

EXECUTIVE REORGANIZATION ORDER

E.R.O. No. 2019-2

333.27001 Creation of marijuana regulatory agency as a type I agency within department of licensing and regulatory affairs; transfer of powers and duties of medical marihuana licensing board, marihuana advisory panel, and bureau of marijuana regulation to marijuana regulatory agency; abolishment of medical marihuana licensing board, marihuana advisory panel, and bureau of marijuana regulation; transfer of certain powers and duties of department of licensing and regulatory affairs to regulate industrial hemp to department of agriculture and rural development; administration of marijuana regulatory agency; transfer of certain powers and duties of department of licensing and regulatory affairs to Michigan unarmed combat commission as type I transfer.

Section 1 of article 5 of the Michigan Constitution of 1963 vests the executive power of the State of Michigan in the governor.

Section 2 of article 5 of the Michigan Constitution of 1963 empowers the governor to make changes in the organization of the executive branch of state government or in the assignment of functions among its units that are necessary for efficient administration.

To avoid licensing delays and to better coordinate varying sources of authority for the enforcement of state law, the administration of state laws relating to marijuana can more effectively and efficiently be administered by a dedicated state agency.

Changing the organization of the executive branch of state government is necessary in the interests of efficient administration and effectiveness of government.

Acting pursuant to the Michigan Constitution of 1963 and Michigan law, I order the following:

1. Creating the Marijuana Regulatory Agency

(a) The Marijuana Regulatory Agency (the "Agency") is created as a Type I agency within the Department of Licensing and Regulatory Affairs (the "Department").

(b) All of the authorities, powers, duties, functions, and responsibilities of the Medical Marihuana Licensing Board under the Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, MCL 333.27101 to 333.27801, are transferred by Type I transfer to the Agency. The Medical Marihuana Licensing Board is abolished.

(c) All of the authorities, powers, duties, functions, and responsibilities of the Marihuana Advisory Panel under the Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, MCL 333.27101 to 333.27801, are transferred to the Agency. The Marihuana Advisory Panel is abolished.

(d) Except as provided in section 1(f), all of the authorities, powers, duties, functions, and responsibilities of the Department, including its Bureau of Marijuana Regulation, under the following statutes are transferred to the Agency to be administered by the Agency:

(i) The Michigan Medical Marihuana Act, 2008 IL 1, as amended, MCL 333.26421 to 333.26430.

(ii) The Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, MCL 333.27101 to 333.27801.

(iii) The Marihuana Tracking Act, 2016 PA 282, as amended, MCL 333.27901 to 333.27904.

(iv) The Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 to 333.27967.

(e) The Bureau of Marijuana Regulation is abolished.

(f) The authorities, powers, duties, functions, and responsibilities of the Department to promulgate rules to regulate the cultivation, processing, distribution, and sale of industrial hemp, under section 8 of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27958, are transferred by Type II transfer to the Department of Agriculture and Rural Development, except that the Agency may promulgate rules to establish standards, procedures, and requirements for the processing, testing, transportation, and sale of industrial hemp from marihuana establishments.

(g) The Agency shall exercise all of the authorities, powers, duties, functions, and responsibilities transferred to the Agency by this order or otherwise vested in the Agency by law.

(h) The Agency is responsible for implementing the transfers to the Agency under this order and has the powers and duties necessary to exercise the powers and duties vested in the Agency by this order or otherwise by law.

2. Administration of the Marijuana Regulatory Agency

(a) The head of the Marijuana Regulatory Agency is an executive director (the "Executive Director") appointed by the governor with the advice and consent of the senate. The Executive Director shall serve at the pleasure of the

governor. A vacancy in the office of Executive Director shall be filled in the same manner as the original appointment.

(b) The Executive Director shall subscribe to and file the oath of office required by section 1 of article 11 of the Michigan Constitution of 1963. The Executive Director shall devote his or her full time to the performance of the duties of the office of Executive Director and shall not hold any other office or employment.

(c) The Executive Director must not be interested pecuniarily, directly or indirectly, in a marihuana establishment. An individual who is not of good moral character or who has been indicted for, charged with, or convicted of, pled guilty or no contest to, or forfeited bail concerning any felony or a misdemeanor involving a controlled substance violation, theft, dishonesty, or fraud under the laws of this state, any other state, or the United States or a local ordinance in any state involving a controlled substance violation, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state is not eligible to serve as the Executive Director.

