

SENATE BILL NO. 654

November 09, 2023, Introduced by Senators WOJNO, CAVANAGH, CHERRY, SINGH, 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, 2, and 5 (MCL 722.641, 722.642, and 722.645), the title and section 2 as amended by 2019 PA 18, section 1 as amended by 2022 PA 167, and section 5 as added by 1988 PA 314.

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 prohibit the purchase, possession, or use of tobacco~~
3 ~~products, vapor products, and alternative nicotine products by~~
4 ~~minors;~~ to regulate the retail sale of tobacco products, vapor
5 products, alternative nicotine products, and liquid nicotine
6 containers; to prescribe penalties **and civil sanctions**; and to
7 prescribe the powers and duties of certain state **and local** agencies
8 and departments.

9 Sec. 1. (1) A person shall not sell, give, or furnish a
10 tobacco product, vapor product, or alternative nicotine product to
11 a minor, including, but not limited to, through a vending machine.
12 A person ~~who~~ **that** violates this subsection or subsection (8) is
13 guilty of a misdemeanor punishable by a fine as follows:

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

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

16 (c) For a third or subsequent offense, not more than
17 \$2,500.00.

18 (2) A person who sells tobacco products, vapor products, or
19 alternative nicotine products at retail shall post, in a place
20 ~~close to the~~ **not more than 6 feet from each tobacco product, vapor**
21 **product, or alternative nicotine product** point of sale and
22 conspicuous to both employees and customers, ~~a~~ **an unobstructed** sign
23 produced by the department of health and human services that
24 includes the following statement:

25 "The ~~purchase~~ **selling, giving, or furnishing** of a tobacco
26 product, vapor product, or alternative nicotine product ~~by a minor~~
27 ~~under~~ **to an individual who is less than 21 years of age and the**
28 ~~provision of a tobacco product, vapor product, or alternative~~
29 ~~nicotine product to a minor are~~ **is** prohibited by law.". A minor who

1 ~~unlawfully purchases or uses a tobacco product, vapor product, or~~
 2 ~~alternative nicotine product is subject to criminal penalties."~~

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

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

29 (5) It is an affirmative defense to a charge under subsection

1 (1) that the defendant had in force at the time of arrest and
2 continues to have in force a written policy to prevent the sale of
3 tobacco products, vapor products, or alternative nicotine products,
4 as applicable, to ~~individuals less than 21 years of age~~ **minors** and
5 that the defendant enforced and continues to enforce the policy. A
6 defendant ~~who~~ **that** proposes to offer evidence of the affirmative
7 defense described in this subsection shall file notice of the
8 defense, in writing, with the court and serve a copy of the notice
9 on the prosecuting attorney. The defendant shall serve the notice
10 not less than 14 days before the date set for trial.

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

18 (7) Subsection (1) does not apply to ~~the~~ **a minor's** handling or
19 transportation of a tobacco product, vapor product, or alternative
20 nicotine product ~~by a minor~~ under the terms of the minor's
21 employment.

22 (8) Before selling, offering for sale, giving, or furnishing a
23 tobacco product, vapor product, or alternative nicotine product to
24 an individual, a person shall verify that the individual is ~~at~~
25 ~~least~~ **not less than** 21 years of age by doing 1 of the following:

26 (a) If the individual appears to be less than 27 years of age,
27 examining a government-issued photographic identification that
28 establishes that the individual is ~~at least~~ **not less than** 21 years
29 of age.

1 (b) For sales made by the internet or other remote sales
 2 method, performing an age verification through an independent,
 3 third-party age verification service that compares information
 4 available from a commercially available database, or aggregate of
 5 databases, that are regularly used by government agencies and
 6 businesses for the purpose of age and identity verification to the
 7 personal information entered by the individual during the ordering
 8 process that establishes that the individual is 21 years of age or
 9 older.

10 Sec. 2. (1) Subject to ~~subsection~~**subsections** (6) **and (7)**, a
 11 minor shall not do any of the following:

12 (a) Purchase or attempt to purchase a tobacco product.

13 (b) Possess or attempt to possess a tobacco product.

14 (c) Use a tobacco product in a public place.

