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BILL ANALYSIS



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House Bill 5144 (Substitute S-1)
Sponsor: Representative Klint Kesto
House Committee: Law and Justice
Senate Committee: Judiciary

Date Completed: 12-12-17

CONTENT

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

- **Specify that a certified public accountant or a financial institution would not be subject to criminal, civil, or administrative sanctions for engaging in the practice of public accounting, or providing a financial service, respectively, for a licensee under the Act.**
- **Prohibit the Medical Marihuana Licensing Board from issuing a State operating license to an applicant unless the municipality in which the proposed marihuana facility would operate had adopted an ordinance authorizing that type of facility.**
- **Revise the information that a municipality that adopts an ordinance authorizing a marihuana facility must provide to the Department of Licensing and Regulatory Affairs (LARA).**
- **Allow a licensed grower, processor, provisioning center, or safety compliance facility to transfer marihuana without using a secured transporter under certain circumstances.**
- **Specify that, until December 31, 2018, for 30 days after a grower or processor license was issued, a grower or processor could transfer marihuana plants, seeds, and seedlings lawfully possessed by a formerly registered primary caregiver employed by the grower or processor.**
- **Require the Governor to appoint the first members of the Marihuana Advisory Panel by March 1, 2018.**

Certified Public Accountants & Financial Institutions; Immunity

Generally, under the Act, if a person has been granted a State operating license and is operating within the scope of the license, the licensee and its agents are not subject to civil or administrative sanctions or criminal penalties or prosecution for a marihuana-related offense. (A State operating license is a license issued under the Act that allows the licensee to operate as a grower, processor, secure transporter, provisioning center, or safety compliance facility.)

Under the bill, except as otherwise provided, a certified public accountant who was licensed under Article 7 of the Occupational Code would not be subject to any of the following for engaging in the practice of public accounting as that term is defined in Article 7 for an applicant or licensee who was in compliance with the Act, rules, and the Michigan Medical Marihuana Act (MMA):

- Criminal penalties under State law or local ordinances regulating marihuana.
- State or local civil prosecution based on a marihuana-related offense.
- State or local criminal prosecution based on a marihuana-related offense.
- Seizure of any real or personal property or anything of value based on a marihuana-related offense.
- Any sanction, including disciplinary action or denial of a right or privilege, by a business or occupational or professional licensing board or bureau based on a marihuana-related offense.

Except as otherwise provided, a financial institution also would not be subject to any of the penalties or other actions listed above for providing a financial service to a licensee under the Medical Marihuana Facilities Licensing Act.

"Financial institution" would mean any of the following:

- A State or national bank.
- A State or federally chartered savings and loan association, savings bank, or credit union.
- An insurance company.
- An entity that offers any of the following to a resident of the State: a mutual fund account, a security brokerage account, a money market account, or a retail investment account.
- An entity regulated by the Securities and Exchange Commission that collects funds from the public.
- An entity that is a member of the National Association of Securities Dealers and that collects funds from the public.
- Another entity that collects funds from the public.

"Financial service" would mean a deposit; withdrawal; transfer between accounts; exchange of currency; loan; extension of credit; purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument; or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

Local Ordinance; Provision of Information

The Act prohibits a marihuana facility from operating in a municipality unless the municipality has adopted an ordinance that authorizes that type of facility. Under the bill, the Medical Marihuana Licensing Board could not issue a State operating license to an applicant unless the municipality in which the applicant's proposed marihuana facility would operate had adopted an ordinance that authorized that type of facility.

The Act requires a municipality to provide the following information to the Board within 90 days after the municipality receives notification from the applicant that he or she has applied for a license under the Act:

- A copy of the local ordinance that authorizes the marihuana facility.
- A copy of any zoning regulations that apply to the proposed marihuana facility within the municipality.
- A description of any violation of the local ordinance or zoning regulations described above committed by the applicant, but only if those violations relate to activities licensed under the Act or the MMMA.

Under the bill, instead, a municipality that adopted an ordinance that authorized a marihuana facility would have to provide LARA with all of the following on a form it prescribed and provided:

- An attestation that the municipality had adopted an ordinance that authorized the facility.
- A description of any zoning regulations that applied to the proposed facility within the municipality.
- The signature of the clerk of the municipality or his or her designee.
- Any other information required by LARA.

The Act allows the Board to consider the information provided in the application process, but specifies that the municipality's failure to provide information to the Board may not be used against the applicant. The bill would eliminate this provision.

The bill would allow LARA to require a municipality to provide the Department with the following information on a form it prescribed and provided, pertaining to a licensee who submitted an application for license renewal:

- Information that the Board declared necessary to determine whether the license should be renewed.
- A description of a violation of a zoning ordinance committed by the licensee, but only if violation related to activities licensed under the Act and rules or the MMMA.
- Whether there had been a change to an ordinance or a zoning regulation adopted since the license was issued, and a description of the change.

Information that a municipality obtained from an applicant related to licensure is exempt from disclosure under the Freedom of Information Act. The bill would eliminate "related to licensure". Also, except as otherwise provided, information a municipality provided to the Department would be subject to disclosure under the Freedom of Information Act.

Rules; Monthly Purchasing Limits

The Department, in consultation with the Board, must promulgate rules and emergency rules as necessary to implement, administer, and enforce the Medical Marihuana Facilities Licensing Act. The rules must ensure the safety, security, and integrity of the operation of marihuana facilities, and, among other things must include rules establishing daily purchasing limits at provisioning centers for registered qualifying patients and registered primary caregivers to ensure compliance with the MMMA. The bill also would require the rules to establish monthly purchasing limits for the same purpose.

