Legislative Analysis

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ELIGIBILITY FOR STATE OPERATING LICENSE

House Bill 4295 (H-1) as reported from committee
Sponsor: Rep. Julie Alexander
1st Committee: Regulatory Reform
2nd Committee: Rules and Competitiveness
Complete to 5-20-21

BRIEF SUMMARY: House Bill 4295 would amend the Medical Marihuana Facilities Licensing Act to do all of the following:

- Allow issuance of a state operating license to an ***applicant*** whose spouse is a governmental employee, with certain exceptions.
- No longer automatically disqualify an applicant with a recent felony or misdemeanor conviction for a marijuana-related offense from eligibility for a state operating license.
- Exclude marijuana-related offenses from information concerning an applicant that may be considered by the Marijuana Regulatory Agency (e.g., an arrest, conviction, or expungement of a relevant criminal offense, whether a felony or a misdemeanor) when determining whether to grant the applicant a state operating license. [**Note**: The bill does not define the terms "marijuana-related" and "marijuana-related offense."]

FISCAL IMPACT: House Bill 4295 would not be expected to have an appreciable direct fiscal impact on the Department of Licensing and Regulatory Affairs, though changes to procedures and policies within the Marijuana Regulatory Agency would likely be necessitated by the bill.

THE APPARENT PROBLEM:

Applicants for a state operating license to grow, process, sell, transport, or test marijuana for the commercial medical marijuana market must meet stringent eligibility requirements. Under current law, an operating license cannot be issued to an applicant if certain circumstances exist, including being convicted of, or released from incarceration for, a felony offense within the past ten years; being convicted of a felony controlled substance offense within the past ten years; being convicted of certain misdemeanor offenses within the past five years; knowingly submitting an application containing false information; or being employed by the Marijuana Regulatory Agency.

The law also automatically excludes from license eligibility an applicant who holds certain elective offices (state, local, or federal), is a member of or employed by a governmental regulatory body, or is employed by the state of Michigan. By definition, the term *applicant* includes the spouses of those applying for a state operating license. Some feel that unless a spouse's government-related employment, appointment, board membership, or election to public office constitutes a conflict of interest for the applicant, the spouse's employment or position should not be grounds for automatic denial of a license application.

In addition, some feel that a recent marijuana-related criminal offense should not be an automatic disqualifier for a state operating license and that a person's past criminal history regarding marijuana-related offenses should not be a factor to be considered by the Marijuana Regulatory Agency when determining whether to grant or deny an applicant's application.

Legislation addressing these issues has been offered.

THE CONTENT OF THE BILL:

License eligibility based on spouse's employment

Currently, the act defines ***applicant*** to mean a sole proprietor and his or her spouse, or the following individuals connected to other entities, that are applying for a state operating license:

- For a partnership and limited liability partnership—all partners and their spouses.
- For a privately or publicly held corporation—corporate officers or those with equivalent titles, directors, and stockholders, and any of their spouses.
- For a multilevel ownership enterprise—an entity or person receiving or having the right to receive more than 10% of the gross or net profit from the enterprise during any full or partial calendar or fiscal year, and any of their spouses.
- For a nonprofit corporation—an individual or entity with membership or shareholder rights, and any of their spouses.

A state operating license allows a licensee to operate as a grower, processor, secure transporter, provisioning center, or safety compliance facility in the commercial medical marijuana market. Currently, an applicant is not eligible for a license if he or she (or his or her spouse) holds an elective office of a governmental unit of this or any other state or of the federal government, is a member of or employed by a regulatory body of a governmental unit of this or any other state or of the federal government, or is employed by a governmental unit of this state. However, this disqualification does not apply if the applicant or spouse is an elected officer or employee of a federally recognized Indian tribe or is an elected precinct delegate.

Under the bill, an applicant whose spouse is a member or employee of a regulatory body of a governmental unit of this state, another state, or the federal government, or whose spouse is employed by a governmental unit of this state, would no longer be disqualified unless the spouse's position creates a conflict of interest or is within any of the following:

- The Marijuana Regulatory Agency.
- A regulatory body of a governmental unit in the state of Michigan, another state, or the federal government that makes decisions regarding medical marijuana.

An applicant would still be ineligible for a state operating license if he or she (or his or her spouse) holds an elective office of a governmental unit of this state, another state, or the federal government, other than as a precinct delegate or as an elected officer or employee of a federally recognized Indian tribe.

Marijuana-related offenses

Currently, an applicant is not eligible for a state operating license if he or she has been convicted of or released from incarceration for a felony offense within the past ten years; has been convicted of a felony controlled substance offense within the past ten years; or been convicted of certain misdemeanor offenses (including a controlled substance offense) within the past five years or been found responsible for violating a substantially similar local ordinance.

Under the bill, an applicant would not be disqualified if the felony or the misdemeanor or ordinance violation were a marijuana-related felony or a marijuana-related misdemeanor or ordinance violation. [**Note**: The bill does not define the term "marijuana-related."]