15 (d) Present or offer to an individual a purported proof of age
 16 that is false, fraudulent, or not actually ~~his or her~~**the minor's**
 17 own proof of age for the purpose of purchasing, attempting to
 18 purchase, possessing, or attempting to possess a tobacco product.

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

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

28 (i) Perform not more than 16 hours of community service.

29 (ii) Participate in a health promotion and risk reduction

1 assessment program.

2 (b) For a second violation, in addition to participation in a
3 health promotion and risk reduction assessment program, the court
4 may order the individual to perform not more than 32 hours of
5 community service.

6 (c) For a third or subsequent violation, in addition to
7 participation in a health promotion and risk reduction assessment
8 program, the court may order the individual to perform not more
9 than 48 hours of community service.

10 (3) Subject to ~~subsection~~**subsections** (6) **and (7)**, a minor
11 shall not do any of the following:

12 (a) Purchase or attempt to purchase a vapor product or
13 alternative nicotine product.

14 (b) Possess or attempt to possess a vapor product or
15 alternative nicotine product.

16 (c) Use a vapor product or alternative nicotine product in a
17 public place.

18 (d) Present or offer to an individual a purported proof of age
19 that is false, fraudulent, or not actually ~~his or her~~**the minor's**
20 own proof of age for the purpose of purchasing, attempting to
21 purchase, possessing, or attempting to possess a vapor product or
22 alternative nicotine product.

23 (4) An individual who violates subsection (3) is responsible
24 for a state civil infraction or guilty of a misdemeanor as follows:

25 (a) For ~~the~~**a** first violation, the individual is responsible
26 for a state civil infraction and ~~shall~~**must** be fined not more than
27 \$50.00. The court may order the individual to participate in a
28 health promotion and risk reduction assessment program, if
29 available. In addition, the court may order the individual to

1 perform not more than 16 hours of community service.

2 (b) For ~~the~~**a** second violation, the individual is responsible
3 for a state civil infraction and ~~shall~~**must** be fined not more than
4 \$50.00. The court may order the individual to participate in a
5 health promotion and risk reduction assessment program, if
6 available. In addition, the court may order the individual to
7 perform not more than 32 hours of community service.

8 (c) If a violation of subsection (3) occurs after 2 or more
9 prior judgments, the individual is guilty of a misdemeanor
10 punishable by a fine of not more than \$50.00 for each violation.
11 Pursuant to a probation order, the court may also require the
12 individual to participate in a health promotion and risk reduction
13 assessment program, if available. In addition, the court may order
14 the individual to perform not more than 48 hours of community
15 service.

16 (5) An individual who is ordered to participate in a health
17 promotion and risk reduction assessment program under subsection
18 (2) or (4) is responsible for the costs of participating in the
19 program.

20 (6) Subsections (1) and (3) do not apply to a minor
21 participating in any of the following:

22 (a) An undercover operation in which the minor purchases or
23 receives a tobacco product, vapor product, or alternative nicotine
24 product under the direction of the minor's employer and with the
25 prior approval of the local prosecutor's office as part of an
26 employer-sponsored internal enforcement action.

27 (b) An undercover operation in which the minor purchases or
28 receives a tobacco product, vapor product, or alternative nicotine
29 product under the direction of the state police or a local police

1 agency as part of an enforcement action, unless the initial or
2 contemporaneous purchase or receipt of the tobacco product, vapor
3 product, or alternative nicotine product by the minor was not under
4 the direction of the state police or the local police agency and
5 was not part of the undercover operation.

6 (c) Compliance checks in which the minor attempts to purchase
7 tobacco products for the purpose of satisfying federal substance
8 abuse block grant youth tobacco access requirements, if the
9 compliance checks are conducted under the direction of a substance
10 use disorder coordinating agency and with the prior approval of the
11 state police or a local police agency.

12 (7) Subsections (1) and (3) do not apply to the handling or
13 transportation of a tobacco product, vapor product, or alternative
14 nicotine product by a minor under the terms of the minor's
15 employment.

16 (8) This section does not prohibit an individual from being
17 charged with, convicted of, or sentenced for any other violation of
18 law that arises out of ~~the~~a violation of subsection (1) or (3).

19 **(9) Subsections (1) to (8) do not apply after the effective**
20 **date of the amendatory act that added this subsection.**

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