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BILL



ANALYSIS

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Senate Bill 433 (as enrolled)
Sponsor: Senator Rick Jones
Senate Committee: Judiciary
House Committee: Law and Justice

Date Completed: 7-10-17

RATIONALE

Beginning December 16, 2017, the Medical Marihuana Facilities Licensing Act will allow a person to apply for a license to operate a medical marihuana facility, such as a provisioning center or a location where a grower will operate. The Act requires license applicants to submit certain individuals' fingerprints to the Department of Licensing and Regulatory Affairs (LARA), and requires the Medical Marihuana Licensing Board (which is within LARA) to perform a background investigation of prospective licensees. The Act does not, however, require fingerprints to be submitted to the State Police for a criminal history check. Also, the Federal Bureau of Investigation (FBI) apparently requires additional statutory language in order to carry out a Federal criminal history check. To address these issues, it has been suggested that license applicants be required to submit fingerprints to the Michigan Department of State Police (MSP), and that the MSP be required to forward the fingerprints to the FBI, for criminal history checks.

CONTENT

The bill would amend the Medical Marihuana Facilities Licensing Act to do the following:

- **Require an applicant for a medical marihuana-related operating license to ensure that a set of fingerprints for certain individuals associated with the applicant was submitted to the MSP for a criminal history check.**
- **Require the applicant to submit each individual's written consent to the criminal history check and the submission of the person's fingerprints to State and Federal databases.**
- **Require the MSP to conduct a criminal history check on individuals associated with a marihuana facility, and request the FBI to determine the existence of any national criminal history pertaining to those individuals.**
- **Require the MSP to store and retain all fingerprints submitted in an automated fingerprint system database.**
- **Require the MSP to forward all fingerprints submitted to it to the FBI for submission into the FBI automatic notification system.**

Submission of Fingerprints & Criminal History Checks

The Act provides that, beginning 360 days after its effective date (which was December 20, 2016), a person may apply to the Medical Marihuana Licensing Board for a State operating license in the following categories: a) class A, B, or C grower; b) processor; c) provisioning center; d) secure transporter; or e) safety compliance facility. (These categories are described in **BACKGROUND**.) The Board must issue a license to an applicant who submits an application and pays both the application fee and a regulatory assessment established by the Board for the first year of operation, if the Board determines that the applicant is qualified to receive a license.

The license application must contain information prescribed by the Board, including the applicant's name, business address and telephone number, Social Security number, Federal tax ID number (if applicable), and the names of every person having an ownership interest in the applicant.

In addition, each applicant must submit with its application a passport quality photograph and one set of fingerprints for each person having any ownership interest in the marihuana facility and each person who is an officer, director, or managerial employee of the applicant. (A marihuana facility is a location at which a license holder is authorized to operate.) The Department of Licensing and Regulatory Affairs may designate an entity or agent to collect fingerprints, and the applicant is responsible for the costs.

Under the bill, instead of submitting the fingerprints with its application, an applicant would have to ensure that one set of fingerprints was submitted to the MSP for the same individuals, in order for the MSP to conduct a criminal history check and to forward each individual's fingerprints to the FBI for a national criminal history check. The bill would delete the provision allowing LARA to designate an entity or agency to collect fingerprints.

The applicant would have to submit with its application each individual's written consent to the criminal history check and the submission of each person's fingerprints to, and the inclusion of each person's fingerprints in, the State and Federal database systems described below.

The fingerprints could be taken by a law enforcement agency or another person determined by the MSP to be qualified to take fingerprints. The applicant would have to submit a fingerprint processing fee to the MSP in an amount required under Section 3 of Public Act 120 of 1935, and any costs imposed by the FBI. (Public Act 120 prescribes a method for the fingerprinting of State residents, and allows the MSP to charge a fee of \$30 to process fingerprints.)

Duties of the MSP

Under the bill, the Department of State Police would have to conduct a criminal history check on an individual who had an ownership interest in a marihuana facility and each individual who was an officer, director, or managerial employee of the applicant, and request the FBI to make a determination of the existence of any national criminal history pertaining to those individuals. The MSP would have to give the Board a written report containing the criminal history record information of each individual who was the subject of a criminal history check.

The MSP would have to store and retain all fingerprints submitted in an automated fingerprint system database that searched against latent fingerprints, and provided for an automatic notification if and when a subsequent fingerprint submitted into the system matched a set of fingerprints previously submitted or if and when the criminal history of an individual whose fingerprints were retained in the system was updated. If the MSP received a notification, it would have to notify the Board immediately.

Information in the database would be confidential, would not be subject to disclosure under the Freedom of Information Act, and could not be disclosed to any person except for the purposes of the Medical Marihuana Facilities Licensing Act or for law enforcement purposes.

The MSP would have to forward all fingerprints submitted to it to the FBI for submission of those fingerprints into the FBI automatic notification system. This requirement would not apply until the MSP was a participant in the FBI automatic notification system.

"Automatic notification system" would mean a system that stores and retains fingerprints, and that provides for an automatic notification to participants 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.

