Legislative Analysis

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REVISE DEFINITIONS OF MARIJUANA-RELATED TERMS TO REGULATE DELTA-8 THC IN HEMP

House Bill 4517 as enacted
Public Act 56 of 2021
Sponsor: Rep. Yousef Rabhi

House Bill 4740 as enacted
Public Act 57 of 2021
Sponsor: Rep. Pat Outman

House Bill 4741 as enacted
Public Act 58 of 2021
Sponsor: Rep. TC Clements

House Bill 4742 as enacted
Public Act 59 of 2021
Sponsor: Rep. Tenisha Yancey

House Bill 4743 as enacted
Public Act 60 of 2021
Sponsor: Rep. Julie Calley

House Bill 4744 as enacted
Public Act 61 of 2021
Sponsor: Rep. Richard M. Steenland

House Bill 4745 as enacted
Public Act 62 of 2021
Sponsor: Rep. Jim Lilly

House Bill 4746 as enacted
Public Act 63 of 2021
Sponsor: Rep. Roger Hauck

House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

Complete to 2-15-23

SUMMARY:

House Bill 4517 amends the Michigan Regulation and Taxation of Marihuana Act (MRTMA), which regulates the recreational marijuana market, to define the term ***THC***, revise the definitions of ***industrial hemp*** and ***marihuana***, and allow or require the Cannabis Regulatory Agency (CRA)[1] to promulgate certain rules. House Bills 4740 to 4746 amend different acts to establish uniform definitions for terms relating to the medical and recreational marijuana industries by defining those terms as they are defined in the MRTMA. House Bill 4745 also amends the definitions of ***bona fide physician-patient relationship*** and ***written certification*** to remove a requirement that a "relevant medical evaluation" be in person.

House Bill 4517 amends the MRTMA to define the term ***THC***, revise the definitions of ***industrial hemp*** and ***marihuana***, and allow the CRA to exclude certain things from the definition of THC. The CRA also is required to establish, by rule, a limit on the total amount of THC that a product for human or animal consumption can contain.

[1] The Marijuana Regulatory Agency was renamed the Cannabis Regulatory Agency (CRA) by order of the governor under E.R.O. 2022-1.

The bill revises the definition of ***industrial hemp*** to mean any of the following:

- A plant, or a part of a plant, of the genus *Cannabis*, whether growing or not, with a THC concentration of 0.3% or less on a dry-weight basis.
- The seeds of a plant of the genus *Cannabis* with a THC concentration of 0.3% or less on a dry-weight basis.
- If it has a THC concentration of 0.3% or less on a dry-weight basis, a compound, manufacture, derivative, mixture, preparation, extract, cannabinoid, acid, salt, isomer, or salt of an isomer of a plant, or a part of a plant, of the genus *Cannabis*.
- A product to which one of the following applies:
  - If it is intended for human or animal consumption, the product, in the form in which it is intended for sale to a consumer, meets both of the following requirements:
    - Has a THC concentration of 0.3% or less on a dry-weight or per volume basis.
    - Contains a total amount of THC that is less than or equal to the limit established by the CRA under the bill. (The bill would require the CRA to establish, by rule, a limit on the total amount of THC that a product intended for human or animal consumption could contain and still fall under this provisions.)
  - If it is not intended for human or animal consumption, the product meets both of the following requirements:
    - Contains any of the substances described above.
    - Has a THC concentration of 0.3% or less on a dry-weight basis.

The bill revises the definition of ***marihuana*** to mean any of the following:

- A plant, or a part of a plant, of the genus *Cannabis*, whether growing or not.
- The seeds of a plant of the genus *Cannabis*.
- Marihuana concentrate (the resin extracted from any part of a plant of the genus *Cannabis*).
- A compound, manufacture, salt, derivative, mixture, extract, acid, isomer, salt of an isomer, or preparation of any of the above.
- A marihuana-infused product (a topical formulation, tincture, beverage, edible substance, or similar product that contains marihuana or other ingredients and is intended for human consumption).
- A product with a THC concentration of more than 0.3% on a dry-weight basis or per volume or weight in the form in which it is intended for sale to a consumer.
- A product that is intended for human or animal consumption and that contains, in the form in which it is intended for sale to a consumer, a total amount of THC that is greater than the limit established by the CRA by rule for a product that is intended for human or animal consumption and is defined as industrial hemp (see above).

Except for marihuana concentrate extracted from any of the following, ***marihuana*** does not include any of the following:

- The mature stalks, or fiber produced from the mature stalks, of a plant of the genus *Cannabis*.
- Oil or cake made from the seeds of a plant of the genus *Cannabis*.
- A compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks of a plant of the genus *Cannabis*.
- Industrial hemp.
- An ingredient combined with marihuana to prepare topical or oral administrations, food, drink, or other products.
- A drug for which an application filed in accordance with 21 USC 355 is approved by the federal Food and Drug Administration (FDA).[2]

The bill defines ***THC*** to mean any of the following:

- Tetrahydrocannabinolic acid.
- A tetrahydrocannabinol, regardless of whether it is artificially or naturally derived, unless excluded by the CRA as described below.
- A tetrahydrocannabinol that is a structural, optical, or geometric isomer of a tetrahydrocannabinol that is not excluded by CRA rule.

