

MEDICAL MARIHUANA FACILITIES LICENSING ACT (EXCERPT)
Act 281 of 2016

***** 333.27402.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 30, 2022 *****

333.27402.amended License; issuance; ineligibility; circumstances; other considerations granting license; fingerprint processing fee; criminal history check; requirements applicable to fingerprints; definitions; review of application; informing applicant of decision; issuance; duration; renewal; notice; expiration; consent to inspections; examinations, searches, and seizures; information required to be provided by applicant.

Sec. 402. (1) The marijuana regulatory agency shall issue a license to an applicant if all of the following conditions are met:

(a) The applicant submits a complete application.

(b) The applicant pays both the nonrefundable application fee required under section 401(5) and the regulatory assessment established by the marijuana regulatory agency for the first year of operation.

(c) The marijuana regulatory agency determines that the applicant is qualified to receive a license under this act.

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

(a) The applicant has been convicted of or released from incarceration for a felony under the laws of this state, any other state, or the United States within the past 10 years or has been convicted of a controlled substance-related felony within the past 10 years. This subdivision does not apply to a felony for the manufacture, processing, or distribution of marihuana, or possession with the intent to manufacture, process, or distribute marihuana, unless the felony involved the distribution of marihuana to a minor.

(b) Within the past 5 years the applicant has been convicted of a misdemeanor involving a controlled substance, theft, dishonesty, or fraud in any state or been found responsible for violating a local ordinance in any state involving a controlled substance, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state. This subdivision does not apply to a misdemeanor or ordinance violation for the possession or use of marihuana.

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

(d) The applicant is an employee of the marijuana regulatory agency.

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

(f) The applicant holds an elective office of a governmental unit of this state, another state, or the federal government. This subdivision does not apply to an elected officer of or employee of a federally recognized Indian tribe or to an elected precinct delegate.

(g) The applicant is a member of or employed by a regulatory body of a governmental unit in this state, another state, or the federal government, or is employed by a governmental unit of this state. This subdivision does not apply to any of the following:

(i) An elected officer of or employee of a federally recognized Indian tribe.

(ii) An elected precinct delegate.

(iii) The spouse of a person who applies for a state operating license unless the spouse's position creates a conflict of interest or is within any of the following:

(A) The marijuana regulatory agency.

(B) A regulatory body of a governmental unit in this state, another state, or the federal government that makes decisions regarding medical marihuana.

(h) The marijuana regulatory agency determines that the applicant is not in compliance with section 205(1).

(i) The marijuana regulatory agency determines that the applicant is not in compliance with section 408.

(j) The applicant fails to meet other criteria established by rule.

(3) In determining whether to grant a license to an applicant, the marijuana regulatory agency may also consider all of the following:

(a) The business probity; financial ability and experience; and responsibility or means to operate or maintain a marihuana facility of the applicant and of any other person that meets either of the following:

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

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

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

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

(d) Whether the applicant has been indicted for, charged with, arrested for, or convicted of, pled guilty or nolo contendere to, forfeited bail concerning, or had expunged any relevant criminal offense under the laws of any jurisdiction, either felony or misdemeanor, not including traffic violations, regardless of whether the offense has been expunged, pardoned, or reversed on appeal or otherwise. This subdivision does not apply to a criminal offense for the possession, use, manufacture, processing, or distribution of marihuana, or possession with the intent to manufacture, process, or distribute marihuana, unless the felony involved the distribution of marihuana to a minor.

(e) Whether the applicant has filed, or had filed against it, a proceeding for bankruptcy within the past 7 years.

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

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

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

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

(4) Each applicant shall ensure that 1 set of fingerprints is submitted to the department of state police. The applicant shall submit with its application the applicant's written consent to the criminal history check described in this section and the submission of the applicant's fingerprints to, and the inclusion of the applicant's fingerprints in, the state and federal database systems described in subsection (7).

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

(6) The department of state police shall do all of the following:

(a) Conduct a criminal history check on each applicant and request the Federal Bureau of Investigation to make a determination of the existence of any national criminal history pertaining to each applicant.

(b) Provide the marijuana regulatory agency with a written report containing the criminal history record information of each applicant.

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

(a) The department of state police shall store and retain all fingerprints submitted under this section in an automated fingerprint identification system database that searches against latent fingerprints, and provides for an automatic notification when a subsequent fingerprint is submitted into the system that matches a fingerprint previously submitted under this section or when the criminal history of an individual whose fingerprints are retained in the system is updated. Upon receiving a notification, the department of state police shall immediately notify the marijuana regulatory agency. Information in the database maintained under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

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

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

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

(8) The marijuana regulatory agency shall review all applications for licenses and shall inform each applicant of the marijuana regulatory agency's decision.

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

(a) The licensee applies to the marijuana regulatory agency on a renewal form provided by the marijuana

regulatory agency that requires information prescribed in rules.

(b) The application is received by the marijuana regulatory agency on or before the expiration date of the current license.

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

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

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

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

(12) License expiration does not terminate the marijuana regulatory agency's authority to impose sanctions on a licensee whose license has expired.

(13) In its decision on an application for renewal, the marijuana regulatory agency shall consider any specific written input it receives from an individual or entity within the local unit of government in which the applicant for renewal is located.

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

(15) An applicant or licensee has a continuing duty to provide information requested by the marijuana regulatory agency and to cooperate in any investigation, inquiry, or hearing conducted by the marijuana regulatory agency.

History: 2016, Act 281, Eff. Dec. 20, 2016;—Am. 2017, Act 105, Imd. Eff. July 13, 2017;—Am. 2018, Act 582, Eff. Jan. 1, 2019;—Am. 2021, Act 103, Imd. Eff. Nov. 4, 2021;—Am. 2021, Act 161, Eff. Mar. 30, 2022.

Compiler's note: Enacting section 2 of Act 281 of 2016 provides:

"Enacting section 2. The legislature finds that the necessity for access to safe sources of marihuana for medical use and the immediate need for growers, processors, secure transporters, provisioning centers, and safety compliance facilities to operate under clear requirements establish the need to promulgate emergency rules to preserve the public health, safety, or welfare."

For transfer of powers and duties of the medical marihuana licensing board, marihuana advisory panel, and department of licensing and regulatory affairs, including its bureau of marijuana regulation, to the marijuana regulatory agency, and abolishment of the medical marihuana licensing board, marihuana advisory panel, and bureau of marijuana regulation, see ERO No. 2019-2, compiled at MCL 333.27001.