marihuana establishments”.

The use of the time, place, and manner First Amendment test on the ability of government to regulate speech is ill suited and inappropriate to the licensure and regulation of local businesses. One cannot help but believe that the choice of the time, place and manner language was an intentional effort so as to permit marihuana establishments to heavily borrow from established legal precedent that largely circumscribes the ability of governmental authorities to restrict speech. Specifically, valid time, place, and manner type of restrictions must:

- 1) be content neutral;
- 2) be narrowly tailored to serve a significant governmental interest; and
- 3) leave open ample alternative channels for communication.

Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989) citing *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984)

The above formulation is not consistent with Michigan zoning law doctrine, which, although subject to the due process and equal protection guarantees of the Fourteenth Amendment, generally requires that there be a reasonable governmental interest being advanced by the regulation. See *Charter Township of Delta v Dinolfo*, 419 Mich 253, 268 (1984). To this end, the only clear reference to the zoning power is the grant to municipalities to reduce the separation distance between marihuana establishments and pre-existing public and private schools providing K-12 education from 1000’ to a lesser distance.

A municipality’s authority to authorize designated areas and special events for the consumption marihuana holds the potential to give rise to specialty businesses such as in California where restaurants make marihuana-infused food and drinks available to diners.

At Section 6.5, the MRTMA specifically precludes a municipality from prohibiting the transportation of marihuana through the municipality or prohibiting the co-location of a grower, processor, or retailer from operating within a single facility or a shared location with a facility holding a license under the MMFLA. This latter prohibition raises the question whether communities that have opted-in to the MMFLA, and where a medical marihuana facility is operating, may opt-out of the MRTMA, since the proposed act at Section 17 provides that it is to be “broadly construed to accomplish” the purposes set forth under the act.

If a municipality limits the number of establishments that may be licensed and such limitation prevents LARA from issuing a state license to all applicants who otherwise meet the requirements for the issuance of a license, the MRTMA provides that “the municipality shall decide among the competing applications by competitive process intended to select applicants who are best suited to operate in compliance with the act within the municipality”. MRTMA § 9.4. This provision raises the Pandora’s Box that confronted municipalities that attempted to cap the number of licenses issued under the MMFLA. Any competitive process that seeks to determine who is best suited inherently has a subjective component that may expose the municipality to legal challenges based on alleged due process violations by the municipality from unsuccessful applicants asserting that the process employed was unfair on its face or unfairly administered. While there may be good reasons to limit the number of recreational marihuana establishments, any community that chooses to do so should be prepared to defend itself from challenges by unsuccessful applicants.

A municipality may adopt an ordinance requiring that marihuana establishments located within its boundaries obtain a municipally-issued marihuana establishment license; but the annual fee for such a license is limited to \$5000 and any qualifications for licensure may not conflict with the MRTMA or rules promulgated by LARA pursuant to the act.

What limitations on the State are applicable to Municipalities?

According to the proposal, a State rule may not be unreasonably impracticable, or limit the number of any of the various types of license that may be granted, or require a customer to provide a retailer with identifying information other than to determine a customer’s age or acquire personal information other than that typically required in a retail transaction. MRTMA §8.3.

The State is required to issue a license under the act if the municipality does not notify LARA that the proposed establishment is not in compliance with a local ordinance and if the proposed location is not within an area “zoned exclusively for residential use and not within 1000 feet of a pre-existing public or private school providing K-12 education.” A municipality is authorized to reduce the 1000’ separation from a school requirement. MRTMA §9.3.

Additionally, the grounds for disqualifying a license applicant based on a prior controlled substance conviction is much reduced under the MRTMA than under the MMFLA. An applicant for a medical marijuana facilities license is disqualified if they have any of the following:

- a felony conviction or release from incarceration for a felony within the past 10 years;
- a controlled substance-related felony conviction within the past 10 years; or
- a misdemeanor conviction involving a controlled substance, theft, dishonesty, or fraud within the past 5 years.

