

MEDICAL MARIHUANA LICENSEES: BACKGROUND CHECK

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Senate Bill 433 as reported from committee w/o amendment

Sponsor: Sen. Rick Jones

House Committee: Law and Justice

Senate Committee: Judiciary

Complete to 6-20-17

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

(Enacted as Public Act 105 of 2017)

SUMMARY:

Senate Bill 433 amends the Medical Marihuana Facilities Licensing Act to revise provisions relating to criminal background checks for applicants for a state operating license as a grower, processor, secure transporter, provisioning center, or safety compliance facility.

Currently, the act requires one set of fingerprints for each applicant for a state operating license to be submitted along with the application. Under the act, "applicant" includes the person applying for a state operating license, an officer, director, and managerial employee of the applicant, as well as a person who holds any direct or indirect ownership interest in the applicant. Senate Bill 433 would specify that the fingerprint sets are to be submitted to the Department of State Police (MSP).

The act also currently allows the Department of Licensing and Regulatory Affairs (LARA) to designate an entity or agent to collect the fingerprints, and assigns the costs associated with the fingerprint collection to the applicant. This provision would be deleted, and instead the bill would specify that the fingerprints would be submitted to the MSP in order for that department to conduct a criminal history check on each person and to forward each person's fingerprints to the FBI for a national criminal history check. The fingerprints could be taken by a law enforcement agency or any other person determined by the MSP to be qualified to take the prints. The applicant would be responsible to pay a processing fee to the MSP (currently \$30 plus a state fee of \$2 for administrative costs) and also any costs imposed by the FBI (currently, \$10).

MSP would be required to conduct a criminal history check on each person and request the FBI to make a determination of the existence of any national criminal history pertaining to each person. A written report containing the criminal history record information of each person must be provided to the Medical Marihuana Licensing Board by the MSP.

Further, the bill requires each applicant to include with the application, a written consent to the criminal history check and to submitting the fingerprints for inclusion in the state and federal database systems described in subsection (7) of the bill. Subsection (7) requires the MSP to do the following:

- ❖ Store and retain all fingerprints submitted under the bill in an automated fingerprint identification system database that searches against latent fingerprints and provides for an automatic notification if and when a subsequent fingerprint is submitted that matches a set previously submitted **or** if and when the criminal history of an individual whose fingerprints are retained in the system is updated. Upon receiving a notification, the MSP must immediately notify the Board.

The information in this database would be confidential, not subject to disclosure under the Freedom of Information Act (FOIA), and could not be disclosed to any person except for purposes of this act or for law enforcement purposes.

- ❖ Forward all fingerprints to the FBI for submission into the FBI automatic notification system. This provision would not apply until the MSP becomes a participant in the automatic notification system.

The bill defines "automatic notification system" as 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.

"FBI automatic notification system" would be defined as the automatic notification system maintained by the FBI.

MCL 333.27402

BRIEF DISCUSSION:

Recently people became aware that, though the Michigan Medical Marihuana Facilities Licensing Act requires state and national criminal history background checks of applicants for medical marihuana operating licenses, the Act does not actually give the Michigan State Police the legal authority necessary to collect and retain applicants' fingerprints, nor to submit them to the FBI for a check of national databases. Administrative rules establishing the licensing process for those seeking licensure as a medical marihuana grower, processor, provisioning center, secure transporter, or safety compliance facility are nearing completion and applicants, under provisions within the Act, will be able to submit applications for licensure in December. Unless the needed changes to the Act are adopted quickly, however, the licensure process will not be able to proceed.

According to information provided by the MSP, the FBI requires certain specific statutory authority regarding the taking of fingerprints and submission to the state and FBI for the background checks. Where the Act's current language meets some of the FBI requirements, the bill is needed to add provisions that must be expressly stated. Without the changes the FBI will not be able to conduct the national criminal history checks, according to the MSP. Further, the bill adds provisions that will allow Michigan to participate in a national automatic notification system run by the FBI similar to the Rapback Program currently

used in Michigan that enables agencies with individuals enrolled in the program to receive notifications of subsequent criminal activity. The FBI requires by state statute that the fingerprints be allowed to be retained by AFIS (Automated Fingerprint Identification System) and NGI (Next Generation Identification) and allow those fingerprints to be searched by future submissions to the AFIS and NGI systems. A "hit" will trigger an appropriate response to be sent to the submitting and subscribing entities.

Since the searches include latent fingerprint searches, enrollment in the national program will mean that any criminal activity conducted in Michigan or another state on the part of a licensed medical marihuana operator or applicant will be quickly identified and the MSP and LARA notified for appropriate action to be taken. Reportedly, MSP is making the upgrades needed to participate in this program and the bill will enable the department to join once everything is in place.

However, before the MSP can collect and submit the fingerprints of applicants for the national criminal history checks, the bill must be enrolled, signed by the governor, and approved by the US Attorney General—a process that can take up to six months. With the deadline for when LARA may begin taking applications looming, the needed statutory language needs to be in place as quickly as possible.

FISCAL IMPACT:

This bill would likely have no fiscal impact on the Department of State Police or local law enforcement agencies. Provisions within the bill continue to allow for the collection of application fees in order to cover the costs of fingerprint collection and the processing of state and federal background checks.

POSITIONS:

A representative of the Michigan State Police testified in support of the bill. (6-20-17)

The Michigan Department of Licensing and Regulatory Affairs (LARA) indicated support for the bill. (6-20-17)

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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.