

Legislative Analysis



PROHIBIT CERTAIN MARIJUANA SALES AND CREATE CAUSE OF ACTION

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House Bill 4516 as enacted
Public Act 55 of 2021
Sponsor: Rep. Jim Lilly
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform
Complete to 1-18-23

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

BRIEF SUMMARY: House Bill 4516 amends the Michigan Regulation and Taxation of Marihuana Act¹ to prohibit the sale or transfer of marijuana to certain individuals by persons licensed under the act. The bill creates a cause of action against a licensee for harm caused by an individual to whom the sale or transfer of marijuana was prohibited if a violation of that prohibition is a proximate cause of the harm. Licensees must maintain at least \$50,000 insurance coverage for such actions.

FISCAL IMPACT: The bill may increase revenue for the state and could result in an indeterminate fiscal impact to local court systems. (See **Fiscal Information**, below, for more information.)

THE APPARENT PROBLEM:

Under Michigan's "dram shop law,"² a retail liquor licensee can be sued if the licensee or the licensee's employee unlawfully sells or furnishes alcohol to a visibly intoxicated individual or to a minor and that individual's conduct results in property damage or death or injury to another person. The selling or furnishing of the alcohol to the intoxicated individual or minor must be a proximate cause of the death, injury, or property damage. The law also provides that a licensee has a right of indemnification, which means a third party the licensee contracts with would bear responsibility to make the licensee whole for any losses the licensee suffers as a result of a lawsuit. Certain defenses to a lawsuit are also available to the licensee (for instance, if a minor presented a fake ID that could not be easily identified as such).

Recently, with some conditions, Michigan has legalized recreational marijuana for adults at least 21 years of age. According to medical sites, using too much marijuana can result in signs observable by others, such as extreme confusion, anxiety, panic, a fast heart rate, delusions or hallucinations, or severe nausea and vomiting. Mixing marijuana with alcohol is known to increase the intoxicating effects of alcohol, and interactions can result if marijuana is used with other drugs. The reactions to marijuana intoxication can result in inadvertent self-injury or, in the case of operating a motor vehicle, result in death or injury to others. However, there is no law in place regarding an injured person's ability to bring a cause of action against a licensee who sold marijuana to a visibly intoxicated person or to a minor or regarding a licensee's ability to protect against losses if sued. Legislation has been offered to reproduce for recreational marijuana what is in place for alcohol under the dram shop law.

¹ The Initiated Law of 2018: <http://legislature.mi.gov/documents/2017-2018/initiative/pdf/MarijuanaInitiative.pdf>.

² In the Michigan Liquor Control Code: <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-436-1801.pdf>

THE CONTENT OF THE BILL:

House Bill 4516 adds a new section to the Michigan Regulation and Taxation of Marijuana Act to prohibit a licensee authorized to sell or otherwise transfer marijuana under the act or its rules from selling or transferring marijuana, directly or through a clerk, agent, or servant, to a ***minor*** or an individual who, at the time of the sale or transfer, was ***visibly intoxicated***.

Minor means an individual who is younger than 21 years old.

Visibly intoxicated means displaying obvious, objective, and visible evidence of intoxication that would be apparent to an ordinary observer.

An individual who suffers damage or is personally injured by a minor or visibly intoxicated individual as a result of a violation of the above prohibition has a right of action in their name against the licensee that sold or transferred the marijuana if the violation was a proximate cause of the damage or personal injury or death. The bill provides the exclusive remedy for money damages against a licensee and the licensee's clerks, agents, and employees arising from a violation of the prohibition described above. However, this does not apply to a remedy available under law to lawful users of marijuana for liability resulting from the manufacture, distribution, transportation, or sale of ***adulterated marijuana***.

Adulterated marijuana means a product sold as marijuana that contains any unintended substance or chemical or biological matter other than marijuana that causes adverse reaction after ingestion or consumption.

