



**House
Legislative
Analysis
Section**

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LICENSE TOBACCO RETAILERS

House Bill 4313

**Sponsor: Rep. Michael J. Bennane
Committee: Public Health**

Complete to 6-22-93

A SUMMARY OF HOUSE BILL 4313 AS INTRODUCED 2-18-93

Public Act 315 of 1915, which prohibits the sale of cigarettes to minors, is part of the Probate Code 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 and increased the penalties for all who violate the law, including sellers, providers, and users. The 1988 amendment, which also renamed this section of the Probate Code the "Youth Tobacco Act," also requires retailers to post certain signs saying that the purchase of tobacco products by minors is illegal and that minors buying or using tobacco products are subject to certain criminal penalties.

The bill would amend the Youth Tobacco Act to create the Youth Tobacco and Tobacco Retailer Licensure Act, and to prohibit the retail sale of tobacco products without a license from the Department of Public Health.

Licenses. Licenses would be issued annually for specific premises, though licenses could be transferred to other people or locations upon payment of a \$25 application fee. The Department of Public Health would be able to promulgate rules to govern the transfer of retail tobacco licenses.

An initial license would cost \$100, and renewals \$50. (There would be an additional \$25 late renewal fee for licensees who failed to renew their licenses within 30 days of the license expiration date.)

In addition to the appropriate fee, applicants would have to submit an application form (provided by the department) with the following information:

- * the name and address of the person being licensed (in the case of corporations, the names and addresses of the officers and directors of the corporation; in other cases, the names and addresses of anyone having an ownership interest of more than ten percent and anyone acting in a supervisory capacity);
- * the name of any applicant who had been convicted of selling, giving, or furnishing tobacco products to anyone under 18 years old;
- * a diagram of the premises to be licensed; and
- * any other information ruled relevant by the department.

Licensees would have to notify the department within 30 days after a change in any of the information required on the application form.

House Bill 4313 (6-22-93)

The department could not license someone from out-of-state unless the application designated a resident agent in Michigan, and could not issue a new license or a transfer if the proposed location were within 500 feet of a K-12 public or private school or a registered child care organization.

The Youth Tobacco Fund. The bill would create in the Department of Treasury a revolving "youth tobacco fund" to be administered by the Department of Public Health to administer the licensing program, enforcement of the bill, and educational activities related to the use of tobacco. Not more than half of the fund's money (which would come from license fees and would not revert to the general fund at the end of the fiscal year) could be used for administrative costs.

Rules promulgation. The Department of Public Health could promulgate rules to implement and administer the licensure provisions of the bill.

License actions. A license would automatically be revoked if a licensee transferred ownership or location (though the person desiring licensure after such a revocation could file an original application for another license by going through the initial licensure application process). Proceedings against licensees for violating the licensure requirements or rules promulgated under the bill would be carried out under the contested case provisions of the Administrative Procedures Act (Public Act 306 of 1969), and could result in license suspensions or revocations.

Penalties. Currently, it is a misdemeanor, punishable by a fine of up to \$50 for each offense, to sell, give, or furnish tobacco products to minors. Under the bill, penalties for violations would be cumulative, and someone found to be in violation of the licensing requirements of the bill might also be subject to criminal prosecution under the misdemeanor provisions of the act.

Signs. Currently, anyone selling tobacco products must post a sign, produced by the Department of Public Health, saying that "The purchase of tobacco products by a minor under 18 years of age and the provision of tobacco products to a minor are prohibited by law. A minor unlawfully purchasing or using tobacco products is subject to criminal penalties." The sign must be "close" to the point of sale and "conspicuous" to both employees and customers. Signs within six feet of the point of sale must be two inches by four inches, with the statement printed in 20-point boldfaced type. Signs more than six feet from the point of sale must be five and one-half inches by eight and one-half inches, with the statement printed in 36-point boldfaced type.

After the effective date of the bill, the required signs would have to say that "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 \$50.00 for each offense." In addition, the sign would be required to have a "universal prohibition symbol" covering a pack of cigarettes and the statement "Sale of cigarettes or any tobacco product to persons under 18 years of age is illegal" directly above the illustration in boldfaced type not less than one-half inch high.

Other provisions. Currently, it is an affirmative defense to a charge of illegally selling tobacco products to minors under 18 that the defendant had in force at the time of the arrest (and continued to have in force) a written policy to prevent the sale of such products to minors. The bill would add that such policies would have to include a request for a picture identification as proof of age of the buyer unless the salesperson reasonably believed that the buyer was at least 18 years old.

MCL 722.641 et al.