

# Legislative Analysis



## ALLOW POSSESSION AND APPLICATION OF FDA-APPROVED OVER-THE-COUNTER TOPICAL SUBSTANCES AT SCHOOL

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**House Bill 5379 (proposed substitute H-1)**

**Sponsor: Rep. Kevin Hertel**

**Committee: Education Reform**

**Complete to 2-7-18**

### SUMMARY:

House Bill 5379 would amend the Revised School Code to allow possession and usage of U.S. Food and Drug Administration (FDA)-approved over-the-counter topical substances at school by nonpublic and public school students.

Under the bill, students would be allowed to possess and use those topical substances at school, on school-sponsored transportation, or at any activity, event, or program sponsored by or in which the student's school is participating as long as the student has written approval from a parent or guardian (if the student is a minor) and the school's principal or other chief administrator has received a copy of the approval. A principal or chief administrator who is aware that a student has the topical substance must notify each of the student's classroom teachers of that fact and of the provisions of the bill.

The bill would exempt school districts, nonpublic schools, and board members and employees from liability when they permit or prohibit use of those topical substances based on a reasonable belief that the required conditions had or had not been met, as applicable.

*U.S. FDA-approved over-the-counter topical substance* would include, but not be limited to, sunscreen, antimicrobial or antifungal products, external analgesics including lidocaine, psoriasis or eczema topical treatments, or any other topical product with a therapeutic effect.

The bill would take effect 90 days after enactment.

MCL 380.1179

### BACKGROUND:

Currently, sunscreen is considered an over-the-counter medication by the U.S. Food and Drug Administration (FDA), so Michigan districts and nonpublic schools require a doctor's note and that usage be overseen by a school nurse.

In recent years, states have moved to provide an exception from over-the-counter protections for sunscreen. At least ten states had passed legislation to that effect as of January 2018: California (in 2002), New York (2013), Oregon and Texas (2015), and Alabama, Arizona, Florida, Louisiana, Utah, and Washington (2017). The laws in Arizona,

New York, and Washington also stipulate that children may bring and use sunscreen at summer camps. Legislation is pending in at least five other states.

The bill would include the sunscreen in its provisions, similarly to laws in other states, but extend its reach to include all FDA-approved over-the-counter topical substances.

[“Topical” refers to the method of delivery. Topical administration refers to application to body surfaces, but can also be inhalational, such as asthma medications (which are prescription medications, not over-the-counter) or in the form of eye or ear drops.]

**FISCAL IMPACT:**

House Bill 5379 would have no fiscal impact for the state, but the bill could marginally increase costs for school districts, intermediate school districts (ISDs), and public school academies (PSAs). School districts, ISDs, and PSAs could incur additional administrative costs for collecting and keeping track of written approvals to possess and use FDA-approved over-the-counter topical substances.

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