

SUBSTITUTE FOR
HOUSE BILL NO. 5396

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:

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TITLE

An act to prohibit the selling, giving, or furnishing of
tobacco products to minors; to prohibit the **PURCHASE, POSSESSION,**
OR use of tobacco products by minors; ~~to prohibit the harboring of~~
~~minors for the purpose of indulging in the use of tobacco products;~~
to regulate the retail sale of tobacco products; to prescribe
penalties; and to prescribe the powers and duties of certain state
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 any~~
3 ~~other form~~ **A TOBACCO PRODUCT** to a ~~person under 18 years of age~~
4 **MINOR**. A person who violates this ~~section~~ **SUBSECTION** is guilty of
5 a misdemeanor ~~—~~ punishable by a fine of not more than \$50.00 for
6 each ~~offense~~ **VIOLATION**.

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

12 "The purchase of tobacco products by a minor under 18 years of
13 age and the provision of tobacco products to a minor are prohibited
14 by law. A minor unlawfully purchasing or using tobacco products is
15 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~~ **BOLDFACED** type. If the sign required
20 under subsection (2) is 6 feet or less from the point of sale, it
21 shall be 2 inches by 4 inches ~~—~~ and the statement required under
22 subsection (2) shall be printed in 20-point ~~boldface~~ **BOLDFACED**
23 type.

24 (4) The department of ~~public~~ **COMMUNITY** health shall produce
25 the sign required under subsection (2) and have adequate copies of
26 the sign ready for distribution to licensed wholesalers, secondary
27 wholesalers, and unclassified acquirers of ~~cigarettes and other~~

1 tobacco products ~~described in subsection (1)~~ free of charge.
2 ~~within 60 days after the effective date of this subsection.~~
3 Licensed wholesalers, secondary wholesalers, and unclassified
4 acquirers of ~~cigarettes and other~~ tobacco products ~~described in~~
5 ~~subsection (1)~~ shall obtain copies of the sign from the department
6 of ~~public~~ **COMMUNITY** health and distribute them free of charge,
7 upon request, to persons who are subject to subsection (2). The
8 department of ~~public~~ **COMMUNITY** health shall provide copies of the
9 sign free of charge, upon request, to persons subject to subsection
10 (2) who do not purchase their supply of ~~cigarettes or other~~
11 tobacco products ~~described in subsection (1)~~ from ~~licensed~~
12 wholesalers, secondary wholesalers, and unclassified acquirers of
13 ~~cigarettes and other~~ tobacco products ~~described in subsection (1)~~
14 **LICENSED UNDER THE TOBACCO PRODUCTS TAX ACT, 1993 PA 327, MCL**
15 **205.421 TO 205.436.**

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

27 (6) A prosecuting attorney who proposes to offer testimony to

1 rebut the affirmative defense described in subsection (5) shall
 2 file and serve a notice of rebuttal, in writing, upon the court and
 3 the defendant. The notice shall be served not less than 7 days
 4 before the date set for trial — and shall contain the name and
 5 address of each rebuttal witness.

6 (7) SUBSECTION (1) DOES NOT APPLY TO THE HANDLING OR
 7 TRANSPORTATION OF A TOBACCO PRODUCT BY A MINOR UNDER THE TERMS OF
 8 THAT MINOR'S EMPLOYMENT.

9 Sec. 2. (1) ~~A person under 18 years of age shall not possess~~
 10 ~~or smoke cigarettes or cigars; or possess or chew, suck, or inhale~~
 11 ~~chewing tobacco or tobacco snuff; or possess or use tobacco in any~~
 12 ~~other form, on a public highway, street, alley, park, or other~~
 13 ~~lands used for public purposes, or in a public place of business or~~
 14 ~~amusement. A person~~ SUBJECT TO SUBSECTION (3), A MINOR SHALL NOT
 15 DO ANY OF THE FOLLOWING:

- 16 (A) PURCHASE OR ATTEMPT TO PURCHASE A TOBACCO PRODUCT.
 17 (B) POSSESS OR ATTEMPT TO POSSESS A TOBACCO PRODUCT.
 18 (C) USE A TOBACCO PRODUCT IN A PUBLIC PLACE.
 19 (D) PRESENT OR OFFER TO AN INDIVIDUAL A PURPORTED PROOF OF AGE
 20 THAT IS FALSE, FRAUDULENT, OR NOT ACTUALLY HIS OR HER OWN PROOF OF
 21 AGE FOR THE PURPOSE OF PURCHASING, ATTEMPTING TO PURCHASE,
 22 POSSESSING, OR ATTEMPTING TO POSSESS A TOBACCO PRODUCT.

