



**Senate Fiscal Agency**  
**P. O. Box 30036**  
**Lansing, Michigan 48909-7536**

**BILL ANALYSIS**



**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bills 442 and 526  
 Sponsor: Senator John J. H. Schwarz, M.D.  
 Committee: Health Policy and Senior Citizens

Date Completed: 5-15-95

**SUMMARY OF SENATE BILL 442 as introduced 3-28-95 and SENATE BILL 526 as introduced 5-11-95:**

**Senate Bill 442** would repeal and reenact the Youth Tobacco Act (MCL 722.641-722.645). Provisions that the bill would reinstate set a criminal penalty for persons who distribute tobacco products to minors (although the bill would establish a range of increased penalties); provide that it is a defense if the defendant has in force a written policy to prevent the distribution of tobacco products to minors; require tobacco retailers to post a sign stating that the provision of tobacco products to minors is illegal; require the Department of Public Health (DPH) to distribute the signs; set criminal penalties for minors who use tobacco products in public; and prohibit retailers from selling a cigarette separately from its package. The bill also would add new provisions to do the following:

- Require tobacco retailers to obtain proof of age from a prospective purchaser who looked like he or she could be under 18.
- Make exceptions to the Act for giving a tobacco product to an acquaintance or family member or to an employee.
- Require tobacco retailers to notify their sales clerks of the provisions of the law.
- Require the DPH to enforce the law.
- Provide that someone under 18 could be engaged by the State or local police or the DPH as part of an enforcement action under the Act.
- Prohibit a local unit of government from imposing a new requirement or prohibition pertaining to the sale, distribution, or advertising of tobacco products.

**Senate Bill 526** would amend the juvenile code to specify procedures that would apply if a

child were accused of violating the Youth Tobacco Act. The bill is tie-barred to Senate Bill 442.

**Senate Bill 442**

Distributing to Minors

The current Act prohibits a person from selling, giving, or furnishing any cigarette, cigar, chewing tobacco, tobacco snuff, or tobacco in any other form to a person under 18, and provides that a violation is a misdemeanor punishable by a maximum fine of \$50. The bill would prohibit a person from distributing a tobacco product to a person under 18. A violator would be guilty of a misdemeanor punishable by a fine of \$100 for a first offense, \$250 for a second offense in a two-year period, and \$500 for a third or subsequent offense within a two-year period. Each separate location of a franchise or other business that was owned by a person and operated in multiple locations would be a separate entity for purposes of calculating second and subsequent offenses. ("Distribute" would mean to sell, give, or furnish, but would not include sampling, i.e., the transfer of a tobacco product to a member of the general public at no cost in a public place for the purpose of promoting the product. "Tobacco product" would mean a product that contained tobacco and was intended for human consumption, including cigarettes, cigars, noncigarette smoking tobacco, or smokeless tobacco, as those terms are defined in the Tobacco Products Tax Act.)

Under the bill, if an ordinary, reasonable person under similar circumstances would conclude on the basis of appearance that a prospective recipient or purchaser of a tobacco product could be under the age of 18, a person selling a tobacco product at retail would have to obtain proof of age

from the prospective recipient or purchaser. Evidence that a defendant obtained and reasonably relied on proof of age that appeared on its face to be valid would be a defense to a charge brought for the distribution of a tobacco product to a minor. ("Proof of age" would mean a driver's license, official State personal identification card, or other pictured identification issued by a governmental agency, not including a school or university student identification card, that described the individual identified as 18 years of age or older.)

If an employee of the store at which tobacco products were sold at retail distributed a tobacco product in violation of the law, the employee would be guilty of the violation. If a violation consisted of a minor's purchase of a tobacco product through a vending machine, the proprietor of the establishment where the machine was located would be guilty of the violation. If the proprietor had made an employee responsible for monitoring vending machine purchases, however, the employee would be guilty.

