

ALLOW COURT-APPOINTED INDIVIDUALS TO OPERATE CERTAIN MARIJUANA ENTITIES

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House Bills 5490 and 5491 as reported from committee
Sponsor: Rep. Brandt Iden
1st Committee: Judiciary
Complete to 2-26-20

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

BRIEF SUMMARY: House Bills 5490 and 5491 would allow a court-appointed individual to operate a medical marijuana facility or marijuana establishment, as applicable, under the Medical Marihuana Facilities Licensing Act and the Michigan Regulation and Taxation of Marihuana Act, respectively.

FISCAL IMPACT: The bills would have no fiscal impact on state or local government.

THE APPARENT PROBLEM:

Because marijuana is still illegal under federal law, many federal processes are unavailable to marijuana facilities acting lawfully in Michigan. For instance, a marijuana facility that is having trouble making building or property payments cannot seek assistance through federal bankruptcy protections. If a marijuana facility is unable to claim bankruptcy, this in turn means that creditors of the marijuana facility cannot receive payments that would have been collected during the bankruptcy process.

According to committee testimony, this bill was introduced to offer an avenue to assist marijuana facilities in managing the property, the building, or both. A receiver currently has authority to manage property or buildings, as well as make payments to creditors. The bill would help ensure that receivers could be appointed to help manage marijuana facilities as well.

THE CONTENT OF THE BILLS:

House Bills 5490 and 5491 would respectively amend the Medical Marihuana Facilities Licensing Act (MMFLA) and the Michigan Regulation and Taxation of Marihuana Act (MRTMA) to allow a court-appointed individual to operate a medical marijuana facility or marijuana establishment, as applicable under those acts.

The bills would amend their respective acts to reflect the creation of the *Marijuana Regulatory Agency* by Executive Reorganization Order No. 2019-2¹ and the transfer to that agency of the powers and duties of the Medical Marihuana Licensing Board and Marihuana Advisory Panel under the MMFLA, as well as the powers and duties of the Department of Licensing and Regulatory Affairs and its Bureau of Marijuana Regulation under the MMFLA and the MRTMA.

¹ MCL 333.27001: <http://legislature.mi.gov/doc.aspx?mcl-333-27001>

The bills would allow the agency to approve the operation of a medical marijuana facility (under the MMFLA) or a marijuana establishment (under the MRTMA) by either of the following:

- A court-appointed personal representative, guardian, or conservator of an individual who holds a state license or who has an interest in a person that holds a state license.
- A court-appointed receiver or trustee.

If an individual approved to operate a marijuana facility or establishment as described above received notice from the agency that the facility or establishment was in violation of the MMFLA or MRTMA, as applicable, or rules promulgated under that act, the individual would have to notify the court that appointed him or her within two days after receiving the notice.

The bills would require the agency to promulgate rules to establish procedures and standards for approving an appointee to operate a medical marijuana facility (under the MMFLA) or marijuana establishment (under the MRTMA) as described above.

HB 5490: MCL 333.27102 and 333.27206 and proposed MCL 333.27206a

HB 5491: MCL 333.27953 and 333.27958 and proposed MCL 333.27959a

ARGUMENTS:

For:

Supporters of the bills argue that allowing courts to appoint receivers for struggling Michigan marijuana facilities is paramount not only for the future of these facilities, but also for their creditors. Marijuana, for both medical and personal use, is a growing industry in Michigan, yet it is still considered an illegal drug under federal law. Because of this, when a marijuana facility is struggling to pay its creditors and manage its property, the federal bankruptcy process is unavailable. This bill would enable a receiver to help manage the property of a marijuana facility and make payments to creditors. Additionally, codifying a court's ability to choose a receiver under statute would ensure consistent regulation of the process with no deviations.

Against:

No arguments against the bills were presented during committee testimony.

POSITIONS:

A representative of the Michigan Judges Association testified in support of the bills. (2-18-20)

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