

# Legislative Analysis



## RAISE FROM 18 TO 21 THE LEGAL AGE TO BUY, POSSESS, OR PUBLICLY USE TOBACCO AND VAPOR PRODUCTS; AND REGULATE SYNTHETIC NICOTINE

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House Bill 4878 (H-1) as reported from committee

Sponsor: Rep. Jim Lilly

Committee: Rules and Competitiveness

Complete to 5-24-21

### SUMMARY:

House Bill 4878 would amend the Youth Tobacco Act to prohibit anyone under the age of 21 from buying, possessing, or publicly using tobacco, vapor, or alternative nicotine products, including e-cigarettes, cigarettes, cigars, chewing tobacco, pipe or rolling tobacco, and related devices or substances. The bill also would prohibit a person from selling or giving those products to anyone under 21. Currently these prohibitions apply with regard to individuals who are less than 18 years old. The bill also would add synthetic nicotine products to the products addressed by the act.

#### Change “minor” from under 18 to under 21

The act now prohibits a person from selling, giving, or furnishing a **tobacco product, vapor product, or alternative nicotine product** to a **minor**, including through a vending machine, and requires a person to verify the age of anyone who looks younger than 27 or who is buying the product remotely before conducting such a transaction. A violation is a misdemeanor punishable by a fine of \$100 for a first offense, \$500 for a second offense, or \$2,500 for a third or subsequent offense. There is an exception allowing a minor to handle the prohibited products in the course of his or her job. A person who sells these products at retail must post a sign advising that their sale to minors is prohibited under the law.

The act also prohibits a **minor** from purchasing, possessing, or publicly using<sup>1</sup> a vapor product or alternative nicotine product, attempting to do so, or providing false proof of age in an attempt to do so. A minor violating these prohibitions is responsible for a civil infraction and must pay a civil fine of up to \$50. The minor also may be subject to a health promotion and risk reduction assessment program or be ordered to perform community service. The amount of community service that can be ordered increases with the number of violations. There are exceptions for minors handling these products in the course of their employment or violating the prohibitions in coordination with the police as part of an undercover enforcement action.

Currently, for purposes of the act, **minor** means an individual under 18 years of age.

The bill would amend that definition, and the provisions described above, to define **minor** as an individual under 21 years of age.

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<sup>1</sup> The act prohibits a minor’s use of these products in a **public place**, which it defines as a public street, sidewalk, or park or any area open to the general public in a publicly owned or operated building or public place of business. The act defines **using** such a product as smoking, chewing, sucking, inhaling, or otherwise consuming it.

***Tobacco product*** means a product that contains tobacco and is intended for human consumption, including a cigarette, noncigarette smoking tobacco, or smokeless tobacco, as those terms are defined in the Tobacco Products Tax Act, and a cigar.

***Vapor product*** means a noncombustible product that simulates smoking in its use or inhalation and that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from nicotine or any other substance. The term includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container of nicotine or other substance in a solution or other form that is intended to be used with or in those products or devices. The term does not include a product regulated as a drug or device by the federal Food and Drug Administration (FDA).

***Alternative nicotine product*** means a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term does not include a tobacco or vapor product, food, or a product regulated as a drug or device by the FDA.

#### **Synthetic nicotine**

The bill would also add ***synthetic nicotine products*** to the list of products prohibited or regulated as described above. (In addition to the above provisions, under the bill, an individual under 21 years of age could not buy, possess, or publicly use synthetic nicotine products, and the bill would prohibit a person from selling or giving those products to anyone under 21. The exceptions, penalties or sanctions, and signage requirements described above would also apply with regard to synthetic nicotine products.)

***Synthetic nicotine product*** would mean a product intended for human consumption that contains nicotine that has been synthetically produced by the chemical conversion of one or more reagent compounds that are not nicotine. It would not include a vapor product (as defined in the act) or a product regulated as a drug or device by the FDA.

The bill would prohibit a person that sells vapor products, alternative nicotine products, or synthetic nicotine products at retail from displaying for sale or selling a synthetic nicotine product or a vapor product containing synthetic nicotine unless the packaging of the product contained the following notice:

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

A person violating the above product packaging provision would be responsible for a state civil infraction with a fine of up to \$500.

The bill would take effect 90 days after its enactment. It is tie-barred to HB 4251, which means that it could not take effect unless HB 4251 were also enacted. House Bill 4251 would prohibit the sale of vapor products containing vitamin E acetate or certain other prohibited ingredients.

MCL 722.641 et seq.

**FISCAL IMPACT:**

House Bill 4878 would have an indeterminate fiscal impact on the state and on local units of government. There is not a practical way to estimate the number of additional misdemeanor convictions or civil infractions that would result from changing the definition of “minor” from meaning “under 18” to meaning “under 21” or from adding synthetic nicotine products to those regulated under the act. Any increase in penal fine revenue for misdemeanor convictions, and from payment of civil infraction penalties, would impact revenue going to public and county law libraries. A small portion of revenue from payment of civil infraction penalties would be deposited into the state’s Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury.

**POSITIONS:**

Michigan Vape Shop Owners indicated opposition to the bill. (5-20-21)

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