

# Regulation to Prohibit the Sale of Tobacco Products to Individuals Under 21 Years of Age

Effective: May 15, 2017



## **GENESEE COUNTY**

### **REGULATION TO PROHIBIT THE SALE OF TOBACCO PRODUCTS TO INDIVIDUALS UNDER 21 YEARS OF AGE**

#### **SECTION 1000 – TITLE**

This Regulation shall be known as the Regulation to Prohibit the Sale of Tobacco Products to Individuals Under 21 Years of Age.

#### **SECTION 1001 – AUTHORITY**

This Regulation is adopted pursuant to authority conferred upon local health departments by Section 2441 of the Michigan Public Health Code, Act 368, P.A. of 1978 as amended, Mich. Comp. Laws § 333.2441.

#### **SECTION 1002 – JURISDICTION AND ADMINISTRATION**

- 1002.1 This Regulation shall have effect throughout Genesee County in all areas incorporated and unincorporated, which includes cities, villages and townships.
- 1002.2 The Health Officer shall have responsibility for administering and enforcing this Regulation, including all amendments hereafter adopted unless otherwise specifically stated.
- 1002.3 Nothing in this Regulation shall be construed to restrict or abrogate the authority of any municipality in Genesee County to adopt more restrictive regulations or ordinances.

#### **SECTION 1003 – PURPOSE AND FINDINGS**

Genesee County does hereby find:

That tobacco use is the number one cause of preventable death<sup>1</sup> in Michigan<sup>2</sup> and continues to be an urgent public health challenge, as evidenced by the following:

- 16,200 Michigan adults die from smoking-related diseases every year;<sup>3</sup>
- Nearly one in ten Michigan youth who are alive today will die from early from smoking-related

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<sup>1</sup> U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress, A Report of the Surgeon General Executive Summary. Rockville, MD; 2014. <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/exec-summary.pdf>.

<sup>2</sup> CDC. Prevention Status Reports 2013: Tobacco Use—Michigan. Atlanta, GA; 2014. <http://www.cdc.gov/psr/2013/tobacco/2013/mi-tobacco.pdf>.

<sup>3</sup> The Toll of Tobacco in Michigan. Campaign for Tobacco-Free Kids website. [http://www.tobaccofreekids.org/facts\\_issues/toll\\_us/michigan](http://www.tobaccofreekids.org/facts_issues/toll_us/michigan). Accessed October 26, 2016.

diseases;<sup>4, 5, 6</sup>

- Tobacco use can cause disease in nearly all organ systems and is responsible for 87% of lung cancer deaths, 79% of all chronic obstructive pulmonary disease deaths, and 32% of coronary heart disease deaths;<sup>7</sup> and

That every year, smoking costs Michigan nearly \$9.4 billion dollars in direct healthcare expenses and lost productivity;<sup>8</sup> and

That a Community Health Needs Assessment for Genesee County identified Tobacco Free Living (Anti-Smoking) as one of the 6 major health needs for residents of Genesee County;<sup>9</sup> and

That in a survey conducted between 2013 and 2014, 29.4% of residents in Genesee County reported that they smoked every day;<sup>10</sup> and

That in 2014, 22% of mothers in Genesee County smoked during pregnancy compared to 18% of mothers generally in Michigan;<sup>11</sup> and

That nearly 95% of people who smoke start by age 21;<sup>12</sup> and

That individuals who begin smoking at an early age are more likely to develop a severe addiction to nicotine than those who start at a later age;<sup>13, 14</sup> and

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<sup>4</sup> According to the Campaign for Tobacco Free Kids, 213,000 kids now under 18 and alive in Michigan will die prematurely from smoking. The U.S. Census estimates that in 2014 there were approximately 2,344,068 Michigan youth under age 18. More than one in ten was calculated by dividing the number of youth who will die prematurely (213,000) by the number of youth under age 18 in Michigan (2,344,068).

<sup>5</sup> U.S. Census Bureau, Population Division. Annual Estimates of the Resident Population for Selected Age Groups by Sex for the United States, States, Counties, and Puerto Rico Commonwealth and Municipios: April 1, 2010 to July 1, 2014. U.S. Census Bureau website. <http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?src=bkmk>. Accessed October 26, 2016.

<sup>6</sup> The Toll of Tobacco in Michigan. Campaign for Tobacco-Free Kids website. [http://www.tobaccofreekids.org/facts\\_issues/toll\\_us/michigan](http://www.tobaccofreekids.org/facts_issues/toll_us/michigan). Accessed October 26, 2016.

