

# SENATE BILL No. 911

January 14, 2004, Introduced by Senators SWITALSKI, JACOBS, PATTERSON, CROUSEY and THOMAS 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 for  
6 ~~each offense~~ **a first violation, \$100.00 for a second violation,**  
7 **or \$200.00 for a third or subsequent violation.**

8       (2) ~~Beginning 90 days after the effective date of this~~  
9 ~~subsection, a~~ A person who sells tobacco products at retail

1 shall post, in a place close to the point of sale and conspicuous  
2 to both employees and customers, a sign produced by the  
3 department of ~~public~~ **community** health that includes the  
4 following statement:

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

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

17 (4) The department of ~~public~~ **community** health shall produce  
18 the sign required under subsection (2) and have adequate copies  
19 of the sign ready for distribution to licensed wholesalers,  
20 secondary wholesalers, and unclassified acquirers of ~~cigarettes~~  
21 ~~and other~~ tobacco products ~~described in subsection (1)~~ free of  
22 charge. ~~within 60 days after the effective date of this~~  
23 ~~subsection.~~ Licensed wholesalers, secondary wholesalers, and  
24 unclassified acquirers of ~~cigarettes and other~~ tobacco products  
25 ~~described in subsection (1)~~ shall obtain copies of the sign  
26 from the department of ~~public~~ **community** health and distribute  
27 them free of charge, upon request, to persons who are subject to

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

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

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

25 Sec. 2. (1) A person under 18 years of age shall not  
26 possess or ~~smoke cigarettes or cigars; or possess or chew, suck,~~  
27 ~~or inhale chewing tobacco or tobacco snuff; or possess or use~~

1 ~~tobacco in any other form, on a public highway, street, alley,~~  
2 ~~park, or other lands used for public purposes, or in a public~~  
3 ~~place of business or amusement~~ **use a tobacco product in a public**  
4 **place.**

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

16 (a) For the first violation, the court may order the person  
17 to do 1 of the following:

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

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

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

26 (c) For a third or subsequent violation, in addition to  
27 participation in a health promotion and risk reduction program,

1 the court may order the person to perform not more than 48 hours  
2 of community service in a hospice, nursing home, or long-term  
3 care facility.

4 Sec. 4. As used in this act:

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

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

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

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

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

23 (d) "Use a tobacco product" means to smoke or otherwise  
24 consume a tobacco product.