

LICENSED SPECIALTY MEDICAL GROWERS

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<http://www.house.mi.gov/hfa>

House Bill 5300 as introduced
Sponsor: Rep. TC Clements

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5301 as introduced
Sponsor: Rep. Rep. Jim Lilly

House Bills 5319 and 5321 as introduced
Sponsor: Rep. Ronnie D. Petersen

House Bill 5302 as introduced
Sponsor: Rep. Richard M. Steenland

House Bill 5320 as introduced
Sponsor: Rep. Gary Howell

Committee: Regulatory Reform
Complete to 10-5-21

BRIEF SUMMARY:

House Bills 5300 to 5302 would amend different acts that regulate the medical marijuana market. Among other things, the bills would do all of the following:

- Regulate licensed specialty medical growers.
- Require the statewide monitoring system that tracks medical marijuana sales and transfers between licensees and registered primary caregivers and registered qualified patients to track certain information pertaining to licensed specialty medical growers.
- Prohibit transfers of marijuana from a licensed specialty medical grower to a licensee in the recreational marijuana market.
- Prohibit a licensed grower, processor, secure transporter, or safety compliance facility licensee from also being licensed as a licensed specialty medical grower.
- Reduce, from five to one, the number of registered qualified patients a registered primary caregiver may assist.
- Eliminate provisions barring a registered qualified patient from transferring marijuana or a marijuana-infused product to any individual and making selling marijuana to someone who is not a registered qualifying patient a felony offense.
- No longer exclude an applicant from meeting the conditions for automatic registration or licensure due to a felony based solely on a marijuana-related offense committed during the ten years immediately preceding an application as a registered primary caregiver or licensed specialty medical grower.

House Bill 5320 would revise a citation in the Public Health Code to account for changes made to the Michigan Medical Marijuana Act by HB 5301.

House Bills 5319 and 5321 would respectively amend the Use Tax Act and the General Sales Tax Act to exempt the sale of marijuana by a registered primary caregiver or licensed specialty medical grower to a registered qualified patient from the use and sales taxes.

DETAILED SUMMARY:

House Bill 5301 would amend the Michigan Medical Marijuana Act to establish a regulatory framework for a new category of medical marijuana licensees designated as a licensed specialty medical grower. Many provisions that currently apply to registered primary caregivers (“caregivers”), registered qualified patients (“patients”), or licensed state operators also would apply to a licensed specialty medical grower, including regulatory provisions, rights and privileges, the license application process, protection from criminal penalties if complying with the act, and certain departmental rules. The following are some of the substantive differences that apply to a licensed specialty medical grower, as well as other revisions proposed by the bill:

- The bill would prescribe an application process similar to other licenses under the act. The license would not be transferable and would expire one year after the date it is granted.
- A patient would have to designate on his or her application form who would cultivate his or her marijuana—the patient, a caregiver, or a licensed specialty medical grower. A patient could be connected through the registration process either to a caregiver or to a licensed specialty medical grower, but not to both at the same time.
- The parent of a patient who is a minor could serve as the minor patient’s caregiver or licensed specialty medical grower or could approve a caregiver or licensed specialty medical grower.
- Currently, a caregiver may assist up to five patients. Beginning March 21, 2022, a caregiver could assist only one patient with his or her medical use of marijuana. The bill does not specify how many patients a licensed specialty medical grower could assist.
- A caregiver and a licensed specialty medical grower each would be allowed to apply to the Marijuana Regulatory Agency (MRA) to designate no more than two authorized individuals to assist them in cultivating marijuana for a patient.
- The bill would eliminate a prohibition on a patient transferring marijuana or a marijuana-infused product to any individual.
- A licensed specialty medical grower’s license could be suspended without notice or hearing if the safety or health of patients or members of the public were jeopardized by the licensee’s continued operation. The bill details the process for a postsuspension hearing or for a hearing requested by a party aggrieved by an action taken by the MRA regarding a license sanction or fine.
- The MRA could disclose to the Department of State Police or a local law enforcement agency the address of the location where a caregiver or licensed specialty medical grower cultivates or manufactures marijuana.
- The conditions requiring the MRA to issue a registry ID card to an individual named as a patient’s primary caregiver would remain the same, except that, beginning March 21, 2022, the condition that the individual not have been convicted of a felony in the immediately preceding 10 years would not apply to a conviction based solely on a marijuana-related offense unless the offense involved distribution of marijuana to a minor.
- The bill would require the MRA to include the number of applications filed for specialty medical grower licenses, as well as the number of licenses granted in each county and the number revoked, in the annual report it must submit to the legislature.

- The bill would revise the prohibition on using butane extraction to separate plant resin from marijuana to instead prohibit using a hydrocarbon solvent or any other flammable substance to separate plant resin from marijuana.

