

AN ACT

To amend sections 2151.02, 2151.022, 2151.23, 2151.27, 2151.28, 2151.35, and 2927.02 and to enact section 2151.87 of the Revised Code to expand the offense of illegal distribution of cigarettes or other tobacco products; to create the offense of permitting children to use cigarettes or other tobacco products; and to prohibit children from possessing, using, purchasing, or receiving cigarettes or other tobacco products.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 2151.02, 2151.022, 2151.23, 2151.27, 2151.28, 2151.35, and 2927.02 be amended and section 2151.87 of the Revised Code be enacted to read as follows:

Sec. 2151.02. As used in this chapter, "delinquent child" includes any of the following:

(A) Any child who violates any law of this state or the United States, or any ordinance or regulation of a political subdivision of the state, that would be a crime if committed by an adult, except as provided in section 2151.021 of the Revised Code;

(B) Any child who violates any lawful order of the court made under this chapter other than an order issued under section 2151.87 of the Revised Code;

(C) Any child who violates division (A) of section 2923.211 of the Revised Code;

(D) Any child who violates division (A)(1) or (2) of section 3730.07 of the Revised Code;

(E) Any child who is an habitual truant and who previously has been adjudicated an unruly child for being an habitual truant;

(F) Any child who is a chronic truant.

Sec. 2151.022. As used in this chapter, "unruly child" includes any of the following:

(A) Any child who does not subject the child's self to the reasonable

control of the child's parents, teachers, guardian, or custodian, by reason of being wayward or habitually disobedient;

(B) Any child who is persistently truant from home;

(C) Any child who is an habitual truant from school and who previously has not been adjudicated an unruly child for being an habitual truant;

(D) Any child who so departs the child's self as to injure or endanger the child's own health or morals or the health or morals of others;

(E) Any child who attempts to enter the marriage relation in any state without the consent of the child's parents, custodian, or legal guardian or other legal authority;

(F) Any child who is found in a disreputable place, visits or patronizes a place prohibited by law, or associates with vagrant, vicious, criminal, notorious, or immoral persons;

(G) Any child who engages in an occupation prohibited by law or is in a situation dangerous to life or limb or injurious to the child's own health or morals or the health or morals of others;

(H) Any child who violates a law, other than division (A) of section 2923.211 or section 2151.87 of the Revised Code, that is applicable only to a child.

Sec. 2151.23. (A) The juvenile court has exclusive original jurisdiction under the Revised Code as follows:

(1) Concerning any child who on or about the date specified in the complaint is alleged to have violated section 2151.87 of the Revised Code or an order issued under that section or to be a juvenile traffic offender or a delinquent, unruly, abused, neglected, or dependent child and, based on and in relation to the allegation pertaining to the child, concerning the parent, guardian, or other person having care of a child who is alleged to be an unruly or delinquent child for being an habitual or chronic truant;

(2) Subject to division (V) of section 2301.03 of the Revised Code, to determine the custody of any child not a ward of another court of this state;

(3) To hear and determine any application for a writ of habeas corpus involving the custody of a child;

(4) To exercise the powers and jurisdiction given the probate division of the court of common pleas in Chapter 5122. of the Revised Code, if the court has probable cause to believe that a child otherwise within the jurisdiction of the court is a mentally ill person subject to hospitalization by court order, as defined in section 5122.01 of the Revised Code;

(5) To hear and determine all criminal cases charging adults with the violation of any section of this chapter;

(6) To hear and determine all criminal cases in which an adult is

charged with a violation of division (C) of section 2919.21, division (B)(1) of section 2919.22, section 2919.222, division (B) of section 2919.23, or section 2919.24 of the Revised Code, provided the charge is not included in an indictment that also charges the alleged adult offender with the commission of a felony arising out of the same actions that are the basis of the alleged violation of division (C) of section 2919.21, division (B)(1) of section 2919.22, section 2919.222, division (B) of section 2919.23, or section 2919.24 of the Revised Code;

(7) Under the interstate compact on juveniles in section 2151.56 of the Revised Code;

(8) Concerning any child who is to be taken into custody pursuant to section 2151.31 of the Revised Code, upon being notified of the intent to take the child into custody and the reasons for taking the child into custody;

(9) To hear and determine requests for the extension of temporary custody agreements, and requests for court approval of permanent custody agreements, that are filed pursuant to section 5103.15 of the Revised Code;

(10) To hear and determine applications for consent to marry pursuant to section 3101.04 of the Revised Code;

(11) Subject to division (V) of section 2301.03 of the Revised Code, to hear and determine a request for an order for the support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic violence, or an action for support brought under Chapter 3115. of the Revised Code;

(12) Concerning an action commenced under section 121.38 of the Revised Code;

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~~(14)~~(13) To hear and determine violations of section 3321.38 of the Revised Code;

~~(15)~~(14) To exercise jurisdiction and authority over the parent, guardian, or other person having care of a child alleged to be a delinquent child, unruly child, or juvenile traffic offender, based on and in relation to the allegation pertaining to the child.

