

SENATE BILL NO. 651

November 09, 2023, Introduced by Senators SINGH, KLINEFELT, CHERRY, CHANG 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 1, 4, and 5 (MCL 722.641, 722.644, and 722.645), the title as amended by 2019 PA 18, sections 1 and 4 as amended by 2022 PA 167, and section 5 as added by 1988 PA 314, and by adding sections 1a, 1c, 1e, 1g, 1i, 1k, 1m, 1o, and 2f.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to prohibit ~~the~~ **establishments from** selling, giving, or

1 furnishing ~~of nicotine or~~ tobacco products ~~, vapor products, and~~
 2 ~~alternative nicotine products~~ to minors; **to create the nicotine and**
 3 **tobacco regulation fund in the state treasury; to require the**
 4 **licensure and regulation of establishments; to impose fees for**
 5 **licensure; to authorize the promulgation of rules;** to prohibit the
 6 purchase, possession, ~~or and~~ use of tobacco products, vapor
 7 products, and alternative nicotine products by minors; to regulate
 8 the retail sale of **nicotine or** tobacco products ~~, vapor products,~~
 9 ~~alternative nicotine products,~~ and liquid nicotine containers; **to**
 10 **prohibit persons from selling, giving, or furnishing certain vapor**
 11 **products to minors;** to prescribe penalties **and civil sanctions;** and
 12 to prescribe the powers and duties of certain state **and local**
 13 agencies and departments.

14 Sec. 1. (1) ~~A person~~ **Subject to subsections (5) and (6), an**
 15 **establishment** shall not sell, give, or furnish a **nicotine or**
 16 tobacco product ~~, vapor product, or alternative nicotine product~~ to
 17 a minor, including, but not limited to, through a vending machine.
 18 ~~A person who violates this subsection or subsection (8) is guilty~~
 19 ~~of a misdemeanor punishable by a fine as follows:~~

20 ~~(a) For a first offense, not more than \$100.00.~~

21 ~~(b) For a second offense, not more than \$500.00.~~

22 ~~(c) For a third or subsequent offense, not more than~~
 23 ~~\$2,500.00.~~

24 (2) ~~A person who sells tobacco products, vapor products, or~~
 25 ~~alternative nicotine products at retail~~ **Before an establishment**
 26 **sells, gives, or furnishes a nicotine or tobacco product to an**
 27 **individual, the establishment shall examine, in person,**
 28 **photographic identification of the individual.**

29 (3) **An establishment that violates subsection (1) or (2) is**

1 subject to an administrative fine, suspension or revocation of the
2 establishment's license, or both, as follows:

3 (a) For a first violation in a period of 36 months, \$1,500.00.

4 (b) For a second violation in a period of 36 months, \$2,000.00
5 and, if the establishment holds a license, the department shall
6 suspend the license for 30 days.

7 (c) For a third violation in a period of 36 months, \$2,500.00
8 and, if the establishment holds a license, the department shall
9 suspend the license for 1 year.

10 (d) For a fourth or subsequent violation in a period of 36
11 months, \$3,000.00 and, if the establishment holds a license, the
12 department shall revoke the license.

13 (4) For the violations described in subsections (3) and (9),
14 the department may bring an action to collect the fine. A fine
15 collected must be deposited in the fund.

16 (5) Subsection (1) does not apply to a minor's handling or
17 transportation of a nicotine or tobacco product under the terms of
18 the minor's employment.

19 (6) Subsection (1) does not apply if an establishment sells,
20 gives, or furnishes a nicotine or tobacco product to a minor after
21 the establishment makes a diligent and good-faith effort to examine
22 photographic identification in person. The photographic
23 identification must meet all of the following requirements:

24 (a) Appear to be authentic and government-issued.

25 (b) Establish the identity of the minor.

26 (c) Misrepresent that the minor is an individual 21 years of
27 age or older.

28 (7) An establishment shall post, in a place ~~close to the~~ not
29 more than 6 feet from each point of sale for a nicotine or tobacco

1 **product** and conspicuous to both employees and customers, ~~a~~**an**
 2 **unobstructed** sign produced by the department ~~of health and human~~
 3 ~~services~~ that includes the following statement:

4 "The purchase of a tobacco product, vapor product, or
 5 alternative nicotine product by ~~a minor under~~**an individual who is**
 6 **less than** 21 years of age and the provision of a **nicotine or**
 7 tobacco product ~~, vapor product, or alternative nicotine product to~~
 8 ~~a minor~~**an individual who is less than 21 years of age** are
 9 prohibited by law. ~~A minor~~**An individual who is less than 21 years**
 10 **of age and** unlawfully purchases, **possesses**, or uses a tobacco
 11 product, vapor product, or alternative nicotine product is subject
 12 to criminal penalties."

