

**STATE OF MICHIGAN  
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

**Before the Director of Insurance and Financial Services**

**In the Matter of Michigan Cannabis  
Risk and Financial Association and  
Specialty Agriculture Insurance Co.  
Of Michigan's Request for a  
Declaratory Ruling**

**Order No. 18-077-M**

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**Issued and entered  
this 19<sup>th</sup> day of December 2018  
by Patrick M. McPharlin  
Director**

**ORDER DENYING REQUEST FOR DECLARATORY RULING**

**I  
BACKGROUND**

On November 13, 2018, the Director received a request for declaratory ruling (Request) from the Michigan Cannabis Risk and Financial Association, LLC (MCRFA) and Specialty Agriculture Insurance Company of Michigan, Inc. (SAICM) (collectively, Petitioners).

For the purposes of the declaratory ruling request, these facts were presented by the Petitioner are as follows. Section 408 of the Michigan Medical Marihuana Facilities Licensing Act (MMFLA), 2016 PA 281, MCL 333.27101 to 333.27801, requires facilities licensed under that act to file with the Department of Licensing and Regulatory Affairs (LARA)<sup>1</sup> "proof of financial responsibility for liability for bodily injury to lawful users resulting from the manufacture, distribution, transportation, or sale of adulterated marihuana or adulterated marihuana-infused product in an amount not less than \$100,000.00." MCL 333.27408. This proof "may be in the form of cash, unencumbered securities, a liability insurance policy, or a constant value

bond executed by a surety company authorized to do business in this state.” *Id.* An applicant or licensee relying on a liability insurance policy to satisfy this requirement must complete a form (Attestation J), issued by LARA, that it has such liability coverage and “that no products liability exclusion exists in the liability coverage” that would “exclude the coverage mandated” under the MMFLA or any associated rule. Request, ¶ 5.

MCRFA is a Michigan limited liability company that “creates and markets insurance and financial products tailored to legal medical cannabis growers, transporters, compliance facilities, provisioning centers, processors, and other licensed entities needing to fulfill Section 408 requirements.” Request, ¶ 6. SAICM is a Michigan association captive insurance company that offers a “Licensee Statutory Compliance and Patient Protection Liability Policy” to MCRFA members in fulfillment of the members’ obligation to provide proof of financial responsibility under Section 408 of the MMFLA. Request, ¶ 7.

Petitioners filed a request for a declaratory ruling seeking the Director’s “determination and declaration” that:

1) A liability insurance policy form offered and/or issued to MMFLA licensees and/or applicants for purposes of satisfying the financial responsibility mandates of Section 408 may not contain exclusions or other provisions that could preclude the coverage required under the MMFLA.

2) A liability insurance policy form offered and/or issued to MMFLA licensees and/or applicants for purposes of satisfying the financial responsibility mandates of Section 408 that contains exclusions that could exclude the coverage required under the MMFLA be deemed insufficient to fulfill Section 408 financial responsibility requirements and insufficient to support the execution of an Attestation J on behalf of a MMFLA licensee and/or applicant.

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<sup>1</sup> The licensing program established by the MMFLA is administered by the Bureau of Medical Marihuana Regulation (BMMR), which is an agency within LARA. For ease of reference, this Order refers simply to “LARA” throughout.

3) Any insurer or agent thereof offering a liability insurance policy form to MMFLA licensees and/or applicants for purposes of satisfying the financial responsibility mandates of Section 408 that contains exclusions or other provisions that could preclude coverage required under the MMFLA be enjoined from further offering and/or issuing such policy form and from executing Attestation J forms regarding such policy forms on behalf of MMFLA licensees and/or applicants; and

4) The SAICM form complies with the financial responsibility mandates of Section 408 of the MMFLA and the averments contained within the Attestation J.

Request, ¶ 22.

## II ANALYSIS

The Director is authorized to issue declaratory rulings under Section 63 of the Administrative Procedures Act of 1969, as amended, MCL 24.263, which provides:

On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case.

The issuance of a declaratory ruling is discretionary. There are two considerations here that warrant denial of Petitioners' request for a declaratory ruling.

First, a declaratory ruling is binding only on DIFS and the person requesting the ruling. MCL 24.263. As a result, Conifer would not be bound by any ruling in favor of the Petitioners. Thus, a declaratory ruling is not a useful mechanism for resolving a dispute between the two parties. Moreover, the Petitioners'

request relates to the applicability of a statute that is not administered by DIFS. Under the APA, a declaratory ruling may address “a statute administered by the agency.” DIFS does not administer the MMFLA; therefore, a declaratory ruling is not appropriate under the APA.

**III**  
**ORDER**

Therefore, it is ORDERED that the Request for Declaratory Ruling is denied.



Patrick M. McPharlin  
Director