

SUBSTITUTE FOR
SENATE BILL NO. 106

A bill to amend 1915 PA 31, entitled
"Youth tobacco act,"
by amending the title and sections 1, 2, and 4 (MCL 722.641,
722.642, and 722.644), as amended by 2006 PA 236.

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 prescribe penalties; and to prescribe the powers and



1 duties of certain state agencies and departments.

2 Sec. 1. (1) A person shall not sell, give, or furnish a
3 tobacco product, **vapor product, or alternative nicotine product** to
4 a minor, **including, but not limited to, through a vending machine.**

5 A person who violates this subsection **or subsection (8)** is guilty
6 of a misdemeanor punishable by a fine ~~of not more than \$50.00 for~~
7 ~~each violation.~~ **as follows:**

8 (a) **For a first offense, not more than \$100.00.**

9 (b) **For a second offense, not more than \$500.00.**

10 (c) **For a third or subsequent offense, not more than**
11 **\$2,500.00.**

12 (2) A person who sells tobacco products, **vapor products, or**
13 **alternative nicotine products** at retail shall post, in a place
14 close to the point of sale and conspicuous to both employees and
15 customers, a sign produced by the department of ~~community health~~
16 **and human services** that includes the following statement:

17 "The purchase of ~~a tobacco products-product, vapor product, or~~
18 **alternative nicotine product** by a minor under 18 years of age and
19 the provision of ~~a tobacco products-product, vapor product, or~~
20 **alternative nicotine product** to a minor are prohibited by law. A
21 minor **who** unlawfully ~~purchasing-purchases~~ or ~~using-uses~~ **a** tobacco
22 ~~products-product, vapor product, or alternative nicotine product~~ is
23 subject to criminal penalties."

24 (3) If the sign required under subsection (2) is more than 6
25 feet from the point of sale, it ~~shall-must~~ be 5-1/2 inches by 8-1/2
26 inches and the statement required under subsection (2) ~~shall-must~~
27 be printed in 36-point boldfaced type. If the sign required under
28 subsection (2) is 6 feet or less from the point of sale, it ~~shall~~
29 **must** be 2 inches by 4 inches and the statement required under



1 subsection (2) ~~shall~~**must** be printed in 20-point boldfaced type.

2 (4) The department of ~~community health~~**health and human**
 3 **services** shall produce the sign required under subsection (2) and
 4 have adequate copies of the sign ready for distribution to licensed
 5 wholesalers, secondary wholesalers, and unclassified acquirers of
 6 tobacco products **and to persons who sell vapor products or**
 7 **alternative nicotine products at retail** free of charge. Licensed
 8 wholesalers, secondary wholesalers, and unclassified acquirers of
 9 tobacco products shall obtain copies of the sign from the
 10 department of ~~community health~~ **and human services** and distribute
 11 them free of charge, upon request, to persons who **sell tobacco**
 12 **products and who** are subject to subsection (2). The department of
 13 ~~community health~~ **and human services** shall provide copies of the
 14 sign free of charge, upon request, to persons subject to subsection
 15 (2) who do not purchase their supply of tobacco products from
 16 wholesalers, secondary wholesalers, and unclassified acquirers of
 17 tobacco products licensed under the tobacco products tax act, 1993
 18 PA 327, MCL 205.421 to 205.436, **and to persons who sell vapor**
 19 **products or alternative nicotine products at retail.**

20 (5) It is an affirmative defense to a charge under subsection
 21 (1) that the defendant had in force at the time of arrest and
 22 continues to have in force a written policy to prevent the sale of
 23 tobacco products, **vapor products, or alternative nicotine products,**
 24 **as applicable,** to persons under 18 years of age and that the
 25 defendant enforced and continues to enforce the policy. A defendant
 26 who proposes to offer evidence of the affirmative defense described
 27 in this subsection shall file ~~and serve~~ notice of the defense, in
 28 writing, ~~upon~~**with** the court and **serve a copy of the notice on** the
 29 prosecuting attorney. The **defendant shall serve the** notice ~~shall be~~



1 ~~served~~ not less than 14 days before the date set for trial.

2 (6) A prosecuting attorney who proposes to offer testimony to
 3 rebut the affirmative defense described in subsection (5) shall
 4 file ~~and serve~~ a notice of rebuttal, in writing, ~~upon~~ **with** the
 5 court and **serve a copy of the notice on** the defendant. The
 6 **prosecuting attorney shall serve the** notice ~~shall be served~~ not
 7 less than 7 days before the date set for trial and shall ~~contain~~
 8 **include in the notice** the name and address of each rebuttal
 9 witness.

10 (7) Subsection (1) does not apply to the handling or
 11 transportation of a tobacco product, **vapor product, or alternative**
 12 **nicotine product** by a minor under the terms of ~~that~~ **the** minor's
 13 employment.