<sup>7</sup> The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. U.S. Department of Health & Human Services website. <http://www.surgeongeneral.gov/library/reports/50-years-of-progress/fact-sheet.html>. Accessed October 26, 2016.

<sup>8</sup> **Error! Hyperlink reference not valid.** The Toll of Tobacco in Michigan. Campaign for Tobacco-Free Kids website. [http://www.tobaccofreekids.org/facts\\_issues/toll\\_us/michigan](http://www.tobaccofreekids.org/facts_issues/toll_us/michigan). Accessed September 28, 2016.

<sup>9</sup> *2012 Community Health Needs Assessment for the Genesee County/City of Flint Community*. Flint, Michigan: Greater Flint Health Coalition; 2012. [http://gfhc.org/wp-content/uploads/2015/07/GR-81815-UPDATED.FINAL\\_chna\\_narrative.061813tc.pdf](http://gfhc.org/wp-content/uploads/2015/07/GR-81815-UPDATED.FINAL_chna_narrative.061813tc.pdf).

<sup>10</sup> *Speak To Your Health! Community Survey*. Genesee County, MI: Prevention Research Center of Michigan; 2013. <http://speak.gchd.us/wp-content/uploads/2016/10/2013-Community-Survey-Results-Tables.pdf>.

<sup>11</sup> *Community Health Information—Nativity: Characteristics of the Mother or Infant, as a Percentage of Live Births Genesee County and Michigan Residents, 2014*. Michigan Department of Health & Human Services Website. Lansing, Michigan: MDHHS; 2016. <http://www.mdch.state.mi.us/pha/osr/Chi/births14/frameBxChar.html>.

<sup>12</sup> Increasing the Minimum Legal Sale Age for Tobacco Products. Campaign for Tobacco-Free Kids website. <http://www.tobaccofreekids.org/research/factsheets/pdf/0376.pdf>.

<sup>13</sup> U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.; 2012. <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf>.

<sup>14</sup> **Error! Hyperlink reference not valid.** Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015. <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

That the younger people start smoking, the greater their risk of many adverse health outcomes, such as hospitalizations and lifetime risk of respiratory disease, chronic obstructive pulmonary disease, and lung cancer,<sup>15</sup> and

That Genesee County has the 5<sup>th</sup> highest number of public schools in Michigan, with 147 public schools altogether serving 68,768 youth;<sup>16</sup> and

That tobacco use continues to be a significant public health concern for high school students as evidenced by:

- 35.8% of Michigan high school students who report they have tried cigarettes;<sup>17</sup> and

That the majority of youth under age 18 obtain tobacco through social sources<sup>18</sup> as evidenced by:

- 48.0% of Genesee County high school students, including 58.9% of 11<sup>th</sup> graders, who report easy access to cigarettes;<sup>19</sup>
- 15.6% of Genesee County high school students who smoke usually give someone money to purchase their cigarettes;<sup>20</sup>
- 26.2% of Genesee County high school students who smoke usually receive their cigarettes by asking someone they know for them;<sup>21</sup>
- 8.4% of Genesee County high school students who smoke usually get their cigarettes from someone 18 years or older;<sup>22</sup> and

That youth obtain cigarettes in two ways: commercially (from a store or vending machine) and socially (borrowing, buying, or stealing them from other youth or adults);<sup>23</sup> and

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<sup>15</sup> Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015. <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

<sup>16</sup> Michigan Public Schools. Public School Review website. <http://www.publicschoolreview.com/michigan>. Accessed October 26, 2016.

<sup>17</sup> 2013 Youth Risk Behavior Survey Results. Michigan.gov website.

[http://www.michigan.gov/documents/mde/mi\\_comp\\_US\\_2013\\_459014\\_7.pdf](http://www.michigan.gov/documents/mde/mi_comp_US_2013_459014_7.pdf). Accessed October 26, 2016.

<sup>18</sup> Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015. <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

<sup>19</sup> *Michigan School Health Survey System, Michigan Profile for Healthy Youth: 2015-2016 Genesee, MiPHY Regional Demographics Summary High School*. Lansing, MI: Michigan Department of Education <https://mdoe.state.mi.us/schoolhealthsurveys/ExternalReports/CountyReportGeneration.aspx>.

