



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 203 (as passed by the Senate)
Sponsor: Senator Michael D. MacDonald
Committee: Judiciary and Public Safety

Date Completed: 3-26-19

RATIONALE

Public Act (PA) 582 of 2018 amended the Medical Marihuana Facilities Licensing Act (MMFLA) to revise the definition of "applicant", and the revised definition went into effect on January 1, 2019. Public Act 648 of 2018, however, made changes to the MMFLA pertaining to industrial hemp, but did not include the changes to the definition that PA 582 contained. This means that the definition of "applicant" will revert to its previous iteration when PA 648 takes effect on March 28, 2019, and the Medical Marihuana Licensing Board (housed within the Department of Licensing and Regulatory Affairs) will be required to perform criminal background checks on all those who would be involved with a prospective medical marihuana facility, rather than only on those who would have more than a 10% interest, as required under PA 582. It has been suggested that the definition again be revised in order to allow the Board conduct criminal background checks for applicants in a more efficient manner.

CONTENT

The bill would amend the MMFLA to revise the definition of "applicant" to include additional individuals who would have to apply for a State operating license, such as an applicant's managerial employee, or for entities that applied for a license, a partner, member, stockholder, officer, director, and his or her spouse.

Applicant

The MMFLA allows a person to apply to the Medical Marihuana Licensing Board for State operating licenses in the categories of class A, B, or C grower; processor; provisioning center; secure transporter; and safety compliance facility. Under the MMFLA, "applicant" means a person who applies for a State operating license.

With respect to disclosure in an application, or for purposes of ineligibility for a license under Section 402 (see **BACKGROUND**), the term includes an applicant's officer, director, and managerial employee, and a person who holds any direct or indirect ownership interest in the applicant.

Instead, under the bill, the term would include, with respect to disclosure in an application, or for purposes of ineligibility for a license under Section 402, or for purposes of prior Board approval of a transfer interest under Section 406 (see **BACKGROUND**), and only for applications submitted on or after January 1, 2019, a managerial employee of the applicant, a person holding a direct or indirect ownership interest of more than 10% in the applicant, and the following for each type of applicant:

- For an individual or sole proprietorship: the proprietor and his or her 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 10% or less and who did not 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 member holding a direct or indirect ownership interest of 10% or less and who did not exercise control over or participate in the management of the company, and their spouses.
- For a privately- or publicly-held corporation: all corporate officers or individuals 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 10% or less, and their spouses.
- For a multilevel ownership enterprise: any entity or person that received or had the right to receive more than 10% 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 article of incorporation or the bylaws and their spouses.

Provisioning Center

The MMFLA provides the definition of "provisioning center", and specifies that a noncommercial location used by a primary caregiver to assist a qualifying patient connect to the caregiver in accordance with the Michigan Medical Marihuana Act is not a provisioning center for the purposes of the MMFLA.

The bill would refer to a *registered* primary caregiver.

MCL 333.27102

BACKGROUND

Under Section 402 of the MMFLA, an applicant is ineligible to receive a license if any of the following applies:

- The applicant has been convicted of or released from incarceration for a felony under the laws of this or any other state or the United States within the past five years or has been convicted of a controlled substance-related felony within the past 10 years.
- Within the past five years, the applicant has been convicted of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or has been found responsible for violating a substantially corresponding local ordinance in any state.
- The applicant has knowingly submitted a license application that contains false information.
- The applicant is a member of the Board.
- The applicant fails to demonstrate the ability to maintain adequate premises liability and casualty insurance for its proposed facility.
- The applicant holds an elective office of a governmental unit of this or any other state or the Federal government; is a member of or employed by a regulatory body of a governmental unit of this or any other state or the Federal government; or is employed by a governmental unit of the State.
- The Board determines that the applicant is not in compliance with a provision prohibiting a marihuana facility from operating in a municipality that has not adopted an ordinance authorizing that type of facility.
- The applicant fails to meet other criteria established by rule.

Section 406 specifies that each license is exclusive to the licensee, and a licensee or any other person must apply for and receive the Board's approval before a license is transferred, sold, or purchased. The attempted transfer, sale, or other conveyance of an interest of more than 1.0% in a license without prior Board approval is grounds for suspension or revocation of the license or other sanction the Board considers appropriate.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The MMFLA requires the Medical Marihuana Licensing Board to collect information from and conduct background checks on all individuals involved with a business seeking licensure under the Act. Before the definition of "applicant" was revised to include only a company's managerial employees, and officer, partners, and shareholders holding at least a 10% interest in the company, this meant vetting hundreds of individuals, including many who held only a fraction of an interest in the company. Retaining the 10% threshold would allow the Board to focus its oversight on those who have a greater financial interest or operational decision-making authority in a medical marihuana business.

Opposing Argument

The ownership interest threshold should be lowered from 10% to 5.0%. A 5.0% ownership threshold was the level originally recommended by the Board, and it was the level prescribed in the bill introduced in the Senate last session. The 10% threshold would make it too easy for certain individuals with criminal histories involving narcotics who otherwise would be ineligible for licensure to own a substantial portion of a medical marihuana business. Lowering the threshold to 5.0% would not place an undue burden on the Board because it would represent only a limited number of additional background checks, and the law currently requires applicants to cover the costs of processing their applications.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have no fiscal impact on State or local government. The Department of Licensing and Regulatory Affairs currently administers the Medical Marihuana Facilities Licensing Act according the definition of "applicant" provided in the bill using existing appropriations.

Fiscal Analyst: Elizabeth Raczowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.