

Legislative Analysis



SALE OF TOBACCO: INCREASE AGE FROM 18 TO 21

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House Bill 4039 as introduced
Sponsor: Rep. Tommy Brann
Committee: Regulatory Reform
Complete to 6-23-20

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

SUMMARY:

House Bill 4039¹ would amend the Youth Tobacco Act to do all of the following:

- Prohibit selling, giving, or furnishing tobacco products or tobacco paraphernalia to anyone under 21 years of age. (Currently, for tobacco products, the age is 18.)
- Repeal a provision that establishes criminal penalties for a minor who purchases or possesses a tobacco product, uses a product in public, or uses a fake ID to purchase or possess a tobacco product.
- Reduce the penalty for a violation from a misdemeanor to a civil infraction and increase the fines that may be imposed.
- Include, as tobacco products, products containing nicotine and electronic devices.
- Allow local governments to adopt ordinances that are as restrictive as, or more restrictive than, the regulations in the act.

The bill would amend the definition of “minor,” for purposes of the act, to mean an individual who is less than 21 years of age, instead of less than 18, as it is currently.

In addition to the act’s current prohibition concerning tobacco products, the bill would prohibit selling, giving, or furnishing *tobacco paraphernalia* to minors.

Tobacco paraphernalia would mean an item designed or marketed for the consumption, use, or preparation of a tobacco product.

Penalties

Currently, the act specifies that a person is not to sell, give, or furnish a tobacco product, vapor product, or alternative nicotine product to a minor, including through a vending machine. A violation is a misdemeanor punishable by a criminal fine of up to \$100 for a first offense, up to \$500 for a second offense, and up to \$2,500 for a third or subsequent offense.

The bill would change the penalty from a misdemeanor to a state civil infraction. A person who violated the above prohibition could be ordered to pay a fine of at least \$1,000 and up to \$2,500

¹ **Note:** House Bill 4039, which was introduced January 15, 2019, does not amend or republish the currently effective versions of sections 1 and 4 of the act, since they were amended by 2019 PA 18, which took effect September 2, 2019. Among other things, 2019 PA 18 added vapor products and alternative nicotine products to the prohibitions regarding tobacco products and minors under the act. However, 2019 PA 18 did not include define vapor products as tobacco products, whereas House Bill 4039 proposes to define “electronic devices,” a similar term, as tobacco products. While the descriptions of current law in this summary reflect sections 1 and 4 as amended by 2019 PA 18 and not the versions that were amended in the introduced bill, it is not clear from the bill as introduced how it would amend current law with regard to alternative nicotine products and vapor products. The description of the introduced bill in this summary should be read with that in mind.

for a first violation. A second or subsequent violation could incur a fine of at least \$2,500 and up to \$5,000 if occurring within 24 months after a previous violation.

Repeal of sanctions and penalties for minors

The bill would repeal section 2 of the act, which prohibits a minor from purchasing or possessing a tobacco product, vapor product, or alternative nicotine product or attempting to do so, using a tobacco product, vapor product, or alternative nicotine product in a public place, or using a fake ID to purchase or possess, or attempting to purchase or possess, a tobacco product, vapor product, or alternative nicotine product. Section 2 also establishes civil sanctions and criminal penalties for a minor who violates its prohibitions.

Affirmative defense

The act currently provides as an affirmative defense to a charge of selling, giving, or furnishing tobacco products, vapor products, or alternative nicotine products to a minor that the defendant had in force a written policy to prevent such sales.

The bill would instead specify that it is an affirmative defense to a citation that the defendant demanded, was shown, and reasonably relied on a ***government-issued photographic identification*** establishing that the individual was at least 21 years of age before the defendant sold, gave, or furnished the tobacco product or tobacco paraphernalia to him or her.

Government-issued photographic identification would mean a document that includes a photograph and the date of birth of an individual that is issued by a federal, state, or local unit of government or a political subdivision or agency of a federal, state, or local unit of government.

