

HOUSE BILL No. 4997

September 19, 2013, Introduced by Reps. Outman, Muxlow, Yonker, Hooker, Denby, Rogers, Kelly, Glardon, Johnson, Lyons, Pettalia, Genetski, Franz, Victory, Pagel, Daley, Poleski, Lori, MacGregor, Walsh and O'Brien and referred to the Committee on Regulatory Reform.

A bill to amend 1915 PA 31, entitled
"Youth tobacco act,"
by amending the title and sections 1, 2, and 4 (MCL 722.641,
722.642, and 722.644), as amended by 2006 PA 236.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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TITLE

An act to prohibit the selling, giving, or furnishing of tobacco products, **TOBACCO-DERIVED PRODUCTS, AND VAPOR PRODUCTS** to minors; to prohibit the purchase, possession, or use of tobacco products, **TOBACCO-DERIVED PRODUCTS, AND VAPOR PRODUCTS** by minors; to regulate the retail sale of tobacco products, **TOBACCO-DERIVED PRODUCTS, AND VAPOR PRODUCTS**; to prescribe penalties; and to prescribe the powers and duties of certain state agencies and departments.

1 Sec. 1. (1) A person shall not sell, give, or furnish a
2 tobacco product, **TOBACCO-DERIVED PRODUCT, VAPOR PRODUCT, OR**
3 **COMPONENT OF A VAPOR PRODUCT** to a minor. A person who violates this
4 subsection is guilty of a misdemeanor punishable by a fine of not
5 more than \$50.00 for each violation.

6 (2) A person who sells tobacco products, **TOBACCO-DERIVED**
7 **PRODUCTS, VAPOR PRODUCTS, OR COMPONENTS OF VAPOR PRODUCTS** at retail
8 shall post, in a place close to the point of sale and conspicuous
9 to both employees and customers, a sign produced by the department
10 of community health that includes the following statement:

11 "The purchase of ~~A tobacco products~~**PRODUCT, TOBACCO-DERIVED**
12 **PRODUCT, VAPOR PRODUCT, OR COMPONENT OF A VAPOR PRODUCT** by a minor
13 under 18 years of age and the provision of ~~A tobacco products~~
14 **PRODUCT, TOBACCO-DERIVED PRODUCT, VAPOR PRODUCT, OR COMPONENT OF A**
15 **VAPOR PRODUCT** to a minor are prohibited by law. A minor **WHO**
16 unlawfully ~~purchasing~~**PURCHASES** or ~~using~~**USES A tobacco products**
17 **PRODUCT, TOBACCO-DERIVED PRODUCT, VAPOR PRODUCT, OR COMPONENT OF A**
18 **VAPOR PRODUCT** is subject to criminal penalties.".

19 (3) If the sign required under subsection (2) is more than 6
20 feet from the point of sale, it shall be 5-1/2 inches by 8-1/2
21 inches and the statement required under subsection (2) shall be
22 printed in 36-point boldfaced type. If the sign required under
23 subsection (2) is 6 feet or less from the point of sale, it shall
24 be 2 inches by 4 inches and the statement required under subsection
25 (2) shall be printed in 20-point boldfaced type.

26 (4) The department of community health shall produce the sign
27 required under subsection (2) and have adequate copies of the sign

1 ready for distribution to licensed wholesalers, secondary
 2 wholesalers, and unclassified acquirers of tobacco products **AND TO**
 3 **PERSONS WHO SELL TOBACCO-DERIVED PRODUCTS, VAPOR PRODUCTS, OR**
 4 **COMPONENTS OF VAPOR PRODUCTS AT RETAIL** free of charge. Licensed
 5 wholesalers, secondary wholesalers, and unclassified acquirers of
 6 tobacco products shall obtain copies of the sign from the
 7 department of community health and distribute them free of charge,
 8 upon request, to persons who **SELL TOBACCO PRODUCTS AND WHO** are
 9 subject to subsection (2). The department of community health shall
 10 provide copies of the sign free of charge, upon request, to persons
 11 subject to subsection (2) who do not purchase their supply of
 12 tobacco products from wholesalers, secondary wholesalers, and
 13 unclassified acquirers of tobacco products licensed under the
 14 tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, **AND**
 15 **TO PERSONS WHO SELL TOBACCO-DERIVED PRODUCTS, VAPOR PRODUCTS, OR**
 16 **COMPONENTS OF VAPOR PRODUCTS AT RETAIL.**

