

SENATE BILL NO. 575

June 24, 2021, Introduced by Senators BULLOCK, MCCANN, ANANICH, WOJNO, OUTMAN and BIZON and referred to the Committee on Regulatory Reform.

A bill to amend 1915 PA 31, entitled
"Youth tobacco act,"
by amending the title and section 4 (MCL 722.644), as amended by
2019 PA 18, and by adding sections 2d and 2e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE
2 An act to prohibit the selling, giving, or furnishing of
3 tobacco products, vapor products, and alternative nicotine products
4 to minors; to prohibit the purchase, possession, or use of tobacco

1 products, vapor products, and alternative nicotine products by
2 minors; to regulate the ~~retail~~-sale of tobacco products, vapor
3 products, alternative nicotine products, and liquid nicotine
4 containers; **to require the registration of vapor products; to**
5 **regulate and license persons that manufacture and persons that sell**
6 **tobacco products, vapor products, or alternative nicotine products**
7 **at retail;** to prescribe penalties **and provide sanctions;** and to
8 prescribe the powers and duties of certain state agencies and
9 departments.

10 Sec. 2d. (1) Beginning January 1, 2022, a person shall not
11 sell a tobacco product, vapor product, or alternative nicotine
12 product at retail unless that person is licensed under this
13 section.

14 (2) An application for a license must be in a form prescribed
15 by the department and signed under penalty of perjury. A person
16 shall obtain a separate license for each location where a tobacco
17 product, vapor product, or alternative nicotine product is sold. A
18 person who sells a tobacco product, vapor product, or alternative
19 nicotine product at retail at more than 1 location may submit a
20 single application to the department for each location where a
21 tobacco product, vapor product, or alternative nicotine product is
22 sold.

23 (3) The department shall grant a license to a person that
24 submits a completed application and pays a licensing fee of not
25 more than \$250.00 per location to the department.

26 (4) The department shall issue a certificate of licensure to a
27 person that is granted a license under this act.

28 (5) A person shall display the certificate of licensure, or a
29 duplicate copy of the certificate of licensure, prominently and

1 where visible to the public in the person's place of business where
2 a tobacco product, vapor product, or alternative nicotine product
3 is sold.

4 (6) Each license is valid for 1 year and must be renewed
5 annually before December 31 of the year that the license expires.
6 The cost of renewing the license must not exceed \$100.00.

7 (7) The department may deny, suspend, revoke, or refuse to
8 renew a license for good cause. For purposes of this subsection,
9 "good cause" consists of instances in which the department
10 determines that a person has done any of the following:

11 (a) Submitted a false or fraudulent application for a license.

12 (b) Provided a false statement in the application for a
13 license.

14 (c) Possessed a false or fraudulent certificate of licensure.

15 (d) Displayed a false or fraudulent certificate of licensure
16 in a place of business where a tobacco product, vapor product, or
17 alternative nicotine product is sold.

18 (8) The department shall not deny, suspend, revoke, or refuse
19 to renew a person's license under this section unless the person is
20 given an opportunity for a hearing. A hearing and an appeal must be
21 conducted under the administrative procedures act of 1969, 1969 PA
22 306, MCL 24.201 to 24.328.

23 (9) The department may promulgate rules under the
24 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
25 24.328, to implement this section.

26 (10) In addition to any other remedies provided by law, if the
27 department determines that a person violated this section, the
28 department may assess an administrative fine of not more than
29 \$500.00 after notice and a hearing as provided under the

1 administrative procedure act of 1969, 1969 PA 306, MCL 24.201 to
2 24.328.

3 (11) Fees and fines collected under this section must be
4 distributed as follows:

5 (a) Fifty-five percent to the local law enforcement department
6 for the city, village, township, or county, as applicable, in which
7 the licensed premises is located.

8 (b) Forty-one and one-half percent for the administration and
9 enforcement of this act.

10 (c) Three and one-half percent to be credited to a special
11 fund in the department for the purpose of promoting and sustaining
12 programs for the prevention, rehabilitation, and treatment of
13 individuals who suffered adverse effects from the use of a tobacco
14 product, vapor product, or alternative nicotine product.

15 (12) As used in this section, "department" means the
16 department of treasury.

17 Sec. 2e. (1) Beginning January 1, 2022, a person who sells
18 tobacco products, vapor products, or alternative nicotine products
19 at retail shall not sell a vapor product in this state unless the
20 vapor product is registered with the department.

21 (2) Beginning January 1, 2022, a person that manufactures
22 vapor products to be sold in this state must register those vapor
23 products with the department.

24 (3) To register a vapor product under this section, a person
25 that manufactures vapor products to be sold in this state shall
26 execute and deliver an attestation under the penalty of perjury to
27 the department certifying that 1 or more of the following
28 conditions have been met as of the date of the certification:

29 (a) The vapor product was on the United States market as of

1 August 8, 2016, and the person that manufactured the vapor product
2 has applied for a marketing order for the vapor product by
3 submitting a premarket tobacco product application on or before
4 March 31, 2021, to the United States Food and Drug Administration.

5 (b) The person that manufactured the vapor product has
6 received a marketing order or other authorization under 21 USC 387j
7 for the vapor product from the United States Food and Drug
8 Administration.

