

# SENATE BILL NO. 649

November 09, 2023, Introduced by Senators CHERRY, SINGH and SHINK and referred to the Committee on Regulatory Affairs.

A bill to amend 1915 PA 31, entitled "Youth tobacco act," by amending the title and sections 4 and 5 (MCL 722.644 and 722.645), the title as amended by 2019 PA 18, section 4 as amended by 2022 PA 167, and section 5 as added by 1988 PA 314, and by adding sections 1a and 2d.

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

1 TITLE  
2 An act to prohibit the selling, giving, or furnishing of

1 tobacco products, vapor products, and alternative nicotine products  
2 to minors; **to create the nicotine and tobacco regulation fund in**  
3 **the state treasury;** to prohibit the purchase, possession, ~~or~~ and  
4 use of tobacco products, vapor products, and alternative nicotine  
5 products by minors; to regulate the ~~retail~~-sale of **nicotine or**  
6 tobacco products ~~, vapor products, alternative nicotine products,~~  
7 and liquid nicotine containers; **to prohibit the advertising for**  
8 **sale, displaying for sale, marketing, and selling of certain**  
9 **nicotine or tobacco products;** to prescribe penalties and civil  
10 sanctions; and to prescribe the powers and duties of certain state  
11 and local agencies and departments.

12       Sec. 1a. (1) The nicotine and tobacco regulation fund is  
13 created in the state treasury.

14       (2) The state treasurer may deposit money and other assets  
15 from any source in the fund. The state treasurer shall direct the  
16 investment of the fund and credit interest and earnings from the  
17 investments to the fund.

18       (3) The department is the administrator of the fund for audits  
19 of the fund.

20       (4) The department shall expend money from the fund on  
21 appropriation, only for 1 or more of the following purposes:

22       (a) The administration and enforcement of section 2d,  
23 including, but not limited to, compliance checks.

24       (b) To ensure compliance with applicable law that relates to  
25 the retail sale of a nicotine or tobacco product, the education and  
26 training of persons that sell, or intend to sell, a nicotine or  
27 tobacco product at retail; department staff; and others that are  
28 subject to or enforce the applicable law.

29       Sec. 2d. (1) Subject to subsection (7), a person, other than a

1 nonmanagerial employee acting within the scope of the employee's  
2 employment, shall not advertise for sale, display for sale, market,  
3 or sell a nicotine or tobacco product that has characterizing  
4 flavor.

5 (2) Subject to subsection (7), if a person employs a  
6 nonmanagerial employee, the person shall prohibit the employee,  
7 within the scope of the employee's employment with the person, from  
8 advertising for sale, displaying for sale, marketing, or selling a  
9 nicotine or tobacco product that has characterizing flavor.

10 (3) A person that violates subsection (1) or (2) is subject to  
11 a civil fine, license suspension or revocation, or both, as  
12 follows:

13 (a) For a first violation in a period of 36 months, not more  
14 than \$1,500.00.

15 (b) For a second violation in a period of 36 months,  
16 \$2,000.00. If the person is an establishment licensed under this  
17 act, the department shall also suspend, for 30 days, the  
18 establishment's license under this act.

19 (c) For a third violation in a period of 36 months, \$2,500.00.  
20 If the person is an establishment licensed under this act, the  
21 department shall also suspend, for 1 year, the establishment's  
22 license under this act.

23 (d) For a fourth or subsequent violation in a period of 36  
24 months, \$3,000.00. If the person is an establishment licensed under  
25 this act, the department shall also revoke the establishment's  
26 license under this act.

27 (4) For the violations described in subsection (3), the  
28 prosecutor of the county in which the violation occurred or the  
29 attorney general may bring an action to collect the fine. A fine

1 collected must be deposited in the fund.

2 (5) A nicotine or tobacco product advertised for sale,  
3 displayed for sale, marketed, or sold by a person is presumed to  
4 have characterizing flavor if the manufacturer of the nicotine or  
5 tobacco product, the person, or an employee or agent of at least 1  
6 of those entities has done at least 1 of the following:

7 (a) Publicly stated or claimed that the nicotine or tobacco  
8 product has characterizing flavor.

9 (b) Used text or images, or both, on the nicotine or tobacco  
10 product's label or packaging that indicate, explicitly or  
11 implicitly, that the nicotine or tobacco product has characterizing  
12 flavor.

13 (c) Taken action, directed to consumers, that would reasonably  
14 be expected to cause consumers to believe the nicotine or tobacco  
15 product has characterizing flavor.

16 (6) A party challenging the presumption under subsection (5)  
17 has the burden of proving, by a preponderance of the evidence, that  
18 the nicotine or tobacco product does not have characterizing  
19 flavor.

20 (7) Subsections (1) and (2) do not apply to hookah or hookah  
21 tobacco that is to be sold, for on-site consumption, by a tobacco  
22 specialty retail store with an exemption under section 12606a of  
23 the public health code, 1978 PA 368, MCL 333.12606a.