In contrast, under the MRTMA any prior conviction solely for a marijuana offense does not disqualify or affect eligibility for licensure unless the offense involved distribution to a minor. Thus, persons convicted of trafficking in large amounts of marijuana would be eligible for a municipal marijuana establishment license. MRTMA §8.1(c).

Additionally, LARA is precluded from issuing a rule and municipalities may not adopt an ordinance requiring a customer to provide a marijuana retailer with any information other than identification to determine the customer's age. MRTMA §8.3(b). In this regard, the MRTMA provides an affirmative defense to marijuana retailers who sell or otherwise transfer marijuana to a person under 21 years of age if the retailer reasonably verified that the recipient appeared to be 21 years of age or older by means of government issued photographic identification containing a date of birth. MRTMA §10.2.

There are also limitations on holding ownership interests in different types of facilities. Owners of a safety compliance facility or secure transporter may not hold an ownership interest in a grower or processor or retailer or microbusiness establishment. The owner of a microbusiness may not hold an interest in a grower or processor or retailer safety compliance for secure transporter establishment. And a person may not hold an interest in more than 5 marijuana growers or more than one microbusiness, unless after January 1, 2023 LARA issues a rule permitting otherwise. MRTMA §9.3.

Finally, for the first 24 months after LARA begins accepting applications for licensure, only persons who are residents of Michigan may apply for a Class A grower or microbusiness license and to be eligible for all other licenses, persons must hold a State operating license pursuant to the MMFLA. MRTMA §9.6.

What if the State fails to does not act in a timely fashion?

If the State does not timely promulgate rules, despite the act not providing when those must be issued, or accept or process applications within 12 months after the effective date of the act, an applicant may submit an application for establishment directly to the municipality

where the business will be located. MRTMA §16. A municipality must issue a license to the applicant within 90 days after receipt of the application unless the municipality determines that the applicant is not in compliance with an ordinance or rule adopted pursuant to the act. If a municipality issues a license, it must notify the department that the license has been issued. That municipal license will have the same force and effect as a State license but the holder will not be subject to regulation or enforcement by the State during the municipal license term. It is unclear whether, if the State puts in place a licensing system during the term of a municipal license, the establishment can be required to seek State licensure or is merely required to renew the license with the municipality.

Municipality as an employer or landlord

The MRTMA does not require that an employer permit or accommodate conduct otherwise allowed by the act in the workplace or on the employer's property. The 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 marijuana. Nor does the act prevent an employer from refusing to hire a person because of that person's violation of a workplace drug policy. MRTMA §4.3. In this regard, the statute appears to codify the holding of *Casias v. Wal-Mart Stores, Inc.*, 764 F Supp 2d 914 (WD Mich 2011) *aff'd*, 695 F3d 428 (6th Cir 2012) permitting an employer to discharge an employee who as a registered patient under the MMMA used marijuana outside of work hours, was not under the influence while at work, but tested positive after suffering an injury while at work.

To the degree that a municipality provides housing and therefore acts as a landlord, the MRTMA permits the lessor of property to prohibit or otherwise regulate the consumption, cultivation, distribution, processing, sale, or display of marijuana and marijuana accessories on leased property, except that a lease agreement may not prohibit a tenant from lawfully possessing and consuming marijuana by means other than smoking. MRTMA §4.4.

Municipal share of Marijuana Excise Tax Fund

Under the terms of the MMFLA, municipalities (cities, villages, and townships) in which a medical marijuana facility is located get a *pro rata* share of 25% of a medical marijuana excise fund created by the imposition of a 3% tax on gross retail sales at provisioning centers. However, under the terms of the MMFLA, if a law authorizing the recreational or nonmedical use of marijuana is enacted, the tax on medical marijuana sales sunsets 90 days following the effective date of the new law. MCL 333.27601.