Eligibility for a specialty medical grower license

The bill would require the MRA to issue an initial or renewal certificate of licensure to an individual if all of the following apply:

- A complete application is submitted and an application fee of \$500 is paid.
- The individual does not have an ownership interest in a safety compliance facility or secure transporter licensed under the act or a marijuana safety compliance facility or marijuana secure transporter licensed under the Michigan Regulation and Taxation of Marihuana Act, which regulates the recreational marijuana market.
- The individual has not been convicted of a felony in the immediately preceding 10 years. This would not apply to a conviction based solely on a marijuana-related offense unless the offense involved distribution of marijuana to a minor.
- The individual has not violated the Michigan Medical Marihuana Act, the Medical Marihuana Facilities Licensing Act, the Marihuana Tracking Act, or the Michigan Regulation and Taxation of Marihuana Act in the immediately preceding five years.

Permitted conduct by a licensed specialty medical grower

A licensed specialty medical grower could do any of the following:

- Cultivate or manufacture marijuana in compliance with the act and the Marijuana Tracking Act to assist a patient, or sell or transfer marijuana to a patient, to whom the grower is connected through the MRA's registration process. The sale or transfer would have to be entered into the statewide monitoring system as required under the Marihuana Tracking Act, the package would have to include a label with certain information, and the marijuana would have to be tested by a licensed safety compliance facility before the sale or transfer.
- Sell or transfer *overages* to a licensed grower if certain conditions were met.
- Purchase marijuana from a licensed provisioning center for the purpose of assisting a patient or selling or transferring marijuana to the patient.

Overage would mean either an amount of marijuana cultivated by a patient in excess of that required by the patient or an amount cultivated by a caregiver or licensed specialty medical grower in excess of the amount transferred or sold to a caregiver's or licensed specialty medical grower's patient. A caregiver could not transfer or sell overages to any person.

The bill also would provide the conditions under which a licensed specialty medical grower must cultivate or manufacture marijuana, provide that the location must be zoned for agricultural or industrial use or unzoned, and allow inspections (with or without notice) by law enforcement or the MRA.

Penalties and sanctions

Currently, a patient or caregiver who sells marijuana to someone who is not allowed the medical use of marijuana under the act must have his or her registry ID card revoked and is guilty of a felony punishable by imprisonment for up to two years or a fine of up to \$2,000, or both, in addition to any other penalties for the distribution of marijuana. The bill would

eliminate the criminal penalty and instead provide that a patient or caregiver who sells *or transfers* marijuana to a person not authorized to obtain marijuana under the act must have his or her registry ID card revoked by the MRA.

Currently, a patient or caregiver who violates the act is responsible for a civil fine of up to \$250. The bill would also apply this penalty to a licensed specialty medical grower.

Finally, the MRA, local law enforcement, or the Department of State Police could confiscate or destroy any marijuana or equipment used to cultivate or manufacture marijuana by a licensed specialty medical grower in violation of the act, departmental rules, or the Marihuana Tracking Act or if the grower ceased to meet certain requirements for licensure. The MRA could suspend, revoke, or restrict the grower's license or deny the grower's application for licensure.

MCL 333.26423 et seq.

House Bill 5300 would amend the Medical Marihuana Facilities Licensing Act to do all of the following:

- Define *licensed specialty medical grower* as that term is defined in the Michigan Medical Marihuana Act and revise the definitions of *safety compliance facility* and *secure transporter* to include a licensed specialty medical grower as an entity from which the licensee may be able to receive or transport marijuana, respectively.
- Include purchasing, receiving, selling, transporting, or transferring marijuana to a licensed specialty medical grower in the activities performed under a state operating license for which protection is afforded from criminal and civil prosecutions or other sanctions.
- Allow a licensed specialty medical grower to transfer marijuana to a licensed grower only by means of a secure transporter and provide that a secure transporter license authorizes the licensee to transport marijuana and money associated with the purchase or sale of marijuana between a licensed specialty medical grower and a grower. However, the bill would provide that a secure transporter license does not authorize transport to a licensed specialty medical grower.
- Allow a licensed specialty medical grower to sell or transfer seeds, seedlings, or tissue cultures to a grower without using a secure transporter.
- Allow the MRA to establish a limit on the amount of marijuana that a licensed specialty medical grower may transfer to a grower.
- Prohibit the transfer of marijuana from a licensed specialty medical grower to a person licensed under the Michigan Regulation and Taxation of Marihuana Act.
- Prohibit a grower or processor from also being licensed, or from employing a person who is also licensed, as a licensed specialty medical grower. Similarly, a secure transporter or safety compliance facility licensee could not also be a licensed specialty medical grower.
- Allow a safety compliance facility licensee to take marijuana from, test it for, and return it to a licensed specialty medical grower. A safety compliance facility licensee also could collect a random sample of marijuana for testing at the location where a licensed specialty medical grower is authorized to cultivate or manufacture marijuana under the Michigan Medical Marihuana Act.

