



Sub. S.B. 218
123rd General Assembly
(As Passed by the General Assembly)

Sens. Mumper, Drake, Johnson, Watts, Armbruster

Reps. Hughes, Willamowski, Schuler, Peterson, Corbin, Mottley, Widener

Effective date: *

ACT SUMMARY

- Prohibits a child, unless accompanied by a parent, adult spouse, or legal guardian, from consuming, possessing, using, purchasing, attempting to purchase, ordering, paying for, sharing the cost of, accepting, or receiving cigarettes, other tobacco products, or papers used to roll cigarettes.
- Prohibits a child from knowingly furnishing false identification to obtain cigarettes, other tobacco products, or papers used to roll cigarettes.
- Creates the offense of permitting children to use cigarettes or other tobacco products.
- Expands and revises the offense of illegal distribution of cigarettes or other tobacco products.

CONTENT AND OPERATION

Prohibiting children from possessing, using, purchasing, or receiving tobacco products or papers

The prohibition

Prior law did not prohibit children (generally persons under 18 years of age) from possessing, using, purchasing, or receiving tobacco products. Under the

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

act, no child may do any of the following unless accompanied by a parent, spouse who is 18 years of age or older, or legal guardian of the child: (1) use, consume, or possess cigarettes, other tobacco products, or papers used to roll cigarettes, (2) purchase or attempt to purchase cigarettes, other tobacco products, or papers used to roll cigarettes, (3) order, pay for, or share the cost of cigarettes, other tobacco products, or papers used to roll cigarettes, or (4) except when acting exclusively within the scope and requirements of the child's employment, accept or receive cigarettes, other tobacco products, or papers used to roll cigarettes. (R.C. 2151.87(B) and (E)(1).)

Under the act, it is not a violation of any of the prohibitions described in the preceding paragraph, if the child possesses, purchases or attempts to purchase, orders, pays for, or shares the cost of, or accepts or receives, cigarettes, other tobacco products, or papers used to roll cigarettes while participating in an inspection or compliance check conducted by a federal, state, local, or corporate entity at a location at which cigarettes, other tobacco products, or papers used to roll cigarettes are sold or distributed (R.C. 2151.87(E)(2)).

The act additionally prohibits a child from knowingly furnishing false information concerning that child's name, age, or other identification for the purpose of obtaining cigarettes, other tobacco products, or papers used to roll cigarettes (R.C. 2151.87(C)).

The act specifies that a child alleged or found to have violated either prohibition may not be detained under any provision of the Juvenile Law or any other provision of the Revised Code (R.C. 2151.87(H)).

Disposition of a child who violates any of the prohibitions

Under the act, a child who is alleged to have violated any of the above prohibitions and that child's parent, guardian, or custodian, in lieu of appearing before the court at the time fixed in the summons and prior to the appearance date in the summons, may sign a waiver of appearance before the clerk of the juvenile court and pay a fine of \$100. If the child and the child's parent, guardian, or custodian do not waive the court appearance, the court must proceed with the adjudicatory hearing. (R.C. 2151.28(C)(2).)

If a juvenile court finds that a child violated any of the prohibitions described under "**The prohibition**," above, the court may do either or both of the following (R.C. 2151.87(F)): (1) require the child to attend a youth smoking education program or other smoking treatment program approved by the court, if one is available; or (2) impose a fine of not more than \$100.

If a child disobeys a juvenile court order described in the preceding paragraph, the court may do any or all of the following (R.C. 2151.87(G)): (1)

increase the fine imposed upon the child, (2) require the child to perform not more than 20 hours of community service, or (3) suspend for a period of 30 days the temporary instruction permit, probationary driver's license, or driver's license issued to the child.

The act prohibits a juvenile court from adjudicating a child a delinquent or unruly child for violating any of the prohibitions (R.C. 2151.87(D)).

Related changes

The act also makes the following changes in the Juvenile Law related to the prohibitions described in "**The prohibition**," above:

(1) It grants juvenile courts exclusive original jurisdiction concerning any child who is alleged to have violated any of the prohibitions (R.C. 2151.23(A)(1)).

(2) It authorizes a person to file in juvenile court a complaint alleging a child to have violated any of the prohibitions (R.C. 2151.27(A)(1)).

(3) It amends the Juvenile Law hearing procedure to instruct the court how to proceed at the conclusion of a hearing to determine whether a child violated any of the prohibitions (R.C. 2151.35(A)(1)).

(4) It excepts a child who violates any of the prohibitions or who violates a court order relating to the prohibitions from the definition of "unruly child" and from the definition of "delinquent child" (R.C. 2151.02(B) and 2151.022(H)).

(5) It provides that the adjudicatory hearing for a child alleged to have committed any of the prohibitions must be held and may be continued in accordance with the Juvenile Rules (R.C. 2151.28(A)(1)).

Permitting children to use cigarettes or other tobacco products

Operation of the act

The act prohibits a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes, other tobacco products, or papers used to roll cigarettes, an agent, employee, or representative of any such entity, or any other person from knowingly furnishing any false information regarding the name, age, or other identification of any child with purpose to obtain cigarettes, other tobacco products, or papers used to roll cigarettes for that child. Whoever violates that prohibition is guilty of permitting children to use cigarettes or other tobacco products, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of that prohibition, permitting children to use cigarettes or other tobacco products is a misdemeanor of the third degree. (R.C. 2927.02(B)(3) and (E)(2).)

