



# HOUSE BILL No. 5535

March 21, 2000, Introduced by Reps. Ruth Johnson, Rocca, Spade, Allen, Bishop, Hart, Schauer and Birkholz and referred to the Committee on Family and Civil Law.

A bill to amend 1915 PA 31, entitled "Youth tobacco act," by amending the title and sections 1, 2, and 4 (MCL 722.641, 722.642, and 722.644), the title and section 4 as amended by 1992 PA 272 and sections 1 and 2 as amended by 1988 PA 314.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 TITLE

2 An act to prohibit the selling, giving, or furnishing of  
3 tobacco products to minors; to prohibit the PURCHASE OR use of  
4 tobacco products by minors; to prohibit the harboring of minors  
5 for the purpose of indulging in the use of tobacco products; to  
6 regulate the retail sale of tobacco products; to prescribe penal-  
7 ties; and to prescribe the powers and duties of certain state  
8 agencies and departments.

1           Sec. 1. (1) A person shall not sell, give, or furnish ~~any~~  
2 ~~cigarette, cigar, chewing tobacco, tobacco snuff, or tobacco in~~  
3 ~~any other form~~ A TOBACCO PRODUCT to a person under 18 years of  
4 age. A person who violates this section is guilty of a misde-  
5 meanor, punishable by a fine of not more than ~~\$50.00~~ \$100.00  
6 for each offense.

7           (2) ~~Beginning 90 days after the effective date of this sub-~~  
8 ~~section, a~~ A person who sells tobacco products at retail shall  
9 post, in a place close to the point of sale and conspicuous to  
10 both employees and customers, a sign produced by the department  
11 of ~~public~~ COMMUNITY health that includes the following  
12 statement:

13           "The purchase of tobacco products by a minor under 18 years  
14 of age and the provision of tobacco products to a minor are pro-  
15 hibited by law. A minor unlawfully purchasing or using tobacco  
16 products is subject to criminal penalties."

17           (3) If the sign required under subsection (2) is more than 6  
18 feet from the point of sale, it shall be 5-1/2 inches by 8-1/2  
19 inches, and the statement required under subsection (2) shall be  
20 printed in 36-point boldface type. If the sign required under  
21 subsection (2) is 6 feet or less from the point of sale, it shall  
22 be 2 inches by 4 inches, and the statement required under subsec-  
23 tion (2) shall be printed in 20-point boldface type.

24           (4) The department of ~~public~~ COMMUNITY health shall  
25 produce the sign required under subsection (2) and have adequate  
26 copies of the sign ready for distribution to licensed  
27 wholesalers, secondary wholesalers, and unclassified acquirers of

1 ~~cigarettes and other~~ tobacco products ~~described in~~  
2 ~~subsection (1)~~ free of charge. ~~within 60 days after the effec=~~  
3 ~~tive date of this subsection.~~ Licensed wholesalers, secondary  
4 wholesalers, and unclassified acquirers of ~~cigarettes and other~~  
5 tobacco products ~~described in subsection (1)~~ shall obtain  
6 copies of the sign from the department of ~~public~~ COMMUNITY  
7 health and distribute them free of charge, upon request, to per=  
8 sons who are subject to subsection (2). The department of public  
9 health shall provide copies of the sign free of charge, upon  
10 request, to persons subject to subsection (2) who do not purchase  
11 their supply of ~~cigarettes or other~~ tobacco products ~~described~~  
12 ~~in subsection (1)~~ from licensed wholesalers, secondary wholesal=  
13 ers, and unclassified acquirers of ~~cigarettes and other~~ tobacco  
14 products. ~~described in subsection (1).~~

15 (5) It is an affirmative defense to a charge pursuant to  
16 subsection (1) that the defendant had in force at the time of  
17 arrest and continues to have in force a written policy to prevent  
18 the sale of ~~cigarettes, cigars, chewing tobacco, tobacco snuff,~~  
19 ~~and other~~ tobacco products to persons under 18 years of age, and  
20 that the defendant enforced and continues to enforce the policy.  
21 A defendant who proposes to offer evidence of the affirmative  
22 defense described in this subsection shall file and serve notice  
23 of the defense, in writing, upon the court and the prosecuting  
24 attorney. The notice shall be served not less than 14 days  
25 before the date set for trial.