Grower License

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.

"Grower" means a licensee that is a commercial entity located in the State that cultivates, dries, trims, or cures and packages marihuana for sale to a processor or provisioning center. Under the bill, the definition would include sale to another grower.

A grower license authorizes the sale of marihuana seeds or marihuana plants only to a grower by means of a secure transporter. Under the bill, except as otherwise provided, a grower license would authorize the sale of marihuana plants to a grower only by means of a secure transporter. A grower license would authorize the sale or transfer of seeds, seedlings, or tissue cultures to a grower from a registered primary caregiver or another grower without using a

secure transporter. The license also would allow a grower to transfer marihuana without using a secure transporter to a processor or provisioning center if both of the following were met: a) the processor or provisioning center occupied the same location as the grower and the marihuana was transferred using only private real property without using public roadways; and b) the grower entered each transfer into the statewide monitoring system.

(The bill would define "seed" as the fertilized, ungerminated, matured ovule, containing an embryo or rudimentary plant, of a marihuana plant that is flowering. "Seedlings" would mean a marihuana plant that has germinated and has not flowered and is not harvestable.)

Under the Act, a grower license authorizes sale of marihuana, other than seeds, only to a processor or provisioning center. Under the bill, the license would authorize the sale of marihuana, other than seedlings, tissue cultures, and cuttings, to a processor or provisioning center.

(The bill would define "cutting" as a section of lead stem or root stock that is used for vegetative asexual propagation. "Tissue cultures" would mean a marihuana plant cell, cutting, tissue, or organ, that is kept under a sterile condition on a nutrient culture medium of known composition and that does not have visible root formation. A tissue culture would not be a marihuana plant for purposes of a grower.)

A grower license authorizes the grower to transfer marihuana only by means of a secured transporter. Under the bill, this would apply except as provided above, and under Section 505 (which governs safety compliance facilities and is described below).

Until December 31, 2018, for a period of 30 days after a grower license was issued and in accordance with rules, a grower could transfer any marihuana plants, seeds, or seedlings that were possessed lawfully by an individual formerly registered as a primary caregiver who was an active employee of the grower.

Processor License

A processor license authorizes the licensee to purchase marihuana only from a grower, and to sell marihuana-infused products or marihuana only to a provisioning center. Under the bill, those products also could be sold to another processor.

The license authorizes the processor to transfer marihuana only by means of a secure transporter. Under the bill, this would apply except as follows and as provided under Section 505. A processor license would authorize a processor to transfer marihuana without using a secure transporter to a grower or provisioning center if both of the following were met: a) the grower or provisioning center occupied the same location as the processor and the marihuana was transferred using only private real property and without using public roadways; and b) the processor entered each transfer into the statewide monitoring system.

Until December 31, 2018, for a period of 30 days after a processor license was issued and in accordance with rules, a processor could transfer any usable marihuana or marihuana plants that were lawfully possessed by an individual formerly registered as a primary caregiver who was an active employee of the processor.

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. Under the bill, this would apply except as provided by Section 505 and as follows. A transfer of marihuana to a provisioning center from a marihuana facility that occupied the same location would not require a secure transporter if the marihuana were transferred to the provisioning center using only private real property without using public roadways.

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. Under the bill, marihuana also could be transported to or from a safety compliance facility as provided in Section 505.

Safety Compliance Facility License

Under Section 505, a safety compliance facility license authorizes the facility to receive marihuana from, test marihuana for, and return marihuana to only a marihuana facility. The bill also would allow a safety compliance facility to collect a random sample of marihuana at the marihuana facility of a grower, processor or provisioning center for testing. A safety compliance facility could perform any of these activities without using a secure transporter.

"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 and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility. Under the bill, that term would mean a licensee that is a commercial entity that *takes* marihuana from a marihuana facility or *receives marihuana from* a registered primary caregiver, tests the marihuana for contaminants and for tetrahydrocannabinol and other cannabinoids, returns the test results, and may return the marihuana to the marihuana facility.

Secure Transporter Travel

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. It does not authorize transport to a registered qualifying patient or registered primary caregiver.

Under the bill, if a secure transporter had its primary place of business in a municipality that had adopted an ordinance authorizing that marihuana facility, the secure transporter could travel through any municipality.

Marihuana Advisory Panel

The Panel consists of 17 members, including the Directors of the Departments of State Police, Health and Human Services, LARA, Agriculture and Rural Development, and the Attorney General, or their respective designees, and 12 members appointed by the Governor. The appointed members include one representative each for growers, processors, provisioning centers, safety compliance facilities, and secure transporters. Under the bill, the member representing each of those groups would have to be a representative of the industry from that category.

The Act required the members first appointed to the Panel to be appointed within three months after the Act's effective date (which was December 20, 2016). Under the bill, the Governor would have to appoint the first members of the Panel by March 1, 2018.

MCL 333.27102 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have a negligible fiscal impact on State and local government.

The bill would modify how the Department of Licensing and Regulatory Affairs will interact with municipalities that allow medical marihuana facilities. The Medical Marihuana Facilities Licensing Act established the original regulatory framework for marihuana facilities, which was funded at \$10.0 million under the current omnibus appropriations act, Public Act 107 of 2017. The bill would alter that framework, requiring the Department to create reporting forms

for municipalities, and requiring municipalities to report to the Department about local ordinances and facility license applicants. It is expected that the costs associated with these duties would be absorbed by the Department and local units of government, respectively.

Fiscal Analyst: Michael Siracuse

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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.