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BILL ANALYSIS

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Senate Bill 651 (Substitute S-3 as passed by the Senate)
Senate Bills 652 and 653 (as passed by the Senate)
Senate Bill 654 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Sam Singh (S.B. 651 & 652)
 Senator Mary Cavanagh (S.B. 653)
 Senator Paul Wojno (S.B. 654)
Committee: Regulatory Affairs

Date Completed: 1-21-25

INTRODUCTION

The bills would establish licensure requirements for nicotine and tobacco retailers. They would prescribe administrative fines, licensing sanctions, and misdemeanor penalties for specific violations of their licensure requirements and prohibitions. To obtain or renew a license, an establishment would have to apply to the Department of Licensing and Regulatory Affairs (LARA) and pay a \$500 application or annual renewal fee. The Department would have to begin accepting license applications within 15 months after the bill's effective date. The bill's application fees and administrative and civil fines would have to be deposited into the proposed Nicotine and Tobacco Regulation Fund, which LARA would have to use to administer and enforce compliance with the bill. Finally, the bills would remove penalties for a minor who attempts to purchase, possess, attempts to possess, or uses in a public place a tobacco, vapor, or alternative nicotine product.

FISCAL IMPACT

Senate Bill 651 (S-3) would have an indeterminate negative fiscal impact on LARA, no significant impact on the Department of Treasury, and a positive fiscal impact on local units of government. The Department of Treasury would incur minimal costs to establish the Nicotine and Tobacco Regulation Fund. Additionally, the bill would have an indeterminate negative fiscal impact on the LARA, as total costs would depend on implementation expenses and the appropriations made by the Legislature from the Nicotine and Tobacco Regulation Fund. Local units of government would receive revenue collected from misdemeanor fines imposed under the bill.

Senate Bills 652 and 654 (S-1) would have no fiscal impact on State or local government.

Senate Bill 653 would have a minor negative fiscal impact on the Department of Health and Human Services (DHHS) and no fiscal impact on local units of government. The DHHS would incur minor administrative and production costs related to the creation and provision, free of charge, of the signage required under the bill to establishments that sell vapor products or alternative nicotine products at retail. The bill could have a positive fiscal impact on local units of government. The bill would impose misdemeanor fines ranging from \$100 up to \$2,500. Revenue collected from misdemeanor fines is used to support local and county law libraries. The amount of revenue for local libraries depends on the actual number of violations.

MCL 722.641 et al. (S.B. 651)
722.52 & 722.53 (S.B. 652)

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CONTENT

Senate Bill 651 (S-3) would amend the Youth Tobacco Act to do the following:

- Require a person to hold a valid license to sell a nicotine or tobacco product at retail.
- Prescribe administrative fines and licensing sanctions to an unlicensed person who sold a nicotine or tobacco product.
- Prescribe requirements for new licenses and license renewals, including conditions under which a license could be denied or revoked.
- Allow LARA to promulgate rules to implement licensure requirements.
- Require LARA to begin accepting license applications and affidavits for temporary exemption before licensure within 15 months after the bill's effective date.
- Prohibit an unlicensed establishment from displaying, advertising, or selling its nicotine and tobacco products.
- Prescribe administrative fines and license suspensions or revocations to an establishment that violated the bill's provisions.
- Create the Nicotine and Tobacco Regulation Fund and require fees and fines collected by LARA to be deposited into the Fund and spent on appropriation to ensure compliance with the bill.
- Require LARA to conduct regular compliance checks at each licensed establishment and publish the results of each check.
- Modify penalties for selling, giving, or furnishing an illegal nicotine or tobacco product to a minor to include higher penalties and the suspension and revocation of an establishment's license.
- Require an establishment to examine the photographic identification of an individual attempting to purchase a nicotine or tobacco product and prescribe requirements for this photographic identification.

Senate Bill 652 would amend the Age of Majority Act to exempt from the Act the Michigan Regulation and Taxation of Marihuana Act and the Youth Tobacco Act.