(B) Except as provided in division (I) of section 2301.03 of the Revised Code, the juvenile court has original jurisdiction under the Revised Code:

(1) To hear and determine all cases of misdemeanors charging adults with any act or omission with respect to any child, which act or omission is a violation of any state law or any municipal ordinance;

(2) To determine the paternity of any child alleged to have been born out of wedlock pursuant to sections 3111.01 to 3111.19 of the Revised

Code;

(3) Under the uniform interstate family support act in Chapter 3115. of the Revised Code;

(4) To hear and determine an application for an order for the support of any child, if the child is not a ward of another court of this state;

(5) To hear and determine an action commenced under section 5101.314 of the Revised Code.

(C) The juvenile court, except as to juvenile courts that are a separate division of the court of common pleas or a separate and independent juvenile court, has jurisdiction to hear, determine, and make a record of any action for divorce or legal separation that involves the custody or care of children and that is filed in the court of common pleas and certified by the court of common pleas with all the papers filed in the action to the juvenile court for trial, provided that no certification of that nature shall be made to any juvenile court unless the consent of the juvenile judge first is obtained. After a certification of that nature is made and consent is obtained, the juvenile court shall proceed as if the action originally had been begun in that court, except as to awards for spousal support or support due and unpaid at the time of certification, over which the juvenile court has no jurisdiction.

(D) The juvenile court, except as provided in division (I) of section 2301.03 of the Revised Code, has jurisdiction to hear and determine all matters as to custody and support of children duly certified by the court of common pleas to the juvenile court after a divorce decree has been granted, including jurisdiction to modify the judgment and decree of the court of common pleas as the same relate to the custody and support of children.

(E) The juvenile court, except as provided in division (I) of section 2301.03 of the Revised Code, has jurisdiction to hear and determine the case of any child certified to the court by any court of competent jurisdiction if the child comes within the jurisdiction of the juvenile court as defined by this section.

(F)(1) The juvenile court shall exercise its jurisdiction in child custody matters in accordance with sections 3109.04, 3109.21 to 3109.36, and 5103.20 to 5103.28 of the Revised Code.

(2) The juvenile court shall exercise its jurisdiction in child support matters in accordance with section 3109.05 of the Revised Code.

(G)(1) Each order for child support made or modified by a juvenile court shall include as part of the order a general provision, as described in division (A)(1) of section 3113.21 of the Revised Code, requiring the withholding or deduction of income or assets of the obligor under the order as described in division (D) of section 3113.21 of the Revised Code, or

another type of appropriate requirement as described in division (D)(3), (D)(4), or (H) of that section, to ensure that withholding or deduction from the income or assets of the obligor is available from the commencement of the support order for collection of the support and of any arrearages that occur; a statement requiring all parties to the order to notify the child support enforcement agency in writing of their current mailing address, current residence address, current residence telephone number, and current driver's license number, and any changes to that information; and a notice that the requirement to notify the child support enforcement agency of all changes to that information continues until further notice from the court. Any juvenile court that makes or modifies an order for child support shall comply with sections 3113.21 to 3113.219 of the Revised Code. If any person required to pay child support under an order made by a juvenile court on or after April 15, 1985, or modified on or after December 1, 1986, is found in contempt of court for failure to make support payments under the order, the court that makes the finding, in addition to any other penalty or remedy imposed, shall assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

(2) Notwithstanding section 3109.01 of the Revised Code, if a juvenile court issues a child support order under this chapter, the order shall remain in effect beyond the child's eighteenth birthday as long as the child continuously attends on a full-time basis any recognized and accredited high school or the order provides that the duty of support of the child continues beyond the child's eighteenth birthday. Except in cases in which the order provides that the duty of support continues for any period after the child reaches nineteen years of age the order shall not remain in effect after the child reaches nineteen years of age. Any parent ordered to pay support under a child support order issued under this chapter shall continue to pay support under the order, including during seasonal vacation periods, until the order terminates.

