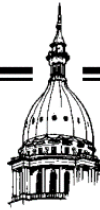




Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bills 667 and 668 (as introduced 11-7-13)
Sponsor: Senator Glenn S. Anderson (S.B. 667)
Senator Rick Jones (S.B. 668)
Committee: Regulatory Reform

Date Completed: 12-5-13

CONTENT

The bills would amend the Youth Tobacco Act to include e-cigarettes and e-cigarette cartridges in provisions that prohibit a minor from buying, possessing, or using a tobacco product and prohibit a person from selling, giving, or furnishing a tobacco product to a minor.

The bills are tie-barred

The Act defines "minor" as a person under 18 years of age.

Senate Bill 668 would define "e-cigarette" as an electronic oral device to which all of the following apply:

- It provides a vapor of nicotine.
- It simulates smoking through its use or through inhalation of the vapor generated by the device.
- It is not approved by the U.S. Food and Drug Administration as an aid in quitting the use of tobacco or a nicotine product.
- It is composed of a heating element, battery, or electronic circuit.

The bill would define "e-cigarette cartridge" as a container to which all of the following apply:

- It has opening on each end.
- It serves as a liquid reservoir and mouthpiece.
- It allows the passage of liquid to an atomizer and vapor from the atomizer to the user's mouth.
- It contains liquid for producing vapor in an e-cigarette.

Senate Bill 667

The Act prohibits a minor from 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. It also prohibits a minor from presenting or offering to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age, for the purpose of purchasing, possessing, or attempting to purchase or possess a tobacco product. A violation is a misdemeanor punishable by a maximum fine of \$50 for each violation. Pursuant to a probation order, the court also may require a violator to participate in a health promotion and risk reduction assessment program, if available. The Act also allows a court to order a violator to perform community service in a hospice, nursing home, or long-term care facility.

Under the bill, the prohibitions would apply to activities involving a tobacco product, an e-cigarette, or an e-cigarette cartridge.

The prohibitions do not apply to a minor participating in an undercover law enforcement operation or compliance check. They also do not apply to the handling or transportation of a tobacco product by a minor under the terms of his or her employment. The bill would refer to an e-cigarette or e-cigarette cartridge, as well as a tobacco product, in those provisions.

Senate Bill 668

The Act prohibits a person from selling, giving, or furnishing a tobacco product to a minor. A violation is a misdemeanor punishable by a maximum fine of \$50 for each violation. The bill would include selling, giving, or furnishing an e-cigarette or e-cigarette cartridge to a minor in that prohibition.

Under the Act, a person who sells tobacco products at retail must post in a place close to the point of sale and conspicuous to both employees and customers, a sign produced by the Department of Community Health (DCH) that includes a specific statement about the illegality of the purchase of tobacco products by a minor. The DCH must produce the sign and have adequate copies of it ready for distribution to licensed wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products, free of charge. Those entities must obtain copies of the sign from the DCH and distribute them free of charge, upon request, to people who sell tobacco products. The bill would include references to e-cigarettes and e-cigarette cartridges in those provisions.

Under the Act, it is an affirmative defense to a charge of selling tobacco 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 people under 18 and that the defendant enforced and continues to enforce the policy. The bill would refer to a written policy to prevent the sale of tobacco products, e-cigarettes, or e-cigarette cartridges, as applicable, to people under 18.

The prohibition against giving or furnishing a tobacco product to a minor does not apply to the handling or transportation of a tobacco product by a minor under the terms of his or her employment. The bill would include the handling or transportation of e-cigarettes or e-cigarette cartridges in that provision.

MCL 722.642 (S.B. 667)
722.641 & 722.644 (S.B. 668)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would expand the Youth Tobacco Act to apply to electronic cigarettes and electronic cigarette cartridges. This would result in a marginal increase in misdemeanor penalties associated with violations of the Act; these misdemeanors are punishable by a fine of up to \$50, the revenue from which benefits public libraries. For youths violating the Act, additional punishments may include community service and participation in health risk reduction programming. The bills would not have a significant impact on State and local criminal justice costs of incarceration or probation.

Fiscal Analyst: Dan O'Connor

S1314\667sa

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.