

# HOUSE BILL NO. 4164

February 07, 2019, Introduced by Reps. Albert, Griffin, Yaroch, Wittenberg, Vaupel and Allor 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, and by adding sections 2b and 2c.

**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 to prescribe the powers and  
 7 duties of certain state agencies and departments.

8       Sec. 1. (1) A person shall not sell, give, or furnish a  
 9 tobacco product, **vapor product, or alternative nicotine product** to  
 10 a minor, **including, but not limited to, through a vending machine.**  
 11 A person who violates this subsection **or subsection (8)** is guilty  
 12 of a misdemeanor punishable by a fine ~~of not more than \$50.00 for~~  
 13 ~~each violation.~~ **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 point of sale and conspicuous to both employees and  
 21 customers, a sign produced by the department of ~~community~~ health  
 22 **and human services** that includes the following statement:

23       "The purchase of **a tobacco products-product, vapor product, or**  
 24 **alternative nicotine product** by a minor under 18 years of age and  
 25 the provision of **a tobacco products-product, vapor product, or**  
 26 **alternative nicotine product** to a minor are prohibited by law. A  
 27 minor **who unlawfully purchasing-purchases or using-uses a tobacco**  
 28 ~~products-product, vapor product, or alternative nicotine product~~ **is**  
 29 **subject to criminal penalties."**

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

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

26           (5) It is an affirmative defense to a charge under subsection  
27 (1) that the defendant had in force at the time of arrest and  
28 continues to have in force a written policy to prevent the sale of  
29 tobacco products, **vapor products, or alternative nicotine products,**

1 **as applicable**, to persons under 18 years of age and that the  
 2 defendant enforced and continues to enforce the policy. A defendant  
 3 who proposes to offer evidence of the affirmative defense described  
 4 in this subsection shall file ~~and serve~~ notice of the defense, in  
 5 writing, ~~upon~~ **with** the court and **serve a copy of the notice on** the  
 6 prosecuting attorney. The **defendant shall serve the** notice ~~shall be~~  
 7 ~~served~~ not less than 14 days before the date set for trial.

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

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

20 (8) **Before selling, offering for sale, giving, or furnishing a**  
 21 **tobacco product, vapor product, or alternative nicotine product to**  
 22 **an individual, a person shall verify that the individual is at**  
 23 **least 18 years of age by doing 1 of the following:**

24 (a) **If the individual appears to be under 27 years of age,**  
 25 **examining a government-issued photographic identification that**  
 26 **establishes that the individual is at least 18 years of age.**

27 (b) **For sales made by the internet or other remote sales**  
 28 **method, performing an age verification through an independent,**  
 29 **third-party age verification service that compares information**

1 available from a commercially available database, or aggregate of  
 2 databases, that are regularly used by government agencies and  
 3 businesses for the purpose of age and identity verification to the  
 4 personal information entered by the individual during the ordering  
 5 process that establishes that the individual is 18 years of age or  
 6 older.

7 Sec. 2. (1) Subject to subsection ~~(3)~~, **(6)**, a minor shall not  
 8 do any of the following:

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

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

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

12 (d) Present or offer to an individual a purported proof of age  
 13 that is false, fraudulent, or not actually his or her own proof of  
 14 age for the purpose of purchasing, attempting to purchase,  
 15 possessing, or attempting to possess a tobacco product.

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

26 (a) For the 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. ~~in a  
 29 hospice, nursing home, or long-term care facility.~~

1 (ii) Participate in a health promotion and risk reduction  
2 **assessment** program. ~~as described in this subsection.~~

3 (b) For a second violation, in addition to participation in a  
4 health promotion and risk reduction **assessment** program, the court  
5 may order the individual to perform not more than 32 hours of  
6 community service. ~~in a hospice, nursing home, or long-term care~~  
7 ~~facility.~~

8 (c) For a third or subsequent violation, in addition to  
9 participation in a health promotion and risk reduction **assessment**  
10 program, the court may order the individual to perform not more  
11 than 48 hours of community service. ~~in a hospice, nursing home, or~~  
12 ~~long-term care facility.~~

13 (3) Subject to subsection (6), a minor shall not do any of the  
14 following:

15 (a) Purchase or attempt to purchase a vapor product or  
16 alternative nicotine product.

17 (b) Possess or attempt to possess a vapor product or  
18 alternative nicotine product.

19 (c) Use a vapor product or alternative nicotine product in a  
20 public place.

21 (d) Present or offer to an individual a purported proof of age  
22 that is false, fraudulent, or not actually his or her own proof of  
23 age for the purpose of purchasing, attempting to purchase,  
24 possessing, or attempting to possess a vapor product or alternative  
25 nicotine product.

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

28 (a) For the first violation, the individual is responsible for  
29 a state civil infraction and shall be fined not more than \$50.00.

1 The court may order the individual to participate in a health  
2 promotion and risk reduction assessment program, if available. In  
3 addition, the court may order the individual to perform not more  
4 than 16 hours of community service.

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

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

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

23 (6) ~~(3) Subsection~~ **Subsections** (1) ~~does~~ **and** (3) do not apply  
24 to a minor participating in any of the following:

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

1 (b) An undercover operation in which the minor purchases or  
 2 receives a tobacco product, **vapor product, or alternative nicotine**  
 3 **product** under the direction of the state police or a local police  
 4 agency as part of an enforcement action, unless the initial or  
 5 contemporaneous purchase or receipt of the tobacco product, **vapor**  
 6 **product, or alternative nicotine product** by the minor was not under  
 7 the direction of the state police or the local police agency and  
 8 was not part of the undercover operation.