13 (8) ~~(3) If the~~**The** sign required under subsection ~~(2) is more~~
 14 ~~than 6 feet from the point of sale, it~~ (7) must be 5-1/2-**14** inches
 15 by ~~8-1/2~~-**11** inches, and the statement required under subsection ~~(2)~~
 16 (7) must be printed in 36-point, boldfaced, **uppercase** type **with**
 17 **high-contrast red ink**. ~~If the sign required under subsection (2) is~~
 18 ~~6 feet or less from the point of sale, it must be 2 inches by 4~~
 19 ~~inches and the statement required under subsection (2) must be~~
 20 ~~printed in 20-point boldfaced type.~~

21 (9) If all of the following conditions are met, an
 22 establishment that violates subsection (7) is subject to an
 23 administrative fine of \$50.00:

24 (a) The department, or the department's designee, observed the
 25 violation.

26 (b) After the observation described in subdivision (a), the
 27 department notified the establishment, in writing, of the
 28 violation.

29 (c) In the 30-day period immediately after the notification

1 **described in subdivision (b), the establishment failed to cure the**
 2 **violation.**

3 (10) ~~(4) The department of health and human services shall~~
 4 produce the sign required under subsection ~~(2)~~ **(7)** and have
 5 adequate copies of the sign ready for distribution, **free of charge,**
 6 to licensed wholesalers, secondary wholesalers, and unclassified
 7 acquirers of tobacco products and to persons who sell vapor
 8 products or alternative nicotine products at retail. ~~free of~~
 9 ~~charge.~~ Licensed wholesalers, secondary wholesalers, and
 10 unclassified acquirers of tobacco products shall obtain copies of
 11 the sign from the department ~~of health and human services~~ and
 12 distribute them, free of charge ~~, upon~~ **and on** request, to persons
 13 who sell tobacco products and ~~who~~ are subject to subsection ~~(2)~~.
 14 **(7)**. The department ~~of health and human services~~ shall provide
 15 copies of the sign, free of charge ~~, upon~~ **and on** request, to
 16 persons subject to subsection ~~(2)~~ ~~who~~ **(7) that** do not purchase
 17 their supply of tobacco products from wholesalers, secondary
 18 wholesalers, and unclassified acquirers of tobacco products
 19 licensed under the tobacco products tax act, 1993 PA 327, MCL
 20 205.421 to 205.436, and to persons who sell vapor products or
 21 alternative nicotine products at retail.

22 ~~(5) It is an affirmative defense to a charge under subsection~~
 23 ~~(1) that the defendant had in force at the time of arrest and~~
 24 ~~continues to have in force a written policy to prevent the sale of~~
 25 ~~tobacco products, vapor products, or alternative nicotine products,~~
 26 ~~as applicable, to individuals less than 21 years of age and that~~
 27 ~~the defendant enforced and continues to enforce the policy. A~~
 28 ~~defendant who proposes to offer evidence of the affirmative defense~~
 29 ~~described in this subsection shall file notice of the defense, in~~

1 ~~writing, with the court and serve a copy of the notice on the~~
2 ~~prosecuting attorney. The defendant shall serve the notice not less~~
3 ~~than 14 days before the date set for trial.~~

4 ~~(6) A prosecuting attorney who proposes to offer testimony to~~
5 ~~rebut the affirmative defense described in subsection (5) shall~~
6 ~~file a notice of rebuttal, in writing, with the court and serve a~~
7 ~~copy of the notice on the defendant. The prosecuting attorney shall~~
8 ~~serve the notice not less than 7 days before the date set for trial~~
9 ~~and shall include in the notice the name and address of each~~
10 ~~rebuttal witness.~~

11 ~~(7) Subsection (1) does not apply to the handling or~~
12 ~~transportation of a tobacco product, vapor product, or alternative~~
13 ~~nicotine product by a minor under the terms of the minor's~~
14 ~~employment.~~

15 ~~(8) Before selling, offering for sale, giving, or furnishing a~~
16 ~~tobacco product, vapor product, or alternative nicotine product to~~
17 ~~an individual, a person shall verify that the individual is at~~
18 ~~least 21 years of age by doing 1 of the following:~~

