

SUBSTITUTE FOR  
HOUSE BILL NO. 4878

A bill to amend 1915 PA 31, entitled  
"Youth tobacco act,"  
by amending the title and sections 1, 2, 2b, 2c, and 4 (MCL  
722.641, 722.642, 722.642b, 722.642c, and 722.644), the title and  
sections 1, 2, and 4 as amended by 2019 PA 18 and sections 2b and  
2c as added by 2019 PA 17.

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  
4 products, **and synthetic nicotine products** to minors; to prohibit  
5 the purchase, possession, or use of tobacco products, vapor  
6 products, ~~and~~ alternative nicotine products, **and synthetic nicotine**

1 **products** by minors; to regulate the retail sale of tobacco  
 2 products, vapor products, alternative nicotine products, ~~and~~ liquid  
 3 nicotine containers, **and synthetic nicotine products**; to prescribe  
 4 penalties; and to prescribe the powers and duties of certain state  
 5 agencies and departments.

6       Sec. 1. (1) A person shall not sell, give, or furnish a  
 7 tobacco product, vapor product, ~~or~~ alternative nicotine product, **or**  
 8 **synthetic nicotine product** to a minor, including, but not limited  
 9 to, through a vending machine. A person who violates this  
 10 subsection or subsection (8) is guilty of a misdemeanor punishable  
 11 by a fine as follows:

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

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

14       (c) For a third or subsequent offense, not more than  
 15 \$2,500.00.

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

22       "The purchase of a tobacco product, vapor product, ~~or~~  
 23 alternative nicotine product, **or synthetic nicotine product** by a  
 24 minor under ~~18-21~~ years of age and the provision of a tobacco  
 25 product, vapor product, ~~or~~ alternative nicotine product, **or**  
 26 **synthetic nicotine product** to a minor are prohibited by law. A  
 27 minor who unlawfully purchases or uses a tobacco product, vapor  
 28 product, ~~or~~ alternative nicotine product, **or synthetic nicotine**  
 29 **product** is subject to criminal penalties."

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

8           (4) The department of health and human services shall produce  
9 the sign required under subsection (2) and have adequate copies of  
10 the sign ready for distribution to licensed wholesalers, secondary  
11 wholesalers, and unclassified acquirers of tobacco products and to  
12 persons who sell vapor products, ~~or~~ alternative nicotine products,  
13 **or synthetic nicotine products** at retail free of charge. Licensed  
14 wholesalers, secondary wholesalers, and unclassified acquirers of  
15 tobacco products shall obtain copies of the sign from the  
16 department of health and human services and distribute them free of  
17 charge, upon request, to persons who sell tobacco products and who  
18 are subject to subsection (2). The department of health and human  
19 services shall provide copies of the sign free of charge, upon  
20 request, to persons subject to subsection (2) who do not purchase  
21 their supply of tobacco products from wholesalers, secondary  
22 wholesalers, and unclassified acquirers of tobacco products  
23 licensed under the tobacco products tax act, 1993 PA 327, MCL  
24 205.421 to 205.436, and to persons who sell vapor products, ~~or~~  
25 alternative nicotine products, **or synthetic nicotine products** at  
26 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 **or synthetic nicotine products**, as applicable, to persons under ~~18~~  
3 **21** years of age and that the defendant enforced and continues to  
4 enforce the policy. A defendant who proposes to offer evidence of  
5 the affirmative defense described in this subsection shall file  
6 notice of the defense, in writing, with the court and serve a copy  
7 of the notice on the prosecuting attorney. The defendant shall  
8 serve the notice not less than 14 days before the date set for  
9 trial.

10 (6) A prosecuting attorney who proposes to offer testimony to  
11 rebut the affirmative defense described in subsection (5) shall  
12 file a notice of rebuttal, in writing, with the court and serve a  
13 copy of the notice on the defendant. The prosecuting attorney shall  
14 serve the notice not less than 7 days before the date set for trial  
15 and shall include in the notice the name and address of each  
16 rebuttal 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, **or synthetic nicotine product** by a minor under  
20 the terms of the minor's employment.

