

HOUSE BILL NO. 4878

May 19, 2021, Introduced by Rep. Lilly and referred to the Committee on Rules and Competitiveness.

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

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

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

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

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

19 (c) For a third or subsequent offense, not more than
20 \$2,500.00.

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

27 "The purchase of a tobacco product, vapor product, ~~or~~
28 alternative nicotine product, **or synthetic nicotine product** by a
29 minor under ~~18~~**21** years of age and the provision of a tobacco

1 product, vapor product, ~~or~~ alternative nicotine product, **or**
2 **synthetic nicotine product** to a minor are prohibited by law. A
3 minor who unlawfully purchases or uses a tobacco product, vapor
4 product, ~~or~~ alternative nicotine product, **or synthetic nicotine**
5 **product** is subject to criminal penalties."

6 (3) If the sign required under subsection (2) is more than 6
7 feet from the point of sale, it must be 5-1/2 inches by 8-1/2
8 inches and the statement required under subsection (2) must be
9 printed in 36-point boldfaced type. If the sign required under
10 subsection (2) is 6 feet or less from the point of sale, it must be
11 2 inches by 4 inches and the statement required under subsection
12 (2) must be printed in 20-point boldfaced type.

13 (4) The department of health and human services shall produce
14 the sign required under subsection (2) and have adequate copies of
15 the sign ready for distribution to licensed wholesalers, secondary
16 wholesalers, and unclassified acquirers of tobacco products and to
17 persons who sell vapor products, ~~or~~ alternative nicotine products,
18 **or synthetic nicotine products** at retail free of charge. Licensed
19 wholesalers, secondary wholesalers, and unclassified acquirers of
20 tobacco products shall obtain copies of the sign from the
21 department of health and human services and distribute them free of
22 charge, upon request, to persons who sell tobacco products and who
23 are subject to subsection (2). The department of health and human
24 services shall provide copies of the sign free of charge, upon
25 request, to persons subject to subsection (2) who do not purchase
26 their supply of tobacco products from wholesalers, secondary
27 wholesalers, and unclassified acquirers of tobacco products
28 licensed under the tobacco products tax act, 1993 PA 327, MCL
29 205.421 to 205.436, and to persons who sell vapor products, ~~or~~

1 alternative nicotine products, **or synthetic nicotine products** at
2 retail.

3 (5) It is an affirmative defense to a charge under subsection
4 (1) that the defendant had in force at the time of arrest and
5 continues to have in force a written policy to prevent the sale of
6 tobacco products, vapor products, ~~or~~ alternative nicotine products,
7 **or synthetic nicotine products**, as applicable, to persons under ~~18~~
8 **21** years of age and that the defendant enforced and continues to
9 enforce the policy. A defendant who proposes to offer evidence of
10 the affirmative defense described in this subsection shall file
11 notice of the defense, in writing, with the court and serve a copy
12 of the notice on the prosecuting attorney. The defendant shall
13 serve the notice not less than 14 days before the date set for
14 trial.

15 (6) A prosecuting attorney who proposes to offer testimony to
16 rebut the affirmative defense described in subsection (5) shall
17 file a notice of rebuttal, in writing, with the court and serve a
18 copy of the notice on the defendant. The prosecuting attorney shall
19 serve the notice not less than 7 days before the date set for trial
20 and shall include in the notice the name and address of each
21 rebuttal witness.

22 (7) Subsection (1) does not apply to the handling or
23 transportation of a tobacco product, vapor product, or alternative
24 nicotine product by a minor under the terms of the minor's
25 employment.

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

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

4 (b) For sales made by the internet or other remote sales
5 method, performing an age verification through an independent,
6 third-party age verification service that compares information
7 available from a commercially available database, or aggregate of
8 databases, that are regularly used by government agencies and
9 businesses for the purpose of age and identity verification to the
10 personal information entered by the individual during the ordering
11 process that establishes that the individual is ~~18~~21 years of age
12 or older.

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

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

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

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

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

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

29 (a) For the first violation, the court may order the

1 individual to do 1 of the following:

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

3 (ii) Participate in a health promotion and risk reduction
4 assessment program.

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

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.

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

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

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

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

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

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

28 (a) For the first violation, the individual is responsible for
29 a state civil infraction and shall be fined not more than \$50.00.

1 The court may order the individual to participate in a health
2 promotion and risk reduction assessment program, if available. In
3 addition, the court may order the individual to perform not more
4 than 16 hours of community service.

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

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

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

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

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

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

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

17 (7) Subsections (1) and (3) do 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) This section does not prohibit an individual from being
22 charged with, convicted of, or sentenced for any other violation of
23 law that arises out of the violation of subsection (1) or (3).

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

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

1 (3) As used in this section:

2 (a) "Liquid nicotine" means a liquid or other substance
3 containing nicotine **or synthetic nicotine**, in any concentration,
4 that is sold, marketed, or intended for use in a noncombustible
5 product that employs a heating element, power source, electronic
6 circuit, or other electronic, chemical, or mechanical means,
7 regardless of shape or size, that can be used to produce vapor from
8 nicotine or any other substance, and the use or inhalation of which
9 simulates smoking.

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

15 Sec. 2c. A person who sells vapor products, ~~or~~ alternative
16 nicotine products, **or synthetic nicotine products** at retail shall
17 not ~~display~~ **do either of the following:**

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

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

26 "WARNING: Use of this product may be hazardous to your health.
27 This product contains synthetic nicotine. Nicotine is an addictive
28 chemical. This product has not been regulated or approved by the
29 FDA."

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

3 Sec. 4. As used in this act:

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

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

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

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

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

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

28 (g) "**Synthetic nicotine product**" means **a product that contains**
29 **synthetic nicotine and is intended for human consumption. Synthetic**

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

4 (h) ~~(f)~~—"Tobacco product" means a product that contains
5 tobacco and is intended for human consumption, including, but not
6 limited to, a cigarette, noncigarette smoking tobacco, or smokeless
7 tobacco, as those terms are defined in section 2 of the tobacco
8 products tax act, 1993 PA 327, MCL 205.422, and a cigar.

9 (i) ~~(g)~~—"Use a tobacco product, vapor product, ~~or~~ alternative
10 nicotine product, **or synthetic nicotine product**" means to smoke,
11 chew, suck, inhale, or otherwise consume a tobacco product, vapor
12 product, ~~or~~ alternative nicotine product, **or synthetic nicotine**
13 **product**.

14 (j) ~~(h)~~—"Vapor product" means a noncombustible product that
15 employs a heating element, power source, electronic circuit, or
16 other electronic, chemical, or mechanical means, regardless of
17 shape or size, that can be used to produce vapor from nicotine,
18 **synthetic nicotine**, or any other substance, and the use or
19 inhalation of which simulates smoking. Vapor product includes an
20 electronic cigarette, electronic cigar, electronic cigarillo,
21 electronic pipe, or similar product or device and a vapor cartridge
22 or other container of nicotine, **synthetic nicotine**, or other
23 substance in a solution or other form that is intended to be used
24 with or in an electronic cigarette, electronic cigar, electronic
25 cigarillo, electronic pipe, or similar product or device. Vapor
26 product does not include a product regulated as a drug or device by
27 the United States Food and Drug Administration under 21 USC 351 to
28 360fff-7.

29 Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.

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