23 (2) AN INDIVIDUAL who violates ~~this section~~ SUBSECTION (1)
 24 is guilty of a misdemeanor — punishable by a fine of not more
 25 than \$50.00 for each ~~offense~~ VIOLATION. Pursuant to a probation
 26 order, the court may ALSO require ~~a person~~ AN INDIVIDUAL who
 27 violates ~~this section~~ SUBSECTION (1) to participate in a health

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1 promotion and risk reduction assessment program, if available. ~~A~~
2 ~~probationer~~ **AN INDIVIDUAL** who is ordered to participate in a
3 health promotion and risk reduction assessment program under this
4 ~~section~~ **SUBSECTION** is responsible for the costs of participating
5 in the program. In addition, ~~a person~~ **AN INDIVIDUAL** who violates
6 ~~this section~~ **SUBSECTION (1)** is subject to the following:

7 (a) For the first violation, the court may order the ~~person~~
8 **INDIVIDUAL** to do 1 of the following:

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

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

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

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

23 (3) **SUBSECTION (1) DOES NOT APPLY TO A MINOR PARTICIPATING IN**
24 **<<ANY>> OF THE FOLLOWING:**

25 (A) **AN UNDERCOVER OPERATION IN WHICH THE MINOR PURCHASES OR**
26 **RECEIVES A TOBACCO PRODUCT UNDER THE DIRECTION OF THE MINOR'S**
27 **EMPLOYER AND WITH THE PRIOR APPROVAL OF THE LOCAL PROSECUTOR'S**

1 OFFICE AS PART OF AN EMPLOYER-SPONSORED INTERNAL ENFORCEMENT
 2 ACTION.

3 (B) AN UNDERCOVER OPERATION IN WHICH THE MINOR PURCHASES OR
 4 RECEIVES A TOBACCO PRODUCT UNDER THE DIRECTION OF THE STATE POLICE
 5 OR A LOCAL POLICE AGENCY AS PART OF AN ENFORCEMENT ACTION, UNLESS
 6 THE INITIAL OR CONTEMPORANEOUS PURCHASE OR RECEIPT OF THE TOBACCO
 7 PRODUCT BY THE MINOR WAS NOT UNDER THE DIRECTION OF THE STATE
 8 POLICE OR THE LOCAL POLICE AGENCY AND WAS NOT PART OF THE
 9 UNDERCOVER OPERATION.

<<(C) COMPLIANCE CHECKS IN WHICH THE MINOR ATTEMPTS TO PURCHASE
 TOBACCO PRODUCTS FOR THE PURPOSE OF SATISFYING FEDERAL SUBSTANCE ABUSE
 BLOCK GRANT YOUTH TOBACCO ACCESS REQUIREMENTS, IF THE COMPLIANCE CHECKS
 ARE CONDUCTED UNDER THE DIRECTION OF A SUBSTANCE ABUSE COORDINATING
 AGENCY AS DEFINED IN SECTION 6103 OF THE PUBLIC HEALTH CODE, 1978 PA 368,
 MCL 333.6103, AND WITH THE PRIOR APPROVAL OF THE STATE POLICE OR A LOCAL
 POLICE AGENCY.>>

[(4) SUBSECTION (1) DOES NOT APPLY TO THE HANDLING OR
 TRANSPORTATION OF A TOBACCO PRODUCT BY A MINOR UNDER THE TERMS OF THAT
 MINOR'S EMPLOYMENT.]

10 (5) THIS SECTION DOES NOT PROHIBIT THE INDIVIDUAL FROM BEING
 11 CHARGED WITH, CONVICTED OF, OR SENTENCED FOR ANY OTHER VIOLATION OF
 12 LAW ARISING OUT OF THE VIOLATION OF SUBSECTION (1).

13 Sec. 4. As used in this act:

14 ~~—— (a) "Chewing tobacco" means loose tobacco or a flat,~~
 15 ~~compressed cake of tobacco that is inserted into the mouth to be~~
 16 ~~chewed or sucked.~~

17 (A) "MINOR" MEANS AN INDIVIDUAL UNDER 18 YEARS OF AGE.

18 (b) "Person who sells tobacco products at retail" means a
 19 person whose ordinary course of business consists, in whole or in
 20 part, of the retail sale of tobacco products subject to state sales
 21 tax.

22 ~~—— (c) "Tobacco snuff" means shredded, powdered, or pulverized~~
 23 ~~tobacco that may be inhaled through the nostrils, chewed, or placed~~
 24 ~~against the gums.~~

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25 (C) "PUBLIC PLACE" MEANS A PUBLIC STREET, SIDEWALK, OR PARK OR
26 ANY AREA OPEN TO THE GENERAL PUBLIC IN A PUBLICLY OWNED OR OPERATED
27 BUILDING OR PUBLIC PLACE OF BUSINESS.

1 (D) "TOBACCO PRODUCT" MEANS A PRODUCT THAT CONTAINS TOBACCO
2 AND IS INTENDED FOR HUMAN CONSUMPTION, INCLUDING, BUT NOT LIMITED
3 TO, CIGARETTES, NONCIGARETTE SMOKING TOBACCO, OR SMOKELESS TOBACCO,
4 AS THOSE TERMS ARE DEFINED IN SECTION 2 OF THE TOBACCO PRODUCTS TAX
5 ACT, 1993 PA 327, MCL 205.422, AND CIGARS.

6 (E) "USE A TOBACCO PRODUCT" MEANS TO SMOKE, CHEW, SUCK,
7 INHALE, OR OTHERWISE CONSUME A TOBACCO PRODUCT.

8 Enacting section 1. This amendatory act takes effect
9 September 1, 2006.