

SENATE BILL NO. 574

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

A bill to amend 1915 PA 31, entitled
"Youth tobacco act,"
by amending section 1 (MCL 722.641), 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)~~ **(13)** or
5 **(14)** is guilty 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 sales clerk, agent, or employee of a person who sells
6 tobacco products, vapor products, or alternative nicotine products
7 at retail who knowingly sells or furnishes a tobacco product, vapor
8 product, or alternative nicotine product to a minor, or who fails
9 to make diligent inquiry as to whether the individual is a minor,
10 is responsible for a state civil infraction and may be ordered to
11 pay a fine of not more than \$250.00.

12 (3) ~~(2)~~—A person who sells tobacco products, vapor products,
13 or alternative nicotine products at retail shall post, in a place
14 close to the point of sale, **unobstructed**, and conspicuous to both
15 employees and customers, a sign produced by the department ~~of~~
16 ~~health and human services~~ that includes the following statement:

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

24 (4) ~~(3)~~—If the sign required under subsection ~~(2)~~**(3)** is more
25 than 6 feet from the point of sale, it must be 5-1/2 inches by 8-
26 1/2 inches and the statement required under subsection ~~(2)~~**(3)** must
27 be printed in 36-point boldfaced type. If the sign required under
28 subsection ~~(2)~~**(3)** is 6 feet or less from the point of sale, it
29 must be 2 inches by 4 inches and the statement required under

subsection ~~(2)~~ **(3)** must be printed in 20-point boldfaced type.

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

(6) Beginning January 1, 2022, the local law enforcement department for a city, village, township, or county in which a licensed premises is located may conduct unannounced compliance checks at any time during the open hours of the licensed premises by engaging individuals under 21 years of age to enter into the licensed premises to attempt to purchase a tobacco product, vapor product, or alternative nicotine product. If a licensed premises fails a first compliance check, the local law enforcement department shall give the licensee of the licensed premises the opportunity to demonstrate that the licensee has a compliance plan

1 in place for identifying the cause of the problem and a remediation
2 plan for addressing the sale of tobacco products, vapor products,
3 or alternative nicotine products to minors. The local law
4 enforcement department shall, not less than 3 months after the
5 failed compliance check, conduct an unannounced follow-up
6 compliance check on the licensed premises that failed the
7 compliance check.

8 (7) If a licensee's licensed premises fails a second
9 unannounced compliance check under subsection (6) in a calendar
10 year, after being given the opportunity to demonstrate that the
11 licensee has a compliance plan and a remediation plan, the licensee
12 is responsible for a state civil infraction or guilty of a crime as
13 follows:

14 (a) For a first violation, the licensee is responsible for a
15 state civil infraction and may be fined not more than \$2,000.00.

16 (b) For a second violation, the licensee is responsible for a
17 state civil infraction and may be fined not more than \$3,000.00.

18 (c) For a third violation, the licensee is responsible for a
19 state civil infraction and may be fined not more than \$4,000.00.

20 (d) For a fourth violation, the licensee is guilty of a
21 misdemeanor punishable by a fine of not more than \$5,000.00, and
22 the licensee's licensed premises shall not sell a tobacco product,
23 vapor product, or alternative nicotine product for a minimum of 7
24 days.

25 (e) For a fifth or subsequent violation, the licensee is
26 guilty of a misdemeanor punishable by a fine of not more than
27 \$6,000.00, and the licensee's licensed premises shall not sell a
28 tobacco product, vapor product, or alternative nicotine product for
29 a minimum of 14 days.

1 (8) If a licensee's licensed premises complies with
2 subsections (3), (4), (13), and (14), and the licensee shows that
3 his or her employees were trained to properly conduct age
4 verification under this act, and that the licensee has an employee
5 handbook or manual outlining the age verification requirements
6 under this act, but the licensed premises fails a second
7 unannounced compliance check under subsection (6) in a calendar
8 year, the licensee is responsible for a state civil infraction or
9 guilty of a crime as follows:

10 (a) For a first violation, the licensee is responsible for a
11 state civil infraction and may be fined not more than \$150.00.

12 (b) For a second violation, the licensee is responsible for a
13 state civil infraction and may be fined not more than \$1,500.00.

14 (c) For a third violation, the licensee is responsible for a
15 state civil infraction and may be fined not more than \$2,000.00.

16 (d) For a fourth violation, the licensee is guilty of a
17 misdemeanor punishable by a fine of not more than \$2,500.00, and
18 the licensee's licensed premises shall not sell a tobacco product,
19 vapor product, or alternative nicotine product for a minimum of 3
20 days.

21 (e) For a fifth or subsequent violation, the licensee is
22 guilty of a misdemeanor punishable by a fine of not more than
23 \$5,000.00, and the licensee's licensed premises shall not sell a
24 tobacco product, vapor product, or alternative nicotine product for
25 a minimum of 7 days.

26 (9) A local law enforcement department shall report the
27 results of all compliance checks to the department. The department
28 shall publish the results of all compliance checks at least
29 annually and make them available to the public on request.