The bill would reinstate provisions that make it an affirmative defense that the defendant had in force at the time of arrest and continues to have in force a written policy to prevent the distribution of a tobacco product to persons under 18, and that the defendant enforced and continues to enforce the policy. A defendant must give notice of the defense to the prosecutor at least 14 days before trial, and the prosecutor must give notice of a rebuttal at least seven days before trial.

#### Notice to Employees

The bill would require a tobacco products retailer to notify each individual employed by that person as a retail sales clerk of all of the following:

- That State law prohibits the distribution of a tobacco product to a person under 18 and the purchase, receipt, possession, smoking, or other use or consumption of a tobacco product by a person under 18.
- That State law prohibits the sale of a cigarette separately from its package.
- That State law requires proof of age to be obtained from a prospective purchaser or recipient if an ordinary, reasonable person under similar circumstances would conclude on the basis of appearance that the prospective purchaser or recipient might be under 18.

The notice would have to be given before the individual commenced work as a retail sales clerk or within 30 days of the bill's effective date if the individual were employed as a retail sales clerk on that date. The individual would have to signify that he or she had received the notice by signing a form as prescribed in the bill. Each form would have to indicate the date of signature. The employer would have to retain the form during the individual's term of employment and for at least 120 days after the individual left that employ.

In addition, at his or her expense, a tobacco products retailer would have to give each individual employed as a retail sales clerk a true copy of the proposed Act before the individual commenced work as a retail sales clerk or within 30 days of the bill's effective date if the individual were employed as a retail sales clerk on that date.

An employer who failed to comply with these requirements would be guilty of a misdemeanor punishable by a fine of \$100 for a first offense and \$200 for each succeeding violation within a two-year period.

#### Signs

The bill would reenact requirements that a tobacco retailer post, in a place close to the point of sale and conspicuous to employees and customers, a sign stating that the purchase of tobacco products by minors and the provision of tobacco products to minors are prohibited by law. The bill specifies that the required sign would be the only notice regarding the distribution of tobacco products that was required to be posted or maintained in a store where tobacco products were sold at retail. The bill also states that the sign provisions would not conflict with Federal law regarding the signage or labeling of tobacco products.

In addition, the bill would reinstate provisions requiring the DPH to produce the sign; requiring licensed wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products to distribute copies of the sign free of charge to retailers, upon request; and requiring the DPH to distribute copies of the sign free of charge to retailers who do not purchase tobacco products from wholesalers or unclassified acquirers.

#### Minor's Public Use of Tobacco

The bill would reenact current penalties for persons under 18 who purchase, receive, possess, smoke, or otherwise use or consume a

tobacco product in a public place, although this would not apply if a minor were engaged as part of an enforcement action.

Currently, a violation is a misdemeanor punishable by a maximum fine of \$50, and, pursuant to a probation order, the court may require a violator to participate in a health promotion and risk reduction assessment program. (The bill, however, would delete a provision that a probationer is responsible for the costs of this participation.) A violator also may be ordered to perform community service in a hospice, nursing home, or long-term care facility and/or participate in a health promotion and risk reduction program.

#### Exceptions

The bill provides that it would not apply to the following:

- Giving or furnishing a tobacco product to a personal acquaintance or a family member for noncommercial purposes.
- Giving or furnishing a tobacco product to an employee if required in the performance of his or her duties.

#### DPH Responsibilities

The Department of Public Health would be required to enforce the Act. The DPH also would be responsible for ensuring the State's compliance with Subpart II of Part B of Title XIX of the Federal Public Health Service Act and with the implementing regulations promulgated by the U.S. Department of Health and Human Services. (That Act makes Federal funding contingent upon a state's having in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of a tobacco product to sell or distribute any such product to any individual under 18, and requires a state to enforce the law in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under 18. A state must agree to conduct random, unannounced inspections to ensure compliance with the law, and submit an annual report describing its enforcement activities, the extent of its success, and its enforcement strategies. 42 U.S.C. 300x-26)

The DPH would have to work with State and local law enforcement agencies, the Department of Attorney General, and local prosecutors to enforce the Act in a manner that could reasonably be expected to reduce the extent to which tobacco products were sold or otherwise distributed to

persons under 18. Annually, the DPH would have to conduct random, unannounced inspections at locations where tobacco products were sold at retail or otherwise distributed to ensure compliance with the Act.

