

MEDICAL MARIHUANA FACILITIES LICENSING ACT (EXCERPT)
Act 281 of 2016

***** 333.27305.new THIS NEW SECTION IS EFFECTIVE DECEMBER 20, 2016 *****

333.27305.new Board; disclosure form; providing certain notices to chairperson; ex parte communication; outside employment; personal transaction involving marihuana with licensee or applicant; violation.

Sec. 305. (1) By January 31 of each year, each member of the board shall prepare and file with the governor's office and the board a disclosure form in which the member does all of the following:

(a) Affirms that the member or the member's spouse, parent, child, or child's spouse is not a member of the board of directors of, financially interested in, or employed by a licensee or applicant.

(b) Affirms that the member continues to meet any other criteria for board membership under this act or the rules promulgated by the board.

(c) Discloses any legal or beneficial interests in any real property that is or that may be directly or indirectly involved with operations authorized by this act.

(d) Discloses any other information as may be required to ensure that the integrity of the board and its work is maintained.

(2) By January 31 of each year, each employee of the board shall prepare and file with the board an employee disclosure form in which the employee does all of the following:

(a) Affirms the absence of financial interests prohibited by this act.

(b) Discloses any legal or beneficial interests in any real property that is or that may be directly or indirectly involved with operations authorized by this act.

(c) Discloses whether the employee or the employee's spouse, parent, child, or child's spouse is financially interested in or employed by a licensee or an applicant for a license under this act.

(d) Discloses such other matters as may be required to ensure that the integrity of the board and its work is maintained.

(3) A member, employee, or agent of the board who becomes aware that the member, employee, or agent of the board or his or her spouse, parent, or child is a member of the board of directors of, financially interested in, or employed by a licensee or an applicant shall immediately provide detailed written notice thereof to the chairperson.

(4) A member, employee, or agent of the board who within the previous 10 years has been indicted for, charged with, or convicted of, pled guilty or nolo contendere to, or forfeited bail concerning a misdemeanor involving controlled substances, dishonesty, theft, or fraud or a local ordinance in any state involving controlled substances, dishonesty, theft, or fraud that substantially corresponds to a misdemeanor in that state, or a felony under Michigan law, the laws of any other state, or the laws of the United States or any other jurisdiction shall immediately provide detailed written notice of the conviction or charge to the chairperson.

(5) Any member, employee, or agent of the board who is negotiating for, or acquires by any means, any interest in any person who is a licensee or an applicant, or any person affiliated with such a person, shall immediately provide written notice of the details of the interest to the chairperson. The member, employee, or agent of the board shall not act on behalf of the board with respect to that person.

(6) A member, employee, or agent of the board shall not enter into any negotiations for employment with any person or affiliate of any person who is a licensee or an applicant and shall immediately provide written notice of the details of any such negotiations or discussions in progress to the chairperson. The member, employee, or agent of the board shall not take action on behalf of the board with respect to that person.

(7) Any member, employee, or agent of the board who receives an invitation, written or oral, to initiate a discussion concerning employment or the possibility of employment with a person or affiliate of a person who is a licensee or an applicant shall immediately report that he or she received the invitation to the chairperson. The member, employee, or agent of the board shall not take action on behalf of the board with respect to the person.

(8) A licensee or applicant shall not knowingly initiate a negotiation for or discussion of employment with a member, employee, or agent of the board. A licensee or applicant who initiates a negotiation or discussion about employment shall immediately provide written notice of the details of the negotiation or discussion to the chairperson as soon as he or she becomes aware that the negotiation or discussion has been initiated with a member, employee, or agent of the board.

(9) A member, employee, or agent of the board, or former member, employee, or agent of the board, shall not disseminate or otherwise disclose any material or information in the possession of the board that the board considers confidential unless specifically authorized to do so by the chairperson or the board.

(10) A member, employee, or agent of the board or a parent, spouse, sibling, spouse of a sibling, child, or spouse of a child of a member, employee, or agent of the board shall not accept any gift, gratuity, compensation, travel, lodging, or anything of value, directly or indirectly, from any licensee or any applicant or affiliate or representative of a licensee or applicant, unless the acceptance conforms to a written policy or directive that is issued by the chairperson or the board. Any member, employee, or agent of the board who is offered or receives any gift, gratuity, compensation, travel, lodging, or anything of value, directly or indirectly, from any licensee or any applicant or affiliate or representative of an applicant or licensee shall immediately provide written notification of the details to the chairperson.

(11) A licensee or applicant, or an affiliate or representative of an applicant or licensee, shall not, directly or indirectly, give or offer to give any gift, gratuity, compensation, travel, lodging, or anything of value to any member, employee, or agent of the board that the member, employee, or agent of the board is prohibited from accepting under subsection (10).

(12) A member, employee, or agent of the board shall not engage in any conduct that constitutes a conflict of interest and shall immediately advise the chairperson in writing of the details of any incident or circumstances that would present the existence of a conflict of interest with respect to performing board-related work or duties.