<sup>20</sup> *Michigan School Health Survey System, Michigan Profile for Healthy Youth: 2015-2016 Genesee, MiPHY Regional Demographics Summary High School*. Lansing, MI: Michigan Department of Education <https://mdoe.state.mi.us/schoolhealthsurveys/ExternalReports/CountyReportGeneration.aspx>.

<sup>21</sup> *Michigan School Health Survey System, Michigan Profile for Healthy Youth: 2015-2016 Genesee, MiPHY Regional Demographics Summary High School*. Lansing, MI: Michigan Department of Education <https://mdoe.state.mi.us/schoolhealthsurveys/ExternalReports/CountyReportGeneration.aspx>.

<sup>22</sup> *Michigan School Health Survey System, Michigan Profile for Healthy Youth: 2015-2016 Genesee, MiPHY Regional Demographics Summary High School*. Lansing, MI: Michigan Department of Education <https://mdoe.state.mi.us/schoolhealthsurveys/ExternalReports/CountyReportGeneration.aspx>.

<sup>23</sup> Lenk KM, Toomey TL, Shi Q, Erickson DJ, Forster JL. Do sources of cigarettes among adolescents vary by age over time? *J Child Adolesc Subst Abuse*. 2014;23(2):137–143. doi:10.1080/1067828X.2012.750972.

That Genesee County's black and Latino high school students are more likely than white students to buy their cigarettes from stores (27.3% of black students and 35.3% of Latino students versus 18.4% of white students),<sup>24</sup> and

That the closer youth are to age 18, the easier it is for them to buy tobacco products from retailers<sup>25</sup> as evidenced by:

- The percentage of Genesee County high school students who usually buy their cigarettes from stores more than triples between 9<sup>th</sup> and 11<sup>th</sup> grade (8.9% of 9<sup>th</sup> graders usually buy their cigarettes from stores versus 28.8% of 11<sup>th</sup> graders);<sup>26</sup> and

That studies have shown that young adults between ages 18 and 20 are more likely than adults over the age of 21 to purchase tobacco for minors;<sup>27, 28</sup> and

That raising the minimum legal age of access reduces the ability for youth under age 18 to appear legally old enough to buy tobacco products and decreases the probability that nonsmoking youth will have social contact and networks that contain smokers;<sup>29</sup> and

That the Institute of Medicine found that raising the minimum legal age of access to 21 will likely delay initiation and reduce tobacco prevalence across all ages with the largest proportionate reduction in initiation likely occurring among adolescents of ages 15-17;<sup>30</sup> and

That most individuals transition from experimental to regular smoking before age 21,<sup>31, 32</sup> and

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<sup>24</sup> Michigan School Health Survey System, *Michigan Profile for Healthy Youth: 2015-2016 Genesee, MiPHY Regional Demographics Summary High School*. Lansing, MI: Michigan Department of Education <https://mdoe.state.mi.us/schoolhealthsurveys/ExternalReports/CountyReportGeneration.aspx>.

<sup>25</sup> Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015. <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

<sup>26</sup> Michigan School Health Survey System, *Michigan Profile for Healthy Youth: 2015-2016 Genesee, MiPHY Regional Demographics Summary High School*. Lansing, MI: Michigan Department of Education <https://mdoe.state.mi.us/schoolhealthsurveys/ExternalReports/CountyReportGeneration.aspx>.

<sup>27</sup> White MM, Gilpin; EA, Emery SL, Pierce JP. Facilitating adolescent smoking: Who provides the cigarettes? *Am J Heal Promot*. 2005;19(5):355-360. <https://www.scopus.com/record/display.uri?eid=2-s2.0-18244392189&origin=inward&txGid=8ED4198F4CA2196C39F2C1AD8E0437F5.wsnAw8kcdt7IPYLO0V48gA%3a2>.

<sup>28</sup> DiFranza JR, Coleman M. Sources of tobacco for youths in communities with strong enforcement of youth access laws. *Tob Control*. 2001;10(4):323-328. doi:10.1136/tc.10.4.323. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1747607/pdf/v010p00323.pdf>

<sup>29</sup> Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015. <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

<sup>30</sup> Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015. <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

<sup>31</sup> **Error! Hyperlink reference not valid.** Increasing the Minimum Legal Sale Age for Tobacco Products. Campaign for Tobacco-Free Kids website. <http://www.tobaccofreekids.org/research/factsheets/pdf/0376.pdf>. Accessed October 26, 2016.