Signage

Currently, the act requires a person who sells tobacco products, vapor products, or alternative nicotine products at retail to post, in a place close to the point of sale and conspicuous to both employees and customers, a sign produced by the Department of Health and Human Services that includes the following statement:

“The purchase of a tobacco product, vapor product, or alternative nicotine product by a minor under 18 years of age and the provision of a tobacco product, vapor product, or alternative nicotine product to a minor are prohibited by law. A minor who unlawfully purchases or uses a tobacco product, vapor product, or alternative nicotine product is subject to criminal penalties.”

The act also specifies the size of the sign and typeface, which vary based on proximity to the point of sale.

The bill would revise these provision to instead require a person that sells tobacco products or tobacco paraphernalia at retail to post a sign that includes the following statement:

The sale of a tobacco product or tobacco paraphernalia to an individual who is under 21 years of age is prohibited by law.

Further, the signs would have to be posted in a place within six feet of each point of sale, be unobstructed, be conspicuous to both employees and customers, and be all the same size.

Local ordinances

The bill would allow a city, township, village, county, other local unit of government, or political subdivision of the state to adopt an ordinance or a regulation that regulates the sale of tobacco products or tobacco paraphernalia in a manner that is as restrictive as, or more restrictive than, the act.

Loose cigarettes

Currently, a section of the act that prohibits a person who sells tobacco products at retail from selling a cigarette separately from its package contains an exception for tobacco specialty retail stores or other retail stores that deal exclusively in the sale of tobacco products and smoking paraphernalia. The bill would delete this exception.

Definitions

Finally, the bill would revise the definition of “tobacco product” to mean a product containing or made or derived from tobacco or nicotine intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means. The term would include cigarettes, little cigars, chewing tobacco, pipe tobacco, shisha, snuff, or an *electronic device*. The term would also include a component, part, or accessory of a tobacco product regardless of whether it was sold separately, but would not include a product specifically approved as a tobacco smoking cessation product by the U.S. Food and Drug Administration that is marketed and sold solely for the approved purpose.

Electronic device would mean a product that delivers nicotine or another similar substance that is intended for human consumption and that can be used by an individual to simulate smoking through inhalation of vapor or aerosol from the product. The term would include an electronic cigarette, cigar, or pipe or an electronic hookah.

The bill would take effect 180 days after being enacted into law.

MCL 722.641 et al.

FISCAL IMPACT:

House Bill 4039 would have an indeterminate fiscal impact on the state. Under the bill, a person who sells, gives, or furnishes a tobacco product or tobacco paraphernalia to a minor would be responsible for a state civil infraction and could be ordered to pay a civil fine. The amount of civil fine ordered potentially could be significantly higher than the fine that would be assessed under current law. The amount of the fine would depend on whether the offense was a first, second, or subsequent violation. Currently, a violation is a misdemeanor punishable by a fine of not more than \$100 for a first offense, not more than \$500 for a second offense, or not more than \$2,500 for a third or subsequent offense. The bill would establish the fines as not less than \$1,000 and not more than \$2,500 for a first offense and not less than \$2,500 and not more than \$5,000 for a second or subsequent offense. Reducing the penalty from a misdemeanor to a civil infraction also would impact revenue deposited into the state’s Justice System Fund. Revenue collected from the payment of civil infraction penalties, like misdemeanor fines, is used to support public and county law libraries, but, under section 8827(4) of the Revised Judicature Act, \$10 of the civil fine would be deposited into the state’s Justice System Fund, so revenue to the state would be increased. Justice System Fund revenue supports various justice-related endeavors in the judicial branch, the Departments of State Police, Corrections, Health and

Human Services, and Treasury, and the Legislative Retirement System. There is no way to determine the number of violations that will occur under provisions of the bill, so there is no way to estimate the amount of additional revenue the state would collect.

Under the bill, a city, township, village, county, other local unit of government, or political subdivision would be authorized to adopt an ordinance or regulation that regulates the sale of tobacco products or tobacco paraphernalia in a manner that is as restrictive as, or more restrictive than, provisions in the bill. If a violation were to occur and the offense determined to be a violation of local ordinance, fine revenue would be distributed 1/3 to the political subdivision whose ordinance was violated and 2/3 to the local court funding unit. Assessments including Justice System Assessment may be imposed.

An analysis of the bill's fiscal impact related to the Department of Health and Human Services is in progress.

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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.