

HOUSE BILL No. 4341

February 20, 1991, Introduced by Reps. Hunter, Barns, Murphy, Wallace, Gubow, Leland and Bandstra and referred to the Committee on Public Health.

A bill to amend the title and sections 1, 4, and 5 of Act No. 31 of the Public Acts of 1915, entitled as amended "Youth tobacco act,"

section 1 as amended and sections 4 and 5 as added by Act No. 314 of the Public Acts of 1988, being sections 722.641, 722.644, and 722.645 of the Michigan Compiled Laws; and to add sections 3a, 3b, 3c, 3d, and 3e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and sections 1, 4, and 5 of Act No. 31
2 of the Public Acts of 1915, section 1 as amended and sections 4
3 and 5 as added by Act No. 314 of the Public Acts of 1988, being
4 sections 722.641, 722.644, and 722.645 of the Michigan Compiled
5 Laws, are amended and sections 3a, 3b, 3c, 3d, and 3e are added
6 to read as follows:

1 TITLE

2 An act to prohibit the selling, giving, or furnishing of
3 tobacco products to minors; to prohibit the use of tobacco prod-
4 ucts by minors; to prohibit the harboring of minors for the pur-
5 pose of indulging in the use of tobacco products; TO PROVIDE FOR
6 LICENSURE OF RETAIL SELLERS OF TOBACCO PRODUCTS; TO CREATE A
7 YOUTH TOBACCO FUND; to prescribe penalties; TO PROVIDE FOR THE
8 PROMULGATION OF RULES; and to prescribe ~~the~~ CERTAIN powers and
9 duties of certain state agencies and departments.

10 Sec. 1. (1) A person shall not sell, give, or furnish any
11 ~~cigarette, cigar, chewing tobacco, tobacco snuff, or tobacco in~~
12 ~~any other form to a person~~ TOBACCO PRODUCT TO AN INDIVIDUAL
13 under 18 years of age. A person who violates this section is
14 guilty of a misdemeanor, punishable by a fine of not more than
15 \$50.00 for each offense.

16 (2) Beginning ~~90 days after the effective date of this~~
17 ~~subsection~~ MARCH 30, 1989, a person ~~who sells~~ ENGAGED IN THE
18 RETAIL SALE OF tobacco products ~~at retail~~ shall post, in a
19 place close to the point of sale and conspicuous to both employ-
20 ees and customers, a sign produced by the department ~~of public~~
21 ~~health~~ that includes, AFTER THE EFFECTIVE DATE OF THE 1991 AMEN-
22 DATORY ACT THAT AMENDED THIS SUBSECTION, A UNIVERSAL PROHIBITION
23 SYMBOL COVERING AN ILLUSTRATION OF A PACK OF CIGARETTES AND THE
24 STATEMENT "SALE OF CIGARETTES OR ANY TOBACCO PRODUCT TO PERSONS
25 UNDER 18 YEARS OF AGE IS ILLEGAL" DIRECTLY ABOVE THE ILLUSTRATION
26 IN BOLDFACED TYPE NOT LESS THAN 1/2 INCH IN HEIGHT AND the
27 following statement:

1 ~~"The purchase of tobacco products by a minor under 18 years~~
2 ~~of age and the provision of tobacco products to a minor are pro-~~
3 ~~hibited by law. A minor unlawfully purchasing or using tobacco~~
4 ~~products is subject to criminal penalties."~~

5 "WHOEVER SELLS A CIGARETTE, CHEWING TOBACCO, SNUFF, OR ANY
6 TOBACCO IN ANY OF ITS FORMS TO ANY PERSON UNDER THE AGE OF 18 OR,
7 NOT BEING HIS OR HER PARENT OR GUARDIAN, GIVES A CIGARETTE, CHEW-
8 ING TOBACCO, SNUFF, OR TOBACCO IN ANY OF ITS FORMS TO ANY PERSON
9 UNDER THE AGE OF 18 SHALL BE PUNISHED BY A FINE OF NOT MORE THAN
10 \$50.00 FOR EACH OFFENSE."

