

# HOUSE BILL No. 5125

October 2, 2003, Introduced by Reps. Spade, Bieda, Shaffer, Pappageorge, Kooiman, Wojno, Farrah, Clack, Vagnozzi, Sheltroun, Nofs, Caswell, Woodward, Zelenko, Ehardt, Vander Veen, Voorhees, Pumford, Hart and Hager and referred to the Committee on Commerce.

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 ~~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  
 5 misdemeanor, punishable by **1 of the following fines:**

6       **(a) If the violation is not a violation of subdivision (b), a**  
 7 **fine of not more than ~~\$50.00~~ \$100.00 for ~~each offense~~ a first**  
 8 **violation, \$250.00 for a second violation, or \$500.00 for a third**  
 9 **or subsequent violation.**

1 (b) If the violation is an internet, mail order, or telephone  
2 sale of a tobacco product to a person under 18 years of age, a  
3 fine of not more than \$500.00 for a first violation, \$1,000.00  
4 for a second violation, or \$2,000.00 for a third or subsequent  
5 violation.

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

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

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

24 (4) The department of ~~public~~ **community** health shall produce  
25 the sign required under subsection (2) and have adequate copies  
26 of the sign ready for distribution to licensed wholesalers,  
27 secondary wholesalers, and unclassified acquirers of ~~cigarettes~~

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

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

26 (6) A prosecuting attorney who proposes to offer testimony to  
27 rebut the affirmative defense described in subsection (5) shall

1 file and serve a notice of rebuttal, in writing, upon the court  
2 and the defendant. The notice shall be served not less than 7  
3 days before the date set for trial, and shall contain the name  
4 and address of each rebuttal witness.

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

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

23       (a) For the first violation, the court may order the person  
24 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 person to perform not more than 32 hours of community service  
5 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,  
8 the court may order the person to perform not more than 48 hours  
9 of community service in a hospice, nursing home, or long-term  
10 care facility.

11 Sec. 4. As used in this act:

12 ~~(a) "Chewing tobacco" means loose tobacco or a flat,~~  
13 ~~compressed cake of tobacco that is inserted into the mouth to be~~  
14 ~~chewed or sucked.~~

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

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

22 (b) "Public place" means a public street, sidewalk, park, or  
23 any area open to the general public in a publicly owned or  
24 operated building or public place of business.

25 (c) "Tobacco product" means a product that contains tobacco  
26 and is intended for human consumption, including but not limited  
27 to cigarettes, noncigarette smoking tobacco, or smokeless

1 tobacco, as those terms are defined in section 2 of the tobacco  
2 products tax act, 1993 PA 327, MCL 205.422, and cigars.

3 (d) "Use a tobacco product" means to smoke or otherwise  
4 consume a tobacco product.