

Legislative Analysis



YOUTH TOBACCO ACT: DEFINE “MINOR” AS UNDER 21 AND INCLUDE SYNTHETIC NICOTINE PRODUCTS

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House Bill 4878 as introduced
Sponsor: Rep. Jim Lilly
Committee: Rules and Competitiveness
Revised 6-2-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4878 would amend the Youth Tobacco Act to change the definition of “minor” for its purposes to mean an individual under the age of 21. The act now defines “minor” as an individual under 18. In general terms, the Youth Tobacco Act prohibits selling or providing tobacco products, vapor products, or alternative nicotine products to minors and also prohibits minors from purchasing, possessing, or using those products. The bill would also add synthetic nicotine products to the products addressed by the act.

The act now prohibits a person from selling, giving, or furnishing a tobacco product, vapor product, or alternative nicotine product to a *minor*, including through a vending machine, and requires a person to verify the age of anyone who looks younger than 27 or who is buying the product remotely before conducting such a transaction. A violation is a misdemeanor punishable by a fine of \$100 for a first offense, \$500 for a second offense, or \$2,500 for a third or subsequent offense. A person who sells these products at retail must post a sign advising that their sale to minors is prohibited under the law.

The bill would amend the above provisions to define *minor* as an individual under 21 years of age (instead of an individual under 18 years of age, as currently). The bill would also add *synthetic nicotine products* to the list of products prohibited or regulated as described above, except that the bill as introduced does not require age verification for synthetic nicotine products. (In addition, there is an exception allowing a minor to handle the prohibited products in the course of his or her job. Synthetic nicotine products are not added to this exception in the bill as introduced.)

Synthetic nicotine product would mean a product intended for human consumption that contains nicotine that has been synthetically produced by the chemical conversion of one or more reagent compounds that are not nicotine. It would not include a vapor product (as defined in the act) or a product regulated as a drug or device by the federal Food and Drug Administration.

The act also prohibits a *minor* from purchasing or possessing a tobacco product, vapor product, or alternative nicotine product, attempting to do so, or providing false proof of age in doing so or attempting to do so and from publicly using¹ a tobacco product, vapor product, or alternative nicotine product. There are exceptions for minors handling these products in the course of their employment or violating the prohibitions in coordination with the police as part of an undercover enforcement action. A minor violating these prohibitions with regard to tobacco

¹ The act prohibits a minor’s use of these products in a *public place*, which it defines as 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. The act defines *using* such a product as smoking, chewing, sucking, inhaling, or otherwise consuming it.

products is guilty of a misdemeanor punishable by a fine of up to \$50 for each violation. A minor violating these prohibitions with regard to vapor products or alternative nicotine products is, for the first two violations, responsible for a civil infraction with a civil fine of up to \$50 and, for subsequent violations, guilty of a misdemeanor punishable by a fine of up to \$50 for each violation. In all cases, the minor also may be subject to a health promotion and risk reduction assessment program or may be ordered to perform community service, with the maximum amount of community service that can be ordered increasing with the number of violations.

The bill would amend the provisions described above to define *minor* as an individual under 21 years of age (instead of an individual under 18) and to add synthetic nicotine products to the list of products prohibited or regulated as described above.

Finally, the bill would prohibit a person who sells vapor products, alternative nicotine products, or synthetic nicotine products at retail from displaying for sale or selling a synthetic nicotine product or a vapor product containing synthetic nicotine unless the packaging of the product contained the following notice:

WARNING: Use of this product may be hazardous to your health. This product contains synthetic nicotine. Nicotine is an addictive chemical. This product has not been regulated or approved by the FDA.

A person violating the above provision would be responsible for a state civil infraction with a fine of up to \$500.

The bill would take effect 90 days after its enactment.

The bill is tie-barred to House Bill 4251, which means that it cannot take effect unless HB 4251 is also enacted. That bill would prohibit the sale of vapor products containing vitamin E acetate or certain other prohibited ingredients.

MCL 722.641 et seq.

FISCAL IMPACT:

House Bill 4878 would have an indeterminate fiscal impact on the state and on local units of government. There is not a practical way to estimate the number of additional misdemeanor convictions or civil infractions that would result from changing the definition of “minor” from meaning “under 18” to meaning “under 21” or from adding synthetic nicotine products to those regulated under the act. Any increase in penal fine revenue for misdemeanor convictions, and from payment of civil infraction penalties, would impact revenue going to public and county law libraries. A small portion of revenue from payment of civil infraction penalties would be deposited into the state’s Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury.

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