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

19 (4) The department ~~of public health~~ shall produce the sign
20 required under subsection (2) and have adequate copies of the
21 sign ready for distribution FREE OF CHARGE to PERSONS licensed AS
22 wholesalers, secondary wholesalers, and unclassified acquirers of
23 ~~cigarettes and other tobacco products described in~~
24 ~~subsection (1) free of charge~~ UNDER ACT NO. 265 OF THE PUBLIC
25 ACTS OF 1947, BEING SECTIONS 205.501 TO 205.522 OF THE MICHIGAN
26 COMPILED LAWS, within 60 days after the effective date of THE
27 1991 AMENDATORY ACT THAT AMENDED this subsection. ~~Licensed~~

1 ~~wholesalers~~ WHOLESALERS, secondary wholesalers, and unclassified
2 acquirers of ~~cigarettes and other~~ tobacco products ~~described~~
3 ~~in subsection (1)~~ LICENSED UNDER ACT NO. 265 OF THE PUBLIC ACTS
4 OF 1947 shall obtain copies of the sign from the department ~~of~~
5 ~~public health~~ and distribute them free of charge, upon request,
6 to persons who are subject to subsection (2). The department ~~of~~
7 ~~public health~~ shall provide copies of the sign free of charge,
8 upon request, to persons subject to subsection (2) who do not
9 purchase their supply of ~~cigarettes or other~~ tobacco products
10 ~~described in subsection (1)~~ from ~~licensed~~ wholesalers, sec-
11 ondary wholesalers, and unclassified acquirers of ~~cigarettes and~~
12 ~~other~~ tobacco products ~~described in subsection (1)~~ LICENSED
13 UNDER ACT NO. 265 OF THE PUBLIC ACTS OF 1947.

14 (5) It is an affirmative defense to a ~~charge pursuant to~~
15 COMPLAINT CHARGING A VIOLATION OF subsection (1) that the
16 defendant had in force at the time of arrest and continues to
17 have in force a written policy to prevent the sale of
18 ~~cigarettes, cigars, chewing tobacco, tobacco snuff, and other~~
19 tobacco products to persons under 18 years of age, and that the
20 defendant enforced and continues to enforce the policy. THAT
21 POLICY SHALL INCLUDE A REQUEST FOR A PICTURE IDENTIFICATION AS
22 PROOF OF AGE OF THE PURCHASER UNLESS THE SALESPERSON REASONABLY
23 BELIEVES THAT THE PURCHASER IS AT LEAST 18 YEARS OF AGE. A
24 defendant who proposes to offer evidence of the affirmative
25 defense described in this subsection shall file and serve notice
26 of the defense, in writing, upon the court and the prosecuting

1 attorney. The notice shall be served not less than 14 days
2 before the date set for trial.

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

9 SEC. 3A. (1) A PERSON, OR AN EMPLOYEE OF THE PERSON, SHALL
10 NOT ENGAGE OR OFFER TO ENGAGE IN THE RETAIL SALE OF ANY TOBACCO
11 PRODUCT UNLESS LICENSED UNDER THIS ACT.

12 (2) A LICENSE ISSUED TO A PERSON UNDER THIS ACT SHALL BE FOR
13 THE RETAIL SALE OF ANY TOBACCO PRODUCT ONLY ON THE LICENSED
14 PREMISES.

15 (3) SUBJECT TO SECTION 3C, A LICENSEE, UPON APPLICATION ON A
16 FORM PROVIDED BY THE DEPARTMENT AND PAYMENT OF A FEE OF \$25.00,
17 MAY APPLY FOR A TRANSFER OF A LICENSE TO ANOTHER PERSON OR TO
18 ANOTHER LOCATION UPON DEPARTMENT APPROVAL. THE DEPARTMENT MAY
19 PROMULGATE RULES SETTING STANDARDS APPLICABLE TO A LICENSE TRANS-
20 FER TO ANOTHER PERSON OR TO ANOTHER LOCATION.

21 SEC. 3B. (1) AN APPLICANT FOR LICENSURE SHALL SUBMIT TO THE
22 DEPARTMENT ALL OF THE FOLLOWING INFORMATION ON A FORM PROVIDED BY
23 THE DEPARTMENT:

24 (A) THE NAME AND ADDRESS OF THE PERSON BEING LICENSED. IN
25 THE CASE OF A CORPORATION, THE NAME AND ADDRESS OF THE OFFICERS
26 AND DIRECTORS OF THE CORPORATION. IN THE CASE OF ANY OTHER
27 PERSON NOT AN INDIVIDUAL OR A CORPORATION, THE NAME AND ADDRESS

1 OF ANY INDIVIDUAL HAVING AN OWNERSHIP INTEREST OF MORE THAN 10%
2 AND ANY INDIVIDUAL ACTING IN A SUPERVISORY CAPACITY.

3 (B) ANY INDIVIDUAL DESCRIBED IN SUBDIVISION (A) WHO HAS BEEN
4 CONVICTED OF AN OFFENSE DESCRIBED IN SECTION 1.