Senate Bill 653 would amend the Age of Majority Act to specify that the Act would not apply to the Michigan Regulation and Taxation of Marihuana Act (MRTMA).

Senate Bill 654 (S-1) would amend the Youth Tobacco Act to do the following:

- Remove requirements penalizing a minor under the age of 21 for possessing, purchasing, or attempting to possess or purchase a tobacco, vapor, or alternative nicotine product.

Senate Bill 651 is tie-barred to Senate Bill 654 and House Bills 6002 and 6004. The House Bills would allow a retail establishment to apply for temporary licensure exemption with an affidavit to LARA while LARA processed the establishment's application and allow for off-premises sales under certain circumstances.

Senate Bill 651 (S-3)

Licensure to Sell Nicotine or Tobacco Products

Generally, the bill would require a person to hold a valid license to sell a nicotine or tobacco product at retail. "Nicotine or tobacco product" would mean a tobacco product, a vapor product, or an alternative nicotine product. It also would mean a product that contains, is made of, or is derived from nicotine or tobacco, or is intended for human consumption or is likely to be consumed by humans by any means, including inhaling, absorbing, or ingesting.

Currently, the Act's definition of "nicotine or tobacco product" includes a component, part, or accessory of a nicotine or tobacco product. Under the bill, "nicotine or tobacco accessory" would mean a component, part, or accessory of a nicotine or tobacco product, including filters, rolling papers, blunt or hemp wraps, flavor enhancers, or pipes, if the component, part, or accessory is not a product regulated as a drug or device by the Food and Drug Administration.

The bill would specify that "tobacco product" would exclude a product that contains marihuana. "Vapor product" also would exclude a product that includes marihuana.

"Establishment" would mean a place of business, or area within a place of business, where a licensee has been authorized by LARA to sell or offer for sale a nicotine or tobacco product at retail. The term would not include flash retail or itinerant retail. Flash retail establishments and itinerant establishments would be ineligible for licensure. "Flash retail" would mean the use of a mobile, pop-up, or temporary structure for retail.

A *person*¹ could not sell a nicotine or tobacco product at retail unless the sale was on behalf of the licensee or a person that was temporarily exempt from licensure and was conducted on the licensee's establishment or the premises of the person that was temporarily exempt from licensure.

A person who violated this prohibition would be responsible for a State civil infraction and could be ordered to pay a civil fine as follows:

- For a first violation in a period of three years, \$500.
- For a second violation in a period of three years, \$1,000.
- For a third or subsequent violation in a period of three years, \$2,000.

However, a nonmanagerial employee of a licensee would not be responsible for a State civil infraction or fine if the nonmanagerial employee did not know and did not have reason to know that the violation was taking place.

Application for & Renewal of Licensure

An application for a new license would have to be in a form prescribed by LARA. The application fee for a new license and annual renewal license would be \$500. An applicant would have to submit a separate application for each of the applicant's establishments. In the application, the applicant would have to include the following information:

- The name, address, and telephone number of the applicant and the address of the establishment.
- The organizational documents of the applicant.
- If the applicant were required to be licensed under the Tobacco Products Tax Act, proof that the applicant was licensed, as applicable, under that Act.
- The signature of each operator of the establishment, under the penalty of perjury.
- Other information that LARA found necessary for the administration or enforcement of the Act.
- Payment for the new license fee.
- An affidavit that affirmed that the applicant had not sold and would not sell a nicotine or tobacco product at retail without holding a valid license, and each operator of the applicant had read the Act and had provided training to each of the applicant's employees.

The training described in the latter requirement would have to include the following information:

¹ "Person" would mean an individual or a partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

- That the sale of a nicotine or tobacco product to a minor was prohibited by law.
- The consequences of selling a nicotine or tobacco product to a minor.
- The types of identification that were permissible under the Act for proof of an individual's age.

An applicant that had an application pending LARA approval would have to inform LARA of a change in the information submitted with the application at least 10 business days after the change occurred.

