



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5396 (Substitute H-1 as reported without amendment)

Sponsor: Representative David Law

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 6-7-06

RATIONALE

The Youth Tobacco Act prohibits a person under 18 years of age from possessing or smoking cigarettes and possessing or using other tobacco products. The Act also prohibits a person from selling, giving, or furnishing tobacco to a person who is under 18. A violation of either prohibition is a misdemeanor, punishable by a fine of up to \$50 per violation. The Act does not, however, prohibit the purchase of tobacco products by a minor. Some view this as a loophole because the seller, but not the buyer, is subject to a criminal fine for such a transaction. Also, by not prohibiting tobacco purchase by minors, the Act is not as effective as it could be in discouraging youth tobacco use, according to some. It has been suggested that the purchase of tobacco products by minors should be prohibited.

In addition, the Act does not include an exception for activity conducted in the normal course of a youth's employment or for a youth's involvement in an enforcement action. Some people believe those exceptions should be enacted.

CONTENT

The bill would amend the Youth Tobacco Act to do all of the following:

- **Prohibit a minor (a person under 18 years of age) from purchasing a tobacco product.**
- **Prohibit a minor from using a purported proof of age that was false, fraudulent, or not actually his or hers, in purchasing or possessing tobacco.**
- **Make an exception to the prohibition against a minor's purchase,**

possession, or use of tobacco for a minor participating in an undercover enforcement operation.

- **Specify that the prohibitions against a minor's purchase, possession, or use of tobacco and against selling, giving, or furnishing tobacco to a minor would not apply to a minor's handling or transportation of tobacco in the course of his or her employment.**

The bill would take effect on September 1, 2006.

Purchase, Possession, or Use By Minor

The Act prohibits a person under 18 years of age from possessing or smoking cigarettes; possessing or chewing, sucking, or inhaling chewing tobacco or tobacco snuff; or possessing or using tobacco in any other form, on a public highway, street, alley, park, or other land used for public purposes, or in a public place of business or amusement. The bill would delete that provision and instead prohibit a minor from doing any of the following:

- Purchasing or attempting to purchase a tobacco product.
- Possessing or attempting to possess a tobacco product.
- Using a tobacco product in a public place.
- Presenting or offering to an individual a purported proof of age that was false, fraudulent, or not actually his or her own proof of age, for the purpose or purchasing, possessing, or attempting to purchase or possess a tobacco product.

A violation would continue to be a misdemeanor punishable by a fine of up to \$50 for each violation. Also, under the Act, pursuant to a probation order, the court may require an offender to participate in a health promotion and risk reduction assessment program and perform community service.

The bill specifies that this section of the Act would not prohibit an individual from being charged with, convicted of, or sentenced for any other violation of law arising out of a violation described above.

Under the bill, "tobacco product" would mean a product that contains tobacco and is intended for human consumption, including cigarettes, noncigarette smoking tobacco, or smokeless tobacco, as those terms are defined in the Tobacco Products Tax Act (MCL 205.422), and cigars. "Use a tobacco product" would mean to smoke, chew, suck, inhale, or otherwise consume a tobacco product. "Public place" would mean a public street, sidewalk, or park or any area open to the general public in a publicly owned or operated building or public place of business.

Exceptions to Tobacco Prohibitions

Under the bill, the prohibitions described above would not apply to a minor participating in either or both of the following:

- An undercover operation in which the minor purchased or received a tobacco product under the direction of his or her employer, and with the prior approval of the local prosecutor's office, as part of an employer-sponsored internal enforcement action.
- An undercover operation in which the minor purchased or received a tobacco product under the direction of the State Police or a local police agency as part of an enforcement action, unless the minor's initial or contemporaneous purchase or receipt of the tobacco product was not under the direction of a law enforcement agency and was not part of the undercover operation.

The Act prohibits a person from selling, giving, or furnishing tobacco to a minor. A violation is a misdemeanor punishable by a fine of up to \$50 for each violation. Under the bill, this prohibition, and the prohibitions

against a minor's purchase, possession, or use of a tobacco product, would not apply to the handling or transportation of a tobacco product by a minor under the terms of his or her employment.

MCL 722.641 et al.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Youth Tobacco Act prohibits a minor from possessing or using tobacco products, and it stands to reason that a minor also should be prohibited from purchasing those products. In addition, the Act prohibits selling or furnishing tobacco products to a minor and subjects a violator to a penal fine. In fairness, a minor who purchases or attempts to purchase tobacco should be subject to a fine the same as someone who sells tobacco to a minor and as a minor who unlawfully possesses or uses tobacco.

Supporting Argument

Tobacco use by minors is a major problem in Michigan and throughout the country. The Michigan Surgeon General's Health Status Report, *Healthy Michigan 2010*, points out that tobacco use is the leading cause of preventable disease and death, causing approximately 400,000 deaths in the U.S. each year and 14,700 deaths annually in Michigan. The report states that 27.6% of Michigan's high school-aged youths smoke and, according to the Campaign for Tobacco-Free Kids, 10% of high school males use smokeless tobacco. That organization also reports that 65,900 Michigan children try cigarettes for the first time; 30,100 Michigan children become daily smokers each year; and 32.9 million packs of cigarettes are sold to children annually in Michigan. To address these issues, Michigan law should prohibit minors from purchasing tobacco products.

Response: The bill would do little to prevent minors from smoking. According to a June 2004 report from Americans for Nonsmokers' Rights (ANR), "reducing illegal sales to minors...does not automatically result in lower tobacco consumption on the part of teens, because they often obtain tobacco products by means other than direct purchase". In addition, criminalizing

tobacco use, possession, and purchase by minors will not deter them from smoking. According to the ANR and the American Cancer Society, creating smoke-free environments in public places and workplaces, including restaurants, is the most effective way to reduce youth smoking. The bill should address these issues or be tie-barred to legislation that does.

Supporting Argument

The Act does not include an employment-related exception from the prohibitions against possession by or sale to a minor. Consequently, a youth could be in violation of the Act for handling cigarettes in the course of employment in a position such as a convenience store clerk or a delivery driver for a wholesaler. By creating an exception to the Act's prohibitions for employment activity, the bill would allow minors to work in those capacities without fear of being held criminally liable for violating the law.

In addition, employers or law enforcement agencies occasionally may want to conduct "sting" operations to determine whether workers or retailers are complying with the law against tobacco sales to minors. The employers or agencies may recruit people under 18 to attempt to purchase tobacco in the course of such an investigation. Minors who do so should be exempt from the prohibitions against purchasing and possessing tobacco products.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no impact on State government and an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of the proposed offense. To the extent that the bill increased the number of juveniles convicted, local governments would incur the costs of misdemeanor probation, which varies by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.