

SENATE BILL No. 37

January 18, 2017, Introduced by Senators JONES and HORN and referred to the Committee on Regulatory Reform.

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:

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TITLE

An act to prohibit the selling, giving, or furnishing of tobacco products, **VAPOR PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS** to minors; to prohibit the purchase, possession, or use of tobacco products, **VAPOR PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS** by minors; to regulate the retail sale of tobacco products, **VAPOR PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS**; to prescribe penalties; and to prescribe the powers and duties of certain state agencies and departments.

Sec. 1. (1) A person shall not sell, give, or furnish a

1 tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT** to
2 a minor, **INCLUDING, BUT NOT LIMITED TO, THROUGH A VENDING MACHINE.**
3 A person who violates this subsection **OR SUBSECTION (8)** is guilty
4 of a misdemeanor punishable by a fine of not more than \$50.00 for
5 each violation.

6 (2) A person who sells tobacco products, **VAPOR PRODUCTS, OR**
7 **ALTERNATIVE NICOTINE PRODUCTS** at retail shall post, in a place
8 close to the point of sale and conspicuous to both employees and
9 customers, a sign produced by the department of ~~community health~~
10 **AND HUMAN SERVICES** that includes the following statement:

11 "The purchase of **A tobacco products-PRODUCT, VAPOR PRODUCT, OR**
12 **ALTERNATIVE NICOTINE PRODUCT** by a minor under 18 years of age and
13 the provision of **A tobacco products-PRODUCT, VAPOR PRODUCT, OR**
14 **ALTERNATIVE NICOTINE PRODUCT** to a minor are prohibited by law. A
15 minor **WHO** unlawfully ~~purchasing-PURCHASES~~ or ~~using-USES A~~ tobacco
16 ~~products-PRODUCT, VAPOR PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT~~ is
17 subject to criminal penalties."

18 (3) If the sign required under subsection (2) is more than 6
19 feet from the point of sale, it ~~shall-MUST~~ be 5-1/2 inches by 8-1/2
20 inches and the statement required under subsection (2) ~~shall-MUST~~
21 be printed in 36-point boldfaced type. If the sign required under
22 subsection (2) is 6 feet or less from the point of sale, it ~~shall~~
23 **MUST** be 2 inches by 4 inches and the statement required under
24 subsection (2) ~~shall-MUST~~ be printed in 20-point boldfaced type.

25 (4) The department of ~~community health-HEALTH AND HUMAN~~
26 **SERVICES** shall produce the sign required under subsection (2) and
27 have adequate copies of the sign ready for distribution to licensed

1 wholesalers, secondary wholesalers, and unclassified acquirers of
2 tobacco products **AND TO PERSONS WHO SELL VAPOR PRODUCTS OR**
3 **ALTERNATIVE NICOTINE PRODUCTS AT RETAIL** free of charge. Licensed
4 wholesalers, secondary wholesalers, and unclassified acquirers of
5 tobacco products shall obtain copies of the sign from the
6 department of ~~community-health~~ **AND HUMAN SERVICES** and distribute
7 them free of charge, upon request, to persons who **SELL TOBACCO**
8 **PRODUCTS AND WHO** are subject to subsection (2). The department of
9 ~~community-health~~ **AND HUMAN SERVICES** shall provide copies of the
10 sign free of charge, upon request, to persons subject to subsection
11 (2) who do not purchase their supply of tobacco products from
12 wholesalers, secondary wholesalers, and unclassified acquirers of
13 tobacco products licensed under the tobacco products tax act, 1993
14 PA 327, MCL 205.421 to 205.436, **AND TO PERSONS WHO SELL VAPOR**
15 **PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS AT RETAIL.**

16 (5) It is an affirmative defense to a charge under subsection
17 (1) that the defendant had in force at the time of arrest and
18 continues to have in force a written policy to prevent the sale of
19 tobacco products, **VAPOR PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS,**
20 **AS APPLICABLE,** to persons under 18 years of age and that the
21 defendant enforced and continues to enforce the policy. A defendant
22 who proposes to offer evidence of the affirmative defense described
23 in this subsection shall file ~~and serve~~ notice of the defense, in
24 writing, ~~upon~~ **WITH** the court and **SERVE A COPY OF THE NOTICE ON** the
25 prosecuting attorney. The **DEFENDANT SHALL SERVE THE** notice ~~shall be~~
26 ~~served~~ not less than 14 days before the date set for trial.