14 (8) **Before selling, offering for sale, giving, or furnishing a**
 15 **tobacco product, vapor product, or alternative nicotine product to**
 16 **an individual, a person shall verify that the individual is at**
 17 **least 18 years of age by doing 1 of the following:**

18 (a) **If the individual appears to be under 27 years of age,**
 19 **examining a government-issued photographic identification that**
 20 **establishes that the individual is at least 18 years of age.**

21 (b) **For sales made by the internet or other remote sales**
 22 **method, performing an age verification through an independent,**
 23 **third-party age verification service that compares information**
 24 **available from a commercially available database, or aggregate of**
 25 **databases, that are regularly used by government agencies and**
 26 **businesses for the purpose of age and identity verification to the**
 27 **personal information entered by the individual during the ordering**
 28 **process that establishes that the individual is 18 years of age or**
 29 **older.**



1 Sec. 2. (1) Subject to subsection ~~(3)~~, **(6)**, a minor shall not
2 do any of the following:

3 (a) Purchase or attempt to purchase a tobacco product.

4 (b) Possess or attempt to possess a tobacco product.

5 (c) Use a tobacco product in a public place.

6 (d) Present or offer to an individual a purported proof of age
7 that is false, fraudulent, or not actually his or her own proof of
8 age for the purpose of purchasing, attempting to purchase,
9 possessing, or attempting to possess a tobacco product.

10 (2) An individual who violates subsection (1) is guilty of a
11 misdemeanor punishable by a fine of not more than \$50.00 for each
12 violation. Pursuant to a probation order, the court may also
13 require an individual who violates subsection (1) to participate in
14 a health promotion and risk reduction assessment program, if
15 available. ~~An individual who is ordered to participate in a health
16 promotion and risk reduction assessment program under this
17 subsection is responsible for the costs of participating in the
18 program.~~ In addition, an individual who violates subsection (1) is
19 subject to the following:

20 (a) For the first violation, the court may order the
21 individual to do 1 of the following:

22 (i) Perform not more than 16 hours of community service. ~~in a
23 hospice, nursing home, or long-term care facility.~~

24 (ii) Participate in a health promotion and risk reduction
25 **assessment** program. ~~, as described in this subsection.~~

26 (b) For a second violation, in addition to participation in a
27 health promotion and risk reduction **assessment** program, the court
28 may order the individual to perform not more than 32 hours of
29 community service. ~~in a hospice, nursing home, or long-term care~~



1 ~~facility.~~

2 (c) For a third or subsequent violation, in addition to
 3 participation in a health promotion and risk reduction **assessment**
 4 program, the court may order the individual to perform not more
 5 than 48 hours of community service. ~~in a hospice, nursing home, or~~
 6 ~~long-term care facility.~~

7 (3) Subject to subsection (6), a minor shall not do any of the
 8 following:

9 (a) Purchase or attempt to purchase a vapor product or
 10 alternative nicotine product.

11 (b) Possess or attempt to possess a vapor product or
 12 alternative nicotine product.

13 (c) Use a vapor product or alternative nicotine product in a
 14 public place.

15 (d) Present or offer to an individual a purported proof of age
 16 that is false, fraudulent, or not actually his or her own proof of
 17 age for the purpose of purchasing, attempting to purchase,
 18 possessing, or attempting to possess a vapor product or alternative
 19 nicotine product.

20 (4) An individual who violates subsection (3) is responsible
 21 for a state civil infraction or guilty of a misdemeanor as follows:

22 (a) For the first violation, the individual is responsible for
 23 a state civil infraction and shall be fined not more than \$50.00.
 24 The court may order the individual to participate in a health
 25 promotion and risk reduction assessment program, if available. In
 26 addition, the court may order the individual to perform not more
 27 than 16 hours of community service.

28 (b) For the second violation, the individual is responsible
 29 for a state civil infraction and shall be fined not more than



1 \$50.00. The court may order the individual to participate in a
2 health promotion and risk reduction assessment program, if
3 available. In addition, the court may order the individual to
4 perform not more than 32 hours of community service.

5 (c) If a violation of subsection (3) occurs after 2 or more
6 prior judgments, the individual is guilty of a misdemeanor
7 punishable by a fine of not more than \$50.00 for each violation.
8 Pursuant to a probation order, the court may also require the
9 individual to participate in a health promotion and risk reduction
10 assessment program, if available. In addition, the court may order
11 the individual to perform not more than 48 hours of community
12 service.

13 (5) An individual who is ordered to participate in a health
14 promotion and risk reduction assessment program under subsection
15 (2) or (4) is responsible for the costs of participating in the
16 program.