24 Sec. 4. As used in this act:

25 (a) "Alternative nicotine product" means a noncombustible  
26 product ~~containing~~ **that contains** nicotine ~~that~~ **and** is intended for  
27 human consumption, whether chewed, absorbed, dissolved, or ingested  
28 by any other means. Alternative nicotine product does not include a  
29 tobacco product, a vapor product, food, or a product regulated as a

1 drug or device by the United States Food and Drug Administration  
2 under 21 USC 351 to ~~360fff-7.360fff-8.~~

3 (b) "Characterizing flavor" means 1 or more of the following:

4 (i) A distinguishable taste or aroma, or both, other than the  
5 taste or aroma of tobacco, that is imparted by a nicotine or  
6 tobacco product or a byproduct produced by a nicotine or tobacco  
7 product.

8 (ii) A cooling or numbing sensation that is imparted by a  
9 nicotine or tobacco product or a byproduct produced by a nicotine  
10 or tobacco product.

11 (c) "Department" means the department of health and human  
12 services.

13 (d) "Establishment" means a place of business, or area within  
14 a place of business, where a nicotine or tobacco product is sold,  
15 or is intended to be sold, at retail.

16 (e) "Fund" means the nicotine and tobacco regulation fund  
17 created in section 1a.

18 (f) "Hookah" means that term as defined in section 2 of the  
19 tobacco products tax act, 1993 PA 327, MCL 205.422.

20 (g) "Hookah tobacco" means that term as defined in section 2  
21 of the tobacco products tax act, 1993 PA 327, MCL 205.422.

22 (h) ~~(b)~~—"Minor" means an individual who is less than 21 years  
23 of age.

24 (i) "Nicotine or tobacco product" means any of the following:

25 (i) A product that contains, is made of, or is derived from  
26 nicotine or tobacco, from any source; that is intended for human  
27 consumption or is likely to be consumed by humans, by any means,  
28 including, but not limited to, inhaling, absorbing, or ingesting;  
29 and that is not regulated as a drug or device by the United States

1 Food and Drug Administration under 21 USC 351 to 360fff-8.

2 (ii) An alternative nicotine product.

3 (iii) A tobacco product.

4 (iv) A qualified vapor product.

5 (v) A component, part, or accessory of a product described in  
6 subparagraphs (i) to (iv), including, but not limited to, filters,  
7 rolling papers, blunt or hemp wraps, flavor enhancers, or pipes, if  
8 the component, part, or accessory is not a product regulated as a  
9 drug or device by the United States Food and Drug Administration  
10 under 21 USC 351 to 360fff-8.

11 (j) "Nonmanagerial employee" means a cashier or clerk that  
12 does not have managerial control at the cashier's or clerk's  
13 employer under the terms of the cashier's or clerk's employment.

14 (k) "Person" means an individual or a partnership,  
15 corporation, limited liability company, association, governmental  
16 entity, or other legal entity.

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

21 (m) ~~(e)~~ "Person who sells vapor products or alternative  
22 nicotine products at retail" means a person whose ordinary course  
23 of business consists, in whole or in part, of the retail sale of  
24 vapor products or alternative nicotine products.

25 ~~(d) "Person who sells tobacco products at retail" means a~~  
26 ~~person whose ordinary course of business consists, in whole or in~~  
27 ~~part, of the retail sale of tobacco products subject to state sales~~  
28 ~~tax.~~

29 (n) ~~(e)~~ "Public place" means a public street, sidewalk, or

1 park or any area open to the general public in a publicly owned or  
2 operated building or public place of business.

3 (o) **"Qualified vapor product" means 1 or both of the**  
4 **following:**

5 (i) **A vapor product for the production of vapor from nicotine**  
6 **or tobacco.**

7 (ii) **A vapor product that contains nicotine or tobacco.**

8 (p) ~~(f)~~ **"Tobacco product" means a product that contains**  
9 **tobacco and is intended for human consumption, including, but not**  
10 **limited to, a **cigar, a** cigarette, noncigarette smoking tobacco, or**  
11 **smokeless tobacco, as those terms are defined in section 2 of the**  
12 **tobacco products tax act, 1993 PA 327, MCL 205.422. ~~and a~~**  
13 **~~cigar.~~ Tobacco product does not include a product regulated as a**  
14 **drug or device by the United States Food and Drug Administration**  
15 **under 21 USC 351 to 360fff-8.**

16 (q) ~~(g)~~ **"Use a tobacco product, vapor product, or alternative**  
17 **nicotine product" means to smoke, chew, suck, inhale, or otherwise**  
18 **consume a tobacco product, vapor product, or alternative nicotine**  
19 **product.**

20 (r) ~~(h)~~ **"Vapor product" means a noncombustible product that**  
21 **employs a heating element, power source, electronic circuit, or**  
22 **other electronic, chemical, or mechanical means, regardless of**  
23 **shape or size, ~~that can be used to~~ produce vapor from nicotine or**  
24 **any other substance, and the use or inhalation of which simulates**  
25 **smoking. Vapor product includes an electronic cigarette, electronic**  
26 **cigar, electronic cigarillo, electronic pipe, or similar product or**  
27 **device and a vapor cartridge or other container of nicotine or**  
28 **other substance in a solution or other form that is intended to be**  
29 **used with or in an electronic cigarette, electronic cigar,**

1 electronic cigarillo, electronic pipe, or similar product or  
2 device. Vapor product does not include a product regulated as a  
3 drug or device by the United States Food and Drug Administration  
4 under 21 USC 351 to ~~360fff-7.360fff-8~~.

5       Sec. 5. This act ~~shall be known and~~ may be cited as the "youth  
6 **"nicotine and** tobacco act".