(H) If a child who is charged with an act that would be an offense if committed by an adult was fourteen years of age or older and under eighteen years of age at the time of the alleged act and if the case is transferred for criminal prosecution pursuant to section 2151.26 of the Revised Code, the juvenile court does not have jurisdiction to hear or determine the case subsequent to the transfer. The court to which the case is transferred for criminal prosecution pursuant to that section has jurisdiction subsequent to the transfer to hear and determine the case in the same manner as if the case

originally had been commenced in that court, including, but not limited to, jurisdiction to accept a plea of guilty or another plea authorized by Criminal Rule 11 or another section of the Revised Code and jurisdiction to accept a verdict and to enter a judgment of conviction pursuant to the Rules of Criminal Procedure against the child for the commission of the offense that was the basis of the transfer of the case for criminal prosecution, whether the conviction is for the same degree or a lesser degree of the offense charged, for the commission of a lesser-included offense, or for the commission of another offense that is different from the offense charged.

(I) If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act. In those circumstances, divisions (B) and (C) of section 2151.26 of the Revised Code do not apply regarding the act, the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act, all proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense, and the court having jurisdiction of the offense has all the authority and duties in the case as it has in other criminal cases commenced in that court.

Sec. 2151.27. (A)(1) Subject to division (A)(2) of this section, any person having knowledge of a child who appears to have violated section 2151.87 of the Revised Code or to be a juvenile traffic offender or to be a delinquent, unruly, abused, neglected, or dependent child may file a sworn complaint with respect to that child in the juvenile court of the county in which the child has a residence or legal settlement or in which the violation, traffic offense, delinquency, unruliness, abuse, neglect, or dependency allegedly occurred. If an alleged abused, neglected, or dependent child is taken into custody pursuant to division (D) of section 2151.31 of the Revised Code or is taken into custody pursuant to division (A) of section 2151.31 of the Revised Code without the filing of a complaint and placed into shelter care pursuant to division (C) of that section, a sworn complaint shall be filed with respect to the child before the end of the next day after the day on which the child was taken into custody. The sworn complaint may be upon information and belief, and, in addition to the allegation that the child committed the violation or is a delinquent, unruly, abused, neglected, or dependent child or a juvenile traffic offender, the complaint

shall allege the particular facts upon which the allegation that the child committed the violation or is a delinquent, unruly, abused, neglected, or dependent child or a juvenile traffic offender is based.

(2) Any person having knowledge of a child who appears to be an unruly or delinquent child for being an habitual or chronic truant may file a sworn complaint with respect to that child and the parent, guardian, or other person having care of the child in the juvenile court of the county in which the child has a residence or legal settlement or in which the child is supposed to attend public school. The sworn complaint may be upon information and belief and shall contain the following allegations:

(a) That the child is an unruly child for being an habitual truant or the child is a delinquent child for being a chronic truant or an habitual truant who previously has been adjudicated an unruly child for being an habitual truant and, in addition, the particular facts upon which that allegation is based;

(b) That the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code and, in addition, the particular facts upon which that allegation is based.

(B) If a child, before arriving at the age of eighteen years, allegedly commits an act for which the child may be adjudicated a delinquent child, an unruly child, or a juvenile traffic offender and if the specific complaint alleging the act is not filed or a hearing on that specific complaint is not held until after the child arrives at the age of eighteen years, the court has jurisdiction to hear and dispose of the complaint as if the complaint were filed and the hearing held before the child arrived at the age of eighteen years.

(C) If the complainant in a case in which a child is alleged to be an abused, neglected, or dependent child desires permanent custody of the child or children, temporary custody of the child or children, whether as the preferred or an alternative disposition, or the placement of the child in a planned permanent living arrangement, the complaint shall contain a prayer specifically requesting permanent custody, temporary custody, or the placement of the child in a planned permanent living arrangement.

(D) For purposes of the record to be maintained by the clerk under division (B) of section 2151.18 of the Revised Code, when a complaint is filed that alleges that a child is a delinquent child, the court shall determine if the victim of the alleged delinquent act was sixty-five years of age or older or permanently and totally disabled at the time of the alleged commission of the act.

(E) Any person with standing under applicable law may file a complaint for the determination of any other matter over which the juvenile court is given jurisdiction by section 2151.23 of the Revised Code. The complaint shall be filed in the county in which the child who is the subject of the complaint is found or was last known to be found.

