

HOUSE BILL No. 5014

September 26, 2017, Introduced by Reps. Rabhi, Zemke, LaGrand, Hammoud, Sabo, Elder, Robinson, Neeley, Sowerby, Ellison, Peterson, Hoadley, Gay-Dagnogo, Clemente, Howrylak, Chang, Cochran, Reilly, Phelps, Hertel, Wittenberg, Liberati, Brann, Green and Jones and referred to the Committee on Law and Justice.

A bill to amend 2016 PA 281, entitled
"Medical marihuana facilities licensing act,"
by amending sections 201 and 402 (MCL 333.27201 and 333.27402),
section 402 as amended by 2017 PA 105.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 201. (1) Except as otherwise provided in this act, if a
2 person has been granted a state operating license and is operating
3 within the scope of the license, the licensee and its agents are
4 not subject to any of the following for engaging in activities
5 described in subsection (2):

6 (a) Criminal penalties under state law or local ordinances
7 regulating marihuana.

8 (b) State or local criminal prosecution for a marihuana-

1 related offense.

2 (c) State or local civil prosecution for a marihuana-related
3 offense.

4 (d) Search or inspection, except for an inspection authorized
5 under this act by law enforcement officers, the municipality, or
6 the department.

7 (e) Seizure of marihuana, real property, personal property, or
8 anything of value based on a marihuana-related offense.

9 (f) Any sanction, including disciplinary action or denial of a
10 right or privilege, by a business or occupational or professional
11 licensing board or bureau based on a marihuana-related offense.

12 (2) The following activities are protected under subsection
13 (1) if performed under a state operating license within the scope
14 of that license and in accord with this act, rules, and any
15 ordinance adopted under section 205:

16 (a) Growing marihuana.

17 (b) Purchasing, receiving, selling, transporting, or
18 transferring marihuana from or to a licensee, a licensee's agent, a
19 registered qualifying patient, or a registered primary caregiver.

20 (c) Possessing marihuana.

21 (d) Possessing or manufacturing marihuana paraphernalia for
22 medical use.

23 (e) Processing marihuana.

24 (f) Transporting marihuana.

25 (g) Testing, transferring, infusing, extracting, altering, or
26 studying marihuana.

27 (h) Receiving or providing compensation for products or

1 services.

2 (3) Except as otherwise provided in this act, a person who
3 owns or leases real property upon which a marihuana facility is
4 located and who has no knowledge that the licensee violated this
5 act is not subject to any of the following for owning, leasing, or
6 permitting the operation of a marihuana facility on the real
7 property:

8 (a) Criminal penalties under state law or local ordinances
9 regulating marihuana.

10 (b) State or local civil prosecution based on a marihuana-
11 related offense.

12 (c) State or local criminal prosecution based on a marihuana-
13 related offense.

14 (d) Search or inspection, except for an inspection authorized
15 under this act by law enforcement officers, the municipality, or
16 the department.

17 (e) Seizure of any real or personal property or anything of
18 value based on a marihuana-related offense.

19 (f) Any sanction, including disciplinary action or denial of a
20 right or privilege, by a business or occupational or professional
21 licensing board or bureau.

22 (4) For the purposes of regulating the commercial entities
23 established under this act, any provisions of the following acts
24 that are inconsistent with this act do not apply to a grower,
25 processor, secure transporter, provisioning center, or safety
26 compliance facility operating in compliance with this act:

27 (a) The business corporation act, 1972 PA 284, MCL 450.1101 to

1 450.2098.

2 (b) The nonprofit corporation act, 1982 PA 162, MCL 450.2101
3 to 450.3192.

4 (c) 1931 PA 327, MCL 450.98 to 450.192.

5 (d) The Michigan revised uniform limited partnership act, 1982
6 PA 213, MCL 449.1101 to 449.2108.

7 (e) The Michigan limited liability company act, 1993 PA 23,
8 MCL 450.4101 to 450.5200.

9 (f) 1907 PA 101, MCL 445.1 to 445.5.

10 (g) 1913 PA 164, MCL 449.101 to 449.106.

11 (h) The uniform partnership act, 1917 PA 72, MCL 449.1 to
12 449.48.

13 **(5) AN APPLICANT WHO, ON OR BEFORE AUGUST 15, 2017, ENGAGED IN**
14 **AN ACTIVITY THAT IS LICENSABLE UNDER THIS ACT AND WHO, ON OR BEFORE**
15 **FEBRUARY 15, 2018, SUBMITS A COMPLETE APPLICATION AND PAYS BOTH THE**
16 **NONREFUNDABLE APPLICATION FEE REQUIRED UNDER SECTION 401(5) AND THE**
17 **REGULATORY ASSESSMENT ESTABLISHED BY THE BOARD FOR THE FIRST YEAR**
18 **OF OPERATION IS, FOR THE PURPOSES OF THIS SECTION, UNTIL THE BOARD**
19 **DETERMINES WHETHER THE APPLICANT IS QUALIFIED TO RECEIVE A LICENSE**
20 **UNDER THIS ACT, A LICENSEE.**

21 Sec. 402. (1) The board shall issue a license to an applicant
22 who submits a complete application and pays both the nonrefundable
23 application fee required under section 401(5) and the regulatory
24 assessment established by the board for the first year of
25 operation, if the board determines that the applicant is qualified
26 to receive a license under this act. **FOR AN APPLICANT WHO, ON OR**
27 **BEFORE FEBRUARY 15, 2018, SUBMITS A COMPLETE APPLICATION AND PAYS**

1 BOTH THE NONREFUNDABLE APPLICATION FEE REQUIRED UNDER SECTION
2 401(5) AND THE REGULATORY ASSESSMENT ESTABLISHED BY THE BOARD FOR
3 THE FIRST YEAR OF OPERATION, THE BOARD SHALL DETERMINE WHETHER THE
4 APPLICANT IS QUALIFIED TO RECEIVE A LICENSE UNDER THIS ACT ON OR
5 BEFORE AUGUST 15, 2018.

