



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

BILL ANALYSIS



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

Senate Bills 730 and 526 (Substitute S-2)
Sponsor: Senator Dale L. Shugars
Committee: Health Policy and Senior Citizens

Date Completed: 10-23-95

SUMMARY OF SENATE BILL 730 as introduced 10-19-95 and SENATE BILL 526 (Substitute S-2):

Senate Bill 730 would repeal and reenact the Youth Tobacco Act (MCL 722.641-722.645). Provisions that the bill would reinstate set a criminal penalty for persons who distribute tobacco products to minors (although the bill would establish a range of increased penalties); provide that it is a defense if the defendant has in force a written policy to prevent the distribution of tobacco products to minors; require tobacco retailers to post a sign stating that the provision of tobacco products to minors is illegal; require the Department of Public Health (DPH) to distribute the signs; set penalties for minors who use tobacco products in public (although the penalties under the bill would be civil, rather than criminal); and prohibit retailers from selling a cigarette separately from its package. The bill also would add new provisions to do the following:

- Require tobacco retailers to make an effort to obtain proof of age from a prospective purchaser.
- Make exceptions to the Act for giving a tobacco product to a family member.
- Require tobacco retailers to notify their sales clerks of the provisions of the law.
- Provide that someone under 18 could be engaged by the State or local police or the DPH as part of an enforcement action under the Act.

Senate Bill 526 (S-2) would amend the juvenile code to specify procedures that would apply if a child were accused of violating the Youth Tobacco Act. The bill is tie-barred to Senate Bill 730.

Senate Bill 730

Distributing to Minors

The current Act prohibits a person from selling, giving, or furnishing any cigarette, cigar, chewing tobacco, tobacco snuff, or tobacco in any other form to a person under 18, and provides that a violation is a misdemeanor punishable by a maximum fine of \$50. The bill would prohibit a person from distributing a tobacco product to a person under 18. A violator would be guilty of a misdemeanor punishable by a fine of \$100 for a first offense, \$150 for a second offense in a two-year period, and \$500 for a third or subsequent offense within a two-year period. Evidence that a defendant obtained and "reasonably relied on proof of age that appeared on its face to be valid" would be a defense to a charge brought for a violation of the prohibition.

("Distribute" would mean to sell, give, or furnish a tobacco product. "Distribute" would not include sale or distribution through the use of the U.S. mail services, express mail, parcel post, or common carrier services, or distribution to a person who had not previously paid or agreed to pay for the tobacco product, as regulated under the Michigan Penal Code. "Tobacco product" would mean a product that contained tobacco and was intended for human consumption, including cigarettes, noncigarette smoking tobacco, or smokeless tobacco, as those terms are defined in the Tobacco Products Tax Act, and cigars.)

Under the bill, a person who sold tobacco products at retail would have to make a good faith effort to determine the age of a prospective purchaser, that at least included an examination of a proof of age

from the prospective purchaser. A charge could not be brought for a violation of this provision against a person who, without first obtaining proof of age, sold a tobacco product to a purchaser who was later determined to be 18 or older. ("Proof of age" would mean a driver's license, official State personal identification card, or other pictured identification issued by a governmental agency, not including a school or university student identification card, that described the individual identified as 18 years of age or older.)

A person who sold tobacco products at retail or from a vending machine would be prohibited from selling a cigarette separately from its package, or from selling a package of cigarettes that contained fewer than 20 cigarettes. (Currently, the law only prohibits the sale at retail of a cigarette separately from its package.) Similar to current law, the bill would exempt tobacco specialty and other retail stores that deal exclusively in tobacco products from these prohibitions. Further, the bill would not apply to the giving or furnishing of a tobacco product to a family member for noncommercial purposes.

The bill would reinstate provisions that make it an affirmative defense that the defendant had in force at the time of arrest and continues to have in force a written policy to prevent the distribution of a tobacco product to persons under 18, and that the defendant enforced and continues to enforce the policy. A defendant must give notice of the defense to the prosecutor at least 14 days before trial, and the prosecutor must give notice of a rebuttal at least seven days before trial.

Notice to Employees

The bill would require a tobacco products retailer to notify each individual employed by that person as a retail sales clerk of all of the following:

- That State law prohibits the distribution of a tobacco product to a person under 18 and the purchase, receipt, possession, smoking, or other use or consumption of a tobacco product by a person under 18.
- That State law prohibits the sale of a cigarette separately from its package.
- That State law requires that a diligent effort be made to obtain proof of age from a prospective purchaser or recipient.

The notice would have to be given before the individual commenced work as a retail sales clerk or within 30 days of the bill's effective date if the individual were employed as a retail sales clerk on

that date. The individual would have to signify that he or she had received the notice by signing a form as prescribed in the bill. Each form would have to indicate the date of signature. The employer would have to retain the form during the individual's term of employment and for at least 120 days after the individual left that employ.

In addition, a tobacco products retailer would have to give each individual employed as a retail sales clerk a true copy of the proposed Act before the individual commenced work as a retail sales clerk or within 30 days of the bill's effective date if the individual were employed as a retail sales clerk on that date. The DPH would have to provide copies of the proposed Act free, upon request, to persons subject to the above requirements within 30 days of the bill's effective date.

An employer who failed to comply with these requirements would be guilty of a misdemeanor punishable by a fine of \$100 for a first offense and \$200 for each succeeding violation within a two-year period.

Signs

The bill would reenact requirements that a tobacco retailer post, in a place close to the point of sale and conspicuous to employees and customers, a sign stating that the purchase of tobacco products by minors and the provision of tobacco products to minors are prohibited by law. The bill specifies that the required sign would be the only notice regarding the distribution of tobacco products that was required to be posted or maintained in a store where tobacco products were sold at retail. The bill also states that the sign provisions would not conflict with Federal law regarding the signage or labeling of tobacco products.

