

HOUSE BILL NO. 5621

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

A bill to amend 2018 IL 1, entitled
"Michigan Regulation and Taxation of Marihuana Act,"
by amending section 3 (MCL 333.27953) and by adding section 11a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 3. As used in this act:
- 2 (a) "Cultivate" means to propagate, breed, grow, harvest, dry,
- 3 cure, or separate parts of the marihuana plant by manual or
- 4 mechanical means.



(b) "Department" means the department of licensing and regulatory affairs.

(c) "Industrial hemp" means a plant of the genus ~~cannabis~~ **Cannabis** and any part of that plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration ~~that does not exceed of~~ 0.3% **or less** on a dry-weight basis, ~~or per volume or weight of marihuana-infused product, or~~ **for which** the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant, ~~of the genus cannabis~~ regardless of moisture content, **is 0.3% or less. Industrial hemp includes industrial hemp-infused products.**

(d) "Industrial hemp-infused product" means 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 must be measured based on the volume or weight of the industrial hemp-infused product.

(e) ~~(d)~~ "Licensee" means a person holding a state license.

(f) ~~(e)~~ "Marihuana" means all parts of the plant of the genus ~~cannabis~~, **Cannabis**, growing or not; the seeds of the plant; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin. ~~, including~~ **Marihuana includes** marihuana concentrate and marihuana-infused products. ~~For purposes of this act, marihuana~~ **Marihuana** does not include **any of the following:**

(i) ~~(1) the~~ **The** mature stalks of the plant, fiber produced from the **mature** stalks, oil or cake made from the seeds of the plant, **or** any other compound, manufacture, salt, derivative, mixture, or



1 preparation of the mature stalks. ~~except the resin extracted from~~
 2 ~~those stalks, fiber, oil, or cake, or any sterilized seed of the~~
 3 ~~plant that is incapable of germination;~~

4 (ii) ~~(2) industrial~~ **Industrial** hemp. ~~or~~

5 (iii) ~~(3) any~~ **Any** other ingredient combined with marihuana to
 6 prepare topical or oral administrations, food, drink, or other
 7 products.

8 (g) ~~(f)~~ "Marihuana accessories" means any equipment, product,
 9 material, or combination of equipment, products, or materials,
 10 ~~which~~ **that** is specifically designed for use in planting,
 11 propagating, cultivating, growing, harvesting, manufacturing,
 12 compounding, converting, producing, processing, preparing, testing,
 13 analyzing, packaging, repackaging, storing, containing, ingesting,
 14 inhaling, or otherwise introducing marihuana into the human body.

15 (h) ~~(g)~~ "Marihuana concentrate" means the resin extracted from
 16 any part of the plant of the genus ~~cannabis~~ **Cannabis**.

17 (i) ~~(h)~~ "Marihuana establishment" means a marihuana grower,
 18 marihuana safety compliance facility, marihuana processor,
 19 marihuana microbusiness, marihuana retailer, marihuana secure
 20 transporter, or any other type of marihuana-related business
 21 licensed by the ~~department~~ **marijuana regulatory agency**.

22 (j) ~~(i)~~ "Marihuana grower" means a person licensed to
 23 cultivate marihuana and sell or otherwise transfer marihuana to
 24 marihuana establishments.

25 (k) ~~(j)~~ "Marihuana-infused product" means a topical
 26 formulation, tincture, beverage, edible substance, or similar
 27 product containing marihuana and other ingredients and that is
 28 intended for human consumption.

29 (l) ~~(k)~~ "Marihuana microbusiness" means a person licensed to



1 cultivate not more than 150 marihuana plants; process and package
 2 marihuana; and sell or otherwise transfer marihuana to individuals
 3 who are 21 years of age or older or to a marihuana safety
 4 compliance facility, but not to other marihuana establishments.

5 (m) ~~(l)~~—"Marihuana processor" means a person licensed to obtain
 6 marihuana from marihuana establishments; process and package
 7 marihuana; and sell or otherwise transfer marihuana to marihuana
 8 establishments.

