

1 **containers**; to prescribe penalties; and to prescribe the powers and
 2 duties of certain state agencies and departments.

3 Sec. 1. (1) A person shall not sell, give, or furnish a
 4 tobacco product, **vapor product, or alternative nicotine product** to
 5 a minor, **including, but not limited to, through a vending machine.**
 6 A person who violates this subsection **or subsection (8)** is guilty
 7 of a misdemeanor punishable by a fine of ~~not more than \$50.00 for~~
 8 ~~each violation.~~ **as follows:**

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

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

11 (c) **For a third or subsequent offense, not more than**
 12 **\$2,500.00.**

13 (2) A person who sells tobacco products, **vapor products, or**
 14 **alternative nicotine products** at retail shall post, in a place
 15 close to the point of sale and conspicuous to both employees and
 16 customers, a sign produced by the department of ~~community~~-health
 17 **and human services** that includes the following statement:

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

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



1 **must** be 2 inches by 4 inches and the statement required under
 2 subsection (2) ~~shall~~**must** be printed in 20-point boldfaced type.

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

21 (5) It is an affirmative defense to a charge under subsection
 22 (1) that the defendant had in force at the time of arrest and
 23 continues to have in force a written policy to prevent the sale of
 24 tobacco products, **vapor products, or alternative nicotine products,**
 25 **as applicable,** to persons under 18 years of age and that the
 26 defendant enforced and continues to enforce the policy. A defendant
 27 who proposes to offer evidence of the affirmative defense described
 28 in this subsection shall file ~~and serve~~ notice of the defense, in
 29 writing, ~~upon~~**with** the court and **serve a copy of the notice on** the



1 prosecuting attorney. The **defendant shall serve the** notice ~~shall be~~
 2 ~~served~~ not less than 14 days before the date set for trial.

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

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

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

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

22 (b) For sales made by the internet or other remote sales
 23 method, performing an age verification through an independent,
 24 third-party age verification service that compares information
 25 available from a commercially available database, or aggregate of
 26 databases, that are regularly used by government agencies and
 27 businesses for the purpose of age and identity verification to the
 28 personal information entered by the individual during the ordering
 29 process that establishes that the individual is 18 years of age or



1 **older.**

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

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

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

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

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

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

21 (a) For the first violation, the court may order the
22 individual to do 1 of the following:

23 (i) Perform not more than 16 hours of community service. ~~in a
24 hospice, nursing home, or long-term care facility.~~

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

27 (b) For a second violation, in addition to participation in a
28 health promotion and risk reduction **assessment** program, the court
29 may order the individual to perform not more than 32 hours of



1 community service. ~~in a hospice, nursing home, or long term care~~
2 ~~facility.~~

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

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

10 (a) Purchase or attempt to purchase a vapor product or
11 alternative nicotine product.

12 (b) Possess or attempt to possess a vapor product or
13 alternative nicotine product.

14 (c) Use a vapor product or alternative nicotine product in a
15 public place.

16 (d) Present or offer to an individual a purported proof of age
17 that is false, fraudulent, or not actually his or her own proof of
18 age for the purpose of purchasing, attempting to purchase,
19 possessing, or attempting to possess a vapor product or alternative
20 nicotine product.

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

23 (a) For the first violation, the individual is responsible for
24 a state civil infraction and shall be fined not more than \$50.00.
25 The court may order the individual to participate in a health
26 promotion and risk reduction assessment program, if available. In
27 addition, the court may order the individual to perform not more
28 than 16 hours of community service.

29 (b) For the second violation, the individual is responsible



1 for a state civil infraction and shall be fined not more than
2 \$50.00. The court may order the individual to participate in a
3 health promotion and risk reduction assessment program, if
4 available. In addition, the court may order the individual to
5 perform not more than 32 hours of community service.

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

14 (5) An individual who is ordered to participate in a health
15 promotion and risk reduction assessment program under subsection
16 (2) or (4) is responsible for the costs of participating in the
17 program.

18 (6) ~~(3) Subsection~~ **Subsections** (1) ~~does~~ and (3) do not apply
19 to a minor participating in any of the following:

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

25 (b) 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 state police or a local police
28 agency as part of an enforcement action, unless the initial or
29 contemporaneous purchase or receipt of the tobacco product, **vapor**



1 **product, or alternative nicotine product** by the minor was not under
 2 the direction of the state police or the local police agency and
 3 was not part of the undercover operation.

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

11 (7) ~~(4) Subsection~~ **Subsections** (1) ~~does and (3) do~~ not apply
 12 to the handling or transportation of a tobacco product, **vapor**
 13 **product, or alternative nicotine product** by a minor under the terms
 14 of ~~that the~~ minor's employment.

15 (8) ~~(5) This section does not prohibit the an~~ individual from
 16 being charged with, convicted of, or sentenced for any other
 17 violation of law ~~arising that arises~~ out of the violation of
 18 subsection (1) **or (3)**.

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

22 (2) A person who violates subsection (1) is guilty of a
 23 misdemeanor punishable by a fine of not more than \$50.00 for each
 24 violation.

25 (3) As used in this section:

26 (a) "Liquid nicotine" means a liquid or other substance
 27 containing nicotine in any concentration that is sold, marketed, or
 28 intended for use in a noncombustible product that employs a heating
 29 element, power source, electronic circuit, or other electronic,



1 chemical, or mechanical means, regardless of shape or size, that
2 can be used to produce vapor from nicotine or any other substance,
3 and the use or inhalation of which simulates smoking.

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

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

17 Sec. 4. As used in this act:

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

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

27 (c) ~~(b)~~ "Person who sells tobacco products at retail" means a
28 person whose ordinary course of business consists, in whole or in
29 part, of the retail sale of tobacco products subject to state sales



1 tax.

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

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

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



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

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