The CRA may promulgate rules to exclude a tetrahydrocannabinol from the definition of THC if the CRA determines, after making findings with respect to each of the following factors, that the tetrahydrocannabinol does not have a potential for abuse:

- The actual or relative potential for abuse of the tetrahydrocannabinol.
- The scientific evidence of the tetrahydrocannabinol's pharmacological effect, if known.
- The state of current scientific knowledge regarding the tetrahydrocannabinol.
- The history and current pattern of abuse of the tetrahydrocannabinol.
- The scope, duration, and significance of abuse of the tetrahydrocannabinol.
- The tetrahydrocannabinol's risk to the public health.
- The potential of the tetrahydrocannabinol to produce psychic or physiological dependence liability.

MCL 333.27953 and 333.27958

House Bill 4740 amends the Medical Marihuana Facilities Licensing Act to revise the definitions of ***industrial hemp***, ***marihuana***, and ***marihuana-infused product*** to mean those terms as defined in the MRTMA.

MCL 333.27102

[2] https://www.govinfo.gov/content/pkg/USCODE-2010-title21/pdf/USCODE-2010-title21-chap9-subchapV-partA-sec355.pdf

House Bill 4741 amends the Industrial Hemp Growers Act to revise the definitions of ***industrial hemp***, ***marihuana***, and ***THC*** to mean those terms as defined in the MRTMA.

MCL 333.29103

House Bill 4742 amends the Marihuana Tracking Act to revise the definition of ***marihuana*** to mean that term as defined in the MRTMA.

MCL 333.27902

House Bill 4743 amends the Public Health Code to delete the definitions of ***marihuana*** and ***industrial hemp*** and define those terms as defined in the MRTMA.

MCL 333.7106

House Bill 4744 amends the Industrial Hemp Research and Development Act to delete the definitions of ***industrial hemp*** and ***THC*** and define those terms as defined in the MRTMA

MCL 286.842

House Bill 4745 amends the Michigan Medical Marihuana Act to revise the definition of ***marihuana*** to mean that term as defined in the MRTMA. In addition, the definitions of the terms ***bona fide physician-patient relationship*** and ***written certification*** previously included completion of a "relevant, in-person, medical evaluation of the patient." The bill deletes the requirement that the relevant medical evaluation of the patient be in person.

MCL 333.26423

House Bill 4746 amends the Michigan Liquor Control Code to revise the definition of ***marihuana*** to mean that term as defined the MRTMA.

MCL 436.1914b

The bills took effect October 11, 2021.

BRIEF DISCUSSION:

Until December 20, 2018, when amendments included in the federal 2018 Farm Bill took effect, hemp was classified and prohibited under the federal Controlled Substances Act as a Schedule 1 drug. The decriminalization of hemp products for human and animal consumption opened up a large market for products containing cannabidiol (CBD), a nonpsychoactive cannabinoid in hemp. Many have used CBD products to relieve pain and provide other benefits without intoxicating effects. More recently, however, a wide range of consumable products containing Delta-8 THC distillate from hemp began appearing on store shelves. Delta-8 THC produces a high similar to (but weaker than) the Delta-9 THC in marijuana, but, unlike marijuana, hemp products were largely unregulated. The processes to grow, process, test, sell,

and track products for consumption did not have the oversight and protections as are built into law for marijuana products. This lack of regulation also meant that minors had easy access to a product that can produce a high.

The bill package addresses this concern by amending the Michigan Regulation and Taxation of Marihuana Act, which regulates the recreational marijuana market, to define the term ***THC*** and revise the definitions of ***industrial hemp*** and ***marihuana***. Those terms, as defined in the MRTMA, are then refenced in several other laws, such as those regulating the medical marijuana market and the liquor industry. Under the bills, a hemp product containing THC that can produce a high is treated as marijuana and is subject to the acts that regulate the medical and adult use marijuana markets. In addition, consumers will be aware if they are consuming an intoxicating product, products containing Delta-8 or any other THC cannabinoid that produces intoxication will undergo the same safety protocols as marijuana, and sales to minors of such products will be prohibited.

House Bill 4745 also amends the definitions of the terms ***bona fide physician-patient relationship*** and ***written certification*** to remove the requirement that a "relevant medical evaluation" be in person. Individuals seeking to register under the Michigan Medical Marihuana Act must first be evaluated by a physician with whom the individual has a bona fide physician-patient relationship. Deleting the requirement that the relevant medical evaluation by the physician be conducted in person acknowledges changes in medical practices, in part brought about by the COVID-19 pandemic, and that many medical appointments may be appropriate to be conducted remotely.

FISCAL IMPACT:

The bills would not have a significant fiscal impact on the state or local units of government.

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