

Legislative Analysis



SALE OF ALTERNATIVE NICOTINE AND VAPOR PRODUCTS TO MINORS

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House Bill 4997 (Substitute H-4)
Sponsor: Rep. Rick Outman

Senate Bill 667 (Substitute H-1)
Sponsor: Sen. Glenn S. Anderson

Senate Bill 668 (Substitute H-2)
Sponsor: Sen. Rick Jones

House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

Analysis as Reported from House Committee (3-23-14)

BRIEF SUMMARY: Together, the bills would amend the Youth Tobacco Act (MCL 722.641, 642 & 644) to extend the current prohibitions against selling tobacco products to minors, and the purchase, possession, or use of tobacco products by minors, so that the prohibitions also apply to vapor products and alternative nicotine products.

Senate Bill 667 would prohibit minors from possessing or using vapor products and alternative nicotine products. Senate Bill 668 would prohibit selling or furnishing vapor products or alternative nicotine products to individuals under 18 years of age. House Bill 4997 contains definitions of terms.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on local court systems. The fiscal impact would depend on how the new provisions affect caseloads and related administrative costs to the courts. Persons found in violation would be guilty of a misdemeanor punishable by a fine of not more than \$50 for each violation. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

SB 668 would have a negligible fiscal impact on the Department of Community Health related to the modification of required signage and materials for tobacco retailers, and notification of retailers of the changes.

THE APPARENT PROBLEM:

Currently, individuals under the age of 18 are prohibited from purchasing or possessing cigarettes and other tobacco products, and retailers are prohibited from selling them to minors. However, new products are now being marketed which allow the user to ingest nicotine without tobacco being present (some of which are called "e-cigarettes"). These products can be purchased by minors and, some say, are marketed by the industry in ways that appeal to young people. The products are reported to be increasingly popular with middle schoolers and high schoolers.

Some people use these products as a means of trying to quit smoking (although they are not classified or regulated as medicines or therapy). The federal Food and Drug Administration has yet to complete its own testing of these products, which has led some to worry that these products carry some, if not all, of the health risks associated with traditional tobacco use. Because these products contain nicotine, some are pushing to restrict their sale to those 18 and older by amending the Youth Tobacco Act and treating these vapor products and alternative nicotine products similar to traditional tobacco products.

THE CONTENT OF THE BILL:

House Bill 4997 contains definitions of terms used in Senate Bills 667 and 668.

Senate Bill 667 (H-1) would amend the Youth Tobacco Act to prohibit a minor from possessing or using a "vapor product" or "alternative nicotine product." Various prohibitions that now apply to minors purchasing or attempting to purchase a tobacco product, possessing or attempting to possess a tobacco product, or using a tobacco product in a public place would be extended to vapor products and alternative nicotine products. As now, violations would be misdemeanors subject to a fine of up to \$50 per violation and possible community service requirements. Multiple violations also result in participation in health promotion and risk reduction programs.

Senate Bill 668 (H-2) would amend the same act so that provisions that now apply to selling and furnishing tobacco products to minors would be extended to vapor products and alternative nicotine products. These include the following:

- Prohibiting a person from selling, giving, or furnishing a vapor product or alternative nicotine product to a minor. (As now, this would be a misdemeanor punishable by a fine of up to \$50 for each violation.)
- Requiring signs posted by retailers to indicate that the purchase of vapor or alternative nicotine products by minors is illegal.
- Requiring a person to verify that an individual was at least 18 before selling or furnishing a vapor product or alternative nicotine product to that person.

Currently, it is an affirmative defense to a charge of selling a tobacco product to a minor that the defendant had in force at the time of arrest and continues to have in force a written policy to prevent the sale of tobacco products to minors and that the defendant enforced and continues to enforce the policy. The bills would extend this affirmative defense to a charge of selling vapor products or alternative nicotine products to minors.

The act's prohibition against giving or furnishing a tobacco product to a minor does not apply to the handling or transportation of the product by a minor under the terms of employment. Under the bills, this also would apply to a minor's handling or transportation of a vapor product or alternative nicotine product. The bills also extend the exemption for minors engaged in certain undercover activities.

As noted earlier, House Bill 4997, contains definitions of the terms found in Senate Bills 667 and 668.

The term "vapor product" is defined as "a noncombustible product containing nicotine 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 in a solution or other form." 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 in a solution or other form that is intended to be used with or in such products or devices. The term would not apply to a product regulated as a drug or device by the US Food and Drug Administration.

"Alternative nicotine product" is defined as "a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means." The term does not include a tobacco product, a vapor product, or a product regulated as a drug or device by the US Food and Drug Administration. Neither term would include a product regulated as a drug or device by the FDA.

Similarly, the bill adds to the definition of "tobacco product to specify that the term would not include a vapor product, an alternative nicotine product, or a product regulated as a drug or device by the US Food and Drug Administration.

The bills are tie-barred, meaning none could take effect unless all are enacted, and would take effect 60 days after enactment.

HOUSE COMMITTEE ACTION:

The House Regulatory Reform Committee reported out House Bill 4997 as substitute H-4, Senate Bill 667 as substitute H-1, and Senate Bill 668 as substitute H-2 on March 18, 2014, by a vote of 13 yes, 0 no, and 1 pass. The substitutes essentially remove the definitions that were in Senate Bill 668 and place them in House Bill 4997. As introduced, House Bill 4997 contained provisions about both purchasing and selling tobacco; the substitute version contains definitions of terms used in the two Senate bills.

ARGUMENTS:

For:

Proponents of these three bills argue that the legislation will prevent minors from purchasing devices similar to traditional cigarettes in regards to their nicotine content. They note that these products are manufactured with fruit flavors and other sweet flavorings and are sometimes marketed so as to appeal to young people. They are said to be growing popular with middle school students and high schoolers. These bills will prohibit the sale to minors and the use by minors. The proponents prefer the approach taken in these bills, under which the sale of devices such as electronic cigarettes to minors would be banned, but vapor and alternative nicotine products would not be

classified and regulated as tobacco. Advocates say the bills are a good first step in addressing these products and that state statute can be amended if and when the FDA produces regulations.

Against:

While supporting the idea of keeping these products from minors, opponents of these bills prefer House Bill 5393, currently in the House Regulatory Reform Committee, which puts vapor and alternative nicotine products within the definition of "tobacco products" and requires them to be sold in child-resistant containers. A consortium of statewide health organizations (cited below) have testified that, "Our organizations have serious concerns about the potential public health effects of e-cigarettes and significant additional research is needed on these products and how they are used. Until more research is conducted and the FDA issues regulations, we strongly recommend Michigan treat e-cigarettes like all other tobacco products." Critics argue the proposed legislation stands to benefit the tobacco industry by exempting vapor products and alternative nicotine products from current and future tobacco control laws.

POSITIONS:

The Michigan Distributors & Vendors Association supported the bills. (3-11-14)

The Department of Community Health indicated a neutral position, although the department's chief medical executive testified in support of classifying e-cigarettes as tobacco products as found in House Bill 5393. (3-11-14)

Among those expressing opposition to the bills were the Michigan State Medical Society, the Michigan Osteopathic Association, the Michigan Health and Hospital Association, Tobacco-Free Michigan, the American Lung Association, the American Heart Association, and the American Cancer Society Cancer Action Network. (3-11-14)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.