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## BILL ANALYSIS



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Senate Bill 651 (Substitute S-1)  
Senate Bill 652 (as introduced 11-9-24)  
Sponsor: Senator Sam Singh  
Committee: Regulatory Affairs

Date Completed: 11-14-24

**INTRODUCTION**

Senate Bill 651 (S-1) would establish licensure requirements for nicotine and tobacco retailers. A license would be required to sell nicotine or tobacco products. The bill would prescribe administrative fines, licensure sanctions, and misdemeanor penalties for specific violations of its licensure requirements and prohibitions. To obtain or renew a license, an establishment would have to apply to the Department of Licensing and Regulatory Affairs (LARA) and pay a \$1,500 application fee. The Department would have to begin accepting license applications within 15 months after the bill's effective date. The bill's application fees and administrative and civil fines would have to be deposited into the proposed Nicotine and Tobacco Regulation Fund, which LARA would have to use to administer and enforce compliance with the bill, such as for conducting unannounced compliance checks on each establishment regularly.

Senate Bill 652 would provide that the Age of Majority Act would not supersede provisions of the Youth Tobacco Act, renamed the Nicotine and Tobacco Act by Senate Bill 651 (S-1), and the Michigan Regulation and Taxation of Marihuana Act. It is tie-barred to Senate Bill 651.

**BRIEF FISCAL IMPACT**

Senate Bill 651 (S-1) would have an indeterminate negative fiscal impact on LARA, no significant impact on the Department of Treasury, and a positive fiscal impact on local units of government. The Department of Treasury would incur minimal costs to establish the Nicotine and Tobacco Regulation Fund. Additionally, the bill would have an indeterminate negative fiscal impact on the LARA, as total costs would depend on implementation expenses and the appropriations made by the Legislature from the Nicotine and Tobacco Regulation Fund. Local units of government would receive revenue collected from misdemeanor fines imposed under the bill.

Senate Bill 652 would have no fiscal impact on State or local government.

MCL 722.641 et al. (S.B. 651)  
722.52 & 722.53 (S.B. 652)

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## **CONTENT**

**Senate Bill 651 (S-1) would amend the Youth Tobacco Act to do the following:**

- **Require a person to hold a valid license to sell a nicotine or tobacco product at retail.**
- **Prescribe administrative fines and licensing sanctions to an unlicensed person who sold a nicotine or tobacco product.**
- **Prescribe requirements for new licenses and license renewals, including conditions under which a license could be denied or revoked.**
- **Allow LARA to promulgate rules to implement licensure requirements.**
- **Require LARA to begin accepting license applications and affidavits for temporary exemption before licensure within 15 months after the bill's effective date.**
- **Prohibit a licensed establishment from participating in the delivery of a nicotine or tobacco product off-premises, knowingly selling a nicotine or tobacco product to a person that intended to resell the product, or selling a nicotine or tobacco product itinerantly, remotely, or by flash retail.**
- **Prohibit an unlicensed establishment from displaying, advertising, or selling its nicotine and tobacco products.**
- **Prescribe administrative fines and license suspensions or revocations to an establishment that violated the bill's provisions.**
- **Create the Nicotine and Tobacco Regulation Fund and require fees and fines collected by LARA to be deposited into the Fund to be spent on appropriation to ensure compliance with the bill.**
- **Require LARA to conduct regular compliance checks at each licensed establishment and publish the results of each check.**
- **Modify penalties for selling, giving, or furnishing an illegal nicotine or tobacco product to a minor to include higher penalties and the suspension and revocation of an establishment's license.**
- **Require an establishment to examine the photographic identification of an individual attempting to purchase a nicotine or tobacco product and prescribe requirements for this photographic identification.**
- **Modify establishment's signage requirements.**

**Senate Bill 652 would amend the Age of Majority Act to exempt from the Act the Michigan Regulation and Taxation of Marihuana Act and the Youth Tobacco Act.**

Senate Bill 651 is described in greater detail below.

