

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 782

A bill to amend 1915 PA 31, entitled
"Youth tobacco act,"
by amending the title and section 4 (MCL 722.644), as amended by
2019 PA 18, and by adding sections 2d and 2e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to prohibit the selling, giving, or furnishing of
3 tobacco products, vapor products, and alternative nicotine products
4 to minors; to prohibit the purchase, possession, or use of tobacco
5 products, vapor products, and alternative nicotine products by
6 minors; to regulate the ~~retail~~-sale of tobacco products, vapor
7 products, alternative nicotine products, and liquid nicotine
8 containers; **to require the registration of vapor products; to**



1 regulate and license persons that manufacture and persons that sell
2 tobacco products, vapor products, or alternative nicotine products
3 at retail; to prescribe penalties and provide sanctions; and to
4 prescribe the powers and duties of certain state agencies and
5 departments.

6 Sec. 2d. (1) Beginning October 1, 2020, a person shall not
7 sell a tobacco product, vapor product, or alternative nicotine
8 product at retail unless that person is licensed under this
9 section.

10 (2) An application for a license must be in a form prescribed
11 by the department and signed under penalty of perjury. A person
12 shall obtain a separate license for each location where a tobacco
13 product, vapor product, or alternative nicotine product is sold. A
14 person who sells a tobacco product, vapor product, or alternative
15 nicotine product at retail at more than 1 location may submit a
16 single application to the department for each location where a
17 tobacco product, vapor product, or alternative nicotine product is
18 sold.

19 (3) The department shall grant a license to a person who
20 submits a completed application and pays a licensing fee of not
21 more than \$100.00 per location to the department.

22 (4) The department shall issue a certificate of licensure to a
23 person who is granted a license under this act.

24 (5) A person shall display the certificate of licensure, or a
25 duplicate copy of the certificate of licensure, prominently and
26 where visible to the public in the person's place of business where
27 a tobacco product, vapor product, or alternative nicotine product
28 is sold.

29 (6) Each license is valid for 1 year and must be renewed



1 annually before December 31 of the year that the license expires.
2 The cost of renewing the license must not exceed \$75.00.

3 (7) The department may deny, suspend, revoke, or refuse to
4 renew a license for good cause. For purposes of this subsection,
5 "good cause" consists of instances in which the department
6 determines that a person has done any of the following:

7 (a) Submitted a false or fraudulent application for a license.

8 (b) Provided a false statement in the application for a
9 license.

10 (c) Possessed a false or fraudulent certificate of licensure.

11 (d) Displayed a false or fraudulent certificate of licensure
12 in a place of business where a tobacco product, vapor product, or
13 alternative nicotine product is sold.

14 (8) The department shall not deny, suspend, revoke, or refuse
15 to renew a person's license under this section unless the person is
16 given an opportunity for a hearing. A hearing and an appeal must be
17 conducted under the administrative procedures act of 1969, 1969 PA
18 306, MCL 24.201 to 24.328.

19 (9) The department may promulgate rules under the
20 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
21 24.328, to implement this section.

22 (10) In addition to any other remedies provided by law, if the
23 department determines that a person violated this section, the
24 department may assess an administrative fine of not more than
25 \$500.00.

26 (11) Fees and fines collected under this section must be
27 distributed as follows:

28 (a) Fifty-five percent to the local law enforcement department
29 for the city, village, township, or county, as applicable, in which



1 the licensed premises is located.

2 (b) Forty-one and one-half percent for the administration and
3 enforcement of this act.

4 (c) Three and one-half percent to be credited to a special
5 fund in the department for the purpose of promoting and sustaining
6 programs for the prevention, rehabilitation, and treatment of
7 individuals who suffered adverse effects from the use of a tobacco
8 product, vapor product, or alternative nicotine product.

9 (12) As used in this section:

10 (a) "Certificate of licensure" means a document issued by the
11 department as evidence of authorization to sell a tobacco product,
12 vapor product, or alternative nicotine product at retail.

13 (b) "Department" means the department of treasury.

14 (c) "License" means an authorization issued by the department
15 under this section to sell a tobacco product, vapor product, or
16 alternative nicotine product at retail.

17 (d) "Local law enforcement department" means a full-time
18 police department or full-time ordinance enforcement department
19 maintained by a city, village, or township in which the licensed
20 premises is located, or if a full-time police department or full-
21 time ordinance enforcement department is not maintained by a city,
22 village, or township in which the licensed premises is located, the
23 sheriff's department of the county in which the licensed premises
24 is located.

25 Sec. 2e. (1) Beginning on October 1, 2020, a person who sells
26 tobacco products, vapor products, or alternative nicotine products
27 at retail shall not sell a vapor product in this state unless the
28 vapor product is registered with the department.

29 (2) Beginning on October 1, 2020, a person who manufactures



1 vapor products to be sold in this state must register those vapor
2 products with the department.

3 (3) To register a vapor product under this section, a person
4 who manufactures vapor products to be sold in this state shall
5 execute and deliver an attestation under the penalty of perjury to
6 the department certifying that 1 or more of the following
7 conditions have been met as of the date of the certification:

8 (a) The vapor product was on the United States market as of
9 August 8, 2016, and the person who manufactured the vapor product
10 has applied for a marketing order for the vapor product by
11 submitting a premarket tobacco product application on or before
12 September 9, 2020 to the United States Food and Drug
13 Administration.

14 (b) The person who manufactured the vapor product has received
15 a marketing order or other authorization under 21 USC 387j for the
16 vapor product from the United States Food and Drug Administration.

