



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bills 1057 and 1058 (as introduced 8-15-20)
Sponsor: Senator Curtis S. VanderWall (S.B. 1057)
Senator Paul Wojno (S.B. 1058)
Committee: Regulatory Reform

Date Completed: 9-1-20

CONTENT

Senate Bill 1057 would amend the Medical Marihuana Facilities Licensing Act (MMFLA) to do the following:

- Require a licensee or applicant to include with its filing of proof of financial responsibility for liability an attestation of compliance.
- Modify the forms in which a licensee or applicant could show proof of financial responsibility.
- Require the proof of financial responsibility to cover bodily injuries to a qualifying patient, except those caused by the licensee or its employee or agent who acted with intent to harm.
- Require the Marijuana Regulatory Agency to suspend a licensee's license until the licensee provided the required proof of financial responsibility, if the licensee failed to maintain it.
- Refer to the Marijuana Regulatory Agency instead of the Department of Licensing and Regulatory Affairs (LARA) and the Medical Marihuana Licensing Board.

Senate Bill 1058 would amend the MMFLA to modify various definitions to refer to the Marijuana Regulatory Agency instead of the Medical Marihuana Licensing Board.

The bills are tie-barred.

Senate Bill 1057 is described in greater detail below.

Definitions

The bill would define "unencumbered securities" as securities that are free and clear of all liens and obligations including their use as collateral, and are, at the time they are filed with the Marijuana Regulatory Agency, without claims or liabilities to third parties.

"Securities" would mean any of the following:

- Stocks or bonds registered by the United States Securities and Exchange Commission or the Department of Insurance and Financial Services that are offered for public sale in the State and the values of which are reported regularly in a nationally recognized financial publication.
- Obligations of the US, including bonds, notes, and bills.

- Obligations that are guaranteed fully as to principal and interest by the US, except those requiring partial payment of principal.
- General obligations of the State.
- Unlimited tax general obligation bonds of a political subdivision of the 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 the State, and provides for the State as first beneficiary and claimant of a distribution of up to \$100,000 from the trust to satisfy judgments arising from liability described in Section 408.
- An irrevocable letter of credit or a certificate of deposit issued by a bank, savings bank, savings and loan association, or credit union that is licensed to do business in the State and that is pledged to the State as first claimant for distribution of up to \$100,000 to satisfy judgments arising from liability under the MMFLA.

Proof of Financial Responsibility

Section 408 of the MMFLA specifies that before the Board grants or renews any license under the MMFLA, the licensee or applicant must file with LARA proof of financial responsibility for liability for bodily injury to lawful users resulting from the manufacture, distribution, transportation, or sale of adulterated marihuana or adulterated marihuana-infused product in an amount of at least \$100,000.

The bill would refer to the Marijuana Regulatory Agency instead of the Board and the Department. Additionally, under the bill, the licensee or applicant would have to include with its filing an attestation of compliance on a form approved by the Agency.

Under Section 408, the proof of financial responsibility described above may be in the form of cash, unencumbered securities, a liability insurance policy, or a constant value bond executed by a surety company authorized to do business in Michigan.

Instead, under the bill, the proof of financial responsibility could be in any of the following forms:

- Cash, if the licensee or applicant submitted it to the Agency.
- A liability insurance policy, if the policy were issued by a carrier licensed or authorized in Michigan to transact insurance business of the type and nature required to comply with Section 408 and an officer of the insurance company issuing the policy signed the attestation of compliance that the licensee or applicant was required to file.
- A constant value bond executed by a surety company licensed or authorized to do business in Michigan, if the bond or a separate agreement provided that the bond would be used solely to maintain compliance with Section 408.

Additionally, the proof of financial responsibility could be in the form of unencumbered securities, if the following conditions were met:

- The licensee or applicant pledged unencumbered securities valued at \$100,000 or more to the State; the value of which would have to be determined by the current market price as reported at the time of filing.
- The licensee or applicant submitted a pledge agreement to the Agency that listed the unencumbered securities to be used to demonstrate proof of financial responsibility; the pledge agreement would have to contain original signatures of the licensee or applicant and an officer of the brokerage firm or financial institution where the actual stock certificates were held.

- The licensee or applicant agreed to pledge additional unencumbered securities to the State immediately if the market value of the securities already pledged to the State as proof of financial responsibility were, at any time, less than \$100,000.

A licensee or applicant could provide proof of financial responsibility that exceeded the bill's requirements. A licensee's or applicant's proof of financial responsibility could not include a condition, provision, stipulation, or limitation contained in the policy, or any other endorsement, that relieved the insurer from liability for the payment of any claim for which the insured could be held liable under the MMFLA.

The required proof of financial responsibility would have to cover bodily injuries to a qualifying patient including injuries that were caused by the intentional conduct of the licensee or its employee or agent. However, the proof of responsibility would not be required to cover bodily injuries to qualifying patients caused by the licensee or its employee or agent if the licensee or its employee or agent acted with the intent to harm.

If at any time a licensee failed to maintain the required proof of financial responsibility, the Agency would have to suspend the licensee's license immediately until the licensee provided to the Agency the required proof of financial responsibility.

The Act prohibits an insured licensee from canceling liability insurance unless the licensee gives 30 days' prior written notice to the Department and procures new proof of financial responsibility and delivers that proof to the Department within 30 days after giving the notice. The bill would refer to the Marijuana Regulatory Agency instead of the Department.

MCL 333.27408 (S.B. 1057)
333.27102 (S.B. 1058)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Elizabeth Raczkowski

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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.