

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 784

A bill to amend 1915 PA 31, entitled  
"Youth tobacco act,"  
by amending section 1 (MCL 722.641), as amended by 2019 PA 18.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. (1) A person shall not sell, give, or furnish a  
2 tobacco product, vapor product, or alternative nicotine product to  
3 a minor, including, but not limited to, through a vending machine.  
4 A person who violates this subsection or subsection ~~(8)~~ **(12) or**  
5 **(13)** is guilty of a misdemeanor punishable by a fine as follows:  
6       (a) For a first offense, not more than \$100.00.  
7       (b) For a second offense, not more than \$500.00.  
8       (c) For a third or subsequent offense, not more than  
9 \$2,500.00.



1           (2) A sales clerk, agent, or employee of a person who sells  
2 tobacco products, vapor products, or alternative nicotine products  
3 at retail who knowingly sells or furnishes a tobacco product, vapor  
4 product, or alternative nicotine product to a minor, or who fails  
5 to make diligent inquiry as to whether the individual is a minor is  
6 responsible for a state civil infraction and may be ordered to pay  
7 a fine of not more than \$250.00.

8           (3) ~~(2)~~—A person who sells tobacco products, vapor products,  
9 or alternative nicotine products at retail shall post, in a place  
10 close to the point of sale, **unobstructed**, and conspicuous to both  
11 employees and customers, a sign produced by the department ~~of~~  
12 ~~health and human services~~ that includes the following statement:

13           "The purchase of a tobacco product, vapor product, or  
14 alternative nicotine product by a minor under ~~18~~**21** years of age  
15 and the provision of a tobacco product, vapor product, or  
16 alternative nicotine product to a minor are prohibited by law. A  
17 minor who unlawfully purchases or uses a tobacco product, vapor  
18 product, or alternative nicotine product is subject to criminal  
19 penalties."

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

27           (5) ~~(4)~~—The department ~~of health and human services~~ shall  
28 produce the sign required under subsection ~~(2)~~**(3)** and have  
29 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 health and human services~~ and distribute them free of  
7 charge, ~~upon~~ **on** request, to persons who sell tobacco products and  
8 who are subject to subsection ~~(2)~~ **(3)**. The department ~~of health~~  
9 ~~and human services~~ shall provide copies of the sign free of charge,  
10 ~~upon~~ **on** request, to persons subject to subsection ~~(2)~~ **(3)** who do  
11 not purchase their supply of tobacco products from wholesalers,  
12 secondary wholesalers, and unclassified acquirers of tobacco  
13 products licensed under the tobacco products tax act, 1993 PA 327,  
14 MCL 205.421 to 205.436, and to persons who sell vapor products or  
15 alternative nicotine products at retail.

16 **(6) The local law enforcement department for the city,**  
17 **village, township, or county, as applicable, in which the licensed**  
18 **premises is located may conduct unannounced compliance checks at**  
19 **any time during the open hours of any establishment that sells**  
20 **tobacco products, vapor products, or alternative nicotine products**  
21 **by engaging individuals under 21 years of age to enter into an**  
22 **establishment that sells tobacco products, vapor products, or**  
23 **alternative nicotine products to attempt to purchase a tobacco**  
24 **product, vapor product, or alternative nicotine product. If an**  
25 **establishment that sells tobacco products, vapor products, or**  
26 **alternative nicotine products fails a first compliance check, the**  
27 **local law enforcement department shall give the establishment the**  
28 **opportunity to demonstrate that it has a compliance plan in place**  
29 **for identifying the cause of the problem and a remediation plan for**



1 addressing the sale of tobacco products, vapor products, or  
2 alternative nicotine products to minors. The local law enforcement  
3 department shall, not less than 3 months after the failed  
4 compliance check, conduct an unannounced follow-up compliance check  
5 on a noncompliant establishment that sells tobacco products, vapor  
6 products, or alternative nicotine products.

7 (7) An establishment that sells tobacco products, vapor  
8 products, or alternative nicotine products or a person who sells  
9 tobacco products, vapor products, or alternative nicotine products  
10 at retail that violates subsection (6) by failing a second  
11 unannounced compliance check, in a calendar year, after being given  
12 the opportunity to demonstrate that it has a compliance plan and a  
13 remediation plan is responsible for a state civil infraction or  
14 guilty of a crime as follows:

15 (a) For a first violation, the establishment or person is  
16 responsible for a state civil infraction and may be fined not more  
17 than \$1,000.00.

18 (b) For a second violation, the establishment or person is  
19 responsible for a state civil infraction and may be fined not more  
20 than \$1,500.00, and that establishment or person is prohibited from  
21 selling a tobacco product, vapor product, or alternative nicotine  
22 product for a minimum of 7 days.

