

Legislative Analysis



HEALTH WARNINGS ON MARIJUANA PRODUCTS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4126 as enacted
Public Act 31 of 2020
Sponsor: Rep. Thomas A. Albert

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4127 as enacted
Public Act 32 of 2020
Sponsor: Rep. Daire Rendon

House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 4-13-20

BRIEF SUMMARY: House Bills 4126 and 4127 require all marijuana sold through marijuana retailers and microbusinesses (recreational marijuana) and provisioning centers (medical marijuana) to include a health warning for women who are pregnant, planning to become pregnant, or breastfeeding, as well as requiring an informational pamphlet related to marijuana use by minors to be provided at the point of sale.

FISCAL IMPACT: The bills would not have a significant fiscal impact on any unit of state or local government.

THE APPARENT PROBLEM:

Medical marijuana and recreational marijuana (for adults) may now be legal to purchase and consume in Michigan, but, due in part to a lack of research, the short- and long-term effects of marijuana on a fetus are not definitively known. However, despite the small number of studies on the safety of marijuana during pregnancy and when breastfeeding, there is a growing body of data that show some disturbing effects, such as lower birth rates for those using marijuana at least weekly during pregnancy. The most worrisome, though, is the potential for harm to the developing brain. According to a 2017 report issued by the American College of Obstetricians and Gynecologists (ACOG), some studies show that children exposed to marijuana before birth had “lower scores on tests of visual problem solving, visual-motor coordination, and visual analysis” than children who were not so exposed.¹ In addition, according to the report, exposure to marijuana before birth is also “associated with decreased attention span and behavioral problems.”

In light of evidence that the cannabinoids in marijuana can affect the brain’s development, ACOG recommends that women who are pregnant, contemplating pregnancy, or breastfeeding should be counseled against using marijuana in any form.

¹ ACOG Committee on Obstetric Practice, “Committee Opinion No. 722: Marijuana Use During Pregnancy and Lactation,” *Obstetrics & Gynecology* 130, no. 4 (October 2017): e205-9. Available at: <https://www.acog.org/-/media/Committee-Opinions/Committee-on-Obstetric-Practice/co722.pdf>

Yet, according to the ACOG report, between 34% and 60% of marijuana users continue to use the substance during pregnancy. In an effort to educate the public about the potential for harm, legislation was offered to require marijuana products sold in Michigan to contain a label warning of the health risks to pregnant or nursing women, and women who are planning on becoming pregnant.

THE CONTENT OF THE BILLS:

House Bills 4126 and 4127 amend the Michigan Regulation and Taxation of Marijuana Act and the Medical Marijuana Facilities Licensing Act, respectively. The bills require the Marijuana Regulatory Agency to promulgate a rule requiring that all marijuana sold through marijuana retailers and microbusinesses (recreational marijuana) or through provisioning centers (medical marijuana) include on the exterior of the marijuana packaging a warning—printed in clearly legible type and surrounded by a continuous heavy line—as follows:

WARNING: USE BY PREGNANT OR BREASTFEEDING WOMEN, OR BY WOMEN PLANNING TO BECOME PREGNANT, MAY RESULT IN FETAL INJURY, PRETERM BIRTH, LOW BIRTH WEIGHT, OR DEVELOPMENTAL PROBLEMS FOR THE CHILD.

The bills also require the Marijuana Regulatory Agency to promulgate a rule regarding informational pamphlet standards for marijuana retailers and microbusinesses and for provisioning centers, respectively. At a minimum, a rule must include a requirement that an informational pamphlet be made available to every customer or patron, as applicable, at the time of sale. The pamphlet must measure 3.5 inches by 5 inches, include safety information related to marijuana use by minors, and include the Poison Control Hotline number.

Marijuana Regulatory Agency

Executive Reorganization Order (ERO) 2019-2 created the Marijuana Regulatory Agency (MRA) within the Department of Licensing and Regulatory Affairs (LARA).² Previously, LARA was tasked in statute with implementing and administering the Michigan Regulation and Taxation of Marijuana Act (recreational marijuana). ERO 2019-2 transferred all of LARA's authorities, powers, duties, functions, and responsibilities under that act, including those of its Bureau of Marijuana Regulation, to the MRA and abolished the Bureau. Similarly, LARA, in consultation with the Medical Marijuana Licensing Board, was previously responsible for promulgating rules to implement and administer the Medical Marijuana Facilities Licensing Act (medical marijuana). ERO 2019-2 abolished the Medical Marijuana Licensing Board and transferred all of its authorities, powers, duties, functions, and responsibilities to the MRA.

