

SENATE BILL No. 295

March 13, 2003, Introduced by Senators BASHAM, BERNERO, CLARK-COLEMAN,
BISHOP and GEORGE and referred to the Committee on Judiciary.

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 a fine of not more than ~~\$50.00~~
6 **\$100.00 for each offense a first violation committed in a**
7 **calendar year, not more than \$250.00 for a second violation**
8 **committed in a calendar year, or not more than \$500.00 for a**
9 **third or subsequent violation committed in a calendar year.**

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

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

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~~ **community** health shall produce
20 the sign required under subsection (2) and have adequate copies
21 of the sign ready for distribution to licensed wholesalers,
22 secondary wholesalers, and unclassified acquirers of ~~cigarettes~~
23 ~~and other~~ tobacco products ~~described in subsection (1)~~ free of
24 charge. ~~within 60 days after the effective date of this~~
25 ~~subsection.~~ Licensed wholesalers, secondary wholesalers, and
26 unclassified acquirers of ~~cigarettes and other~~ tobacco products
27 ~~described in subsection (1)~~ shall obtain copies of the sign

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

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

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

27 Sec. 2. (1) A person under 18 years of age shall not

1 possess or ~~smoke cigarettes or cigars; or possess or chew, suck,~~
 2 ~~or inhale chewing tobacco or tobacco snuff; or possess or use~~
 3 ~~tobacco in any other form, on a public highway, street, alley,~~
 4 ~~park, or other lands used for public purposes, or in a public~~
 5 ~~place of business or amusement~~ use a tobacco product in a public
 6 place.

7 (2) A person who violates ~~this section~~ subsection (1) is
 8 guilty of a misdemeanor, punishable by a fine of not more than
 9 \$50.00 for each ~~offense~~ violation. ~~Pursuant to a probation~~
 10 ~~order, the~~ The court ~~may~~ shall require a person who violates
 11 ~~this section~~ subsection (1) to participate in a health
 12 promotion and risk reduction assessment program, if available. A
 13 ~~probationer~~ person who is ordered to participate in a health
 14 promotion and risk reduction assessment program under this
 15 ~~section~~ subsection is responsible for the costs of
 16 participating in the program. In addition, a person who violates
 17 ~~this section~~ subsection (1) is subject to the following:

18 (a) For the first violation, the court ~~may~~ shall order the
 19 person to do 1 of the following:

20 (i) Perform not more than 16 hours of community service in a
 21 hospice, nursing home, or **hospital** long-term care ~~facility~~
 22 unit.

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

25 (b) For a second violation, in addition to participation in a
 26 health promotion and risk reduction program, the court ~~may~~
 27 shall order the person to perform not more than 32 hours of

1 community service in a hospice, nursing home, or **hospital**
2 long-term care ~~facility~~ **unit**.

3 (c) For a third or subsequent violation, in addition to
4 participation in a health promotion and risk reduction program,
5 the court ~~may~~ **shall** order the person to perform not more than
6 48 hours of community service in a hospice, nursing home, or
7 **hospital** long-term care ~~facility~~ **unit**.

8 Sec. 4. As used in this act:

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

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

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

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

22 **(c)** "Tobacco product" means a product that contains tobacco
23 and is intended for human consumption, including but not limited
24 to cigarettes, noncigarette smoking tobacco, or smokeless
25 tobacco, as those terms are defined in section 2 of the tobacco
26 products tax act, 1993 PA 327, MCL 205.422, and cigars.

27 **(d)** "Use a tobacco product" means to smoke or otherwise

1 consume a tobacco product.