19 ~~(a) If the individual appears to be less than 27 years of age,~~
20 ~~examining a government-issued photographic identification that~~
21 ~~establishes that the individual is at least 21 years of age.~~

22 ~~(b) For sales made by the internet or other remote sales~~
23 ~~method, performing an age verification through an independent,~~
24 ~~third party age verification service that compares information~~
25 ~~available from a commercially available database, or aggregate of~~
26 ~~databases, that are regularly used by government agencies and~~
27 ~~businesses for the purpose of age and identity verification to the~~
28 ~~personal information entered by the individual during the ordering~~
29 ~~process that establishes that the individual is 21 years of age or~~

1 ~~elder.~~

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

4 (2) The state treasurer may deposit money and other assets
5 from any source in the fund. The state treasurer shall direct the
6 investment of the fund and credit interest and earnings from the
7 investments to the fund.

8 (3) The department is the administrator of the fund for audits
9 of the fund.

10 (4) The department shall expend money from the fund on
11 appropriation, only for the administration and enforcement of
12 licensure under this act, including, but not limited to, all of the
13 following:

14 (a) To ensure compliance with applicable law that relates to
15 the retail sale of a nicotine or tobacco product, the education and
16 training of persons that sell, or intend to sell, a nicotine or
17 tobacco product at retail; department staff; and others that are
18 subject to or enforce the applicable law.

19 (b) Application processing.

20 (c) Compliance checks.

21 (5) A fee collected under this act must be deposited in the
22 fund.

23 Sec. 1c. (1) Except as provided in section 1m and not earlier
24 than when the department begins accepting affidavits under section
25 1m and license applications, an establishment must hold a valid
26 license to sell a nicotine or tobacco product at retail. Both of
27 the following types of establishments are ineligible to hold a
28 license:

29 (a) A flash retail establishment.

1 (b) An itinerant establishment.

2 (2) Except as provided in subsection (3), a person shall not
3 sell a nicotine or tobacco product at retail unless the sale is at,
4 and on behalf of, an establishment that holds a valid license or is
5 temporarily exempt from licensure under section 1m.

6 (3) Subsection (2) does not apply to a nonmanagerial employee
7 who is at an establishment; is employed by the establishment; and
8 does not know, and does not have reason to know, that the
9 establishment is not an establishment described in subsection (2).

10 (4) A person that violates subsection (1) or (2) is subject to
11 an administrative fine and license ineligibility as follows:

12 (a) For a first violation in a period of 36 months, \$500.00,
13 and the person is ineligible to be granted a license for the 30
14 days immediately after the first violation.

15 (b) For a second violation in a period of 36 months,
16 \$1,000.00, and the person is ineligible to be granted a license for
17 the 3 years immediately after the second violation.

18 (c) For a third or subsequent violation in a period of 36
19 months, \$2,000.00, and the person is ineligible to be granted a
20 license for the 5 years immediately after the third or subsequent
21 violation.

22 (5) An establishment shall do all of the following:

23 (a) If the establishment holds a license, publicly display the
24 applicable certificate of licensure issued under section 1e, or a
25 copy of the certificate.

26 (b) Prohibit the sale, consumption, and use of marihuana on
27 the establishment's premises.

28 (c) If the establishment does not hold a valid license and is
29 not temporarily exempt from licensure under section 1m, both of the

1 following:

2 (i) Keep each of the establishment's nicotine or tobacco
3 products out of public view.

4 (ii) Refrain from advertisement that could lead a reasonable
5 consumer to believe that a nicotine or tobacco product can lawfully
6 be obtained at the establishment.

7 (6) An establishment shall not do any of the following:

8 (a) Deliver, or knowingly participate in a delivery of, a
9 nicotine or tobacco product to a consumer that is not on the
10 establishment's premises.

11 (b) Knowingly sell a nicotine or tobacco product to a person
12 that intends to deliver the nicotine or tobacco product to a
13 consumer as part of a commercial transaction.

14 (c) Sell a nicotine or tobacco product itinerantly, remotely,
15 or by flash retail.

16 (7) An establishment that violates subsection (5) or (6) is
17 subject to an administrative fine of not less than \$250.00 but not
18 more than \$2,000.00. The department shall also suspend or revoke
19 the establishment's license, if any, as follows:

20 (a) For a first violation in a period of 36 months, the
21 department shall suspend the license for 30 days.