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

26 (a) If the individual appears to be under 27 years of age,  
27 examining a government-issued photographic identification that  
28 establishes that the individual is at least ~~18~~**21** years of age.

29 (b) For sales made by the internet or other remote sales

1 method, performing an age verification through an independent,  
2 third-party age verification service that compares information  
3 available from a commercially available database, or aggregate of  
4 databases, that are regularly used by government agencies and  
5 businesses for the purpose of age and identity verification to the  
6 personal information entered by the individual during the ordering  
7 process that establishes that the individual is ~~18~~ **21** years of age  
8 or older.

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

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

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

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

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

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

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

27       (i) Perform not more than 16 hours of community service.

28       (ii) Participate in a health promotion and risk reduction  
29 assessment program.

1 (b) For a second violation, in addition to participation in a  
2 health promotion and risk reduction assessment program, the court  
3 may order the individual to perform not more than 32 hours of  
4 community service.

5 (c) For a third or subsequent violation, in addition to  
6 participation in a health promotion and risk reduction assessment  
7 program, the court may order the individual to perform not more  
8 than 48 hours of community service.

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

11 (a) Purchase or attempt to purchase a vapor product, ~~or~~  
12 alternative nicotine product, **or synthetic nicotine product.**

13 (b) Possess or attempt to possess a vapor product, ~~or~~  
14 alternative nicotine product, **or synthetic nicotine product.**

15 (c) Use a vapor product, ~~or~~ alternative nicotine product, **or**  
16 **synthetic nicotine product** in a public place.

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

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

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

1 (b) For the second violation, the individual is responsible  
2 for a state civil infraction and shall be fined not more than  
3 \$50.00. The court may order the individual to participate in a  
4 health promotion and risk reduction assessment program, if  
5 available. In addition, the court may order the individual to  
6 perform not more than 32 hours of community service.

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

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

19 (6) Subsections (1) and (3) do not apply to a minor  
20 participating in any of the following:

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

27 (b) An undercover operation in which the minor purchases or  
28 receives a tobacco product, vapor product, ~~or~~ alternative nicotine  
29 product, **or synthetic nicotine product** under the direction of the

1 state police or a local police agency as part of an enforcement  
2 action, unless the initial or contemporaneous purchase or receipt  
3 of the tobacco product, vapor product, ~~or~~ alternative nicotine  
4 product, **or synthetic nicotine product** by the minor was not under  
5 the direction of the state police or the local police agency and  
6 was not part of the undercover operation.

7 (c) Compliance checks in which the minor attempts to purchase  
8 tobacco products for the purpose of satisfying federal substance  
9 abuse block grant youth tobacco access requirements, if the  
10 compliance checks are conducted under the direction of a substance  
11 use disorder coordinating agency and with the prior approval of the  
12 state police or a local police agency.

13 (7) Subsections (1) and (3) do not apply to the handling or  
14 transportation of a tobacco product, vapor product, ~~or~~ alternative  
15 nicotine product, **or synthetic nicotine product** by a minor under  
16 the terms of the minor's employment.

17 (8) This section does not prohibit an individual from being  
18 charged with, convicted of, or sentenced for any other violation of  
19 law that arises out of the violation of subsection (1) or (3).

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

23 (2) A person who violates subsection (1) is guilty of a  
24 misdemeanor punishable by a fine of not more than \$50.00 for each  
25 violation.

26 (3) As used in this section:

27 (a) "Liquid nicotine" means a liquid or other substance  
28 containing nicotine **or synthetic nicotine**, in any concentration,  
29 that is sold, marketed, or intended for use in a noncombustible



1 product that employs a heating element, power source, electronic  
2 circuit, or other electronic, chemical, or mechanical means,  
3 regardless of shape or size, that can be used to produce vapor from  
4 nicotine or any other substance, and the use or inhalation of which  
5 simulates smoking.

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, **or synthetic nicotine products** at retail shall  
13 not ~~display~~ **do either of the following:**

14 (a) **Display** for sale in this state a vapor product unless the  
15 vapor product is stored for sale behind a counter in an area  
16 accessible only to employees or within a locked case so that a  
17 customer wanting access to the vapor product must ask an employee  
18 for assistance.

