

# Legislative Analysis



## SALE OF ALTERNATIVE TOBACCO/NICOTINE AND VAPOR PRODUCTS TO MINORS

Mary Ann Cleary, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

### House Bill 4997

**Sponsor: Rep. Rick Outman**  
**Committee: Regulatory Reform**

**Senate Bill 667 (Substitute S-2)**  
**Sponsor: Sen. Glenn S. Anderson**

**Senate Bill 668 (Substitute S-4)**  
**Sponsor: Sen. Rick Jones**

**Senate Committee: Regulatory Reform**  
**House Committee: Regulatory Reform**

**Complete to 3-10-14**

## A SUMMARY OF HOUSE BILL 4997 AS INTRODUCED 9-19-13 AND SENATE BILLS 667 & 668 AS PASSED BY THE SENATE ON 3-6-14

The bills would each amend the Youth Tobacco Act (MCL 722.641, 642 & 644) to extend the current prohibitions against selling tobacco products to minors, and the purchase, possession, or use of tobacco products by minors so that they also apply to *vapor products and tobacco-derived products or alternative nicotine products*.

House Bill 4997 contains provisions similar to those found in Senate Bills 667 and 668 combined, as explained below.

Senate Bill 667 (S-2) would amend the Youth Tobacco Act to prohibit a minor from possessing or using a "vapor product" or "alternative nicotine product." Various prohibitions that now apply to minors 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 would be extended to vapor products and alternative nicotine products. As now, violations would be misdemeanors subject to a fine of up to \$50 per violation and possible community service requirements. Multiple violations also result in participation in health promotion and risk reduction programs.

Senate Bill 668 (S-4) would amend the same act to extend provisions regarding selling and furnishing tobacco products to minors to vapor products and alternative nicotine products. These include the following:

- Prohibiting a person from selling, giving, or furnishing a vapor product or alternative nicotine product to a minor. (As now, this would be a misdemeanor punishable by a fine of up to \$50 for each violation.)
- Requiring signs posted by retailers to indicate that the purchase of vapor or alternative nicotine products by minors is illegal.

- Requiring a person to verify that an individual was at least 18 before selling or furnishing a vapor product or alternative nicotine product to that person.

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 bills 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 employment. Under the bills, this also would apply to a minor's handling or transportation of a vapor product or alternative nicotine product. The bills also extend the exemption for minors engaged in certain undercover activities.

As noted earlier, House Bill 4997, as introduced, contains similar provisions as found in Senate Bills 667 and 668 combined, except in its use of terms. In place of "alternative nicotine product," the bill uses the term "tobacco-derived product." The terms are defined in similar, although not identical, ways. It also adds the term "component of a vapor product." The House bill does not contain the provision regarding verification of age.

The two Senate bills are tie-barred, meaning neither could take effect unless both are enacted, and would take effect 60 days after enactment.

In the Senate Bill 668, the term "vapor product" is defined as "a noncombustible product containing nicotine 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 in a solution or other form." The term would include an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in such products or devices. House Bill 4997 cites the same products and devices but the term specifically refers to "any noncombustible product that employs a mechanical heating element, battery, or electronic circuit regardless of shape or size that can be used to heat a liquid nicotine solution contained in a vapor cartridge."

"Alternative nicotine product" is defined as "a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means." Neither term would include a product regulated as a drug or device by the FDA.

## **FISCAL IMPACT:**

House Bill 4997/SB 667-668 would have an indeterminate fiscal impact on local court systems. The fiscal impact would depend on how the new provisions of the bill affect caseloads and related administrative costs to the courts. Persons found in violation would

be guilty of a misdemeanor punishable by a fine of not more than \$50 for each violation. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

House Bill 4997 as introduced (and SB 668) would have a negligible fiscal impact on the Department of Community Health related to the modification of required signage and materials for tobacco retailers, and notification of retailers of the changes.

Legislative Analyst: Chris Couch  
Fiscal Analyst: Susan Frey  
Robin Risko

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.