

USE OF A TOBACCO OR VAPOR PRODUCT BY A MINOR

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House Bill 4427 (H-3) as referred to second committee

Sponsor: Rep. Ryan Berman

1st Committee: Regulatory Reform

2nd Committee: Judiciary

Complete to 10-25-21

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

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. The bill would eliminate criminal penalties for a violation for use of a tobacco product and instead make a violation a civil infraction with a civil fine. The bill also would increase, from \$50 to \$100, the civil fine for a third or subsequent violation of use of a vapor product or alternative nicotine product.

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. A court 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. 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 IMPACT:

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.

POSITIONS:

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

- Smoke-Free Environments Law Project
- Tobacco Free Michigan

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■ 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.

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