(F) Within ten days after the filing of a complaint, the court shall give written notice of the filing of the complaint and of the substance of the complaint to the superintendent of a city, local, exempted village, or joint vocational school district if the complaint alleges that a child committed an act that would be a criminal offense if committed by an adult, that the child was sixteen years of age or older at the time of the commission of the alleged act, and that the alleged act is any of the following:

(1) A violation of section 2923.122 of the Revised Code that relates to property owned or controlled by, or to an activity held under the auspices of, the board of education of that school district;

(2) A violation of section 2923.12 of the Revised Code, of a substantially similar municipal ordinance, or of section 2925.03 of the Revised Code that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district;

(3) A violation of section 2925.11 of the Revised Code that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district, other than a violation of that section that would be a minor drug possession offense, as defined in section 2925.01 of the Revised Code, if committed by an adult;

(4) A violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.11, 2903.12, 2907.02, or 2907.05 of the Revised Code, or a violation of former section 2907.12 of the Revised Code, that was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district, if the victim at the time of the commission of the alleged act was an employee of the board of education of that school district.

(5) Complicity in any violation described in division (F)(1), (2), (3), or (4) of this section that was alleged to have been committed in the manner described in division (F)(1), (2), (3), or (4) of this section, regardless of whether the act of complicity was committed on property owned or controlled by, or at an activity held under the auspices of, the board of education of that school district.

(G) A public children services agency, acting pursuant to a complaint or an action on a complaint filed under this section, is not subject to the

quirements of section 3109.27 of the Revised Code.

Sec. 2151.28. (A) No later than seventy-two hours after the complaint is filed, the court shall fix a time for an adjudicatory hearing. The court shall conduct the adjudicatory hearing within one of the following periods of time:

(1) If the complaint alleged that the child violated section 2151.87 of the Revised Code or is a delinquent or unruly child or a juvenile traffic offender, the adjudicatory hearing shall be held and may be continued in accordance with the Juvenile Rules.

(2) If the complaint alleged that the child is an abused, neglected, or dependent child, the adjudicatory hearing shall be held no later than thirty days after the complaint is filed, except that, for good cause shown, the court may continue the adjudicatory hearing for either of the following periods of time:

(a) For ten days beyond the thirty-day deadline to allow any party to obtain counsel;

(b) For a reasonable period of time beyond the thirty-day deadline to obtain service on all parties or any necessary evaluation, except that the adjudicatory hearing shall not be held later than sixty days after the date on which the complaint was filed.

(B) At an adjudicatory hearing held pursuant to division (A)(2) of this section, the court, in addition to determining whether the child is an abused, neglected, or dependent child, shall determine whether the child should remain or be placed in shelter care until the dispositional hearing. When the court makes the shelter care determination, all of the following apply:

(1) The court shall determine whether there are any relatives of the child who are willing to be temporary custodians of the child. If any relative is willing to be a temporary custodian, the child otherwise would remain or be placed in shelter care, and the appointment is appropriate, the court shall appoint the relative as temporary custodian of the child, unless the court appoints another relative as custodian. If it determines that the appointment of a relative as custodian would not be appropriate, it shall issue a written opinion setting forth the reasons for its determination and give a copy of the opinion to all parties and the guardian ad litem of the child.

The court's consideration of a relative for appointment as a temporary custodian does not make that relative a party to the proceedings.

(2) The court shall comply with section 2151.419 of the Revised Code.

(3) The court shall schedule the date for the dispositional hearing to be held pursuant to section 2151.35 of the Revised Code. The parents of the child have a right to be represented by counsel; however, in no case shall the

dispositional hearing be held later than ninety days after the date on which the complaint was filed.

(C)(1) The court shall direct the issuance of a summons directed to the child except as provided by this section, the parents, guardian, custodian, or other person with whom the child may be, and any other persons that appear to the court to be proper or necessary parties to the proceedings, requiring them to appear before the court at the time fixed to answer the allegations of the complaint. The summons shall contain the name and telephone number of the court employee designated by the court pursuant to section 2151.314 of the Revised Code to arrange for the prompt appointment of counsel for indigent persons. A child alleged to be an abused, neglected, or dependent child shall not be summoned unless the court so directs. A summons issued for a child who is under fourteen years of age and who is alleged to be a delinquent child, unruly child, or a juvenile traffic offender shall be served on the parent, guardian, or custodian of the child in the child's behalf.

