

## ELIGIBILITY FOR MEDICAL MARIJUANA LICENSE

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**House Bill 4295 as enacted**

**Public Act 103 of 2021**

**Sponsor: Rep. Julie Alexander**

**1st House Committee: Regulatory Reform**

**2nd House Committee: Rules and Competitiveness**

**Senate Committee: Regulatory Reform**

**Complete to 2-3-23**

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

**BRIEF SUMMARY:** House Bill 4295 amends the Medical Marijuana 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, unless there is a conflict of interest.
- No longer automatically disqualify an applicant from license eligibility for having a recent felony or misdemeanor conviction for certain offenses related to marijuana.
- Exclude certain marijuana-related offenses and character traits from information the Cannabis Regulatory Agency may consider when determining whether to grant an applicant a license.

**FISCAL IMPACT:** The bill would not be expected to have an appreciable direct fiscal impact on the Department of Licensing and Regulatory Affairs (LARA), although changes to procedures and policies within the Cannabis 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 medical marijuana must meet specified eligibility requirements. For example, a license cannot be issued to an applicant who holds certain elective offices, is a member of or is employed by a governmental regulatory body, or is employed by the state. By definition, *applicant* includes the spouses of those applying for a license. Some feel that a spouse's government-related employment, appointment, or board membership, or election to public office, should not be grounds for automatic denial of a license application unless it constitutes a conflict of interest for the person applying for the license.

An applicant is also automatically excluded from license eligibility if certain circumstances exist, including their being convicted of, or released from incarceration for, a felony offense within the past 10 years; being convicted of a felony controlled substance offense within the past 10 years; being convicted of certain misdemeanor offenses within the past five years; knowingly submitting an application containing false information; or being employed by the Cannabis Regulatory Agency (formerly the Marijuana Regulatory Agency<sup>1</sup>). 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 Cannabis Regulatory Agency when determining whether to grant or deny an application.

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<sup>1</sup> The name of the Marijuana Regulatory Agency was changed to the Cannabis Regulatory Agency by Executive Reorganization Order 2022-1: <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-333-27002.pdf>

## ***THE CONTENT OF THE BILL:***

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.

### License eligibility based on spouse's employment

For purposes of determining ineligibility for a license under the act, the term ***applicant*** (a person applying for a state operating license) includes the following for each type of applicant:

- For an individual or sole proprietorship—the proprietor and their spouse.
- 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.

Among other criteria, an ***applicant*** is not eligible for a license if any of the following apply:<sup>2</sup>

- The applicant holds an elective office of a governmental unit of Michigan, another state, or the federal government.
- The applicant is a member of or employed by a regulatory body of a governmental unit of Michigan, another state, or the federal government.
- The applicant is employed by a governmental unit of Michigan.

The bill provides that the second and third disqualifications listed above do not apply to the *spouse* of a person who applies for a state operating license unless either of the following apply:

- The spouse's position creates a conflict of interest.
- The spouse's position is in the Cannabis Regulatory Agency or a regulatory body of a governmental unit in Michigan, another state, or the federal government that makes decisions regarding medical marijuana.

The ineligibility arising from holding an elective office of a governmental unit of Michigan, another state, or the federal government still applies to both applicants and their spouses.

### License eligibility based on marijuana-related offenses

In addition, an applicant is not eligible for a state operating license if any of the following apply:

- The applicant has been convicted of or released from incarceration for a felony offense, or has been convicted of a felony controlled substance offense, within the past 10 years.
- The applicant has been convicted of certain specified misdemeanor offenses (including controlled substance offenses) within the past five years or has been found responsible for violating a substantially similar local ordinance.

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<sup>2</sup> Under the bill, as under previous law, these disqualifications do not apply to an elected officer or employee of a federally recognized Indian tribe or to an elected precinct delegate.

The bill provides that the above disqualifications do not apply to either of the following:

- A felony for the manufacture, processing, or distribution of marijuana, or possession with the intent to manufacture, process, or distribute marijuana, unless the felony involved the distribution of marijuana to a minor.
- A misdemeanor or ordinance violation for the possession or use of marijuana.

#### Factors for consideration

The act allows the Cannabis Regulatory Agency to consider certain factors when determining whether to grant a license to an applicant. 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, but not including traffic violations) under the laws of any jurisdiction, regardless of whether the offense had been expunged, pardoned, or reversed on appeal or otherwise.

The bill provides that the above provision does not apply to a **criminal offense** for the possession, use, manufacture, processing, or distribution of marijuana, or possession with the intent to manufacture, process, or distribute marijuana, unless the **felony** involved the distribution of marijuana to a minor.

The bill also eliminates the agency's possible consideration of an applicant's integrity, moral character, reputation, and personal probity. However, business probity may still be considered. (Generally speaking, probity means honesty, decency, and moral uprightness.)

MCL 333.27402

#### ***ARGUMENTS:***

##### ***For:***

The law disqualifying government employees and elected officials from obtaining a medical marijuana operating license precludes even the appearance of impropriety if the employee or official is the one operating the marijuana establishment. However, a person whose *spouse* has a job with a state or federal agency that does even not regulate medical marijuana seems far less likely to have any plausible conflict of interest as a result.

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 10 years or for them to divorce. The bill would address their conundrum by no longer disqualifying an applicant because their 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 be with an agency that regulates medical marijuana, the bill would then provide grounds for the Cannabis Regulatory Agency to deny the applicant's application.

##### ***For:***

The law requires the Cannabis Regulatory Agency to exclude an applicant with a felony conviction in the previous 10 years or with certain misdemeanor convictions in the previous five. In addition, the agency can 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, adult recreational use of marijuana was legalized in Michigan. In addition, criminal justice reform was enacted that allows a person to expunge more convictions from their record and makes more types of crimes eligible for expungement.<sup>3</sup> Being able to make a “clean slate” of one’s past, after a reasonable time has passed to show personal change, can help a person to find gainful employment, find better housing, and integrate into the community—all of which are known to reduce recidivism.

Supporters argued that the bill, by no longer automatically disqualifying an applicant with a recent felony or misdemeanor for certain marijuana-related offenses, and removing the authority of the Cannabis Regulatory Agency to consider past criminal history involving those offenses when deciding whether to grant or deny an application for a state operating license, would enable more people who have turned their lives around to be a part of the medical marijuana industry.

***Against:***

Applicants for a state operating license to grow, process, sell, transport, or test marijuana for the medical marijuana market undergo a rigorous vetting process to ensure that they have the moral character, financial ability, and business acumen 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.

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, concerns were raised that the bill could impede the ability of the Cannabis Regulatory Agency to identify those who may be unsuitable for a state operating license by excluding consideration of past convictions for more serious controlled substance violations that might have a bearing on a licensee’s potential future conduct in the marketplace, such as large-scale illegal grow operations, selling marijuana without a license, or selling an adulterated product.

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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.

<sup>3</sup> 2020 PAs 187 to 193: <http://legislature.mi.gov/doc.aspx?2019-HB-4981>