

Legislative Analysis



PROHIBIT CERTAIN MARIJUANA SALES AND CREATE CAUSE OF ACTION

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

House Bill 5621 as introduced
Sponsor: Rep. Jim Lilly

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

House Bill 5622 as introduced
Sponsor: Rep. Yousef Rabhi

Committee: Government Operations
Complete to 3-18-20

SUMMARY:

House Bills 5621 and 5622 would respectively amend the Michigan Regulation and Taxation of Marihuana Act¹ and the Medical Marihuana Facilities Licensing Act to prohibit the sale or transfer of marijuana to certain individuals by persons licensed under the acts. The bills 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 \$100,000 insurance coverage for such actions. The bills, although similar, are separately described below.

House Bill 5621 would prohibit a licensee authorized to sell or otherwise transfer marijuana under the Michigan Regulation and Taxation of Marihuana Act 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 only damages recoverable would be for wage loss, replacement services, or medical expenses actually incurred and not otherwise recoverable under an insurance policy or any other provision of law. The maximum recovery for damages would be \$100,000.

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

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

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 bill would provide the exclusive remedy for money damages against a licensee and the licensee's clerks, agents, and employees arising out of 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.

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 \$100,000 for actions brought under the bill.

Finally, the bill would specify that, as used in the act, the term “industrial hemp” includes *industrial hemp-infused products*.

Industrial hemp-infused product would mean a topical formulation, tincture, beverage, edible substance, or similar product containing industrial hemp and other ingredients and that is intended for human consumption. The delta-9 tetrahydrocannabinol concentration of an industrial hemp-infused product [which, as a form of industrial hemp, must be 0.3% or less] would have to be measured based on the volume or weight of the industrial hemp-infused product.

MCL 333.27953 and proposed MCL 333.27961a

House Bill 5622 would prohibit a licensee authorized to sell or otherwise transfer marijuana under the Medical Marijuana Facilities Licensing Act or its rules from selling or transferring marijuana, directly or through a clerk, agent, or servant, to a registered qualifying patient who, at the time of the sale or transfer, was *visibly intoxicated* (defined as above).

The act currently allows the Marijuana Regulatory Agency to suspend, revoke, or restrict a license and require the removal of a licensee or an employee of a licensee for a violation of the act, and the agency can also impose civil fines of up to \$5,000 against an individual and up to \$10,000 or an amount equal to the daily gross receipts, whichever is greater, against a licensee for each violation. These penalties would apply to a violation of the above prohibition.

Further, under the bill, an individual who suffered damage or was personally injured by a registered qualifying patient 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 only damages recoverable would be for wage loss, replacement services, or medical expenses actually incurred and not otherwise recoverable under an insurance policy or any other provision of law. The maximum recovery for damages would be \$100,000.

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 be defined as above, except that it would include an identification of the registered qualifying patient by name and address (rather than of the minor or alleged visibly intoxicated individual, as under HB 5621).

An action could not be commenced unless the registered qualifying patient 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 registered qualifying patient for all damages awarded against the licensee. Additionally, all defenses of the registered qualifying patient would be available to the licensee.

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 registered qualifying patient. This presumption could be overcome by clear and convincing evidence.

A registered qualifying patient 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 sustained resulting from the injury or death of the registered qualifying patient.

The bill would provide the exclusive remedy for money damages against a licensee and the licensee's clerks, agents, and employees arising out of 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* (defined as above).

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 \$100,000 for actions brought under the bill.

Proposed MCL 333.27504a

FISCAL IMPACT:

House Bills 5621 and 5622 would have an indeterminate fiscal impact on the state and on local units of government. Under provisions of HB 5622, if there are any violations and subsequent civil fines imposed, the civil fine revenue would be deposited into the Medical Marijuana Excise Fund, as required by section 602 of the Medical Marijuana Facilities Licensing Act. The bills could have a fiscal impact on local court systems depending on how provisions of the bills affect court caseloads and related administrative costs.

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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.