1 ~~(10) (5) It is an affirmative defense to a charge under~~
2 ~~subsection (1) that the defendant had in force at the time of~~
3 ~~arrest and continues to have in force a written policy to prevent~~
4 ~~the sale of tobacco products, vapor products, or alternative~~
5 ~~nicotine products, as applicable, to persons under 18 years of age~~
6 ~~and that the defendant enforced and continues to enforce the~~
7 ~~policy. A defendant who proposes to offer evidence of the~~
8 ~~affirmative defense described in this subsection shall file notice~~
9 ~~of the defense, in writing, with the court and serve a copy of the~~
10 ~~notice on the prosecuting attorney. The defendant shall serve the~~
11 ~~notice not less than 14 days before the date set for trial.~~**It is an**
12 **affirmative defense to a charge under subsections (1) and (2) that**
13 **the defendant demanded, was shown, and reasonably relied on bona**
14 **fide documentary evidence of the age and identity of the minor, and**
15 **that the defendant reasonably relied on the bona fide documentary**
16 **evidence before selling, offering for sale, giving, or furnishing a**
17 **tobacco product, vapor product, or alternative nicotine product to**
18 **the minor.**

19 ~~(11) (6)~~A prosecuting attorney who proposes to offer
20 testimony to rebut the affirmative defense described in subsection
21 ~~(5)~~**(10)** shall file a notice of rebuttal, in writing, with the
22 court and serve a copy of the notice on the defendant. The
23 prosecuting attorney shall serve the notice not less than 7 days
24 before the date set for trial and shall include in the notice the
25 name and address of each rebuttal witness.

26 ~~(12) (7)~~Subsection (1) does not apply to the handling or
27 transportation of a tobacco product, vapor product, or alternative
28 nicotine product by a minor under the terms of the minor's
29 employment.

1 (13) ~~(8)~~ Before selling, offering for sale, giving, or
2 furnishing a tobacco product, ~~vapor product, or an~~ alternative
3 nicotine product, **or, until December 31, 2021, a vapor product** to
4 an individual, a person shall verify that the individual is at
5 least ~~18~~**21** years of age by doing 1 of the following:

6 (a) If the individual appears to be under 27 years of age,
7 examining ~~a government-issued photographic identification~~ **bona fide**
8 **documentary evidence** that establishes that the individual is at
9 least ~~18~~**21** years of age.

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

19 (14) **Beginning January 1, 2022, before selling, offering for**
20 **sale, giving, or furnishing a vapor product to an individual, a**
21 **person shall verify that the individual is at least 21 years of age**
22 **by doing 1 of the following:**

23 (a) **Scanning bona fide documentary evidence to verify that the**
24 **purchaser is at least 21 years of age and that the photographic**
25 **identification has not expired.**

26 (b) For sales made by the internet or other remote sales
27 method, performing an age verification through an independent,
28 third-party age verification service that compares information
29 available from a commercially available database, or aggregate of

1 databases, that are regularly used by government agencies and
2 businesses for the purpose of age and identity verification to the
3 personal information entered by the individual during the ordering
4 process that establishes that the individual is 21 years of age or
5 older.

6 (15) In addition to the penalties provided in this act, a
7 local legislative body, by resolution, may request that the
8 department of treasury revoke the license of a licensee whose
9 licensed premises is located within the local legislative body's
10 jurisdiction and who has been determined to have violated this act
11 on at least 3 separate occasions in a consecutive 12-month period.
12 If the department of treasury verifies that the licensee who is the
13 subject of the resolution has been found to have committed the
14 violations as prescribed in this subsection, the department of
15 treasury may suspend or revoke the licensee's license.

16 (16) As used in this section:

17 (a) "Bona fide documentary evidence" means a document issued
18 by a federal government, state government, or municipality that
19 includes a photo and the date of birth of the individual.

20 (b) "Department" means the department of health and human
21 services.

22 (c) "Diligent inquiry" means a diligent good-faith effort to
23 determine the age of an individual that includes at least 1 of the
24 following:

25 (i) An examination of an official Michigan operator's or
26 chauffeur's license, an official Michigan personal identification
27 card, a military identification card, or any other bona fide
28 documentary evidence that establishes the identity and age of the
29 individual.

1 (ii) Use of a secure identity verification device if all of the
2 following conditions are met:

3 (A) The electronic scan of a biometric of the individual is
4 referenced against any form of picture identification described in
5 subparagraph (i).

6 (B) The authenticity of the picture identification was
7 previously verified by an electronic authentication process.

8 (C) The identity of the individual was previously verified
9 through a commercially available knowledge-based electronic
10 authentication process.

11 (D) The authenticated picture identification was securely
12 linked to biometrics contemporaneously collected from the
13 individual.

14 (d) "Municipality" means a county, township, city, village,
15 school district, intermediate school district, community college
16 district, metropolitan district, district library, or another
17 governmental authority or agency in this state that has the power
18 to issue bona fide documentary evidence.

19 (e) "Sales clerk" means an individual who sells tobacco
20 products, vapor products, or alternative nicotine products in a
21 licensed premises and who is not the licensee of the licensed
22 premises.

23 (f) "Secure identity verification device" means a commercial
24 device that instantly verifies the identity and age of an
25 individual by an electronic scan of a biometric of the individual.

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

29 (a) Senate Bill No. 572.

1

2 (b) Senate Bill No. 575.

3

4 (c) Senate Bill No. 573.

5

6 (d) Senate Bill No. _____ or House Bill No. _____ (request no.
7 01404'21).