If the person who has physical custody of the child, or with whom the child resides, is other than the parent or guardian, then the parents and guardian also shall be summoned. A copy of the complaint shall accompany the summons.

(2) In lieu of appearing before the court at the time fixed in the summons and prior to the date fixed for appearance in the summons, a child who is alleged to have violated section 2151.87 of the Revised Code and that child's parent, guardian, or custodian may sign a waiver of appearance before the clerk of the juvenile court and pay a fine of one hundred dollars. If the child and that child's parent, guardian, or custodian do not waive the court appearance, the court shall proceed with the adjudicatory hearing as provided in this section.

(D) If the complaint contains a prayer for permanent custody, temporary custody, whether as the preferred or an alternative disposition, or a planned permanent living arrangement in a case involving an alleged abused, neglected, or dependent child, the summons served on the parents shall contain as is appropriate an explanation that the granting of permanent custody permanently divests the parents of their parental rights and privileges, an explanation that an adjudication that the child is an abused, neglected, or dependent child may result in an order of temporary custody that will cause the removal of the child from their legal custody until the court terminates the order of temporary custody or permanently divests the parents of their parental rights, or an explanation that the issuance of an order for a planned permanent living arrangement will cause the removal of the child from the legal custody of the parents if any of the conditions listed

in divisions (A)(5)(a) to (c) of section 2151.353 of the Revised Code are found to exist.

(E)(1) Except as otherwise provided in division (E)(2) of this section, the court may endorse upon the summons an order directing the parents, guardian, or other person with whom the child may be to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.

(2) In cases in which the complaint alleges that a child is an unruly or delinquent child for being an habitual or chronic truant and that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school, the court shall endorse upon the summons an order directing the parent, guardian, or other person having care of the child to appear personally at the hearing and directing the person having the physical custody or control of the child to bring the child to the hearing.

(F)(1) The summons shall contain a statement advising that any party is entitled to counsel in the proceedings and that the court will appoint counsel or designate a county public defender or joint county public defender to provide legal representation if the party is indigent.

(2) In cases in which the complaint alleges a child to be an abused, neglected, or dependent child and no hearing has been conducted pursuant to division (A) of section 2151.314 of the Revised Code with respect to the child or a parent, guardian, or custodian of the child does not attend the hearing, the summons also shall contain a statement advising that a case plan may be prepared for the child, the general requirements usually contained in case plans, and the possible consequences of failure to comply with a journalized case plan.

(G) If it appears from an affidavit filed or from sworn testimony before the court that the conduct, condition, or surroundings of the child are endangering the child's health or welfare or those of others, that the child may abscond or be removed from the jurisdiction of the court, or that the child will not be brought to the court, notwithstanding the service of the summons, the court may endorse upon the summons an order that a law enforcement officer serve the summons and take the child into immediate custody and bring the child forthwith to the court.

(H) A party, other than the child, may waive service of summons by written stipulation.

(I) Before any temporary commitment is made permanent, the court shall fix a time for hearing in accordance with section 2151.414 of the Revised Code and shall cause notice by summons to be served upon the parent or guardian of the child and the guardian ad litem of the child, or

published, as provided in section 2151.29 of the Revised Code. The summons shall contain an explanation that the granting of permanent custody permanently divests the parents of their parental rights and privileges.

(J) Any person whose presence is considered necessary and who is not summoned may be subpoenaed to appear and testify at the hearing. Anyone summoned or subpoenaed to appear who fails to do so may be punished, as in other cases in the court of common pleas, for contempt of court. Persons subpoenaed shall be paid the same witness fees as are allowed in the court of common pleas.

(K) The failure of the court to hold an adjudicatory hearing within any time period set forth in division (A)(2) of this section does not affect the ability of the court to issue any order under this chapter and does not provide any basis for attacking the jurisdiction of the court or the validity of any order of the court.

(L) If the court, at an adjudicatory hearing held pursuant to division (A) of this section upon a complaint alleging that a child is an abused, neglected, dependent, delinquent, or unruly child or a juvenile traffic offender, determines that the child is a dependent child, the court shall incorporate that determination into written findings of fact and conclusions of law and enter those findings of fact and conclusions of law in the record of the case. The court shall include in those findings of fact and conclusions of law specific findings as to the existence of any danger to the child and any underlying family problems that are the basis for the court's determination that the child is a dependent child.

Sec. 2151.35. (A)(1) The juvenile court may conduct its hearings in an informal manner and may adjourn its hearings from time to time. In the hearing of any case, the general public may be excluded and only those persons admitted who have a direct interest in the case.