### **Senate Bill 651 (S-1)**

#### **Licensure to Sell Nicotine or Tobacco Products**

Generally, the bill would require a person to hold a valid license to sell a nicotine or tobacco product at retail. "Nicotine or tobacco product" would mean a tobacco product, a vapor product, or an alternative nicotine product. It also would mean a product that contains, is made of, or is derived from nicotine or tobacco, or is intended for human consumption or is likely to be consumed by humans by any means, including inhaling, absorbing, or ingesting.

Currently, the Act's definition of "nicotine or tobacco product" includes a component, part, or accessory of a nicotine or tobacco product. Under the bill, "nicotine or tobacco accessory" would mean a component, part, or accessory of a nicotine or tobacco product, including filters, rolling papers, blunt or hemp wraps, flavor enhancers, or pipes, if the component, part, or accessory is not a product regulated as a drug or device by the Food and Drug Administration.

The bill would specify that "tobacco product" would exclude a product that contains marihuana. "Vapor product" also would exclude a product that includes marihuana.

"Establishment" would mean a place of business, or area within a place of business, where a licensee has been authorized by LARA to sell or offer for sale a nicotine or tobacco product at retail. The term would not include flash retail or itinerant retail. Flash retail establishments and itinerant establishments would be ineligible for licensure. "Flash retail" would mean the use of a mobile, pop-up, or temporary structure for retail.

A *person*<sup>1</sup> could not sell a nicotine or tobacco product at retail unless the sale was on behalf of the licensee or a person that was temporarily exempt from licensure and was conducted on the licensee's establishment or the premises of the person that was temporarily exempt from licensure.

A person who violated this prohibition would be responsible for a State civil infraction and could be ordered to pay a civil fine as follows:

- For a first violation in a period of three years, \$500.
- For a second violation in a period of three years, \$1,000.
- For a third or subsequent violation in a period of three years, \$2,000.

However, a nonmanagerial employee of a licensee would not be responsible for a State civil infraction or fine if the nonmanagerial employee were at the licensee's premises and the nonmanagerial employee did not know and did not have reason to know that the violation was taking place.

#### Application for & Renewal of Licensure

An application for a new license would have to be in a form prescribed by LARA. An applicant would have to submit a separate application for each of the applicant's establishments. In the application, the applicant would have to include the following information:

- The name, address, and telephone number of the applicant and the address of the establishment.
- The organizational documents of the applicant.
- If the applicant were required to be licensed under the Tobacco Products Tax Act, proof that the applicant was licensed, as applicable, under that Act.
- The signature of each operator of the establishment, under the penalty of perjury.
- Other information that LARA found necessary for the administration or enforcement of the Act.
- Payment for the new license fee.
- An affidavit that affirmed that the applicant had not sold and would not sell a nicotine or tobacco product at retail without holding a valid license, and each operator of the applicant had read the Act and had provided training to each of the applicant's employees.

The training described in the latter requirement would have to include the following information:

- That the sale of a nicotine or tobacco product to a minor was prohibited by law.
- The consequences of selling a nicotine or tobacco product to a minor.

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<sup>1</sup> "Person" would mean an individual or a partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

- The types of identification that were permissible under the Act for proof of an individual's age.

An applicant that had an application pending LARA approval would have to inform LARA of a change in the information submitted with the application at least 10 business days after the change occurred.

The application fee for a new license would be \$1,500. Additionally, the bill would require LARA to begin accepting affidavits and license applications within 15 months after the bill's effective date.

The bill would require LARA to grant a license to each establishment for which the applicant requested a license unless LARA determined that the applicant or establishment did not qualify for licensure. Subject to a license suspension or revocation, a license, a license renewal, and a certificate of licensure would be valid for three years.

To renew a license, a licensee would have to submit to LARA, between 60 and 90 days before the expiration of the license term, an application for a renewed license in a form and manner as prescribed by LARA and the \$1,500 renewal fee. If a licensee failed to submit a license renewal application in a timely manner, the licensee would have to apply for a new license.

Under the bill, LARA could deny, suspend, revoke, or refuse to grant a license for any of the following reasons:

- The applicant or licensee submitted inaccurate or false information to the Department.
- The applicant or licensee violated the bill.
- The applicant or licensee failed to pay a fine assessed under the bill.
- If a licensee had an unresolved disciplinary action under the bill, LARA could not grant or renew a license if the license was for the same establishment that was associated with the unresolved disciplinary action.