22 (b) For a second violation in a period of 36 months, the
23 department shall suspend the license for 90 days.

24 (c) For a third violation in a period of 36 months, the
25 department shall suspend the license for 1 year.

26 (d) For a fourth or subsequent violation in a period of 36
27 months, the department shall revoke the license.

28 (8) For the violations described in subsections (4) and (7),
29 the department may bring an action to collect the fine. A fine

1 collected must be deposited in the fund.

2 Sec. 1e. (1) The department shall begin accepting affidavits
3 under section 1m and license applications not later than 15 months
4 after the effective date of the amendatory act that added this
5 section.

6 (2) The department shall set the fee to submit an application
7 for a new license. The new license fee, in conjunction with the
8 renewal fee described in section 1g, must be sufficient to cover
9 the cost to administer and enforce licensure under this act as
10 described in section 1a.

11 (3) An application for a new license must be in a form
12 prescribed by the department. In the application, the applicant
13 shall include the following information for each establishment for
14 which the applicant requests a license:

15 (a) The name, address, and telephone number of the
16 establishment.

17 (b) The name, address, and telephone number of each operator
18 of the establishment.

19 (c) For the establishment, or each operator of the
20 establishment, 1 name and mailing address to receive communication
21 under this act. An establishment, or an operator of an
22 establishment, that does not include a name and mailing address
23 under this subdivision consents to receiving communication at an
24 address described in subdivision (b).

25 (d) If the establishment is required to be licensed under the
26 tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436,
27 proof that the establishment is licensed, as applicable, under that
28 act.

29 (e) The establishment's, and each operator of the

1 establishment's, record, if any, for violations of this act that
2 occurred in the 5 years immediately before the date the application
3 is submitted. A record described in this subdivision must include
4 the date and location of each violation.

5 (f) An affidavit that affirms both of the following:

6 (i) Except as provided in section 1m, the establishment has not
7 sold and will not sell a nicotine or tobacco product at retail
8 without holding a valid license.

9 (ii) Each operator of the establishment has read this act and
10 has provided training to each employee of the establishment, if
11 any. The training described in this subparagraph must include the
12 following information:

13 (A) The sale of a nicotine or tobacco product to a minor is
14 prohibited by law.

15 (B) The consequences of selling a nicotine or tobacco product
16 to a minor.

17 (C) The types of identification that are permissible under
18 this act for proof of an individual's age.

19 (g) The signature of each operator of the establishment, under
20 the penalty of perjury as provided under section 423 of the
21 Michigan penal code, 1931 PA 328, MCL 750.423.

22 (h) Other information that the department finds necessary for
23 the administration or enforcement of this act.

24 (i) Payment for the new license fee described in subsection
25 (2).

26 (4) An establishment that has an application pending
27 department approval under this act shall inform the department of a
28 change in the information submitted with the application not later
29 than 10 business days after the change occurs.

1 (5) Not later than 90 days after the department receives a
2 complete application for a new license, the department shall grant
3 a license to each establishment for which the applicant requested a
4 license unless the department finds that 1 or more of the following
5 bases of denial exist:

6 (a) Information included in the application is inaccurate or
7 false.

8 (b) The establishment, or an operator of the establishment, is
9 ineligible for licensure under this act.

10 (c) The applicant requests a license for an establishment to
11 sell a nicotine or tobacco product that is prohibited by applicable
12 law.

13 (d) Granting a license to the establishment would not be
14 consistent with the public health and general welfare, as evidenced
15 by the establishment's, or an operator of the establishment's,
16 history of noncompliance with this act or any other law that
17 relates to the retail sale of a nicotine or tobacco product.

18 (e) The establishment, or an operator of the establishment,
19 has an unpaid fine under this act.

20 (6) For each license granted under subsection (5) and each
21 license renewal under section 1g, the department shall issue a
22 certificate of licensure to the establishment that holds the
23 license.

24 (7) Except as provided in section 91 of the administrative
25 procedures act of 1969, 1969 PA 306, MCL 24.291, and subject to a
26 license suspension or revocation, a license granted under
27 subsection (5) and a certificate of licensure issued under
28 subsection (6) are valid for 1 year.