9 (n) ~~(m)~~—"Marihuana retailer" means a person licensed to obtain
 10 marihuana from marihuana establishments and to sell or otherwise
 11 transfer marihuana to marihuana establishments and to individuals
 12 who are 21 years of age or older.

13 (o) ~~(n)~~—"Marihuana secure transporter" means a person licensed
 14 to obtain marihuana from marihuana establishments in order to
 15 transport marihuana to marihuana establishments.

16 (p) ~~(o)~~—"Marihuana safety compliance facility" means a person
 17 licensed to test marihuana, including certification for potency and
 18 the presence of contaminants.

19 (q) **"Marijuana regulatory agency" means the marijuana**
 20 **regulatory agency created under Executive Reorganization Order No.**
 21 **2019-2, MCL 333.27001.**

22 (r) ~~(p)~~—"Municipal license" means a license issued by a
 23 municipality pursuant to section 16 of this act that allows a
 24 person to operate a marihuana establishment in that municipality.

25 (s) ~~(q)~~—"Municipality" means a city, village, or township.

26 (t) ~~(r)~~—"Person" means an individual, corporation, limited
 27 liability company, partnership of any type, trust, or other legal
 28 entity.

29 (u) ~~(s)~~—"Process" or "Processing" means to separate or



1 otherwise prepare parts of the marihuana plant and to compound,
2 blend, extract, infuse, or otherwise make or prepare marihuana
3 concentrate or marihuana-infused products.

4 (v) ~~(t)~~—"State license" means a license issued by the
5 ~~department~~ **marijuana regulatory agency** that allows a person to
6 operate a marihuana establishment.

7 (w) ~~(u)~~—"Unreasonably impracticable" means that the measures
8 necessary to comply with the rules or ordinances adopted pursuant
9 to this act subject licensees to unreasonable risk or require such
10 a high investment of money, time, or any other resource or asset
11 that a reasonably prudent businessperson would not operate the
12 marihuana establishment.

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

18 (2) Except as otherwise provided in this section, an
19 individual who suffers damage or is personally injured by a minor
20 or visibly intoxicated person as a result of a violation of
21 subsection (1), if the violation is a proximate cause of the damage
22 or personal injury or death, shall have a right of action in his or
23 her name against the licensee that sold or transferred the
24 marihuana.

25 (3) An action under this section must be instituted within 2
26 years after the injury or death. A person shall give written notice
27 to all defendants within 120 days after entering an attorney-client
28 relationship for the purposes of pursuing a claim for damages under
29 this section. Failure to give written notice to the licensee within



1 that time period is grounds for dismissal of the claim unless the
2 licensee could not be identified within that time period with
3 reasonable diligence. If the licensee is identified after that time
4 period, failure to give written notice within 120 days thereafter
5 is grounds for dismissal. In the event of the death of either
6 party, the right of action under this section survives to or
7 against his or her personal representative.

8 (4) An action under this section shall not be commenced unless
9 the minor or alleged visibly intoxicated individual is a named
10 defendant and is retained in the action until the litigation is
11 concluded by final action or the licensee is dismissed with
12 prejudice.

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

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

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

27 (8) A minor or alleged visibly intoxicated individual
28 described in subsection (1) does not have a cause of action under
29 this section. A person does not have a cause of action against a



1 licensee for any loss or damage sustained resulting from the injury
2 or death of the minor or visibly intoxicated person.

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

8 (10) A licensee authorized to sell or otherwise transfer
9 marihuana under this act or a rule promulgated under this act must
10 maintain insurance coverage provided by an insurance company
11 licensed and admitted in this state in a minimum amount of
12 \$100,000.00 for actions brought under subsection (2).

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

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

22 (13) As used in this section:

23 (a) "Adulterated marihuana" means a product sold as marihuana
24 that contains any unintended substance or chemical or biological
25 matter other than marihuana that causes adverse reaction after
26 ingestion or consumption.

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

29 (c) "Visibly intoxicated" means displaying obvious, objective,



1 and visible evidence of intoxication that would be apparent to an
2 ordinary observer.

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

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

7 (ii) States all of the following:

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

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

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

12 (D) The date of retention of the person or law firm giving the
13 notice.

