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House Bill 4516 (Substitute H-1 as passed by the House)
Sponsor: Representative Jim Lilly
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

Date Completed: 6-8-21

CONTENT

The bill would amend the Michigan Regulation and Taxation of Marihuana Act (MRTMA) to:

- Prohibit a licensee authorized to sell or transfer marihuana in Michigan from selling or transferring to an individual younger than 21 years of age or to an individual who was visibly intoxicated.**
- Specify that an individual who suffered damage or was personally injured by a minor or visibly intoxicated person as a result of a violation of the bill's prohibition would have a right of action against the licensee that sold the marihuana.**
- Require an action against a licensee under the bill to be commenced within two years after the injury or death and require a person to give written notice to all defendants within 120 days after entering an attorney-client relationship for the purposes of pursuing a claim for damages.**
- Require a licensee to maintain insurance coverage of at least \$50,000 for an action authorized under the bill.**
- Define relevant terms, including "adulterated marihuana", "minor", "visibly intoxicated individual", and "written notice."**

Prohibition

The bill would prohibit a licensee authorized under the MRTMA to sell or otherwise transfer marihuana from directly, or by clerk, agent, or servant, selling or otherwise transferring marihuana 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 of age; "visibly intoxicated" would mean displaying obvious, objective, and visible evidence of intoxication that would be apparent to an ordinary observer.

Right of Action Against Licensee

Except as otherwise provided, an individual who suffered damage or was personally injured by a minor or visibly intoxicated person as a result of a violation of the bill's prohibition, if the violation were a proximate cause of the damage or personal injury or death, would have a right of action in his or her name against the licensee that sold or transferred the marihuana. An action against the licensee 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 for the purposes of pursuing a claim for damages.

"Written notice" would mean a communication in writing that does all of the following: 1) identifies the minor or alleged visibly intoxicated person by name and address, and 2) states the date of the alleged violation, the name and address of the injured or killed individual, the location and circumstances of the accident or event that caused injury or death, and the date of retention of the person or the law firm giving the notice.

Failure to notify the licensee during the 120-day time period would be grounds for dismissal of the claim unless the licensee could not be identified within that time period with reasonable diligence. If the licensee were identified after that time period, failure to give written notice within 120 days thereafter would be grounds for dismissal. If either party died, the right of action would survive to or against his or her personal representative.

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 by final action 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.

All defenses of the minor or alleged visibly intoxicated individual would be available to the licensee. In an action alleging that the licensee provided a minor with marihuana, proof that the licensee demanded and was shown a government-issued photographic identification appearing to be genuine and showed the minor to be 21 year of age or older would be a complete defense of the action.

It would be presumed that a licensee other than the licensee that last sold or transferred marihuana to a minor or visibly intoxicated person was not a proximate cause of an injury that gave rise to a cause of action. This presumption could be overcome by clear and convincing evidence.

A minor or alleged visibly intoxicated individual would not have a cause of action. 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 minor or visibly intoxicated person.

An individual who suffered damage or who was personally injured by a minor or visibly intoxicated person as a result of the licensee's providing him or her with marihuana would have the right to 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.

Insurance Coverage Requirements

A licensee authorized to sell or otherwise transfer marihuana would be required to maintain insurance coverage provided by a licensed and admitted insurance company in Michigan in a minimum amount of \$50,000 for an action brought against it as described above.

Remedies & Other Provisions

The remedy described above would be the exclusive remedy for money damages against a licensee and the licensee's clerks, agents, and employees arising out of a situation in which a licensee provides marihuana to a minor or visibly intoxicated individual. This provision would not apply to a remedy available under law to lawful users of marihuana for liability resulting from the manufacture, distribution, transportation, or sale of adulterated marihuana. "Adulterated marihuana" would mean a product sold as marihuana that contains any

unintended substance or chemical or biological matter other than marihuana that causes adverse reaction after ingestion or consumption.

Except as otherwise provided, a civil action against a licensee would be subject to the Revised Judicature Act.

Proposed MCL 333.27961a

Legislative Analyst: Christian Schmidt

FISCAL IMPACT

The bill likely would have a minor fiscal impact on State and local units of government. Violations could result in increased revenue to the State. However, it is unknown how many violations would occur and what the result would be for those penalties. The administrative costs associated with receiving complaints, investigating licensees, and completing the disciplinary action process likely would be covered by existing appropriations.

Local court systems could incur minor administrative costs associated with relevant cases. However, it is unlikely that the volume of cases associated with the bill's provisions would be of a magnitude large enough to create a continuous administrative burden on local units of government.

Fiscal Analyst: Elizabeth Raczkowski

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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.