

Legislative Analysis



PROHIBIT VITAMIN E ACETATE IN MARIJUANA AND VAPING PRODUCTS

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House Bill 4249 (proposed substitute H-1)
House Bill 4250 (proposed substitute H-1)
Sponsor: Rep. Abdullah Hammoud

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

House Bill 4251 (proposed substitute H-1)
Sponsor: Rep. Joseph N. Bellino, Jr.

Committee: Regulatory Reform
Complete to 3-22-21

SUMMARY:

House Bills 4249, 4250, and 4251 would respectively amend the Medical Marijuana Facilities Licensing Act, amend the Michigan Regulation and Taxation of Marijuana Act, and create a new act, to prohibit the sale of marijuana products, vapor products, or alternative nicotine products that contain vitamin E acetate or other prohibited ingredients and to establish a criminal fine for a violation. HB 4250 would also lower, from 21 to 18 years of age, the minimum age for employees or volunteers of a (recreational) marijuana establishment.

House Bill 4249 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 any of the following:

- Vitamin E acetate.
- Any other ingredient, unless one of the following applies:
 - The ingredient is a botanically derived terpene that is chemically identical to a terpene derived from the plant *Cannabis sativa* L. (Generally speaking, a terpene is a compound found in many plants that can be used to add a flavor or scent to a product; for instance, citrus. Terpenes can also be chemically synthesized.)
 - Both of the following conditions are met:
 - The ingredient is approved by the U.S. Food and Drug Administration (FDA) for inhalation.
 - The concentration of the ingredient in the marijuana or marijuana-infused product does not exceed the maximum concentration approved by the FDA.

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 333.27502 et seq.

House Bill 4250 would amend the Michigan Regulation and Taxation of Marijuana Act to prohibit a marijuana establishment from allowing a person who is younger than 18 years of age to volunteer or work for the marijuana establishment. Currently, a marijuana establishment may not allow a person younger than 21 years of age to work or volunteer in the establishment.

The bill would also 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 any of the following:

- Vitamin E acetate.
- Any other ingredient, unless one of the following applies:
 - The ingredient is a botanically derived terpene that is chemically identical to a terpene derived from the plant *Cannabis sativa* L.
 - Both of the following conditions are met:
 - The ingredient is approved by the FDA for inhalation.
 - The concentration of the ingredient in the marijuana or marijuana-infused product does not exceed the maximum concentration approved by the FDA.

A violation involving a prohibited ingredient would be a misdemeanor punishable by a fine of up to \$10,000.

MCL 333.27953 et seq.

House Bill 4251 would create a new act to prohibit the sale of a **vapor product** or **alternative nicotine product** that contains or has been combined with any of the following:

- Vitamin E acetate.
- Any other ingredient unless both of the following apply:
 - The ingredient is approved by the FDA for inhalation.
 - The concentration of the ingredient in the vapor product or alternative nicotine product does not exceed the maximum concentration approved by the FDA.

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 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.

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,” above, would be the same as those in the Youth Tobacco Act.]

BACKGROUND:

The bills are reintroductions of HBs 5159, 5160, and 5161 of the 2019-20 legislative session. Those bills, which pertained only to prohibiting products containing vitamin E acetate, were passed by the House of Representatives in February 2020.

FISCAL IMPACT:

House Bill 4249 would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, a processor that processes or a provisioning center that sells marijuana or a marijuana-infused product intended for inhalation that contains or has been combined with vitamin E acetate, or other ingredients specified in the bill, would be guilty of a misdemeanor punishable by a fine of up to \$10,000. Under section 602 of the Medical Marihuana Facilities Licensing Act, all revenue from fines imposed under the act is required to be deposited into the Medical Marihuana Excise Fund. Because there is no practical way to determine the number of violations that will occur under provisions of the bill, an estimate of the amount of additional revenue the state would collect cannot be made. The fiscal impact to local units would depend on how provisions of the bill affected court caseloads and the related administrative costs.

House Bill 4250 would have an indeterminate fiscal impact on the state and on local units of government. Under the bill, a marijuana processor or marijuana retailer that processes or sells marijuana or a marijuana-infused product intended for inhalation that contains or has been combined with vitamin E acetate, or other ingredients specified in the bill, would be guilty of a misdemeanor punishable by a fine of up to \$10,000. Under section 7 of the Michigan Regulation and Taxation of Marihuana Act, all revenue from fines imposed under the act is required to be deposited into the general fund. Because there is no practical way to determine the number of violations that will occur under provisions of the bill, an estimate of the amount of additional revenue the state would collect cannot be made. The fiscal impact to local units would depend on how provisions of the bill affected court caseloads and the related administrative costs.

House Bill 4251 would have an indeterminate fiscal impact on local units of government. Under the bill, an individual that sells a vapor product or an alternative nicotine product that contains or has been combined with vitamin E acetate, or other ingredients unless those ingredients are approved by the FDA or the concentration is equal to or less than the maximum concentration approved by the FDA, would be guilty of a misdemeanor punishable by a fine of up to \$10,000. The bill does not specify where the fine revenue would be deposited, so it is assumed the fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of penal fine revenues. Because there is no practical way to determine the number of violations that will occur under provisions of the bill, an estimate of the amount of additional revenue the libraries would collect cannot be made. The fiscal impact to local units would depend on how provisions of the bill affected court caseloads and the related administrative costs.

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