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**SFA****BILL ANALYSIS**

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Senate Bill 341 (as passed by the Senate)  
Sponsor: Senator Loren Bennett  
Committee: Local, Urban and State Affairs

Date Completed: 10-1-97

### **RATIONALE**

The illegal use of tobacco by school children in the United States is increasing, according to an annual survey funded by the U.S. Department of Health and Human Services. The nationwide survey of approximately 50,000 eighth-, 10th- and 12th-grade students in 1996 indicated that cigarette smoking is on the rise. Survey results show that of the students who participated, 21% of the eighth graders, 30% of the 10th grade students, and 34% of the high school seniors smoked cigarettes. Furthermore, the American Medical Association estimates that 3,000 young people a day take up smoking, resulting in more than 1 million new smokers each year. Some people contend that the tobacco industry is purposely marketing its products to youths in Michigan and across the country. One technique used in this effort is billboard advertising that features cartoon characters or attractive individuals who depict cigarette smoking as a positive activity. To limit the exposure of Michigan's youths to these messages, some people believe that the advertising of cigarettes on outdoor billboards should be banned.

### **CONTENT**

The bill would amend the Highway Advertising Act to prohibit a sign from advertising the purchase or consumption of tobacco products or advertising sexually explicit material. The prohibition would begin one year after the bill's effective date.

Under the Act, "sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing, whether placed individually or on a T-type, V-type, back to back or double-faced display, designed, intended, or used to advertise or inform. The bill would define "tobacco product" as any tobacco product sold to the general public; the term would include, but not be limited to, cigarettes, cigars, tobacco,

snuff, and chewing tobacco.

Currently, the Act's legislative findings state that it is appropriate to regulate and control outdoor advertising adjacent to the interstate highway, freeway, and primary highway systems within the State. The bill would refer to the secondary highway, major street, and local road systems within the State. The bill would add the legislative finding that it would be "appropriate to protect minors from exposure to advertising that encourages them to illegally possess tobacco". In addition, the bill would delete the legislative finding that "outdoor advertising is a legitimate commercial use of private property, is an integral part of the marketing function and an established segment of the economy of this state".

MCL 252.303 et al.

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

According to the American Medical Association, 90% of new smokers are children and teens who replace other cigarette smokers who died prematurely from tobacco-related diseases. Furthermore, cigarette smoking among underage students reportedly is at a 17-year high. Cigarette advertising appears to increase young people's risk of smoking, according to a 1994 U.S. Surgeon General's report. In addition, a 1991 study published in the *Journal of the American Medical Association* noted that "Old Joe", the cartoon camel used to advertise Camel cigarettes, is as familiar to six-year-olds as the silhouette of Mickey Mouse. The study also found that 91% of six-year-

old children not only recognized the camel image, but were able to link it with cigarettes. The tobacco industry reportedly doubled its advertising and promotion budget from \$3.3 billion in 1988 to \$6 billion in 1993, with an increasing amount of the marketing dollars paying for promotional activities that appeal to young people. Clearly, the tobacco industry designs billboards and other promotional activities to encourage young people to smoke. Consequently, the State has a compelling interest in protecting its youths from the harmful health risks associated with cigarettes and other tobacco products. Many Michigan residents apparently agree that tobacco billboards should be banned in the State as a means of limiting the exposure of young people to the lure of cigarette smoking. A recent poll by EPIC/MRA indicates that 64% of the State's residents support a ban on cigarette billboard advertising, while 31% oppose a ban, according to an article in the *Lansing State Journal* (5-8-97).

#### **Supporting Argument**

If Michigan were to ban tobacco billboards, it would join the Federal government and a number of other states that also are seeking to do the same. In June, the nation's largest tobacco companies agreed to submit to strict Federal control over the way they make and market cigarettes and to pay \$368.5 billion over the next 25 years to compensate states and individuals for tobacco-related health costs. The tentative settlement also bans billboard and other advertising of tobacco products, the use of human and cartoon characters in ads, Internet advertising, the placement of these products in movies and television, brand-name sponsorship of sporting events, and brand-name promotional merchandise. (President Bill Clinton recently pronounced the settlement as being inadequate and left the issue open for negotiation in Congress, which also must approve the deal.) The largest tobacco companies recently settled a lawsuit with the State of Florida and agreed to pay \$11.3 billion over the next 25 years and to take steps aimed at reducing underage smoking. Under the agreement, the tobacco industry must reduce advertising and promotion of tobacco products in return for protection from some lawsuits. In addition, tobacco companies will have to remove their billboard ads within 1,000 feet of schools and replace those ads with anti-tobacco advertising funded by the settlement. Other billboards promoting tobacco products will be removed over the next few months. In a recent settlement of a 1991 lawsuit in California, filed by an individual citizen opposing Camel ads and joined by 13 city and county attorneys, the Joe Camel image will be banished from advertising in that state. Under the

settlement, R.J. Reynolds Tobacco Company, which produces Camel cigarettes, will have to pull from the state all Joe Camel advertisements on billboards, posters, and magazines, by the end of the year.

#### **Opposing Argument**

Under the bill, billboards advertising tobacco products and sexually explicit material would be banned. Tobacco is a legal product, however, and the tobacco industry should not be prohibited from advertising it. Furthermore, the bill does not define what would constitute sexually explicit material. Banning billboards that carried messages about either of these subjects would set a dangerous precedent of content-based censorship. If government is allowed to prohibit billboards based on the content of their messages, it could lead to a ban of billboards that advertise other products. In addition, the U.S. Supreme Court recently established constitutional protections for truthful commercial speech on billboards by invalidating a Rhode Island statute that would have banned liquor price advertising. To survive a constitutional challenge, a limitation on commercial speech should be narrowly drawn and not more extensive than necessary. This bill, however, would ban *all* outdoor advertising of tobacco products or sexually explicit material throughout the entire State.

**Response:** Commercial speech about tobacco can be and already is regulated. For example, tobacco cannot be advertised on television and radio. While the Supreme Court ruling on the Rhode Island statute has been cited by the billboard industry as establishing constitutional protections, the ruling is not as broad as characterized by the billboard industry. In fact, the ruling dealt with the governmental restrictions on the dissemination of truthful information about the price of a lawful product. On the other hand, the Court has upheld other laws that restrict or ban outdoor advertising of liquor or tobacco products. The Court recently declined to hear a First Amendment challenge to a 1994 Baltimore ordinance that bans tobacco and alcohol billboards in order to promote the welfare and temperance of minors. The ruling sends a clear message that the Court will permit commercial speech restrictions that are aimed at reducing tobacco use among children. Furthermore, although tobacco itself may be a legal product, Michigan's Youth Tobacco Act makes it a crime to sell or give tobacco in any form to a person under 18.

Legislative Analyst: L. Arasim

#### **FISCAL IMPACT**

Costs would depend on the number of signs that violate the provisions of the bill. The bill would result in increased costs by requiring the Michigan Department of Transportation also to regulate billboards adjacent to secondary highways, major streets, and local roads.

Fiscal Analyst: B. Bowerman

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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.