

# Legislative Analysis

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## HEALTH WARNINGS ON MARIJUANA PRODUCTS

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

**House Bill 4126 (H-2) as reported from committee**  
**Sponsor: Rep. Thomas A. Albert**

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

**House Bill 4127 (H-2) as reported from committee**  
**Sponsor: Rep. Daire Rendon**

**Committee: Judiciary**  
**Complete to 9-5-19**

**BRIEF SUMMARY:** House Bills 4126 and 4127 would require all marijuana sold through provisioning centers (medical marijuana) and marijuana retailers and microbusinesses (recreational marijuana) to include a health warning for women who are pregnant, planning to become pregnant, or breastfeeding, as well as require 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 the state, 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.<sup>1</sup> 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. 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 has been offered to require marijuana products sold in Michigan to contain a label warning

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<sup>1</sup> 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>

of the health risks to pregnant or nursing women, and women who are planning on becoming pregnant.

***THE CONTENT OF THE BILLS:***

The Marijuana Regulatory Agency (MRA) is responsible for promulgating rules to implement and administer the Michigan Regulation and Taxation of Marihuana Act (recreational marijuana), and the Department of Licensing and Regulatory Affairs (LARA) is responsible for implementing and administering the Medical Marihuana Facilities Licensing Act (medical marijuana).

House Bills 4126 and 4127 would amend those respective acts to require the MRA and LARA 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 would also require the MRA and LARA to promulgate a rule regarding informational pamphlet standards for marijuana retailers and microbusinesses and for provisioning centers, respectively. At a minimum, a rule would have to include a requirement that an informational pamphlet be made available to every customer or patron, as applicable, at the time of sale. The pamphlet would have to measure 3.5 inches by 5 inches, include safety information related to marijuana use by minors, and include the Poison Control Hotline number.

House Bill 4126 would amend the Michigan Regulation and Taxation of Marihuana Act (MCL 333.27958). The bill would define “Marijuana Regulatory Agency” as the marijuana regulatory agency created under Executive Reorganization Order No. 2019-7. Further, the bill replaces references to the “department” with references to the MRA.

House Bill 4127 would amend the Medical Marihuana Facilities Licensing Act (MCL 333.27206).

***BACKGROUND INFORMATION:***

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.<sup>2</sup> Such mental health issues persisted into adolescence, according to a Harvard SITN article, and significantly increased the likelihood of attention problems and depression and the display of delinquent behavior.

The American College of Obstetrics and Gynecology (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 contain any penalties or sanctions, would 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 that will be manufactured and sold in Michigan will be in small packages. Other information, such as date of harvest, the concentration of THC or CBD, and the name of the safety compliance facility that performed any test, among other things, are 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 the influence of marijuana. 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 would be 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

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<sup>2</sup> "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/>

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 a warning in all text. 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.

***POSITIONS:***

A representative of the American College of Obstetricians and Gynecologists (ACOG) testified in support of the bills. (6-18-19)

The following entities indicated support for the bills:

- Department of Licensing and Regulatory Affairs (8-27-19)
- Michigan Council for Maternal and Child Health (8-27-19)
- Prosecuting Attorneys Association of Michigan (8-27-19)
- Michigan Catholic Conference (8-27-19)
- Michigan Family Forum (6-18-19)
- Right to Life (6-18-19)
- Michigan State Medical Society (with changes) (6-18-19)

A representative of the Michigan Chapter/American Academy of Pediatrics testified that the organization is neutral on the bills. (6-18-19)

A representative of the Michigan Cannabis Industry Association testified on 6-18-19 that the organization is neutral on the bills and affirmed a neutral position on the H-2 substitutes. (8-27-19)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Robin Risko

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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.