

SENATE BILL NO. 106

February 12, 2019, Introduced by Senators OUTMAN, WOJNO, JOHNSON, DALEY and VICTORY 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, and by adding sections 2b and 2c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

1 An act to prohibit the selling, giving, or furnishing of
 2 tobacco products, **vapor products, and alternative nicotine products**
 3 to minors; to prohibit the purchase, possession, or use of tobacco
 4 products, **vapor products, and alternative nicotine products** by
 5 minors; to regulate the retail sale of tobacco products, **vapor**
 6 **products, alternative nicotine products, and liquid nicotine**
 7 **containers**; to prescribe penalties; and to prescribe the powers and
 8 duties of certain state agencies and departments.

9 Sec. 1. (1) A person shall not sell, give, or furnish a
 10 tobacco product, **vapor product, or alternative nicotine product** to
 11 a minor, **including, but not limited to, through a vending machine.**
 12 A person who violates this subsection **or subsection (8)** is guilty
 13 of a misdemeanor punishable by a fine ~~of not more than \$50.00 for~~
 14 ~~each violation.~~ **as follows:**

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

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

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

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

24 "The purchase of **a tobacco products-product, vapor product, or**
 25 **alternative nicotine product** by a minor under 18 years of age and
 26 the provision of **a tobacco products-product, vapor product, or**
 27 **alternative nicotine product** to a minor are prohibited by law. A
 28 minor **who** unlawfully ~~purchasing~~ **purchases** or ~~using~~ **uses a** tobacco
 29 ~~products-product, vapor product, or alternative nicotine product~~ **is**

1 subject to criminal penalties.".

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

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

27 (5) It is an affirmative defense to a charge under subsection
28 (1) that the defendant had in force at the time of arrest and
29 continues to have in force a written policy to prevent the sale of

1 tobacco products, **vapor products, or alternative nicotine products,**
2 **as applicable,** to persons under 18 years of age and that the
3 defendant enforced and continues to enforce the policy. A defendant
4 who proposes to offer evidence of the affirmative defense described
5 in this subsection shall file ~~and serve~~ notice of the defense, in
6 writing, ~~upon~~ **with** the court and **serve a copy of the notice on** the
7 prosecuting attorney. The **defendant shall serve the** notice ~~shall be~~
8 ~~served~~ not less than 14 days before the date set for trial.

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

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

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

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

28 (b) For sales made by the internet or other remote sales
29 method, performing an age verification through an independent,

1 third-party age verification service that compares information
 2 available from a commercially available database, or aggregate of
 3 databases, that are regularly used by government agencies and
 4 businesses for the purpose of age and identity verification to the
 5 personal information entered by the individual during the ordering
 6 process that establishes that the individual is 18 years of age or
 7 older.

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

- 10 (a) Purchase or attempt to purchase a tobacco product.
 11 (b) Possess or attempt to possess a tobacco product.
 12 (c) Use a tobacco product in a public place.
 13 (d) Present or offer to an individual a purported proof of age
 14 that is false, fraudulent, or not actually his or her own proof of
 15 age for the purpose of purchasing, attempting to purchase,
 16 possessing, or attempting to possess a tobacco product.

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

- 27 (a) For the first violation, the court may order the
 28 individual to do 1 of the following:
 29 (i) Perform not more than 16 hours of community service. ~~in a~~

1 ~~hospice, nursing home, or long-term care facility.~~

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

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

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

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

16 (a) Purchase or attempt to purchase a vapor product or
17 alternative nicotine product.

18 (b) Possess or attempt to possess a vapor product or
19 alternative nicotine product.

20 (c) Use a vapor product or alternative nicotine product in a
21 public place.

22 (d) Present or offer to an individual a purported proof of age
23 that is false, fraudulent, or not actually his or her own proof of
24 age for the purpose of purchasing, attempting to purchase,
25 possessing, or attempting to possess a vapor product or alternative
26 nicotine product.

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

29 (a) For the first violation, the individual is responsible for

1 a state civil infraction and shall be fined not more than \$50.00.
2 The court may order the individual to participate in a health
3 promotion and risk reduction assessment program, if available. In
4 addition, the court may order the individual to perform not more
5 than 16 hours of community service.

6 (b) For the second violation, the individual is responsible
7 for a state civil infraction and shall be fined not more than
8 \$50.00. The court may order the individual to participate in a
9 health promotion and risk reduction assessment program, if
10 available. In addition, the court may order the individual to
11 perform not more than 32 hours of community service.

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

20 (5) An individual who is ordered to participate in a health
21 promotion and risk reduction assessment program under subsection
22 (2) or (4) is responsible for the costs of participating in the
23 program.

24 (6) ~~(3) Subsection~~ Subsections (1) ~~does~~ and (3) do not apply
25 to a minor participating in any of the following:

26 (a) An undercover operation in which the minor purchases or
27 receives a tobacco product, **vapor product, or alternative nicotine**
28 **product** under the direction of the minor's employer and with the
29 prior approval of the local prosecutor's office as part of an

1 employer-sponsored internal enforcement action.

2 (b) An undercover operation in which the minor purchases or
 3 receives a tobacco product, **vapor product, or alternative nicotine**
 4 **product** under the direction of the state police or a local police
 5 agency as part of an enforcement action, unless the initial or
 6 contemporaneous purchase or receipt of the tobacco product, **vapor**
 7 **product, or alternative nicotine product** by the minor was not under
 8 the direction of the state police or the local police agency and
 9 was not part of the undercover operation.

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

17 (7) ~~(4) Subsection~~ **Subsections** (1) ~~does~~ **and (3) do** not apply
 18 to the handling or transportation of a tobacco product, **vapor**
 19 **product, or alternative nicotine product** by a minor under the terms
 20 of ~~that~~ **the** minor's employment.

21 (8) ~~(5)~~ This section does not prohibit ~~the~~ **an** individual from
 22 being charged with, convicted of, or sentenced for any other
 23 violation of law ~~arising~~ **that arises** out of the violation of
 24 subsection (1) **or (3)**.

25 **Sec. 2b. (1) A person shall not sell in this state a liquid**
 26 **nicotine container unless the liquid nicotine container meets the**
 27 **child-resistant effectiveness standards of 16 CFR 1700.15(b).**

28 (2) **A person who violates subsection (1) is guilty of a**
 29 **misdemeanor punishable by a fine of not more than \$50.00 for each**

1 violation.

2 (3) As used in this section:

3 (a) "Liquid nicotine" means a liquid or other substance
4 containing nicotine in any concentration that is sold, marketed, or
5 intended for use in a vapor product.

6 (b) "Liquid nicotine container" means a bottle or other
7 container holding liquid nicotine in any concentration but does not
8 include a cartridge containing liquid nicotine if the cartridge is
9 prefilled and sealed by the manufacturer of the cartridge and is
10 not intended to be opened by the consumer.

11 Sec. 2c. A person who sells vapor products or alternative
12 nicotine products at retail shall not display for sale in this
13 state a vapor product unless the vapor product is stored for sale
14 behind a counter in an area accessible only to employees or within
15 a locked case so that a customer wanting access to the vapor
16 product must ask an employee for assistance. A person who violates
17 this section is responsible for a state civil infraction and shall
18 be fined not more than \$500.00.

19 Sec. 4. As used in this act:

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

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

29 (c) "Person who sells vapor products or alternative nicotine

1 **products at retail" means a person whose ordinary course of**
 2 **business consists, in whole or in part, of the retail sale of vapor**
 3 **products or alternative nicotine products.**

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

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

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

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

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

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

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