19 (b) **Display for sale or sell, in this state, a synthetic**  
20 **nicotine product or vapor product containing synthetic nicotine**  
21 **unless the packaging of the product contains the following notice:**

22 **"WARNING: Use of this product may be hazardous to your health.**  
23 **This product contains synthetic nicotine. Nicotine is an addictive**  
24 **chemical. This product has not been regulated or approved by the**  
25 **FDA."**

26 (2) A person who violates this section is responsible for a  
27 state civil infraction and shall be fined not more than \$500.00.

28 Sec. 4. As used in this act:

29 (a) "Alternative nicotine product" means a noncombustible

1 product containing nicotine that is intended for human consumption,  
2 whether chewed, absorbed, dissolved, or ingested by any other  
3 means. Alternative nicotine product does not include a tobacco  
4 product, **a synthetic nicotine product**, a vapor product, food, or a  
5 product regulated as a drug or device by the United States Food and  
6 Drug Administration under 21 USC 351 to 360fff-7.

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

9 (c) "Person who sells vapor products, ~~or~~ alternative nicotine  
10 products, **or synthetic nicotine products** at retail" means a person  
11 whose ordinary course of business consists, in whole or in part, of  
12 the retail sale of vapor products, ~~or~~ alternative nicotine  
13 products, **or synthetic nicotine products**.

14 (d) "Person who sells tobacco products at retail" means a  
15 person whose ordinary course of business consists, in whole or in  
16 part, of the retail sale of tobacco products subject to state sales  
17 tax.

18 (e) "Public place" means a public street, sidewalk, or park or  
19 any area open to the general public in a publicly owned or operated  
20 building or public place of business.

21 (f) "**Synthetic nicotine**" means nicotine that has been  
22 **synthetically produced by the chemical conversion of 1 or more**  
23 **reagent compounds that are not nicotine**.

24 (g) "**Synthetic nicotine product**" means a product that contains  
25 **synthetic nicotine and is intended for human consumption. Synthetic**  
26 **nicotine product does not include a vapor product or a product**  
27 **regulated as a drug or device by the United States Food and Drug**  
28 **Administration under 21 USC 351 to 360fff-7.**

29 (h) ~~(f)~~ "Tobacco product" means a product that contains

1 tobacco and is intended for human consumption, including, but not  
2 limited to, a cigarette, noncigarette smoking tobacco, or smokeless  
3 tobacco, as those terms are defined in section 2 of the tobacco  
4 products tax act, 1993 PA 327, MCL 205.422, and a cigar.

5 (i) ~~(g)~~—"Use a tobacco product, vapor product, ~~or~~ alternative  
6 nicotine product, **or synthetic nicotine product**" means to smoke,  
7 chew, suck, inhale, or otherwise consume a tobacco product, vapor  
8 product, ~~or~~ alternative nicotine product, **or synthetic nicotine**  
9 **product.**

10 (j) ~~(h)~~—"Vapor product" means a noncombustible product that  
11 employs a heating element, power source, electronic circuit, or  
12 other electronic, chemical, or mechanical means, regardless of  
13 shape or size, that can be used to produce vapor from nicotine,  
14 **synthetic nicotine**, or any other substance, and the use or  
15 inhalation of which simulates smoking. Vapor product includes an  
16 electronic cigarette, electronic cigar, electronic cigarillo,  
17 electronic pipe, or similar product or device and a vapor cartridge  
18 or other container of nicotine, **synthetic nicotine**, or other  
19 substance in a solution or other form that is intended to be used  
20 with or in an electronic cigarette, electronic cigar, electronic  
21 cigarillo, electronic pipe, or similar product or device. Vapor  
22 product does not include a product regulated as a drug or device by  
23 the United States Food and Drug Administration under 21 USC 351 to  
24 360fff-7.

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

27 Enacting section 2. This amendatory act does not take effect  
28 unless House Bill No. 4251 of the 101st Legislature is enacted into  
29 law.