

SUBSTITUTE FOR
SENATE BILL NO. 668

A bill to amend 1915 PA 31, entitled
"Youth tobacco act,"
by amending the title and sections 1 and 4 (MCL 722.641 and
722.644), as amended by 2006 PA 236.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to prohibit the selling, giving, or furnishing of
3 tobacco products, **VAPOR PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS**
4 to minors; to prohibit the purchase, possession, or use of tobacco
5 products, **VAPOR PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS** by
6 minors; to regulate the retail sale of tobacco products, **VAPOR**
7 **PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS**; to prescribe
8 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 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 be 5-1/2 inches by 8-1/2
22 inches and the statement required under subsection (2) shall be
23 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 be 2 inches by 4 inches and the statement required under subsection
26 (2) shall be printed in 20-point boldfaced type.

27 (4) The department of community health shall produce the sign

required under subsection (2) and have adequate copies of the sign ready for distribution to licensed wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products **AND TO PERSONS WHO SELL VAPOR PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS AT RETAIL** free of charge. Licensed wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products shall obtain copies of the sign from the department of community health and distribute them free of charge, upon request, to persons who **SELL TOBACCO PRODUCTS AND WHO** are subject to subsection (2). The department of community health shall provide copies of the sign free of charge, upon request, to persons subject to subsection (2) who do not purchase their supply of tobacco products from wholesalers, secondary wholesalers, and unclassified acquirers of tobacco products licensed under the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, **AND TO PERSONS WHO SELL VAPOR PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS AT RETAIL.**

(5) It is an affirmative defense to a charge under subsection (1) that the defendant had in force at the time of arrest and continues to have in force a written policy to prevent the sale of tobacco products, **VAPOR PRODUCTS, OR ALTERNATIVE NICOTINE PRODUCTS, AS APPLICABLE,** to persons under 18 years of age and that the defendant enforced and continues to enforce the policy. A defendant who proposes to offer evidence of the affirmative defense described in this subsection shall file ~~and serve~~ notice of the defense, in writing, ~~upon~~ **WITH** the court and **SERVE A COPY OF THE NOTICE ON** the prosecuting attorney. The **DEFENDANT SHALL SERVE THE** notice ~~shall be served~~ not less than 14 days before the date set for trial.

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

9 (7) 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 (8) **BEFORE SELLING, OFFERING FOR SALE, GIVING, OR FURNISHING A**
14 **VAPOR PRODUCT OR ALTERNATIVE NICOTINE PRODUCT TO AN INDIVIDUAL, A**
15 **PERSON SHALL VERIFY THAT THE INDIVIDUAL IS AT LEAST 18 YEARS OF AGE**
16 **BY DOING 1 OF THE FOLLOWING:**

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

20 (B) FOR SALES MADE BY THE INTERNET OR OTHER REMOTE SALES
21 METHOD, PERFORMING AN AGE VERIFICATION THROUGH AN INDEPENDENT,
22 THIRD-PARTY AGE VERIFICATION SERVICE THAT COMPARES INFORMATION
23 AVAILABLE FROM A COMMERCIALY AVAILABLE DATABASE, OR AGGREGATE OF
24 DATABASES, THAT ARE REGULARLY USED BY GOVERNMENT AGENCIES AND
25 BUSINESSES FOR THE PURPOSE OF AGE AND IDENTITY VERIFICATION TO THE
26 PERSONAL INFORMATION ENTERED BY THE INDIVIDUAL DURING THE ORDERING
27 PROCESS THAT ESTABLISHES THAT THE INDIVIDUAL IS 18 YEARS OF AGE OR

1 OLDER.

2 Sec. 4. As used in this act:

3 (A) "ALTERNATIVE NICOTINE PRODUCT" MEANS A NONCOMBUSTIBLE
4 PRODUCT CONTAINING NICOTINE THAT IS INTENDED FOR HUMAN CONSUMPTION,
5 WHETHER CHEWED, ABSORBED, DISSOLVED, OR INGESTED BY ANY OTHER
6 MEANS. ALTERNATIVE NICOTINE PRODUCT DOES NOT INCLUDE A TOBACCO
7 PRODUCT, A VAPOR PRODUCT, OR A PRODUCT REGULATED AS A DRUG OR
8 DEVICE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION UNDER
9 SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21 USC
10 351 TO 360EEE-4.

