

SENATE BILL No. 600

September 28, 2017, Introduced by Senators JONES and KNEZEK and referred to the Committee on Health Policy.

A bill to amend 2016 PA 281, entitled "Medical marihuana facilities licensing act," by amending sections 302 and 402 (MCL 333.27302 and 333.27402), section 402 as amended by 2017 PA 105.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 302. The board has general responsibility for
2 implementing this act. The board has the powers and duties
3 specified in this act and all other powers necessary and proper to
4 fully and effectively implement and administer this act for the
5 purpose of licensing, regulating, and enforcing the licensing and
6 regulation system established under this act for marihuana growth,
7 processing, testing, and transporting. The board is subject to the
8 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
9 24.328. The board's duties include all of the following:

10 (a) Granting or denying each application for a state operating

1 license within a reasonable time.

2 (b) Deciding all ~~license~~ applications **FOR A STATE OPERATING**
3 **LICENSE** in reasonable order.

4 (c) Conducting its public meetings in compliance with the open
5 meetings act, 1976 PA 267, MCL ~~15.231-15.261~~ to ~~15.246-15.275~~.

6 (d) Consulting with the department in promulgating rules and
7 emergency rules as necessary to implement, administer, and enforce
8 this act. The board shall not promulgate a rule establishing a
9 limit on the number or type of ~~marihuana facility~~ **STATE OPERATING**
10 licenses that may be granted.

11 (e) Implementing and collecting the application fee described
12 in section 401 and, in conjunction with the department of treasury,
13 the tax described in section 601 and regulatory assessment
14 described in section 603.

15 (f) Providing for the levy and collection of fines for a
16 violation of this act or rules.

17 (g) Providing oversight of a marihuana facility through the
18 board's inspectors, agents, and auditors and through the state
19 police or attorney general for the purpose of certifying the
20 revenue, receiving complaints from the public, or conducting
21 investigations into the operation of the marihuana facility as the
22 board considers necessary and proper to ensure compliance with this
23 act and rules and to protect and promote the overall safety,
24 security, and integrity of the operation of a marihuana facility.

25 (h) Providing oversight of marihuana facilities to ensure that
26 marihuana-infused products meet health and safety standards that
27 protect the public to a degree comparable to state and federal

1 standards applicable to similar food and drugs.

2 (i) Reviewing and ruling on any complaint by a licensee
3 regarding any investigative procedures of this state that are
4 believed to be unnecessarily disruptive of marihuana facility
5 operations. The need to inspect and investigate is presumed at all
6 times. The board may delegate authority to hear, review, or rule on
7 licensee complaints to a subcommittee of the board. To prevail on
8 the complaint, a licensee must establish by a preponderance of the
9 evidence that the procedures unreasonably disrupted its marihuana
10 facility operations.

11 (j) Holding at least 2 public meetings each year. Upon 72
12 hours' written notice to each member, the chairperson or any 2
13 board members may call a special meeting. Three members of the
14 board constitute a quorum, including when making determinations on
15 an application for a **STATE OPERATING** license. Three votes are
16 required in support of final determinations of the board on
17 applications for **STATE OPERATING** licenses and all other licensing
18 determinations, except that 4 votes are required in support of a
19 determination to suspend or revoke a **STATE OPERATING** license. The
20 board shall keep a complete and accurate record of all of its
21 meetings and hearings. Upon order of the board, 1 of the board
22 members or a hearing officer designated by the board may conduct
23 any hearing provided for under this act or by rules and may
24 recommend findings and decisions to the board. The board member or
25 hearing officer conducting the hearing has all powers and rights
26 regarding the conduct of hearings granted to the board under this
27 act. The **BOARD OR A MAJORITY OF THE BOARD SHALL REVIEW THE** record

1 made at the time of the hearing, ~~shall be reviewed by the board or~~
2 ~~a majority of the board,~~ and the findings and decision of the
3 majority of the board are the order of the board in the case.

4 (k) Maintaining records that are separate and distinct from
5 the records of any other state board. The records ~~shall~~**MUST** be
6 made available for public inspection subject to the limitations of
7 this act and ~~shall~~**MUST** accurately reflect all board proceedings.

8 (l) Reviewing the patterns of marihuana transfers by the
9 licensees under this act as recorded in a statewide database
10 established for use in administering and enforcing this act and
11 making recommendations to the governor and the legislature in a
12 written annual report to the governor and the legislature and
13 additional reports that the governor requests. The annual report
14 ~~shall~~**MUST** be submitted by April 15 of each year and ~~shall~~**MUST**
15 include the report required under section 702, a statement of
16 receipts and disbursements by the board, the actions taken by the
17 board, and any additional information and recommendations that the
18 board considers appropriate or that the governor requests.

19 (m) Except as otherwise provided in this act, all information,
20 records, interviews, reports, statements, memoranda, or other data
21 supplied to or used by the board are subject to the freedom of
22 information act, 1976 PA 442, MCL 15.231 to 15.246, except for the
23 following:

24 (i) Unless presented during a public hearing or requested by
25 the licensee or applicant who is the sole subject of the data, all
26 of the information, records, interviews, reports, statements,
27 memoranda, or other data supplied to, created by, or used by the

1 board related to background investigation of applicants or
2 licensees and to trade secrets, internal controls, and security
3 measures of the licensees or applicants.