Illegal distribution of cigarettes or other tobacco products

Prior and continuing law

Prior R.C. 2927.02 provided that no manufacturer, producer, distributor, wholesaler, or retailer of cigarettes or other tobacco products, or any agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes or other tobacco products could do either of the following: (1) give, sell, or otherwise distribute cigarettes or other tobacco products to any person under 18 years of age or (2) give away, sell, or distribute cigarettes or other tobacco products in any place that does not have posted in a conspicuous place a sign stating that giving, selling, or otherwise distributing cigarettes or other tobacco products to a person under 18 years of age is prohibited by law (R.C. 2927.02(A)).

Prior law further provided that no person could sell or offer to sell cigarettes or other tobacco products by or from a vending machine except in the following locations: (1) an area either: (a) within a factory, business, office, or other place not open to the general public, or (b) to which persons under the age of 18 years were not generally permitted access, (2) in any other place not identified in (1) above, upon all of the following conditions: (a) the vending machine was located within the immediate vicinity, plain view, and control of the person who owned or operated the place, or an employee of the person, so that all cigarettes and other tobacco product purchases from the vending machine would be readily observed by the person who owned or operated the place or an employee of that person, and (b) the vending machine was inaccessible to the public when the place was closed. A vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, was not considered to be located within the immediate vicinity, plain view, and control of the person who owned or operated the place, or an employee of that person. (R.C. 2927.02(B).)

Under continuing law, a person who violates any of the above prohibitions is guilty of illegal distribution of cigarettes or other tobacco products, a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of any of the above prohibitions, then illegal distribution of cigarettes or other tobacco products is a misdemeanor of the third degree. (R.C. 2927.02(D).)

Operation of the act

The act expands the offense of illegal distribution of cigarettes or tobacco products in the following ways (R.C. 2927.02(B) and (C) and 2151.011(B)(6)):

(1) It adds "papers used to roll cigarettes" to the items (cigarettes and tobacco products) that are prohibited from being given away, sold, or distributed to children.

(2) It makes the offense applicable to any "other person" in addition to the types of persons to which the offense currently applies.

(3) It changes the reference from "person under 18 years of age" to "child" in the prohibitions as they relate to providing the items to children or making the items available to children via a vending machine. While "child" generally means a person under 18 years of age, a person under 18 years of age is not considered a child if the person has been transferred over to, and convicted in, an adult court for a violation of law. In this circumstance, the prohibition would no longer apply.

The act also creates affirmative defenses to a charge that someone gave, sold, or otherwise distributed cigarettes, other tobacco products, or papers used to roll cigarettes to a child. The affirmative defenses to the charge are (1) that the child was accompanied by a parent, spouse who is 18 years of age or older, or legal guardian of the child, and (2) that the person who gave, sold, or distributed cigarettes, other tobacco products, or papers used to roll cigarettes to the child is a parent, spouse who is 18 years of age or older, or legal guardian of the child. (R.C. 2927.02(D).)

The act does not change the penalty for this offense (R.C. 2927.02(E)(1)).

Under the act, any cigarettes, other tobacco products, or papers used to roll cigarettes that are given, sold, or otherwise distributed to a child in violation of any of the above prohibitions and that are used, possessed, purchased, or received by a child in violation of the prohibitions described under "**Prohibiting children from possessing, using, purchasing, or receiving tobacco products,**" above, are subject to seizure and forfeiture as contraband (R.C. 2927.02(F)).

Power of townships and municipal corporations

The act specifies that, except for the prohibitions relating to the sale of cigarettes or other tobacco products by or from a vending machine found in R.C. 2927.02(C), nothing in the act may be construed as limiting or affecting the powers of townships or municipal corporations to regulate the purchase, use, or sale of tobacco (Section 3).

Definitions

As used in the act:

"Youth smoking education program" means a private or public agency program is related to tobacco use, prevention, and cessation, that is carried out or

funded by the Tobacco Use Prevention and Control Foundation, that utilizes educational methods focusing on the negative health effects of smoking and using tobacco products, and that is not more than 12 hours in duration (R.C. 2151.87(A)(2)).

"Cigarette" includes clove cigarettes and hand-rolled cigarettes (R.C. 2927.02(A)(2) and 2151.87(A)(1)).

"Distribute" means to furnish, give, or provide cigarettes, other tobacco products, or papers used to roll cigarettes to the ultimate consumer of the cigarettes, other tobacco products, or papers used to roll cigarettes (R.C. 2927.02(A)(3)).

"Proof of age" means a driver's license, a commercial driver's license, a military identification card, a passport, or a state identification card that shows that a person is 18 years of age or older (R.C. 2927.02(A)(4)).

"Tobacco product" means any product that is made from tobacco, including, but not limited to, a cigarette, a cigar, pipe tobacco, chewing tobacco, or snuff (R.C. 2927.02(A)(5) and 2151.87(A)(1)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-07-99	p. 1217
Reported, S. Judiciary	05-10-00	pp. 1680-1681
Passed Senate (25-7)	05-10-00	p. 1685
Reported, H. Criminal Justice	11-15-00	p. 2363
Passed House (72-18)	11-16-00	pp. 2377-2379
Senate concurred in House amendments (29-3)	12-05-00	pp. 2290-2291

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