

# HOUSE BILL No. 4218

February 8, 2005, Introduced by Reps. Spade, Polidori and Vagnozzi and referred to the Committee on Commerce.

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

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

1           Sec. 1. (1) A person shall not sell, give, or furnish ~~any~~  
2           ~~cigarette, cigar, chewing tobacco, tobacco snuff, or tobacco in any~~  
3           ~~other form~~ **A TOBACCO PRODUCT** to a person under 18 years of age. A  
4           person who violates this section is guilty of a misdemeanor,  
5           punishable by **1 OF THE FOLLOWING FINES:**

6           **(A) IF THE VIOLATION IS NOT A VIOLATION OF SUBDIVISION (B),** a  
7           fine of not more than ~~-\$50.00-~~ **\$100.00** for ~~each offense~~ **A FIRST**

1 VIOLATION, \$250.00 FOR A SECOND VIOLATION, OR \$500.00 FOR A THIRD  
2 OR SUBSEQUENT VIOLATION.

3 (B) IF THE VIOLATION IS AN INTERNET, MAIL ORDER, OR TELEPHONE  
4 SALE OF A TOBACCO PRODUCT TO A PERSON UNDER 18 YEARS OF AGE, A FINE  
5 OF NOT MORE THAN \$500.00 FOR A FIRST VIOLATION, \$1,000.00 FOR A  
6 SECOND VIOLATION, OR \$2,000.00 FOR A THIRD OR SUBSEQUENT VIOLATION.

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

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

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

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

1 tobacco products ~~described in subsection (1)~~ free of charge.  
2 ~~within 60 days after the effective date of this subsection.~~  
3 Licensed wholesalers, secondary wholesalers, and unclassified  
4 acquirers of ~~cigarettes and other~~ tobacco products ~~described in~~  
5 ~~subsection (1)~~ shall obtain copies of the sign from the department  
6 of ~~public~~ **COMMUNITY** health and distribute them free of charge,  
7 upon request, to persons who are subject to subsection (2). The  
8 department of ~~public~~ **COMMUNITY** health shall provide copies of the  
9 sign free of charge, upon request, to persons subject to subsection  
10 (2) who do not purchase their supply of ~~cigarettes or other~~  
11 tobacco products ~~described in subsection (1)~~ from licensed  
12 wholesalers, secondary wholesalers, and unclassified acquirers of  
13 ~~cigarettes and other~~ tobacco products. ~~described in subsection~~  
14 ~~(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. A  
21 defendant who proposes to offer evidence of the affirmative defense  
22 described in this subsection shall file and serve notice of the  
23 defense, in writing, upon the court and the prosecuting attorney.  
24 The notice shall be served not less than 14 days before the date  
25 set for trial.

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

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

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

11 (2) A person who violates ~~this section~~ **SUBSECTION (1)** is  
12 guilty of a misdemeanor, punishable by a fine of not more than  
13 \$50.00 for each ~~offense~~ **VIOLATION**. ~~Pursuant to a probation~~  
14 ~~order, the~~ **THE** court may require a person who violates ~~this~~  
15 ~~section~~ **SUBSECTION (1)** to participate in a health promotion and  
16 risk reduction assessment program, if available. A ~~probationer~~  
17 **PERSON** who is ordered to participate in a health promotion and risk  
18 reduction assessment program under this ~~section~~ **SUBSECTION** is  
19 responsible for the costs of participating in the program. In  
20 addition, a person who violates ~~this section~~ **SUBSECTION (1)** is  
21 subject to the following:

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

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

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

1 (b) For a second violation, in addition to participation in a  
2 health promotion and risk reduction program, the court may order  
3 the person to perform not more than 32 hours of community service  
4 in a hospice, nursing home, or long-term care facility.

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

10 Sec. 4. As used in this act:

11 ~~———— (a) "Chewing tobacco" means loose tobacco or a flat,~~  
12 ~~compressed cake of tobacco that is inserted into the mouth to be~~  
13 ~~chewed or sucked.~~

14 (A) ~~—(b)—~~ "Person who sells tobacco products at retail" means  
15 a person whose ordinary course of business consists, in whole or in  
16 part, of the retail sale of tobacco products subject to state sales  
17 tax.

18 ~~———— (c) "Tobacco snuff" means shredded, powdered, or pulverized~~  
19 ~~tobacco that may be inhaled through the nostrils, chewed, or placed~~  
20 ~~against the gums.~~

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

24 (C) "TOBACCO PRODUCT" MEANS A PRODUCT THAT CONTAINS TOBACCO  
25 AND IS INTENDED FOR HUMAN CONSUMPTION, INCLUDING BUT NOT LIMITED TO  
26 CIGARETTES, NONCIGARETTE SMOKING TOBACCO, OR SMOKELESS TOBACCO, AS  
27 THOSE TERMS ARE DEFINED IN SECTION 2 OF THE TOBACCO PRODUCTS TAX

1 ACT, 1993 PA 327, MCL 205.422, AND CIGARS.

2 (D) "USE A TOBACCO PRODUCT" MEANS TO SMOKE OR OTHERWISE

3 CONSUME A TOBACCO PRODUCT.