

MEDICAL MARIHUANA FACILITIES LICENSING ACT REVISIONS

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House Bill 6500 (H-3) as reported from committee
Sponsor: Rep. Klint Kesto
Committee: Law and Justice
Complete to 12-5-18

SUMMARY:

House Bill 6500 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.

Definition of “applicant”

The bill would revise the definition of “applicant” to include, for applications submitted on or after December 15, 2017, a managerial employee 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 and their spouses.
 - *For a limited liability company:* all members, managers, and their spouses.
- *For a privately or publicly held corporation:* all corporate officers or persons with equivalent titles and their spouses and all stockholders holding a direct or indirect ownership interest of 5% or more and their spouses.
- *For a multilevel ownership enterprise:* any entity or person that receives or has the right to receive 5% 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 the bylaws and their spouses.

“Applicant” would not include, with respect to disclosures in an application, or for purposes of ineligibility for a license under Section 402, any of the following:

- A person or entity receiving from an applicant reasonable payment for rent on a fixed basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the applicant’s business.
- A person who receives a bonus as an employee of an applicant if the employee is on a fixed wage or salary and the bonus is not more than 25% of the employee’s

prebonus annual compensation or if the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

Holding a business out as a licensed facility without a license

The bill would prohibit a person from holding itself out as operating a marihuana 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 violates 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

Licensees 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 is 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.

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.
- Eliminate the requirement that applicants disclose on the application whether the applicant has been indicted for, charged with, or arrested for any criminal offense. An applicant would still have to disclose whether the applicant had been convicted of or pled guilty or forfeited bail concerning a criminal offense, but the bill would no longer specify that the disclosure was regardless of whether the offense has been reversed on appeal or otherwise.
- Remove a provision allowing the Board, when determining whether to grant a license, to consider whether the applicant has been indicted for, charged with, arrested for, or had expunged any relevant criminal offense. The Board could still consider whether the applicant had been convicted of or pled guilty or forfeited bail concerning a criminal offense, but under the bill such consideration would no longer be “regardless of whether the offense has been expunged, pardoned, or reversed on appeal or otherwise.”

Miscellaneous provisions

- 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 an executive director.
- The bill would delete a provision specifying that each license is exclusive to the licensee and requiring the licensee or any other person to apply for and receive the Board's and municipality's approval before a license may be transferred, sold, or purchased. Also deleted would be a provision making the attempted transfer, sale, or conveyance of an interest in a license without prior Board approval grounds for suspension or revocation of the license or other appropriate sanction.
- The bill would repeal Section 404, which pertains to true parties of interest.

MCL 333.27102 et al.

BRIEF DISCUSSION:

Under the Medical Marihuana Facilities Licensing Act, the Medical Marihuana Licensing Board must receive information from and conduct criminal history checks on all involved in a business seeking licensure under the Act. For some applicants, this can and does include more than a hundred investors, some holding as little as three-tenths of a share. To narrow the need for such comprehensive criminal history checks, the bill would raise the threshold for investors to those having at least a 5% percent interest in the business. Investors less than that amount are unlikely to be able to exert great influence over the daily operations. In addition, the bill would require information from and a criminal history of any person holding a managerial post with the business as managers would hold an instrumental role in the running of a marihuana-related business.

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of persons who might be convicted under provisions of the bill. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision, and how the costs are financed, vary by jurisdiction. 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. 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 revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 6500 would result in improved workflow for the Department of Licensing and Regulatory Affairs, specifically in terms of conducting investigations of applicants when the applicant is a corporation. Determining an exact expenditure savings that the bill would accomplish is impractical, but the Department has indicated that it would result in fewer employee hours being required, and therefore an indeterminate cost savings would likely result.

POSITIONS:

Representatives of the Department of Licensing and Regulatory Affairs (LARA) testified in support of the bill. (11-28-18)

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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.