17 (5) It is an affirmative defense to a charge under subsection
 18 (1) that the defendant had in force at the time of arrest and
 19 continues to have in force a written policy to prevent the sale of
 20 tobacco products, **TOBACCO-DERIVED PRODUCTS, VAPOR PRODUCTS, OR**
 21 **COMPONENTS OF VAPOR PRODUCTS, AS APPLICABLE,** to persons under 18
 22 years of age and that the defendant enforced and continues to
 23 enforce the policy. A defendant who proposes to offer evidence of
 24 the affirmative defense described in this subsection shall file ~~and~~
 25 ~~serve~~ notice of the defense, in writing, ~~upon~~ **WITH** the court and
 26 **SERVE A COPY OF THE NOTICE ON** the prosecuting attorney. The
 27 **DEFENDANT SHALL SERVE THE** notice ~~shall be served~~ not less than 14

1 days before the date set for trial.

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

10 (7) Subsection (1) does not apply to the handling or
11 transportation of a tobacco product, **TOBACCO-DERIVED PRODUCT, VAPOR**
12 **PRODUCT, OR COMPONENT OF A VAPOR PRODUCT** by a minor under the terms
13 of ~~that~~ **THE** minor's employment.

14 Sec. 2. (1) Subject to subsection (3), a minor shall not do
15 any of the following:

16 (a) Purchase or attempt to purchase a tobacco product,
17 **TOBACCO-DERIVED PRODUCT, VAPOR PRODUCT, OR COMPONENT OF A VAPOR**
18 **PRODUCT.**

19 (b) Possess or attempt to possess a tobacco product, **TOBACCO-**
20 **DERIVED PRODUCT, VAPOR PRODUCT, OR COMPONENT OF A VAPOR PRODUCT.**

21 (c) Use a tobacco product, **TOBACCO-DERIVED PRODUCT, VAPOR**
22 **PRODUCT, OR COMPONENT OF A VAPOR PRODUCT** in a public place.

23 (d) Present or offer to an individual a purported proof of age
24 that is false, fraudulent, or not actually his or her own proof of
25 age for the purpose of purchasing, attempting to purchase,
26 possessing, or attempting to possess a tobacco product, **TOBACCO-**
27 **DERIVED PRODUCT, VAPOR PRODUCT, OR COMPONENT OF A VAPOR PRODUCT.**

1 (2) An individual who violates subsection (1) is guilty of a
2 misdemeanor punishable by a fine of not more than \$50.00 for each
3 violation. Pursuant to a probation order, the court may also
4 require an individual who violates subsection (1) to participate in
5 a health promotion and risk reduction assessment program, if
6 available. An individual who is ordered to participate in a health
7 promotion and risk reduction assessment program under this
8 subsection is responsible for the costs of participating in the
9 program. In addition, an individual who violates subsection (1) is
10 subject to the following:

11 (a) For the first violation, the court may order the
12 individual to do 1 of the following:

13 (i) Perform not more than 16 hours of community service in a
14 hospice, nursing home, or long-term care facility.

15 (ii) Participate in a health promotion and risk reduction
16 program, as described in this subsection.

17 (b) For a second violation, in addition to participation in a
18 health promotion and risk reduction program, the court may order
19 the individual to perform not more than 32 hours of community
20 service in a hospice, nursing home, or long-term care facility.

21 (c) For a third or subsequent violation, in addition to
22 participation in a health promotion and risk reduction program, the
23 court may order the individual to perform not more than 48 hours of
24 community service in a hospice, nursing home, or long-term care
25 facility.

26 (3) Subsection (1) does not apply to a minor participating in
27 any of the following:

1 (a) An undercover operation in which the minor purchases or
2 receives a tobacco product, **TOBACCO-DERIVED PRODUCT, VAPOR PRODUCT,**
3 **OR COMPONENT OF A VAPOR PRODUCT** under the direction of the minor's
4 employer and with the prior approval of the local prosecutor's
5 office as part of an employer-sponsored internal enforcement
6 action.

7 (b) An undercover operation in which the minor purchases or
8 receives a tobacco product, **TOBACCO-DERIVED PRODUCT, VAPOR PRODUCT,**
9 **OR COMPONENT OF A VAPOR PRODUCT** under the direction of the state
10 police or a local police agency as part of an enforcement action,
11 unless the initial or contemporaneous purchase or receipt of the
12 tobacco product, **TOBACCO-DERIVED PRODUCT, VAPOR PRODUCT, OR**
13 **COMPONENT OF A VAPOR PRODUCT** by the minor was not under the
14 direction of the state police or the local police agency and was
15 not part of the undercover operation.

