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BILL ANALYSIS



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Senate Bill 106 (Substitute S-1)
Senate Bill 155 (Substitute S-1)
Sponsor: Senator Rick Outman (S.B. 106)
Senator Marshall Bullock II (S.B. 155)
Committee: Regulatory Reform

Date Completed: 3-19-19

CONTENT

Senate Bill 106 (S-1) would amend the Youth Tobacco Act to do the following:

- Prohibit a person from selling or giving a vapor product or alternative nicotine product to a minor.
- Increase the monetary penalty for selling, giving, or furnishing a tobacco, vapor, or alternative nicotine product to a minor.
- Require signs posted by retailers to indicate that the purchase of vapor or alternative nicotine products by minors was illegal.
- Require a person to verify that an individual was at least 18 before selling or furnishing a tobacco, vapor, or alternative nicotine product to him or her.
- Extend the affirmative defense of having and enforcing a preventative written policy to a charge of selling a vapor or alternative nicotine product to a minor.
- Prohibit a minor from possessing or using a vapor product or alternative nicotine product.

Senate Bill 155 (S-1) would amend the Youth Tobacco Act to do the following:

- Prohibit a person from selling a liquid nicotine container in Michigan unless it met Federal child-resistant effectiveness standards.
- Prohibit a person selling vapor products or alternative nicotine products at retail from displaying for sale in Michigan a vapor product unless it was stored behind a counter in an area only accessible by employees or a locked case.

Each bill would take effect 90 days after its enactment. The bills are tie-barred.

Senate Bill 106 (S-1)**Selling, Giving, or Furnishing Vapor or Alternative Nicotine Product to a Minor**

The bill would prohibit a person from selling, giving, or furnishing a vapor product or alternative nicotine product to a minor, including through a vending machine or other means. Currently, it is a misdemeanor to sell, give, or furnish a tobacco product to a minor, and a violator is subject to a maximum \$50 fine for each violation. Under the bill, the fine would be modified to the following, and also would apply to a violation of the proposed prohibition described above:

- For a first offense, not more than \$100.

- For a second offense, not more than \$500.
- For a third or subsequent offense, not more than \$2,500.

The bill would define "alternative nicotine product" as a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term would not include a tobacco product, a vapor product, food, or a product regulated as a drug or device by the United States Food and Drug Administration (FDA).

"Vapor product" would mean a noncombustible product 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 or any other substance, and the use or inhalation of which simulates smoking. The term would include an electronic cigarette, electronic cigar, electronic pipe, or similar product or device and a vapor cartridge or other container of nicotine or other substance in a solution or other form that is intended to be used with or in such a product or device. It would not include a product regulated as a drug or device by the FDA.

Required Retail Sign

The Act requires a person who sells tobacco products at retail to post a conspicuous sign in a place close to the point of sale. The sign must include a specific statement about the illegality of the purchase of tobacco products by a minor. The Act also requires the Department of Community Health (now the Department of Health and Human Services) to produce the signs, and distribute them free of charge to people who sell tobacco products at retail. The bill would extend the sign requirement to a person who sells vapor products or alternative nicotine products at retail, and would modify the sign's statement to include those products.

"Person who sells vapor products or alternative nicotine products at retail" would mean a person whose ordinary course of business consists, in whole or in part, of the retail sale of vapor products or alternative nicotine products.

Age Verification Requirement

The bill would require a person to verify that an individual was at least 18 years old before selling, offering to sell, giving, or furnishing a tobacco, vapor, or alternative nicotine product to the individual. If the individual appeared to be under 27 years old, the person would have to examine a government-issued photographic identification that established that the individual was at least 18 years old. If the sale were made by the internet or another remote sales method, the person would have to perform an age verification through an independent, third-party age verification service that compared information from a commercially available database, or aggregate of databases, that was regularly used by government agencies and businesses for the purpose of verifying age and identity, to the personal information entered by the individual when ordering, that established that the individual was at least 18 years old.

A person who violated the age-verification requirement would be guilty of a misdemeanor, and would be subject to a fine as follows:

- For a first offense, not more than \$100.
- For a second offense, not more than \$500.
- For a third or subsequent offense, not more than \$2,500.

Affirmative Defense & Employment Exemption

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 bill 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 his or her employment. Under the bill, this also would apply to a minor's handling or transportation of a vapor product or alternative nicotine product.

Purchase, Possession, or Use of Tobacco, Vapor, or Alternative Nicotine Products

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. An individual who is ordered to participate in a health promotion and risk reduction assessment program is responsible for the costs of participating in the program. The Act also allows a court to order a violator to perform a certain number of hours of community service in a hospice, nursing home, or long-term care facility.

The bill would eliminate the requirement for any ordered community service to be conducted in a hospice, nursing home, or long-term care facility. In addition, the bill would extend the prohibitions and penalties listed above to activities involving vapor products or alternative nicotine products, although for an individual's first and second violation regarding vapor products or alternative nicotine products, he or she would be responsible for a State civil infraction, instead of a misdemeanor.

Currently, the tobacco prohibitions do not apply to a minor participating in an undercover law enforcement operation or compliance check. The bill would refer to a vapor product or alternative nicotine product, as well as a tobacco product, in this provision.

Senate Bill 155 (S-1)

The bill would prohibit a person from selling a liquid nicotine container in Michigan unless it met the child-resistant effectiveness standards found under 16 CFR 1700.15(b) (which requires child-resistant effectiveness of not less than 85% without a demonstration and not less than 80% after a demonstration of the proper means of opening special packaging).

"Liquid nicotine" would mean a liquid or other substance containing nicotine in any concentration that is sold, marketed, or intended for use in a noncombustible product 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 or any other substance, and the use or inhalation of which simulates smoking. "Liquid nicotine container" would mean a bottle or other container holding liquid nicotine in any concentration but would not include a cartridge containing liquid nicotine if it were prefilled and sealed by its manufacturer and was not intended to be opened by the consumer.

A person who violated the proposed prohibition would be guilty of a misdemeanor punishable by a fine of not more than \$50 for each violation.

In addition, a person who sold vapor products or alternative nicotine products at retail could not display for sale in Michigan a vapor product unless it was stored for sale behind a counter

in an area accessible only to employees or within a locked case so that a customer wanting access to the vapor product would have to ask an employee for assistance. A person who violated this provision would be responsible for a State civil infraction and would have to be fined not more than \$500.

MCL 722.641 et al. (S.B. 106)
Proposed MCL 722.642b & 722.642c (S.B. 155)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

Senate Bill 106 (S-1)

The bill would have no fiscal impact on the State and could have a small negative fiscal impact on local government. A violation of the bill would be a civil infraction for the first two violations and a misdemeanor on the third or subsequent violation, each of which would be subject to a \$50 maximum fine. Any increase in misdemeanor arrests and convictions could increase resource demands on law enforcement, court systems, and community supervision. Any associated increase in fine revenue would increase funding to public libraries.

Senate Bill 155 (S-1)

The bill would have no fiscal impact on the State and could have a small negative fiscal impact on local government. A violation of the bill for selling liquid nicotine containers that were not child resistant would be a misdemeanor subject to a \$50 maximum fine. Additionally, a violation of the bill for selling vapor products that were not stored behind a locked case would be a State civil infraction subject to a \$500 maximum fine. Any increase in misdemeanor arrests and convictions could increase resource demands on law enforcement, court systems, and community supervision. Any associated increase in fine revenue would increase funding to public libraries.

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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.