

Legislative Analysis



PROHIBIT CERTAIN MARIJUANA SALES AND CREATE CAUSE OF ACTION

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

House Bill 4516 (proposed substitute H-1)
Sponsor: Rep. Jim Lilly

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

House Bill 4517 (proposed substitute H-2)
Sponsor: Rep. Yousef Rabhi

Committee: Regulatory Reform
Complete to 5-4-21

SUMMARY:

House Bill 4516 would add a new section to the Michigan Regulation and Taxation of Marihuana Act (MRTMA)¹ 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.

House Bill 4517 would amend the MRTMA to define the term *THC* and revise the definitions of *industrial hemp* and *marihuana*.

House Bill 4516 would 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.

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

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

House Bill 4517 would also amend the MRTMA. The bill would revise the definitions of certain terms, add a definition for **THC**, and allow the Marijuana Regulatory Agency (MRA) to exclude certain things from the definition of **THC**.

The definition of **industrial hemp** would be revised 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 or per volume or weight.
- A product with both of the following per package in the form in which it is intended for sale to a consumer:
 - A THC concentration of 0.3% or less on a dry-weight basis or per volume or weight.
 - Less than one milligram of THC.

Marihuana would be revised 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, or preparation of any of the above.
- A marihuana-infused product.
- A product with a THC concentration of more than 0.3% on a dry-weight basis or per volume or weight per package in the form in which it is intended for sale to a consumer.
- A product with one milligram or more of THC per package in the form in which it is intended for sale to a consumer.

Except for marihuana concentrate extracted from any of the following, **marihuana** would 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).

The bill would also define **THC** to mean any of the following:

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

The MRA could promulgate rules to exclude a tetrahydrocannabinol from the definition of THC if the MRA 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

FISCAL IMPACT:

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 MRA 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.

House Bill 4517 would not have a significant fiscal impact on the state or local units of government.

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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.