23 (c) For a third violation, the establishment or person is  
24 guilty of a misdemeanor punishable by a fine of not more than  
25 \$2,500.00, and that establishment or person is prohibited from  
26 selling a tobacco product, vapor product, or alternative nicotine  
27 product for a minimum of 30 days.

28 (d) For a fourth or subsequent violation, the establishment or  
29 person is guilty of a misdemeanor punishable by a fine of not more



1 than \$3,000.00, and that establishment or person is prohibited from  
2 selling a tobacco product, vapor product, or alternative nicotine  
3 product for 3 years.

4 (8) A local law enforcement department shall report the  
5 results of all compliance checks to the department. The department  
6 shall publish the results of all compliance checks at least  
7 annually and make them available to the public on request.

8 (9) ~~(5) It is an affirmative defense to a charge under~~  
9 ~~subsection (1) that the defendant had in force at the time of~~  
10 ~~arrest and continues to have in force a written policy to prevent~~  
11 ~~the sale of tobacco products, vapor products, or alternative~~  
12 ~~nicotine products, as applicable, to persons under 18 years of age~~  
13 ~~and that the defendant enforced and continues to enforce the~~  
14 ~~policy. A defendant who proposes to offer evidence of the~~  
15 ~~affirmative defense described in this subsection shall file notice~~  
16 ~~of the defense, in writing, with the court and serve a copy of the~~  
17 ~~notice on the prosecuting attorney. The defendant shall serve the~~  
18 ~~notice not less than 14 days before the date set for trial.~~ **It is an**  
19 **affirmative defense to a charge under subsections (1) and (2) that**  
20 **the defendant demanded, was shown, and reasonably relied on bona**  
21 **fide documentary evidence of the age and identity of the minor, and**  
22 **that the defendant reasonably relied on the bona fide documentary**  
23 **evidence before furnishing a tobacco product, vapor product, or**  
24 **alternative nicotine product to the minor.**

25 (10) ~~(6)~~ A prosecuting attorney who proposes to offer  
26 testimony to rebut the affirmative defense described in subsection  
27 ~~(5)~~ **(9)** shall file a notice of rebuttal, in writing, with the court  
28 and serve a copy of the notice on the defendant. The prosecuting  
29 attorney shall serve the notice not less than 7 days before the



1 date set for trial and shall include in the notice the name and  
2 address of each rebuttal witness.

3 (11) ~~(7)~~—Subsection (1) does not apply to the handling or  
4 transportation of a tobacco product, vapor product, or alternative  
5 nicotine product by a minor under the terms of the minor's  
6 employment.

7 (12) ~~(8)~~—Before selling, offering for sale, giving, or  
8 furnishing a tobacco product, ~~vapor product, or an~~ alternative  
9 nicotine product, **or, until September 30, 2020, a vapor product** to  
10 an individual, a person shall verify that the individual is at  
11 least ~~18~~**21** years of age by doing 1 of the following:

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

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

24 (13) **Beginning October 1, 2020, before selling, offering for**  
25 **sale, giving, or furnishing a vapor product to an individual, a**  
26 **person shall verify that the individual is at least 21 years of age**  
27 **by doing 1 of the following:**

28 (a) **Scanning a government-issued photographic identification**  
29 **to verify that the purchaser is at least 21 years of age and that**



1 the photographic identification has not expired.

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

11 (14) In addition to the penalties provided in this act, a  
12 local legislative body, by resolution, may request that the  
13 department of treasury revoke the license of a licensee granted a  
14 license to sell a tobacco product, vapor product, or alternative  
15 nicotine product under section 2d whose place of business is  
16 located within the local legislative body's jurisdiction and who  
17 has been determined to have violated the provisions of this act, on  
18 at least 3 separate occasions in a consecutive 12-month period. If  
19 the department of treasury verifies that the licensee who is the  
20 subject of the resolution has been found to have committed the  
21 violations as prescribed in this subsection, the department of  
22 treasury may suspend or revoke the licensee's license and any  
23 permit held in conjunction with that license.

24 (15) Fees collected under this section must be used to offset  
25 the costs of enforcing this act.

26 (16) As used in this section:

27 (a) "Bona fide documentary evidence" means a document issued  
28 by a federal government, state government, or municipality that  
29 includes a photo and the date of birth of the individual.



1           (b) "Department" means the department of health and human  
2 services.

3           (c) "Municipality" means a county, township, city, village,  
4 school district, intermediate school district, community college  
5 district, metropolitan district, district library, or another  
6 governmental authority or agency in this state that has the power  
7 to issue the document.

8           Enacting section 1. This amendatory act does not take effect  
9 unless all of the following bills of the 100th Legislature are  
10 enacted into law:

- 11           (a) Senate Bill No. 781.  
12           (b) Senate Bill No. 782.  
13           (c) Senate Bill No. 783.  
14           (d) House Bill No. 4039.