In addition, the act allows the Marijuana Regulatory Agency, when determining whether to grant a license to an applicant, to consider certain factors. One of those factors is whether the applicant has been indicted for, charged with, arrested for, or convicted of, pled guilty or nolo contendere to, forfeited bail concerning, or had expunged any relevant criminal offense (felony or misdemeanor) under the laws of any jurisdiction, regardless of whether the offense had been expunged, pardoned, or reversed on appeal or otherwise. Currently, this provision does not apply to traffic offenses. The bill would provide that the provision would also not apply to marijuana-related offenses.

Marijuana Regulatory Agency

Finally, the bill would replace references to the Medical Marihuana Licensing Board with those to the Marijuana Regulatory Agency created by Executive Reorganization Order No. 2019-2, which replaced the board.[1]

MCL 333.27402

BACKGROUND INFORMATION:

House Bill 4295 is similar to House Bill 5700 of the 2019-20 legislative session. The bill was passed by the House of Representatives, but pertained only to no longer automatically disqualifying an applicant if his or her spouse was employed by a governmental agency.

ARGUMENTS:

For:

Currently, the law disqualifying governmental workers or elected officials from obtaining a medical marijuana operating license has merit regarding avoiding even the appearance of impropriety if the governmental employee or elected official is the one operating the marijuana establishment. However, to automatically exclude from license eligibility a person whose spouse holds a position within a state or federal agency makes less sense considering the sheer number of people employed throughout the state in various capacities and levels of state or national government service whose positions are not within an agency that regulates medical marijuana.

Reportedly, a licensee was recently told that he could not renew either of his two state operating licenses because, since receiving his initial licenses, he had married a woman employed by the state of Michigan. The solution offered to the couple was for the woman to quit her job of ten years or for them to divorce. The bill would address the conundrum faced by the couple by no longer disqualifying an applicant just because his or her spouse worked for a state or federal governmental entity. Should the spouse's position be such that a conflict of interest could arise or the employment was with an agency that regulated medical marijuana, the bill would provide grounds for the Marijuana Regulatory Agency to deny the applicant's application for an initial or renewal license.

[1] ERO 2019-2: https://www.legislature.mi.gov/documents/mcl/pdf/mcl-E-R-O-No-2019-2.pdf

For:

Under current law, the Marijuana Regulatory Agency must exclude any applicant with a felony conviction within the previous 10 years or with certain misdemeanor convictions within the previous five years. In addition, the Marijuana Regulatory Agency may take into consideration, when determining whether to approve an applicant for a license, any criminal record, including expungements or pardons, for a relevant criminal offense.

Recently, criminal justice reform legislation known as the Clean Slate laws was enacted.[2] Under its provisions, a person may expunge more convictions from his or her record, and more types of crimes are eligible for expungement. Having the ability to make a "clean slate" of one's past, once a reasonable period of time has passed to show personal change, enables a person to find gainful employment, find better housing, and integrate into the community—all of which are known to reduce recidivism. By no longer automatically disqualifying an applicant with a recent felony or misdemeanor for any marijuana-related offense, and removing the authority of the Marijuana Regulatory Agency to consider any past criminal history involving a marijuana-related offense when making a determination to grant or deny an application for a state operating license, it is hoped that more deserving people who have turned their lives around will be able to be a part of the thriving medical marijuana industry.

Against:

As currently written, the bill could have a significant impact on the ability of the Marijuana Regulatory Agency to vet applicants for state operating licensure.

Applicants for a state operating license to grow, process, sell, transport, or test marijuana for the medical marijuana market currently undergo a rigorous vetting process to ensure that they have the moral character, financial ability, and business acuity to meet all statutory requirements for the license they seek. Such controls are necessary to ensure that medical marijuana patients have access to a safe and high-quality product and to screen out bad actors.

The bill, by excluding consideration of any past crime involving marijuana, could impede the ability of the Marijuana Regulatory Agency to identify those who may be unsuitable for a state operating license. For instance, some would argue it unwise to disallow automatic disqualification for, or even consideration of, a conviction for selling or furnishing marijuana to minors. In addition, in the absence of statutory clarification, "marijuana-related" is such a broad term as to invite costly litigation challenging its meaning. Now that many misdemeanor marijuana convictions may be set aside under the Clean Slate laws, and recreational marijuana is lawful for use by adults, it may be reasonable that past convictions for simple use or possession no longer be a deterrent to licensure as a grower, processor, or provisioning center. However, "marijuana-related" could apply to more serious controlled substance violations, such as illegal grow operations and selling marijuana without a license or selling an adulterated product. The term might also encompass other crimes if they indirectly involve marijuana, such as theft, tax evasion, fraud, or even some assaultive offenses or property crimes. These are important factors to consider when evaluating applicants, and the Marijuana Regulatory Agency should not be hindered in considering them when making a decision that has the potential to benefit, or harm, the public.

[2] 2020 PAs 187 to 193: http://legislature.mi.gov/doc.aspx?2019-HB-4981

POSITIONS:

Michigan Cannabis Industry Association indicated support for the bill as introduced. (3-23-21)

The Department of Licensing and Regulatory Affairs indicated a neutral position on the bill as introduced. (3-16-21)

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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.