The bill would allow LARA to prorate the fee for and duration of a license if the applicant for the license were a licensee.

#### Transfer or Change of an Establishment's Ownership Interest

A license would not be transferable. If a licensee transferred ownership of the licensee's establishment, the license for that establishment would be void. If a licensee elected to no longer sell or offer for sale nicotine or tobacco products at an establishment, the licensee would have to notify LARA within 30 days. The licensee's license for the establishment would become void when LARA received the notification.

#### Temporary Licensure Exemptions for Current Sellers

A person would be temporarily exempt from the licensure provisions of the bill if an affidavit filed with LARA affirmed the following:

- Before the bill's effective date, the person lawfully sold a nicotine or tobacco product at retail,
- An application for licensure had been submitted for the person, and LARA approval was pending, and
- The establishment had not been granted a license.

A person's temporary exemption would expire when the person's application was no longer pending LARA approval.

## Other Requirements

A licensee would be required to publicly display the applicable certificate of licensure or a copy of the certificate. A licensee that violated this requirement would be subject to an administrative fine of up to \$50.

A licensee would have to prohibit the sale, consumption, and use of marijuana on the licensee's establishment. A licensee that violated this requirement would be subject to an administrative fine of up to \$2,500.

A licensee would be prohibited from doing all the following:

- Delivering or participating in a delivery of a nicotine or tobacco product to a consumer that was not on the licensee's establishment.
- Selling a nicotine or tobacco product to a person that intended to deliver the nicotine or tobacco product to a consumer as part of a commercial transaction.
- Selling a nicotine or tobacco product itinerantly, remotely or by flash sale.

A licensee that violated this prohibition would be subject to an administrative fine of \$250 to \$2,500.

## Departmental Duties

The bill would require LARA and the Department of Treasury to share information that was necessary for the effective administration or enforcement of the Act.

The bill would prohibit LARA from denying, suspending, revoking, or refusing to renew a license or impose an administrative fine or license ineligibility period under the Act unless the person subject to LARA's action was provided notice and an opportunity for a hearing.

The bill would require LARA to regularly inspect each establishment for compliance with the bill. Every year, or more frequently, LARA would be required to publish the results of each compliance check that was conducted during the applicable time period.

## Prohibition Against Sale to Minors, Requirements to Check Identification, Penalties and Fees

Among other things, the Act prohibits a person from selling, giving, or furnishing a tobacco product, vapor product, or alternative nicotine product to a minor, including through a vending machine. A person who violates this prohibition is guilty of a misdemeanor punishable by a fine as follows:

- For a first offense, not more than \$100.
- For a second offense, not more than \$500.
- For a third or subsequent offense, not more than \$2,500.

Instead, the bill would delete the misdemeanor penalties and specify that a person could not sell, give, or furnish a nicotine or tobacco product (including a tobacco vapor product) or a nicotine or tobacco accessory to a minor, including those sold through vending machine.

Additionally, the bill would specify that the prohibition would not apply to a minor's handling or transportation of a nicotine or tobacco product under the terms of the minor's employment. Nor would this prohibition apply if an establishment sold, gave, or furnished a nicotine or tobacco product to a minor after the establishment made a diligent and good-faith effort to examine photographic identification in person.

The bill would require a licensee or employee of a licensee to examine, in person, photographic identification of the individual attempting to purchase a nicotine or tobacco product before the product was sold, given, or furnished. The photographic identification would have to meet all the following requirements:

- Appear to be authentic and government issued.
- Establish the identity of the minor.
- Misrepresent that the minor was an individual 21 years of age or older.

A person that sold, gave, or furnished a nicotine or tobacco *product* to a minor would be subject to an administrative fine, suspension or revocation of the licensee's license, or both, as follows:

- For a first violation in a period of three years, \$1,500.
- For a second violation in a period of three years, \$2,500.
- For a third violation in a period of three years, \$3,000, and LARA would have to suspend the license for seven days.
- For a fourth violation in a period of three years, \$4,000, and LARA would have to suspend the license for 30 days.
- For a fifth violation in a period of three years, \$5,000, and LARA would have to suspend the license for one year.
- For a sixth violation in a period of three years, \$5,000, and LARA would have to revoke the license.