29 (8) In addition to the bases of denial described in subsection

1 (5) and section 1g, the department shall deny, suspend, revoke, or
2 refuse to renew an establishment's license for good cause, which
3 includes all of the following:

4 (a) An applicant for the establishment submitted a false or
5 fraudulent license application.

6 (b) An applicant for the establishment included a false or
7 fraudulent statement in a license application.

8 (c) The establishment possesses a certificate described in
9 subsection (6) that is false or fraudulent.

10 (d) The establishment displays a certificate described in
11 subsection (6), pursuant to section 1c(5)(a), that is false or
12 fraudulent.

13 Sec. 1g. (1) To renew a license for a period of 1 year, an
14 establishment must submit an application for a renewed license as
15 follows:

16 (a) If the establishment is not subject to a license
17 suspension period at the expiration of the license term, not
18 earlier than 60 days before the expiration of the license term but
19 not later than 30 days before the expiration of the license term.

20 (b) If the establishment is subject to a license suspension
21 period at the expiration of the license term, not earlier than 60
22 days before the expiration of the license term but not later than
23 the day that the license suspension period expires. For purposes of
24 section 91 of the administrative procedures act of 1969, 1969 PA
25 306, MCL 24.291, an application submitted under this subdivision is
26 not timely.

27 (2) If an establishment fails to submit a license renewal
28 application under subsection (1), the establishment may submit an
29 application under section 1e only.

1 (3) The department shall set the fee to submit an application
2 for a renewed license. The renewal fee, in conjunction with the new
3 license fee described in section 1e, must be sufficient to cover
4 the cost to administer and enforce licensure under this act as
5 described in section 1a.

6 (4) An application for a renewed license must be in a form
7 prescribed by the department. In the application, the applicant
8 shall include the following information for each establishment for
9 which the applicant requests a renewed license:

10 (a) The name, address, and telephone number of the
11 establishment.

12 (b) The name, address, and telephone number of each operator
13 of the establishment.

14 (c) An affidavit that affirms both of the following:

15 (i) Except as provided in section 1m, the establishment has not
16 sold and will not sell a nicotine or tobacco product at retail
17 without holding a valid license.

18 (ii) The establishment, or an operator of the establishment, is
19 not subject to a license ineligibility period under this act.

20 (d) The signature of each operator of the establishment, under
21 the penalty of perjury as provided under section 423 of the
22 Michigan penal code, 1931 PA 328, MCL 750.423.

23 (e) Other information that the department finds necessary for
24 the administration or enforcement of this act.

25 (f) Payment for the renewal fee described in subsection (3).

26 (5) Subject to subsection (6), if the department receives a
27 complete application for a renewed license, the department shall
28 renew the license of each establishment for which the applicant
29 requested a renewed license as follows:

1 (a) For an application under subsection (1)(a), not later than
2 60 days after the department receives the application.

3 (b) For an application under subsection (1)(b), not later than
4 60 days after the expiration of the license suspension period.

5 (6) The department shall not renew the license of an
6 establishment included in an application received under subsection
7 (5) if the department finds that 1 or more of the following bases
8 of denial exist:

9 (a) Information included in the application is inaccurate or
10 false.

11 (b) The establishment, or an operator of the establishment, is
12 ineligible for licensure under this act.

13 (c) The applicant requests a renewed license for an
14 establishment to sell a nicotine or tobacco product that is
15 prohibited by applicable law.

16 (d) Renewing the establishment's license would not be
17 consistent with the public health and general welfare, as evidenced
18 by the establishment's, or an operator of the establishment's,
19 history of noncompliance with this act or any other law that
20 relates to the retail sale of a nicotine or tobacco product.

21 (e) The establishment, or an operator of the establishment,
22 has an unpaid fine under this act.

23 (7) Except as provided in section 91 of the administrative
24 procedures act of 1969, 1969 PA 306, MCL 24.291, and subject to a
25 license suspension or revocation, a license renewal under this
26 section is valid for 1 year.

27 Sec. 1i. (1) The department shall monitor each establishment
28 for compliance with this act.

29 (2) The department, or the department's designee, shall

1 conduct not less than 2 unannounced compliance checks per year at
2 each establishment. Each compliance check must involve all of the
3 following:

4 (a) An individual, 18 years of age or older but less than 21
5 years of age, who enters the establishment and attempts a purchase
6 of a nicotine or tobacco product.

7 (b) A visual inspection to ascertain whether the establishment
8 sells, or offers to sell, a nicotine or tobacco product that is
9 prohibited under applicable law.

