

SUBSTITUTE FOR
SENATE BILL NO. 74

A bill to amend 1915 PA 31, entitled
"Youth tobacco act,"
by amending sections 1 and 2 (MCL 722.641 and 722.642), as amended
by 2006 PA 236.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) A person shall not sell, give, or furnish a
2 tobacco product to a minor. A person who violates this subsection
3 is guilty of a misdemeanor punishable by a fine of not more than
4 ~~\$50.00~~-\$100.00 for each **A FIRST violation AND NOT MORE THAN \$500.00**
5 **FOR A SECOND OR SUBSEQUENT VIOLATION OCCURRING WITHIN 12 MONTHS**
6 **AFTER A PREVIOUS VIOLATION OF THIS SUBSECTION. HOWEVER, A PERSON**
7 **WHO SELLS TOBACCO PRODUCTS AT RETAIL WHO VIOLATES THIS SUBSECTION**
8 **IS GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE OF NOT MORE THAN**
9 **\$100.00 FOR A FIRST VIOLATION AND NOT MORE THAN \$500.00 FOR A**

1 **SECOND OR SUBSEQUENT VIOLATION OCCURRING AT THE SAME LOCATION AS**
2 **THE FIRST VIOLATION.**

3 (2) A person who sells tobacco products at retail shall post,
4 in a place close to the point of sale and conspicuous to both
5 employees and customers, a sign produced by the department of
6 ~~community health~~ **AND HUMAN SERVICES** that includes the following
7 statement:

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

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

19 (4) The department of ~~community health~~ **AND HUMAN SERVICES**
20 shall produce the sign required under subsection (2) and have
21 adequate copies of the sign ready for distribution **FREE OF CHARGE**
22 to licensed wholesalers, secondary wholesalers, and unclassified
23 acquirers of tobacco products. ~~free of charge.~~ Licensed
24 wholesalers, secondary wholesalers, and unclassified acquirers of
25 tobacco products shall obtain copies of the sign from the
26 department of ~~community health~~ **AND HUMAN SERVICES** and distribute
27 them free of charge, upon request, to persons who are subject to

1 subsection (2). The department of ~~community~~ health **AND HUMAN**
2 **SERVICES** shall provide copies of the sign free of charge, upon
3 request, to persons subject to subsection (2) who do not purchase
4 their supply of tobacco products from wholesalers, secondary
5 wholesalers, and unclassified acquirers of tobacco products
6 licensed under the tobacco products tax act, 1993 PA 327, MCL
7 205.421 to 205.436.

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

18 (6) A prosecuting attorney who proposes to offer testimony to
19 rebut the affirmative defense described in subsection (5) shall
20 file ~~and serve~~ a notice of rebuttal, in writing, ~~upon~~ **WITH** the
21 court and **SERVE A COPY OF THE NOTICE ON** the defendant. The ~~notice~~
22 ~~shall be served~~ **PROSECUTING ATTORNEY SHALL SERVE THE NOTICE** not
23 less than 7 days before the date set for trial and shall ~~contain~~
24 **INCLUDE IN THE NOTICE** the name and address of each rebuttal
25 witness.

26 (7) Subsection (1) does not apply to the handling or
27 transportation of a tobacco product by a minor under the terms of

1 that minor's employment.

2 Sec. 2. (1) Subject to subsection (3), a minor shall not do
3 any of the following:

4 (a) Purchase or attempt to purchase a tobacco product.

5 (b) Possess or attempt to possess a tobacco product.

6 (c) Use a tobacco product in a public place.

7 (d) Present or offer to an individual a purported proof of age
8 that is false, fraudulent, or not actually his or her own proof of
9 age for the purpose of purchasing, attempting to purchase,
10 possessing, or attempting to possess a tobacco product.

11 (2) An individual who violates subsection (1) is guilty of a
12 misdemeanor punishable by a fine of not more than ~~\$50.00~~**\$100.00**
13 ~~for each~~**A FIRST violation AND NOT MORE THAN \$500.00 FOR A SECOND**
14 **OR SUBSEQUENT VIOLATION OCCURRING WITHIN 12 MONTHS AFTER A PREVIOUS**
15 **VIOLATION OF SUBSECTION (1).** Pursuant to a probation order, ~~the~~**THE**
16 court may also, **BY AN ORDER OF PROBATION,** require an individual who
17 violates subsection (1) to participate in a health promotion and
18 risk reduction assessment program, if available. An individual who
19 is ordered to participate in a health promotion and risk reduction
20 assessment program under this subsection is responsible for the
21 costs of participating in the program. In addition, an individual
22 who violates subsection (1) is subject to the following:

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

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

27 (ii) Participate in a health promotion and risk reduction

1 program, as described in this subsection.

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

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

11 (3) Subsection (1) does not apply to a minor participating in
12 any of the following:

13 (a) An undercover operation in which the minor purchases or
14 receives a tobacco product under the direction of the minor's
15 employer and with the prior approval of the local prosecutor's
16 office as part of an employer-sponsored internal enforcement
17 action.

18 (b) An undercover operation in which the minor purchases or
19 receives a tobacco product under the direction of the state police
20 or a local police agency as part of an enforcement action, unless
21 the initial or contemporaneous purchase or receipt of the tobacco
22 product by the minor was not under the direction of the state
23 police or the local police agency and was not part of the
24 undercover operation.

25 (c) Compliance checks in which the minor attempts to purchase
26 tobacco products for the purpose of satisfying federal substance
27 abuse block grant youth tobacco access requirements, if the

1 compliance checks are conducted under the direction of a substance
2 abuse coordinating agency ~~as defined in section 6103 of the public~~
3 ~~health code, 1978 PA 368, MCL 333.6103,~~ and with the prior approval
4 of the state police or a local police agency.

5 (4) Subsection (1) does not apply to the handling or
6 transportation of a tobacco product by a minor under the terms of
7 that minor's employment.

8 (5) This section does not prohibit the individual from being
9 charged with, convicted of, or sentenced for any other violation of
10 law arising out of the violation of subsection (1).

11 Enacting section 1. This amendatory act takes effect 90 days
12 after the date it is enacted into law.