



SPONSOR: Rep. Osienski & Sen. Paradee
Sen. Lockman

HOUSE OF REPRESENTATIVES
153rd GENERAL ASSEMBLY

HOUSE BILL NO. 110

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO THE DELAWARE MARIJUANA CONTROL ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 1302, Title 4 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and redesignating accordingly:

3 § 1302. Definitions.

4 As used in this chapter:

5 (32) ~~“Work” means as defined in § 3302 of Title 19.~~

6 Section 2. Amend § 1347, Title 4 of the Delaware Code by making deletions as shown by strike through and
7 insertions as shown by underline as follows:

8 § 1347. Background checks.

9 (a) All of the following persons are required to complete a background check under this chapter:

10 (1) An applicant for a marijuana establishment license.

11 (2) A person who performs work at or for a marijuana establishment, whether classified as a contractor,
12 employee, or volunteer, with or without compensation, and prior to beginning work.

13 (3) A person who is or seeks to become a director, officer, board member, or agent of a licensed marijuana
14 establishment or a business entity that is an applicant for a marijuana establishment license.

15 (4) A person who holds an ownership interest of 10% or more in a licensed marijuana establishment or a
16 business entity that is an applicant for a marijuana establishment license.

17 ~~(a)~~ (b) A person required to obtain a background check under this chapter subsection (a) of this section must
18 submit fingerprints and other necessary information to the State Bureau of Identification in order to obtain a Delaware and
19 national criminal history background check through all of the following:

20 (1) A report of the person’s entire criminal history record from the State Bureau of Identification or a
21 statement that the State Central Repository contains no such information relating to that person.

(2) A report of the person's entire federal criminal history record pursuant to the Federal Bureau of Investigation (FBI) appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534) or a statement that the FBI's records contain no such information relating to that person.

~~(b)~~ (c) The State Bureau of Identification is the intermediary for the purpose of ~~subsection (a)~~ of this section and must forward all information required by ~~subsection (a)~~ subsections (a) and (b) of this section to the Division of Alcohol and Tobacco Enforcement.

~~(e)~~ (d) The Division and the Commissioner may use the background check required by this section only to ~~determine if the person required to obtain a background check meets the~~ consider the background, qualifications, and suitability of persons required to obtain a background check for licensure or employment ~~requirements of~~ under this chapter.

~~(d)~~ (e) A person required to obtain a background check under this chapter is responsible for any costs associated with obtaining the background check.

~~(e)~~ A person required to obtain a background check under this chapter is subject to the report of their subsequent criminal history record information to the Division as part of ongoing monitoring and reporting through the Bureau, the FBI's criminal history systems or the Rap Back System as long as they are a license holder or employee subject to the requirements of this chapter.

(f) If a current applicant, person performing work at or for a marijuana establishment, director, officer, board member, agent, or person who holds an ownership interest of 10% or more in a licensed marijuana establishment or a business entity that is an applicant for a marijuana establishment license obtains a background check under this section, the State Bureau of Identification shall provide all of the following to the Division:

(1) Any subsequent state criminal history record information of the person.

(2) Any subsequent criminal history record information of the person available through the Rap Back System as defined under § 8502 of Title 11, if the Rap Back System is available.

(g) The failure of an applicant, person holding a 10% or more ownership interest in a licensed marijuana establishment, or current officer or director to satisfy the requirements of § 1336(2), § 1354(b)(4), or § 1361(c) of this chapter may constitute grounds for refusal, suspension, or cancellation of a license issued by the Commissioner pursuant to this chapter.

Section 3. Amend Subchapter IV, Chapter 13, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1354. Grounds for refusal of license; transfer or extension of premises.

(b) The Commissioner may refuse to license an applicant if the Commissioner has substantial evidence that would reasonably support a belief that any of the following apply:

(4) The applicant, including any of the ~~applicant's directors or officers, or any of the applicant's shareholders who hold more than 10% of the outstanding issued shares,~~ directors, officers, and board members, or such other person who holds an ownership interest of 10% or more in a licensed marijuana establishment or a business entity that is an applicant for a marijuana establishment, has been convicted of an offense that may impact the qualifications, functions, or duties of the business or profession for which the application is made, except that if the Commissioner determines that the applicant is otherwise suitable to be issued a license, and granting the license would not compromise public safety, the Commissioner shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant to be issued a license based on the evidence found through the review. In determining which offenses may impact the qualifications, functions, or duties of the business or profession for which the application is made, the Commissioner shall include the following:

(c) Except as set forth in subsection (b) of this section, a prior ~~conviction,~~ conviction for possession of, possession for sale, sale, manufacture, transportation, or cultivation of ~~a controlled substance~~ marijuana may not be a ground for denial of a license.

(i) The Commissioner may refuse to issue a license to an applicant that in the Commissioner's discretion, based on information collected in the criminal background check process, presents a risk to the health or public safety of Delaware citizens.

SYNOPSIS

This Act identifies the specific categories of persons required to obtain a fingerprint-based national criminal background check in connection with working at a licensed marijuana establishment, holding a marijuana establishment license, or owning or serving on the board of directors of a business entity that has or applies for a marijuana establishment license. This clarification is necessary to comply with the requirements of Public Law (Pub. L.) 92-544 for access to FBI criminal history record information.

This Act also makes conforming changes to § 1354 of Title 4 and clarifies other grounds for approval or denial of a license based on criminal background check information.