

SENATE BILL NO. 527

April 20, 1999, Introduced by Senators BENNETT, MC COTTER, NORTH, HAMMERSTROM, JOHNSON, ROGERS, GOUGEON and BYRUM and referred to the Committee on Health Policy.

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:

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TITLE

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An act to prohibit the selling, giving, or furnishing of

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tobacco products to minors; to prohibit the PURCHASE OR use of

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tobacco products by minors; to prohibit the harboring of minors

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for the purpose of indulging in the use of tobacco products; to

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regulate the retail sale of tobacco products; to prescribe penal-

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ties; and to prescribe the powers and duties of certain state

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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-~~ \$500.00
6 for ~~each~~ A FIRST offense OR NOT MORE THAN \$1,000.00 FOR A
7 SECOND OR SUBSEQUENT OFFENSE.

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

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

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

26 (4) The department of ~~public~~ COMMUNITY health shall
27 produce the sign required under subsection (2) and have adequate

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

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

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

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

17 (2) A person who violates ~~this section~~ SUBSECTION (1) is
 18 guilty of a misdemeanor, punishable by a fine of not more than
 19 ~~\$50.00~~ \$100.00 for each ~~offense~~ VIOLATION. ~~Pursuant to a~~
 20 ~~probation order, the~~ THE court ~~may~~ SHALL require a person who
 21 violates ~~this section~~ SUBSECTION (1) to participate in a health
 22 promotion and risk reduction assessment program, if available. A
 23 ~~probationer~~ PERSON who is ordered to participate in a health
 24 promotion and risk reduction assessment program under this
 25 ~~section~~ SUBSECTION is responsible for the costs of participat-
 26 ing in the program. In addition, a person who violates ~~this~~
 27 ~~section~~ SUBSECTION (1) is subject to the following:

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

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

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

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

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

18 Sec. 4. As used in this act:

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

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

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

4 (B) "PUBLIC PLACE" MEANS A PUBLIC STREET, SIDEWALK, PARK, OR
5 ANY AREA OPEN TO THE GENERAL PUBLIC IN A PUBLICLY OWNED OR OPER-
6 ATED BUILDING OR PUBLIC PLACE OF BUSINESS.

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

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