<sup>32</sup> **Error! Hyperlink reference not valid.** U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General.; 2012. <http://www.surgeongeneral.gov/library/reports/preventing-youth-tobacco-use/full-report.pdf>.

That tobacco companies target young adults between the ages of 18 to 24 to increase the frequency with which they use tobacco products to encourage them to transition into habitual users;<sup>33</sup> and

That studies by tobacco companies have recognized that if “a man has never smoked by the age of 18, the odds are three-to-one he never will. By age 24, the odds are twenty-to-one;”<sup>34</sup> and

That studies by tobacco companies have acknowledged that if they do not capture new users by their early 20s, it is unlikely that they ever will;<sup>35</sup> and

That the tobacco industry knows that raising the minimum age to 21 will hurt sales and has historically worked to lower tobacco minimum legal age laws from 21 to 18;<sup>36</sup> and

That a Philip Morris report has concluded that “[r]aising the legal minimum age for cigarette purchaser to 21 could gut our key young adult market;”<sup>37</sup> and

That research has repeatedly found that raising the minimum age of access is an effective strategy for reducing tobacco use among youth and young adults as evidenced by:

- Research that overwhelmingly demonstrated minimum legal drinking age laws decreased alcohol consumption rates in the United States, especially among youth and young adults;<sup>38</sup>
- An evaluation of Needham, MA’s law raising the minimum tobacco sales age to 21 found that within five years the prevalence of youth smoking reduced by nearly half (12.9% in 2006 versus 6.7% in 2010);<sup>39</sup>
- The Institute of Medicine found that a nationwide law raising the minimum age of legal access to 21 would save almost a quarter of a million lives of people born between 2000 and 2019;<sup>40</sup> and

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<sup>33</sup> Ling PM, Glantz S a. Why and how the tobacco industry sells cigarettes to young adults: evidence from industry documents. *Am J Public Health*. 2002;92(6):908-916.

<http://www.pubmedcentral.nih.gov/articlerender.fcgi?artid=1447481&tool=pmcentrez&rendertype=abstract>.

<sup>34</sup>**Error! Hyperlink reference not valid.** D.S. Burrows. RJ Reynolds; Minnesota Lawsuit. September 20, 1982. Estimated Change in Industry Trend Following Federal Excise Tax Increase. UCSF Library Truth Tobacco Industry Documents website. <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/nnnw0084>. Accessed October 26, 2016.

<sup>35</sup> Philip Morris. January 21, 1986. Discussion Draft Sociopolitical Strategy. UCSF Library Truth Tobacco Industry Documents website. <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=zsw0127>. Accessed October 26, 2016. See also D.S. Burrows. RJ Reynolds; Minnesota Lawsuit. September 20, 1982. Estimated Change in Industry Trend Following Federal Excise Tax Increase. UCSF Library Truth Tobacco Industry Documents website.

<sup>36</sup> Apollonio; DE, Stanton A. Glantz. Minimum Ages of Legal Access for Tobacco in the United States From 1863 to 2015. *Am J Public Health*. 2016;106(7):1200-1207. doi:10.2105/AJPH.2016.303172.

<sup>37</sup> Philip Morris. January 21, 1986. Discussion Draft Sociopolitical Strategy. UCSF Library Truth Tobacco Industry Documents website. <https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/#id=zsw0127>. Accessed October 26, 2016.

<sup>38</sup> Wagenaar AC, Toomey TL. Effects of minimum drinking age laws: Review and analyses of the literature from 1960 to 2000. *J Stud Alcohol*. 2002;S14:206-225. doi:10.15288/jsas.2002.s14.206.

<sup>39</sup>**Error! Hyperlink reference not valid.** Schneider SK, Buka SL, Dash K, Winickoff JP. Community reductions in youth smoking after raising the minimum tobacco sales age to 21. *Tob Control*. 2015. doi:10.1136/tobaccocontrol-2014-052207.

<sup>40</sup>**Error! Hyperlink reference not valid.** Institute of Medicine. *Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products*. (Bonnie RJ, Stratton K, Kwan LY, eds.). Washington D.C.; 2015. <https://www.nap.edu/catalog/18997/public-health-implications-of-raising-the-minimum-age-of-legal-access-to-tobacco-products>.

