

MICHIGAN REGULATION AND TAXATION OF MARIHUANA ACT (EXCERPT)
Initiated Law 1 of 2018

***** 333.27961a.added THIS ADDED SECTION IS EFFECTIVE OCTOBER 11, 2021 *****

333.27961a.added Direct sale or transfer of marihuana to minor or intoxicated individual; prohibition; right of action; indemnification; defenses; rebuttable presumption; damages; insurance coverage required; civil action; definitions.

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

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

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

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

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

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

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

(8) A minor or alleged visibly intoxicated individual does not have a cause of action under this section. A person does 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.

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

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

(11) This section provides the exclusive remedy for money damages against a licensee and the licensee's clerks, agents, and employees arising out of a violation of subsection (1). This subsection does 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.

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

(13) As used in this section:

(a) "Adulterated marihuana" means 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.

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

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

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

- (i) Identifies the minor or alleged visibly intoxicated person by name and address.
- (ii) States all of the following:
 - (A) The date of the alleged violation of subsection (1).
 - (B) The name and address of the injured or killed individual.
 - (C) The location and circumstances of the accident or event that caused injury or death.
 - (D) The date of retention of the person or law firm giving the notice.

History: Add. 2021, Act 55, Eff. Oct. 11, 2021.