4 (ii) All information, records, interviews, reports,
5 statements, memoranda, or other data supplied to or used by the
6 board that have been received from another jurisdiction or local,
7 state, or federal agency under a promise of confidentiality or if
8 the release of the information is otherwise barred by the statutes,
9 rules, or regulations of that jurisdiction or agency or by an
10 intergovernmental agreement.

11 (iii) All information in the statewide monitoring system.

12 Sec. 402. (1) The board shall issue a license to an applicant
13 who submits a complete application and pays both the nonrefundable
14 application fee required under section 401(5) and the regulatory
15 assessment established by the board for the first year of
16 operation, if the board determines that the applicant is qualified
17 to receive a license under this act. **FOR AN APPLICANT WHO, ON OR**
18 **BEFORE FEBRUARY 15, 2018, SUBMITS A COMPLETE APPLICATION AND PAYS**
19 **BOTH THE NONREFUNDABLE APPLICATION FEE REQUIRED UNDER SECTION**
20 **401(5) AND THE REGULATORY ASSESSMENT ESTABLISHED BY THE BOARD FOR**
21 **THE FIRST YEAR OF OPERATION, THE BOARD SHALL DETERMINE WHETHER THE**
22 **APPLICANT IS QUALIFIED TO RECEIVE A LICENSE UNDER THIS ACT ON OR**
23 **BEFORE AUGUST 15, 2018.**

24 (2) An applicant is ineligible to receive a license if any of
25 the following circumstances exist:

26 (a) The applicant has been convicted of or released from
27 incarceration for a felony under the laws of this state, any other

1 state, or the United States within the past 10 years or has been
2 convicted of a controlled substance-related felony within the past
3 10 years.

4 (b) Within the past 5 years the applicant has been convicted
5 of a misdemeanor involving a controlled substance, theft,
6 dishonesty, or fraud in any state or been found responsible for
7 violating a local ordinance in any state involving a controlled
8 substance, dishonesty, theft, or fraud that substantially
9 corresponds to a misdemeanor in that state.

10 (c) The applicant has knowingly submitted an application for a
11 license under this act that contains false information.

12 (d) The applicant is a member of the board.

13 (e) The applicant fails to demonstrate the applicant's ability
14 to maintain adequate premises liability and casualty insurance for
15 its proposed marihuana facility.

16 (f) The applicant holds an elective office of a governmental
17 unit of this state, another state, or the federal government; is a
18 member of or employed by a regulatory body of a governmental unit
19 in this state, another state, or the federal government; or is
20 employed by a governmental unit of this state. This subdivision
21 does not apply to an elected officer of or employee of a federally
22 recognized Indian tribe or to an elected precinct delegate.

23 (g) The applicant, if an individual, has been a resident of
24 this state for less than a continuous 2-year period immediately
25 preceding the date of filing the application. The requirements in
26 this subdivision do not apply after June 30, 2018.

27 (h) The board determines that the applicant is not in

1 compliance with section 205(1). **THIS SUBDIVISION DOES NOT APPLY TO**
2 **AN APPLICANT WHO MEETS THE REQUIREMENTS OF SECTION 201(5).**

3 (i) The applicant fails to meet other criteria established by
4 rule.

5 (3) In determining whether to grant a license to an applicant,
6 the board may also consider all of the following:

7 (a) The integrity, moral character, and reputation; personal
8 and business probity; financial ability and experience; and
9 responsibility or means to operate or maintain a marihuana facility
10 of the applicant and of any other person that meets either of the
11 following:

12 (i) Controls, directly or indirectly, the applicant.

13 (ii) Is controlled, directly or indirectly, by the applicant
14 or by a person who controls, directly or indirectly, the applicant.

15 (b) The financial ability of the applicant to purchase and
16 maintain adequate liability and casualty insurance.

17 (c) The sources and total amount of the applicant's
18 capitalization to operate and maintain the proposed marihuana
19 facility.

20 (d) Whether the applicant has been indicted for, charged with,
21 arrested for, or convicted of, pled guilty or nolo contendere to,
22 forfeited bail concerning, or had expunged any relevant criminal
23 offense under the laws of any jurisdiction, either felony or
24 misdemeanor, not including traffic violations, regardless of
25 whether the offense has been expunged, pardoned, or reversed on
26 appeal or otherwise.

27 (e) Whether the applicant has filed, or had filed against it,

1 a proceeding for bankruptcy within the past 7 years.

2 (f) Whether the applicant has been served with a complaint or
3 other notice filed with any public body regarding payment of any
4 tax required under federal, state, or local law that has been
5 delinquent for 1 or more years.

6 (g) Whether the applicant has a history of noncompliance with
7 any regulatory requirements in this state or any other
8 jurisdiction.

9 (h) Whether at the time of application the applicant is a
10 defendant in litigation involving its business practices.