11 (B) ~~(a)~~—"Minor" means an individual ~~under~~ WHO IS LESS THAN 18
12 years of age.

13 (C) "PERSON WHO SELLS VAPOR PRODUCTS OR ALTERNATIVE NICOTINE
14 PRODUCTS AT RETAIL" MEANS A PERSON WHOSE ORDINARY COURSE OF
15 BUSINESS CONSISTS, IN WHOLE OR IN PART, OF THE RETAIL SALE OF VAPOR
16 PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS.

17 (D) ~~(b)~~—"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 (E) ~~(c)~~—"Public place" means a public street, sidewalk, or
22 park or any area open to the general public in a publicly owned or
23 operated building or public place of business.

24 (F) ~~(d)~~—"Tobacco product" means a product that contains
25 tobacco and is intended for human consumption, including, but not
26 limited to, cigarettes, noncigarette smoking tobacco, or smokeless
27 tobacco, as those terms are defined in section 2 of the tobacco

1 products tax act, 1993 PA 327, MCL 205.422, and cigars. TOBACCO
2 PRODUCT DOES NOT INCLUDE A VAPOR PRODUCT, AN ALTERNATIVE NICOTINE
3 PRODUCT, OR A PRODUCT REGULATED AS A DRUG OR DEVICE BY THE UNITED
4 STATES FOOD AND DRUG ADMINISTRATION UNDER SUBCHAPTER V OF THE
5 FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21 USC 351 TO 360EEE-4.

6 (G) ~~(e)~~—"Use a tobacco product, VAPOR PRODUCT, OR ALTERNATIVE
7 NICOTINE PRODUCT" means to smoke, chew, suck, inhale, or otherwise
8 consume a tobacco product, VAPOR PRODUCT, OR ALTERNATIVE NICOTINE
9 PRODUCT.

10 (H) "VAPOR PRODUCT" MEANS A NONCOMBUSTIBLE PRODUCT CONTAINING
11 NICOTINE THAT EMPLOYS A HEATING ELEMENT, POWER SOURCE, ELECTRONIC
12 CIRCUIT, OR OTHER ELECTRONIC, CHEMICAL, OR MECHANICAL MEANS,
13 REGARDLESS OF SHAPE OR SIZE, THAT CAN BE USED TO PRODUCE VAPOR FROM
14 NICOTINE IN A SOLUTION OR OTHER FORM. VAPOR PRODUCT INCLUDES AN
15 ELECTRONIC CIGARETTE, ELECTRONIC CIGAR, ELECTRONIC CIGARILLO,
16 ELECTRONIC PIPE, OR SIMILAR PRODUCT OR DEVICE AND A VAPOR CARTRIDGE
17 OR OTHER CONTAINER OF NICOTINE IN A SOLUTION OR OTHER FORM THAT IS
18 INTENDED TO BE USED WITH OR IN AN ELECTRONIC CIGARETTE, ELECTRONIC
19 CIGAR, ELECTRONIC CIGARILLO, ELECTRONIC PIPE, OR SIMILAR PRODUCT OR
20 DEVICE. VAPOR PRODUCT DOES NOT INCLUDE A PRODUCT REGULATED AS A
21 DRUG OR DEVICE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION
22 UNDER SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT, 21
23 USC 351 TO 360EEE-4.

24 Enacting section 1. This amendatory act takes effect 60 days
25 after the date it is enacted into law.

26 Enacting section 2. This amendatory act does not take effect
27 unless Senate Bill No. 667 of the 97th Legislature is enacted into

1 law.