

Legislative Analysis



USE OF A TOBACCO OR VAPOR PRODUCT BY A MINOR

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4427 (H-3) as reported from committee

Sponsor: Rep. Ryan Berman

1st Committee: Regulatory Reform

2nd Committee: Judiciary

Complete to 12-7-21

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: House Bill 4427 would amend the Youth Tobacco Act to revise the penalties relating to use of a tobacco product, vapor product, or alternative nicotine product to eliminate all criminal penalties for a violation and instead make a violation a civil infraction with a civil fine. The bill also would revise the maximum fine that could be imposed for some violations.

FISCAL IMPACT: House Bill 4427 would have an indeterminate fiscal impact on the state and on local units of government. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

Over the past few years, many criminal penalties for minor offenses have been eliminated in favor of making a violation a civil infraction. It is believed that hitting a person in his or her wallet can be just as effective in incentivizing a change in certain conduct without the stigma and implications that a criminal record carries. Yet it remains a criminal offense for a minor to buy or possess a tobacco product or use a tobacco product in public. A third violation involving e-cigarettes is also a criminal offense. Legislation has been offered to reduce these criminal penalties to a civil infraction.

THE CONTENT OF THE BILL:

Tobacco products

Currently, it is a criminal offense for a minor (under 18 years of age) to purchase, possess, or attempt to purchase or possess a tobacco product; use a tobacco product in a public place; or present or offer a fake ID for the purpose of purchasing, possessing, or attempting to purchase or possess a tobacco product. A violation is a misdemeanor punishable by a fine of \$50 for each violation. In addition, a court may impose participation in a health promotion and risk reduction assessment program. The court also may impose community service as an alternative to such a program (for a first offense) or in addition to it (for a second or subsequent offense). The amount of community service that can be ordered ranges from up to 16 hours for a first violation to up to 48 hours for a third or subsequent violation.

The bill would eliminate the \$50 criminal penalty for a violation involving tobacco and instead make a violation a state civil infraction with the following sanctions:

- First violation: A civil fine of up to \$50
- Second violation: A civil fine of up to \$100
- Third or subsequent violation: A civil fine of up to \$150

The bill would retain the court's ability to require participation in a health promotion and risk reduction assessment program and to impose community service as described above.

Vapor products and alternative nicotine products

Similarly, a minor is prohibited from purchasing, possessing, or attempting to purchase or possess a vapor product or alternative nicotine product; using either product in a public place; or presenting or offering a fake ID for the purpose of purchasing, possessing, or attempting to purchase or possess either product. A violation is currently a state civil infraction for a first or second violation and a misdemeanor for a third or subsequent violation. A court also may impose participation in a health promotion and risk reduction assessment program and may impose community service in addition to such a program, with the same maximum amounts as for a violation involving tobacco products as described above. For a third or subsequent violation, the bill would eliminate the misdemeanor penalty, make the offense a civil infraction, and increase the fine. The maximum civil fine that could be imposed for a violation under the bill is as follows:

- First violation: Maximum fine of \$50 (current fine)
- Second violation: Maximum fine of \$50 (current fine)
- Third or subsequent violation: Maximum fine of \$100 (increased from \$50)

The bill would take effect 90 days after its enactment.

MCL 722.642

BACKGROUND:

As described above, the Youth Tobacco Act defines a “minor” as an individual under 18 years of age. Note that, under federal law, it is now illegal for a retailer to sell any tobacco product (including cigarettes, cigars, and e-cigarettes) to anyone under 21.¹ Two bills now before the Senate Regulatory Reform committee—House Bill 4878 and Senate Bill 575—would amend the act to change the definition of “minor” to mean an individual who is under 21 years of age. (Senate Bill 575 is part of a package of bills proposing amendments to several acts.)

FISCAL INFORMATION:

House Bill 4427 would have an indeterminate fiscal impact on the state and on local units of government. In revising penalties related to youth and the use of tobacco products from misdemeanors to civil infractions, the bill would impact revenue going to public and county law libraries and revenue deposited into the state’s Justice System Fund. Any decrease in fine revenue under misdemeanor convictions and increase in fine revenue from payment of civil infraction penalties would impact revenue going to public and county law libraries. A small portion of revenue from payment of civil infraction penalties would be deposited into the state Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. There is not a practical way to estimate the current number of misdemeanor convictions or revenue from fines, compared to future civil infraction revenue.

¹ <https://www.fda.gov/tobacco-products/retail-sales-tobacco-products/tobacco-21>

ARGUMENTS:

For:

Currently, it is a civil infraction for a person under 21 years of age to buy, possess, or use alcohol (for a first violation), but a youth 17 or under would be guilty of a misdemeanor offense for buying, possessing, or using a tobacco product. In light of the stigma and other implications of having a criminal record, it has been suggested that the penalties for youth buying, possessing, and using tobacco products and vaping products such as e-cigarettes be civil infractions. In addition, the bill would increase the maximum fine amount that can be imposed for certain repeat violations to discourage the continued use of tobacco products.

For:

According to committee testimony, studies show that low-income and rural youth tend to favor tobacco products and thus are disadvantaged by current penalties that already make a first and second violation of the vaping prohibitions a civil infraction. The bill would make the penalties and sanctions more uniform across products. In addition, because nicotine is highly addictive, diverting more resources to educational programs to encourage youth not to start smoking may be more effective than a criminal fine in reducing youth dependency on all types of tobacco products. Even measures such as banning smoking or vaping in public places like parks and beaches could better reduce interest in youth smoking by making smoking less of a “normal” or accepted practice by adults,

Moreover, federal law now prohibits sales of all tobacco products, including vaping products, to a person under 21 years of age. Perhaps the bill could be amended to extend the penalties under the act to include anyone under 21.

POSITIONS:

The ACLU of Michigan indicated support for the bill. (10-26-21)

Representatives of the following entities testified in opposition to an earlier version of the bill (4-20-21):

- Smoke-Free Environments Law Projects
- Tobacco Free Michigan

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.