

# Legislative Analysis



## MARIHUANA-INFUSED ALCOHOL

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<http://www.house.mi.gov/hfa>

**House Bill 4668 as enacted**

**Public Act 346 of 2018**

**Sponsor: Rep. Klint Kesto**

**House Committee: Regulatory Reform**

**Senate Committee: Regulatory Reform**

**Complete to 2-14-19**

Analysis available at

<http://www.legislature.mi.gov>

**BRIEF SUMMARY:** House Bill 4668 makes it a misdemeanor offense to use, possess, or sell alcoholic beverages infused with marihuana. The bill also requires, instead of allowing, the Michigan Liquor Control Commission to maintain a revolving fund into which money credited to the Commission is deposited.

**FISCAL IMPACT:** The bill would not have any fiscal impact on the Department of Licensing and Regulatory Affairs, but would have an indeterminate fiscal impact on local units of government. Information is not available on the number of persons who might be convicted under provisions of the bill. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

### **THE APPARENT PROBLEM:**

Numerous studies have shown that consuming either alcohol or marihuana can lead to impaired driving. When alcohol consumption is combined with marihuana consumption, studies show, the effects of both are enhanced. Currently, marihuana-infused alcoholic beverages are prohibited under federal law. However, in light of changing attitudes regarding the legalization of marihuana for recreational use and for commercial operations, some feel that the state should be proactive and adopt a state prohibition on such beverages.

### **THE CONTENT OF THE BILL:**

**House Bill 4668** adds a new section to the Michigan Liquor Control Code to prohibit a person from using or offering for use, possessing, or selling or offering for sale *marihuana-infused beer, wine, mixed wine drink, mixed spirit drink, or spirits*.

*Marihuana-infused beer, wine, mixed wine drink, mixed spirit drink, or spirits* means beer, wine, mixed wine drink, mixed spirit drink, or spirits that contain any amount of *marihuana*.

*Marihuana* means that term as defined in the Public Health Code. [The Public Health Code defines marihuana to mean all parts of the plant *Cannabis sativa* L., growing or not; the seeds of that plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its

seeds or resin. Marihuana does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from those stalks, fiber, oil, or cake, or any sterilized seed of the plant that is incapable of germination. Marihuana does not include industrial hemp grown or cultivated for research purposes under the Industrial Hemp Research Act. Beginning March 28, 2019, this definition of marihuana excludes all industrial hemp.<sup>1]</sup>

A violation of the new section, regardless of whether the person violating the section is or is not a licensee, is a misdemeanor punishable as provided in Section 909 of the Code. The misdemeanor punishment for a licensee under Section 909 is imprisonment for up to six months or a fine of up to \$500, or both. Section 909 does not specifically prescribe the punishment for a misdemeanor violation committed by a nonlicensee. In such a circumstance, Section 504 of the Michigan Penal Code designates the penalty as imprisonment for up to 90 days or a fine of up to \$500, or both. [Note: A 90-day misdemeanor does not trigger a search of the national fingerprint database or provide a mechanism to track repeat offenses.]

The bill exempts the following entities from the prohibitions regarding marihuana-infused alcohol:

- A hospital that operates primarily for the purpose of conducting scientific research.
- A state institution conducting bona fide research.
- A private college or university conducting bona fide research.
- A pharmaceutical company or biotechnology company conducting bona fide research.

Further, Public Act 155 of 2018 amended Section 221 of the Code to specify that the Liquor Control Commission may maintain a revolving fund into which all money received by the Commission is to be deposited with the state treasurer and credited to the Commission. Previous to that change, the Code *authorized* the Commission to maintain such a fund. Under House Bill 4668, the Commission is required to maintain a revolving fund. The bill also makes several technical changes of an editorial nature.

[Under current practice, money is first credited to the Liquor Purchase Revolving Fund and is then periodically transferred to the state general fund as provided by Section 435 of the Management and Budget Act. The Liquor Control Code requires the Revolving Fund to be used for replenishing, maintaining, warehousing, and distributing liquor stock throughout the state and for administration of the Code.]