The bill would require LARA to grant a license to each establishment for which the applicant requested a license unless LARA determined that the applicant or establishment did not qualify for licensure. Subject to a license suspension or revocation, a license, a license renewal, and a certificate of licensure would be valid for one year.

To renew a license, a licensee would have to submit to LARA, between 60 and 90 days before the expiration of the license term, an application for a renewed license in a form and manner as prescribed by LARA. If a licensee failed to submit a license renewal application in a timely manner, the licensee would have to apply for a new license.

Under the bill, LARA could deny, suspend, revoke, or refuse to grant a license for any of the following reasons:

- The applicant or licensee submitted inaccurate or false information to the Department.
- The applicant or licensee violated the bill.
- The applicant or licensee failed to pay a fine assessed under the bill.
- If a licensee had an unresolved disciplinary action under the bill, LARA could not grant or renew a license if the license was for the same establishment that was associated with the unresolved disciplinary action.

The bill would allow LARA to prorate the fee for and duration of a license if the applicant for the license were a licensee.

Transfer or Change of an Establishment's Ownership Interest

A license would not be transferable. If a licensee transferred ownership of the licensee's establishment, the license for that establishment would be void. If a licensee elected to no longer sell or offer for sale nicotine or tobacco products at an establishment, the licensee would have to notify LARA within 30 days. The licensee's license for the establishment would become void when LARA received the notification.

Other Requirements

A licensee would be required to publicly display the applicable certificate of licensure or a copy of the certificate. A licensee that violated this requirement would be subject to an administrative fine of up to \$50.

A licensee would have to prohibit the sale, consumption, and use of marijuana on the licensee's establishment. A licensee that violated this requirement would be subject to an administrative fine of up to \$2,500.

A licensee would be prohibited from selling a nicotine or tobacco product itinerantly by flash retail. A licensee that violated this prohibition would be subject to an administrative fine of between \$250 and \$2,000.

A licensee that violated this prohibition would be subject to an administrative fine of \$250 to \$2,500.

Departmental Duties

The bill would require LARA and the Department of Treasury to share information that was necessary for the effective administration or enforcement of the Act.

The bill would prohibit LARA from denying, suspending, revoking, or refusing to renew a license or impose an administrative fine or license ineligibility period under the Act unless the person subject to LARA's action was provided notice and an opportunity for a hearing.

The bill would require LARA to regularly inspect each establishment for compliance with the bill. Every year, or more frequently, LARA would be required to publish the results of each compliance check that was conducted during the applicable time period. The Department could create and operate an education and training program for individuals involved in the inspections.

By October 1 of each year, beginning in 2027, LARA would have to create a report that included the following information for the one-year period immediately preceding the report:

- The number of licensees.
- The number of inspections conducted.
- The number of inspections failed by licensees.
- The number of inspections in which a licensee failed the immediately preceding inspection.
- A detailed statement of whether the fees for licensure were sufficient for the Department to administer the Act.

The report would have to be made available to the public at no cost on LARA's website.

Prohibition Against Sale to Minors, Identification Requirements, Penalties and Fees

Among other things, the Act 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. A person who violates this prohibition is guilty of a misdemeanor punishable by a fine as follows:

- For a first offense, not more than \$100.
- For a second offense, not more than \$500.
- For a third or subsequent offense, not more than \$2,500.

Instead, the bill would delete the misdemeanor penalties and specify that a person could not sell, give, or furnish a nicotine or tobacco product (including a tobacco vapor product) or a nicotine or tobacco accessory to a minor, including those sold through a vending machine.

Additionally, the bill would specify that the prohibition would not apply to a minor's handling or transportation of a nicotine or tobacco product under the terms of the minor's employment. Nor would this prohibition apply if an establishment sold, gave, or furnished a nicotine or tobacco product to a minor after the establishment made a diligent and good-faith effort to examine photographic identification in person.

