

Legislative Analysis



PROHIBIT MARIJUANA LICENSE DENIAL BASED ON CERTAIN EMPLOYMENT OF SPOUSE OF APPLICANT

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<http://www.house.mi.gov/hfa>

House Bill 5839 as enrolled
Sponsor: Rep. Pat Outman
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform
Complete to 2-7-23

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

(Vetoed by the Governor 12-22-22)

SUMMARY:

House Bill 5839 would amend the Michigan Regulation and Taxation of Marihuana Act to prohibit the ***Cannabis Regulatory Agency*** (CRA) from denying an application for licensure, or conducting other specified activities, solely because the spouse of an individual who holds an ownership interest in the applicant is a member of, or employed by, a state or federal regulatory body or governmental body—as long as the applicant submits an attestation with certain details. (The Michigan Regulation and Taxation of Marihuana Act is the 2018 initiated law that regulates adult-use marijuana.)

Cannabis Regulatory Agency would mean the Marijuana Regulatory Agency that was renamed the Cannabis Regulatory Agency under Executive Order 2022-1.¹

The bill would provide that an applicant's spouse is generally considered an applicant for purposes of determining licensure eligibility, including background investigations. However, if an applicant submitted an attestation stating that all of the following are true, the applicant's spouse would not be considered an applicant under those provisions:

- The spouse does not control or direct the affairs of the marijuana establishment.
- The spouse is not able to make policy decisions regarding the establishment.
- The spouse will not control or direct the affairs of the marijuana establishment if the license is granted or be able to make policy decisions regarding the establishment if the license is granted.
- The spouse is not an applicant for a state license.
- If the spouse is employed by a state or federal regulatory agency or by a governmental unit of Michigan, the spouse's position does not create a conflict of interest and is not within the CRA or within a regulatory body of a state or federal governmental unit that makes decisions regarding marijuana.

The bill would prohibit the CRA from doing any of the following if an attestation is submitted as described above:

- Conducting a background investigation of the applicant's spouse.
- Requiring the applicant's spouse to submit an application for licensure.

¹ The Marijuana Regulatory Agency was renamed the Cannabis Regulatory Agency in part to reflect a regulatory authority that includes hemp as well as marijuana. (Regulation of processors-handlers of hemp is the purview of the CRA, while regulation of industrial hemp cultivation remains the responsibility of the Michigan Department of Agriculture and Rural Development (MDARD).)

- Denying an application solely because the applicant's spouse is employed by a governmental entity, unless one of the following applies:
 - The spouse's position creates a conflict of interest.
 - The spouse's position is within the CRA.
 - The spouse's position is within a regulatory body of a state or federal governmental unit that makes decisions regarding marijuana.

The bill also would make several editorial and technical changes that do not substantively affect the current meaning of the act, such as moving around provisions that address powers and duties of the CRA and the Department of State Police.

The bill would take effect 90 days after it is enacted.

MCL 333.27957

BRIEF DISCUSSION:

Supporters of the bill say it will clarify an existing ambiguity in the Michigan Regulation and Taxation of Marihuana Act that has led to applicants being denied because their spouse is employed by a governmental entity. The intent is to provide a safeguard against corruption by allowing an application to be denied if the applicant's spouse is employed by a governmental entity with regulatory power over marijuana, while also allowing applicants to move forward in the licensure approval process if their spouse's employment is in a branch of government unrelated to marijuana oversight.

FISCAL IMPACT:

House Bill 5839 would not have an appreciable fiscal impact on the Department of Licensing and Regulatory Affairs or any other unit of state or local government.

Vetoed 12-22-22:

The bill was among several that Governor Whitmer said she vetoed because they "were rushed through a lame duck session and need closer examination." Note that similar provisions were proposed to be added to the Medical Marihuana Facilities Licensing Act by House Bills 5781 and 5965. Those bills also were vetoed by the governor for the above reasons.

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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.