MCL 333.27102 et seq.

House Bill 5302 would amend the Marihuana Tracking Act. The bill would require that the system created under the act to store and provide access to information regarding the validity of registry identification cards and a record of the sale or transfer of marijuana to a registered qualifying patient or registered primary caregiver must also allow for the verification that a specialty medical grower license is current and valid and had not been suspended, revoked, or denied and that a record of sales and transfers of marijuana to a licensed specialty medical grower is retained.

The bill also would amend, to include licensed specialty medical growers, a provision that requires the MRA to promulgate rules to govern the process incorporating certain information that must be included and maintained in the statewide monitoring system that now applies to information concerning registry identification card renewal, revocation, suspension, and changes applicable to licensees, registered primary caregivers, and registered qualified patients.

MCL 333.27902 and MCL 333.27903

House Bills 5319 and 5321 would respectively amend the Use Tax Act and the General Sales Tax Act to provide that the sale of marijuana from a registered primary caregiver or licensed specialty medical grower to a registered qualifying patient as authorized under the Michigan Medical Marihuana Act is exempt from the tax imposed by the appropriate act. The terms *licensed specialty medical grower*, *marihuana*, *registered primary caregiver*, and *registered qualifying patient* would be defined as they are in the Michigan Medical Marihuana Act.

Proposed MCL 205.94ii (HB 5019)

Proposed MCL 205.54ii (HB 5021)

House Bill 5320 would amend the Public Health Code. That act includes marijuana as a Schedule 2 controlled substance, but only for the purpose of treating a *debilitating medical condition* as that term is defined in section 3(b) of the Michigan Medical Marihuana Act. The bill would instead simply cite section 3 of the Michigan Medical Marihuana Act to account for changes to that section that would be made by HB 5301.

MCL 333.7214

Tie-bars

House Bills 5300, 5301, 5302, 5319, and 5321 are all tie-barred to one another, which means that none of those bills could take effect unless all of them were enacted. House Bill 5320 is tie-barred to HB 5301, which means that it could not take effect unless HB 5301 were enacted.

FISCAL IMPACT:

House Bill 5300 would not have a fiscal impact on the Marijuana Regulatory Agency within the Department of Licensing and Regulatory Affairs or on any other unit of state or local government.

House Bill 5301 would have significant revenue and expenditure implications for the Marijuana Regulatory Agency within the Department of Licensing and Regulatory Affairs. The bill would expand the scope of the agency's regulatory activities, by necessitating the regulation of licensed specialty medical growers and "authorized individuals," as defined in the bill. These activities would include processing applications and other materials, monitoring

compliance, pursuing applicable disciplinary actions (including license suspensions and revocations), and conducting administrative hearings. The volume of these activities would depend on the expansion of the population of regulated individuals, which is presently indeterminate. The bill would provide for a \$500 application fee for specialty medical grower licenses, and this revenue would be deposited to the Marihuana Registry Fund, a state restricted fund that is utilized for the implementation of the Michigan Medical Marihuana Act. The amount of this revenue would depend on the volume of licensees, and thus the amount of projected revenue is indeterminate.

In addition, House Bill 5301 would have an indeterminate fiscal impact on the courts and on state and local corrections systems. Depending on the number of individuals that would no longer be charged with a felony under the bill, the bill could result in a decrease in costs for the state and for local units of government. Reduced felony charges would result in reduced costs related to state prisons and state probation supervision. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,300 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. There could also be a decrease in penal fine revenues, which would decrease funding for public and county law libraries, the constitutionally designated recipients of those revenues. Also, under the bill, including licensed specialty medical growers could result in an increase in the number of civil fines issued, which would increase funding for public and county law libraries.

House Bill 5302 would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs, as the bill may require Information Technology modifications, which could necessitate a modest expenditure.

House Bills 5319 and 5321 would result in an indeterminate reduction in sales and/or use tax revenue. The data necessary to determine a precise fiscal estimate are not available. Approximately 73% of sales tax revenue is earmarked to the School Aid Fund, and roughly an additional 10% is dedicated to constitutional revenue sharing to cities, villages, and townships. The majority of the remainder accrues to the general fund. One-third of use tax revenue is dedicated to the School Aid Fund, while the remaining two-thirds accrues to the Local Community Stabilization Authority and the state general fund. Although the split between forgone sales and use taxes is not known, it is assumed that the majority of the revenue loss would come from sales tax collections.

House Bill 5320 would not have a fiscal impact on any unit of state or local government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.