27 (6) A prosecuting attorney who proposes to offer testimony to

1 rebut the affirmative defense described in subsection (5) shall
2 file ~~and serve~~ a notice of rebuttal, in writing, ~~upon~~ **WITH** the
3 court and **SERVE A COPY OF THE NOTICE ON** the defendant. The
4 **PROSECUTING ATTORNEY SHALL SERVE THE** notice ~~shall be served~~ not
5 less than 7 days before the date set for trial and shall ~~contain~~
6 **INCLUDE IN THE NOTICE** the name and address of each rebuttal
7 witness.

8 (7) Subsection (1) does not apply to the handling or
9 transportation of a tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE**
10 **NICOTINE PRODUCT** by a minor under the terms of ~~that~~ **THE** minor's
11 employment.

12 (8) **BEFORE SELLING, OFFERING FOR SALE, GIVING, OR FURNISHING A**
13 **VAPOR PRODUCT OR ALTERNATIVE NICOTINE PRODUCT TO AN INDIVIDUAL, A**
14 **PERSON SHALL VERIFY THAT THE INDIVIDUAL IS AT LEAST 18 YEARS OF AGE**
15 **BY DOING 1 OF THE FOLLOWING:**

16 (A) **IF THE INDIVIDUAL APPEARS TO BE UNDER 27 YEARS OF AGE,**
17 **EXAMINING A GOVERNMENT-ISSUED PHOTOGRAPHIC IDENTIFICATION THAT**
18 **ESTABLISHES THAT THE INDIVIDUAL IS AT LEAST 18 YEARS OF AGE.**

19 (B) **FOR SALES MADE BY THE INTERNET OR OTHER REMOTE SALES**
20 **METHOD, PERFORMING AN AGE VERIFICATION THROUGH AN INDEPENDENT,**
21 **THIRD-PARTY AGE VERIFICATION SERVICE THAT COMPARES INFORMATION**
22 **AVAILABLE FROM A COMMERCIALY AVAILABLE DATABASE, OR AGGREGATE OF**
23 **DATABASES, THAT ARE REGULARLY USED BY GOVERNMENT AGENCIES AND**
24 **BUSINESSES FOR THE PURPOSE OF AGE AND IDENTITY VERIFICATION TO THE**
25 **PERSONAL INFORMATION ENTERED BY THE INDIVIDUAL DURING THE ORDERING**
26 **PROCESS THAT ESTABLISHES THAT THE INDIVIDUAL IS 18 YEARS OF AGE OR**
27 **OLDER.**

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

3 (a) Purchase or attempt to purchase a tobacco product, **VAPOR**
4 **PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT.**

5 (b) Possess or attempt to possess a tobacco product, **VAPOR**
6 **PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT.**

7 (c) Use a tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE**
8 **NICOTINE PRODUCT** in a public place.

9 (d) Present or offer to an individual a purported proof of age
10 that is false, fraudulent, or not actually his or her own proof of
11 age for the purpose of purchasing, attempting to purchase,
12 possessing, or attempting to possess a tobacco product, **VAPOR**
13 **PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT.**

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

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

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

1 (ii) Participate in a health promotion and risk reduction
2 program, as described in this subsection.

3 (b) For a second violation, in addition to participation in a
4 health promotion and risk reduction program, the court may order
5 the individual to perform not more than 32 hours of community
6 service in a hospice, nursing home, or long-term care facility.

7 (c) For a third or subsequent violation, in addition to
8 participation in a health promotion and risk reduction program, the
9 court may order the individual to perform not more than 48 hours of
10 community service in a hospice, nursing home, or long-term care
11 facility.

12 (3) Subsection (1) does not apply to a minor participating in
13 any of the following:

14 (a) An undercover operation in which the minor purchases or
15 receives a tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE NICOTINE**
16 **PRODUCT** under the direction of the minor's employer and with the
17 prior approval of the local prosecutor's office as part of an
18 employer-sponsored internal enforcement action.