House Bill 4126 reflects the changes made by ERO 2019-2 by specifying that the MRA must promulgate rules to implement and administer the Michigan Regulation and Taxation of Marijuana Act and by striking a reference to LARA as having that

² Compiled as MCL 333.27001: <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-333-27001.pdf>

responsibility. The bill also replaces references to the “department” with references to the MRA.

House Bill 4127 removes the requirement that LARA, in consultation with the Medical Marihuana Licensing Board, must promulgate rules and emergency rules as necessary to implement, administer, and enforce the Medical Marihuana Facilities Licensing Act and instead specifies that the MRA is to fulfill this requirement.

Each bill defines “Marijuana Regulatory Agency” as the marijuana regulatory agency created under ERO 2019-2.

The bills took effect February 20, 2020.

MCL 333.27958 (HB 4126)

MCL 333.27206 (HB 4127)

BACKGROUND:

The bills are similar to House Bill 5222 of the 2017-18 legislative session. That bill was passed by the House of Representatives in December 2017.

ARGUMENTS:

For:

Conclusive evidence on the short- and long-term effects on a child from maternal use of marijuana during pregnancy and while breastfeeding is not yet available. That is due in large part because of the difficulty of designing studies for a substance that contains about 400 different chemicals; that may be tainted with mold, fungus, or pesticides; that may be ingested along with other drugs (prescription and/or illegal); and that remains illegal under federal and many state laws.

However, several large-scale longitudinal studies that tracked how maternal use of marijuana affected the child’s development consistently reveal that the children of users show more impulsivity and hyperactivity, lower IQ scores, and more memory problems, and exhibit more behavioral issues, than children of nonusers.³ Such mental health issues persisted into adolescence, according to a Harvard Science in the News (SITN) article, and significantly increased the likelihood of attention problems and depression and the display of delinquent behavior.

ACOG and the Centers for Disease Control and Prevention (CDC) say that the only way to limit potential risk to the fetus or infant is to reduce or limit marijuana use or exposure. Yet, according to the Harvard SITN article, 70% of women in the U.S. believe that marijuana use during pregnancy carries little to no risk to a child. The bills, which do not

³ “How Marijuana Exposure Affects Developing Babies’ Brains,” Harvard University Graduate School of Arts and Sciences, Science in the News (SITN), January 16, 2019. Available at: <http://sitn.hms.harvard.edu/flash/2019/marijuana-exposure-affects-developing-babies-brains/>

contain any penalties or sanctions, require a health warning label on all products sold by provisioning centers and marijuana retailers and an informative pamphlet to be made available to all purchasers. It is hoped that the warning will encourage women to talk to their doctors and to educate themselves about the risks and dangers of marijuana exposure to their unborn or infant children.

Response:

Not all agree that the bills are needed. Some feel that the sheer number of products required to post warnings of some kind would water down the overall effectiveness of a warning label by making the warnings so common that they are largely ignored. Further, some of the medical and recreational marijuana products manufactured and sold in Michigan are in small packages. Other information, such as date of harvest, the concentration of tetrahydrocannabinol (THC) or cannabidiol (CBD), and the name of the safety compliance facility that performed any test, among other things, is already required to be attached to each product. Each product also must be stamped with the universal symbol designating it as a marijuana product and contain warnings to keep it out of the reach of children and not to drive under its influence. With such a visually cluttered package, the bills' warning may go unnoticed and not have the protective effect intended.

Rebuttal:

At a minimum, the bills are proactive in alerting pregnant and breastfeeding women, and their friends and family who may use medical or recreational marijuana, of the risks and potential harm. Once the authority to have a warning is in place, labels can always be redesigned for greater clarity and effectiveness. Studies on the effectiveness of warning labels on cigarettes, for example, have revealed an impact in decreasing use of tobacco products—and especially so when the warning included graphic depictions rather than just an all-text warning. Even if only one child were spared from pre- or post-natal exposure to marijuana, it could be argued that the warning label was worth it. More likely, the labeling and informational pamphlet required by the bills will reach some women who otherwise would never know that, contrary to many online posts, marijuana has not been proven safe during pregnancy or while breastfeeding.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.