(d) The Executive Director shall file with the governor a financial disclosure statement listing all assets and liabilities, property and business interests, and sources of income of the Executive Director and his or her spouse, if any. The financial disclosure statement must be made under oath and filed at the time of appointment and annually during each year after the appointment. For four years after the expiration of the Executive Director's service as Executive Director, the Executive Director shall not acquire any direct or indirect interest in, be employed by, or enter into a contract for services with an applicant, licensee, or marihuana establishment. For two years after the expiration of the Executive Director's service as Executive Director, the Executive Director shall not represent any person or party other than this state before or against the Agency.

(e) The Executive Director shall comply with the requirements applicable to a member of the former Medical Marihuana Licensing Board under section 305 of the Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, MCL 333.27305.

(f) The Executive Director shall be the appointing authority for the employees of the Agency.

(g) The Agency shall hold at least four public meetings each calendar year for the purpose of hearing complaints and receiving the views of the public regarding the administration of the authorities, powers, duties, functions, and responsibilities vested in the Agency by this order or otherwise by law.

(h) The Executive Director may establish advisory workgroups composed of members of the public as deemed necessary by the Executive Director to assist the Agency in performing its functions and responsibilities. The Executive Director may adopt, reject, or modify any recommendations proposed by an advisory workgroup.

(i) To the fullest extent permitted by law, an employee, advisor, or consultant of the Agency involved in the implementation, administration, or enforcement of the authorities, powers, duties, functions, and responsibilities transferred to the Agency by this order is not personally liable for any action at law for damages sustained by a person or entity because of an action performed or done in the performance of those authorities, powers, duties, functions, and responsibilities.

3. Other Transfers to Department of Licensing and Regulatory Affairs

(a) The Michigan Unarmed Combat Commission (the "Commission") is transferred by Type I transfer to the Department.

(b) Except as otherwise provided by this order, all of the authorities, powers, duties, functions, and responsibilities of the Department under the Michigan Unarmed Combat Regulatory Act, 2004 PA 403, as amended, MCL 338.3601 to 338.3661a, are transferred to the Commission.

(c) The authorities, powers, duties, functions, and responsibilities of the director of the Department under sections 20(5) to 20(7), 22(5)(a), 41(1), 43(1), and 45(5) of the Michigan Unarmed Combat Regulatory Act, 2004 PA 403, as amended, MCL 338.3620(5) to 338.3620(7), 338.3622(5)(a), 338.3641(1), 338.3643(1), and 338.3645(5), are transferred to the chairperson of the Commission.

(d) The authorities, powers, duties, functions, and responsibilities of the director of the Department under sections 22(2) to 22(4), 22(7), 34(d), and 35 of the Michigan Unarmed Combat Regulatory Act, 2004 PA 403, as amended, MCL 338.3622(2) to 338.3622(4), 338.3622(7), 338.3634(d), and 338.3635, are transferred to the Commission.

(e) As a Type I agency, the Commission shall exercise its prescribed powers, duties, responsibilities, functions, and any rule-making, licensing, and registration, including the prescription of any rules, rates, and regulations and standards, and adjudication, including those transferred to the Commission under this order, independently of the director of the Department. The budgeting, procurement, and related management functions of the Commission shall be performed under the direction and supervision of the director of the Department. The director of the Department shall be the appointing authority for employees of the Commission.

4. Definitions

As used in this order:

(a) "Applicant" means that term as defined under section 102(c) of the Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, MCL 333.27102(c), and also includes an applicant under the Michigan Medical Marihuana Act, 2008 IL 1, as amended, MCL 333.26421 to 333.26430, and the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 to 333.27967.

(b) "Department of Agriculture and Rural Development" means principal department of state government

created under section 1 of 1921 PA 13, MCL 285.1, and section 175 of the Executive Organization Act of 1965, 1965 PA 380, MCL 16.275, and renamed by Executive Order 2011-2, MCL 285.11.

(c) "Department of Licensing and Regulatory Affairs" means the principal department of state government originally created as the Department of Commerce under section 225 of the Executive Organization Act of 1965, 1965 PA 380, as amended, MCL 16.325, renamed as the Department of Consumer and Industry Services by Executive Order 1996-2, MCL 445.2001, renamed the Department of Labor and Economic Growth by Executive Order 2003-18, MCL 445.2011, renamed the Department of Energy, Labor, and Economic Growth by Executive Order 2008-20, MCL 445.2025, and renamed the Department of Licensing and Regulatory Affairs by Executive Order 2011-4, MCL 445.2030.