A person that sold, gave, or furnished a nicotine or tobacco accessory to a minor would be subject to an administrative fine as follows:

- For a first violation in a period of three years, \$100.
- For a second violation in a period of three years, \$150.
- For a third violation in a period of three years, \$200.
- For a fourth or subsequent violation in a period of three years, \$400.

A licensee who sold, gave, or furnished a nicotine or tobacco *product* to an individual without examining, in person, photographic identification of the individual, would be subject to an administrative fine as follows:

- For a first violation in a period of three years, \$250.
- For a second violation in a period of three years, \$500.
- For a third violation in a period of three years, \$750.
- For a fourth or subsequent violation in a period of three years, \$1,000.

A licensee who sold, gave, or furnished a nicotine or tobacco *accessory* to an individual without examining, in person, photographic identification of the individual, would be subject to an administrative fine as follows:

- For a first violation in a period of three years, \$100.
- For a second violation in a period of three years, \$150.
- For a third violation in a period of three years, \$200.
- For a fourth or subsequent violation in a period of three years, \$250.

An employee, other than a nonmanagerial employee, who violated these prohibitions would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$200. A nonmanagerial employee who violated these prohibitions would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$100.

A person, other than a nonmanagerial employee, licensee, or employee of a licensee, that sold, gave, or furnished a nicotine or tobacco *product* to a minor would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to the following:

- For a first violation in a period of 3 years, \$2,000.
- For a second violation in a period of 3 years, \$3,000.
- For a third violation in a period of 3 years, \$4,000.
- For a fourth or subsequent violation in a period of 3 years, \$5,000.

A person, other than a nonmanagerial employee, licensee, or employee of a licensee, who sold, gave, or furnished a nicotine or tobacco accessory to a minor would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to the following:

- For a first violation in a period of three years, \$150.
- For a second violation in a period of three years, \$300.
- For a third violation in a period of three years, \$400.
- For a fourth or subsequent violation in a period of three years, \$500.

Under the bill, LARA could bring an action to collect administrative fines imposed.

#### Required Signage

The Act requires a person who sells tobacco products, vapor products, or alternative nicotine products at retail to post, in a place close to the point of sale and conspicuous to employees and customers, a sign produced by the Department of Health and Human Services (DHHS).

If the sign is more than six feet from the point of sale, it must be 5-1/2 inches by 8-1/2 inches and the statement required must be printed in 36-point boldfaced type. If the sign is six feet or less from the point of sale, it must be 2 inches by 4 inches and the statement required must be printed in 20-point boldfaced type. Currently, the sign must read as follows:

"The purchase of a tobacco product, vapor product, or alternative nicotine product by a minor under 21 years of age and the provision of a tobacco product, vapor product, or alternative nicotine product to a minor are prohibited by law. A minor who unlawfully purchases or uses a tobacco product, vapor product, or alternative nicotine product is subject to criminal penalties."

The bill would require this sign to be unobstructed and placed within six feet from each point of sale of nicotine and tobacco products or nicotine or tobacco accessories. It would have to be 14 inches by 11 inches, with the text printed with uppercase letters using high-contrast red ink. Additionally, the bill would amend the text to read as follows:

"The purchase of a tobacco product, vapor product, or alternative nicotine product by an individual who is less than 21 years of age and the provision of a nicotine or tobacco product to an individual who is less than 21 years of age are prohibited by law. An individual who is less than 21 years of age and unlawfully purchases, possesses, or uses a tobacco product, vapor product, or alternative nicotine product is subject to criminal penalties."

The bill would require the Department of Licensing and Regulatory Affairs, instead of the DHHS, to produce the sign and have adequate copies ready for distribution, free of charge.

If LARA, or the Department's designee, observed a violation of these requirements, notified the licensee in writing of the violation, and the licensee did not correct the violation within 30 days after the notification, the licensee would be subject to an administrative fine of \$50.

