

Legislative Analysis



PROHIBITING THE SALE OF E-CIGARETTES TO MINORS AND OTHER NEW NICOTINE REGULATIONS

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Senate Bill 106 (S-1) as passed by the Senate
Sponsor: Sen. Rick Outman

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

Senate Bill 155 (S-1) as passed by the Senate
Sponsor: Sen. Marshall Bullock II

House Committee: Judiciary
Senate Committee: Regulatory Reform
Complete to 4-23-19

SUMMARY:

Senate Bills 106 and 155 would amend the Youth Tobacco Act to prohibit selling or providing vapor products and alternative nicotine products (such as e-cigarettes) to minors. They would also implement new regulations on the retail sale of vapor products, alternative nicotine products, and liquid nicotine containers that are in line with those currently in place for traditional tobacco products. The bills are tie-barred to one another, which means that neither could take effect unless both were enacted. Each bill would take effect 90 days after its enactment.

Senate Bill 106

Prohibition of the sale of nicotine products to minors

Senate Bill 106 would prohibit selling, giving, or furnishing *vapor products* or *alternative nicotine products* to anyone under the age of 18, including through vending machines. Violators would be guilty of a misdemeanor punishable by a fine of up to \$100 for a first offense, \$500 for a second offense, or \$2,500 for a third or subsequent offense.

Vapor product would mean a noncombustible product that employs a heating element or other means to produce vapor from nicotine or any other substance, and the use or inhalation of which stimulates smoking. A vapor product would include an e-cigarette, e-cigar, e-cigarillo, or e-pipe, and would include the cartridge or other container for the liquid or solution that is used in the product or device.

Alternative nicotine product would mean a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term would exclude food and any product defined under the act as a tobacco product or vapor product.

Prohibition of the purchase of nicotine products by minors

The bill would prohibit minors from:

- Purchasing or attempting to purchase a vapor or alternative nicotine product.
- Possessing or attempting to possess a vapor or alternative nicotine product.

- Using a vapor or alternative nicotine product in a public space.
- Using a false ID to do any of the above.

An individual who violated the above prohibitions would be responsible for a state civil infraction or found guilty of a misdemeanor, with the following penalties:

- For a first offense, the individual would be responsible for a state civil infraction and would have to pay a fine of up to \$50, and the court could choose to impose up to 16 hours of community service.
- For a second offense, the individual would be responsible for a state civil infraction and would have to pay a fine of up to \$50, and the court could choose to impose up to 32 hours of community service.
- For any subsequent offense, the individual would be guilty of a misdemeanor and would have to pay a fine of not more than \$50 per offense, and the court could choose to assign not more than 48 hours of community service.

In addition to these penalties, the court could require the individual to participate in a health promotion and risk assessment program, if such a program is available, pursuant to a probation order. In such a case, the individual would be responsible for paying the costs of participating in the program.

The bill clarifies that the above prohibitions would not apply to a minor participating in the following:

- An undercover operation in which the minor purchases or receives vapor or alternative nicotine products under the direction of the minor's 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 purchases or receives vapor or alternative nicotine products as part of state or local police operations, unless the initial or contemporaneous purchase or receipt of the product was not under the direction of said police.
- The handling or transportation of vapor or alternative nicotine products by a minor under the terms of the minor's employment.

Regulation of the sale of nicotine products

Under the bill, before selling, offering for sale, giving, or furnishing a tobacco, vapor, or alternative nicotine product to an individual, a person would need to verify that the individual is at least 18 years of age by doing either of the following:

- If the individual appears to be under 27 years of age, by examining a government-issued photographic ID that establishes that the individual is at least 18 years old.
- If the sale is made electronically or remotely, by performing an age verification through an independent, third-party age verification service that compares information from a commercially available database or aggregate of databases that are regularly used by government agencies and businesses for age identification purposes.

Currently, retail sellers of tobacco products are required to post, in a conspicuous location near the point of sale, a sign designed and produced by the Department of Health and Human Services that warns minors of the criminal penalties incurred by unlawfully purchasing tobacco products. Under the bill, the language of these signs would be amended to include mention of vapor products and alternative nicotine products as well, and the signs would also have to be posted by retail sellers of vapor and alternative nicotine products.

Defense against charges of sale to minors

Under the bill, a defendant who is charged with selling vapor or alternative nicotine products to minors, but who had been enforcing a written policy to prevent the sale of such products to minors at his or her retail location, may use the policy and its enforcement as an affirmative defense against the charges by providing a written notice of the defense to the court and the prosecuting attorney no later than 14 days before the date set for the trial. If the prosecuting attorney wishes to rebut this affirmative defense, he or she may do so by serving a notice of rebuttal in writing to the court and to the defendant no later than 7 days before the date set for the trial. (These affirmative defense provisions currently apply to sellers of tobacco products under the act.)

MCL 722.641 et seq.

Senate Bill 155

Regulation of the sale of liquid nicotine containers

Senate Bill 155 would prohibit the sale of liquid nicotine containers unless the containers met the child-resistant effectiveness standards required by the U.S. Consumer Product Safety Commission. Anyone who violated this prohibition would be guilty of a misdemeanor punishable by a fine of up to \$50 for each infraction.

Display of products for sale

In addition, the bill would prohibit the display for sale of vapor products or alternative nicotine products unless they are stored behind a counter in an area accessible only to employees or within a locked case so that customers must ask an employee for access. Those who violate this prohibition would be responsible for a state civil infraction and fined up to \$500.

Proposed MCL 722.642b and 722.642c

BACKGROUND:

The substantive provisions of Senate Bills 106 (S-1) and 155 (S-1), taken together, are identical to those of House Bill 4164 (H-4) as it was referred to the House Committee on Judiciary by the House Committee on Regulatory Reform on March 19, 2019.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on the state and on local units of government. Costs could be incurred by the judiciary and local court systems. Costs would depend on how provisions of the bills affect caseloads and related administrative costs. Revenues could be increased under the bills, as new misdemeanor fines and civil infractions would be established, and a number of current misdemeanor fines would be increased. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues. Revenue collected from payment of civil infraction penalties is deposited into the state Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury.

The bills would have modest cost implications for the Department of Health and Human Services (DHHS) to modify signs made available to wholesalers and retailers, to modify related training and instructional materials, and to support related outreach and training to those entities. Signs and training materials are currently made available through a DHHS publications clearinghouse as downloadable pdfs and PowerPoints.

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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.