

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 as enacted
Public Act 160 of 2021
Sponsor: Sen. Curtis S. VanderWall

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

Senate Bill 462 as enacted
Public Act 161 of 2021
Sponsor: Sen. Paul Wojno

House Committee: Regulatory Reform
Senate Committee: Regulatory Reform
Complete to 1-21-22

SUMMARY:

Senate Bills 461 and 462 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 amends 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. Previously, this proof of financial responsibility could 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 retains the requirement for, and amount of, the required proof of financial responsibility. However, it removes the above options as to the form of that proof and instead requires 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.

Previously the proof of financial responsibility had to be filed with the Department of Licensing and Regulatory Affairs (LARA). The bill instead requires the applicant or licensee to file it

with the Marijuana Regulatory Agency (MRA), which is an agency within LARA, and also requires the applicant or licensee to include with its filing an attestation of compliance on an MRA-approved form. An officer of the insurer issuing the policy must sign the attestation.

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

- An applicant or licensee may furnish proof of financial responsibility exceeding the requirements described above.
- If at any time a licensee fails to maintain the required proof of financial responsibility, the MRA must immediately suspend its license until the licensee provides the required proof of financial responsibility to the MRA.

MCL 333.27408

Senate Bill 462 amends 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 adds 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 refers to the MRA throughout section 402, rather than to LARA and the Medical Marijuana Licensing Board. Executive Reorganization Order 2019-2,¹ which created the MRA as an agency within LARA, also abolished the Marijuana Advisory Panel and the Medical Marijuana 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 take effect March 30, 2022.

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, 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.

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 Marijuana Facilities Licensing Act. As a result, the licensee may find that 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.

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

According to supporters, the bills 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 the amendments will protect patients who suffer harm from a product as well as protect licensees from financial losses accruing from a claim. The bills do not change current testing standards or procedures, but instead ensure 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.

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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.