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BILL ANALYSIS

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Senate Bill 231 (as introduced 3-24-15)
Sponsor: Senator Rick Jones
Committee: Regulatory Reform

(Senate-passed version)

Date Completed: 5-13-15

CONTENT

The bill would amend the Youth Tobacco Act to do the following:

- **Prohibit a person from selling or giving a vapor product or alternative nicotine product to a minor.**
- **Require signs posted by retailers to indicate that the purchase of vapor or alternative nicotine products by minors was illegal.**
- **Require a person to verify that an individual was at least 18 before selling or furnishing a vapor product or alternative nicotine product to him or her.**
- **Extend the affirmative defense of having and enforcing a preventative written policy to a charge of selling a vapor or alternative nicotine product to a minor.**
- **Prohibit a minor from possessing or using a vapor product or alternative nicotine product.**

The bill would take effect 90 days after its enactment.

Selling, Giving, or Furnishing Vapor or Alternative Nicotine Product to a Minor

The bill would prohibit a person from selling, giving, or furnishing a vapor product or alternative nicotine product to a minor, including through a vending machine or other means. Currently, it is a misdemeanor to sell, give, or furnish a tobacco product to a minor, and a violator is subject to a maximum \$50 fine for each violation. The bill would extend this penalty to the proposed prohibition.

The bill specifies that "tobacco product" would not include a vapor product, an alternative nicotine product, or a product regulated as a drug or device by the U.S. Food and Drug Administration (FDA). The bill would define "alternative nicotine product" as "a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means". The term would not include a tobacco product, a vapor product, or a product regulated as a drug or device by the FDA.

The bill would define "vapor product" as "a noncombustible product containing nicotine that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine in a solution or other form". The term would include an electronic cigarette, electronic cigar, electronic pipe, or similar product or device and a vapor cartridge or other container of nicotine in a solution or other form that is intended to be used with or in such a product or device. It would not include a product regulated as a drug or device by the FDA.

Required Retail Sign

The Act requires a person who sells tobacco products at retail to post a conspicuous sign in a place close to the point of sale. The sign must include a specific statement about the illegality of the purchase of tobacco products by a minor. The Act also requires the Department of Community Health to produce the signs, and distribute them free of charge to people who sell tobacco products at retail. Where the Act refers to the Department of Community Health, the bill instead would refer to the Department of Health and Human Services. The bill would extend the sign requirement to a person who sells vapor products or alternative nicotine products at retail, and would modify the sign's statement to include those products.

"Person who sells vapor products or alternative nicotine products at retail" would mean a person whose ordinary course of business consists, in whole or in part, of the retail sale of vapor products or alternative nicotine products.

Age Verification Requirement

The bill would require a person to verify that an individual was at least 18 years old before selling, offering to sell, giving, or furnishing a vapor or alternative nicotine product to the individual. If the individual appeared to be under 27 years old, the person would have to examine a government-issued photographic identification that established that the individual was at least 18 years old. If the sale were made by the internet or another remote sales method, the person would have to perform an age verification through an independent, third-party age verification service that compared information from a commercially available database, or aggregate of databases, that was regularly used by government agencies and businesses for the purpose of verifying age and identity, to the personal information entered by the individual when ordering, that established that the individual was at least 18 years old. A person who violated the age-verification requirement would be guilty of a misdemeanor, and would be subject to a maximum \$50 fine for each violation.

Affirmative Defense & Employment Exemption

Currently, it is an affirmative defense to a charge of selling a tobacco product to a minor that the defendant had in force at the time of arrest and continues to have in force a written policy to prevent the sale of tobacco products to minors and that the defendant enforced and continues to enforce the policy. The bill would extend this affirmative defense to a charge of selling vapor products or alternative nicotine products to minors.

The Act's prohibition against giving or furnishing a tobacco product to a minor does not apply to the handling or transportation of the product by a minor under the terms of his or her employment. Under the bill, this also would apply to a minor's handling or transportation of a vapor product or alternative nicotine product.

Purchase, Possession, or Use of Vapor or Alternative Nicotine Products

The Act prohibits a minor from purchasing or attempting to purchase a tobacco product, possessing or attempting to possess a tobacco product, or using a tobacco product in a public place. It also prohibits a minor from presenting or offering to an individual a purported proof of age that is false, fraudulent, or not actually his or her own proof of age, for the purpose of purchasing, possessing, or attempting to purchase or possess a tobacco product. A violation is a misdemeanor punishable by a maximum fine of \$50 for each violation. Pursuant to a probation order, the court also may require a violator to participate in a health promotion and risk reduction assessment program, if available. The Act also allows a court to order a violator to perform community service in a hospice, nursing home, or long-term care facility.

Under the bill, the prohibitions and penalties also would apply to activities involving tobacco products, vapor products, or alternative nicotine products.

The prohibitions do not apply to a minor participating in an undercover law enforcement operation or compliance check. They also do not apply to the handling or transportation of a tobacco product by a minor under the terms of his or her employment. The bill would refer to a vapor product or alternative nicotine product, as well as a tobacco product, in those provisions.

MCL 722.641 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill could result in a marginal increase in misdemeanor penalties associated with violations of the Youth Tobacco Act. These misdemeanors are punishable by a fine of up to \$50, the revenue from which benefits public libraries. For youths violating the Act, additional punishments may include community service and participation in health risk reduction programming. The bill would not have a significant impact on State and local criminal justice costs.

Fiscal Analyst: John Maxwell

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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.