5 (C) A DIAGRAM OF THE LICENSED PREMISES.

6 (D) ANY OTHER RELEVANT INFORMATION REQUIRED BY THE DEPART-
7 MENT CONTAINED IN RULES PROMULGATED UNDER THIS ACT.

8 (E) THE FEE DESCRIBED IN SUBSECTION (2).

9 (2) AN APPLICANT FOR LICENSURE SHALL PAY TO THE DEPARTMENT A
10 NONREFUNDABLE APPLICATION FEE OF \$100.00 UPON THE FILING OF AN
11 APPLICATION UNDER THIS SECTION.

12 (3) UPON THE APPLICANT'S COMPLIANCE WITH SUBSECTIONS (1) AND
13 (2) AND AFTER THE DEPARTMENT'S APPROVAL OF THE APPLICANT, THE
14 DEPARTMENT SHALL ISSUE A LICENSE TO A PERSON WHICH SHALL EXPIRE 1
15 YEAR AFTER THE DATE OF ISSUANCE.

16 (4) A LICENSE MAY BE RENEWED UPON THE FILING OF A RENEWAL
17 APPLICATION WITH THE DEPARTMENT ON A FORM PROVIDED BY THE DEPART-
18 MENT AND THE PAYMENT OF A LICENSE RENEWAL FEE OF \$50.00. A
19 LICENSEE THAT DOES NOT RENEW ITS LICENSE WITHIN 30 DAYS AFTER THE
20 EXPIRATION DATE MAY RENEW ITS LICENSE BY FILING THE RENEWAL
21 APPLICATION, PAYING THE RENEWAL FEE, AND PAYING A LATE RENEWAL
22 FEE OF \$25.00.

23 (5) A TRANSFER OF OWNERSHIP OR LOCATION OF A LICENSEE SHALL
24 OPERATE AS AN AUTOMATIC REVOCATION OF A LICENSE. IF A REVOCATION
25 OF LICENSURE OCCURS UNDER THIS SUBSECTION, THE DEPARTMENT SHALL
26 ISSUE AN ORIGINAL LICENSE IF THE PERSON DESIRING LICENSURE FILES
27 AN ORIGINAL APPLICATION ACCOMPANIED BY THE ORIGINAL APPLICATION

1 FEE AND OTHERWISE MEETS THE REQUIREMENTS OF THIS ACT AND ANY
2 RULES PROMULGATED UNDER THIS ACT.

3 (6) A LICENSEE SHALL NOTIFY THE DEPARTMENT WITHIN 30 DAYS
4 AFTER A CHANGE IN THE INFORMATION REQUIRED TO BE FURNISHED UNDER
5 SUBSECTION (1).

6 (7) THE DEPARTMENT SHALL NOT ACCEPT AN APPLICATION FOR
7 LICENSURE FROM A PERSON LOCATED IN ANOTHER STATE OR COUNTRY
8 UNLESS THE APPLICATION DESIGNATES A RESIDENT AGENT IN THIS STATE
9 FOR ACCEPTANCE OF PROCESS.

10 SEC. 3C. THE DEPARTMENT SHALL NOT ISSUE A NEW LICENSE OR
11 TRANSFER THE LOCATION OF AN EXISTING LICENSE FOR THE RETAIL SALE
12 OF ANY TOBACCO PRODUCT IF THE LOCATION OR CONTEMPLATED LOCATION
13 IS WITHIN 500 FEET OF A K-12 PUBLIC OR PRIVATE SCHOOL, OR WITHIN
14 500 FEET OF A FACILITY REGISTERED UNDER ACT NO. 116 OF THE PUBLIC
15 ACTS OF 1973, BEING SECTIONS 722.111 TO 722.128 OF THE MICHIGAN
16 COMPILED LAWS.

