

**SUBSTITUTE FOR
HOUSE BILL NO. 4440**

A bill to amend 2016 PA 281, entitled
"Medical marihuana facilities licensing act,"
by amending section 402 (MCL 333.27402), as amended by 2018 PA 582.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 402. (1) The board shall issue a license to an applicant
2 who submits a complete application and pays both the nonrefundable
3 application fee required under section 401(5) and the regulatory
4 assessment established by the board for the first year of
5 operation, if the board determines that the applicant is qualified
6 to receive a license under this act.

7 (2) An applicant is ineligible to receive a license if any of
8 the following circumstances exist:

9 (a) The applicant has been convicted of or released from
10 incarceration for a felony under the laws of this state, any other

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1 state, or the United States within the past 10 years or has been
2 convicted of a controlled substance-related felony within the past
3 10 years.

4 (b) Within the past 5 years the applicant has been convicted
5 of a misdemeanor involving a controlled substance, theft,
6 dishonesty, or fraud in any state or been found responsible for
7 violating a local ordinance in any state involving a controlled
8 substance, dishonesty, theft, or fraud that substantially
9 corresponds to a misdemeanor in that state.

10 (c) The applicant has knowingly submitted an application for a
11 license under this act that contains false information.

12 (d) The applicant is a member of the board.

13 (e) The applicant fails to demonstrate the applicant's ability
14 to maintain adequate premises liability and casualty insurance for
15 its proposed marihuana facility.

16 (f) The applicant holds an elective office of a governmental
17 unit of this state, another state, or the federal government; is a
18 member of or employed by a regulatory body of a governmental unit
19 in this state, another state, or the federal government; or is
20 employed by a governmental unit of this state. This subdivision
21 does not apply to an elected officer of or employee of a federally
22 recognized Indian tribe or to an elected precinct delegate.

23 (g) The board determines that the applicant is not in
24 compliance with section 205(1).

25 (H) **[SUBJECT TO SUBSECTIONS (16) AND (17), THE] DEPARTMENT**
26 **DETERMINES THAT THE APPLICANT, AT ANY TIME**
27 **AFTER JUNE 1, 2019, HELD ITSELF OUT AS OPERATING A MARIHUANA**
FACILITY AND DID NOT HAVE A LICENSE TO OPERATE THAT FACILITY OR THE

1 APPLICANT'S LICENSE TO OPERATE THAT MARIHUANA FACILITY WAS
2 SUSPENDED, REVOKED, LAPSED, VOID, FRAUDULENTLY OBTAINED, OR
3 TRANSFERRED TO THE APPLICANT OTHER THAN PURSUANT TO SECTION 406. IF
4 THE DEPARTMENT DETERMINES THAT AN APPLICANT IS INELIGIBLE TO
5 RECEIVE A LICENSE UNDER THIS SUBDIVISION, THE APPLICANT IS
6 INELIGIBLE TO RECEIVE A LICENSE FOR 1 YEAR AFTER THE DATE OF THE
7 DEPARTMENT'S DETERMINATION.

8 (I) ~~(h)~~—The applicant fails to meet other criteria established
9 by rule.

10 (3) In determining whether to grant a license to an applicant,
11 the board may also consider all of the following:

12 (a) The integrity, moral character, and reputation; personal
13 and business probity; financial ability and experience; and
14 responsibility or means to operate or maintain a marihuana facility
15 of the applicant and of any other person that meets either of the
16 following:

17 (i) Controls, directly or indirectly, the applicant.

18 (ii) Is controlled, directly or indirectly, by the applicant
19 or by a person who controls, directly or indirectly, the applicant.

20 (b) The financial ability of the applicant to purchase and
21 maintain adequate liability and casualty insurance.

22 (c) The sources and total amount of the applicant's
23 capitalization to operate and maintain the proposed marihuana
24 facility.

25 (d) Whether the applicant has been indicted for, charged with,
26 arrested for, or convicted of, pled guilty or nolo contendere to,
27 forfeited bail concerning, or had expunged any relevant criminal

1 offense under the laws of any jurisdiction, either felony or
2 misdemeanor, not including traffic violations, regardless of
3 whether the offense has been expunged, pardoned, or reversed on
4 appeal or otherwise.