The bill would require a licensee or employee of a licensee to examine, in person, photographic identification of the individual attempting to purchase a nicotine or tobacco product before the product was sold, given, or furnished. The photographic identification would have to meet all the following requirements:

- Appear to be authentic and government issued.
- Establish the identity of the minor.
- Misrepresent that the minor was an individual 21 years of age or older.

A person that sold, gave, or furnished a nicotine or tobacco *product* to a minor would be subject to an administrative fine, suspension or revocation of the licensee's license, or both, as follows:

- For a first violation in a period of three years, \$1,500.
- For a second violation in a period of three years, \$2,500.
- For a third violation in a period of three years, \$3,000, and LARA would have to suspend the license for seven days.
- For a fourth violation in a period of three years, \$4,000, and LARA would have to suspend the license for 30 days.
- For a fifth violation in a period of three years, \$5,000, and LARA would have to suspend the license for one year.
- For a sixth violation in a period of three years, \$5,000, and LARA would have to revoke the license.

A person that sold, gave, or furnished a nicotine or tobacco accessory to a minor would be subject to an administrative fine as follows:

- For a first violation in a period of three years, \$100.
- For a second violation in a period of three years, \$150.
- For a third violation in a period of three years, \$200.
- For a fourth or subsequent violation in a period of three years, \$400.

A licensee who sold, gave, or furnished a nicotine or tobacco *product* to an individual without examining, in person, photographic identification of the individual, would be subject to an administrative fine as follows:

- For a first violation in a period of three years, \$250.
- For a second violation in a period of three years, \$500.
- For a third violation in a period of three years, \$750.
- For a fourth or subsequent violation in a period of three years, \$1,000.

A licensee who sold, gave, or furnished a nicotine or tobacco *accessory* to an individual without examining, in person, photographic identification of the individual, would be subject to an administrative fine as follows:

- For a first violation in a period of three years, \$100.
- For a second violation in a period of three years, \$150.
- For a third violation in a period of three years, \$200.
- For a fourth or subsequent violation in a period of three years, \$250.

An employee, other than a nonmanagerial employee, who violated these prohibitions would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$200. A nonmanagerial employee who violated these prohibitions would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$100.

A person, other than a nonmanagerial employee, licensee, or employee of a licensee, that sold, gave, or furnished a nicotine or tobacco *product* to a minor would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to the following:

- For a first violation in a period of 3 years, \$2,000.
- For a second violation in a period of 3 years, \$3,000.
- For a third violation in a period of 3 years, \$4,000.
- For a fourth or subsequent violation in a period of 3 years, \$5,000.

A person, other than a nonmanagerial employee, licensee, or employee of a licensee, who sold, gave, or furnished a nicotine or tobacco accessory to a minor would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to the following:

- For a first violation in a period of three years, \$150.
- For a second violation in a period of three years, \$300.
- For a third violation in a period of three years, \$400.
- For a fourth or subsequent violation in a period of three years, \$500.

Under the bill, LARA could bring an action to collect administrative fines imposed.

Required Signage

The Act requires a person who sells tobacco products, vapor products, or alternative nicotine products at retail to post, in a place close to the point of sale and conspicuous to employees and customers, a sign produced by the DHHS, in the same size and color as produced by DHHS.

If the sign is more than six feet from the point of sale, it must be 5-1/2 inches by 8-1/2 inches and the statement required must be printed in 36-point boldfaced type. If the sign is six feet or less from the point of sale, it must be two inches by four inches and the statement required must be printed in 20-point boldfaced type. Currently, the sign must read as follows:

"The selling, giving, or furnishing of a tobacco product, vapor product, or alternative nicotine product to an individual who is less than 21 years of age is prohibited by law."

The bill would require this sign to be unobstructed and placed within six feet from each point of sale of nicotine and tobacco products or nicotine or tobacco accessories. It would have to be not larger than 5.5 inches by 8.5 inches, with the text printed with uppercase letters using high-contrast red ink. Additionally, the bill would amend the text to read as follows:

"The purchase of a tobacco product, vapor product, or alternative nicotine product by an individual who is less than 21 years of age and the provision of a nicotine or tobacco product to an individual who is less than 21 years of age are prohibited by law. An individual who is less than 21 years of age and unlawfully purchases, possesses, or uses a tobacco product, vapor product, or alternative nicotine product is subject to criminal penalties."