10 (3) Not later than 3 months after an establishment fails a
11 compliance check under subsection (2), the department, or the
12 department's designee, shall conduct an additional compliance check
13 at the establishment. The additional compliance check must be
14 conducted as described in subsection (2).

15 (4) Every year, or more frequently, the department shall
16 publish the results of each compliance check conducted under this
17 section during the applicable time frame.

18 Sec. 1k. (1) An establishment's license is not transferable to
19 another establishment.

20 (2) When all ownership interest in an establishment is
21 transferred, the establishment's history of violations under this
22 act, if any, while under the ownership of the transferor is not
23 assumed by the transferee, if the transfer meets all of the
24 following requirements:

25 (a) The transfer is the result of an arm's-length transaction.

26 (b) The transfer is not between relatives or related entities.

27 (c) The transfer is not made to avoid a consequence of a
28 violation of this act.

29 (3) If any of the following changes occur with respect to an

1 establishment, the establishment shall inform the department of the
2 change not later than 60 days after the change:

3 (a) Ownership interest in the establishment is transferred.

4 (b) A person becomes an operator of the establishment and was
5 not included on the establishment's most recent license
6 application.

7 (c) A person ceases to be an operator of the establishment.

8 Sec. 1m. (1) An establishment is temporarily exempt from the
9 licensure provisions of this act if an affidavit is filed with the
10 department and meets both of the following requirements:

11 (a) The affidavit affirms all of the following:

12 (i) Before the effective date of the amendatory act that added
13 this section, the establishment lawfully sold a nicotine or tobacco
14 product at retail.

15 (ii) An application under section 1e has been submitted for the
16 establishment, and the application is pending department approval.

17 (iii) The establishment has not been granted a license.

18 (b) The affidavit includes the signature of each operator of
19 the establishment, under the penalty of perjury as provided under
20 section 423 of the Michigan penal code, 1931 PA 328, MCL 750.423.

21 (2) An establishment's temporary exemption under subsection
22 (1) expires when the establishment's application under section 1e
23 is no longer pending department approval.

24 Sec. 1o. (1) The department may promulgate rules to implement
25 the licensure provisions of this act under the administrative
26 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

27 (2) The department and the department of treasury shall share
28 information that is necessary for the effective administration or
29 enforcement of this act.

1 (3) The department shall not deny, suspend, revoke, or refuse
2 to renew a license or impose an administrative fine or license
3 ineligibility period under this act unless the person that is
4 subject to the department's action is provided notice and an
5 opportunity for a hearing under the administrative procedures act
6 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

7 (4) A nicotine or tobacco product that is possessed,
8 delivered, offered for sale, or sold in violation of sections 1 to
9 1m may be seized and confiscated by the department after its
10 possessor, deliverer, offeror, or seller is provided notice and an
11 opportunity for a hearing under the administrative procedures act
12 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

13 (5) If all appeals, including judicial review, are exhausted
14 for a nicotine or tobacco product seized and confiscated under
15 subsection (4), the department shall destroy the nicotine or
16 tobacco product.

17 Sec. 2f. (1) Except as provided in the Michigan Regulation and
18 Taxation of Marihuana Act, 2018 IL 1, MCL 333.27951 to 333.27967,
19 and subject to subsections (2) and (3), a person shall not sell,
20 give, or furnish an unqualified vapor product to a minor,
21 including, but not limited to, through a vending machine. A person
22 that violates this subsection is guilty of a misdemeanor punishable
23 by a fine as follows:

24 (a) For a first offense, not more than \$100.00.

25 (b) For a second offense, not more than \$500.00.

26 (c) For a third or subsequent offense, not more than
27 \$2,500.00.

28 (2) Subsection (1) does not apply to a minor's handling or
29 transportation of an unqualified vapor product under the terms of

1 the minor's employment.

2 (3) Subsection (1) does not apply if a person sells, gives, or
3 furnishes an unqualified vapor product to a minor after the person
4 makes a diligent and good-faith effort to examine photographic
5 identification in person. The photographic identification must meet
6 all of the following requirements:

7 (a) Appear to be authentic and government-issued.

8 (b) Establish the identity of the minor.

9 (c) Misrepresent that the minor is an individual 21 years of
10 age or older.

