

NO SALE OF SINGLE CIGARETTES

House Bill 5225 as enrolled
Second Analysis (1-5-93)

Sponsor: Rep. Michael J. Bennane
House Committee: Public Health
Senate Committee: Health Policy

THE APPARENT PROBLEM:

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. The federal Department of Health and Human Services (HHS) has suggested model legislation that would counteract the addictive nature of tobacco products and the aggressive marketing of the tobacco industry, including strategies for preventing children from becoming addicted to tobacco products, helping current tobacco users to quit, and protecting the rest of the population from the harmful health effects of environmental (or "second hand") tobacco smoke. The Task Force made a number of specific recommendations which it published in a report. One of the recommendations, described below, deals with one strategy for making children's access to tobacco more difficult and thereby helping prevent children from becoming dependent on tobacco products in the first place.

According to the report of the 1989 Department of Public Health Tobacco Reduction Task Force, it is a retail practice in some areas of the state, particularly in Detroit, to open packs of cigarettes in order to sell them individually. The individual cigarettes reportedly sell for about ten cents each, making them generally more affordable to young people, who might be unable to pay for an entire pack (not to mention making more money for the retailer). One of the task force's recommendations for reducing the use of tobacco products in Michigan -- and, in particular, for preventing children from becoming addicted to tobacco -- is for legislation prohibiting breaking up packages of cigarettes, small cigars, or smokeless tobacco products for the purpose of selling individual items or portions.

THE CONTENT OF THE BILL:

The bill would add a new section to the Youth Tobacco Act (a part of Public Act 31 of 1915) to prohibit the retail sale of cigarettes separately from their packages and to make violators of this prohibition guilty of a misdemeanor and subject to a fine of up to \$500 for each offense. The bill would define "person who sells tobacco products at retail" to mean someone whose business was selling tobacco products subject to the state sales tax, but would exempt from its provisions retailers (including tobacco specialty retailers) who sold nothing but tobacco products and smoking paraphernalia.

MCL 722.642a

BACKGROUND INFORMATION:

By now, the adverse health consequences of tobacco smoking are well known. 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 (in Michigan it is illegal to sell tobacco products to anyone under the age of 18). Children as young as 7 or 8 reportedly are experimenting with tobacco products. 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 shows that the risk of developing lung cancer is related to (a) the age at which the smoker begins smoking, (b) the degree of lifetime exposure to tobacco smoke (whether through smoking or through being near those who do smoke), and (c) the number of cigarettes smoked. Reportedly, each year approximately 1.3 million people quit smoking in the United States, while about one million young people start smoking each year and become addicted to nicotine.

FISCAL IMPLICATIONS:

The House Fiscal Agency says there would be indeterminate law enforcement costs and revenues from fines. (1-7-93)

ARGUMENTS:

For:

The bill, part of a package of bills intended to reduce the use of tobacco in Michigan, would discourage children from becoming addicted to smoking tobacco by making it more difficult for them to buy their own cigarettes. Although it is illegal in Michigan to sell cigarettes to anyone under the age of 18 (and illegal for these minors to buy or use tobacco products), a number of "sting" operations (in which underage young people, in cooperation with a police agency, try to buy cigarettes) have shown that startlingly high percentages of young people are able to buy cigarettes at retail even though the retailers should not be selling to them (one operation, for example, showed an 80 percent "success" rate). So, even though it is illegal to sell cigarettes to children under 18, this apparently happens frequently. However, the cost of whole packs of cigarettes apparently is a deterrent to some young people, and the practice of breaking up packs of cigarettes in order to sell individual cigarettes (for, say, a dime each) enables youngsters who would otherwise be unable to afford to buy packs of cigarettes to buy cigarettes singly or in twos or threes. In fact, reportedly some children trade a pop can for a cigarette at some retail outlets.

Although the state takes a vigorous approach to keeping alcohol out of the hands of children and adolescents, there is no similar effort for tobacco products, even though tobacco products ultimately are more dangerous than alcohol to people's health. By prohibiting retailers from breaking up packs of cigarettes to sell the cigarettes individually, the bill would make it harder for young people to buy and become addicted to cigarettes.