17 SEC. 3D. (1) THERE IS CREATED IN THE DEPARTMENT OF TREASURY
18 A YOUTH TOBACCO FUND WHICH IS A REVOLVING FUND ADMINISTERED BY
19 THE DEPARTMENT. THE FEES PAID BY LICENSEES PURSUANT TO THIS ACT
20 SHALL BE PLACED INTO THAT FUND AND SHALL NOT REVERT TO THE GEN-
21 ERAL FUND. ANY UNEXPENDED BALANCE IN THE FUND AT THE END OF A
22 FISCAL YEAR SHALL CARRY FORWARD TO THE NEXT FISCAL YEAR.

23 (2) THE DEPARTMENT SHALL USE THE FUND TO ADMINISTER THE
24 APPLICATION AND LICENSING PROVISIONS CONTAINED IN THIS ACT EXCEPT
25 THAT THE COST OF THOSE ADMINISTRATIVE FUNCTIONS SHALL NOT EXCEED
26 50% OF THE MONEY CONTAINED IN THE FUND.

1 (3) THE REMAINDER OF THE MONEY CONTAINED IN THE FUND, AFTER
2 THE DEDUCTION OF THE ADMINISTRATIVE COSTS DESCRIBED IN
3 SUBSECTION (2), SHALL BE EQUALLY DIVIDED FOR BOTH OF THE FOLLOW-
4 ING ACTIVITIES:

5 (A) ENFORCEMENT OF THIS ACT.

6 (B) EDUCATIONAL ACTIVITIES RELATED TO THE USE OF TOBACCO.

7 SEC. 3E. (1) THE DEPARTMENT MAY PROMULGATE RULES UNDER THE
8 ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC
9 ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF THE MICHIGAN
10 COMPILED LAWS, FOR THE IMPLEMENTATION AND ADMINISTRATION OF THE
11 LICENSURE PROVISIONS OF THIS ACT.

12 (2) A PROCEEDING AGAINST A LICENSEE FOR VIOLATION OF SECTION
13 3A OR FOR VIOLATION OF A RULE PROMULGATED PURSUANT TO THIS ACT
14 SHALL BE PURSUANT TO THE CONTESTED CASE PROVISIONS OF ACT NO. 306
15 OF THE PUBLIC ACTS OF 1969 AND MAY RESULT IN THE REVOCATION OR
16 SUSPENSION OF THE LICENSE FOR THE RETAIL SALE OF TOBACCO
17 PRODUCTS.

18 (3) THE PENALTIES UNDER THIS ACT AGAINST A LICENSEE ARE
19 CUMULATIVE AND A PERSON FOUND BY THE DEPARTMENT TO BE IN VIOLA-
20 TION OF SECTION 3A MAY BE SUBJECT TO CRIMINAL PROSECUTION UNDER
21 SECTION 1.

22 Sec. 4. As used in this act:

23 (a) "Chewing tobacco" means loose tobacco or a flat, com-
24 pressed cake of tobacco which is inserted into the mouth to be
25 chewed or sucked.

26 (B) "DEPARTMENT" MEANS THE DEPARTMENT OF PUBLIC HEALTH.

1 (C) "LICENSED PREMISES" MEANS ANY PORTION OF A BUILDING,
2 STRUCTURE, ROOM, OR ENCLOSURE ON REAL ESTATE WHICH IS OWNED,
3 LEASED, USED, CONTROLLED, OR OPERATED BY A LICENSEE IN THE CON-
4 DUCT OF THE BUSINESS AT THE LOCATION FOR WHICH THE PERSON IS
5 LICENSED BY THE DEPARTMENT.

6 (D) "LICENSEE" MEANS THE PERSON TO WHOM A LICENSE IS ISSUED
7 BY THE DEPARTMENT FOR THE RETAIL SALE OF ANY TOBACCO PRODUCT.

8 (E) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION,
9 OR OTHER ENTITY.

10 (F) "RETAIL SALE" MEANS THE SALE DIRECTLY TO A MEMBER OF THE
11 PUBLIC.

12 (G) "TOBACCO PRODUCT" MEANS ANY CIGARETTE, CIGAR, CHEWING
13 TOBACCO, TOBACCO SNUFF, OR TOBACCO IN ANY OTHER FORM.

14 (H) ~~(b)~~ "Tobacco snuff" means shredded, powdered, or pul-
15 verized tobacco which may be inhaled through the nostrils,
16 chewed, or placed against the gums.

17 Sec. 5. This act shall be known and may be cited as the
18 "youth tobacco AND TOBACCO RETAILER LICENSURE act".