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# OHIO LEGISLATIVE SERVICE COMMISSION

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135<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsor:** Rep. Carruthers

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### SUMMARY

- Specifies fines for repeated violations of the prohibition against selling tobacco products to underage persons.
- Expands the definition of “public nuisance” to include those places or businesses that repeatedly violate the prohibition against selling tobacco products to underage persons.

### DETAILED ANALYSIS

#### Overview

The bill amends the methods used to enforce the prohibition against selling tobacco products to underage persons in two ways – altered fines for repeat offenders and designating places where the prohibition is continuously violated as public nuisances. Under continuing law, unchanged by the bill, it is prohibited to sell tobacco products to any person under the age of 21.<sup>1</sup> “Tobacco products” means any product that is made or derived from tobacco or that contains any form of nicotine. Tobacco products also include vaping products and accessories, regardless of whether they contain nicotine.<sup>2</sup>

#### Fines

The bill prescribes specific fines for repeated violations of the prohibition against selling tobacco products to underage persons. Under current law, a first violation of this prohibition is a misdemeanor of the fourth degree. Any subsequent violations are a misdemeanor of the third

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<sup>1</sup> R.C. 2927.02(B)(1).

<sup>2</sup> R.C. 2927.02(A)(7).

degree.<sup>3</sup> The bill maintains these misdemeanor designations, but changes the associated fines for repeated violations.

### Current penalties

The current penalties for a fourth and third degree misdemeanor are as follows:

Misdemeanor Penalties		
	Fourth degree (first offense)	Third degree (subsequent offenses)
Jail time <sup>4</sup>	Up to 30 days	Up to 60 days
Fine <sup>5</sup>	Up to \$250	Up to \$500

### Fines under the bill

The bill amends the fines for repeated violations as follows:

- First offense – up to \$250;
- Second offense – up to \$500;
- Third offense – \$500;
- Fourth offense or more – \$1,000.

The bill specifies that these fines are in lieu of the fines imposed for standard misdemeanors, but are in addition to any other sanctions or penalties that may apply to the offender, including other financial sanctions or any applicable jail term.<sup>6</sup> The bill does not make any changes to possible jail sentences.

### Public nuisance

The bill enables a business that continually sells tobacco products to underage persons to be declared a public nuisance. Ohio law provides for the abatement of public nuisances. Under current law, the definition of “public nuisance” is:

- Anything declared by Ohio law to be a nuisance;
- Any place in which lewdness, assignation, or prostitution is conducted or permitted, or any place in which lewd, indecent, or obscene files are shown;

<sup>3</sup> R.C. 2927.02(B)(1)(a) and (G).

<sup>4</sup> R.C. 2929.24(A), not in the bill.

<sup>5</sup> R.C. 2929.28(A)(2), not in the bill.

<sup>6</sup> R.C. 2927.02(F).

- Any place where beer or intoxicating liquor is made or distributed in violation of law, or any place where such activities occur in a way that interferes with public decency, sobriety, peace, and good order.

The bill expands this definition to include “any place in which a pattern of continuous or repeated violations” of the prohibition against selling tobacco products to minors occurs.<sup>7</sup>

### **Enforcement of public nuisance laws**

The Revised Code authorizes certain persons to bring a civil suit against a person thought to be maintaining a public nuisance. These authorized 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 Chapter 504 of the Revised Code;
- Any person who is a citizen of the county in which the alleged nuisance exists.<sup>8</sup>

After the suit is filed, the person bringing the complaint may request that the court issue a restraining order barring the property owner, or other person responsible for the nuisance, from removing or in any manner interfering with the personal property and contents of the place where the alleged nuisance exists until further order of the court.<sup>9</sup> If, at the time of the granting of the restraining order, the owner or operator of the property in question has not abated the nuisance, the court is required to issue an order closing the place against its use for “any purpose of . . . prohibited conduct” until a final decision is rendered on the complaint. The restraining order is continued during any closing order. Additionally, an inventory of the personal property and contents situated in the place is required to be made.<sup>10</sup>

If the owner of the property files a bond in the full value of the real property, pays all incurred costs, and shows the court that the nuisance will be immediately abated and kept from being re-established, the court may release real property to the owner or refrain from issuing a restraining order or closing the property.<sup>11</sup>

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<sup>7</sup> R.C. 3767.01(C); conforming change in R.C. 4301.74.

<sup>8</sup> R.C. 3767.03, not in the bill.

<sup>9</sup> R.C. 3767.04(B)(2), not in the bill.

<sup>10</sup> R.C. 3767.04(B)(3), not in the bill.

<sup>11</sup> R.C. 3767.04(C), not in the bill.

If the court finds that a nuisance exists at the property in question, either through a civil action as described above or through a separate criminal proceeding,<sup>12</sup> the court is required to enter an order that perpetually enjoins the defendant and any other person from further maintaining the nuisance at the location in question or anywhere else. The order must also direct that the nuisance be abated.<sup>13</sup>

The order must direct the removal from the place in question all personal property and contents used in conducting or maintaining the nuisance. The contents are then to be sold at public auction, without appraisal, to the highest bidder. Amounts generated by the sale are generally used to pay costs associated with the lawsuit and the abatement. Any residual amounts are deposited into the general fund of the applicable local government.<sup>14</sup>

The order must also require the renewal for one year of any bond furnished by the owner. If a bond was not furnished, then any closing order issued on the property continues for a year. If a closing order was not issued, then the court is to issue a closing order for a period of one year, but may release the order sooner.<sup>15</sup>

Violating a temporary or permanent injunction, restraining order, closing order, or abatement order is a misdemeanor of the first degree, which carries a possible jail sentence of up to 180 days and a fine of up to \$1,000.<sup>16</sup> Furthermore, if a property is found to be a public nuisance and an injunction is issued, a tax of \$350 is levied against the personal property and the real property used to maintain the nuisance until all associated costs are paid. All provisions of law relating to the collection of taxes in Ohio, including the sale of property to pay those taxes, apply. And any amounts collected from the sale of personal or real property are to be applied toward paying any unpaid costs of the action and abatement.<sup>17</sup>

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## HISTORY

Action	Date
Introduced	08-28-23

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<sup>12</sup> R.C. 3767.06(A), not in the bill.

<sup>13</sup> R.C. 3767.05(D), not in the bill.

<sup>14</sup> R.C. 3767.06(C) to (F), not in the bill.

<sup>15</sup> R.C. 3767.06(A), not in the bill.

<sup>16</sup> R.C. 2929.24(A), 2929.28(A)(2), 3767.07, and 3767.99(A), not in the bill.

<sup>17</sup> R.C. 3767.08, not in the bill.