That raising the minimum age of purchase may also address racial and ethnic inequities as communities of color are more likely to begin smoking after age 18;<sup>41, 42, 43</sup> and

That fines are one way to increase retailers' awareness of tobacco control policies, which may make it more likely they will comply with the law and increase the number of retailers who refuse to sell tobacco to youth;<sup>44</sup> and

That as of September 27, 2016, at least 200 jurisdictions in 14 states have laws raising the minimum legal sale age for tobacco products to 21;<sup>45</sup> and

That nationally, 70.5% of people, including 57.8% of people who currently smoke, support raising the minimum age of legal access to 21;<sup>46</sup> and

That the minimum sale age for alcohol in Michigan is 21 years of age, and persons under 21 years of age have visibly different drivers' licenses.<sup>47</sup> Raising the minimum sale age for tobacco would streamline identification checks and would establish a uniform age for the purchase of both products; and  
That tobacco use is a particularly important public health problem facing Genesee County, especially tobacco use among youth, as evidenced by local data; and

That a prohibition on the sale of tobacco products to individuals under 21 is a local solution to the public health problems facing Genesee County; and

That solutions to public health problems can effectively be addressed at the local level, and in many cases local control advances the protection of public health in the local community; and

That the Michigan Supreme Court has ruled that "the [Michigan] Legislature has expressly placed the affirmative duty on local health departments to take measures to safeguard human health;"<sup>48</sup> and

That the Michigan Supreme Court has held that local health departments may adopt regulations to properly safeguard public health;<sup>49</sup> and

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<sup>41</sup> Freedman KS, Nelson NM, Feldman LL. Smoking initiation among young adults in the United States and Canada, 1998-2010: A systematic review. *Prev Chronic Dis.* 2012;9(5):E05. doi:10.5888/pcd9.110037.

<sup>42</sup> Bauer UE. Understanding the African American "Smoker" *Nicotine Tob Res.* 2016;18(Suppl. 1):S7-S10. doi:10.1093/ntr/ntv192.

<sup>43</sup> Trinidad DR, Gilpin EA, Lee L, Pierce JP. Has there been a delay in the age of regular smoking onset among African Americans?. *Ann Behav Med.* 2004;28(3):152-157. <http://escholarship.org/uc/item/3v37f9n8#>.

<sup>44</sup> Lantz PM, Jacobson PD, Warner KE, et al. Investing in youth tobacco control: A review of smoking prevention and control strategies. *Tob Control.* 2000;9:47-63. doi:10.1136/tc.9.1.47.

<sup>45</sup> States and Localities That Have Raised the Minimum Legal Sale Age for Tobacco Products to 21. Campaign for Tobacco-Free Kids website.

[https://www.tobaccofreekids.org/content/what\\_we\\_do/state\\_local\\_issues/sales\\_21/states\\_localities\\_MLSA\\_21.pdf](https://www.tobaccofreekids.org/content/what_we_do/state_local_issues/sales_21/states_localities_MLSA_21.pdf). Accessed October 26, 2016.

<sup>46</sup> Winickoff J, McMillen R, Tanski S. Public support for raising the age of sale for tobacco to 21 in the United States. *Tob Control.* 2015;1-6. doi:10.1136/tobaccocontrol-2014-052126.

<sup>47</sup> Mich. Comp. Laws § 28.292(4) (2016).

<sup>48</sup> *McNeil v. Charlevoix Cty.*, 772 N.W.2d 18, 27 (2009) (interpreting Mich. Comp. Laws § 333.2433(1) (2016)) (emphasis omitted).

<sup>49</sup> *McNeil v. Charlevoix Cty.*, 772 N.W.2d 18, 23 (2009) (citing Mich. Comp. Laws §§ 333.2433(2)(a) (2016), 333.2435(d) (2016) 333.2441(1) (2010)).

That the Michigan Supreme Court has emphasized that the Public Health Code is to be “liberally construed for the protection of the health, safety, and welfare of the people of this state.”<sup>50</sup>

Therefore, this Regulation is adopted to safeguard the public health by prohibiting the sale of tobacco products to individuals under 21 years of age.

