




Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 5396 (Substitute H-1 as passed by the House)
Sponsor: Representative David Law
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 5-30-06

CONTENT

The bill would amend the Youth Tobacco Act to do all of the following:

- Prohibit a minor (a person under 18 years of age) from purchasing a tobacco product.**
- Prohibit a minor from using a purported proof of age that was false, fraudulent, or not actually his or hers, in purchasing or possessing tobacco.**
- Make an exception to the prohibition against a minor's purchase, possession, or use of tobacco for a minor participating in an undercover enforcement operation.**
- Specify that the provisions against a minor's purchase, possession, or use of tobacco and against selling, giving, or furnishing tobacco to a minor would not apply to a minor's handling or transportation of tobacco in the course of his or her employment.**

The bill would take effect on September 1, 2006.

Purchase, Possession, or Use By Minor

The Act prohibits a person under 18 years of age from possessing or smoking cigarettes; possessing or chewing, sucking, or inhaling chewing tobacco or tobacco snuff; or possessing or using tobacco in any other form on a public highway, street, alley, park, or other lands used for public purposes, or in a public place of business or amusement. The bill would delete that provision and 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 or offering to an individual a purported proof of age that was false, fraudulent, or not actually his or her own proof of age, for the purpose or purchasing, possessing, or attempting to purchase or possess a tobacco product.

A violation would continue to be a misdemeanor punishable by a fine of up to \$50 for each violation. Also, under the Act, pursuant to a probation order, the court may require an offender to participate in a health promotion and risk reduction assessment program and perform community service.

The bill specifies that this section of the Act would not prohibit an individual from being charged with, convicted of, or sentenced for any other violation of law arising out of a violation described above.

Under the bill, "tobacco product" would mean a product that contains tobacco and is intended for human consumption, including cigarettes, noncigarette smoking tobacco, or smokeless tobacco, as those terms are defined in the Tobacco Products Tax Act (MCL 205.422), and cigars. "Use a tobacco product" would mean to smoke, chew, suck, inhale, or otherwise consume a tobacco product. "Public place" would 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.

Exceptions to Tobacco Prohibitions

Under the bill, the prohibitions described above would not apply to a minor participating in either or both of the following:

- An undercover operation in which the minor purchased or received a tobacco product under the direction of his or her 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 purchased or received a tobacco product under the direction of the State Police or a local police agency as part of an enforcement action, unless the minor's initial or contemporaneous purchase or receipt of the tobacco product was not under the direction of a law enforcement agency and was not part of the undercover operation.

The Act prohibits a person from selling, giving, or furnishing tobacco to a minor. A violation is a misdemeanor punishable by a fine of up to \$50 for each violation. Under the bill, this prohibition, and the prohibitions against a minor's purchase, possession, or use of a tobacco product, would not apply to the handling or transportation of a tobacco product by a minor under the terms of his or her employment.

MCL 722.641 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no impact on State government and an indeterminate fiscal impact on local government. There are no data to indicate how many offenders would be convicted of the proposed offense. To the extent that the bill increased the number of juveniles convicted, local governments would incur the costs of misdemeanor probation, which varies by county. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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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.