26 (6) A prosecuting attorney who proposes to offer testimony  
27 to rebut the affirmative defense described in subsection (5)

1 shall file and serve a notice of rebuttal, in writing, upon the  
2 court and the defendant. The notice shall be served not less  
3 than 7 days before the date set for trial, and shall contain the  
4 name and address of each rebuttal witness.

5       Sec. 2. (1) A person under 18 years of age shall not  
6 ~~possess or smoke cigarettes or cigars; or possess or chew, suck,~~  
7 ~~or inhale chewing tobacco or tobacco snuff; or possess or use~~  
8 ~~tobacco in any other form, on a public highway, street, alley,~~  
9 ~~park, or other lands used for public purposes, or in a public~~  
10 ~~place of business or amusement~~ PURCHASE OR ATTEMPT TO PURCHASE A  
11 TOBACCO PRODUCT, OR RECEIVE OR ATTEMPT TO RECEIVE A TOBACCO PRO-  
12 DUCT, OR POSSESS OR ATTEMPT TO POSSESS A TOBACCO PRODUCT IN A  
13 PUBLIC PLACE, OR USE OR ATTEMPT TO USE A TOBACCO PRODUCT IN A  
14 PUBLIC PLACE.

15       (2) A person who violates ~~this section~~ SUBSECTION (1) is  
16 guilty of a misdemeanor, punishable by a fine of not more than  
17 \$50.00 for each ~~offense~~ VIOLATION. ~~Pursuant to a probation~~  
18 ~~order, the~~ A court may require a person who violates ~~this~~  
19 ~~section~~ SUBSECTION (1) to participate in a health promotion and  
20 risk reduction assessment program, if available. A ~~probationer~~  
21 PERSON who is ordered to participate in a health promotion and  
22 risk reduction assessment program under this ~~section~~ SUBSECTION  
23 is responsible for the costs of participating in the program. In  
24 addition, a person who violates ~~this section~~ SUBSECTION (1) is  
25 subject to the following:

26       (a) For the first violation, the court may order the person  
27 to do 1 of the following:

1 (i) Perform not more than 16 hours of community service in a  
2 hospice, nursing home, or HOSPITAL long-term care ~~facility~~  
3 UNIT.

4 (ii) Participate in a health promotion and risk reduction  
5 program, as described in this subsection.

6 (b) For a second violation, in addition to participation in  
7 a health promotion and risk reduction program, the court may  
8 order the person to perform not more than 32 hours of community  
9 service in a hospice, nursing home, or HOSPITAL long-term care  
10 ~~facility~~ UNIT.

11 (c) For a third or subsequent violation, in addition to par-  
12 ticipation in a health promotion and risk reduction program, the  
13 court may order the person to perform not more than 48 hours of  
14 community service in a hospice, nursing home, or HOSPITAL  
15 long-term care ~~facility~~ UNIT.

16 Sec. 4. As used in this act:

17 ~~(a) "Chewing tobacco" means loose tobacco or a flat, com-~~  
18 ~~pressed cake of tobacco that is inserted into the mouth to be~~  
19 ~~chewed or sucked.~~

20 (A) ~~(b)~~ "Person who sells tobacco products at retail"  
21 means a person whose ordinary course of business consists, in  
22 whole or in part, of the retail sale of tobacco products subject  
23 to state sales tax.

24 ~~(c) "Tobacco snuff" means shredded, powdered, or pulverized~~  
25 ~~tobacco that may be inhaled through the nostrils, chewed, or~~  
26 ~~placed against the gums.~~

1           (B) "PUBLIC PLACE" MEANS A PUBLIC STREET, SIDEWALK, PARK, OR  
2 ANY AREA OPEN TO THE GENERAL PUBLIC IN A PUBLICLY OWNED OR  
3 OPERATED BUILDING OR PUBLIC PLACE OF BUSINESS.

4           (C) "TOBACCO PRODUCT" MEANS A PRODUCT THAT CONTAINS TOBACCO  
5 AND IS INTENDED FOR HUMAN CONSUMPTION, INCLUDING, BUT NOT LIMITED  
6 TO, CIGARETTES, NONCIGARETTE SMOKING TOBACCO, OR SMOKELESS TOBAC-  
7 CO, AS THOSE TERMS ARE DEFINED IN SECTION 2 OF THE TOBACCO PRO-  
8 DUCTS TAX ACT, 1993 PA 327, MCL 205.422, AND CIGARS.

9           (D) "USE A TOBACCO PRODUCT" MEANS TO SMOKE OR OTHERWISE CON-  
10 SUME A TOBACCO PRODUCT.