Except cases involving children who are alleged to be unruly or delinquent children for being habitual or chronic truants, all cases involving children shall be heard separately and apart from the trial of cases against adults. The court may excuse the attendance of the child at the hearing in cases involving abused, neglected, or dependent children. The court shall hear and determine all cases of children without a jury, except that section 2151.47 of the Revised Code shall apply in cases involving a complaint that jointly alleges that a child is an unruly or delinquent child for being an habitual or chronic truant and that a parent, guardian, or other person having care of the child failed to cause the child's attendance at school.

If a complaint alleges a child to be a delinquent child, unruly child, or

juvenile traffic offender, the court shall require the parent, guardian, or custodian of the child to attend all proceedings of the court regarding the child. If a parent, guardian, or custodian fails to so attend, the court may find the parent, guardian, or custodian in contempt.

If the court finds from clear and convincing evidence that the child violated section 2151.87 of the Revised Code, the court shall proceed in accordance with divisions (F) and (G) of that section.

If the court at the adjudicatory hearing finds from clear and convincing evidence that the child is an abused, neglected, or dependent child, the court shall proceed, in accordance with division (B) of this section, to hold a dispositional hearing and hear the evidence as to the proper disposition to be made under section 2151.353 of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent or unruly child or a juvenile traffic offender, the court shall proceed immediately, or at a postponed hearing, to hear the evidence as to the proper disposition to be made under sections 2151.352 to 2151.355 of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is an unruly child for being an habitual truant, or that the child is an unruly child for being an habitual truant and that the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, the court shall proceed to hold a hearing to hear the evidence as to the proper disposition to be made in regard to the child under division (C)(1) of section 2151.354 of the Revised Code and the proper action to take in regard to the parent, guardian, or other person having care of the child under division (C)(2) of section 2151.354 of the Revised Code. If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent child for being a chronic truant or for being an habitual truant who previously has been adjudicated an unruly child for being an habitual truant, or that the child is a delinquent child for either of those reasons and the parent, guardian, or other person having care of the child has failed to cause the child's attendance at school in violation of section 3321.38 of the Revised Code, the court shall proceed to hold a hearing to hear the evidence as to the proper disposition to be made in regard to the child under division (A)(24)(a) of section 2151.355 of the Revised Code and the proper action to take in regard to the parent, guardian, or other person having care of the child under division (A)(24)(b) of section 2151.355 of the Revised Code.

If the court does not find the child to have violated section 2151.87 of the Revised Code or to be an abused, neglected, dependent, delinquent, or

unruly child or a juvenile traffic offender, it shall order that the complaint be dismissed and that the child be discharged from any detention or restriction theretofore ordered.

(2) A record of all testimony and other oral proceedings in juvenile court shall be made in all proceedings that are held pursuant to section 2151.414 of the Revised Code or in which an order of disposition may be made pursuant to division (A)(4) of section 2151.353 of the Revised Code, and shall be made upon request in any other proceedings. The record shall be made as provided in section 2301.20 of the Revised Code.

(B)(1) If the court at an adjudicatory hearing determines that a child is an abused, neglected, or dependent child, the court shall not issue a dispositional order until after the court holds a separate dispositional hearing. The court may hold the dispositional hearing for an adjudicated abused, neglected, or dependent child immediately after the adjudicatory hearing if all parties were served prior to the adjudicatory hearing with all documents required for the dispositional hearing. The dispositional hearing may not be held more than thirty days after the adjudicatory hearing is held. The court, upon the request of any party or the guardian ad litem of the child, may continue a dispositional hearing for a reasonable time not to exceed the time limits set forth in this division to enable a party to obtain or consult counsel. The dispositional hearing shall not be held more than ninety days after the date on which the complaint in the case was filed.

If the dispositional hearing is not held within the period of time required by this division, the court, on its own motion or the motion of any party or the guardian ad litem of the child, shall dismiss the complaint without prejudice.

(2) The dispositional hearing shall be conducted in accordance with all of the following:

(a) The judge or referee who presided at the adjudicatory hearing shall preside, if possible, at the dispositional hearing;

(b) The court may admit any evidence that is material and relevant, including, but not limited to, hearsay, opinion, and documentary evidence;

(c) Medical examiners and each investigator who prepared a social history shall not be cross-examined, except upon consent of the parties, for good cause shown, or as the court in its discretion may direct. Any party may offer evidence supplementing, explaining, or disputing any information contained in the social history or other reports that may be used by the court in determining disposition.

