

## MEDICAL MARIHUANA FACILITIES LICENSING ACT

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bills 5871 and 5965 as enrolled**  
**Sponsor: Rep. Roger Hauck**  
**House Committee: Regulatory Reform**  
**Senate Committee: Regulatory Reform**  
**Complete to 2-7-23**

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

*(Vetoed by the Governor 12-22-22)*

### SUMMARY:

House Bills 5871 and 5965 would amend the Medical Marijuana Facilities Licensing Act to do all of the following:

- Revise provisions that disqualify an applicant for licensure based on the employment of the applicant's spouse.
- Expand the types of entities to or from which certain licensees may sell, buy, or transfer marijuana or marijuana-infused products.
- Modify definitions of terms and scope of authority provisions that apply to different types of licensees under the act.

#### Spouses of applicants

The act currently provides that spouses of applicants for licensure under the act are themselves considered applicants for purposes of application disclosures, application ineligibility under section 402 of the act, and prior approval of a transfer of an interest in a license under section 406. The bills would remove spouses from being considered applicants in all of those cases.

In addition, section 402 now provides for the ineligibility of an applicant who holds an elective state or federal office, is a member of or employed by a regulatory body of a state or federal governmental unit, or is employed by a governmental unit of Michigan. However, those particular provisions currently apply to positions held by the spouse of an applicant *only* if the position creates a conflict of interest or is within the CRA or within a regulatory body of a state or federal governmental unit that makes decisions regarding adult-use marijuana. The bills would remove this exception.

Instead, the bills would provide that an applicant's spouse is generally considered an applicant only for purposes of the provisions of section 402 that concern grounds for license ineligibility, factors that may be considered by CRA in determining whether to issue a license, and procedures for background investigations. However, if an applicant submits an attestation stating that all of the following are true, the applicant's spouse would not be considered an applicant under those provisions:

- The applicant's spouse does not control or direct the affairs of the marijuana facility.
- The applicant's spouse is not able to make policy decisions regarding the facility.
- The applicant's spouse will not control or direct the affairs of the marijuana facility if the license is granted or be able to make policy decisions regarding the facility if the license is granted.
- The applicant's spouse is not an applicant for a state operating license.

- If the applicant’s spouse is employed by a state or federal regulatory agency or by a governmental unit of Michigan, the spouse’s position does not create a conflict of interest and is not within the CRA or within a regulatory body of a state or federal governmental unit that makes decisions regarding marijuana.

The bills would prohibit the CRA from doing any of the following if an attestation is submitted as described above:

- Conducting a background investigation of the applicant’s spouse.
- Requiring the applicant’s spouse to submit an application for licensure.
- Denying an application solely because the applicant’s spouse is employed by a governmental entity, unless one of the following applies:
  - The spouse’s position creates a conflict of interest.
  - The spouse’s position is within the CRA.
  - The spouse's position is within a regulatory body of a state or federal governmental unit that makes decisions regarding marijuana.

**Transfer, sale, and purchase of marijuana**

The following table shows (in italics) changes proposed by House Bill 5871:

<b>Processor licensee</b>	May purchase <i>or transfer</i> <sup>1</sup> marijuana from:		May sell <i>or transfer</i> marijuana or marijuana-infused products to:	
	Current law	HB 5871	Current law	HB 5871
	grower	grower, <i>processor, provisioning center</i>	processor, provisioning center	<i>grower, processor, provisioning center</i>
<b>Provisioning center licensee</b>	May purchase or transfer marijuana from:		May sell or transfer marijuana to:	
	Current law	HB 5871	Current law	HB 5871
	grower, processor	grower, processor, <i>provisioning center</i>	registered qualifying patient, registered primary caregiver	registered qualifying patient, registered primary caregiver, <i>grower, processor, provisioning center</i>

In addition, under the bill, all transfers of marijuana from a provisioning center to a separate marijuana facility would have to be by means of a secure transporter—except for a transfer to a marijuana facility occupying the same location. (These provisions already apply to transfers of marijuana to a provisioning center from a separate marijuana facility.)

<sup>1</sup> Transfers are not now included in the provisions governing processor licensees. House Bill 5871 would add them.

### **Definitions of terms used in the act**

House Bill 5965 would modify definitions of terms that apply to different types of license holders under the act. The new definitions would reflect current license types. For example, rather than offering a description of who constitutes a “safety compliance facility” under the act, and what activities that encompasses, the bill would define a safety compliance facility as someone who holds a safety compliance facility license.

In cases where the activities now described in the licensee’s definition are not also authorized in later provisions addressing those licensees, the bills would newly specify that those activities are authorized under the act for those licensees. For example, HB 5871 would authorize the following activities (which are now part of the licensees’ respective definitions):

- For a grower licensee: the cultivation, drying, trimming, or curing and packaging of marijuana for sale.
- For a processor licensee: the extraction of resin from marijuana or creation of a marijuana-infused product for sale and transfer in packaged form.

In other words, substantive provisions concerning the scope of authority conferred by certain licenses would be moved from the act’s definitions provisions to the act’s substantive provisions. These changes would reportedly reflect the current state regulatory framework in place for the marijuana industry.

In addition, House Bill 5965 would newly define the term *Cannabis Regulatory Agency*, for purposes of the act, as the Marijuana Regulatory Agency created by Executive Reorganization Order 2019-2<sup>2</sup> and renamed the Cannabis Regulatory Agency by Executive Reorganization Order 2022-1.<sup>3</sup>

Each bill would take effect 90 days after it is enacted. Neither bill could take effect unless both bills were enacted.

HB 5871: MCL 333.27402, 333.27501, 333.27502 and 333.27504

HB 5965: MCL 333.27102

### **BRIEF DISCUSSION:**

According to its proponents, the changes proposed by House Bill 5871 related to the sale, purchase, or transfer of marijuana will provide greater flexibility for licensed processors and provisioning centers in managing the medical marijuana products they handle. For instance, a provisioning center that found it had too much product could sell the excess product to another provisioning center that may be low on products and not expecting a shipment for several days. Reportedly, the bill’s provisions would provide greater parity with the adult recreational marijuana industry. Many marijuana licensees operate in both the medical marijuana and adult recreational marijuana markets.

### **FISCAL IMPACT:**

The bills would not have a fiscal impact on any state or local government units.

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<sup>2</sup> <http://legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2019-EO-07.pdf>

<sup>3</sup> <http://legislature.mi.gov/documents/2021-2022/executiveorder/pdf/2022-EO-01.pdf>

**Vetoed 12-22-22:**

The bills were among several that Governor Whitmer said she vetoed because they “were rushed through a lame duck session and need closer examination.” The provisions of the bills regarding the employment of an applicant’s spouse were similar to those that would have been added by House Bill 5839 to the Michigan Regulation and Taxation of Marihuana Act. That bill also was vetoed by the governor for the above reasons.

Legislative Analysts: Josh Roesner  
Susan Stutzky  
Fiscal Analyst: Marcus Coffin

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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.