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

8 (a) The applicant has been convicted of or released from
9 incarceration for a felony under the laws of this state, any other
10 state, or the United States within the past 10 years or has been
11 convicted of a controlled substance-related felony within the past
12 10 years.

13 (b) Within the past 5 years the applicant has been convicted
14 of a misdemeanor involving a controlled substance, theft,
15 dishonesty, or fraud in any state or been found responsible for
16 violating a local ordinance in any state involving a controlled
17 substance, dishonesty, theft, or fraud that substantially
18 corresponds to a misdemeanor in that state.

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

21 (d) The applicant is a member of the board.

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

25 (f) The applicant holds an elective office of a governmental
26 unit of this state, another state, or the federal government; is a
27 member of or employed by a regulatory body of a governmental unit

1 in this state, another state, or the federal government; or is
2 employed by a governmental unit of this state. This subdivision
3 does not apply to an elected officer of or employee of a federally
4 recognized Indian tribe or to an elected precinct delegate.

5 (g) The applicant, if an individual, has been a resident of
6 this state for less than a continuous 2-year period immediately
7 preceding the date of filing the application. The requirements in
8 this subdivision do not apply after June 30, 2018.

9 (h) The board determines that the applicant is not in
10 compliance with section 205(1). **THIS SUBDIVISION DOES NOT APPLY TO**
11 **AN APPLICANT WHO MEETS THE REQUIREMENTS OF SECTION 201(5).**

12 (i) The applicant fails to meet other criteria established by
13 rule.

14 (3) In determining whether to grant a license to an applicant,
15 the board may also consider all of the following:

16 (a) The integrity, moral character, and reputation; personal
17 and business probity; financial ability and experience; and
18 responsibility or means to operate or maintain a marihuana facility
19 of the applicant and of any other person that meets either of the
20 following:

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

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

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

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

1 facility.

2 (d) Whether the applicant has been indicted for, charged with,
3 arrested for, or convicted of, pled guilty or nolo contendere to,
4 forfeited bail concerning, or had expunged any relevant criminal
5 offense under the laws of any jurisdiction, either felony or
6 misdemeanor, not including traffic violations, regardless of
7 whether the offense has been expunged, pardoned, or reversed on
8 appeal or otherwise.

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

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

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

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

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

22 (4) Each applicant shall submit with its application, on forms
23 provided by the board, a passport quality photograph and shall
24 ensure that 1 set of fingerprints is submitted to the department of
25 state police for each person having any ownership interest in the
26 marihuana facility and each person who is an officer, director, or
27 managerial employee of the applicant, in order for the department

1 of state police to conduct a criminal history check on each person
2 and to forward each person's fingerprints to the Federal Bureau of
3 Investigation for a national criminal history check. The applicant
4 shall submit with its application each person's written consent to
5 the criminal history check described in this section and the
6 submission of each person's fingerprints to, and the inclusion of
7 each person's fingerprints in, the state and federal database
8 systems described in subsection (7).

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

16 (6) The department of state police shall conduct a criminal
17 history check on each person described in subsection (4) and shall
18 request the Federal Bureau of Investigation to make a determination
19 of the existence of any national criminal history pertaining to
20 each person. The department of state police shall provide the board
21 with a written report containing the criminal history record
22 information of each person who was the subject of the criminal
23 history check conducted under this section.

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

26 (a) The department of state police shall store and retain all
27 fingerprints submitted under this section in an automated

1 fingerprint identification system database that searches against
2 latent fingerprints, and provides for an automatic notification if
3 and when a subsequent fingerprint is submitted into the system that
4 matches a set of fingerprints previously submitted under this
5 section or if and when the criminal history of an individual whose
6 fingerprints are retained in the system is updated. Upon receiving
7 a notification, the department of state police shall immediately
8 notify the board. Information in the database maintained under this
9 subsection is confidential, is not subject to disclosure under the
10 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
11 ~~shall~~**MUST** not be disclosed to any person except for purposes of
12 this act or for law enforcement purposes.

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

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

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

1 Investigation.

2 (8) The board shall review all applications for licenses and
3 shall inform each applicant of the board's decision.

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

8 (a) The licensee applies to the board on a renewal form
9 provided by the board that requires information prescribed in
10 rules.

11 (b) The application is received by the board on or before the
12 expiration date of the current license.

13 (c) The licensee pays the regulatory assessment under section
14 603.

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

17 (10) The department shall notify the licensee by mail or
18 electronic mail at the last known address on file with the board
19 advising of the time, procedure, and regulatory assessment under
20 section 603. The failure of the licensee to receive notice under
21 this subsection does not relieve the licensee of the responsibility
22 for renewing the license.

23 (11) If a license renewal application is not submitted by the
24 license expiration date, the license may be renewed within 60 days
25 after its expiration date upon application, payment of the
26 regulatory assessment under section 603, and satisfaction of any
27 renewal requirement and late fee set forth in rules. The licensee

1 may continue to operate during the 60 days after the license
2 expiration date if the license is renewed by the end of the 60-day
3 period.

4 (12) License expiration does not terminate the board's
5 authority to impose sanctions on a licensee whose license has
6 expired.

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

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

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

18 Enacting section 1. This amendatory act takes effect 90 days
19 after the date it is enacted into law.