(d) "Licensee" means that term as defined under section 102(h) of the Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, MCL 333.27102(h), and includes a licensee as defined under section 3(d) of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953(d).

(e) "Marihuana Advisory Panel" means the public body created under section 810 of the Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, MCL 333.27101 to 333.27801.

(f) "Marihuana" means that term as defined in section 3(e) of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953(e), including marihuana as defined in section 7106 of the Public Health Code, 1978 PA 368, as amended, MCL 333.7106. For purposes of this order, "marihuana" and "marijuana" are synonymous.

(g) "Marihuana establishment" means that term as defined in section 3(h) of the Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL 333.27953(3), or any marihuana facility as defined in section 102(j) of the Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, MCL 333.27102.

(h) "Medical Marihuana Licensing Board" means the board created within the Department of Licensing and Regulatory Affairs under section 301 of the Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, MCL 333.27301.

(i) "Michigan Unarmed Combat Commission" means the commission created within the Department of Licensing and Regulatory Affairs under section 20 of the Michigan Unarmed Combat Regulatory Act, 2004 PA 403, as amended, MCL 338.3620.

(j) "State Budget Director" means the individual appointed by the governor under section 321 of The Management and Budget Act, 1984 PA 431, as amended, MCL 18.1321.

(k) "Type I agency" means an agency established consistent with section 3(a) of the Executive Organization Act of 1965, 1965 PA 380, as amended, MCL 16.103.

(l) "Type I transfer" means that term as defined under section 3(a) of the Executive Organization Act of 1965, 1965 PA 380, as amended, MCL 16.103(a).

(m) "Type II transfer" means that term as defined under section 3(b) of the Executive Organization Act of 1965, 1965 PA 380, as amended, MCL 16.103(b).

5. Implementation

(a) The director of each applicable department shall provide executive direction and supervision for the implementation of all transfers to the director's department under this order.

(b) Except as otherwise provided in this order, the functions and responsibilities transferred to a department under this order shall be administered under the direction and supervision of the director of that department.

(c) Any records, personnel, property, and unexpended balances of appropriations, allocations, and other funds used, held, employed, available, or to be made available to any entity for the authority, activities, powers, duties, functions, and responsibilities transferred to a department or agency under this order, are transferred to that department or agency.

(d) The director of a department shall administer the functions and responsibilities transferred to the department under this order in such ways as to promote efficient administration and shall make internal organizational changes as administratively necessary to complete the realignment of responsibilities under this order.

(e) State departments, agencies, and state officers shall fully and actively cooperate with and assist each director of a department receiving functions or responsibilities under this order with implementation responsibilities under this order. The director of a department or Executive Director of the Agency receiving functions or responsibilities under this order may request the assistance of other state departments, agencies, and officers with respect to personnel, budgeting, procurement, telecommunications, information systems, legal services, and other management-related functions, and the departments, agencies, and officers shall provide that assistance.

(f) The State Budget Director shall determine and authorize the most efficient manner possible for handling financial transactions and records in this state's financial management system necessary to implement this order.

(g) A rule, regulation, order, contract, or agreement relating to a function or responsibility transferred under this order lawfully adopted or entered into before the effective date of this order shall continue to be effective until revised, amended, repealed, or rescinded.

(h) This order does not limit any privileges, rights, immunities, or defenses of a person as provided in the Michigan Medical Marihuana Act, 2008 IL 1, as amended, MCL 333.26421 to 333.26430, the Medical Marihuana Facilities Licensing Act, 2016 PA 281, as amended, MCL 333.27101 to 333.27801, the Michigan Regulation and

Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 to 333.27967, or any other law of this state regulating marihuana.

(i) This order does not abate any criminal action commenced by this state before the effective date of this order.

(j) This order is not intended to abate a proceeding commenced by, against, or before an officer or entity affected by this order. A proceeding may be maintained by, against, or before the successor of any officer or entity affected by this order.

(k) If any portion of this order is found to be unenforceable, the unenforceable provision should be disregarded and the rest of the order should remain in effect as issued.

(l) Consistent with section 2 of article 5 of the Michigan Constitution of 1963, this order is effective April 30, 2019 at 12:01 a.m.

History: 2019, E.R.O. No. 2019-2, Eff. May 1, 2019

Compiler's Notes: Executive Reorganization Order No. 2019-2 was promulgated Mar. 1, 2019, as Executive Order No. 2019-7, Eff. May 1, 2019. For the renaming of the marijuana regulatory agency to the cannabis regulatory agency, see E.R.O. No. 2022-1, compiled at MCL 333.27002.