

## PROHIBIT CERTAIN MARIJUANA SALES AND CREATE CAUSE OF ACTION

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**House Bill 4516 (H-1) as reported from committee**  
**Sponsor: Rep. Jim Lilly**  
**Committee: Regulatory Reform**  
**Complete to 5-26-21**

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

**BRIEF SUMMARY:** House Bill 4516 would amend the Michigan Regulation and Taxation of Marihuana Act (MRTMA)<sup>1</sup> to prohibit the sale or transfer of marijuana to certain individuals by persons licensed under the act. The bill would create 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 was a proximate cause of the harm. Licensees would have to 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,"<sup>2</sup> 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. In addition, the law provides that a licensee has a right of indemnification, meaning that a third party with which the licensee contracts 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, Michigan has legalized, with some conditions, recreational marijuana for adults (persons 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, among other reactions. Mixing marijuana with alcohol is known to increase the intoxicating effects of alcohol, and interactions could 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 comparable 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.

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

<sup>2</sup> 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 would add a new section to the MRTMA to prohibit a licensee authorized to sell or otherwise transfer marijuana under the MRTMA or its rules from selling or transferring marijuana, directly or through a clerk, agent, or servant, to a ***minor*** or to an individual who, at the time of the sale or transfer, was ***visibly intoxicated***.

***Minor*** would mean an individual who is younger than 21 years old.

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

An individual who suffered damage or was personally injured by a minor or visibly intoxicated individual as a result of a violation of the above prohibition would have a right of action in his or her 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 would provide 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 would 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*** would mean 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 would have to be instituted within two years after the injury or death. A person would have to 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 would be grounds for dismissal unless the licensee could not 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 would be grounds for dismissal. If either party were to die, the right of action would survive to or against his or her personal representative.

***Written notice*** would mean 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 could not be commenced unless the minor or alleged visibly intoxicated individual was a named defendant and was retained in the action until the litigation was concluded or the licensee was dismissed with prejudice.

A licensee would have 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 would be 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 would be a complete defense to the action.

It would be presumed that a licensee was 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 could be overcome by clear and convincing evidence.

A minor or alleged visibly intoxicated individual would not have a cause of action under the bill, and a person would 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 could recover actual damages in a sum of not less than \$50 in each case in which the court or jury determined that intoxication was a proximate cause of the damage, injury, or death.

The bill would require 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 would be 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 MRTMA. 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 Marijuana Regulatory Agency allow for action to be taken against licensees who violate MRTMA. 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, if a person is showing signs of overindulgence or alcohol or drug toxicity, he or she 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 would address 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 would provide 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 could be drawn upon to inform lawsuits brought under HB 4516.

### ***Against:***

No arguments opposing the bill were raised in committee testimony.

## ***POSITIONS:***

The following entities indicated support for the bill:

- Michigan Cannabis Manufacturers Association (5-4-21)
- Great Lakes Cannabis Chamber (5-11-21)
- Michigan Cannabis Industry Association (5-4-21)
- Conifer Insurance (5-4-21)
- Michigan Association for Justice (5-4-21)

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