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## TOBACCO VENDING MACHINES

House Bill 5017 as enrolled  
Sponsor: Rep. Mary C. Brown

Third Analysis (1-14-93)

House Committee: Judiciary  
Senate Committee: Health Policy

### ***THE APPARENT PROBLEM:***

The health risks from tobacco use have been well established for some time. What is perhaps less well known is that over 90 percent of all smokers begin their habit before the age of 19; 60 percent begin before the age of 16. Over the past 25 years the average age of the beginning smoker has been dropping to the point where it is now down to the age of 14. Research also indicates that the risk of developing lung cancer is related to the age at which a smoker begins smoking, the degree of lifetime exposure to tobacco smoke, and the number of cigarettes smoked. Reportedly, although each year approximately 1.3 million people quit smoking in the United States, about one million young people start smoking each year and become addicted to nicotine. Thus, to be effective, any strategy to markedly reduce the incidence of smoking would have to include methods of preventing young people from starting to smoke.

As one element in the development of an addiction is the availability of the substance in question, the problem can be approached through the development of ways to deny minors access to tobacco. Although Michigan statute prohibits selling cigarettes to anyone under the age of 18 (and also prohibits these young people from buying or using tobacco products), minors continue to obtain cigarettes and other tobacco products. One way in which minors can circumvent the law is to purchase cigarettes in vending machines. In response to this problem, legislation to restrict minors' access to tobacco vending machines has been proposed.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Michigan Penal Code to generally ban tobacco vending machines in places of public accommodation where access to minors is not prohibited by law (the bill thus would continue to allow tobacco vending machines in places that

were not places of public accommodation, and in places of public accommodation where minors were prohibited by law).

Vending machines in the following locations would be exempted from the bill:

\*\* an area, office, factory, or club that was not open to the public, providing the vending machine was at least 20 feet from all entrances and exits accessible to the general public.

\*\* an establishment with a Class C liquor license, providing the machine either was located entirely in a separate bar room, or, if the establishment had no separate bar room, was located within 20 feet of the bar, clearly within the bar area, and not in a hallway, coat room, rest room, or similar unrelated area. If not in a separate bar room, the machine would in addition have to be under the direct visual supervision of an adult.

Violation of the bill would be a misdemeanor punishable by up to six months in jail, community service of up to 45 days, a fine of up to \$1,000, or any combination of imprisonment, community service, or fine. Each day of violation would constitute a separate offense.

The bill would be enforceable by a local public health department to the same extent and by the same means as regulations adopted by that local health department.

A "place of public accommodation" would be defined as it is in the Michigan Handicappers' Civil Rights Act. That act defines the term as "a business, educational institution, refreshment, entertainment, recreation, health, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages, or

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accommodations are extended, offered, sold, or otherwise made available to the public."

The bill would take effect June 1, 1993, or six months after its enactment, whichever was later.

MCL 750.470

### ***FISCAL IMPLICATIONS:***

The House Fiscal Agency says that depending on the degree of compliance, the bill could have fiscal implications for local units of government. If incarceration was imposed as a penalty, the bill could increase costs. Conversely, if a fine was imposed, the bill could increase local revenues, less any additional costs for courts. (9-3-92)

### ***ARGUMENTS:***

#### ***For:***

In 1989, the Department of Public Health formed a Tobacco Reduction Task Force to come up with a comprehensive approach for reducing the use of tobacco products in Michigan by 50 percent by the year 2000, a goal that also has been set by the federal government for the nation as a whole. To meet that goal, it is imperative that young people are prevented from becoming addicted to nicotine. An important part of prevention efforts must be to limit the availability of tobacco products to minors, who at present are able to obtain cigarettes and other tobacco products from a variety of sources, despite statutory prohibitions against doing so.

Vending machines, which typically are unsupervised, serve as a significant source of cigarettes for minors, especially very young smokers. Selling cigarettes through vending machines suggests that tobacco is no more dangerous than candy, when in fact it is more addictive and poses a greater threat to health than alcohol. The bill, in banning cigarette vending machines in places where minors are likely to be, is a reasonable measure that would help to limit minors' access to a powerfully addictive and harmful substance. Since most smokers start smoking while still teenagers, preventing addiction in the teen years should have a dramatic effect on the numbers of smokers in the general population. Reducing the incidence of smoking could in turn save thousands of lives and billions of dollars annually in health care costs. While the bill certainly would not be a total solution, it would be an important element in

efforts to achieve the ultimate goal of a smoke-free society.

#### ***Against:***

The bill would impose burdensome restrictions without achieving the effects anticipated by its proponents. For one thing, most cigarette vending machines are already in age-restricted locations, where presumably access to minors is limited. More to the point, however, the bill takes aim at the wrong target: vending machines account for less than three percent of the sales of tobacco products in this country, and most of the purchases from vending machines are made by adults. To restrict placement of vending machines would be to make it more difficult for adults to freely choose this convenience. Vendors' sales and livelihoods could be hurt, while there would be little or no effect on juvenile smoking. Any proposals to restrict cigarette vending machines more properly should be part of broader efforts also to stiffen regulations against sales to minors by grocery and convenience stores.

#### ***Response:***

It is fallacious to suggest that because vending machines account for a small percentage of tobacco sales, they therefore play an insignificant role in sales to minors. The three percent figure represents sales to both adults and minors; as the machines are rarely supervised, it seems likely that the ease with which youngsters can buy from vending machines means that a relatively high proportion of vending machine sales are to minors.

#### ***Against:***

Many would prefer an outright ban on cigarette vending machines, as a more effective alternative. Even vending machines in nonpublic places tend to be located in lobby areas and near doorways, making it easy for youngsters to gain access to them. And, concerns remain over how effectively minors can be excluded even from places where proprietors can post signs and invoke the force of law to prohibit their presence. Thus, it may be that simple restrictions on the placement of cigarette vending machines would not be as effective as an outright ban, which would have the additional advantage of being easier to enforce.

#### ***Response:***

A total ban on cigarette vending machines would be not only antismoking, but also antibusiness. A total ban would cripple some vendors, and simply put others out of business. The bill offers a reasonable and effective alternative that would restrict machine

placement so as to make access by minors extremely difficult, while at the same time providing for relatively easy access by adults.

***Against:***

The bill should at least explicitly preempt local ordinances regulating cigarette vending machines. Vendors' routes frequently cross and re-cross a number of local boundaries, and it would be unduly burdensome for them to have to comply with a myriad of local regulations existing in a patchwork across the state. As several jurisdictions in Michigan already have enacted varying local ordinances affecting cigarette vending machines, now is the time to ensure that the issue be resolved in terms of state policy.

***Response:***

As pointed out by the Secretary of Health and Human Services, a report of the Office of the Inspector General "clearly showed that local jurisdictions can have a noticeable impact on cigarette sales to minors if they choose." Given the apparent inadequacy of statutory prohibitions, local ordinances and their enforcement constitute an important part of the efforts to keep kids from becoming addicted to tobacco products. Local ordinances should not be pre-empted.

***Against:***

A more effective method of restricting minors' access to cigarette vending machines would be to require remote control locking devices or the use of tokens.

***Response:***

Such measures could prove inadequate. In places where remote locking devices have been required, notably Utah, it has been discovered that the requirements were ineffective. Locking devices were easily disabled or left in the "on" position.