In addition, the DPH would have to prepare for submission annually to the Secretary of the U.S. Department of Health and Human Services the report required by Subpart II of Part B of Title XIX of the Public Health Service Act and with the implementing regulations promulgated under that section.

#### Enforcement Actions

A person under 18 could be engaged by the State Police, the DPH, or a local law enforcement agency as part of an enforcement action under the Act if the initial or contemporaneous receipt of purchase of a tobacco product by the minor occurred under the direction of the State Police, DPH, or local law enforcement agency and were part of the enforcement action. The State Police, DPH, or local agency could not recruit or attempt to recruit a person under 18 to participate in an enforcement action at the scene of a violation involving distribution to a minor.

#### Local Regulations

Beginning on the bill's effective date, a city, township, village, county, or other local unit of government could not impose a new requirement or prohibition pertaining to the sale, distribution, advertising, promotion, or display of tobacco products. This provision would not invalidate or otherwise restrict a requirement or prohibition existing on the effective date of the Tobacco Products Tax Act (March 15, 1994).

#### **Senate Bill 526**

The bill would amend the juvenile code to specify procedures that would apply if a child were accused of an act that would constitute a violation of the Section 3 of the Youth Tobacco Act (which would prohibit a person under 18 from purchasing, receiving, possessing, smoking, or otherwise using a tobacco product in a public place) or a substantially corresponding local ordinance. Notwithstanding other provisions of the code, the following would apply:

- A petition would not be required, but the probate court could act upon a copy of the written notice to appear given to the accused child under Chapter 87 of the Revised Judicature Act (which governs

municipal civil infractions) or Chapter 88 of that Act (which, under Enrolled House Bill 4426, pertains to State civil infractions).

- The provisions of Section 2b(b) and (c) of the code would apply.

courts chose to act upon written notices to appear in juvenile court.

Fiscal Analyst: P. Graham (S.B. 442)  
L. Nacionales-Tafoya (S.B. 526)

(Section 2b specifies procedures that apply when a child is accused of a act that constitutes a violation of the Michigan Vehicle Code. Under Section 2b(b), the parent, guardian, or custodian of the child may be required to attend a hearing when notified by the probate court. Section 2b(c) provides that if, after the hearing, the probate court finds the accusation to be true, the court may dispose of the case in accordance with the juvenile code, e.g., give the child a warning, place the child on probation in his or her own home, place the child with a private agency, or commit the child to a public institution.)

Proposed MCL 712A.2d (S.B. 526)

Legislative Analyst: S. Margules

## **FISCAL IMPACT**

### **Senate Bill 442**

The bill would result in an indeterminate increase in fine revenues that are dedicated to libraries. (The level of fine collections under the current Act is unknown.) The bill also would result in an indeterminate increase in costs incurred by the Department of Public Health associated with the enforcement of the provisions of the bill. The magnitude of the increase, at a minimum, would depend on the number of random, unannounced inspections conducted by the Department.

It might be noted that failure by the State to provide assurances to the Federal Department of Health and Human Services that the State is conducting random, unannounced inspections of tobacco vendors, in order to enforce prohibitions against the sale of tobacco products to minors, could result in the forfeiture of a portion of the State's allocation of the Federal Substance Abuse Block Grant. In FY 1994-95, failure to provide such assurances could result in the loss of \$9,740,200. It also might be noted that the State may conduct the necessary inspections under current law.

### **Senate Bill 526**

Local courts could be affected administratively depending on the number of juveniles accused under the Youth Tobacco Act and whether the

S9596\S442SA

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.