

SENATE BILL No. 110

January 27, 2005, Introduced by Senators BASHAM, SWITALSKI, THOMAS, BRATER and CLARKE and referred to the Committee on Judiciary.

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 ~~eigarette, 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 a fine of not more than ~~\$50.00~~ **\$100.00** for ~~each~~
6 ~~offense~~ **A FIRST VIOLATION COMMITTED IN A CALENDAR YEAR, NOT MORE**

1 THAN \$250.00 FOR A SECOND VIOLATION COMMITTED IN A CALENDAR YEAR,
2 OR NOT MORE THAN \$500.00 FOR A THIRD OR SUBSEQUENT VIOLATION
3 COMMITTED IN A CALENDAR YEAR.

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

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

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

21 (4) The department of ~~public~~ **COMMUNITY** health shall produce
22 the sign required under subsection (2) and have adequate copies of
23 the sign ready for distribution to licensed wholesalers, secondary
24 wholesalers, and unclassified acquirers of ~~cigarettes and other~~
25 tobacco products ~~described in subsection (1)~~ free of charge.
26 ~~within 60 days after the effective date of this subsection.~~
27 Licensed wholesalers, secondary wholesalers, and unclassified

1 acquirers of ~~cigarettes and other~~ tobacco products ~~described in~~
2 ~~subsection (1)~~ shall obtain copies of the sign from the department
3 of ~~public~~ **COMMUNITY** health and distribute them free of charge,
4 upon request, to persons who are subject to subsection (2). The
5 department of ~~public~~ **COMMUNITY** health shall provide copies of the
6 sign free of charge, upon request, to persons subject to subsection
7 (2) who do not purchase their supply of ~~cigarettes or other~~
8 tobacco products ~~described in subsection (1)~~ from licensed
9 wholesalers, secondary wholesalers, and unclassified acquirers of
10 ~~cigarettes and other~~ tobacco products. ~~described in subsection~~
11 ~~(1)~~.

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

23 (6) A prosecuting attorney who proposes to offer testimony to
24 rebut the affirmative defense described in subsection (5) shall
25 file and serve a notice of rebuttal, in writing, upon the court and
26 the defendant. The notice shall be served not less than 7 days
27 before the date set for trial, and shall contain the name and

1 address of each rebuttal witness.

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

8 (2) A person who violates ~~this section~~ **SUBSECTION (1)** is
9 guilty of a misdemeanor, punishable by a fine of not more than
10 \$50.00 for each ~~offense~~ **VIOLATION**. ~~Pursuant to a probation~~
11 ~~order, the~~ **THE** court ~~may~~ **SHALL** require a person who violates
12 ~~this section~~ **SUBSECTION (1)** to participate in a health promotion
13 and risk reduction assessment program, if available. A ~~probationer~~
14 **PERSON** who is ordered to participate in a health promotion and risk
15 reduction assessment program under this ~~section~~ **SUBSECTION** is
16 responsible for the costs of participating in the program. In
17 addition, a person who violates ~~this section~~ **SUBSECTION (1)** is
18 subject to the following:

19 (a) For the first violation, the court ~~may~~ **SHALL** order the
20 person to do 1 of the following:

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

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

25 (b) For a second violation, in addition to participation in a
26 health promotion and risk reduction program, the court ~~may~~ **SHALL**
27 order the person to perform not more than 32 hours of community

1 service in a hospice, nursing home, or **HOSPITAL** long-term care
2 facility- **UNIT**.

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

8 Sec. 4. As used in this act:

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

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

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

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

22 **(C)** "TOBACCO PRODUCT" MEANS A PRODUCT THAT CONTAINS TOBACCO
23 AND IS INTENDED FOR HUMAN CONSUMPTION, INCLUDING BUT NOT LIMITED TO
24 CIGARETTES, NONCIGARETTE SMOKING TOBACCO, OR SMOKELESS TOBACCO, AS
25 THOSE TERMS ARE DEFINED IN SECTION 2 OF THE TOBACCO PRODUCTS TAX
26 ACT, 1993 PA 327, MCL 205.422, AND CIGARS.

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

1 CONSUME A TOBACCO PRODUCT.