

Legislative Analysis



VITAMIN E ACETATE: PROHIBIT IN MARIJUANA AND VAPING PRODUCTS

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<http://www.house.mi.gov/hfa>

House Bill 5159 (H-2) as reported from committee
Sponsor: Rep. Abdullah Hammoud

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

House Bill 5160 (H-1) as reported
Sponsor: Rep. Frank Liberati

House Bill 5161 (H-1) as reported
Sponsor: Rep. Joseph N. Bellino, Jr.

1st Committee: Regulatory Reform
2nd Committee: Judiciary
Complete to 1-30-20

BRIEF SUMMARY: House Bills 5159, 5160, and 5161 would respectively amend the Medical Marihuana Facilities Licensing Act, amend the Michigan Regulation and Taxation of Marihuana Act, and create a new act, to prohibit the sale of marijuana products, vapor products, or alternative nicotine products that contain vitamin E acetate and to establish a criminal fine for a violation.

FISCAL IMPACT: House Bills 5159, 5160, and 5161 would have an indeterminate fiscal impact on the state and on local units of government. The impact would depend on the number of individuals convicted of misdemeanors under the bills and ordered to pay fines. The impact on local court systems would depend on how court caseloads and related administrative costs are affected. Increased fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues. The bills would not have an appreciable fiscal impact on the Department of Licensing and Regulatory Affairs (LARA).

THE APPARENT PROBLEM:

Vitamin E acetate has been linked by the Centers for Disease Control and Prevention (CDC) to an outbreak of vaping-related illnesses in over 2,600 people across the country.¹ As of January 23, 2020, the Michigan Department of Health and Human Services had identified 69 confirmed or probable cases of severe lung disease associated with vaping in Michigan, including three deaths. Though not an approved additive, Vitamin E acetate is being used to thicken or dilute vaping products. It has been most commonly used in vaping products that contain THC (tetrahydrocannabinol, the active chemical in marijuana), but has also been found in some liquid nicotine products. While vitamin E acetate can usually be safely ingested or applied topically, as when used in such products as nutritional supplements or skin creams, it can be dangerous when inhaled into the lungs. Several states have banned vaping products that contain vitamin E acetate. In November 2019, emergency rules issued by the Marijuana Regulatory Agency banned the use of vitamin E acetate in marijuana vaping products in Michigan.² Legislation has been offered to prohibit selling certain products intended to be inhaled that contain vitamin E acetate.

¹ https://www.cdc.gov/tobacco/basic_information/e-cigarettes/severe-lung-disease.html

² <https://www.michigan.gov/lara/0,4601,7-154-11472-513083--,00.html>

THE CONTENT OF THE BILLS:

House Bill 5159 would amend the Medical Marijuana Facilities Licensing Act to prohibit a licensed marijuana processor from processing marijuana intended for inhalation, or a marijuana-infused product intended for inhalation, that contains or has been combined with vitamin E acetate. Similarly, a licensed provisioning center could not sell marijuana intended for inhalation, or a marijuana-infused product intended for inhalation, that contains or has been combined with vitamin E acetate. A processor or provisioning center that violated the prohibition would be guilty of a misdemeanor punishable by a fine of up to \$10,000.

MCL 333.27102 et seq.

House Bill 5160 would amend the Michigan Regulation and Taxation of Marijuana Act to prohibit a marijuana processor from processing, and a marijuana retailer from selling, marijuana intended for inhalation or a marijuana-infused product intended for inhalation if the marijuana or marijuana-infused product contains or has been combined with vitamin E acetate. A violation would be a misdemeanor punishable by a fine of up to \$10,000.

MCL 333.27953 et seq.

House Bill 5161 would create a new act to prohibit the sale of a *vapor product* or *alternative nicotine product* that contains or has been combined with vitamin E acetate. A violation would be a misdemeanor punishable by a fine of up to \$10,000. [Note: The definitions of “vapor product” and “alternative nicotine product,” below, would be the same as those in the Youth Tobacco Act.]

Vapor product would mean a noncombustible product that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine or any other substance, and the use or inhalation of which simulates smoking. The term would include an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container of nicotine or other substance in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term would not include a product regulated as a drug or device by the U.S. Food and Drug Administration (FDA).

Alternative nicotine product would mean a noncombustible product containing nicotine intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term would not include a tobacco product, a vapor product, food, or a product regulated as drug or device by the FDA.

ARGUMENTS:

For:

Nationally, thousands have suffered lung injuries and at least 60 people have died from vaping-related incidents. Those injured could suffer long-term effects. Though no single substance has been identified as causing the injuries, half of the samples tested by the FDA contained THC, the active ingredient in marijuana, and half of those were found to contain vitamin E acetate.

This provides clear evidence that the addition of vitamin E acetate to vaping products, whether nicotine alone or products containing marijuana, poses a serious public health risk.

The bills would address the issue by prohibiting sales of vaping products containing vitamin E acetate and would apply the ban, and resulting criminal fine, to both nicotine-only products and to marijuana or marijuana-infused products that are intended to be inhaled. The prohibition would protect the public, as labels on products would not necessarily identify vitamin E acetate as an additive and not all consumers may be aware of the dangers of inhaling the substance. Under the bills, anyone selling marijuana or nicotine in inhalable products containing vitamin E acetate, whether in licensed facilities or on the street, could be prosecuted.

Against:

Some argued that the bills do not go far enough, as other substances that are or may prove to be harmful when inhaled are already being used as diluents (that is, fillers or cutting agents). For example, the FDA found that 24% of the products that contained THC also contained another diluent such as medium chain triglycerides. Some of the affected patients had used products containing polyethylene glycol as a diluent. Therefore, it could be prudent to ban any additive as a diluent that has not been approved by the FDA as safe to use in that manner. Although concerns have been raised about the economic impact to those in the vaping industry if certain ingredients, such as certain flavors, are banned, the impact to taxpayers of bearing the economic costs related to lost productivity and health-related costs should also be considered. The social and economic impact of these lung injuries is still unknown, as some may result in long-term and potentially disabling conditions. For instance, two vaping-related cases, one in Michigan that involved a high school student, resulted in double-lung transplants.

POSITIONS:

The Michigan Chapter of the American Academy of Pediatrics indicated support for the bills. (1-21-20)

The Michigan League for Public Policy indicated support for House Bill 5161. (1-14-20)

Representatives of the Department of Licensing and Regulatory Affairs (LARA) and the Marijuana Regulatory Agency testified with no position on the bills. (1-14-20)

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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.