

# SENATE BILL No. 668

November 7, 2013, Introduced by Senators JONES, ANDERSON, BIEDA, PAPPAGEORGE, HOPGOOD, YOUNG, GREGORY, SCHUITMAKER, HOOD, HANSEN, KAHN, NOFS, JANSEN, MARLEAU and HUNTER 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 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 **AND DEVICES THAT DELIVER NICOTINE** to minors; to  
4 prohibit the purchase, possession, or use of tobacco products **AND**  
5 **DEVICES THAT DELIVER NICOTINE** by minors; to regulate the retail  
6 sale of tobacco products **AND DEVICES THAT DELIVER NICOTINE**; to  
7 prescribe penalties; and to prescribe the powers and duties of  
8 certain state agencies and departments.

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

5       (2) A person who sells tobacco products, **E-CIGARETTES, OR E-**  
6 **CIGARETTE CARTRIDGES** at retail shall post, in a place close to the  
7 point of sale and conspicuous to both employees and customers, a  
8 sign produced by the department of community health that includes  
9 the following statement:

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

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

24       (4) The department of community health shall produce the sign  
25 required under subsection (2) and have adequate copies of the sign  
26 ready for distribution to licensed wholesalers, secondary  
27 wholesalers, and unclassified acquirers of tobacco products **AND TO**

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

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

25 (6) A prosecuting attorney who proposes to offer testimony to  
 26 rebut the affirmative defense described in subsection (5) shall  
 27 file ~~and serve~~ a notice of rebuttal, in writing, ~~upon~~ **WITH** the

1 court and **SERVE A COPY OF THE NOTICE ON** the defendant. The  
2 **PROSECUTING ATTORNEY SHALL SERVE THE** notice ~~shall be served not~~  
3 less than 7 days before the date set for trial and shall ~~contain~~  
4 **INCLUDE IN THE NOTICE** the name and address of each rebuttal  
5 witness.

6 (7) Subsection (1) does not apply to the handling or  
7 transportation of a tobacco product, **E-CIGARETTE, OR E-CIGARETTE**  
8 **CARTRIDGE** by a minor under the terms of ~~that~~ **THE** minor's  
9 employment.

10 Sec. 4. As used in this act:

11 (A) "E-CIGARETTE" MEANS AN ELECTRONIC ORAL DEVICE TO WHICH ALL  
12 OF THE FOLLOWING APPLY:

13 (i) THE DEVICE PROVIDES A VAPOR OF NICOTINE.

14 (ii) THE DEVICE SIMULATES SMOKING THROUGH ITS USE OR THROUGH  
15 INHALATION OF THE VAPOR GENERATED BY THE DEVICE.

16 (iii) THE DEVICE IS NOT APPROVED BY THE UNITED STATES FOOD AND  
17 DRUG ADMINISTRATION AS AN AID IN QUITTING THE USE OF TOBACCO OR A  
18 NICOTINE PRODUCT.

19 (iv) THE DEVICE IS COMPOSED OF A HEATING ELEMENT, BATTERY, OR  
20 ELECTRONIC CIRCUIT.

21 (B) "E-CIGARETTE CARTRIDGE" MEANS A CONTAINER TO WHICH ALL OF  
22 THE FOLLOWING APPLY:

23 (i) THE CONTAINER HAS OPENINGS ON EACH END.

24 (ii) THE CONTAINER SERVES AS A LIQUID RESERVOIR AND MOUTHPIECE.

25 (iii) THE CONTAINER ALLOWS THE PASSAGE OF LIQUID TO AN ATOMIZER  
26 AND VAPOR FROM THE ATOMIZER TO THE USER'S MOUTH.

27 (iv) THE CONTAINER CONTAINS LIQUID FOR PRODUCING VAPOR IN AN E-

1 CIGARETTE.

2 (C) ~~(a)~~—"Minor" means an individual ~~under~~ WHO IS LESS THAN 18  
3 years of age.

4 (D) "PERSON WHO SELLS E-CIGARETTES OR E-CIGARETTE CARTRIDGES  
5 AT RETAIL" MEANS A PERSON WHOSE ORDINARY COURSE OF BUSINESS  
6 CONSISTS, IN WHOLE OR IN PART, OF THE RETAIL SALE OF E-CIGARETTES  
7 OR E-CIGARETTE CARTRIDGES.

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

12 (F) ~~(c)~~—"Public place" means a public street, sidewalk, or  
13 park or any area open to the general public in a publicly owned or  
14 operated building or public place of business.

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

20 (H) ~~(e)~~—"Use a tobacco product" means to smoke, chew, suck,  
21 inhale, or otherwise consume a tobacco product.

22 Enacting section 1. This amendatory act does not take effect  
23 unless Senate Bill No. 667

24 of the 97th Legislature is enacted into law.