

# HOUSE BILL No. 4296

February 23, 1999, Introduced by Reps. Sanborn, Wojno, DeHart, Patterson, Garcia, Hart, Kuipers, Jelinek, Koetje, Voorhees, Mans, Ehardt, Jamnick, Jansen and Scranton and referred to the Committee on Criminal Law and Corrections.

A bill to amend 1915 PA 31, entitled "Youth tobacco act," by amending the title and sections 1, 2, and 4 (MCL 722.641, 722.642, and 722.644), the title and section 4 as amended by 1992 PA 272 and sections 1 and 2 as amended by 1988 PA 314.

## **THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1

### TITLE

2 An act to prohibit the selling, giving, or furnishing of  
3 tobacco products to minors; to prohibit the PURCHASE OR use of  
4 tobacco products by minors; to prohibit the harboring of minors  
5 for the purpose of indulging in the use of tobacco products; to  
6 regulate the retail sale of tobacco products; to prescribe penal-  
7 ties; and to prescribe the powers and duties of certain state  
8 agencies and departments.

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 misde-  
5 meanor, punishable by a fine of not more than \$50.00 for each  
6 offense.

7           (2) ~~Beginning 90 days after the effective date of this sub-~~  
8 ~~section, a~~ A person who sells tobacco products at retail shall  
9 post, in a place close to the point of sale and conspicuous to  
10 both employees and customers, a sign produced by the department  
11 of public health that includes the 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 pro-  
14 hibited by law. A minor unlawfully purchasing or using tobacco  
15 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 type. If the sign required under  
20 subsection (2) is 6 feet or less from the point of sale, it shall  
21 be 2 inches by 4 inches, and the statement required under subsec-  
22 tion (2) shall be printed in 20-point boldface type.

23           (4) The department of public health shall produce the sign  
24 required under subsection (2) and have adequate copies of the  
25 sign ready for distribution to licensed wholesalers, secondary  
26 wholesalers, and unclassified acquirers of ~~cigarettes and other~~  
27 tobacco products ~~described in subsection (1)~~ free of charge.

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

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

24 (6) A prosecuting attorney who proposes to offer testimony  
25 to rebut the affirmative defense described in subsection (5)  
26 shall file and serve a notice of rebuttal, in writing, upon the  
27 court and the defendant. The notice shall be served not less

1 than 7 days before the date set for trial, and shall contain the  
2 name and address of each rebuttal witness.

3       Sec. 2. (1) A person under 18 years of age shall not  
4 ~~possess or smoke cigarettes or cigars; or possess or chew, suck,~~  
5 ~~or inhale chewing tobacco or tobacco snuff; or possess or use~~  
6 ~~tobacco in any other form, on a public highway, street, alley,~~  
7 ~~park, or other lands used for public purposes, or in a public~~  
8 ~~place of business or amusement~~ PURCHASE OR ATTEMPT TO PURCHASE A  
9 TOBACCO PRODUCT, OR RECEIVE OR ATTEMPT TO RECEIVE A TOBACCO PRO-  
10 DUCT, OR POSSESS OR ATTEMPT TO POSSESS A TOBACCO PRODUCT IN A  
11 PUBLIC PLACE, OR USE OR ATTEMPT TO USE A TOBACCO PRODUCT IN A  
12 PUBLIC PLACE.

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

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

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

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

3           (b) ~~For a second~~ IF THE COURT FINDS THAT THE PERSON HAS 1  
4 PRIOR CONVICTION FOR A violation, in addition to participation in  
5 a health promotion and risk reduction program, the court may  
6 order the person to perform not more than 32 hours of community  
7 service in a hospice, nursing home, or long-term care facility;  
8 MAY ORDER THE SECRETARY OF STATE TO SUSPEND THE PERSON'S  
9 OPERATOR'S OR CHAUFFEUR'S LICENSE FOR A PERIOD OF NOT LESS THAN  
10 60 DAYS OR MORE THAN 90 DAYS; AND IF IT ORDERS A SUSPENSION, MAY  
11 ORDER THE SECRETARY OF STATE TO ISSUE THE PERSON A RESTRICTED  
12 LICENSE AFTER THE FIRST 30 DAYS OF SUSPENSION.

13           (c) ~~For a third or subsequent~~ IF THE COURT FINDS THAT THE  
14 PERSON HAS 2 OR MORE CONVICTIONS FOR A violation, in addition to  
15 participation in a health promotion and risk reduction program,  
16 the court may order the person to perform not more than 48 hours  
17 of community service in a hospice, nursing home, or long-term  
18 care facility; SHALL ORDER THE SECRETARY OF STATE TO SUSPEND THE  
19 PERSON'S OPERATOR'S OR CHAUFFEUR'S LICENSE FOR A PERIOD OF NOT  
20 LESS THAN 90 DAYS OR MORE THAN 180 DAYS; AND MAY ORDER THE SECRE-  
21 TARY OF STATE TO ISSUE THE PERSON A RESTRICTED LICENSE AFTER THE  
22 FIRST 60 DAYS OF SUSPENSION.