An action must be instituted within two years after the injury or death. A person must give ***written notice*** to all defendants within 120 days after entering an attorney-client relationship to pursue a claim for damages. Failure to give written notice to the licensee within 120 days is grounds for dismissal unless the licensee cannot be identified in that time period with reasonable diligence. In such a case, failure to give written notice within 120 days after identifying the licensee is grounds for dismissal. If either party dies, the right of action survives to or against their personal representative.

Written notice means a communication in writing that includes all of the following:

- An identification of the minor or alleged visibly intoxicated person by name and address.
- The date of the alleged violation of the prohibition described above.
- The name and address of the injured or killed individual.
- The location and circumstances of the accident or event that caused injury or death.
- The date the person or law firm giving the notice was retained.

An action cannot be commenced unless the minor or alleged visibly intoxicated individual is a named defendant and is retained in the action until the litigation is concluded by final action or the licensee is dismissed with prejudice.

A licensee has the right to full indemnification from the minor or alleged visibly intoxicated individual for all damages awarded against the licensee. Additionally, all defenses of the minor

or alleged visibly intoxicated individual are available to the licensee. In an action involving a minor, proof that the licensee asked for and was shown a government-issued photo ID that appeared to be genuine and showed the minor to be at least 21 years old is a complete defense to the action.

It is presumed that a licensee is not a proximate cause of an injury giving rise to a cause of action if the licensee was not the one that last sold or transferred marijuana to a minor or visibly intoxicated individual. This presumption can be overcome by clear and convincing evidence.

A minor or alleged visibly intoxicated individual does not have a cause of action under the bill, and a person does not have a cause of action against a licensee for any loss or damage resulting from the injury or death of the minor or visibly intoxicated individual.

The individual may recover actual damages in a sum of not less than \$50 in each case in which the court or jury determines that intoxication was a proximate cause of the damage, injury, or death.

The bill requires a licensee authorized to sell or otherwise transfer marijuana under the act to maintain insurance coverage provided by an insurance company licensed and admitted in Michigan in an amount of at least \$50,000 for actions brought under the bill.

A civil action against a licensee is subject to the Revised Judicature Act except as otherwise provided under the bill.

Proposed MCL 333.27961a

FISCAL INFORMATION:

House Bill 4516 may result in increased state revenues stemming from violations of the Michigan Regulation and Taxation of Marijuana Act. Any increase in violations resulting from the language included in this bill (namely the prohibition on selling marijuana to an individual who is visibly intoxicated) could result in the state's receiving additional revenue from fines that would presumably be deposited to the general fund, in accordance with statute. Administrative rules pertaining to the Cannabis Regulatory Agency allow for action to be taken against licensees who violate Michigan Regulation and Taxation of Marijuana Act. Action that can be taken against licensees includes denial, revocation, or restriction of a marijuana license; removal of a licensee or an employee of the licensee from the marijuana business; and civil fines of up to \$10,000 or an amount equal to the daily gross receipts, whichever is greater, against a licensee for each violation of the act. Furthermore, the rules specify that civil fines may be assessed for each day a licensee is not in compliance with each violation of the act. The amount of revenue from fines would depend on the volume of violations, which is presently indeterminate.

The bill could also have a fiscal impact on local court systems, depending on how provisions of the bill affect court caseloads and related administrative costs.

ARGUMENTS:

For:

Intoxication as a result of marijuana ingestion is possible, as is intoxication from alcohol, controlled substances, or prescription medications. Regardless of the source of the intoxication, a person who is showing signs of overindulgence or alcohol or drug toxicity should not be sold marijuana. If a recreational marijuana licensee sells marijuana to a visibly intoxicated person or unlawfully sells marijuana to a minor, the licensee should be held responsible for any consequences arising from that transaction. The bill addresses the issue by mirroring the dram shop law, which allows a liquor licensee to be sued for selling alcohol to a minor or visibly intoxicated person who then causes injury or death to another. The bill provides the only remedy for an individual injured by a recreational marijuana licensee's, or the licensee's employee's, act of selling marijuana to a minor or visibly intoxicated person. The dram shop law has a substantial body of case law that can be drawn upon to inform lawsuits brought under the bill.

Against:

No arguments opposing the bill were raised in House committee testimony.

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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.