

Legislative Analysis



PROOF OF FINANCIAL RESPONSIBILITY UNDER THE MEDICAL MARIHUANA FACILITIES LICENSING ACT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 461 (H-2) as reported from House committee
Sponsor: Sen. Curtis S. VanderWall

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

Senate Bill 462 as reported from House committee
Sponsor: Sen. Paul Wojno

House Committee: Regulatory Reform
Senate Committee: Regulatory Reform
Complete to 12-14-21

SUMMARY:

Taken together, Senate Bills 461 and 462 would amend the Medical Marihuana Facilities Licensing Act to require a liability insurance policy meeting certain requirements as proof of the financial responsibility of a licensee or applicant and to make meeting those requirements a condition for licensure.

Senate Bill 461 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. Currently, 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.

The bill would retain the requirement for, and amount of, the required proof of financial responsibility. However, it would remove the above options as to the form of that proof and instead require the proof of financial responsibility to be in the form of a liability insurance policy that meets all of the following conditions:

- The policy is issued by a licensed insurance company or licensed captive insurance company in this state.
- The policy does 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.
- The policy covers bodily injuries to a qualifying patient, including those caused by the intentional conduct of the licensee or its employee or agent. However, the policy 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.

Currently the proof of financial responsibility must be filed with the Department of Licensing and Regulatory Affairs (LARA). The bill instead would require the applicant or licensee to file it with the Marijuana Regulatory Agency (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. An officer of the insurer issuing the policy would have to sign the attestation.

Finally, the bill would add the following provisions regarding proof of financial responsibility:

- An applicant or licensee could furnish proof of financial responsibility exceeding the requirements described above.
- 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 462 would amend section 402 of the act, which among other things describes circumstances under which an applicant is ineligible to receive a license under the act.

The bill would add that an applicant is ineligible if the MRA determines that the applicant is not in compliance with the proof of financial responsibility provisions described above.

The bill also would refer to the MRA throughout section 402, rather than to LARA and the Medical Marihuana Licensing Board. 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 333.27402

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

BRIEF DISCUSSION:

Marijuana grown and processed for the medical marijuana industry is required to undergo safety testing to ensure that the products are free from contaminants such as mold and fungus, bacteria, and heavy metals. Even so, some tainted products slip through the testing regimen on occasion. Adulterated products—whether contaminated intentionally as a criminal act or inadvertently through the growing or processing processes—can result in harm to users. Medical marijuana patients, many of whom are immunocompromised, are particularly at risk of harm.

Currently, licensees are required to carry liability insurance to cover claims brought by consumers alleging harm from a licensee's product. Apparently, however, some policies issued by insurers to licensees contain certain policy exclusions that could be interpreted by courts as precluding coverage for a claim relating to that exclusion. For example, a policy could contain a blanket exclusion for certain substances whether or not the substance is prohibited or allowed under the Medical Marihuana Facilities Licensing Act. As a result, the licensee may find that

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

its policy would not cover a claim made by a person alleging harm from ingesting a product containing one or more of the listed substances.

According to supporters, the bills would close loopholes regarding documentation to prove compliance with the act's financial responsibility requirements and clarify standards for insurers who offer liability insurance products to medical marijuana licensees. It is believed that such amendments will protect patients who suffer harm from a product as well as protect licensees from financial losses accruing from a claim. The bills would not change current testing standards or procedures, but would focus on ensuring that, if a claim should arise, medical marijuana licensees will have adequate product liability insurance and the claim will be coverable under the policy and not excluded under an exclusionary clause.

FISCAL IMPACT:

The bills would not have an appreciable fiscal impact on LARA or any other unit of state or local government.

POSITIONS:

The Specialty Agriculture Risk and Financial Association indicated support for Senate Bills 461 and 462. (11-2-21)

Representatives of the following entities testified in support of House Bills 5126 and 5127, which are identical to the Senate-passed versions of Senate Bills 461 and 462 (10-19-21):

- Specialty Agriculture Risk and Financial Association
- Honigman Business Law Firm

The following entities indicated a neutral position on House Bills 5126 and 5127, which are identical to the Senate-passed versions of Senate Bills 461 and 462 (10-19-21):

- Department of Licensing and Regulatory Affairs
- NORML of Michigan

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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.