11 (i) Whether the applicant meets other standards in rules
12 applicable to the license category.

13 (4) Each applicant shall submit with its application, on forms
14 provided by the board, a passport quality photograph and shall
15 ensure that 1 set of fingerprints is submitted to the department of
16 state police for each person having any ownership interest in the
17 marihuana facility and each person who is an officer, director, or
18 managerial employee of the applicant, in order for the department
19 of state police to conduct a criminal history check on each person
20 and to forward each person's fingerprints to the Federal Bureau of
21 Investigation for a national criminal history check. The applicant
22 shall submit with its application each person's written consent to
23 the criminal history check described in this section and the
24 submission of each person's fingerprints to, and the inclusion of
25 each person's fingerprints in, the state and federal database
26 systems described in subsection (7).

27 (5) The fingerprints required under subsection (4) may be

1 taken by a law enforcement agency or any other person determined by
2 the department of state police to be qualified to take
3 fingerprints. The applicant shall submit a fingerprint processing
4 fee to the department in an amount required under section 3 of 1935
5 PA 120, MCL 28.273, and any costs imposed by the Federal Bureau of
6 Investigation.

7 (6) The department of state police shall conduct a criminal
8 history check on each person described in subsection (4) and shall
9 request the Federal Bureau of Investigation to make a determination
10 of the existence of any national criminal history pertaining to
11 each person. The department of state police shall provide the board
12 with a written report containing the criminal history record
13 information of each person who was the subject of the criminal
14 history check conducted under this section.

15 (7) All of the following apply concerning fingerprints
16 submitted to the department of state police under this section:

17 (a) The department of state police shall store and retain all
18 fingerprints submitted under this section in an automated
19 fingerprint identification system database that searches against
20 latent fingerprints, and provides for an automatic notification if
21 and when a subsequent fingerprint is submitted into the system that
22 matches a set of fingerprints previously submitted under this
23 section or if and when the criminal history of an individual whose
24 fingerprints are retained in the system is updated. Upon receiving
25 a notification, the department of state police shall immediately
26 notify the board. Information in the database maintained under this
27 subsection is confidential, is not subject to disclosure under the

1 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
2 ~~shall~~**MUST** not be disclosed to any person except for purposes of
3 this act or for law enforcement purposes.

4 (b) The department of state police shall forward all
5 fingerprints submitted to it under this section to the Federal
6 Bureau of Investigation for submission of those fingerprints into
7 the FBI automatic notification system. This subdivision does not
8 apply until the department of state police is a participant in the
9 FBI automatic notification system. As used in this subdivision:

10 (i) "Automatic notification system" means a system that stores
11 and retains fingerprints, and that provides for an automatic
12 notification to a participant if and when a fingerprint is
13 submitted into the system that matches an individual whose
14 fingerprints are retained in the system or if and when the criminal
15 history of an individual whose fingerprints are retained in the
16 system is updated.

17 (ii) "FBI automatic notification system" means the automatic
18 notification system that is maintained by the Federal Bureau of
19 Investigation.

20 (8) The board shall review all applications for licenses and
21 shall inform each applicant of the board's decision.

22 (9) A license shall be issued for a 1-year period and is
23 renewable annually. Except as otherwise provided in this act, the
24 board shall renew a license if all of the following requirements
25 are met:

26 (a) The licensee applies to the board on a renewal form
27 provided by the board that requires information prescribed in

1 rules.

2 (b) The application is received by the board on or before the
3 expiration date of the current license.

4 (c) The licensee pays the regulatory assessment under section
5 603.

6 (d) The licensee meets the requirements of this act and any
7 other renewal requirements set forth in rules.

8 (10) The department shall notify the licensee by mail or
9 electronic mail at the last known address on file with the board
10 advising of the time, procedure, and regulatory assessment under
11 section 603. The failure of the licensee to receive notice under
12 this subsection does not relieve the licensee of the responsibility
13 for renewing the license.

14 (11) If a license renewal application is not submitted by the
15 license expiration date, the license may be renewed within 60 days
16 after its expiration date upon application, payment of the
17 regulatory assessment under section 603, and satisfaction of any
18 renewal requirement and late fee set forth in rules. The licensee
19 may continue to operate during the 60 days after the license
20 expiration date if the license is renewed by the end of the 60-day
21 period.

22 (12) License expiration does not terminate the board's
23 authority to impose sanctions on a licensee whose license has
24 expired.

25 (13) In its decision on an application for renewal, the board
26 shall consider any specific written input it receives from an
27 individual or entity within the local unit of government in which

1 the applicant for renewal is located.

2 (14) A licensee must consent in writing to inspections,
3 examinations, searches, and seizures that are permitted under this
4 act and must provide a handwriting exemplar, fingerprints,
5 photographs, and information as authorized in this act or by rules.

6 (15) An applicant or licensee has a continuing duty to provide
7 information requested by the board and to cooperate in any
8 investigation, inquiry, or hearing conducted by the board.

9 Enacting section 1. This amendatory act does not take effect
10 unless Senate Bill No. 599

11 of the 99th Legislature is enacted into law.