

Legislative Analysis



ELIGIBILITY FOR STATE OPERATING LICENSE

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House Bill 5700 as reported from committee
Sponsor: Rep. Julie Alexander
Committee: Judiciary
Complete to 5-27-20

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

BRIEF SUMMARY: House Bill 5700 would amend the Medical Marijuana Facilities Licensing Act to no longer automatically disqualify an applicant for a state operating license to grow, process, sell, transport, or test medical marijuana because his or her spouse held an elective office or was a governmental employee, with certain exceptions.

FISCAL IMPACT: House Bill 5700 would not have an appreciable fiscal impact on the Department of Licensing and Regulatory Affairs or on any other unit of state or local government.

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 (MRA). 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. Legislation addressing the issue has been offered.

THE CONTENT OF THE BILL:

House Bill 5700 would amend the Medical Marijuana Facilities Licensing Act to allow issuance of a state operating license to an *applicant* whose spouse holds an elected office or is a governmental employee, with certain exceptions. The bill would also replace references to the Medical Marijuana Licensing Board with those to the Marijuana Regulatory Agency, which replaced the board.

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.

The bill would allow a state operating license to be issued to an applicant whose spouse holds an elective office or is a governmental employee as described above, except for an applicant whose spouse's position is within the *Marijuana Regulatory Agency* or whose spouse's position would otherwise create a conflict of interest.

Marijuana Regulatory Agency would mean the Marijuana Regulatory Agency created by Executive Reorganization Order No. 2019-2.¹

MCL 333.27102 and 333.27402

ARGUMENTS:

For:

Applicants for a state operating license to grow, process, sell, transport, or test marijuana for the medical marijuana market undergo a 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. 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

¹ ERO 2019-2 (MCL 333.27001): <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-E-R-O-No-2019-2.pdf>

person whose spouse holds such a position makes less sense considering the sheer number of people employed throughout the state in various capacities and levels of government service whose positions do not include public policymaking.

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 local governmental entity or was an elected official. Should the spouse's position be such that a conflict of interest could arise, the bill would allow the Marijuana Regulatory Agency to deny the applicant's application for an initial or renewal license.

Against:

No arguments against the bill were offered in committee.

POSITIONS:

The Michigan Cannabis Industry Association indicated support for the bill. (5-19-20)

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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.