The MRTMA seeks to fill the gap created by the loss of the 3% excise tax under the MMFLA by creating marijuana regulation fund through the imposition of a 10% excise tax (which would be in addition to the 6% sales tax) on the sales price of marijuana sold or

otherwise transferred by a marihuana retailer or microbusiness to anyone other than another marihuana establishment. However, the sale to be allocated to municipalities is reduced to 15% and before any money is provided to cities, villages, and townships in which a marihuana retail store or microbusiness is located, the State is made whole for its implementation, administration, and enforcement of the act—and until 2022 or for at least 2 years, \$20 million from the fund must be annually provided to one or more clinical trials approved by the FDA that are researching the efficacy of marihuana in the treatment of U.S. armed services veterans and preventing veteran suicide. MRTMA §14.

The net effect for municipalities could result in more money under the MRTMA than under the MMFLA. This is because: a) the tax rate levied is over 3 times higher under the MRTMA (10% v. 3%); b) there is a larger pool of potential consumers (registered patients and caregivers v. all persons aged 21 and older); and c) the allocation to municipalities under the MRTMA is based on the number of marihuana retail stores and micro businesses as opposed to all types of marihuana facilities under the MMFLA. However this this not take into account that if a municipality does not permit recreational marihuana retail establishments, it will not receive any revenue under the either the MMFLA or MRTMA, but will still have to deal with the social consequences of marihuana use that it may not prohibit under the new law.

The following table illustrates the differences between the two statutory approaches based on assumption of \$1 billion in sales, State expenses being recouped by applicable fees, a municipality having one percent of the total number of medical marihuana facilities or recreational retail businesses.

	MMFLA	MRTMA
Total Annual Retail Sales	\$1,000,000,000	\$1,000,000,000
Applicable Excise Tax Rate	3%	10%
Amount of Excise Tax Fund	\$30,000,000	\$100,000,000
Less Allocation for Veterans' Health Research	<u>0</u> \$30,000,000	<u>-\$20,000,000</u> \$80,000,000
Percentage Allocated to Municipalities	25%	15%
Amount Available for Municipalities	\$7,500,000	\$12,000,000
1% of facilities or retail establishments in municipality	\$75,000	\$120,000

In what appears to be a blatant attempt to convince voters to approve the MRTMA, 35% of the marihuana regulation fund will be allocated to the school aid fund for K-12 education and another 35% to the Michigan transportation fund for the repair and maintenance of roads and

bridges. Unlike the MMFLA, which allocated 15% split equally (5% each) between county sheriffs where a marihuana facility was located, the Commission on Law Enforcement Standards for Officer Training, and to the State Police, there is no allocation directly to law enforcement purposes under the MRTMA.

Conclusion

As challenging as it was for municipalities to come to grips with medical marihuana regulation under the MMFLA, the difficulties posed by the proposed MRTMA regarding recreational marihuana are likely to be significantly greater. Under the MMFLA many municipalities took a "wait and see" position on the issue of broad commercialization of medical marihuana, and in doing so only required that the governing body of the municipality do nothing. And for those municipalities that chose to "opt in", the MMFLA granted them a great deal of regulatory discretion, which some representatives of the marihuana industry have called "onerous" [Langwith, "Local Overreach", 97 Mich B J 36, 37 (August 2018)], so as to reasonably safeguard the public safety health and welfare.

The MRTMA on the other hand, requires a municipality to affirmatively take legislative action to "opt out" of regulating recreational marijuana commercial enterprises. For those municipalities that choose to permit recreational marijuana establishments to exist in the community, the regulatory framework is much more circumscribed than under the MMFLA, and is certainly more likely to raise legal issues. Fortunately, commercialization of recreational marijuana is at least a year away should the ballot proposal to legalize marihuana be adopted and by that time the State regulatory framework for medical marihuana will have been in place for nearly two years.

Apart from the commercialization of recreational marihuana, municipal law enforcement officials and officers may be required to know the new rules surrounding "legalized" marihuana within days of the election. At a minimum, county and municipal prosecutors should be ready to provide training on the law in early November. It is also likely that defendants who committed marihuana offenses prior to November 6 will seek dismissal of those charges should voters approve the ballot proposal.

In the meantime, municipal attorneys would be well-advised to read through the initiated statute more than once and be prepared to advise their clients of the significant ramifications of legalized marijuana on local governmental and social services.