9 (c) Compliance checks in which the minor attempts to purchase  
 10 tobacco products for the purpose of satisfying federal substance  
 11 abuse block grant youth tobacco access requirements, if the  
 12 compliance checks are conducted under the direction of a substance  
 13 ~~abuse~~ **use disorder** coordinating agency ~~as defined in section 6103~~  
 14 ~~of the public health code, 1978 PA 368, MCL 333.6103,~~ and with the  
 15 prior approval of the state police or a local police agency.

16 (7) ~~(4) Subsection~~ **Subsections** (1) ~~does~~ **and (3) do** not apply  
 17 to the handling or transportation of a tobacco product, **vapor**  
 18 **product, or alternative nicotine product** by a minor under the terms  
 19 of ~~that~~ **the** minor's employment.

20 (8) ~~(5)~~ This section does not prohibit ~~the~~ **an** individual from  
 21 being charged with, convicted of, or sentenced for any other  
 22 violation of law ~~arising~~ **that arises** out of the violation of  
 23 subsection (1) **or (3)**.

24 **Sec. 2b. (1) A person shall not sell in this state a liquid**  
 25 **nicotine container unless the liquid nicotine container meets the**  
 26 **child-resistant effectiveness standards of 16 CFR 1700.15(b).**

27 (2) **A person who violates subsection (1) is guilty of a**  
 28 **misdemeanor punishable by a fine of not more than \$50.00 for each**  
 29 **violation.**



1 (3) As used in this section:

2 (a) "Liquid nicotine" means a liquid or other substance  
3 containing nicotine in any concentration that is sold, marketed, or  
4 intended for use in a vapor product.

5 (b) "Liquid nicotine container" means a bottle or other  
6 container holding liquid nicotine in any concentration but does not  
7 include a cartridge containing liquid nicotine if the cartridge is  
8 prefilled and sealed by the manufacturer of the cartridge and is  
9 not intended to be opened by the consumer.

10 Sec. 2c. A person who sells vapor products or alternative  
11 nicotine products at retail shall not display for sale in this  
12 state a vapor product unless the vapor product is stored for sale  
13 behind a counter in an area accessible only to employees or within  
14 a locked case so that a customer wanting access to the vapor  
15 product must ask an employee for assistance. A person who violates  
16 this section is responsible for a state civil infraction and shall  
17 be fined not more than \$500.00.

18 Sec. 4. As used in this act:

19 (a) "Alternative nicotine product" means a noncombustible  
20 product containing nicotine that is intended for human consumption,  
21 whether chewed, absorbed, dissolved, or ingested by any other  
22 means. Alternative nicotine product does not include a tobacco  
23 product, a vapor product, food, or a product regulated as a drug or  
24 device by the United States Food and Drug Administration under 21  
25 USC 351 to 360fff-7.

26 (b) ~~(a)~~ "Minor" means an individual ~~under~~ who is less than 18  
27 years of age.

28 (c) "Person who sells vapor products or alternative nicotine  
29 products at retail" means a person whose ordinary course of

1 **business consists, in whole or in part, of the retail sale of vapor**  
 2 **products or alternative nicotine products.**

3 (d) ~~(b)~~—"Person who sells tobacco products at retail" means a  
 4 person whose ordinary course of business consists, in whole or in  
 5 part, of the retail sale of tobacco products subject to state sales  
 6 tax.

7 (e) ~~(e)~~—"Public place" means a public street, sidewalk, or  
 8 park or any area open to the general public in a publicly owned or  
 9 operated building or public place of business.

10 (f) ~~(d)~~—"Tobacco product" means a product that contains  
 11 tobacco and is intended for human consumption, including, but not  
 12 limited to, ~~cigarettes,~~ **a cigarette**, noncigarette smoking tobacco,  
 13 or smokeless tobacco, as those terms are defined in section 2 of  
 14 the tobacco products tax act, 1993 PA 327, MCL 205.422, and  
 15 ~~eigars.~~ **a cigar.**

16 (g) ~~(e)~~—"Use a tobacco product, **vapor product, or alternative**  
 17 **nicotine product**" means to smoke, chew, suck, inhale, or otherwise  
 18 consume a tobacco product, **vapor product, or alternative nicotine**  
 19 **product.**

20 (h) "Vapor product" means a noncombustible product that  
 21 employs a heating element, power source, electronic circuit, or  
 22 other electronic, chemical, or mechanical means, regardless of  
 23 shape or size, that can be used to produce vapor. Vapor product  
 24 includes an electronic cigarette, electronic cigar, electronic  
 25 cigarillo, electronic pipe, or similar product or device and a  
 26 vapor cartridge or other container of nicotine or other substance  
 27 in a solution or other form that is intended to be used with or in  
 28 an electronic cigarette, electronic cigar, electronic cigarillo,  
 29 electronic pipe, or similar product or device. Vapor product does

1 not include a product regulated as a drug or device by the United  
2 States Food and Drug Administration under 21 USC 351 to 360fff-7.

3 Enacting section 1. This amendatory act takes effect 90 days  
4 after the date it is enacted into law.