17 (4) A person who manufactures vapor products to be sold in
18 this state must notify the department within 15 days of any
19 material change to the attestation, including if the United States
20 Food and Drug Administration has issued a marketing order or other
21 authorization to that manufacturer, has issued a no marketing order
22 to that manufacturer, or has ordered that manufacturer to remove
23 the vapor product, either temporarily or permanently, from the
24 United States market.

25 (5) On receipt of the attestation required under subsection
26 (3), the department shall register the vapor product identified in
27 the attestation and compile a directory that includes the following
28 information:

29 (a) A list of persons who manufacture vapor products to be



1 sold in this state that complied with the requirements of
2 subsection (3).

3 (b) A list of vapor products registered in this state.

4 (6) Beginning on January 1, 2021, the department shall make
5 the directory required under subsection (5) available for public
6 inspection on its website. The department shall periodically update
7 the directory to correct mistakes, add new information that becomes
8 available under subsection (5), or remove information from the
9 directory.

10 (7) Beginning on January 1, 2021, a person who violates
11 subsection (1) or (2) is responsible for a state civil infraction
12 and may be ordered to pay a civil fine as follows:

13 (a) For a first offense in a calendar year, not more than
14 \$500.00.

15 (b) For a second offense in a calendar year, not more than
16 \$1,000.00.

17 (c) For a third or subsequent offense in a calendar year, not
18 more than \$2,500.00.

19 (8) This state shall not, by rule or regulation, prohibit the
20 sale of a vapor product that has been registered in accordance with
21 subsection (3).

22 (9) As used in this section, "department" means the department
23 of licensing and regulatory affairs.

24 Sec. 4. As used in this act:

25 (a) "Alternative nicotine product" means a noncombustible
26 product containing nicotine that is intended for human consumption,
27 whether chewed, absorbed, dissolved, or ingested by any other
28 means. Alternative nicotine product does not include a tobacco
29 product, a vapor product, food, or a product regulated as a drug or



1 device by the United States Food and Drug Administration under 21
2 USC 351 to 360fff-7.

3 (b) "Minor" means an individual who is less than ~~18~~**21** years
4 of age.

5 ~~(c) "Person who sells vapor products or alternative nicotine
6 products at retail" means a person whose ordinary course of
7 business consists, in whole or in part, of the retail sale of vapor
8 products or alternative nicotine products.~~

9 ~~(d) "Person who sells tobacco products at retail" means a
10 person whose ordinary course of business consists, in whole or in
11 part, of the retail sale of tobacco products subject to state sales
12 tax.~~

13 (c) "Person who sells tobacco products, vapor products, or
14 alternative nicotine products at retail" means:

15 (i) Until September 30, 2020, a person whose ordinary course of
16 business consists, in whole or in part, of the retail sale of a
17 tobacco product subject to state sales tax under the general sales
18 tax act, 1933 PA 167, MCL 205.51 to 205.78, a vapor product, or an
19 alternative nicotine product.

20 (ii) Beginning October 1, 2020, a person whose ordinary course
21 of business consists, in whole or in part, of the retail sale of a
22 tobacco product subject to state sales tax under the general sales
23 tax act, 1933 PA 167, MCL 205.51 to 205.78, a vapor product, or an
24 alternative nicotine product, and who is licensed under section 2d.

25 (d) ~~(e)~~"Public place" means a public street, sidewalk, or
26 park or any area open to the general public in a publicly owned or
27 operated building or public place of business.

28 (e) ~~(f)~~"Tobacco product" means a product that contains
29 tobacco and is intended for human consumption, including, but not



1 limited to, a cigarette, noncigarette smoking tobacco, or smokeless
 2 tobacco, as those terms are defined in section 2 of the tobacco
 3 products tax act, 1993 PA 327, MCL 205.422, and a cigar.

4 (f) ~~(g)~~—"Use a tobacco product, vapor product, or alternative
 5 nicotine product" means to smoke, chew, suck, inhale, or otherwise
 6 consume a tobacco product, vapor product, or alternative nicotine
 7 product.

8 (g) ~~(h)~~—"Vapor product" means a noncombustible product that
 9 employs a heating element, power source, electronic circuit, or
 10 other electronic, chemical, or mechanical means, regardless of
 11 shape or size, that can be used to produce vapor from nicotine or
 12 any other substance, **other than marihuana**, and the use or
 13 inhalation of which simulates smoking. Vapor product includes an
 14 electronic cigarette, electronic cigar, electronic cigarillo,
 15 electronic pipe, or similar product or device and a vapor cartridge
 16 or other container of nicotine or other substance, **other than**
 17 **marihuana**, in a solution or other form that is intended to be used
 18 with or in an electronic cigarette, electronic cigar, electronic
 19 cigarillo, electronic pipe, or similar product or device. Vapor
 20 product does not include a product regulated as a drug or device by
 21 the United States Food and Drug Administration under 21 USC 351 to
 22 360fff-7. **As used in this subdivision, "marihuana" means that term**
 23 **as defined in section 7106 of the public health code, 1978 PA 368,**
 24 **MCL 333.7106. For purposes of this definition, "marihuana" and**
 25 **"marijuana" are synonymous.**

26 Enacting section 1. This amendatory act does not take effect
 27 unless all of the following bills of the 100th Legislature are
 28 enacted into law:

29 (a) Senate Bill No. 781.



- 1 (b) Senate Bill No. 783.
- 2 (c) Senate Bill No. 784.
- 3 (d) House Bill No. 4039.