(3) After the conclusion of the dispositional hearing, the court shall enter an appropriate judgment within seven days and shall schedule the date

for the hearing to be held pursuant to section 2151.415 of the Revised Code. The court may make any order of disposition that is set forth in section 2151.353 of the Revised Code. A copy of the judgment shall be given to each party and to the child's guardian ad litem. If the judgment is conditional, the order shall state the conditions of the judgment. If the child is not returned to the child's own home, the court shall determine which school district shall bear the cost of the child's education and shall comply with section 2151.36 of the Revised Code.

(4) As part of its dispositional order, the court may issue any order described in division (B) of section 2151.33 of the Revised Code.

(C) The court shall give all parties to the action and the child's guardian ad litem notice of the adjudicatory and dispositional hearings in accordance with the Juvenile Rules.

(D) If the court issues an order pursuant to division (A)(4) of section 2151.353 of the Revised Code committing a child to the permanent custody of a public children services agency or a private child placing agency, the parents of the child whose parental rights were terminated cease to be parties to the action upon the issuance of the order. This division is not intended to eliminate or restrict any right of the parents to appeal the permanent custody order issued pursuant to division (A)(4) of section 2151.353 of the Revised Code.

(E) Each juvenile court shall schedule its hearings in accordance with the time requirements of this chapter.

(F) In cases regarding abused, neglected, or dependent children, the court may admit any statement of a child that the court determines to be excluded by the hearsay rule if the proponent of the statement informs the adverse party of the proponent's intention to offer the statement and of the particulars of the statement, including the name of the declarant, sufficiently in advance of the hearing to provide the party with a fair opportunity to prepare to challenge, respond to, or defend against the statement, and the court determines all of the following:

- (1) The statement has circumstantial guarantees of trustworthiness;
- (2) The statement is offered as evidence of a material fact;
- (3) The statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts;
- (4) The general purposes of the evidence rules and the interests of justice will best be served by the admission of the statement into evidence.

(G) If a child is alleged to be an abused child, the court may order that the testimony of the child be taken by deposition. On motion of the

prosecuting attorney, guardian ad litem, or any party, or in its own discretion, the court may order that the deposition be videotaped. Any deposition taken under this division shall be taken with a judge or referee present.

If a deposition taken under this division is intended to be offered as evidence at the hearing, it shall be filed with the court. Part or all of the deposition is admissible in evidence if counsel for all parties had an opportunity and similar motive at the time of the taking of the deposition to develop the testimony by direct, cross, or redirect examination and the judge determines that there is reasonable cause to believe that if the child were to testify in person at the hearing, the child would experience emotional trauma as a result of participating at the hearing.

Sec. 2151.87. (A) As used in this section:

(1) "Cigarette" and "tobacco product" have the same meanings as in section 2927.02 of the Revised Code.

(2) "YOUTH SMOKING EDUCATION PROGRAM" MEANS A PRIVATE OR PUBLIC AGENCY PROGRAM THAT IS RELATED TO TOBACCO USE, PREVENTION, AND CESSATION, THAT IS CARRIED OUT OR FUNDED BY THE TOBACCO USE PREVENTION AND CONTROL FOUNDATION PURSUANT TO SECTION 183.07 of the Revised Code, THAT UTILIZES EDUCATIONAL METHODS FOCUSING ON THE NEGATIVE HEALTH EFFECTS OF SMOKING AND USING TOBACCO PRODUCTS, AND THAT IS NOT MORE THAN TWELVE HOURS IN DURATION.

(B) No child shall do any of the following unless accompanied by a parent, spouse who is eighteen 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;

(4) Except as provided in division (E) of this section, accept or receive cigarettes, other tobacco products, or papers used to roll cigarettes.

(C) No child shall knowingly furnish 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.

(D) A juvenile court shall not adjudicate a child a delinquent or unruly child for a violation of division (B)(1), (2), (3), or (4) or (C) of this section.

(E)(1) It is not a violation of division (B)(4) of this section for a child to accept or receive cigarettes, other tobacco products, or papers used to roll cigarettes if the child is required to do so in the performance of the child's duties as an employee of that child's employer and the child's acceptance or receipt of cigarettes, other tobacco products, or papers used to roll cigarettes occurs exclusively within the scope of the child's employment.

(2) It is not a violation of division (B)(1), (2), (3), or (4) of this section if the child possesses, purchases or attempts to purchase, orders, pays for, 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.

