

SENATE BILL No. 311

April 11, 2013, Introduced by Senators BIEDA, ANDERSON, NOFS, HOOD and ROCCA and referred to the Committee on Judiciary.

A bill to amend 1915 PA 31, entitled
"Youth tobacco act,"
by amending sections 1 and 2 (MCL 722.641 and 722.642), as amended
by 2006 PA 236.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. (1) A person shall not sell, give, or furnish a
2 tobacco product to a minor. A person who violates this subsection
3 is guilty of a misdemeanor punishable by a fine of not more than
4 ~~\$50.00~~ ~~\$100.00~~ for each **A FIRST VIOLATION AND NOT MORE THAN \$500.00**
5 **FOR A SECOND OR SUBSEQUENT** violation.

6 (2) A person who sells tobacco products at retail shall post,
7 in a place close to the point of sale and conspicuous to both
8 employees and customers, a sign produced by the department of
9 community health that includes the following statement:

10 "The purchase of tobacco products by a minor under 18 years of

1 age and the provision of tobacco products to a minor are prohibited
2 by law. A minor unlawfully purchasing or using tobacco products is
3 subject to criminal penalties.".

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

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

25 (5) It is an affirmative defense to a charge under subsection
26 (1) that the defendant had in force at the time of arrest and
27 continues to have in force a written policy to prevent the sale of

1 tobacco products to persons under 18 years of age and that the
2 defendant enforced and continues to enforce the policy. A defendant
3 who proposes to offer evidence of the affirmative defense described
4 in this subsection shall file and serve notice of the defense, in
5 writing, upon the court and the prosecuting attorney. The notice
6 shall be served not less than 14 days before the date set for
7 trial.

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

14 (7) Subsection (1) does not apply to the handling or
15 transportation of a tobacco product by a minor under the terms of
16 that minor's employment.

17 Sec. 2. (1) Subject to subsection (3), a minor shall not do
18 any of the following:

19 (a) Purchase or attempt to purchase a tobacco product.

20 (b) Possess or attempt to possess a tobacco product.

21 (c) Use a tobacco product in a public place.

22 (d) Present or offer to an individual a purported proof of age
23 that is false, fraudulent, or not actually his or her own proof of
24 age for the purpose of purchasing, attempting to purchase,
25 possessing, or attempting to possess a tobacco product.

26 (2) An individual who violates subsection (1) is guilty of a
27 misdemeanor punishable by a fine of not more than ~~\$50.00~~ **\$100.00**

1 for each ~~A FIRST VIOLATION AND NOT MORE THAN \$500.00 FOR A SECOND~~
2 ~~OR SUBSEQUENT~~ violation. Pursuant to a probation order, the ~~THE~~
3 court may also, **BY AN ORDER OF PROBATION**, require an individual who
4 violates subsection (1) to participate in a health promotion and
5 risk reduction assessment program, if available. An individual who
6 is ordered to participate in a health promotion and risk reduction
7 assessment program under this subsection is responsible for the
8 costs of participating in the program. In addition, an individual
9 who violates subsection (1) is subject to the following:

10 (a) For the first violation, the court may order the
11 individual to do 1 of the following:

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

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

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

20 (c) For a third or subsequent violation, in addition to
21 participation in a health promotion and risk reduction program, the
22 court may order the individual to perform not more than 48 hours of
23 community service in a hospice, nursing home, or long-term care
24 facility.

25 (3) Subsection (1) does not apply to a minor participating in
26 any of the following:

27 (a) An undercover operation in which the minor purchases or

1 receives a tobacco product under the direction of the minor's
2 employer and with the prior approval of the local prosecutor's
3 office as part of an employer-sponsored internal enforcement
4 action.

5 (b) An undercover operation in which the minor purchases or
6 receives a tobacco product under the direction of the state police
7 or a local police agency as part of an enforcement action, unless
8 the initial or contemporaneous purchase or receipt of the tobacco
9 product by the minor was not under the direction of the state
10 police or the local police agency and was not part of the
11 undercover operation.

12 (c) Compliance checks in which the minor attempts to purchase
13 tobacco products for the purpose of satisfying federal substance
14 abuse block grant youth tobacco access requirements, if the
15 compliance checks are conducted under the direction of a substance
16 abuse coordinating agency as defined in section 6103 of the public
17 health code, 1978 PA 368, MCL 333.6103, and with the prior approval
18 of the state police or a local police agency.

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

22 (5) This section does not prohibit the individual from being
23 charged with, convicted of, or sentenced for any other violation of
24 law arising out of the violation of subsection (1).