

# SENATE BILL No. 74

January 31, 2017, Introduced by Senators BIEDA, JONES 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~~ **AND HUMAN SERVICES** that includes the following

1 statement:

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

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

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

1 205.421 to 205.436.

2 (5) It is an affirmative defense to a charge under subsection  
3 (1) that the defendant had in force at the time of arrest and  
4 continues to have in force a written policy to prevent the sale of  
5 tobacco products to persons under 18 years of age and that the  
6 defendant enforced and continues to enforce the policy. A defendant  
7 who proposes to offer evidence of the affirmative defense described  
8 in this subsection shall file ~~and serve~~ notice of the defense, in  
9 writing, ~~upon~~ **WITH** the court and **SERVE A COPY OF THE NOTICE ON** the  
10 prosecuting attorney. The **DEFENDANT SHALL SERVE THE** notice ~~shall be~~  
11 ~~served~~ not less than 14 days before the date set for trial.

12 (6) A prosecuting attorney who proposes to offer testimony to  
13 rebut the affirmative defense described in subsection (5) shall  
14 file ~~and serve~~ a notice of rebuttal, in writing, ~~upon~~ **WITH** the  
15 court and **SERVE A COPY OF THE NOTICE ON** the defendant. The ~~notice~~  
16 ~~shall be served~~ **PROSECUTING ATTORNEY SHALL SERVE THE NOTICE** not  
17 less than 7 days before the date set for trial and shall ~~contain~~  
18 **INCLUDE IN THE NOTICE** the name and address of each rebuttal  
19 witness.

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

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

- 25 (a) Purchase or attempt to purchase a tobacco product.  
26 (b) Possess or attempt to possess a tobacco product.  
27 (c) Use a tobacco product in a public place.

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

5 (2) An individual who violates subsection (1) is guilty of a  
6 misdemeanor punishable by a fine of not more than ~~\$50.00~~ **\$100.00**  
7 **for each** **A FIRST VIOLATION AND NOT MORE THAN \$500.00 FOR A SECOND**  
8 **OR SUBSEQUENT** violation. ~~Pursuant to a probation order, the~~ **THE**  
9 court may also, **BY AN ORDER OF PROBATION**, require an individual who  
10 violates subsection (1) to participate in a health promotion and  
11 risk reduction assessment program, if available. An individual who  
12 is ordered to participate in a health promotion and risk reduction  
13 assessment program under this subsection is responsible for the  
14 costs of participating in the program. In addition, an individual  
15 who violates subsection (1) is subject to the following:

16 (a) For the first violation, the court may order the  
17 individual 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 individual to perform not more than 32 hours of community  
25 service 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, the

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

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

6 (a) An undercover operation in which the minor purchases or  
7 receives a tobacco product under the direction of the minor's  
8 employer and with the prior approval of the local prosecutor's  
9 office as part of an employer-sponsored internal enforcement  
10 action.

11 (b) An undercover operation in which the minor purchases or  
12 receives a tobacco product under the direction of the state police  
13 or a local police agency as part of an enforcement action, unless  
14 the initial or contemporaneous purchase or receipt of the tobacco  
15 product by the minor was not under the direction of the state  
16 police or the local police agency and was not part of the  
17 undercover operation.

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

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

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

4           Enacting section 1. This amendatory act takes effect 90 days  
5 after the date it is enacted into law.