17 (6) ~~(3) Subsection~~ **Subsections** (1) ~~does~~ **and** (3) do not apply
18 to a minor participating in any of the following:

19 (a) An undercover operation in which the minor purchases or
20 receives a tobacco product, **vapor product, or alternative nicotine**
21 **product** under the direction of the minor's employer and with the
22 prior approval of the local prosecutor's office as part of an
23 employer-sponsored internal enforcement action.

24 (b) An undercover operation in which the minor purchases or
25 receives a tobacco product, **vapor product, or alternative nicotine**
26 **product** under the direction of the state police or a local police
27 agency as part of an enforcement action, unless the initial or
28 contemporaneous purchase or receipt of the tobacco product, **vapor**
29 **product, or alternative nicotine product** by the minor was not under



1 the direction of the state police or the local police agency and
2 was not part of the undercover operation.

3 (c) Compliance checks in which the minor attempts to purchase
4 tobacco products for the purpose of satisfying federal substance
5 abuse block grant youth tobacco access requirements, if the
6 compliance checks are conducted under the direction of a substance
7 abuse ~~use disorder~~ coordinating agency as ~~defined in section 6103~~
8 ~~of the public health code, 1978 PA 368, MCL 333.6103,~~ and with the
9 prior approval of the state police or a local police agency.

10 (7) ~~(4) Subsection~~ **Subsections** (1) ~~does~~ **and (3) do** not apply
11 to the handling or transportation of a tobacco product, **vapor**
12 **product, or alternative nicotine product** by a minor under the terms
13 of ~~that~~ **the** minor's employment.

14 (8) ~~(5)~~ This section does not prohibit ~~the~~ **an** individual from
15 being charged with, convicted of, or sentenced for any other
16 violation of law ~~arising~~ **that arises** out of the violation of
17 subsection (1) **or (3)**.

18 Sec. 4. As used in this act:

19 (a) **"Alternative nicotine product" means a noncombustible**
20 **product containing nicotine that is intended for human consumption,**
21 **whether chewed, absorbed, dissolved, or ingested by any other**
22 **means. Alternative nicotine product does not include a tobacco**
23 **product, a vapor product, food, or a product regulated as a drug or**
24 **device by the United States Food and Drug Administration under 21**
25 **USC 351 to 360fff-7.**

26 (b) ~~(a)~~ **"Minor" means an individual under who is less than 18**
27 **years of age.**

28 (c) **"Person who sells vapor products or alternative nicotine**
29 **products at retail" means a person whose ordinary course of**



1 **business consists, in whole or in part, of the retail sale of vapor**
 2 **products or alternative nicotine products.**

3 (d) ~~(b)~~—"Person who sells tobacco products at retail" means a
 4 person whose ordinary course of business consists, in whole or in
 5 part, of the retail sale of tobacco products subject to state sales
 6 tax.

7 (e) ~~(e)~~—"Public place" means a public street, sidewalk, or
 8 park or any area open to the general public in a publicly owned or
 9 operated building or public place of business.

10 (f) ~~(d)~~—"Tobacco product" means a product that contains
 11 tobacco and is intended for human consumption, including, but not
 12 limited to, ~~cigarettes,~~ **a cigarette**, noncigarette smoking tobacco,
 13 or smokeless tobacco, as those terms are defined in section 2 of
 14 the tobacco products tax act, 1993 PA 327, MCL 205.422, and
 15 ~~eigars.~~ **a cigar.**

16 (g) ~~(e)~~—"Use a tobacco product, **vapor product, or alternative**
 17 **nicotine product**" means to smoke, chew, suck, inhale, or otherwise
 18 consume a tobacco product, **vapor product, or alternative nicotine**
 19 **product.**

20 (h) "Vapor product" means a noncombustible product that
 21 employs a heating element, power source, electronic circuit, or
 22 other electronic, chemical, or mechanical means, regardless of
 23 shape or size, that can be used to produce vapor from nicotine or
 24 any other substance, and the use or inhalation of which simulates
 25 smoking. Vapor product includes an electronic cigarette, electronic
 26 cigar, electronic cigarillo, electronic pipe, or similar product or
 27 device and a vapor cartridge or other container of nicotine or
 28 other substance in a solution or other form that is intended to be
 29 used with or in an electronic cigarette, electronic cigar,



1 electronic cigarillo, electronic pipe, or similar product or
2 device. Vapor product does not include a product regulated as a
3 drug or device by the United States Food and Drug Administration
4 under 21 USC 351 to 360fff-7.

5 Enacting section 1. This amendatory act takes effect 90 days
6 after the date it is enacted into law.

7 Enacting section 2. This amendatory act does not take effect
8 unless Senate Bill No. 155 of the 100th Legislature is enacted into
9 law.

