



# MICHIGAN STATE POLICE LEGAL UPDATE

No. 144

September 27, 2019

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## CRIMINAL LAW AND PROCEDURE MANUAL

The fourth edition of *Michigan Criminal Law and Procedure: A Manual for Michigan Police Officers* is now available for purchase in print and eBook formats.

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## STATUTES

***The Youth Tobacco Act amended to prohibit the selling or giving to minors, and possession or purchase by minors, of vapor products and alternative nicotine products***

[Public Act 17](#) and [Public Act 18 of 2019](#) amended the Youth Tobacco Act (YTA) to regulate sales and possession of "alternative nicotine products," "vapor products," and "liquid nicotine containers" involving minors less than 18 years old.

### Definitions

The definitions of "alternative nicotine product," "vapor product," and other terms used in the YTA are listed under [MCL 722.644](#). The definitions of "liquid nicotine container" and "liquid nicotine" are listed under [MCL 722.642b\(3\)](#).

Officers should know "vapor products" include products producing vapor from nicotine or any other substance. [MCL 722.644\(h\)](#).

### Minor possession, use, or purchase

Under [MCL 722.642\(3\)](#), a minor shall not do any of the following with respect to "alternative nicotine products" and "vapor products":

- Purchase or attempt to purchase.
- Possess or attempt to possess.
- "Use" in a "public place," as defined under [MCL 722.644\(g\)](#) and [MCL 722.644\(e\)](#), respectively.
- Present or offer false, fraudulent, or someone else's proof of age to purchase, possess, or attempt to purchase or possess.

A minor who violates [MCL 722.642\(3\)](#) is responsible for a civil infraction. After two or more prior judgments, each subsequent violation is a misdemeanor punishable by a fine of \$50.00 for each violation. [MCL 722.642\(4\)](#).

Officers should know the prohibited conduct under [MCL 722.642\(1\)](#) involving minors and "tobacco products," as defined under [MCL 722.644\(f\)](#), has not changed, and [MCL 722.642\(1\)](#) continues to apply to the same conduct that is listed under [MCL 722.642\(3\)](#). A violation of [MCL 722.642\(1\)](#) is still a misdemeanor punishable by a fine of \$50.00 for each violation. [MCL 722.642\(2\)](#).

Additionally, the prohibited conduct under [MCL 722.642\(1\)](#) and (3) does not apply to minors engaged in certain undercover operations or federal compliance checks or to handling or transporting the prohibited products pursuant to the terms of the minor's employment. [MCL 722.642\(6\)](#), (7).

### Selling, giving, or furnishing to minors

A person shall not sell, give, or furnish an "alternative nicotine product" or "vapor product" to a minor, including through a vending machine. The same prohibition still applies to "tobacco products." [MCL 722.641\(1\)](#).

It is an affirmative defense that the person charged with a violation had, and continues to have and enforce, a written policy to prevent the sale of tobacco, alternative nicotine, and vapor products to minors. [MCL 722.641\(5\)](#). Also, [MCL 722.641\(1\)](#) does not apply to handling or transporting the prohibited products pursuant to the terms of the minor's employment. [MCL 722.641\(7\)](#).

A violation of [MCL 722.641\(1\)](#) is a misdemeanor punishable by a fine of \$100.00 for the first offense, \$500.00 for the second offense, and \$2,500.00 for the third or subsequent offense. [MCL 722.641\(1\)](#).

### Age-verification requirement

Before selling, offering for sale, giving, or furnishing a "tobacco product," "alternative nicotine product," or "vapor product," a person shall verify the individual is at least 18 years old by examining a government-issued photographic identification if the individual appears under 27 years old. [MCL 722.641\(8\)](#).

For internet or remote sales, the individual's age must be verified using a third-party age verification service, as described under [MCL 722.641\(8\)\(b\)](#).

A violation of [MCL 722.641\(8\)](#) is a misdemeanor punishable by a fine of \$100.00 for the first offense, \$500.00 for the second offense, and \$2,500.00 for the third or subsequent offense. [MCL 722.641\(1\)](#).