16 (c) Compliance checks in which the minor attempts to purchase
17 tobacco products for the purpose of satisfying federal substance
18 abuse block grant youth tobacco access requirements, if the
19 compliance checks are conducted under the direction of a substance
20 abuse coordinating agency ~~as defined in section 6103 of the public~~
21 ~~health code, 1978 PA 368, MCL 333.6103,~~ and with the prior approval
22 of the state police or a local police agency.

23 (4) Subsection (1) does not apply to the handling or
24 transportation of a tobacco product, **TOBACCO-DERIVED PRODUCT, VAPOR**
25 **PRODUCT, OR COMPONENT OF A VAPOR PRODUCT** by a minor under the terms
26 of ~~that~~ **THE** minor's employment.

27 (5) This section does not prohibit ~~the~~ **AN** individual from

1 being charged with, convicted of, or sentenced for any other
2 violation of law ~~arising~~ **THAT ARISES** out of the violation of
3 subsection (1).

4 Sec. 4. As used in this act:

5 (a) "Minor" means an individual ~~under~~ **WHO IS LESS THAN** 18
6 years of age.

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

11 (C) **"PERSON WHO SELLS TOBACCO-DERIVED PRODUCTS, VAPOR**
12 **PRODUCTS, OR COMPONENTS OF VAPOR PRODUCTS AT RETAIL" MEANS A PERSON**
13 **WHOSE ORDINARY COURSE OF BUSINESS CONSISTS, IN WHOLE OR IN PART, OF**
14 **THE RETAIL SALE OF TOBACCO-DERIVED PRODUCTS, VAPOR PRODUCTS, OR**
15 **COMPONENTS OF VAPOR PRODUCTS.**

16 (D) ~~(e)~~ "Public place" means a public street, sidewalk, or
17 park or any area open to the general public in a publicly owned or
18 operated building or public place of business.

19 (E) ~~(d)~~ "Tobacco product" means a product that contains
20 tobacco and is intended for human consumption, including, but not
21 limited to, cigarettes, noncigarette smoking tobacco, or smokeless
22 tobacco, as those terms are defined in section 2 of the tobacco
23 products tax act, 1993 PA 327, MCL 205.422, and cigars.

24 (F) **"TOBACCO-DERIVED PRODUCT" MEANS ANY NONCOMBUSTIBLE PRODUCT**
25 **DERIVED FROM TOBACCO THAT CONTAINS NICOTINE AND IS INTENDED FOR**
26 **HUMAN CONSUMPTION, WHETHER CHEWED, ABSORBED, DISSOLVED, INGESTED,**
27 **OR BY OTHER MEANS. TOBACCO-DERIVED PRODUCT DOES NOT INCLUDE A VAPOR**

1 PRODUCT OR A PRODUCT REGULATED BY THE UNITED STATES FOOD AND DRUG
2 ADMINISTRATION UNDER SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND
3 COSMETIC ACT, 21 USC 351 TO 360DDD-2.

4 (G) ~~(e)~~—"Use a tobacco product" means to smoke, chew, suck,
5 inhale, or otherwise consume a tobacco product.

6 (H) "VAPOR PRODUCT" MEANS ANY NONCOMBUSTIBLE PRODUCT THAT
7 EMPLOYS A MECHANICAL HEATING ELEMENT, BATTERY, OR ELECTRONIC
8 CIRCUIT REGARDLESS OF SHAPE OR SIZE AND THAT CAN BE USED TO HEAT A
9 LIQUID NICOTINE SOLUTION CONTAINED IN A VAPOR CARTRIDGE. VAPOR
10 PRODUCT INCLUDES AN ELECTRONIC CIGARETTE, ELECTRONIC CIGAR,
11 ELECTRONIC CIGARILLO, AND ELECTRONIC PIPE. VAPOR PRODUCT DOES NOT
12 INCLUDE A PRODUCT REGULATED BY THE UNITED STATES FOOD AND DRUG
13 ADMINISTRATION UNDER SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND
14 COSMETIC ACT, 21 USC 351 TO 360DDD-2.