5 (e) Whether the applicant has filed, or had filed against it,
6 a proceeding for bankruptcy within the past 7 years.

7 (f) Whether the applicant has been served with a complaint or
8 other notice filed with any public body regarding payment of any
9 tax required under federal, state, or local law that has been
10 delinquent for 1 or more years.

11 (g) Whether the applicant has a history of noncompliance with
12 any regulatory requirements in this state or any other
13 jurisdiction.

14 (h) Whether at the time of application the applicant is a
15 defendant in litigation involving its business practices.

16 (i) Whether the applicant meets other standards in rules
17 applicable to the license category.

18 (4) Each applicant shall ensure that 1 set of fingerprints is
19 submitted to the department of state police. The applicant shall
20 submit with its application the applicant's written consent to the
21 criminal history check described in this section and the submission
22 of the applicant's fingerprints to, and the inclusion of the
23 applicant's fingerprints in, the state and federal database systems
24 described in subsection (7).

25 (5) The fingerprints required under subsection (4) may be
26 taken by a law enforcement agency or any other person determined by
27 the department of state police to be qualified to take

1 fingerprints. The applicant shall submit a fingerprint processing
2 fee to the department in an amount required under section 3 of 1935
3 PA 120, MCL 28.273, and any costs imposed by the Federal Bureau of
4 Investigation.

5 (6) The department of state police shall do all of the
6 following:

7 (a) Conduct a criminal history check on each applicant and
8 request the Federal Bureau of Investigation to make a determination
9 of the existence of any national criminal history pertaining to
10 each applicant.

11 (b) Provide the board with a written report containing the
12 criminal history record information of each applicant.

13 (7) All of the following apply concerning fingerprints
14 submitted to the department of state police under this section:

15 (a) The department of state police shall store and retain all
16 fingerprints submitted under this section in an automated
17 fingerprint identification system database that searches against
18 latent fingerprints, and provides for an automatic notification if
19 and when a subsequent fingerprint is submitted into the system that
20 matches a set of fingerprints previously submitted under this
21 section or if and when the criminal history of an individual whose
22 fingerprints are retained in the system is updated. Upon receiving
23 a notification, the department of state police shall immediately
24 notify the board. Information in the database maintained under this
25 subsection is confidential, is not subject to disclosure under the
26 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and
27 shall not be disclosed to any person except for purposes of this

1 act or for law enforcement purposes.

2 (b) The department of state police shall forward all
3 fingerprints submitted to it under this section to the Federal
4 Bureau of Investigation for submission of those fingerprints into
5 the FBI automatic notification system. This subdivision does not
6 apply until the department of state police is a participant in the
7 FBI automatic notification system. As used in this subdivision:

8 (i) "Automatic notification system" means a system that stores
9 and retains fingerprints, and that provides for an automatic
10 notification to a participant if and when a fingerprint is
11 submitted into the system that matches an individual whose
12 fingerprints are retained in the system or if and when the criminal
13 history of an individual whose fingerprints are retained in the
14 system is updated.

15 (ii) "FBI automatic notification system" means the automatic
16 notification system that is maintained by the Federal Bureau of
17 Investigation.

18 (8) The board shall review all applications for licenses and
19 shall inform each applicant of the board's decision.

20 (9) A license shall be issued for a 1-year period and is
21 renewable annually. Except as otherwise provided in this act, the
22 board shall renew a license if all of the following requirements
23 are met:

24 (a) The licensee applies to the board on a renewal form
25 provided by the board that requires information prescribed in
26 rules.

27 (b) The application is received by the board on or before the

1 expiration date of the current license.

2 (c) The licensee pays the regulatory assessment under section
3 603.

4 (d) The licensee meets the requirements of this act and any
5 other renewal requirements set forth in rules.

6 (10) The department shall notify the licensee by mail or
7 electronic mail at the last known address on file with the board
8 advising of the time, procedure, and regulatory assessment under
9 section 603. The failure of the licensee to receive notice under
10 this subsection does not relieve the licensee of the responsibility
11 for renewing the license.