19 (b) 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 state police or a local police
22 agency as part of an enforcement action, unless the initial or
23 contemporaneous purchase or receipt of the tobacco product, **VAPOR**
24 **PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT** by the minor was not under
25 the direction of the state police or the local police agency and
26 was not part of the undercover operation.

27 (c) Compliance checks in which the minor attempts to purchase

1 tobacco products for the purpose of satisfying federal substance
2 abuse block grant youth tobacco access requirements, if the
3 compliance checks are conducted under the direction of a substance
4 ~~abuse~~ **USE DISORDER** coordinating agency ~~as defined in section 6103~~
5 ~~of the public health code, 1978 PA 368, MCL 333.6103,~~ and with the
6 prior approval of the state police or a local police agency.

7 (4) Subsection (1) does not apply to the handling or
8 transportation of a tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE**
9 **NICOTINE PRODUCT** by a minor under the terms of ~~that~~ **THE** minor's
10 employment.

11 (5) This section does not prohibit ~~the~~ **AN** individual from
12 being charged with, convicted of, or sentenced for any other
13 violation of law ~~arising~~ **THAT ARISES** out of the violation of
14 subsection (1).

15 Sec. 4. As used in this act:

16 (A) **"ALTERNATIVE NICOTINE PRODUCT" MEANS A NONCOMBUSTIBLE**
17 **PRODUCT CONTAINING NICOTINE THAT IS INTENDED FOR HUMAN CONSUMPTION,**
18 **WHETHER CHEWED, ABSORBED, DISSOLVED, OR INGESTED BY ANY OTHER**
19 **MEANS. ALTERNATIVE NICOTINE PRODUCT DOES NOT INCLUDE A TOBACCO**
20 **PRODUCT, A VAPOR PRODUCT, OR A PRODUCT REGULATED AS A DRUG OR**
21 **DEVICE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION UNDER**
22 **SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21 USC**
23 **351 TO 360FFF-7.**

24 (B) ~~(a)~~ **"Minor" means an individual under** ~~WHO IS LESS THAN 18~~
25 **years of age.**

26 (C) **"PERSON WHO SELLS VAPOR PRODUCTS OR ALTERNATIVE NICOTINE**
27 **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. TOBACCO PRODUCT DOES NOT INCLUDE A VAPOR PRODUCT,**
16 **AN ALTERNATIVE NICOTINE PRODUCT, OR A PRODUCT REGULATED AS A DRUG**
17 **OR DEVICE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION UNDER**
18 **SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21 USC**
19 **351 TO 360FFF-7.**

20 (G) ~~(e)~~—"Use a tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE**
21 **NICOTINE PRODUCT**" means to smoke, chew, suck, inhale, or otherwise
22 consume a tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE NICOTINE**
23 **PRODUCT.**

24 (H) **"VAPOR PRODUCT" MEANS A NONCOMBUSTIBLE PRODUCT CONTAINING**
25 **NICOTINE THAT EMPLOYS A HEATING ELEMENT, POWER SOURCE, ELECTRONIC**
26 **CIRCUIT, OR OTHER ELECTRONIC, CHEMICAL, OR MECHANICAL MEANS,**
27 **REGARDLESS OF SHAPE OR SIZE, THAT CAN BE USED TO PRODUCE VAPOR FROM**

1 NICOTINE IN A SOLUTION OR OTHER FORM. VAPOR PRODUCT INCLUDES AN
2 ELECTRONIC CIGARETTE, ELECTRONIC CIGAR, ELECTRONIC CIGARILLO,
3 ELECTRONIC PIPE, OR SIMILAR PRODUCT OR DEVICE AND A VAPOR CARTRIDGE
4 OR OTHER CONTAINER OF NICOTINE IN A SOLUTION OR OTHER FORM THAT IS
5 INTENDED TO BE USED WITH OR IN AN ELECTRONIC CIGARETTE, ELECTRONIC
6 CIGAR, ELECTRONIC CIGARILLO, ELECTRONIC PIPE, OR SIMILAR PRODUCT OR
7 DEVICE. VAPOR PRODUCT DOES NOT INCLUDE A PRODUCT REGULATED AS A
8 DRUG OR DEVICE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION
9 UNDER SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21
10 USC 351 TO 360FFF-7.

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