

MEDICAL MARIHUANA FACILITIES LICENSE MODIFICATIONS

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Senate Bill 1262 (S-1) as passed by the Senate
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Sponsor: Sen. Arlan Meekhof
House Committee: [Placed directly on Second Reading]
Senate Committee: Government Operations
Complete to 12-18-18

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

SUMMARY:

Senate Bill 1262 would amend the Medical Marihuana Facilities Licensing Act (the act that regulates medical marihuana facilities such as provisioning centers and growers) to, among other things, revise the definition of “applicant” for a license, make it a criminal offense for a person to hold himself or herself out as operating a marihuana facility if not licensed, and eliminate or repeal certain provisions.

Senate Bill 1263 would add the felony penalty for operating a marihuana facility without a license to the sentencing guidelines.

Senate Bill 1262 is similar to House Bill 6500, which has passed the House and is currently pending Senate floor action. The bill would revise the Medical Marihuana Facilities Licensing Act as follows:

Definition of “applicant”

The bill would revise the definition of “applicant” with respect to disclosures in an application, for purposes of ineligibility for a license under Section 402, or for purposes of prior Medical Marihuana Licensing Board approval of a transfer of interest under Section 406, and only for applications submitted on or after January 1, 2019, to include a managerial employee of the applicant, a person holding an indirect ownership of 10% or more in the applicant, and the following for each type of applicant:

- *For an individual or sole proprietorship:* the proprietor and spouse.
- *For a partnership and limited liability partnership:* all partners and their spouses.
 - *For a limited partnership and limited liability limited partnership:* all general and limited partners, not including a limited partner holding a direct or indirect ownership interest of less than 10% who does not exercise control over or participate in the management of the partnership, and their spouses.
 - *For a limited liability company:* all members and managers, not including a limited partner holding a direct or indirect ownership interest of less than 10% who does not exercise control over or participate in the management of the partnership, and their spouses.
- *For a privately or publicly held corporation:* all corporate officers or persons with equivalent titles and their spouses, all directors and their spouses, and all

stockholders, not including those holding a direct or indirect ownership interest of less than 10%, and their spouses.

- *For a multilevel ownership enterprise:* any entity or person that receives or has the right to receive 10% or more of the gross or net profit from the enterprise during any full or partial calendar or fiscal year.
- *For a nonprofit corporation:* all individuals and entities with membership or shareholder rights in accordance with the articles of incorporation or bylaws and their spouses.

License applications and eligibility for licensure

The bill would require a license application, when disclosing the identity of every person with an ownership interest in the applicant to disclose—for a disclosed entity that is a publicly held corporation—the names and addresses of all shareholders holding a direct or indirect interest of greater than 5%, as well as officers and directors.

Transfer, sale, or conveyance of license interest

The bill would revise a provision that makes the attempted transfer, sale, or conveyance of an interest of more than 1% in a license without prior Board approval grounds for suspension or revocation of the license or other appropriate sanction. Under the bill, this provision would apply to all such attempts (not limited to those concerning an interest of more than 1%), but only if the transfer, sale, or conveyance would result in the transferee's meeting the definition of "applicant."

Holding a business out as a licensed facility without a license

Beginning June 1, 2019, the bill would prohibit a person from holding itself out as operating a marijuana facility if the person does not have a license to operate that facility or if the license had been suspended, revoked, or lapsed, is void, or had been fraudulently obtained or transferred to the person other than under the provisions of Section 406. A person who violated this provision would be guilty as follows:

- *First violation:* misdemeanor punishable by a fine of at least \$10,000 and up to \$25,000 and/or imprisonment for up to 93 days.
- *Second or subsequent violation:* misdemeanor punishable by a fine of at least \$10,000 and up to \$25,000 and/or imprisonment for up to one year.
- *Violation causing death or serious injury:* felony punishable by a fine of at least \$10,000 and up to \$25,000 and/or imprisonment for up to four years.

Statewide monitoring system

Licenses are required under the act to adopt and use a third-party inventory control and tracking system capable of interfacing with the statewide monitoring system. Under the bill, if the statewide monitoring system were capable of allowing a licensee to access or enter information into the system without use of a third-party inventory control and tracking system, a licensee could access or enter information into the statewide monitoring system directly and would not be required to adopt and use a third-party inventory and tracking system.

Executive director

The bill would eliminate a requirement for the Department of Licensing and Regulatory Affairs (LARA) to hire an executive director and other personnel to assist the Medical Marihuana Licensing Board in its duties, as well as removing references to the executive director.

Repealer and effective date

The bill would repeal Section 404, which pertains to true parties of interest.

The bill would take effect January 1, 2019.

MCL 333.27102 et al.

Senate Bill 1263 would amend the Code of Criminal Procedure to specify that operating a medical marihuana facility without a license resulting in death or serious injury would be a Class F felony against public safety with a maximum term of imprisonment of four years.

The bill is tie-barred to Senate Bill 1262, meaning that it cannot become law unless Senate Bill 1262 is also enacted.

MCL 777.13n

FISCAL IMPACT:

Department of Licensing and Regulatory Affairs

Senate Bill 1262 would likely result in an improved workflow for the Department of Licensing and Regulatory Affairs, specifically in terms of conducting investigations of applicants when the applicant is a corporation. An exact expenditure savings that the bill would accomplish cannot be determined with currently available data, but an indeterminate cost savings would likely result.

Corrections and Judiciary

Senate Bill 1262 would have an indeterminate fiscal impact on the state and on local units of government, which would depend on the number of persons convicted under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affect caseloads and related administrative costs. Any increase in penal fine revenue would

increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

Senate Bill 1263 amends sentencing guidelines and would not have a direct fiscal impact on the state or on local units of 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.