

SUBSTITUTE FOR
HOUSE BILL NO. 4516

A bill to amend 2018 IL 1, entitled
"Michigan Regulation and Taxation of Marihuana Act,"
(MCL 333.27951 to 333.27967) by adding section 11a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11a. (1) A licensee authorized to sell or otherwise
2 transfer marihuana under this act or a rule promulgated under this
3 act shall not directly, or by a clerk, agent, or servant, sell or
4 otherwise transfer marihuana to a minor or to an individual who, at
5 the time of the sale or transfer, is visibly intoxicated.

6 (2) Except as otherwise provided in this section, an
7 individual who suffers damage or is personally injured by a minor
8 or visibly intoxicated person as a result of a violation of
9 subsection (1), if the violation is a proximate cause of the damage

1 or personal injury or death, shall have a right of action in his or
2 her name against the licensee that sold or transferred the
3 marihuana.

4 (3) An action under this section must be instituted within 2
5 years after the injury or death. A person shall give written notice
6 to all defendants within 120 days after entering an attorney-client
7 relationship for the purposes of pursuing a claim for damages under
8 this section. Failure to give written notice to the licensee within
9 that time period is grounds for dismissal of the claim unless the
10 licensee could not be identified within that time period with
11 reasonable diligence. If the licensee is identified after that time
12 period, failure to give written notice within 120 days thereafter
13 is grounds for dismissal. In the event of the death of either
14 party, the right of action under this section survives to or
15 against his or her personal representative.

16 (4) An action under this section shall not be commenced unless
17 the minor or alleged visibly intoxicated individual is a named
18 defendant and is retained in the action until the litigation is
19 concluded by final action or the licensee is dismissed with
20 prejudice.

21 (5) A licensee described in subsection (2) has the right to
22 full indemnification from the minor or alleged visibly intoxicated
23 individual for all damages awarded against the licensee.

24 (6) All defenses of the minor or alleged visibly intoxicated
25 individual are available to the licensee. In an action alleging a
26 violation of subsection (1) involving a minor, proof that the
27 licensee demanded and was shown a government-issued photographic
28 identification appearing to be genuine and showing the minor to be
29 21 years of age or older, is a complete defense to the action.

1 (7) It is presumed that a licensee, other than the licensee
2 that last sold or transferred marihuana to a minor or visibly
3 intoxicated person, is not a proximate cause of an injury that gave
4 rise to a cause of action under subsection (2). This presumption
5 may be overcome by clear and convincing evidence.

6 (8) A minor or alleged visibly intoxicated individual does not
7 have a cause of action under this section. A person does not have a
8 cause of action against a licensee for any loss or damage sustained
9 resulting from the injury or death of the minor or visibly
10 intoxicated person.

11 (9) An individual who suffers damage or who is personally
12 injured by a minor or visibly intoxicated person as a result of a
13 violation of subsection (1) has the right to recover actual damages
14 in a sum of not less than \$50.00 in each case in which the court or
15 jury determines that intoxication was a proximate cause of the
16 damage, injury, or death.

17 (10) A licensee authorized to sell or otherwise transfer
18 marihuana under this act or a rule promulgated under this act must
19 maintain insurance coverage provided by a licensed and admitted
20 insurance company in Michigan in a minimum amount of \$50,000.00 for
21 actions brought under subsection (2).

22 (11) This section provides the exclusive remedy for money
23 damages against a licensee and the licensee's clerks, agents, and
24 employees arising out of a violation of subsection (1). This
25 subsection does not apply to a remedy available under law to lawful
26 users of marihuana for liability resulting from the manufacture,
27 distribution, transportation, or sale of adulterated marihuana.

28 (12) Except as otherwise provided in this section, a civil
29 action against a licensee is subject to the revised judicature act

1 of 1961, 1961 PA 236, MCL 600.101 to 600.9947.

2 (13) As used in this section:

3 (a) "Adulterated marihuana" means a product sold as marihuana
4 that contains any unintended substance or chemical or biological
5 matter other than marihuana that causes adverse reaction after
6 ingestion or consumption.

7 (b) "Minor" means an individual who is younger than 21 years
8 of age.

9 (c) "Visibly intoxicated" means displaying obvious, objective,
10 and visible evidence of intoxication that would be apparent to an
11 ordinary observer.

12 (d) "Written notice" means a communication in writing that
13 does all of the following:

14 (i) Identifies the minor or alleged visibly intoxicated person
15 by name and address.

16 (ii) States all of the following:

17 (A) The date of the alleged violation of subsection (1).

18 (B) The name and address of the injured or killed individual.

19 (C) The location and circumstances of the accident or event
20 that caused injury or death.

21 (D) The date of retention of the person or law firm giving the
22 notice.

23 Enacting section 1. This amendatory act takes effect 90 days
24 after the date it is enacted into law.

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