MCL 333.27402

BACKGROUND

Public Act 281 of 2016 enacted Medical Marihuana Facilities Licensing Act to provide for, among other things, the licensure of marihuana growers, processors, secure transporters, provisioning centers, and safety compliance facilities. The Act took effect on December 20, 2016, and a person may apply for a license after December 15, 2017. The types of licenses are described below.

Grower License. The Act defines "grower" as a licensee that is a commercial entity located in this State that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center. A grower license authorizes the grower to grow not more than the following number of marihuana plants under the indicated class for each license the grower holds in that class:

- Class A: 500 plants.
- Class B: 1,000 plants.
- Class C: 1,500 plants.

Processor License. "Processor" means a licensee that is a commercial entity located in this State that purchases marihuana from a grower and that extracts resin from the marihuana or creates a marihuana-infused product for sale and transfer in packaged form to a provisioning center.

A processor license authorizes the licensee to purchase marihuana only from a grower and to sell of marihuana-infused products or marihuana only to a provisioning center. The license also authorizes the processor to transfer marihuana only through a secure transporter.

Secure Transporter License. A secure transporter license authorizes the licensee to store and transport marihuana and money associated with the purchase or sale of marihuana between marihuana facilities for a fee upon request of a person with legal custody of that marihuana or money.

"Secure transporter" means a licensee that is a commercial entity located in this State that stores marihuana and transports it between marihuana facilities for a fee.

Provisioning Center License. A provisioning center license authorizes the purchase or transfer of marihuana only from a grower or processor and the sale or transfer only to a registered qualifying patient or registered primary caregiver. All transfers of marihuana to a provisioning center from a separate marihuana facility must be by means of a secure transporter. "Provisioning center" means a licensee that is a commercial entity located in this State that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through their registered primary caregivers. The term includes any commercial property where marihuana is sold at retail to registered qualifying patients or registered primary caregivers.

A provisioning center license authorizes the licensee to transfer marihuana to or from a safety compliance facility for testing by means of a secure transporter.

Safety Compliance Facility License. A safety compliance facility license permits the facility to receive marihuana from, test marihuana for, and return marihuana to only a marihuana facility. "Safety compliance facility" means a licensee that is a commercial entity that receives marihuana from a marihuana facility or registered primary caregiver, tests it for contaminants and for tetrahydrocannabinol (THC) and other cannabinoids, returns the test results, and may return the marihuana to the facility.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Medical Marihuana Facilities Licensing Act requires a license application to include information about the applicant's criminal history, in addition to requiring the applicant to submit certain individuals' fingerprints to LARA. The Act also requires the Medical Marihuana Licensing Board to use information on an application as a basis to conduct a "thorough background investigation" on the applicant, and permits the Board to seek the assistance of the MSP in conducting background investigations. The Act does not, however, explicitly require State and Federal criminal history checks of an applicant to be conducted. The Act also provides no authority for the MSP to collect applicant fingerprints, or allow the MSP to submit them to the FBI for a Federal criminal history check. The bill would provide that statutory authority.

In addition, according to the MSP, the Act does not include the necessary statutory authority for the FBI to create a new purpose code.¹ Without a new purpose code, the FBI and MSP cannot carry out the background checks required under the Act. By requiring the fingerprints to be submitted to the MSP and FBI, outlining the process for taking the fingerprints, and requiring the MSP and FBI to run the checks and provide the results to the Medical Marihuana Licensing Board, the bill would make the changes needed to meet Federal background check requirements.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would amend and clarify a provision in the Act that requires an applicant for an operating license to submit with its application a set of fingerprints for each person having any ownership interest in a marihuana facility and each person who is an officer, director, or managerial employee.

The bill would require an applicant for licensure to ensure that a set of fingerprints was submitted to the Department of State Police for a State and Federal criminal history check, and would require the MSP to retain those fingerprints in its automated fingerprint identification system database and report to the Medical Marihuana Licensing Board its findings on each applicant. The Department of State Police also would be responsible for notifying the Board should a subsequent fingerprint search match a set of prints previously submitted.

The costs incurred for the criminal history check would be covered by the applicant, which would be required to submit a fingerprint processing fee, which is currently \$42 (\$30 for State database analysis and \$12 for Federal analysis). In addition, the taking of fingerprint impressions to be sent on to the Department of State Police would be accomplished by a law enforcement agency or other person deemed qualified by the MSP. Current statute allows a reasonable cost for this service to be charged to an applicant.

Fiscal Analyst: Bruce Baker

¹ Only law enforcement and criminal justice agencies are allowed access to the National Crime Information Center (NCIC). The FBI, which administers the NCIC, audits users (such as the MSP) that have access to the database to ensure that requests for NCIC information are for statutorily required purposes and otherwise comply with NCIC policies for record access. Criminal history checks are run under a purpose code, which identifies the purpose for which the information retrieved from the checks will be used. A new purpose code is required for each type of criminal history check so requests run under that purpose code can be audited appropriately.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.