

# HOUSE BILL NO. 4039

January 15, 2019, Introduced by Reps. Brann, Hoadley, Vaupel, Sabo, Calley, Wittenberg and Pagan and referred to the Committee on Regulatory Reform.

A bill to amend 1915 PA 31, entitled "Youth tobacco act," by amending the title and sections 1, 2a, and 4 (MCL 722.641, 722.642a, and 722.644), the title and sections 1 and 4 as amended by 2006 PA 236 and section 2a as added by 1992 PA 272, and by adding section 3a; and to repeal acts and parts of acts.

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

**1**

TITLE

1 An act to prohibit the selling, giving, or furnishing of  
 2 tobacco products **and tobacco paraphernalia** to minors; ~~to prohibit~~  
 3 ~~the purchase, possession, or use of tobacco products by minors; to~~  
 4 regulate the retail sale of tobacco products **and tobacco**  
 5 **paraphernalia**; to prescribe penalties; ~~and to prescribe the powers~~  
 6 and duties of certain state agencies and departments; **and to**  
 7 **provide for the powers and duties of certain state and local**  
 8 **governmental entities.**

9 Sec. 1. (1) A person shall not sell, give, or furnish a  
 10 tobacco product **or tobacco paraphernalia** to a minor. A person who  
 11 violates this subsection is ~~guilty of~~ **responsible for** a misdemeanor  
 12 ~~punishable by a state civil infraction and may be ordered to pay a~~  
 13 **civil** fine of not **less than \$1,000.00 or more than \$2,500.00 for**  
 14 **the first violation, and not less than \$2,500.00 or more than**  
 15 ~~\$50.00 for each violation.~~ **\$5,000.00 for a second or subsequent**  
 16 **violation occurring within 24 months after a previous violation of**  
 17 **this subsection.**

18 (2) ~~A Subject to subsection (3), a person who that~~ sells  
 19 tobacco products **or tobacco paraphernalia** at retail shall post ~~, in~~  
 20 ~~a place close to the point of sale and conspicuous to both~~  
 21 ~~employees and customers,~~ a sign produced by the department of  
 22 ~~community health~~ **and human services** that includes the following  
 23 statement:

24 "The ~~purchase sale of a tobacco products by a minor product or~~  
 25 **tobacco paraphernalia to an individual who is** under ~~18~~ **21** years of  
 26 age and ~~the provision of tobacco products to a minor are~~ **is**  
 27 ~~prohibited by law.~~ "A minor unlawfully purchasing or using tobacco  
 28 ~~products is subject to criminal penalties."~~

29 (3) ~~If the~~ **A person that sells tobacco products or tobacco**

1 **paraphernalia at retail shall ensure that the** sign required under  
2 subsection (2) ~~is more than 6 feet from the point of sale, it shall~~  
3 **is posted in a place that is within 6 feet of each point of sale,**  
4 **is unobstructed, and is conspicuous to both employees and**  
5 **customers. The sign required under subsection (2) must** be 5-1/2  
6 inches by 8-1/2 inches, and the statement required under subsection  
7 (2) ~~shall~~ **must** be printed in 36-point boldfaced type. ~~If the sign~~  
8 ~~required under subsection (2) is 6 feet or less from the point of~~  
9 ~~sale, it shall be 2 inches by 4 inches and the statement required~~  
10 ~~under subsection (2) shall be printed in 20-point boldfaced type.~~

11 (4) The department of ~~community health~~ **and human services**  
12 shall produce the sign required under subsection (2) and have  
13 adequate copies of the sign ready for distribution to licensed  
14 wholesalers, secondary wholesalers, and unclassified acquirers of  
15 tobacco products free of charge. Licensed wholesalers, secondary  
16 wholesalers, and unclassified acquirers of tobacco products shall  
17 obtain copies of the sign from the department of ~~community health~~  
18 **and human services** and distribute them free of charge, upon  
19 request, to persons ~~who~~ **that** are subject to subsection (2). The  
20 department of ~~community health~~ **and human services** shall provide  
21 copies of the sign free of charge, upon request, to persons subject  
22 to subsection (2) ~~who~~ **that** do not purchase their supply of tobacco  
23 products from wholesalers, secondary wholesalers, and unclassified  
24 acquirers of tobacco products licensed under the tobacco products  
25 tax act, 1993 PA 327, MCL 205.421 to 205.436.

