

Testimony of Stephen Linder
Presented to:
2022 Special Committee on Medical Marijuana
State of Kansas

Members of the Committee, my name is Stephen Linder from Okemos Michigan. I want to thank Senator Longbine for inviting Lance Boldrey of the national law firm Dykema Gossett, one of the nations premiere regulatory firms specializing in Cannabis legislation and rule making in a number of states.

I was invited as I was honored to play a pivotal role in the crafting and passage of Michigan's Medical Marijuana Facilities Licensing Act and the shaping, creation, and passage of the first permanent rule set guiding the creation and ramp up of a new industry created and ruled by government. First a few items about myself:

I ran the largest Issue Management, Campaign Management, Fundraising firm in Michigan.

Worked on major issues for industry, insurance, taxes, finance, health care, Pharma, telecommunications, among others, and conservative social issues creating coalitions, messaging, and guiding the efforts of the lobbying team.

General Consultant for the Senate Republican Majority over a number of cycles including being the senior advisor for a number of Senate Majority Leaders assisting in maintaining the majorities in every cycle as General Consultant

Was the last set of hands shaping the Medical Marijuana Facilities Licensing Act of 2016 and was part of a small group helping to shape the Emergency and Permanent Rules governing the industry.

After passage of the MMFLA, working with Lance Boldrey, assisted qualified applicants for Cannabis licenses and then, in 2019 formed the Michigan Cannabis Manufacturers Association representing a group of the largest Vertically Integrated companies representing over \$1.5 Billion in initial investment, and became its first Executive Director

1. Efforts in Cannabis Legislative Advocacy

I was approached by a former Speaker of the House to create a coalition of stakeholders to manage the passage of the package of bills to create a regulated Medical Marijuana industry. I was not involved in the issue prior. As a conservative operative my role was to help "clean up" the dysfunctional environment and help create a system that would serve the public. Cannabis was legal, now we needed to turn it into an industry.

The Bills had passed the Republican led House but were stuck in the Senate Judiciary Committee.

I needed to seek the approval of the Senate Majority Leader who wanted assurances that the issue would bring order and benefit to the public. We conducted polling to demonstrate that the public was supportive of a fully regulated system that would drive out criminality, provide for safety, have high barriers of entry to assure the sustainability of the new industry, provide jobs, and taxes and encourage investment from successful members of the business community.

I was asked to form a “small table” as there were over 100 lobbyists representing clients. The “small table” consisted of lobbyists representing prospective investors who were known successful Michigan business entrepreneurs, law enforcement, health care, local units of government, the Regulatory Agency, the Governor, and interested legislators.

The House Bill was reworked to gain support of all of the Stakeholders and a model set of Rules was created. The law was signed in September 2016.

2. Why did we need to create a regulated system?

Unlike Kansas, Michigan passed a ballot initiative in 2008 that legalized Cannabis, created a class of people called Caregivers, but explicitly prohibited dispensaries and contained no regulation or taxation of the product nor product safety testing.

Local Units of government began issuing permits for dispensaries, all illegal, and supplied by untested untaxed product from Caregivers. Hundreds grew up and law enforcement was unsure of their enforcement prerogatives allowing a total cash business with no oversight, no tax enforcement, and product testing. As well the Federal Government, which had clear enforcement jurisdiction did not intervene in this public criminal activity. Money laundering and prescription mills were rampant. It was a horse dung show.

The public in these cities and townships and elected officials had enough and in 2014 discussions began to “reengineer” the marketplace and create a regulated system that would create a legal industry with full governmental oversight, compliance, penalties for non-compliance, and encourage those who were successful business operators to apply for licenses.

I will repeat this again later: but the one recommendation I would make is to NOT create a Caregiver category of people who grow in their homes, are not regulated, and are totally outside the purview of the Regulatory Agency. If product is tested: flower, distillate, and liquid applications, there is no need for Caregivers as a class.

3. The Michigan Medical Facilities Licensing Act-Created a legal industry from a criminal enterprise. We needed to convince the legislature and the public that the system we created had integrity, oversight, and was in the public interest.
 - A. The overall goals that I was charged with creating in the reworked law were as follows:
 1. Take what was illegal: growing, processing and distributing Cannabis and make it legal to form businesses to do so.
 2. Create a system that would encourage successful business owners to invest and create the certainty any owner would demand.,
 3. Prohibit the grandfathering in existing illegal dispensaries nor allow their owners to seek licenses.
 4. Assure chain of custody of the product from seed to sale with 5 classes of licenses: Growers, Processors, Labs, Secured Transport, Dispensaries.
 5. Assure high testing and safety standards.
 6. Create high barriers of entry for licensing so that only legitimate legal business investors could obtain a license.
 7. Allow local units of government to decide if they wanted Cannabis in their community, what license types, how many, and what criteria they would use to issue permits.
 8. Eliminate the possibility of criminality in the system.
 9. Make the law as lawsuit and bribe proof as possible.
 10. Generate taxes for Michigan's General Fund.
 11. Create a licensing system that was as free market as possible under a government created and regulated industry by not having caps on licenses.

