

Legislative Analysis



PROHIBIT PURCHASE OF TOBACCO BY MINORS

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House Bill 5396 as enrolled
Public Act 236 of 2006
Sponsor: Rep. David Law
House Committee: Judiciary
Senate Committee: Judiciary

Second Analysis (1-31-07)

BRIEF SUMMARY: The bill would make it illegal for a minor to purchase or attempt to purchase tobacco products; provide exemptions; and define "public place", "tobacco product", and "use of tobacco product".

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on juvenile justice systems and local criminal justice systems. To the extent that the bill increased the numbers of young offenders adjudicated as juveniles, the bill could increase state and local costs of juvenile placements and services. To the extent that the bill increased the numbers of young offenders prosecuted as adults and convicted of misdemeanors, the bill could increase local costs of incarceration and misdemeanor probation supervision; those costs vary by county. To the extent that the bill increased collections of penal fine revenues, it could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

The bill seeks to address several issues pertaining to minors and tobacco products. Current law makes it illegal to sell, give, or furnish certain tobacco products to minors (under 18 years of age) and for minors to possess or use tobacco in public. The penalty for a violation is a misdemeanor punishable by a fine up to \$50. Though offenders cannot be sent to jail, a court can impose community service and/or participation in a health promotion and risk reduction program.

Despite these measures, a significant number of teenagers continue to smoke and use tobacco products. Some feel that closing a loophole in the law that does not make it illegal for teens to purchase tobacco products may be part of the solution.

The current prohibition on minors possessing tobacco products also makes it illegal for youths under the age of 18 to stock shelves in grocery or convenience stores and gas stations and to handle tobacco products in a transaction as a cashier. Owners and managers of retail stores say that this prohibition limits their ability to hire and/or schedule employees of this age if the store sells cigarettes and other tobacco products.

Moreover, the Michigan Liquor Control Code provides an exemption to the prohibition on minors purchasing and possessing alcohol if the minor is part of a lawfully sanctioned

sting operation; some would like a similar provision to be added to the Youth Tobacco Act.

THE CONTENT OF THE BILL:

House Bill 5396 would amend the Youth Tobacco Act (MCL 722.641 et al) to prohibit the purchase, possession, or use of tobacco products by minors (defined in the bill as individuals under 18 years of age). The bill would take effect September 1, 2006.

Currently under the law, a minor cannot possess or use tobacco products in public places. The bill would instead prohibit a minor from doing any of the following:

- ***Purchasing*** or attempting to purchase a tobacco product.
- ***Possessing*** or attempting to possess a tobacco product.
- ***Using*** a tobacco product ***in a public place***.
- ***Presenting false proof of age*** for the purpose of purchasing, attempting to purchase, possessing, or attempting to possess a tobacco product.

However, the bill specifies that this prohibition would not apply to the handling or transportation of a tobacco product by a minor under the terms of that minor's employment. The bill would also not apply to minors participating in undercover operations as part of an employer-sponsored internal enforcement action or an undercover operation as part of an enforcement action under the direction of the Michigan State Police or a local police agency (unless the initial or contemporaneous purchase or receipt of the tobacco product by the minor was not under direction of the state police or local police agency and was not part of the undercover operation).

In addition, the bill would not prohibit a minor cited under the bill from being charged with, convicted of, or sentenced for any other violation of law arising out of the violation of the offenses described above.

Furthermore, under current law, a person cannot sell, give, or furnish a tobacco product to a minor. A person who violates this prohibition is guilty of a misdemeanor, and is punished by a fine of up to \$50 for each violation. The bill would retain this provision and specify that this prohibition and penalty would not apply to the handling or transportation of a tobacco product by a minor under the terms of that minor's employment.

The bill would define "*public place*" to mean a public street, sidewalk, or park or any area open to the general public in a publicly owned or operated building or public place of business. "*Tobacco product*" would be defined to mean a product that contains tobacco and is intended for human consumption, including but not limited to, cigarettes, non-cigarette smoking tobacco, or smokeless tobacco, as those terms are defined in Section 2 of the Tobacco Products Tax Act (MCL 205.422), and cigars. The bill also would define "*use of tobacco product*" to mean to smoke, chew, suck, inhale, or otherwise consume a tobacco product.

ARGUMENTS:

For:

Though it is illegal for minors (those under 18 years of age) to possess or use tobacco products in public, and illegal for anyone of any age to furnish, sell, or give tobacco products to minors, it is not illegal under current law for minors to buy tobacco products. The bill would close this loophole and would also make the attempt to purchase, possess, or use tobacco products subject to criminal charges.

The prohibitions on possessing, purchasing, or using tobacco products would not apply to a minor if the prohibited activity occurred in the scope of his or her employment. Currently, teens under 18 cannot stock shelves with cigarettes and other tobacco products or handle those products in a transaction as a cashier. Lifting this ban should open up employment opportunities for younger teens and provide employers with more flexible staffing options.

For:

The prohibitions added by the bill would also not apply in situations where a minor participated in undercover sting operations monitoring compliance with the law on the part of store clerks – whether under the oversight of his or her employer for an in-house enforcement operation or with law enforcement agencies. However, the exclusion would not apply to a minor who, after violating the law, was asked by police officers to go back into the store or to another store to attempt to purchase more tobacco products. These provisions parallel similar ones in the Liquor Control Code. At the time the provisions were added to the Liquor Code, retailers testified that police officers who apprehended minors with alcohol products would often not charge the minors if they agreed to go back into the store or into another store and attempt to purchase more alcohol. The retailers argued that it was unfair for licensees and their employees to face criminal or administrative sanctions when the minor who also broke the law suffered no consequences. Under House Bill 5396, a minor would only be protected from the act's penalties if he or she participated in an organized sting operation, and not as a result of being caught with contraband.

Against:

Many in the public health arena feel that the bill would do little to curb teen smoking and that if the intent is to do just that, that there are more effective measures that could be taken. For example, research does support that when people have greater access to smoke-free environments – whether in the home or in public venues such as restaurants, bowling alleys, and parks, that smoking rates decrease. The bill would do nothing to provide healthier environments for adolescents, just add on additional criminal penalties (which studies have shown do little to curb youth smoking because they often get tobacco products from other people and not from direct sales).

In addition, the bill sends a mixed message to the young – it is OK to handle cigarettes and other tobacco products at work, and to breathe second-hand smoke, but illegal to have those cigarettes in their shirt pockets or to smoke one in public. If minors are to be

deterred from tobacco products, then the ban on handling such products until they are adults should be kept in place.

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