

SUBSTITUTE FOR  
HOUSE BILL NO. 4444

A bill to amend 1915 PA 31, entitled  
"Youth tobacco act,"  
by amending section 1 (MCL 722.641), 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 for each violation.~~ **1 OF THE FOLLOWING FINES:**

5           **(A) IF THE VIOLATION OF THIS SUBSECTION IS NOT A VIOLATION**  
6 **DESCRIBED IN SUBDIVISION (B), 1 OF THE FOLLOWING:**

7           **(i) A FINE OF NOT MORE THAN \$100.00 FOR A FIRST VIOLATION OF**  
8 **THIS SUBSECTION OR A SUBSEQUENT VIOLATION THAT IS NOT DESCRIBED IN**

1 SUBPARAGRAPH (ii) OR (iii) .

2 (ii) UNLESS SUBPARAGRAPH (iii) APPLIES, A FINE OF NOT MORE THAN  
3 \$250.00 FOR A VIOLATION OF THIS SUBSECTION THAT OCCURS WITHIN 3  
4 YEARS OF A VIOLATION DESCRIBED IN SUBPARAGRAPH (i) .

5 (iii) A FINE OF NOT MORE THAN \$500.00 FOR A VIOLATION OF THIS  
6 SUBSECTION THAT OCCURS WITHIN 3 YEARS OF A VIOLATION DESCRIBED IN  
7 SUBPARAGRAPH (ii) .

8 (B) IF THE VIOLATION OF THIS SUBSECTION IS AN INTERNET, MAIL  
9 ORDER, OR TELEPHONE SALE OF A TOBACCO PRODUCT TO A PERSON UNDER 18  
10 YEARS OF AGE, 1 OF THE FOLLOWING:

11 (i) A FINE OF NOT MORE THAN \$500.00 FOR A FIRST VIOLATION OF  
12 THIS SUBSECTION OR A SUBSEQUENT VIOLATION THAT IS NOT DESCRIBED IN  
13 SUBPARAGRAPH (ii) OR (iii) .

14 (ii) UNLESS SUBPARAGRAPH (iii) APPLIES, A FINE OF NOT MORE THAN  
15 \$1,000.00 FOR A VIOLATION OF THIS SUBSECTION THAT OCCURS WITHIN 3  
16 YEARS OF A VIOLATION DESCRIBED IN SUBPARAGRAPH (i) .

17 (iii) A FINE OF NOT MORE THAN \$2,000.00 FOR A VIOLATION OF THIS  
18 SUBSECTION THAT OCCURS WITHIN 3 YEARS OF A VIOLATION DESCRIBED IN  
19 SUBPARAGRAPH (ii) .

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

24 "The purchase of tobacco products by a minor under 18 years of  
25 age and the provision of tobacco products to a minor are prohibited  
26 by law. A minor unlawfully purchasing or using tobacco products is  
27 subject to criminal penalties."

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

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

22           (5) It is an affirmative defense to a charge under subsection  
23 (1) that the defendant had in force at the time of arrest and  
24 continues to have in force a written policy to prevent the sale of  
25 tobacco products to persons under 18 years of age and that the  
26 defendant enforced and continues to enforce the policy. A defendant  
27 who proposes to offer evidence of the affirmative defense described

House Bill No. 4444 (H-1) as amended May 14, 2008

1 in this subsection shall file and serve notice of the defense, in  
2 writing, upon the court and the prosecuting attorney. The notice  
3 shall be served not less than 14 days before the date set for  
4 trial.

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

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

14 (8) A PERSON WHO SELLS TOBACCO PRODUCTS AT RETAIL OR A CLERK,  
15 AGENT, OR EMPLOYEE OF A PERSON WHO SELLS TOBACCO PRODUCTS AT RETAIL  
16 CANNOT BE CONVICTED OF A MISDEMEANOR UNDER SUBSECTION (1) UNLESS  
17 THE MINOR TO WHOM THE TOBACCO PRODUCT WAS SOLD, GIVEN, OR FURNISHED  
18 IS CHARGED WITH A MISDEMEANOR FOR VIOLATING SECTION 2 IN CONNECTION  
19 WITH THE TRANSACTION. THIS SUBSECTION DOES NOT APPLY IF THE MINOR  
20 TO WHOM THE TOBACCO PRODUCT WAS SOLD, GIVEN, OR FURNISHED WAS  
21 ACTING IN AN UNDERCOVER OPERATION IN OBTAINING THE TOBACCO PRODUCT.

[ (9) AN ARRESTING LAW ENFORCEMENT AGENCY IN THIS STATE MAY TAKE  
THE FINGERPRINTS OF A PERSON UPON THE ARREST OF THAT PERSON FOR A  
MISDEMEANOR DESCRIBED IN SUBSECTION (1) AND FORWARD THE FINGERPRINTS TO  
THE DEPARTMENT OF STATE POLICE, AS PROVIDED IN SECTION 3(5) OF 1925 PA  
289, MCL 28.243.]