

HOUSE BILL No. 4431

April 14, 2015, Introduced by Rep. Outman 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 section 2b.

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, ALTERNATIVE NICOTINE PRODUCTS, AND LIQUID NICOTINE CONTAINERS**; to prescribe penalties; and to prescribe the powers and duties of certain state agencies and departments.

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)** is guilty
5 of a misdemeanor punishable by a fine of not more than \$50.00 for
6 each violation.

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

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

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

26 (4) The department of ~~community health~~ **HEALTH AND HUMAN**
27 **SERVICES** shall produce the sign required under subsection (2) and

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

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

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

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

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

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

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

1 **OLDER.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (4) 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 (5) This section does not prohibit ~~the~~ **AN** individual from
13 being charged with, convicted of, or sentenced for any other
14 violation of law ~~arising~~ **THAT ARISES** out of the violation of
15 subsection (1).

16 **SEC. 2B.(1) A PERSON SHALL NOT SELL IN THIS STATE A LIQUID**
17 **NICOTINE CONTAINER UNLESS THE LIQUID NICOTINE CONTAINER MEETS THE**
18 **CHILD-RESISTANT EFFECTIVENESS STANDARDS OF 16 CFR 1700.15(B).**

19 (2) **A PERSON WHO VIOLATES SUBSECTION (1) IS GUILTY OF A**
20 **MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN \$50.00 FOR EACH**
21 **VIOLATION.**

22 (3) **THIS SECTION DOES NOT APPLY IF THE UNITED STATES FOOD AND**
23 **DRUG ADMINISTRATION ISSUES REGULATIONS REQUIRING CHILD-RESISTANT**
24 **PACKAGING FOR A LIQUID NICOTINE CONTAINER.**

25 (4) **AS USED IN THIS SECTION:**

26 (A) **"LIQUID NICOTINE" MEANS A LIQUID OR OTHER SUBSTANCE**
27 **CONTAINING NICOTINE IN ANY CONCENTRATION THAT IS SOLD, MARKETED, OR**

1 INTENDED FOR USE IN A VAPOR PRODUCT.

2 (B) "LIQUID NICOTINE CONTAINER" MEANS A BOTTLE OR OTHER
3 CONTAINER HOLDING LIQUID NICOTINE IN ANY CONCENTRATION BUT DOES NOT
4 INCLUDE A CARTRIDGE CONTAINING LIQUID NICOTINE IF THE CARTRIDGE IS
5 PREFILLED AND SEALED BY THE MANUFACTURER OF THE CARTRIDGE AND IS
6 NOT INTENDED TO BE OPENED BY THE CONSUMER.

7 Sec. 4. As used in this act:

8 (A) "ALTERNATIVE NICOTINE PRODUCT" MEANS A NONCOMBUSTIBLE
9 PRODUCT CONTAINING NICOTINE THAT IS INTENDED FOR HUMAN CONSUMPTION,
10 WHETHER CHEWED, ABSORBED, DISSOLVED, OR INGESTED BY ANY OTHER
11 MEANS. ALTERNATIVE NICOTINE PRODUCT DOES NOT INCLUDE A TOBACCO
12 PRODUCT, A VAPOR PRODUCT, OR A PRODUCT REGULATED AS A DRUG OR
13 DEVICE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION UNDER
14 SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21 USC
15 351 TO 360EEE-4.

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

18 (C) "PERSON WHO SELLS VAPOR PRODUCTS OR ALTERNATIVE NICOTINE
19 PRODUCTS AT RETAIL" MEANS A PERSON WHOSE ORDINARY COURSE OF
20 BUSINESS CONSISTS, IN WHOLE OR IN PART, OF THE RETAIL SALE OF VAPOR
21 PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS.

22 (D) ~~(b)~~ "Person who sells tobacco products at retail" means a
23 person whose ordinary course of business consists, in whole or in
24 part, of the retail sale of tobacco products subject to state sales
25 tax.

26 (E) ~~(e)~~ "Public place" means a public street, sidewalk, or
27 park or any area open to the general public in a publicly owned or

1 operated building or public place of business.

2 (F) ~~(d)~~—"Tobacco product" means a product that contains
3 tobacco and is intended for human consumption, including, but not
4 limited to, cigarettes, noncigarette smoking tobacco, or smokeless
5 tobacco, as those terms are defined in section 2 of the tobacco
6 products tax act, 1993 PA 327, MCL 205.422, and cigars. **TOBACCO**
7 **PRODUCT DOES NOT INCLUDE A VAPOR PRODUCT, AN ALTERNATIVE NICOTINE**
8 **PRODUCT, OR A PRODUCT REGULATED AS A DRUG OR DEVICE BY THE UNITED**
9 **STATES FOOD AND DRUG ADMINISTRATION UNDER SUBCHAPTER V OF THE**
10 **FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21 USC 351 TO 360EEE-4.**

11 (G) ~~(e)~~—"Use a tobacco product, VAPOR PRODUCT, OR ALTERNATIVE
12 NICOTINE PRODUCT" means to smoke, chew, suck, inhale, or otherwise
13 consume a tobacco product, VAPOR PRODUCT, OR ALTERNATIVE NICOTINE
14 PRODUCT.

15 (H) "VAPOR PRODUCT" MEANS A NONCOMBUSTIBLE PRODUCT CONTAINING
16 NICOTINE THAT EMPLOYS A HEATING ELEMENT, POWER SOURCE, ELECTRONIC
17 CIRCUIT, OR OTHER ELECTRONIC, CHEMICAL, OR MECHANICAL MEANS,
18 REGARDLESS OF SHAPE OR SIZE, THAT CAN BE USED TO PRODUCE VAPOR FROM
19 NICOTINE IN A SOLUTION OR OTHER FORM. 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 IN A SOLUTION OR OTHER FORM THAT IS
23 INTENDED TO BE USED WITH OR IN AN ELECTRONIC CIGARETTE, ELECTRONIC
24 CIGAR, ELECTRONIC CIGARILLO, ELECTRONIC PIPE, OR SIMILAR PRODUCT OR
25 DEVICE. VAPOR PRODUCT DOES NOT INCLUDE A PRODUCT REGULATED AS A
26 DRUG OR DEVICE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION
27 UNDER SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21

1 **USC 351 TO 360EEE-4.**

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