The bill took effect October 16, 2018.

MCL 436.1221 and added MCL 436.1914b

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<sup>1</sup> <http://legislature.mi.gov/doc.aspx?2018-HB-6331>

## **BACKGROUND INFORMATION:**

House Bill 4668 was originally a companion bill to House Bill 4667, together a bill package proposing significant changes to the Grape and Wine Industry Council. The bills were passed by the House but House Bill 4668 was replaced in the package with Senate Bill 440 before final passage and enrollment. As enacted, House Bill 4667 (PA 154 of 2018) renamed the Grape and Wine Industry Council as the Michigan Craft Beverage Council, revised the council's membership, and modified its duties. Senate Bill 440 (Public Act 155 of 2018) created the Michigan Craft Beverage Council Fund, restricted how money in the Fund could be expended, and provided for the money in the former Grape and Wine Industry Council account to be transferred into the Fund.<sup>2</sup>

House Bill 4668 was subsequently amended in the Senate to make further changes to Section 221 of the Michigan Liquor Control Code (a provision amended by SB 440) and also to incorporate the substance of Senate Bill 969 pertaining to the prohibition on marihuana-infused alcohol. Senate Bill 969 was passed by the Senate and reported from the House Regulatory Reform committee but failed to see action on the House floor.

## **ARGUMENTS:**

### ***For:***

Both alcohol and marihuana are known to increase a driver's risk of being involved in a traffic crash. Combining the two is also known to exacerbate the effects of both on a driver's attention and ability to safely operate a vehicle. In addition, according to representatives of the liquor industry, allowing marihuana-infused alcohol could create a "regulatory nightmare" in which two very different regulatory systems operating under different statutes and rules would govern such a product.

Under the bill, on- or off-premises liquor licensees, such as bars and package liquor stores, are prohibited from selling marihuana-infused alcoholic beverages. The bill also prohibits an individual from using or even possessing beer, wine, spirits or mixed wine or spirit drinks that are infused with marihuana. (Under the definition of "marihuana" contained in the Public Health Code, until March 28, 2019, the prohibition would include components of hemp, because industrial hemp is only excluded from that definition if it is being grown or cultivated for research purposes under the Industrial Hemp Research Act. After that date, however, industrial hemp is excluded from that definition entirely.) A violation is a criminal offense that could result in going to jail and/or paying a fine. Some feel that establishing such penalties can have a deterrent effect, thus reducing the risk of serious or fatal injuries to a driver, his or her passengers, and pedestrians or occupants of other vehicles.

Michigan would not be alone in banning marihuana-infused alcoholic beverages, as California recently adopted rules that prohibit infusing alcoholic beverages with marihuana containing THC (the psychoactive compound) or CBD (the non-psychoactive compound believed to have medicinal properties) or infusing any edible product with CBD derived from industrial hemp. Federal law also makes such substances illegal (although the Alcohol and Tax and Trade

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<sup>2</sup> See <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-4667-9F9F8387.pdf>

Bureau, or TTB, Hemp Policy<sup>3</sup> does permit the limited use of hemp derivatives in alcoholic beverages).

Where at least one brewer has created a non-alcoholic beer flavored with hemp or marihuana, some feel even that type of product would be illegal under the bill. This is because most so-called non-alcoholic products contain trace amounts of alcohol; under definitions contained in the Liquor Code, “non-alcoholic” beverages would still fall under the Code’s regulations and the bill’s prohibitions.

***Against:***

Some say the bill is providing a solution to a problem that, since federal law already provides a prohibition, does not exist. Even though Michigan voters opted to allow recreational marihuana in various forms for adults, the federal ban on marihuana-infused beverages would still make such beverages illegal to market.

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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.

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<sup>3</sup> <https://www.ttb.gov/newsletters/archives/2018/ttb-newsletter052518.html>