

Legislative Analysis



PROOF OF FINANCIAL RESPONSIBILITY UNDER THE MEDICAL MARIHUANA FACILITIES LICENSING ACT

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<http://www.house.mi.gov/hfa>

Senate Bill 1057 as passed by the Senate
Sponsor: Sen. Curtis S. VanderWall

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

Senate Bill 1058 as passed by the Senate
Sponsor: Sen. Paul Wojno

House Committee: Government Operations
Senate Committee: Regulatory Reform
Complete to 11-26-20

SUMMARY:

Senate Bills 1057 and 1058 would amend the Medical Marihuana Facilities Licensing Act to revise provisions regarding the proof of financial responsibility of a licensee or applicant and to indicate that references in the act to the Marihuana Advisory Panel or Medical Marihuana Licensing Board mean the Marijuana Regulatory Agency (MRA).

Senate Bill 1057 would amend section 408 of the act, which requires as a condition of initial licensure or license renewal that the applicant or licensee file proof of financial responsibility, in an amount of at least \$100,000, for liability for bodily injury to lawful users arising from adulterated marijuana or marijuana-infused product. This proof of financial responsibility can be in any of the following forms:

- Cash.
- Unencumbered securities.
- A liability insurance policy.
- A constant value bond executed by a surety company authorized to do business in this state.

Currently the proof of financial responsibility must be filed with the Department of Licensing and Regulatory Affairs (LARA). The bill would instead require the applicant or licensee to file it with the MRA (which is an agency within LARA) and also require that the applicant or licensee include with its filing an attestation of compliance on a form approved by the MRA.

The bill would allow the proof of financial responsibility to be in any of the following forms (the same types as under current law, but with conditions and definitions as described below):

- Cash, if the applicant or licensee submits the cash to the MRA.
- ***Unencumbered securities***, if all of the following conditions are met:
 - The applicant or licensee pledges to this state unencumbered securities valued at \$100,000 or more. The value of the securities must be determined by the current market price as reported at the time of filing.

- The applicant or licensee submits a pledge agreement to the MRA that lists the securities to be pledged and contains original signatures of the applicant or licensee and an officer of the brokerage firm or financial institution where the actual stock certificates are held.
- The applicant or licensee agrees to immediately pledge to this state additional unencumbered securities if the market value of the unencumbered securities already pledged is, at any time, less than \$100,000.
- A liability insurance policy, if both of the following conditions are met:
 - The policy is issued by a carrier licensed or authorized in this state to transact insurance business of the applicable type and nature.
 - An officer of the insurance company issuing the policy signs the attestation of compliance described above.
- A constant value bond executed by a surety company licensed or authorized to do business in this state, if the bond or a separate agreement provides that the bond will be used solely to maintain compliance with these provisions.

Unencumbered securities would mean ***securities*** that are free and clear of all liens and obligations, including their use as collateral, and that are, at the time they are filed with the MRA, without claims or liabilities to third parties.

Securities would mean any of the following:

- Stocks or bonds registered by the U.S. Securities and Exchange Commission or the Department of Insurance and Financial Services that are offered for public sale in Michigan and whose values are regularly reported in a nationally recognized financial publication.
- Obligations of the United States, including bonds, notes, and bills.
- Obligations that are guaranteed fully as to principal and interest by the United States, except those requiring partial payment of principal.
- General obligations of the state.
- Unlimited tax general obligation bonds of a political subdivision of this state that are payable directly from the levying of general ad valorem taxes without limitations as to rate or amount.
- An irrevocable trust that contains a guaranteed minimum principal of \$100,000, has as trustee a financial institution registered in Michigan, and provides for the state as first beneficiary and claimant of up to \$100,000 from the trust to satisfy judgments arising from liability described above.
- An irrevocable letter of credit or certificate of deposit issued by a bank, savings bank, savings and loan association, or credit union that is pledged to this state as first claimant for up to \$100,000 to satisfy judgments arising from liability described above.

The bill would also add the following provisions concerning proof of financial responsibility:

- An applicant or licensee could furnish proof of financial responsibility exceeding the requirements described above.

- Proof of financial responsibility could not include a provision relieving an insurer from liability for payment of any claim for which the insured may be held liable under the act.
- Proof of financial responsibility would have to cover bodily injuries to a qualifying patient, including those caused by the intentional conduct of the licensee or its employee or agent. However, it would not have to cover bodily injuries to qualifying patients caused by the licensee or its employee or agent when acting with the intent to harm.
- If at any time a licensee failed to maintain the required proof of financial responsibility, the MRA would have to immediately suspend its license until the licensee provided the required proof of financial responsibility to the MRA.

MCL 333.27408

Senate Bill 1058 would amend section 102 of the act, which contains definitions for terms used throughout the act.

Currently, whenever used in the act, “advisory panel” or “panel” means the Marihuana Advisory Panel created under the act and “board” means the Medical Marihuana Licensing Board created under the act.

The bill would amend those definitions so that those terms would instead refer to the MRA. Executive Reorganization Order 2019-2,¹ which created the MRA as an agency within LARA, also abolished the Marihuana Advisory Panel and the Medical Marihuana Licensing Board and transferred their authorities, powers, duties, functions, and responsibilities to the MRA. That order took effect April 30, 2019.

MCL 333.27102

The bills are tie-barred to one another, which means that neither bill could take effect unless both bills were enacted.

FISCAL IMPACT:

Senate Bills 1057 and 1058 would not have an appreciable fiscal impact on LARA or any other unit of state or local government.

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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.

¹ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-333-27001.pdf>