(13) A member, employee, or agent of the board who is approached and offered a bribe as described in section 118 of the Michigan penal code, 1931 PA 328, MCL 750.118, or this act shall immediately provide written account of the details of the incident to the chairperson and to a law enforcement officer of a law enforcement agency having jurisdiction.

(14) A member, employee, or agent of the board shall disclose his or her past involvement with any marihuana enterprise in the past 5 years and shall not engage in political activity or politically related activity during the duration of his or her appointment or employment.

(15) A former member, employee, or agent of the board may appear before the board as a fact witness about matters or actions handled by the member, employee, or agent during his or her tenure as a member, employee, or agent of the board. The member, employee, or agent of the board shall not receive compensation for such an appearance other than a standard witness fee and reimbursement for travel expenses as established by statute or court rule.

(16) A licensee or applicant or any affiliate or representative of an applicant or licensee shall not engage in ex parte communications with a member of the board. A member of the board shall not engage in any ex parte communications with a licensee or an applicant or with any affiliate or representative of an applicant or licensee.

(17) Any board member, licensee, or applicant or affiliate or representative of a board member, licensee, or applicant who receives any ex parte communication in violation of subsection (16), or who is aware of an attempted communication in violation of subsection (16), shall immediately report details of the communication or attempted communication in writing to the chairperson.

(18) Any member of the board who receives an ex parte communication in an attempt to influence that member's official action shall disclose the source and content of the communication to the chairperson. The chairperson may investigate or initiate an investigation of the matter with the assistance of the attorney general and state police to determine if the communication violates subsection (16) or subsection (17) or other state law. The disclosure under this section and the investigation are confidential. Following an investigation, the chairperson shall advise the governor or the board, or both, of the results of the investigation and may recommend action as the chairperson considers appropriate. If the chairperson receives such an ex parte communication, he or she shall report the communication to the governor's office for appropriate action.

(19) A new or current employee or agent of the board shall obtain written permission from the executive director before continuing outside employment held at the time the employee begins to work for the board. Permission shall be denied, or permission previously granted shall be revoked, if the executive director considers the nature of the work to create a possible conflict of interest or if it would otherwise interfere with the duties of the employee or agent for the board.

(20) An employee or agent of the board granted permission for outside employment shall not conduct any business or perform any activities, including solicitation, related to outside employment on premises used by the board or during the employee's working hours for the board.

(21) The chairperson shall report any action he or she has taken or proposes to take under this section with respect to an employee or agent or former employee or former agent to the board at the next meeting of the board. The board may direct the executive director to take additional or different action.

(22) Except as allowed under the Michigan medical marihuana act, a member, employee, or agent of the board shall not enter into any personal transaction involving marihuana with a licensee or applicant.

(23) If a licensee or applicant, or an affiliate or representative of a licensee or applicant, violates this

section, the board may deny a license application, revoke or suspend a license, or take other disciplinary action as provided in section 407.

(24) Violation of this section by a member of the board may result in disqualification or constitute cause for removal under section 301(7) or other disciplinary action as recommended by the board to the governor.

(25) A violation of this section by an employee or agent of the board need not result in termination of employment if the board determines that the conduct involved does not violate the purpose of this act. However, all of the following apply:

(a) If, after being offered employment or beginning employment with the board, the employee or agent intentionally acquires a financial interest in a licensee or an applicant, or an affiliate or representative of a licensee or applicant, the offer or employment with the board shall be terminated.

(b) If a financial interest in a licensee or an applicant, or an affiliate or representative of a licensee or applicant, is acquired by an employee or agent that has been offered employment with the board, an employee of the board, or the employee's or agent's spouse, parent, or child, through no intentional action of the employee or agent, the individual shall have up to 30 days to divest or terminate the financial interest. Employment may be terminated if the interest has not been divested after 30 days.

(c) Employment shall be terminated if the employee or agent is a spouse, parent, child, or spouse of a child of a board member.

(26) Violation of this section does not create a civil cause of action.

(27) As used in this section:

(a) "Outside employment", in addition to employment by a third party, includes, but is not limited to, the following:

(i) Operation of a proprietorship.

(ii) Participation in a partnership or group business enterprise.

(iii) Performance as a director or corporate officer of any for-profit or nonprofit corporation or banking or credit institution.

(iv) Performance as a manager of a limited liability company.

(b) "Political activity" or "politically related activity" includes all of the following:

(i) Using his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

(ii) Knowingly soliciting, accepting, or receiving a political contribution from any person.

(iii) Running for the nomination or as a candidate for election to a partisan political office.

(iv) Knowingly soliciting or discouraging the participation in any political activity of any person who is either of the following:

(A) Applying for any compensation, grant, contract, ruling, license, permit, or certificate pending before the board.

(B) The subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the board.

History: 2016, Act 281, Eff. Dec. 20, 2016.

Compiler's note: Enacting section 2 of Act 281 of 2016 provides:

"Enacting section 2. The legislature finds that the necessity for access to safe sources of marihuana for medical use and the immediate need for growers, processors, secure transporters, provisioning centers, and safety compliance facilities to operate under clear requirements establish the need to promulgate emergency rules to preserve the public health, safety, or welfare."