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H.B. 258
135th General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 258's Bill Analysis](#)

Version: As Passed by the House

Primary Sponsor: Rep. Carruthers

Local Impact Statement Procedure Required: No

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Highlights

- The bill's changes to the fine structure for the offense of "selling tobacco products to a minor" may increase revenue for certain local governments statewide. The magnitude of the increase will depend on the number of repeat violations in any given jurisdiction and whether those jurisdictions already have in place certain ordinances or business licensing restrictions related to the prohibited behavior (some may opt to continue to file charges under those existing ordinances). For those jurisdictions that do not have such ordinances in place, fine revenue will likely increase.
- The bill enables a business that continually sells tobacco products to underage persons to be declared a public nuisance. As a result, abatement proceedings, to be filed in the county court of common pleas, may increase. The number of new filings in any given court will likely be minimal, relative to overall caseloads.

Detailed Analysis

The bill increases the fines for repeated offenses of selling tobacco products to a minor and enables a business that engages in such practice to be declared a public nuisance. Current law prohibits the selling of tobacco products to any person under the age of 21 ("minors"). "Tobacco products" means any product that is made or derived from tobacco or that contains any form of nicotine and also includes vaping products and accessories, regardless of whether they contain nicotine.

The bill generally retains the offense levels for selling tobacco products to minors:

- Misdemeanor of the fourth degree for a first offense (jail term of not more than 30 days, a fine of up to \$250, or both); and

- Misdemeanor of the third degree (jail term of not more than 60 days, a fine of up to \$500, or both) if the offender was previously convicted of the same conduct, regardless of the number of times.

While the bill retains this misdemeanor structure, it increases the applicable fines for violations as follows: \$500 for a third violation, \$1,000 for a fourth violation, and \$1,500 for a fifth or more subsequent violations. The bill will not create new criminal cases.

The bill also creates a new category of what constitutes a “nuisance” to include any place in which a pattern of continuous or repeated violations of selling tobacco products to minors has occurred. Under current law, unchanged by the bill, certain persons are authorized to bring a civil suit against a person thought to be maintaining a public nuisance.¹

Fiscal impact

Overall, the bill may result in additional fine revenue for certain counties, townships, and municipalities related to convictions for selling tobacco products to minors. The amount of additional fine revenue will vary from jurisdiction to jurisdiction and will also depend on whether the charges are filed under the Revised Code or under local ordinance, if available. A number of local jurisdictions statewide have enacted ordinances related to selling tobacco products to minors as well as certain business licensing regulations. As such, the magnitude of the increase in potential fine revenue will depend on the number of repeat violations in any given jurisdiction and whether those jurisdictions already have in place certain ordinances or business licensing restrictions related to the prohibited behavior (some may opt to continue to file charges under those existing ordinances). For those jurisdictions that do not have such ordinances in place, fine revenue will likely increase.

The number of businesses that may qualify, be pursued, and ultimately declared a “nuisance” under the bill is uncertain but is unlikely to result in significant additional costs or workload for county courts of common pleas or prosecuting authorities.

For background, the city of Columbus passed an ordinance in December 2016 that gave the Columbus Public Health Department the authority to regulate tobacco retailers by licensing and enforcing civil fines associated with tobacco sales to minors. As part of its enforcement efforts, the city conducts facility buy attempts, where a secret shopper will attempt an underage purchase. Violations are subject to a civil fine of \$1,000 for a first violation, \$5,000 for a second violation within two years of the first violation, and \$10,000 for a third or subsequent violation within two years of the initial violation and the license to conduct business will be revoked. In 2022, 108 out of 416 facilities, or 26.0%, buy attempts were noncompliant.

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¹ “Certain persons” include the Attorney General; the village solicitor, city director of law, or other similar chief legal officer of the municipal corporation in which the alleged nuisance exists; the prosecuting attorney of the county in which the alleged nuisance exists; the law director of a township that has adopted a limited home rule government under R.C. Chapter 504; and any person who is a citizen of the county in which the alleged nuisance exists.