

HOUSE BILL NO. 6108

May 18, 2022, Introduced by Rep. Brann and referred to the Committee on Regulatory Reform.

A bill to amend 1915 PA 31, entitled
"Youth tobacco act,"
by amending sections 1 and 4 (MCL 722.641 and 722.644), as amended
by 2019 PA 18.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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 as follows:

1 (a) For a first offense, not more than \$100.00.

2 (b) For a second offense, not more than \$500.00.

3 (c) For a third or subsequent offense, not more than
4 \$2,500.00.

5 (2) A person who sells tobacco products, vapor products, or
6 alternative nicotine products at retail shall post, in a place
7 close to the point of sale and conspicuous to both employees and
8 customers, a sign produced by the department of health and human
9 services that includes the following statement:

10 "The purchase of a tobacco product, vapor product, or
11 alternative nicotine product by a minor under ~~18~~**21** years of age
12 and the provision of a tobacco product, vapor product, or
13 alternative nicotine product to a minor are prohibited by law. A
14 minor who unlawfully purchases or uses a tobacco product, vapor
15 product, or alternative nicotine product is subject to criminal
16 penalties."

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

24 (4) The department of health and human services shall produce
25 the sign required under subsection (2) and have adequate copies of
26 the sign ready for distribution to licensed wholesalers, secondary
27 wholesalers, and unclassified acquirers of tobacco products and to
28 persons who sell vapor products or alternative nicotine products at
29 retail free of charge. Licensed wholesalers, secondary wholesalers,

1 and unclassified acquirers of tobacco products shall obtain copies
2 of the sign from the department of health and human services and
3 distribute them free of charge, upon request, to persons who sell
4 tobacco products and who are subject to subsection (2). The
5 department of health and human services shall provide copies of the
6 sign free of charge, upon request, to persons subject to subsection
7 (2) who do not purchase their supply of tobacco products from
8 wholesalers, secondary wholesalers, and unclassified acquirers of
9 tobacco products licensed under the tobacco products tax act, 1993
10 PA 327, MCL 205.421 to 205.436, and to persons who sell vapor
11 products or alternative nicotine products at retail.

12 (5) It is an affirmative defense to a charge under subsection
13 (1) that the defendant had in force at the time of arrest and
14 continues to have in force a written policy to prevent the sale of
15 tobacco products, vapor products, or alternative nicotine products,
16 as applicable, to ~~persons under 18~~ **individuals less than 21** years
17 of age and that the defendant enforced and continues to enforce the
18 policy. A defendant who proposes to offer evidence of the
19 affirmative defense described in this subsection shall file notice
20 of the defense, in writing, with the court and serve a copy of the
21 notice on the prosecuting attorney. The defendant shall serve the
22 notice not less than 14 days before the date set for trial.

23 (6) A prosecuting attorney who proposes to offer testimony to
24 rebut the affirmative defense described in subsection (5) shall
25 file a notice of rebuttal, in writing, with the court and serve a
26 copy of the notice on the defendant. The prosecuting attorney shall
27 serve the notice not less than 7 days before the date set for trial
28 and shall include in the notice the name and address of each
29 rebuttal witness.

1 (7) Subsection (1) does not apply to the handling or
2 transportation of a tobacco product, vapor product, or alternative
3 nicotine product by a minor under the terms of the minor's
4 employment.

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

9 (a) If the individual appears to be ~~under~~**less than** 27 years
10 of age, examining a government-issued photographic identification
11 that establishes that the individual is at least ~~18~~**21** years of
12 age.

13 (b) For sales made by the internet or other remote sales
14 method, performing an age verification through an independent,
15 third-party age verification service that compares information
16 available from a commercially available database, or aggregate of
17 databases, that are regularly used by government agencies and
18 businesses for the purpose of age and identity verification to the
19 personal information entered by the individual during the ordering
20 process that establishes that the individual is ~~18~~**21** years of age
21 or older.

22 Sec. 4. As used in this act:

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

1 (b) "Minor" means an individual who is less than ~~18~~**21** years
2 of age.

3 (c) "Person who sells vapor products or alternative nicotine
4 products at retail" means a person whose ordinary course of
5 business consists, in whole or in part, of the retail sale of vapor
6 products or alternative nicotine products.

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

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

19 (g) "Use a tobacco product, vapor product, or alternative
20 nicotine product" means to smoke, chew, suck, inhale, or otherwise
21 consume a tobacco product, vapor product, or alternative nicotine
22 product.

23 (h) "Vapor product" means a noncombustible product that
24 employs a heating element, power source, electronic circuit, or
25 other electronic, chemical, or mechanical means, regardless of
26 shape or size, that can be used to produce vapor from nicotine or
27 any other substance, and the use or inhalation of which simulates
28 smoking. Vapor product includes an electronic cigarette, electronic
29 cigar, electronic cigarillo, electronic pipe, or similar product or

1 device and a vapor cartridge or other container of nicotine or
2 other substance in a solution or other form that is intended to be
3 used with or in an electronic cigarette, electronic cigar,
4 electronic cigarillo, electronic pipe, or similar product or
5 device. Vapor product does not include a product regulated as a
6 drug or device by the United States Food and Drug Administration
7 under 21 USC 351 to 360fff-7.

8 Enacting section 1. This amendatory act does not take effect
9 unless all of the following bills of the 101st Legislature are
10 enacted into law:

11 (a) Senate Bill No. 576.

12 (b) Senate Bill No. 577.

13 (c) Senate Bill No. 720.

14 (d) Senate Bill No. _____ or House Bill No. 6109 (request no.
15 06272'22 c).