

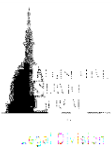
HOUSE BILL NO. 5622

March 12, 2020, Introduced by Reps. Rabhi and Lilly and referred to the Committee on Government Operations.

A bill to amend 2016 PA 281, entitled
"Medical marihuana facilities licensing act,"
(MCL 333.27101 to 333.27801) by adding section 504a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 **Sec. 504a. (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 registered qualifying patient**



1 who, at the time of the sale or transfer, is visibly intoxicated.

2 (2) Except as otherwise provided in this section, an
3 individual who suffers damage or is personally injured by a
4 registered qualifying patient as a result of a violation of
5 subsection (1), if the violation is a proximate cause of the damage
6 or personal injury or death, shall have a right of action in his or
7 her name against the licensee that sold or transferred the
8 marihuana.

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

21 (4) An action under this section shall not be commenced unless
22 the registered qualifying patient is a named defendant and is
23 retained in the action until the litigation is concluded by final
24 action or the licensee is dismissed with prejudice.

25 (5) A licensee described in subsection (2) has the right to
26 full indemnification from the registered qualifying patient for all
27 damages awarded against the licensee.

28 (6) All defenses of the registered qualifying patient are
29 available to the licensee.



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

6 (8) A registered qualifying patient described in subsection
7 (1) does not have a cause of action under this section. A person
8 does not have a cause of action against a licensee for any loss or
9 damage sustained resulting from the injury or death of the
10 registered qualifying patient.

11 (9) The only damages recoverable under this section are for
12 wage loss, replacement services, or medical expenses actually
13 incurred and not otherwise recoverable by an injured person under
14 any other provision of law or insurance policy. The maximum
15 recovery for damages under this section is \$100,000.00.

16 (10) A licensee authorized to sell or otherwise transfer
17 marihuana under this act or a rule promulgated under this act must
18 maintain insurance coverage provided by an insurance company
19 licensed and admitted in this state in a minimum amount of
20 \$100,000.00 for actions brought under subsection (2).

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

27 (12) Except as otherwise provided in this section, a civil
28 action against a licensee is subject to the revised judicature act
29 of 1961, 1961 PA 236, MCL 600.101 to 600.9947.



1 (13) As used in this section:

2 (a) "Adulterated marihuana" means that term as defined in
3 section 408.

4 (b) "Visibly intoxicated" means displaying obvious, objective,
5 and visible evidence of intoxication that would be apparent to an
6 ordinary observer.

7 (c) "Written notice" means a communication in writing that
8 does all of the following:

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

11 (ii) States all of the following:

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

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

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

16 (D) The date of retention of the person or law firm giving the
17 notice.