12 (11) If a license renewal application is not submitted by the
13 license expiration date, the license may be renewed within 60 days
14 after its expiration date upon application, payment of the
15 regulatory assessment under section 603, and satisfaction of any
16 renewal requirement and late fee set forth in rules. The licensee
17 may continue to operate during the 60 days after the license
18 expiration date if the license is renewed by the end of the 60-day
19 period.

20 (12) License expiration does not terminate the board's
21 authority to impose sanctions on a licensee whose license has
22 expired.

23 (13) In its decision on an application for renewal, the board
24 shall consider any specific written input it receives from an
25 individual or entity within the local unit of government in which
26 the applicant for renewal is located.

27 (14) A licensee must consent in writing to inspections,

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1 examinations, searches, and seizures that are permitted under this
2 act and must provide a handwriting exemplar, fingerprints,
3 photographs, and information as authorized in this act or by rules.

4 (15) An applicant or licensee has a continuing duty to provide
5 information requested by the board and to cooperate in any
6 investigation, inquiry, or hearing conducted by the board.

7 **[(16) SUBSECTION (2) (H) DOES NOT APPLY TO AN APPLICANT DESCRIBED
IN SUBSECTION (2) (H) IF THE APPLICANT WAS PROVIDED WITH PROTECTION FROM
DENIAL UNDER RULES OR A RESOLUTION ADOPTED BY THE BOARD, BUT ONLY IF THE
APPLICANT CEASES HOLDING ITSELF OUT AS OPERATING A MARIHUANA FACILITY
IMMEDIATELY UPON NOTIFICATION OF DENIAL BY THE BOARD. IF THE BOARD DENIES
THE APPLICATION OF AN APPLICANT DESCRIBED IN THIS SUBSECTION, AND THE
APPLICANT REQUESTS A HEARING UNDER SECTION 407(3), THE BOARD SHALL NOT
DENY THE APPLICANT'S APPLICATION SOLELY BECAUSE THE APPLICANT CONTINUES
TO OPERATE A MARIHUANA FACILITY DURING THE PUBLIC INVESTIGATIVE HEARING
PROCESS IF THE APPLICANT COMPLIES WITH ALL OF THE FOLLOWING:**

**(A) WITHIN 30 DAYS AFTER RECEIVING NOTICE OF THE INITIAL DENIAL OR
WITHIN 30 DAYS AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED
THIS SUBSECTION, WHICHEVER IS LATER, THE APPLICANT DOES BOTH OF THE
FOLLOWING:**

**(i) PAYS AN AMOUNT EQUAL TO THE REGULATORY ASSESSMENT, THE PAYMENT
OF WHICH SHALL NOT BE REFUNDABLE TO THE APPLICANT.**

**(ii) DEMONSTRATES COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF THIS
ACT AND RULES APPLICABLE TO THE TYPE OF MARIHUANA FACILITY FOR WHICH THE
APPLICANT IS SEEKING LICENSURE.**

**(B) THE APPLICANT CEASES HOLDING ITSELF OUT AS OPERATING A
MARIHUANA FACILITY IMMEDIATELY UPON RECEIVING NOTIFICATION FROM THE
BOARD, AFTER THE PUBLIC INVESTIGATIVE HEARING, THAT THE APPLICANT'S
APPLICATION IS DENIED.**

**(17) THE BOARD SHALL, BEFORE JUNE 1, 2019, ISSUE A LICENSE OR DENY
THE APPLICATION OF AN APPLICANT DESCRIBED IN SUBSECTION (2) (H) WHO MEETS
ALL OF THE FOLLOWING CONDITIONS:**

(A) HAS NOT REQUESTED A HEARING UNDER SECTION 407(3).

**(B) WAS PROVIDED WITH PROTECTION FROM DENIAL UNDER RULES OR A
RESOLUTION ADOPTED BY THE BOARD.**

**(18) AN APPLICANT DESCRIBED IN SUBSECTION (17) IS REQUIRED TO
COMPLY WITH SUBSECTION (15).**

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