## The Nicotine and Tobacco Regulation Fund

The bill would create the Fund in the State Treasury and require the bill's fees and administrative fines to be deposited into the Fund. The State Treasurer could deposit money and other assets from any source into the Fund. The State Treasurer would have to direct the investment of the fund and credit interest and earnings from the investments to the Fund. LARA would be the administrator of the Fund for auditing purposes.

The bill would allow LARA to spend money from the Fund, on appropriation, only for the administration and enforcement or licensure under the Act, including all the following:

- To ensure compliance with applicable law that related to the retail sale of a nicotine or tobacco product, the education and training of persons that sold, or intended to sell, a nicotine or tobacco product at retail; LARA staff; and others that were subject to or enforce the applicable law.
- Application processing.
- Compliance checks.

## Deleted Provisions

Currently, the Act specifies that it is an affirmative defense to a charge of a violation of selling a tobacco product, vapor product, or alternative nicotine product 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, vapor products, or alternative nicotine products, as applicable, to individuals less than 21 years of age and that the defendant enforced and continues to enforce the policy. The Act prescribes a process for the defendant and prosecutor to provide and rebut the affirmative defense.

The Act also prescribes requirements for verifying the age of an individual before selling, offering for sale, giving, or furnishing a tobacco product, vapor product, or alternative nicotine product to the individual. Generally, a person must verify that the individual is at least 21 years of age by examining identification if the individual appears younger than 27 years old or performing an age verification through a third-party servicer for sales made on the internet.

The bill would delete these provisions.

## Title

Currently, the Act is known as the Youth Tobacco Act. The bill would change this to the "Nicotine and Tobacco Act".

## **PREVIOUS LEGISLATION**

*(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)*

Senate Bill 651 is similar to Senate Bill 575 of the 2021-2022 Legislative Session and Senate Bill 782 of the 2019-2020 Legislative Session.

## **FISCAL IMPACT**

### **Senate Bill 651 (S-1)**

The bill would have an indeterminate negative fiscal impact on LARA. The total cost to LARA would depend on the implementation costs minus the amount appropriated by the Legislature from the Nicotine and Tobacco Regulation Fund. Under the bill, LARA would need to administer and enforce licensure for an establishment to sell nicotine or tobacco products



at retail. The total cost to LARA would depend on the number of additional full-time equivalents (FTEs) necessary to process applications and perform compliance checks, as well as the cost of any information technology programs and upgrades, which could be significant. The average annual staffing cost incurred by LARA would be approximately \$138,900 per FTE, which includes salary and benefits.

These costs would be offset by fees collected upon submission of an application for a new license or the renewal of a license, which the bill specifies should be set at a level sufficient to cover the cost of administration and enforcement of licensure. These fees, along with other fees collected under the bill, would be deposited into the Nicotine and Tobacco Regulation Fund. Money from the Nicotine and Tobacco Regulation Fund could only be spent upon appropriation by the Legislature, meaning that it is likely that there would be a lag between when LARA incurred costs to establish the licensing program under the bill and when the fees deposited into the Fund were available.

The bill could have an indeterminate negative fiscal impact and an indeterminate positive fiscal impact on the State and local government. New misdemeanor arrests and convictions under the bill could increase resource demands on law enforcement, court systems, community supervision, and jails; however, it is unknown how many people would be prosecuted under provisions of the bill. Local jail costs vary by jurisdiction and thus costs for local governments would vary. Local revenue to local libraries could increase under the bill as any additional revenue from imposed fines would go to local libraries.

The bill would not have a significant fiscal impact on the Department of Treasury. The administrative fines as well as licensing fees imposed under the bill would be deposited into the newly created Nicotine and Tobacco Regulation Fund administered by Treasury. The exact amount of revenue directed to the Fund is unknown and would depend on the magnitude and volume of fees and administrative fines collected under the bill.

The establishment of the Fund would result in minimal costs for the Department of Treasury, but it is likely that investment and management activities would not result in any significant increase in expenditures for the Department. The bill does not specify whether money in the Fund would remain in the Fund at the end of a fiscal year.

The bill would have a minor positive fiscal impact on the DHHS as responsibility for providing, free of charge, a sign to be displayed in a licensee's establishment would be moved to LARA. This would result in a minor reduction in administrative and production costs.

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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.