



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

LICENSE TOBACCO RETAILERS

House Bill 4341

Sponsor: Rep. Teola P. Hunter

Committee: Public Health

Complete to 9-10-91

A SUMMARY OF HOUSE BILL 4341 AS INTRODUCED 2-20-91

Public Act 315 of 1915, which prohibits the sale of cigarettes to minors, is part of the Probate Code chapter which deals with child protection issues. Public Act 314 (enrolled Senate Bill 740) of 1988 amended this chapter to prohibit the sale (or provision) of all tobacco products to people younger than eighteen ("minors") and increased the penalties for all who violate the law--sellers, providers, and users. The 1988 amendment, which renamed this section of the Probate Code the "Youth Tobacco Act," also requires retailers to post certain signs stating that the purchase of tobacco products by minors is illegal and that minors buying or using tobacco products are subject to criminal penalties.

The bill would change the name of the act from the "Youth Tobacco Act" to the "youth tobacco and tobacco retailer licensure act," and would prohibit the retail sale of tobacco products without a license from the Department of Public Health (DPH). It also would establish a restricted fund in the treasury department to be used to administer the costs of licensing retail tobacco sellers.

License requirements. The bill would require that retailers be licensed before selling tobacco products (defined in the bill to mean cigarettes, cigars, chewing tobacco, tobacco snuff, "or tobacco in any other form"). Licensed retailers could sell tobacco products only on "licensed premises," that is, only at the location from which the retailer conducts his or her business and for which he or she is licensed by the Department of Public Health.

Applicants for a license would have to give the DPH certain information on an application form provided by the department:

- * the name and address of the person being licensed or of anyone owning more than ten percent of the business, and of anyone acting in a supervisory capacity (if the "person" were a corporation, the applicant would have to furnish the names and addresses of the officers and directors of the corporation);
- * any of the listed people who had been convicted of selling or providing tobacco products to a minor;
- * a diagram of the licensed premises; and
- * any other information the DPH deemed relevant.

An annual license would cost \$100. The license renewal fee would be \$50, and there would be a \$25 late renewal fee for any licensee who did not renew his or her license within 30 days after the license expired.

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The department would not accept a license application from someone from out of state unless the application designated a resident agent in Michigan. Licenses would not be issued to locations within 500 feet of a K-12 public or private school or of private residences licensed as a foster family home (or foster family group home) or a child care institution licensed as an adult foster care small group home.

License transfers. Licensees could apply for a transfer of their license to someone else or to another location upon paying a \$25 fee and upon approval by the department. The DPH could promulgate rules governing license transfers.

License revocations. If a licensee transferred ownership or changed locations, the license would automatically be revoked. If a license were revoked under these circumstances, the person could apply for another license, which the department would have to grant if the applicant paid the fee and met the bill's other requirements.

Licensees who violated the bill's provisions also could have their licenses revoked or suspended.

Youth tobacco fund. The bill would establish a restricted fund, the "youth tobacco fund," in the Department of Treasury to be administered as a revolving fund by the DPH. Fees paid by licensees would go into the fund and not revert to the general fund, and any remaining balance at the end of one fiscal year would carry over into the next fiscal year. Money from the fund would be used to administer the application and licensing requirements of the bill (though administrative costs could not be more than 50 percent of the money in the fund), to enforce the bill, and for "educational activities related to the use of tobacco."

Violations and penalties. The bill would make penalties against a licensee cumulative, and a retailer found by the DPH to be selling or providing tobacco products without a license could be subject to the same criminal penalties already provided by law for selling or providing tobacco products to minors (namely, a misdemeanor punishable by a fine of up to \$50 for each offense).

Warning signs. The bill also would change the provisions regarding the mandatory warning sign for retail tobacco products. Instead of saying that the purchase of tobacco products by a minor under 18 and the provision of tobacco products to a minor are prohibited by law (and that minors illegally buying or using tobacco are subject to criminal penalties), the bill would require the mandatory signs to say:

Whoever sells a cigarette, chewing tobacco, snuff, or any tobacco in any of its forms to any person under the age of 18 or, not being his or her parent or guardian, gives a cigarette, chewing tobacco, snuff, or tobacco in any of its forms to any person under the age of 18 shall be punished by a fine of not more than \$50 for each offense.

The mandatory sign also would have to include a universal prohibition symbol covering an illustration of a pack of cigarettes and the statement "sale of cigarettes or any tobacco product to persons under 18 years of age is illegal."

Retail policies regarding sale of tobacco to minors. Currently, the law allows as an affirmative defense to a charge of selling or furnishing tobacco products to a minor the fact that the defendant had--and enforced--at the time of arrest (and continued to have and to enforce) a written policy to prevent the sale of tobacco products to minors.

The bill would require that such policies include a request for picture identification as proof of age of the buyer, unless the salesperson reasonably believed the buyer to be at least 18.

MCL 722.641 et al.