For:

Unfortunately, although tobacco use reduction efforts over the past twenty years seem to have had some success with adult white populations, this had not been the case with minority adult populations and with all teen populations. Consequently, much of the current educational and other efforts to prevent people from starting smoking (and to help

smokers to quit) centers on minorities and teens, both of whom seem to be also heavily targeted by tobacco product manufacturers. According to one of the nation's leading authorities on nicotine addiction, a child who smokes just one pack of cigarettes will develop a substantial tolerance to the drug effects of nicotine, the critical first step in the addiction process. Studies show that the earlier a young person begins using tobacco, the less likely he or she will be able to quit later. With regard specifically to high school age children, the National Institute of Drug Abuse reports that about 19 percent of high school seniors are daily smokers, while a 1988 survey of adolescents in Minnesota--which included high school drop-outs--places this figure closer to 30 percent. Reportedly, more than half of high school seniors who smoke have made at least one unsuccessful attempt at quitting. Not only are people who become addicted to tobacco at a young age at an increased risk for smoking-related diseases (and premature death) in adulthood, studies have also shown that high school students who use cigarettes are more likely to experiment with other drugs as well. It is crucial to the health and well being of young people and adults that easy access to tobacco be restricted.

For:

In addition to making tobacco products more affordable to young people, the sale of single unpackaged tobacco products raises concerns about sanitation, increases the potential for product tampering, and violates the federal law that requires health warning labels on all cigarettes and smokeless tobacco sold in the United States. The bill would decrease the potential for tampering with individual cigarettes (and thus decrease the potential liability of tobacco companies), as well as prohibit circumvention of the federal law requiring health warning labels on cigarettes and smokeless tobacco.

Against:

The bill would unfairly discriminate against poor adults who smoke and who cannot afford to buy their cigarettes by the pack. Like some children who cannot afford to buy whole packs of cigarettes, some adults who smoke also cannot afford to buy complete packs of cigarettes either. Yet cigarettes are a legal drug for those over 18, and this bill would deprive adults of reasonable access to a drug which they are legally entitled to buy.

Response:

Although the bill might impose a hardship on some poor adults who are addicted to smoking and who cannot afford to buy whole packs of cigarettes, it would not make it illegal for these adults to buy cigarettes. At the very worst, such adults would have to save up their money until they had enough to buy a whole pack of cigarettes (or could result in a number of poor adult smokers pooling their money to buy a pack of cigarettes to split up among themselves). On the other hand, by making access to cigarettes more difficult (or, at least, by sometimes delaying access to cigarettes), the bill could have the beneficial effect of encouraging poor people -- for whom, research has shown, the ill health effects of cigarettes can be particularly severe -- to cut back on, or even quit, smoking. It also would cut down on the exploitation of poor smokers by retailers who charge more for single cigarettes than the same cigarette would cost were the buyer to buy the whole pack.

Against:

Isn't it better, in some ways, to sell cigarettes singly rather than in packs? At least that way, people won't be as likely to smoke as many cigarettes as they might if they had access to whole packs of cigarettes. So long as tobacco, like alcohol, is a legal drug, these kinds of unnecessary restrictions on its acquisition should not be allowed.

Response:

The package of bills of which this bill is a part in fact seeks to treat tobacco, a legal drug, more like the other major legal drug, alcohol. That is, both clearly are dangerous drugs and should be carefully regulated. Alcohol currently cannot be bought "by the drink" at "convenience" and "party" stores, but only in specially licensed establishments. Without going so far as to suggest the establishment of specially licensed "smoking parlors" where single cigarettes could be sold, the bill would still treat tobacco more like alcohol by prohibiting the sale of single "portions" tobacco, somewhat along lines similar to the existing restrictions on the sale of individual "portions" of alcohol. Moreover, it is not at all clear that selling cigarettes singly lessens the problems of tobacco addiction, just as there appears to be no evidence showing that access to single portions of alcohol (that is, single drinks in bars) lessens the problem of alcohol abuse.