The bill would require the Department of Licensing and Regulatory Affairs, instead of the DHHS, to produce the sign and have adequate copies ready for distribution, free of charge.

If LARA, or the Department's designee, observed a violation of these requirements, notified the licensee in writing of the violation, and the licensee did not correct the violation within 30 days after the notification, the licensee would be subject to an administrative fine of \$50.

The Nicotine and Tobacco Regulation Fund

The bill would create the Fund in the State Treasury and require the bill's fees and administrative fines to be deposited into the Fund. The State Treasurer could deposit money and other assets from any source into the Fund. The State Treasurer would have to direct the investment of the Fund and credit interest and earnings from the investments to the Fund. Money in the Fund at the close of the fiscal year would not lapse to the General Fund. The bill would require LARA to be the administrator of the Nicotine and Tobacco Regulation Fund for auditing purposes.

The bill would allow LARA to spend money from the Fund on appropriation only for the administration and enforcement or licensure under the Act, including all the following:

- To ensure compliance with applicable law that related to the retail sale of a nicotine or tobacco product, the education and training of persons that sold, or intended to sell, a nicotine or tobacco product at retail; LARA staff; and others that were subject to or enforce the applicable law.
- Application processing.
- Compliance checks.

After these expenditures have been made, LARA would be required to spend money from the Fund on the creation and operation of the program.

Deleted Provisions

Currently, the Act specifies that it is an affirmative defense to a charge of a violation of selling a tobacco product, vapor product, or alternative nicotine product 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, vapor products, or alternative nicotine products, as applicable, to individuals less than 21 years of age and that the defendant enforced and continues to enforce the policy. The Act prescribes a process for the defendant and prosecutor to provide and rebut the affirmative defense.

The Act also prescribes requirements for verifying the age of an individual before selling, offering for sale, giving, or furnishing a tobacco product, vapor product, or alternative nicotine product to the individual. Generally, a person must verify that the individual is at least 21 years of age by examining identification if the individual appears younger than 27 years old or performing an age verification through a third-party servicer for sales made on the internet.

The bill would delete these provisions.

Title

Currently, the Act is known as the Youth Tobacco Act. The bill would change this to the "Nicotine and Tobacco Act".

Senate Bill 652 and 653

The bills would modify the Age of Majority Act to specify that the Act would not apply to the MRTMA. Generally, the Age Majority Act provides that, except as provided in the State Constitution and notwithstanding any other provision of law, a person who is at least 18 years of age is an adult of legal age for all purposes whatsoever, and must have the same duties, liabilities, responsibilities, rights, and legal capacity as individuals who are 21 years of age.

Senate Bill 654 (S-1)

Remove Penalization of Youth Possession

The Youth Tobacco Act prohibits a minor under the age of 21 from purchasing, attempting to purchase, possessing, attempting to possess, or using in a public place a tobacco, vapor, or alternative nicotine product. It also prohibits a minor from presenting a proof of age that is false for the purpose of any of these activities. An individual in violation of these provisions is guilty of a misdemeanor or State civil infraction and a maximum of a \$50 fine.

In addition to a fine for each violation, a court may order the individual participate in a health promotion and risk reduction program at the individual's own cost; and an individual could also be responsible through court order, for the following:

- For a first offense, up to 16 hours of community service.

- For a second offense, the up to 32 hours of community service.
- For a third and subsequent offense, up to 48 hours of community service.

Generally, the prohibitions do not apply to a minor participating in an undercover law enforcement operation or a compliance check or handling products in the course of employment.

Under the bill, the provisions described above would not apply after the bill's effective date.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

Senate Bill 651 is similar to Senate Bill 575 of the 2021-2022 Legislative Session and Senate Bill 782 of the 2019-2020 Legislative Session.