4. The structure of the MMFLA

5 categories of licenses:

- Grower
- Processor

- Secured transport
- Labs
- Dispensaries

5. How to obtain a license

- Applicants had to secure land in local unit of government that had “opted in” and passed an ordinance allowing licensed Cannabis facilities. The MMFLA gave local units of government full authority to decide which license types they would allow, the creation of specialized zoning, and how many of each license type would be allowed. As well, they had the authority to create their own “scoring system” to award local permits to locate facilities.
- Applicants had to submit 3 years of personal and business tax returns for themselves and spouses which were forensically vetted by a state hired accounting firm.
- Applicants had to submit to State Police fingerprinting and in turn those were sent to the FBI/Department of Homeland Security.
- Applicants had to demonstrate a level of liquidity (done by rule)
- Applicants had to submit a business plan to demonstrate the viability of the business.
- Applicants had to submit architectural and security plans.
- By rule applicants had to build a fully “spec-ed out” facility before a license could be granted. This was part of the anti-bribery process which I will explain later.

6. Seed to sale

Plants are tagged with an RFID tag and the plant, from seed to grow, to processing, to transport, to testing, and to retail are tracked by the regulatory agency.

Michigan allows for “stacking” of multiple plants

7. How fees are assessed

The facility pays an initial license fee annually

Licenses are only valid for one year when the business needs to be reinspected for license renewal for all classes of licenses

Michigan charges fees for grow facilities based on plant count only in increments of 500 to 1500

8. Process for approval-One or two steps

The Licensing and Regulatory Agency and the Bureau of Medical Marijuana Regulation would monitor the application process every step of the way: tax returns, criminal background checks, business plans, and inspect the facility.

If an applicant pursued the two step process they would first get approval on the tax returns, criminal background check, tax and regulatory compliance and litigation history, etc. Step one would decide if they were suitable to participate in a heavily regulated industry. Step two would review the business plan, plans for the facility, and the built-out facility itself. Most well capitalized applicants that ascertained that they would pass muster would complete the process and build a facility to cut down on time and ask for full licensing at the same meeting.

By the time the Agency and Bureau got to final licensing recommendations, millions to tens of millions of dollars had to be spent on lawyers, accountants, possibly lobbyists, architects, construction contractors, security companies, and the building itself weeding out those that couldn't possibly build and manage a multi-million dollar supply chain business.

The Agency and Bureau would then process the thousands of pages of documents and write a very thorough report, often hundreds of pages, attesting to the viability of the applicant, clean criminal record, and compliant facility.

One of the mandates of legislative leadership to me was to keep the Civilian Board, contained in the House Bill, to act on the recommendations of the Agency/Bureau and act as a counterweight and vote on approval. Legislators just didn't trust the bureaucracy to manage a new industry. This turned out to be a major mistake and something whose goals could never be accomplished. The Board was appointed by the Governor, was volunteer and had no set meetings or requirement on frequency of meeting or numbers of applications considered. They weren't involved in the process of the months long process and millions of investment required and only saw the synthesized report from the Agency/Bureau. This turned out to create a backlog of application approvals. By demanding by Rule that applications could only be processed once a facility was built, and the Board could only act on applicants brought forward from the Agency/Bureau we purposely diminished the power of the Board to not much more than a perfunctory approval of the Agency/Bureau's recommendations. This also served to assure the integrity of the process since any attempt to sway the Board (communication with any Board member on an application was a violation of the law) through illegal lobbying or bribery would not be successful.

Board meetings were held at the call of the Chair, applications and the analysis of the worthiness of the applicants that were ready for deliberation were forwarded to the Board. Meetings were held in public and televised with Asst AGs and the Agency on stage with the Board. The Board couldn't meet in private as this would violate the Open Meeting Act. And they weren't fully up to speed on the entire process, being limited to the analysis reported to them. It turned out to be a useless appendage with good intentions. If an applicant passed all of the barriers of entry and built the facility the odds of obtaining a license was 100% unless they lied on the application.

We built into the law an automatic appeal to an Administrative Law Judge, so a denial was not a death penalty. If the applicant still didn't prevail, they had remedy with the Court system.