26 (5) It is an affirmative defense to a ~~charge~~ **citation issued**  
27 under subsection (1) that the defendant ~~had in force at the time of~~  
28 ~~arrest and continues to have in force a written policy to prevent~~  
29 ~~the sale of tobacco products to persons under 18 years of age and~~

1 ~~that the defendant enforced and continues to enforce the policy.~~  
 2 **demand, was shown, and reasonably relied on a government-issued**  
 3 **photographic identification that established that the individual**  
 4 **was at least 21 years of age before the defendant sold, gave, or**  
 5 **furnished the tobacco product or tobacco paraphernalia to the**  
 6 **individual.** A defendant who proposes to offer evidence of the  
 7 affirmative defense described in this subsection shall file and  
 8 ~~serve a written~~ notice of the defense ~~, in writing, upon with~~ the  
 9 court and **serve a copy of the notice on** the prosecuting attorney.  
 10 The **defendant shall file and serve the** notice ~~shall be served not~~  
 11 less than 14 days before the **hearing** date. ~~set for trial.~~

12 (6) A prosecuting attorney who proposes to offer testimony to  
 13 rebut the affirmative defense described in subsection (5) shall  
 14 ~~file and serve a written~~ notice of rebuttal ~~, in writing, upon with~~  
 15 the court and **serve a copy of the notice on** the defendant. The  
 16 **prosecuting attorney shall file and serve the** notice ~~shall be~~  
 17 ~~served not~~ less than 7 days before the **hearing** date ~~set for trial~~  
 18 and shall ~~contain~~ **include in the notice** the name and address of  
 19 each rebuttal witness.

20 (7) Subsection (1) does not apply to the handling or  
 21 transportation of a tobacco product **or tobacco paraphernalia** by a  
 22 minor under the terms of that minor's employment.

23 Sec. 2a. (1) ~~Except as otherwise provided in subsection (2), a~~  
 24 **A person who that** sells tobacco products **or tobacco paraphernalia**  
 25 at retail shall not sell a cigarette separately from its package.

26 ~~(2) Subsection (1) does not apply to a person who sells~~  
 27 ~~tobacco products at retail in a tobacco specialty retail store or~~  
 28 ~~other retail store that deals exclusively in the sale of tobacco~~  
 29 ~~products and smoking paraphernalia.~~

1           (2) ~~(3)~~ A person ~~who~~ **that** violates subsection (1) is guilty of  
2 a misdemeanor ~~7~~ punishable by a fine of not more than \$500.00 for  
3 each offense.

4           **Sec. 3a. A city, township, village, county, other local unit**  
5 **of government, or political subdivision of this state may adopt an**  
6 **ordinance or a regulation that regulates the sale of tobacco**  
7 **products or tobacco paraphernalia in a manner that is as**  
8 **restrictive or more restrictive than this act.**

9           Sec. 4. As used in this act:

10           (a) "Electronic device" means a product that delivers nicotine  
11 or another similar substance that is intended for human consumption  
12 and that can be used by an individual to simulate smoking through  
13 inhalation of vapor or aerosol from the product. Electronic device  
14 includes, but is not limited to, an electronic cigarette, an  
15 electronic cigar, an electronic pipe, or an electronic hookah.

16           (b) "Government-issued photographic identification" means a  
17 document that includes a photograph and the date of birth of an  
18 individual that is issued by a federal, state, or local unit of  
19 government, or a political subdivision or agency of a federal,  
20 state, or local unit of government.

21           (c) ~~(a)~~ "Minor" means an individual ~~under 18~~ **who is less than**  
22 **21** years of age.

23           (d) "Person" means an individual, firm, partnership, limited  
24 partnership, association, limited liability company, corporation,  
25 or other legal entity.

26           (e) ~~(b)~~ "Person ~~who~~ **that** sells tobacco products **or tobacco**  
27 **paraphernalia** at retail" means a person whose ordinary course of  
28 business consists, in whole or in part, of the retail sale of  
29 tobacco products **or tobacco paraphernalia** subject to state sales

1 tax.

2 ~~(e) "Public place" means a public street, sidewalk, or park or~~  
3 ~~any area open to the general public in a publicly owned or operated~~  
4 ~~building or public place of business.~~

5 **(f) "Tobacco paraphernalia" means an item designed or marketed**  
6 **for the consumption, use, or preparation of a tobacco product.**

7 **(g) ~~(d)~~"Tobacco product" means a product that contains or is**  
8 **made or derived from tobacco or nicotine and that is intended for**  
9 **human consumption, including, whether smoked, heated, chewed,**  
10 **absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any**  
11 **other means. Tobacco product includes, but is not limited to,**  
12 **cigarettes, noncigarette smoking tobacco, or smokeless tobacco, as**  
13 **those terms are defined in section 2 of the tobacco products tax**  
14 **act, 1993 PA 327, MCL 205.422, and cigars, little cigars, chewing**  
15 **tobacco, pipe tobacco, shisha, snuff, or an electronic device.**  
16 **Tobacco product includes a component, part, or accessory of a**  
17 **tobacco product regardless of whether the component, part, or**  
18 **accessory is sold separately. Tobacco product does not include a**  
19 **product specifically approved by the United States Food and Drug**  
20 **Administration for sale as a tobacco cessation product that is**  
21 **being marketed and sold solely for the approved purpose.**

22 ~~(e) "Use a tobacco product" means to smoke, chew, suck,~~  
23 ~~inhale, or otherwise consume a tobacco product.~~

24 Enacting section 1. Section 2 of the youth tobacco act, 1915  
25 PA 31, MCL 722.642, is repealed.

26 Enacting section 2. This amendatory act takes effect 180 days  
27 after the date it is enacted into law.