9 (4) A person that manufactures vapor products to be sold in
10 this state must notify the department within 15 days of any
11 material change to the attestation provided under subsection (3),
12 including if the United States Food and Drug Administration has
13 issued a marketing order or other authorization to that
14 manufacturer, has issued a no marketing order to that manufacturer,
15 or has ordered that manufacturer to remove the vapor product,
16 either temporarily or permanently, from the United States market.

17 (5) On receipt of the attestation required under subsection
18 (3), the department shall register the vapor product identified in
19 the attestation and compile a directory that includes the following
20 information:

21 (a) A list of persons that manufacture vapor products to be
22 sold in this state that complied with the requirements of
23 subsection (3).

24 (b) A list of vapor products registered in this state.

25 (6) Beginning January 1, 2023, the department shall make the
26 directory required under subsection (5) available for public
27 inspection on its website. The department shall periodically update
28 the directory to correct mistakes, add new information that becomes
29 available under subsection (5), or remove information from the

1 directory.

2 (7) A person that violates subsection (1) or (2) is
3 responsible for a state civil infraction and may be ordered to pay
4 a civil fine as follows:

5 (a) For a first offense in a calendar year, not more than
6 \$500.00.

7 (b) For a second offense in a calendar year, not more than
8 \$1,000.00.

9 (c) For a third or subsequent offense in a calendar year, not
10 more than \$2,500.00.

11 (8) This state shall not, by rule or regulation, prohibit the
12 sale of a vapor product that has been registered in accordance with
13 subsection (3).

14 (9) As used in this section, "department" means the department
15 of licensing and regulatory affairs.

16 Sec. 4. As used in this act:

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

24 (b) "Certificate of licensure" means a document issued by the
25 department of treasury as evidence to a person authorized to sell a
26 tobacco product, vapor product, or alternative nicotine product at
27 retail.

28 (c) "License" means the certificate of licensure issued by the
29 department under section 2d.

1 (d) "Licensee" means the person issued a certificate of
2 licensure under section 2d.

3 (e) "Licensed premises" means any portion of a building,
4 structure, room, or enclosure on real estate that is owned, leased,
5 used, controlled, or operated by a licensee.

6 (f) "Local law enforcement department" means a full-time
7 police department or full-time ordinance enforcement department
8 maintained by a city, village, or township in which the licensed
9 premises is located, or if a full-time police department or full-
10 time ordinance enforcement department is not maintained by a city,
11 village, or township in which the licensed premises is located, the
12 sheriff's department of the county in which the licensed premises
13 is located.

14 (g) ~~(b)~~ "Minor" means an individual who is less than ~~18~~ 21
15 years of age.

16 ~~(c) "Person who sells vapor products or alternative nicotine~~
17 ~~products at retail" means a person whose ordinary course of~~
18 ~~business consists, in whole or in part, of the retail sale of vapor~~
19 ~~products or alternative nicotine products.~~

20 (h) ~~(d)~~ "Person who sells tobacco products at retail" means a
21 person whose ordinary course of business consists, in whole or in
22 part, of the retail sale of tobacco products subject to ~~state~~ sales
23 tax under the general sales tax act, 1933 PA 167, MCL 205.51 to
24 205.78.

25 (i) "Person who sells tobacco products, vapor products, or
26 alternative nicotine products at retail" means a person whose
27 ordinary course of business consists, in whole or in part, of the
28 retail sale of a tobacco products subject to sales tax under the
29 general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, vapor

1 products, or alternative nicotine products.

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

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

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

14 (m) ~~(g)~~—"Use a tobacco product, vapor product, or alternative
15 nicotine product" means to smoke, chew, suck, inhale, or otherwise
16 consume a tobacco product, vapor product, or alternative nicotine
17 product.

18 (n) ~~(h)~~—"Vapor product" means a noncombustible product that
19 employs a heating element, power source, electronic circuit, or
20 other electronic, chemical, or mechanical means, regardless of
21 shape or size, that can be used to produce vapor from nicotine or
22 any other substance, **other than marihuana**, and the use or
23 inhalation of which simulates smoking. Vapor product includes an
24 electronic cigarette, electronic cigar, electronic cigarillo,
25 electronic pipe, or similar product or device and a vapor cartridge
26 or other container of nicotine or other substance, **other than**
27 **marihuana**, in a solution or other form that is intended to be used
28 with or in an electronic cigarette, electronic cigar, electronic
29 cigarillo, electronic pipe, or similar product or device. Vapor

1 product does not include a product regulated as a drug or device by
2 the United States Food and Drug Administration under 21 USC 351 to
3 360fff-7. **As used in this subdivision, "marihuana" means that term**
4 **as defined in section 7106 of the public health code, 1978 PA 368,**
5 **MCL 333.7106. For purposes of this definition, "marihuana" and**
6 **"marijuana" are synonymous.**

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

10 (a) Senate Bill No. 572.

11

12 (b) Senate Bill No. 573.

13

14 (c) Senate Bill No. 574.

15

16 (d) Senate Bill No. _____ or House Bill No. _____ (request no.

17 01404'21).