23           (D) IF A LICENSE SANCTION IS IMPOSED UNDER SUBDIVISION (B)  
24 OR (C), IMMEDIATELY UPON THE ENTRY OF THE COURT-ORDERED SANCTION,  
25 THE COURT SHALL ORDER THE PERSON CONVICTED FOR THE VIOLATION TO  
26 SURRENDER TO THE COURT HIS OR HER OPERATOR'S OR CHAUFFEUR'S  
27 LICENSE. THE COURT SHALL IMMEDIATELY FORWARD A NOTICE OF

1 COURT-ORDERED LICENSE SANCTION TO THE SECRETARY OF STATE THAT  
2 INDICATES THE SANCTION IMPOSED. IF THE LICENSE IS NOT FORWARDED  
3 TO THE SECRETARY OF STATE, AN EXPLANATION OF THE REASON WHY THE  
4 LICENSE IS ABSENT SHALL BE ATTACHED. IF THE FINDING IS APPEALED,  
5 THE COURT MAY, EX PARTE, ORDER THE SECRETARY OF STATE TO STAY THE  
6 SUSPENSION ISSUED PURSUED TO THIS SUBSECTION PENDING THE OUTCOME  
7 OF THE APPEAL.

8 (E) THE SECRETARY OF STATE SHALL SUSPEND THE OPERATOR'S OR  
9 CHAUFFEUR'S LICENSE OF AN INDIVIDUAL DESCRIBED IN SUBDIVISION (B)  
10 OR (C) AS PROVIDED IN SECTION 319 OF THE MICHIGAN VEHICLE CODE,  
11 1949 PA 300, MCL 257.319. IF THE INDIVIDUAL DOES NOT POSSESS AN  
12 OPERATOR'S OR CHAUFFEUR'S LICENSE ON THE DATE HE OR SHE IS CON-  
13 VICTED OF THE VIOLATION DESCRIBED IN SUBDIVISION (B) OR (C), THE  
14 SECRETARY OF STATE SHALL DENY THE INDIVIDUAL A LICENSE AS PRO-  
15 VIDED IN SECTION 303 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,  
16 MCL 257.303.

17 Sec. 4. As used in this act:

18 ~~-(a) "Chewing tobacco" means loose tobacco or a flat, com-~~  
19 ~~pressed cake of tobacco that is inserted into the mouth to be~~  
20 ~~chewed or sucked.~~

21 (A) ~~-(b)-~~ "Person who sells tobacco products at retail"  
22 means a person whose ordinary course of business consists, in  
23 whole or in part, of the retail sale of tobacco products subject  
24 to state sales tax.

25 ~~-(c) "Tobacco snuff" means shredded, powdered, or pulverized~~  
26 ~~tobacco that may be inhaled through the nostrils, chewed, or~~  
27 ~~placed against the gums.~~

1 (B) "PUBLIC PLACE" MEANS A PUBLIC STREET, SIDEWALK, PARK, OR  
2 ANY AREA OPEN TO THE GENERAL PUBLIC IN A PUBLICLY OWNED OR OPER-  
3 ATED BUILDING OR PUBLIC PLACE OF BUSINESS.

4 (C) "TOBACCO PRODUCT" MEANS A PRODUCT THAT CONTAINS TOBACCO  
5 AND IS INTENDED FOR HUMAN CONSUMPTION, INCLUDING BUT NOT LIMITED  
6 TO CIGARETTES, NONCIGARETTE SMOKING TOBACCO, OR SMOKELESS TOBAC-  
7 CO, AS THOSE TERMS ARE DEFINED IN SECTION 2 OF THE TOBACCO PRO-  
8 DUCTS TAX ACT, 1993 PA 327, MCL 205.422, AND CIGARS.

9 (D) "USE A TOBACCO PRODUCT" MEANS TO SMOKE OR OTHERWISE CON-  
10 SUME A TOBACCO PRODUCT.

11 Enacting section 1. This amendatory act takes effect  
12 October 1, 1999.

13 Enacting section 2. This amendatory act does not take  
14 effect unless Senate Bill No. \_\_\_\_\_ or House Bill No. \_\_\_\_\_  
15 (request no. 00244'99 a \*) of the 90th Legislature is enacted  
16 into law.