

# SENATE BILL No. 391

April 19, 2005, Introduced by Senator SWITALSKI 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 ~~ether 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 for ~~each offense~~ **A**  
 6 **FIRST VIOLATION, \$100.00 FOR A SECOND VIOLATION, OR \$200.00 FOR A**  
 7 **THIRD OR SUBSEQUENT VIOLATION.**

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

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

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

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

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

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

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

26 Sec. 2. (1) A person under 18 years of age shall not possess  
27 or ~~smoke cigarettes or cigars; or possess or chew, suck, or inhale~~

1 ~~chewing tobacco or tobacco snuff; or possess or use tobacco in any~~  
2 ~~other form, on a public highway, street, alley, park, or other~~  
3 ~~lands used for public purposes, or in a public place of business or~~  
4 ~~amusement~~ **USE A TOBACCO PRODUCT IN A PUBLIC PLACE.**

5 (2) A person who violates ~~this section~~ **SUBSECTION (1)** is  
6 guilty of a misdemeanor, punishable by a fine of not more than  
7 \$50.00 for each ~~offense~~ **VIOLATION**. Pursuant to a probation order,  
8 the court may require a person who violates ~~this section~~  
9 **SUBSECTION (1)** to participate in a health promotion and risk  
10 reduction assessment program, if available. A ~~probationer~~ **PERSON**  
11 who is ordered to participate in a health promotion and risk  
12 reduction assessment program under this ~~section~~ **SUBSECTION** is  
13 responsible for the costs of participating in the program. In  
14 addition, a person who violates ~~this section~~ **SUBSECTION (1)** is  
15 subject to the following:

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

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

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

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

26 (c) For a third or subsequent violation, in addition to  
27 participation in a health promotion and risk reduction program, the

1 court may order the person to perform not more than 48 hours of  
2 community service in a hospice, nursing home, or long-term care  
3 facility.

4 Sec. 4. As used in this act:

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

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

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

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

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

23 (D) "USE A TOBACCO PRODUCT" MEANS TO SMOKE OR OTHERWISE  
24 CONSUME A TOBACCO PRODUCT.