

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 668

A bill to amend 1915 PA 31, entitled
"Youth tobacco act,"
by amending the title and section 1 (MCL 722.641), 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, **VAPOR PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS**
to minors; to prohibit the purchase, possession, or use of tobacco
products, **VAPOR PRODUCTS, AND ALTERNATIVE NICOTINE PRODUCTS** by
minors; to regulate the retail sale of tobacco products, **VAPOR**
PRODUCTS, AND ALTERNATIVE NICOTINE 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, **VAPOR PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT** to
3 a minor, **INCLUDING, BUT NOT LIMITED TO, THROUGH A VENDING MACHINE.**
4 A person who violates this subsection **OR SUBSECTION (8)** is guilty
5 of a misdemeanor punishable by a fine of not more than \$50.00 for
6 each violation.

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

12 "The purchase of **A tobacco ~~products~~—PRODUCT, VAPOR PRODUCT, OR**
13 **ALTERNATIVE NICOTINE PRODUCT** by a minor under 18 years of age and
14 the provision of **A tobacco ~~products~~—PRODUCT, VAPOR PRODUCT, OR**
15 **ALTERNATIVE NICOTINE PRODUCT** to a minor are prohibited by law. A
16 minor **WHO** unlawfully ~~purchasing~~—**PURCHASES** or ~~using~~—**USES A** tobacco
17 ~~products~~—**PRODUCT, VAPOR PRODUCT, OR ALTERNATIVE NICOTINE PRODUCT** is
18 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 VAPOR PRODUCTS OR ALTERNATIVE NICOTINE PRODUCTS AT**
4 **RETAIL** free of charge. Licensed wholesalers, secondary wholesalers,
5 and unclassified acquirers of tobacco products shall obtain copies
6 of the sign from the department of community health and distribute
7 them free of charge, upon request, to persons who **SELL TOBACCO**
8 **PRODUCTS AND WHO** are subject to subsection (2). The department of
9 community health shall provide copies of the sign free of charge,
10 upon request, to persons subject to subsection (2) who do not
11 purchase their supply of tobacco products from wholesalers,
12 secondary wholesalers, and unclassified acquirers of tobacco
13 products licensed under the tobacco products tax act, 1993 PA 327,
14 MCL 205.421 to 205.436, **AND TO PERSONS WHO SELL VAPOR PRODUCTS OR**
15 **ALTERNATIVE NICOTINE PRODUCTS AT RETAIL.**

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

27 (6) A prosecuting attorney who proposes to offer testimony to

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

8 (7) Subsection (1) does not apply to the handling or
9 transportation of a tobacco product, **VAPOR PRODUCT, OR ALTERNATIVE**
10 **NICOTINE PRODUCT** by a minor under the terms of ~~that~~ **THE** minor's
11 employment.

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

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

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

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

3 Enacting section 2. This amendatory act does not take effect
4 unless all of the following bills of the 97th Legislature are
5 enacted into law:

6 (a) Senate Bill No. 667.

7 (b) House Bill No. 4997.