11 Sec. 4. As used in this act:

12 (a) "Alternative nicotine product" means a noncombustible
13 product ~~containing that contains~~ nicotine ~~that and~~ is intended for
14 human consumption, whether chewed, absorbed, dissolved, or ingested
15 by any other means. Alternative nicotine product does not include a
16 tobacco product, a vapor product, food, or a product regulated as a
17 drug or device by the United States Food and Drug Administration
18 under 21 USC 351 to ~~360fff-7-360fff-8~~.

19 (b) "Arm's-length transaction" means a transaction, in good
20 faith and for consideration that reflects fair market value,
21 between 2 or more informed parties that are all uncompelled and
22 willing to make the transaction.

23 (c) "At retail" or "retail" does not include the sale of a
24 tobacco product by the department of treasury under section 9 of
25 the tobacco products tax act, 1993 PA 327, MCL 205.429.

26 (d) "Department" means the department of health and human
27 services.

28 (e) "Establishment" means a place of business, or area within
29 a place of business, where a nicotine or tobacco product is sold,

1 or is intended to be sold, at retail.

2 (f) "Flash retail" means the use of a mobile, pop-up, or
3 temporary structure for retail.

4 (g) "Fund" means the nicotine and tobacco regulation fund
5 created in section 1a.

6 (h) "License" means the license described in section 1c.

7 (i) "Marihuana" means that term as defined in section 3 of the
8 Michigan Regulation and Taxation of Marihuana Act, 2018 IL 1, MCL
9 333.27953.

10 (j) ~~(b)~~ "Minor" means an individual who is less than 21 years
11 of age.

12 (k) "Nicotine or tobacco product" means any of the following:

13 (i) A product that contains, is made of, or is derived from
14 nicotine or tobacco, from any source; that is intended for human
15 consumption or is likely to be consumed by humans, by any means,
16 including, but not limited to, inhaling, absorbing, or ingesting;
17 and that is not regulated as a drug or device by the United States
18 Food and Drug Administration under 21 USC 351 to 360fff-8.

19 (ii) An alternative nicotine product.

20 (iii) A tobacco product.

21 (iv) A qualified vapor product.

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

28 (l) "Nonmanagerial employee" means a cashier or clerk that does
29 not have managerial control at the cashier's or clerk's employer

1 under the terms of the cashier's or clerk's employment.

2 (m) "Operator" means a person that does 1 or both of the
3 following:

4 (i) Controls the day-to-day operations of an establishment.

5 (ii) Holds not less than 10% ownership interest in an
6 establishment.

7 (n) "Person" means an individual or a partnership,
8 corporation, limited liability company, association, governmental
9 entity, or other legal entity.

10 (o) "Person who sells tobacco products at retail" means a
11 person whose ordinary course of business consists, in whole or in
12 part, of the retail sale of tobacco products subject to state sales
13 tax.

14 (p) ~~(e)~~—"Person who sells vapor products or alternative
15 nicotine products at retail" means a person whose ordinary course
16 of business consists, in whole or in part, of the retail sale of
17 vapor products or alternative nicotine products.

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

22 (q) ~~(e)~~—"Public place" means a public street, sidewalk, or
23 park or any area open to the general public in a publicly owned or
24 operated building or public place of business.

25 (r) "Qualified vapor product" means 1 or both of the
26 following:

27 (i) A vapor product for the production of vapor from nicotine
28 or tobacco.

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

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

9 **(t)** "Unqualified vapor product" means a vapor product that is
 10 **not a qualified vapor product.**

11 **(u)** ~~(g)~~—"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 **(v)** ~~(h)~~—"Vapor product" means a noncombustible product that
 16 employs a heating element, power source, electronic circuit, or
 17 other electronic, chemical, or mechanical means, regardless of
 18 shape or size, ~~that can be used to produce vapor from nicotine or~~
 19 any other substance, and the use or inhalation of which simulates
 20 smoking. Vapor product includes an electronic cigarette, electronic
 21 cigar, electronic cigarillo, electronic pipe, or similar product or
 22 device and a vapor cartridge or other container of nicotine or
 23 other substance in a solution or other form that is intended to be
 24 used with or in an electronic cigarette, electronic cigar,
 25 electronic cigarillo, electronic pipe, or similar product or
 26 device. Vapor product does not include a product regulated as a
 27 drug or device by the United States Food and Drug Administration
 28 under 21 USC 351 to ~~360fff-7.~~ **360fff-8.**

29 Sec. 5. This act ~~shall be known and~~ may be cited as the "youth

1 "nicotine and tobacco act".