The Board process was doomed to fail. We should have professionalized it like the Liquor Control Commission or Public Service Commission. Finally, Lance Boldrey and I worked with the Agency and the Governor's office to eliminate the Board and place the responsibility for processing and approving applications with the Agency and the Bureau, which eventually became its own agency as they now possessed the staff and expertise to manage the process.

As well, the volunteer aspect left the Board subject scrutiny and potential bribes which would not be successful as the process required a 4-10 month process and major investment that would guarantee license approval. Nonetheless, the Board was always subject to rumor of illegal contact and "deal making" even though the Board could not affect an outcome since they were at the end of the process and a recommendation. It undermined the system.

9. Cautionary tales for Kansas Cannabis

It is a very difficult transition from an industry that is totally illegal, and will still be illegal at the Federal level, to one that is legal and fully regulated by the state. The optics of the Cannabis marketplace in the eyes of the public that still believes that Cannabis is an illegal drug are only overcome over time and demonstration of the integrity of the system and licensing only those who are successful, well capitalized, and fully vetted licensees who have a high probability of success and serve their communities with employment, investment, and clean modern looking stores. We were very concerned about bootstrapping wannabees since everyone thinks everyone in Cannabis will get rich, the leaking in of criminals, and illegal product leaking into the system. Make the barriers of entry high.

Our experiment with an uncapped license system to avoid lawsuits and bribery resulted in catastrophic marketplace depression. There are too many cultivation licenses in

Michigan, too much product being produced resulting in a 75% drop in wholesale prices since the system was set up.

Local units of governments who allow Cannabis do have caps and have created formulas for determining which applications will be approved. In every community, those applicants that did not prevail sued...in every community. However, to sustain a healthy industry, we believe the caps on licenses are necessary. We recommend caps on grow licenses and a well thought out criteria for awarding licenses.

Our belief that the Caregiver community would organically be eliminated was wrong. There were over 40,000 Caregivers servicing almost 300,000 patients totally outside the regulated system: addresses unknown, plants grown without testing and without knowing what was used to grow them, and Caregiver product leeching into the regulated system. Today, there are still 22,000 Caregivers and almost 200,000 patients. Caregivers in Michigan are responsible for 1/3 of all of the product produced putting pressure on wholesale prices in the regulated system. If the licensed market follows the path of high barriers of entry, rigorous product testing, and chain of custody, there is no need for a separate class of Caregivers as an interest group.

We fully believe in our strategy of licenses and fees for grow facilities tied to plants and not structures.

We still fully support the sales tax structure we implemented which generates hundreds of millions of dollars for Michigan's general fund.

When we had a change of party in the Executive Office, the Agency proposed a rule that all licensees had to engage in "Labor Peace Agreements." Our Association strenuously objected to this condition. Labor has the right to organize but not use the state as a cudgel. We prevailed.

Even though Social Equity is contained in the Adult Use statute passed we resisted efforts to include any preferences in the licensing process as these are prohibited in the Constitution...a ballot campaign my company ran. As well we resisted calls to give preferences to those who were jailed or part of "community impact" as these factors were irrelevant to whether or not one could overcome the steep barriers of entry. As well we resisted efforts to "shotgun" anyone for any reason with licensees. telecommunications

The last issue, which I mentioned before is criminality. It hangs over Cannabis like a cloud until the industry is more mature. In every state we researched including our experience, criminals and ner do wells will try to get into or inappropriately skew the system. Everyone that touches the Cannabis space is viewed with suspicion by law enforcement: legislators who take donations from Cannabis investors, partners and landlords and property owners of licensees. Lobbyists who will assist in the shaping of

the law and assist prospective licensees navigate the system. This is the pain of the transition from an illegal enterprise to a legal enterprise. Even I, as the issue manager and the last set of hands on the final bills and permanent rules did not escape the rumors, accusations (especially from those who would not be able to overcome the high barriers of entry) was subject to intense scrutiny as to motive and conduct. You all need to be prepared for state and federal law enforcement having eyeballs on how you do what you do. As long as the system is tight and enforced, those representing Cannabis companies conduct themselves with the highest integrity, legislators properly manage their constitutionally legal conversations with interested parties as the bills work their way to passage, and that constitutionally allowed conversations with regulators don't involve discussion about the adjudication of licenses, the ramp up of the industry should be able to withstand the inevitable scrutiny from state and federal law enforcement.

Michigan has created a \$4 billion industry, over 30,000 good paying jobs, and hundreds of millions in tax revenue, and rehabbed many abandoned manufacturing facilities with our Cannabis industry. Do it right in Kansas and the benefits are large.

Thank you for letting me present today.

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