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Bill Analysis
Legislative Service Commission

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

Sens. Mumper, Drake, Johnson, Watts

BILL 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.
- Requires sellers, distributors, and transferors to demand proof of age of purchasers and recipients of cigarettes, other tobacco products, or papers used to roll cigarettes if the seller, distributor, or transferor has reasonable cause to believe the purchaser or recipient is under 18 years of age.
- Requires retail sellers of cigarettes, other tobacco products, or papers to roll cigarettes to sign a certification regarding the prohibitions and requirements incident to sales of cigarettes, other tobacco products, and papers used to roll cigarettes.

CONTENT AND OPERATION

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

The prohibition

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

The bill 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 bill permits a juvenile court to adjudicate a child who violates any of the above prohibitions as an unruly child and prohibits a juvenile court from adjudicating a child a delinquent child for violating any of those same prohibitions (R.C. 2151.87(D)).

Disposition of a child who violates any of the prohibitions

Under the bill, a child who is alleged to be an unruly child for committing an act in violation of any of the above prohibitions and that child's parent, guardian, or custodian may, in lieu of appearing before the court at the time fixed in the summons and prior to the appearance date in the summons, appear in person at the office of the clerk of the juvenile court and sign a waiver of appearance before the clerk 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).)

The bill also provides that if a child is adjudicated an unruly child for violating any of the above prohibitions, the court, may do any or all of the following: (1) require the child to attend a youth smoking education program or

other smoking treatment program approved by the court, if one is available, (2) impose a fine of not more than \$100, (3) require the child to perform not more than 20 hours of community service, or (4) suspend for a period of 30 days the temporary instruction permit, probationary driver's license, or driver's license issued to the child.

If a child disobeys a juvenile court order issued in relation to the above prohibitions, the court may increase the fine, community service hours, or license suspension time of the child but may not sentence the child to any form of detention.

A juvenile court is prohibited from adjudicating a child an unruly child for violating any of the prohibitions described in the first paragraph under "**The prohibition**," above, 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. 2151.354(D), (E), and (F)).

Permitting children to use cigarettes or other tobacco products

Operation of the bill

The bill 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

Existing law

Existing R.C. 2927.02 provides 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 may 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)).

Existing law further provides that no person may 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 are not generally permitted access, (2) in any other place not identified in (1) above, upon all of the following conditions: (a) the vending machine is located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of the person, so that all cigarettes and other tobacco product purchases from the vending machine will be readily observed by the person who owns or operates the place or an employee of that person, and (b) the vending machine is inaccessible to the public when the place is closed. A vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, is not considered to be located within the immediate vicinity, plain view, and control of the person who owns or operates the place, or an employee of that person. (R.C. 2927.02(B).)

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 bill

The bill 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 bill 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, (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, and (3) that all of the following apply: (a) the person purchasing or receiving the cigarettes, other tobacco products, or papers used to roll cigarettes, at the time of that purchase or receipt, exhibited a proof of age to the person giving, selling, or distributing the cigarettes, other tobacco products, or papers used to roll cigarettes, (b) the person giving, selling, or distributing the cigarettes, other tobacco products, or papers used to roll cigarettes made a good faith effort to determine the true age of the person purchasing or receiving them by checking the proof of age exhibited, at the time of giving, selling, or distributing the cigarettes, other tobacco products, or papers used to roll cigarettes, to ascertain that the description on the proof of age compared with the appearance of the person purchasing or receiving the cigarettes, other tobacco products, or papers used to roll cigarettes and that the proof of age exhibited had not been altered in any way, and (c) the person giving, selling, or distributing the cigarettes, other tobacco products, or papers used to roll cigarettes had reasonable cause to believe that the person purchasing or receiving them was 18 years of age or older. (R.C. 2927.02(D).)

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

Under the bill, 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(G)).

Proof of age verification requirement

The bill provides that if a person who gives, sells, or distributes cigarettes, other tobacco products, or papers used to roll cigarettes has reasonable cause to believe that a prospective purchaser or recipient of the cigarettes, other tobacco products, or papers used to roll cigarettes is a child, the person who gives, sells, or distributes the cigarettes, other tobacco products, or papers used to roll cigarettes

must demand that the prospective purchaser or recipient exhibit a proof of age. The bill provides no penalty for violation of this provision. (R.C. 2927.02(F).)

Certification required regarding the prohibitions and requirements incident to sales of cigarettes, other tobacco products, and papers used to roll cigarettes

The bill enacts new language requiring every person who is engaged in the business of selling cigarettes, other tobacco products, or papers used to roll cigarettes in a retail establishment to require each individual employed by that person as a retail sales clerk in the retail establishment to make a written certification on a form provided by the employer acknowledging that the individual employed as a retail sales clerk has received and read the following statements (R.C. 2927.021(A)):

The laws of this state do both of the following:

(1) Prohibit the sale or distribution of cigarettes, other tobacco products, or papers used to roll cigarettes to any person under eighteen years of age and prohibit the purchase, attempt to purchase, acceptance, or receipt of cigarettes, other tobacco products, or papers used to roll cigarettes by any person under eighteen years of age, except when the acceptance or receipt of the cigarettes, other tobacco products, or papers used to roll cigarettes occurs exclusively within the scope of employment of the person under eighteen years of age;

(2) Require that a proof of age be demanded from a prospective purchaser or recipient of cigarettes, other tobacco products, or papers used to roll cigarettes if the retail sales clerk has reasonable cause to believe that the prospective purchaser or recipient is under eighteen years of age.

I understand that state law prohibits the sale or distribution of cigarettes, other tobacco products, or papers used to roll cigarettes to persons under eighteen years of age and requires that a proof of age be demanded from a prospective purchaser or recipient of cigarettes, other tobacco products, or papers used to roll cigarettes in a retail establishment if I have reasonable cause to believe that the prospective purchaser or recipient is under eighteen years of age. I understand that violating this law is a criminal offense.

The bill further provides that an individual who is employed as a retail sales clerk in a retail establishment must make the certification described above before the individual commences work as a retail sales clerk or, in the case of an individual employed as a retail sales clerk on the effective date of the bill, within 30 days after the effective date of the bill. Each written certification must set forth the date on which the certification was made. The employer is required to deliver a copy of the executed certification form to the person who made the certification. The employer must retain the original signed certification form for not less than four months after the individual has left the employer's employment. (R.C. 2927.021(B).)

The bill prohibits (1) a person engaged in the business of selling cigarettes, other tobacco products, or papers used to roll cigarettes in a retail establishment from failing to comply with the above certification requirements and prohibits (2) a retail sales clerk in a retail establishment from failing to comply with the above certification requirements. A person who violates either prohibition is subject to a fine of \$50 for doing so. (R.C. 2927.021(C) and (D).)

Power of townships and municipal corporations

The bill specifies that nothing in the bill 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 bill:

"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. 2151.354(A)(3)).

"Cigarette" includes clove cigarettes and hand-rolled cigarettes (R.C. 2927.02(A)(2), 2151.354(A)(2), and 2151.87(A)).

"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), 2151.354(A)(2), and 2151.87(A)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	12-07-99	p. 1217
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