



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 969 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Rick Jones
Committee: Regulatory Reform

Date Completed: 7-17-18

RATIONALE

Currently, nine states and the District of Columbia allow the recreational use of marihuana, although it remains illegal under Federal law. Some brewing companies and wineries have started producing alcohol-free marihuana-infused beers and wines, and plan to introduce them in states where recreational use is legal, such as Colorado and California. A proposed initiated law that likely will appear on the November general election ballot seeks to legalize the recreational use of marihuana in Michigan. In the likelihood that the measure is approved, it has been suggested that the State ban the use, possession, or sale of marihuana-infused beer, wine, and spirits.

CONTENT

The bill would amend the Michigan Liquor Control Code to prohibit the use, possession, and sale of marihuana-infused beer, wine, mixed wine drink, mixed spirit drink, or spirits.

Specifically, except as provided below, a person could not use or offer for use, possess, sell, or offer for sale marihuana-infused beer, wine, mixed wine drink, mixed spirit drink, or spirits. A person who violated this provision would be guilty of a misdemeanor punishable by imprisonment and/or a fine as specified in Section 909 of the Code (described below).

This prohibition would not apply to a hospital that operated primarily for the purpose of conducting scientific research, or to any of the following conducting bona fide research:

- A State institution.
- A private college or university.
- A pharmaceutical company or biotechnology company.

"Marihuana-infused beer, wine, mixed wine drink, mixed spirit drink, or spirits" would mean beer, wine, mixed wine drink, mixed spirit drink, or spirits that contain any amount of marihuana.

"Marihuana" would mean that term as defined in Section 7106 of the Public Health Code: all parts of the plant *Cannabis sativa* L., growing or not; the seeds of the plant; the resin extracted from any part of that plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. The term 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. It also does not include industrial hemp grown or cultivated, or both, for research purposes under the Industrial Hemp Research Act.

(Section 909 of the Liquor Control Code prescribes a range of penalties for specific violations of the Code. Except as otherwise provided, a licensee that violates the Code is guilty of a

misdemeanor punishable by up to six months' imprisonment and/or a maximum fine of \$500. A person, other than someone required to be licensed under the Code, who violates the Code is guilty of a misdemeanor, except as otherwise provided. Under the Revised Judicature Act, a misdemeanor for which no penalty is specified is punishable by imprisonment for up to 90 days and/or a maximum fine or \$500.)

MCL 436.1914b

BACKGROUND

Under Article 2, Section 9 of the Michigan Constitution, residents may propose, enact, and reject laws by initiative. Proponents must gather signatures of registered voters equal to at least 8.0% of the total vote cast for all candidates for Governor in the last general election in which a Governor was elected. Any law proposed by initiative must be enacted or rejected by the Legislature without change or amendment within 40 session days from the time the petition was received by the Legislature. If the proposed law is not enacted by the Legislature within the 40 days, it must be submitted to the people for approval or rejection in the next general election. An initiative petition is not subject to veto by the Governor, and can be amended or repealed only by a three-fourths vote in both the Senate and the House of Representatives.

The Coalition to Regulate Marijuana Like Alcohol is a committee formed to support a November 2018 ballot initiative that would legalize the possession and consumption of marihuana for Michigan residents 21 years of age or older, and establish a framework to regulate and tax marihuana similarly to alcohol, according to its website. On April 26, 2018, the Board of State Canvassers, which is responsible for canvassing and certifying statewide elections, determined that the initiative petition contained a sufficient number of valid signatures as required by the Michigan Constitution, and the Secretary of State transmitted the proposed initiated law to the Legislature for its consideration. The 40-day constitutional deadline passed without action from the Legislature.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Michigan Liquor Control Code prohibits a retail licensee, or its clerk, agent, or servant, from selling, furnishing, or giving alcohol to a visibly intoxicated person. This means that bartenders and bar owners are responsible for observing bar patrons and must stop serving them before the patron becomes visibly intoxicated. Serving marihuana-infused alcoholic beverages would create additional liability for bartenders and bar owners. Often, it takes a person longer to feel the effects after consuming edibles (food products infused with marihuana) than it does from smoking marihuana, for example. Because of this, bartenders, or a patron, might not be aware that the patron is intoxicated. Michigan is a zero-tolerance state for driving under the influence of marihuana, so bar patrons who consumed marihuana-infused beers would not be allowed to drive home from the bar. Intoxicated driving already is a public safety concern, and the sale of marihuana-infused beer, wine, or spirits would exacerbate the problem.

Opposing Argument

The bill creates a solution to a problem that does not exist as there is no commercial market for marihuana-infused beverages in the State at this time. The Medical Marihuana Facilities Licensing Act, which establishes a regulatory framework for medical use of marihuana in Michigan, prohibits a provisioning center (a commercial entity that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients) from allowing the sale, consumption, or use of alcohol products on its premises. Additionally, even if the ballot initiative were to pass, liquor establishments would not be permitted to sell marihuana-infused alcoholic beverages because the use or sale of marihuana is illegal under Federal law.

Opposing Argument

Michigan has growing craft beer and liquor industries, and the bill could prevent Michigan entrepreneurs from taking advantage of a profitable business opportunity. Hops (*Humulus lupulus*), which is an important component in the brewing of beer, and marihuana (*Cannabis sativa*) are members of the Cannabaceae family, and share similar aromatic and flavor characteristics. Scientists have found that *Cannabis* and *Humulus* plants both contain similar terpenes, chemical compounds produced by several types of flowers and trees, which are responsible for producing flavors and aromas in plants. Because of its similarity to hops, marihuana easily can be infused during the brewing process to produce marihuana-infused beers. However, by broadly prohibiting marihuana-infused beverages, the bill would prevent the manufacture of beverages infused with the nonpsychoactive chemicals found in marihuana, such as cannabidiol (CBD), cannabinol, and cannabigerol.

Some American brewing companies already are developing marihuana-infused beverages. For example, the creator of Blue Moon beer is planning to introduce three nonalcoholic marihuana-infused beers. These drinks, which initially will be available only in Colorado later this year, will be infused with marihuana formulas designed to mimic the effects of alcohol. Lagunitas, a California-based brewing company, is launching a sparkling beverage infused with tetrahydrocannabinol (THC), the main psychoactive chemical in marihuana, and CBD, which will be available at licensed marihuana dispensaries in California in late July. The beverages will not contain alcohol, but will contain THC, or a combination of THC and CBD. Additionally, the government of Ontario, Canada, recently awarded a grant to Province Brands, a Toronto-based premium adult beverage company, in partnership with Element GP, a cannabis oil producer, for the research and development of a nonalcoholic beer entirely brewed from marihuana, instead of barley or grains. With the State's substantial craft beer and liquor industries, similar innovations could be made here.

However, assuming the recreational use of marihuana was approved by ballot initiative, the bill would prevent Michigan breweries and wineries from producing alcoholic or nonalcoholic marihuana-infused beers and wines. If Michigan wishes to remain competitive in the beer, wine, and spirits industries, it should not hinder an opportunity for economic growth and investment.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would have no fiscal impact on the State and could have a negative fiscal impact on local government. Any increase in misdemeanor arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, and jails. Any associated increase in fine revenue would increase funding to public libraries.

Fiscal Analyst: Ryan Bergan

SASVA1718\969a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.