(F) If a juvenile court finds that a child violated division (B)(1), (2), (3), or (4) or (C) of this section, the court may do either or both 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 one hundred dollars.

(G) If a child disobeys a juvenile court order issued pursuant to division (F) of this section, the court may do any or all of the following:

(1) Increase the fine imposed upon the child under division (F)(2) of this section;

(2) Require the child to perform not more than twenty hours of community service;

(3) Suspend for a period of thirty days the temporary instruction permit, probationary driver's license, or driver's license issued to the child.

(H) A child alleged or found to have violated division (B) or (C) of this section shall not be detained under any provision of this chapter or any other provision of the Revised Code.

Sec. 2927.02. (A) As used in this section and section 2927.021 of the Revised Code:

(1) "Child" has the same meaning as in section 2151.011 of the Revised Code.

(2) "Cigarette" includes clove cigarettes and hand-rolled cigarettes.

(3) "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.

(4) "Proof of age" means a driver's license, a commercial driver's license, a military identification card, a passport, or an identification card issued under sections 4507.50 to 4507.52 of the Revised Code that shows

that a person is eighteen years of age or older.

(5) "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.

(6) "Vending machine" has the same meaning as "coin machine" in section 2913.01 of the Revised Code.

(B) No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes ~~or~~ other tobacco products, or ~~any~~ papers used to roll cigarettes, no agent, employee, or representative of a manufacturer, producer, distributor, wholesaler, or retailer of cigarettes ~~or~~ other tobacco products, or papers used to roll cigarettes, and no other person shall do any of the following:

(1) Give, sell, or otherwise distribute cigarettes ~~or~~ other tobacco products, or papers used to roll cigarettes to any person under eighteen years of age child;

(2) Give away, sell, or distribute cigarettes ~~or~~ other tobacco products, or papers used to roll cigarettes 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, or papers used to roll cigarettes to a person under eighteen years of age is prohibited by law;

(3) Knowingly furnish 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.

~~(B)~~(C) No person shall 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~~ within a factory, business, office, or other place not open to the general public; ~~or~~

~~(b) To~~ (2) An area to which persons under the age of eighteen years children are not generally permitted access;

~~(2) In any~~ (3) Any other place not identified in division ~~(B)~~(C)(1) or (2) of this section, 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 ~~such~~ that 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 ~~such~~ that person. For the purpose of this section, a vending machine located in any unmonitored area, including an unmonitored coatroom, restroom, hallway, or outer waiting area, shall not be considered located within the immediate vicinity, plain view, and control of the person who owns or operates the

place, or an employee of ~~such that~~ person.

(b) The vending machine is inaccessible to the public when the place is closed.

~~(C) As used in this section, "vending machine" has the same meaning as "coin machine" as defined in section 2913.01 of the Revised Code.~~

(D) the following are affirmative defenses to a charge under division (B)(1) of this section:

(1) The child was accompanied by a parent, spouse who is eighteen years of age or older, or legal guardian of the child.

(2) The person who gave, sold, or distributed cigarettes, other tobacco products, or papers used to roll cigarettes to a child under division (B)(1) of this section is a parent, spouse who is eighteen years of age or older, or legal guardian of the child.

(E)(1) Whoever violates division (B)(1) or (2) or (C) of this section 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 division (B)(1) or (2) or (C) of this section, then illegal distribution of cigarettes or other tobacco products is a misdemeanor of the third degree.

(2) Whoever violates division (B)(3) of this section 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 division (B)(3) of this section, permitting children to use cigarettes or other tobacco products is a misdemeanor of the third degree.

(F) Any cigarettes, other tobacco products, or papers used to roll cigarettes that are given, sold, or otherwise distributed to a child in violation of this section and that are used, possessed, purchased, or received by a child in violation of section 2151.87 of the Revised Code are subject to seizure and forfeiture as contraband under sections 2933.42 and 2933.43 of the Revised Code.

SECTION 2. That existing sections 2151.02, 2151.022, 2151.23, 2151.27, 2151.28, 2151.35, and 2927.02 of the Revised Code are hereby repealed.

SECTION 3. Except for the provisions set forth in division (C) of section 2927.02 of the Revised Code, nothing in this act shall be construed as limiting or affecting the powers of townships or municipal corporations to regulate the purchase, use, or sale of tobacco.

SECTION 4. Section 2151.23 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 583 and Am. Sub. S.B. 181 of the 123rd General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____