

# HOUSE BILL No. 6561

December 4, 2018, Introduced by Rep. Roberts 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.

**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, AND ALTERNATIVE NICOTINE PRODUCTS**; to prescribe penalties; and to prescribe the powers and duties of certain state

1 agencies and departments.

2       Sec. 1. (1) A person shall not sell, give, or furnish a  
3 tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT** to  
4 a minor, **INCLUDING, BUT NOT LIMITED TO, THROUGH A VENDING MACHINE.**  
5 A person who violates this subsection **OR SUBSECTION (8)** is guilty  
6 of a misdemeanor punishable by a fine of not more than \$50.00 for  
7 each violation.

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

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

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

27       (4) The department of ~~community health~~**HEALTH AND HUMAN**

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

18 (5) It is an affirmative defense to a charge under subsection  
19 (1) that the defendant had in force at the time of arrest and  
20 continues to have in force a written policy to prevent the sale of  
21 tobacco products, **VAPOR PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS,**  
22 **AS APPLICABLE,** to persons under 18 years of age and that the  
23 defendant enforced and continues to enforce the policy. A defendant  
24 who proposes to offer evidence of the affirmative defense described  
25 in this subsection shall file ~~and serve~~ notice of the defense, in  
26 writing, ~~upon~~ **WITH** the court and **SERVE A COPY OF THE NOTICE ON** the  
27 prosecuting attorney. The **DEFENDANT SHALL SERVE THE** notice ~~shall be~~

1 ~~served~~ not less than 14 days before the date set for trial.

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

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

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

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

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

1 **PROCESS THAT ESTABLISHES THAT THE INDIVIDUAL IS 18 YEARS OF AGE OR**  
2 **OLDER.**

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

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

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

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

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

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

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

1           (i) Perform not more than 16 hours of community service in a  
2 hospice, nursing home, or long-term care facility.

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

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

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

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

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

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

1 was not part of the undercover operation.

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

9 (4) 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 (5) This section does not prohibit ~~the~~ **AN** individual from  
14 being charged with, convicted of, or sentenced for any other  
15 violation of law ~~arising~~ **THAT ARISES** out of the violation of  
16 subsection (1).

17 Sec. 4. As used in this act:

18 (A) **"ALTERNATIVE NICOTINE PRODUCT" MEANS A NONCOMBUSTIBLE**  
19 **PRODUCT CONTAINING NICOTINE THAT IS INTENDED FOR HUMAN CONSUMPTION,**  
20 **WHETHER CHEWED, ABSORBED, DISSOLVED, OR INGESTED BY ANY OTHER**  
21 **MEANS. ALTERNATIVE NICOTINE PRODUCT DOES NOT INCLUDE A TOBACCO**  
22 **PRODUCT, A VAPOR PRODUCT, OR A PRODUCT REGULATED AS A DRUG OR**  
23 **DEVICE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION UNDER**  
24 **SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21 USC**  
25 **351 TO 360FFF-7.**

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

1           (C) "PERSON WHO SELLS VAPOR PRODUCTS OR ALTERNATIVE NICOTINE  
2 PRODUCTS AT RETAIL" MEANS A PERSON WHOSE ORDINARY COURSE OF  
3 BUSINESS CONSISTS, IN WHOLE OR IN PART, OF THE RETAIL SALE OF VAPOR  
4 PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS.

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

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

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

22           (G) ~~(e)~~—"Use a tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE**  
23 **NICOTINE PRODUCT**" means to smoke, chew, suck, inhale, or otherwise  
24 consume a tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE NICOTINE**  
25 **PRODUCT.**

26           (H) "VAPOR PRODUCT" MEANS A NONCOMBUSTIBLE PRODUCT CONTAINING  
27 NICOTINE THAT EMPLOYS A HEATING ELEMENT, POWER SOURCE, ELECTRONIC



1 CIRCUIT, OR OTHER ELECTRONIC, CHEMICAL, OR MECHANICAL MEANS,  
2 REGARDLESS OF SHAPE OR SIZE, THAT CAN BE USED TO PRODUCE VAPOR FROM  
3 NICOTINE IN A SOLUTION OR OTHER FORM. VAPOR PRODUCT INCLUDES AN  
4 ELECTRONIC CIGARETTE, ELECTRONIC CIGAR, ELECTRONIC CIGARILLO,  
5 ELECTRONIC PIPE, OR SIMILAR PRODUCT OR DEVICE AND A VAPOR CARTRIDGE  
6 OR OTHER CONTAINER OF NICOTINE IN A SOLUTION OR OTHER FORM THAT IS  
7 INTENDED TO BE USED WITH OR IN AN ELECTRONIC CIGARETTE, ELECTRONIC  
8 CIGAR, ELECTRONIC CIGARILLO, ELECTRONIC PIPE, OR SIMILAR PRODUCT OR  
9 DEVICE. VAPOR PRODUCT DOES NOT INCLUDE A PRODUCT REGULATED AS A  
10 DRUG OR DEVICE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION  
11 UNDER SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21  
12 USC 351 TO 360FFF-7.

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