## Displaying vapor products for sale

A person whose ordinary course of business consists, in whole or in part, of the retail sale of "vapor products" or "alternative nicotine products" shall not display a "vapor product" for sale in Michigan unless it is stored behind a counter in an area accessible only to employees or within a locked case so that a customer must ask an employee for assistance. [MCL 722.642c](#). A person who violates [MCL 722.642c](#) is responsible for a civil infraction and a fine of not more than \$500.00.

## Liquid nicotine containers must be child-resistant

A person shall not sell a "liquid nicotine container" in Michigan unless it meets the child-resistant effectiveness standard under [16 CFR 1700.15\(b\)](#). [MCL 722.642b\(1\)](#). A violation is a misdemeanor punishable by a fine of \$50.00 for each violation. [MCL 722.642b\(2\)](#).

## ADMINISTRATIVE RULES

### *Prohibited acts involving retailers and resellers of a vapor product or flavored nicotine vapor product*

The Department of Health and Human Services promulgated [Administrative Rules](#) (Rules) prohibiting certain acts involving "retailers" and "resellers" of "vapor products" and "flavored nicotine vapor products." The prohibitions begin October 2, 2019, and are effective until March 17, 2020, unless there is a change in law.

"Vapor products" and other terms used under the Rules have the same definitions as they do under [MCL 722.644](#) of the YTA. The Rules define additional terms, for example, "flavored nicotine vapor products."

Using imagery to represent that "vapor products" have a "characterizing flavor" and using "fraudulent or misleading terms or statements" regarding "vapor products" is prohibited. Advertisements for "vapor products" in certain places are also prohibited. In addition to other acts, selling and possessing with intent to sell "flavored nicotine vapor products" is prohibited.

Officers should know mere possession of a "vapor product" or "flavored nicotine vapor product" is not prohibited under the Rules, and the prohibitions on "flavored nicotine vapor products" under the Rules do not apply to nicotine-free flavored vapor products. However, any conduct involving "vapor products" must comply with the YTA or any other applicable law or Rule.

A violation of the Rules is punishable as a six-month misdemeanor and includes varying fines. However, before taking any enforcement action, officers should consult their local prosecutor for guidance on interpreting the Rules and ensuring the Rules remain in effect at the time of enforcement.

## BACK TO BASICS

### *Entry into residence for a warrantless misdemeanor arrest is not permitted unless a search warrant exception applies*

In [People v. Hammerlund](#), Hammerlund was involved in a single-vehicle crash during the early morning hours, which caused damage to a guardrail. She left the vehicle and went home to bed. Officers arrived at her house and told a roommate they wished to speak to Hammerlund. When Hammerlund appeared, the arresting officer was on the porch while Hammerlund remained inside about 15 to 20 feet from the door.

The officer testified Hammerlund did not want to come to the door, and "she wasn't coming out of the home." During a short conversation, she admitted driving the vehicle and "reluctantly" provided identification by passing it through a third party. According to the officer, Hammerlund came to the door when he was returning the identification, and as she reached out to get it, he grabbed her arm to take her into custody for the "hit and run" she just admitted. She pulled away and the "momentum" of another grab took him two to three steps inside where she was arrested.

Hammerlund was convicted of failing to report an accident causing damage to fixtures, [MCL 257.621](#), and operating while intoxicated, third offense, [MCL 257.625](#). On appeal, the Michigan Supreme Court held the officer violated the Fourth Amendment and remanded the case to the trial court.

The Court explained probable cause may support a warrantless public arrest, but either a warrant or exigent circumstances and probable cause is required to enter a home to make an arrest.

The Court concluded there was probable cause to arrest for a misdemeanor under [MCL 257.621](#) because of the damage observed to fixtures on the highway and Hammarlund's pre-arrest admissions. However, she did not surrender her expectation of privacy in her home by breaching the doorway with a portion of her arm or hand. She did not voluntarily and knowingly expose herself to the public as if she had been standing completely outside, and the officer was aware she had "manifested an intent to stay inside."

Assuming the hot pursuit search warrant exception would even apply to entering a home in pursuit of a *misdemeanor* arrest, the Court concluded the exception still did not apply in this case. At the time of the arrest for a violation of [MCL 257.621](#), there was no emergency requiring immediate police action, and no evidence could have been destroyed because all elements of the offense were already known to the police.