In addition, the bill would reinstate provisions requiring the DPH to produce the sign (but would require DPH to do so within 30 days of the bill's effective date); requiring licensed wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products to distribute copies of the sign free of charge to retailers, upon request; and requiring the DPH to distribute copies of the sign free of charge to retailers who do not purchase tobacco products from wholesalers or unclassified acquirers.

Minor's Public Use of Tobacco

Under the current Act, a person under 18 is prohibited from purchasing, receiving, possessing, smoking, or otherwise using or consuming a

tobacco product in a public place. A violation is a misdemeanor punishable by a maximum fine of \$50, and, pursuant to a probation order, the court may require a violator to participate in a health promotion and risk reduction assessment program. A violator also may be ordered to perform community service in a hospice, nursing home, or long-term care facility and/or participate in a health promotion and risk reduction program.

The bill provides instead that a person under 18 could not purchase, receive, possess, smoke, or otherwise use or consume a tobacco product in a public place; and provides that a person who violated this prohibition would be guilty of a State civil infraction, liable for a civil fine of up to \$100 for each violation. Fines and costs collected for these civil infractions would have to be disbursed as provided by law.

A law enforcement agency, upon determining that a person under 18 years of age allegedly purchased, received, possessed, smoked, or otherwise used, or attempted to purchase, receive, possess, smoke, or otherwise use, a tobacco product in violation of the prohibition would have to notify the person's parent or parents, custodian, or guardian as to the nature of the violation if the name of a parent, guardian, or custodian were reasonably ascertainable. The notice would have to be made within 48 hours after the law enforcement agency determined that the person who allegedly committed the violation was under 18. The notice could be made by any means reasonably calculated to give prompt actual notice including, but not limited to, notice in person, by telephone, or by first-class mail. The notification requirements would not apply if the law enforcement agency had reasonable grounds to believe the person was an emancipated minor.

This bill would not prohibit a person under 18 from possessing a tobacco product during regular working hours and in the course of his or her employment, if employed by a person who sold tobacco products at retail, if the tobacco product were not possessed for his or her personal consumption.

The prohibition applicable to persons under 18 would not limit the liability of a person who distributed a tobacco product to a person under 18 in violation of the bill.

The DPH would have to work with State and local law enforcement agencies, the Department of Attorney General, and local prosecutors to enforce the Act in a manner that could reasonably be

expected to reduce the extent to which tobacco products were sold or otherwise distributed to persons under 18. Annually, the DPH would have to conduct random, unannounced inspections at locations where tobacco products were sold at retail or otherwise distributed to ensure compliance with the Act.

In addition, the DPH would have to prepare for submission annually to the standing committee of each house of the Legislature that had responsibility for public health matters, and to the Appropriations Committees, a written report that separately identified the number of prosecutions and convictions under the Act; the number of retail tobacco sellers who were charged with and convicted of selling a tobacco product to a person under 18; the change in the number and percentage of sales to persons under 18; and the methodology used to obtain and determine the information required for the report.

Enforcement Actions

A person under 18 could be engaged by the State Police or a local law enforcement agency as part of an enforcement action under the Act if the initial or contemporaneous receipt or purchase of a tobacco product by the minor occurred under the direction of the State Police or local law enforcement agency and were part of the enforcement action. The State Police or local agency could not recruit or attempt to recruit a person under 18 to participate in an enforcement action at the scene of a violation involving distribution to a minor; or allow a person under 18 to purchase or receive a tobacco product as part of an enforcement action without the permission of the minor's parents or legal guardians.

Senate Bill 526 (S-2)

The bill would amend the juvenile code to specify procedures that would apply if a child were accused of an act that would constitute a violation of the Section 3 of the Youth Tobacco Act (which would prohibit a person under 18 from purchasing, receiving, possessing, smoking, or otherwise using a tobacco product in a public place) or a substantially corresponding local ordinance. Notwithstanding other provisions of the code, the following would apply:

- A petition would not be required, but the probate court could act upon a copy of the written notice to appear given to the accused child under Chapter 87 of the Revised Judicature Act (which governs

municipal civil infractions) or Chapter 88 of that Act (which, under Public Act 54 of 1995, pertains to State civil infractions).

- The provisions of Section 2b(b) and (c) of the code would apply.

(Section 2b specifies procedures that apply when a child is accused of a act that constitutes a violation of the Michigan Vehicle Code. Under Section 2b(b), the parent, guardian, or custodian of the child may be required to attend a hearing when notified by the probate court. Section 2b(c) provides that if, after the hearing, the probate court finds the accusation to be true, the court may dispose of the case in accordance with the juvenile code, e.g., give the child a warning, place the child on probation in his or her own home, place the child with a private agency, or commit the child to a public institution.)

Proposed MCL 712A.2d (S.B. 526)

Legislative Analyst: G. Towne

FISCAL IMPACT

Senate Bill 730

The bill would result in an indeterminate increase in fine revenues that are dedicated to public libraries. (The level of fine collections under the current Act is unknown.) The bill also would result in an indeterminate increase in costs incurred by the Department of Public Health associated with the new printing and mailing and data gathering and reporting provisions of the bill.

Senate Bill 526 (S-2)

The effect of this bill on the courts would depend on the number of juveniles convicted under the Youth Tobacco Act and the punishment imposed by the courts. A monetary punishment could mean additional funds, but youth who could be placed in an institution under this Act could mean the use of additional resources by the courts.

Fiscal Analyst: P. Graham (S.B. 730)
M. Bain (S.B. 526)

S9596\S730SA

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.