#### **SECTION 1004 – DEFINITIONS**

- 1004.1 “Person” means an individual, partnership, corporation, governmental entity, receiver, trustee, assignee, or any other legal entity.
- 1004.2 “Public Health Code” means the Public Health Code of Michigan, Act 368, P.A. 1978, as amended (Mich. Comp. Laws § 333.1101 et seq; Mich. Comp. Laws Ann. § 14.15(1101) et seq.).
- 1004.3 “Tobacco License and Sales to Minors Regulation” means that certain Regulation to Require License for Retail Sale of Tobacco and to Prohibit the Sale of Tobacco to Minors, adopted by Genesee County on November 16, 1993 and made effective on February 14, 1994.
- 1004.4 “Tobacco Paraphernalia” means any item designed for the consumption, use, or preparation of tobacco products.
- 1004.5 “Tobacco Product” means
- (a) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and
  - (b) any electronic device that delivers nicotine or other substances to the person inhaling from the device, including, but not limited to an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah.
  - (c) Notwithstanding any provision of subsections (a) and (b) to the contrary, “tobacco product” includes any component, part, or accessory of a tobacco product, whether or not sold separately. “Tobacco product” does not include any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where such product is marketed and sold solely for such an approved purpose.

#### **SECTION 1005 – PROHIBITION OF THE SALE OF TOBACCO PRODUCTS AND TOBACCO PARAPHERNALIA TO INDIVIDUALS UNDER 21 YEARS OF AGE**

- 1005.1 No person shall sell, give, or furnish any tobacco product or tobacco paraphernalia to an individual under 21 years of age.

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<sup>50</sup> McNeil v. Charlevoix Cty., 484 Mich. 69, 78, 772 N.W.2d 18, 23 (2009) (citing Mich. Comp. Laws § 333.1111(2) (2016)).



- 1005.2 Subsection 1005.1 shall not apply to:
- (a) A transportation company as defined in Public Act 327 of 1993 as amended (Mich. Comp. Laws § 205.422), provided the transportation company holds a valid state license issued pursuant to Public Act 327 of 1993 as amended (Mich. Comp. Laws § 205.421 et seq.)
  - (b) A vending machine operator as defined in Public Act 327 of 1993 as amended (Mich. Comp. Laws § 205.422), provided the vending machine operator holds a valid state license issued pursuant to Public Act 327 of 1993 as amended (Mich. Comp. Laws § 205.421 et seq.)
- 1005.3 Any person who is not subject to the restrictions in Subsection 1005.1 (pursuant to Subsection 1005.2) shall not sell, give, or furnish any tobacco product or tobacco paraphernalia to an individual under 18 years of age.

#### **SECTION 1006 – SIGN REQUIREMENT**

- 1006.1 Any person who sells tobacco products or tobacco paraphernalia at retail, and who is subject to the sign requirement set forth in Public Act 31 of 1915 as amended (Mich. Comp. Laws § 722.641 et seq.), shall post the sign required by that Act.
- 1006.2 In addition to any applicable sign requirement in Subsection 1006.1, a person who sells tobacco products or tobacco paraphernalia at retail shall post a sign which includes the following statement:
- “Genesee County prohibits the sale of tobacco products to any person under 21 years of age.”
- This sign shall be posted in a conspicuous place:
- (1) Adjacent to any sign required by Subsection 1006.1 if applicable; or
  - (2) At or near every point of sale and every display of tobacco products or tobacco paraphernalia if the sign requirement in Subsection 1006.1 does not apply.
- 1006.3 The sign required under Subsection 1006.2 shall be at least 5- ½ inches by 8- ½ inches. The statement required under Subsection 1006.2 shall be clear and conspicuous and shall be printed in boldfaced type no smaller than 36-point.

#### **SECTION 1007 – IDENTIFICATION REQUIREMENT**

A person shall not sell, give, or furnish a tobacco product or tobacco paraphernalia to an individual who appears to be under 27 years of age without first examining the identification of the individual to confirm that the individual is at least 21 years of age. The identification must be a document issued by a federal, state, or municipal government, or subdivision or agency thereof, that includes a photo and the date of birth of the individual.

#### **SECTION 1008 – ENFORCEMENT GENERALLY**

A person shall not be assessed a penalty under both this Regulation and the Tobacco License and Sales to Minors Regulation for a single, specific violation of this Regulation based on the same facts or specific incident.

#### **SECTION 1009 – PENALTY FOR VIOLATION**

A person who violates any provision of this Regulation is guilty of a misdemeanor, as provided in Section 2443 of the Public Health Code, Mich. Comp. Laws § 333.2443. In the case of continuing violations, each day's violation shall constitute a separate offense.

#### **SECTION 1010 – SCHEDULE OF MONETARY CIVIL PENALTIES**

1010.1 Under authority of Section 2461 of the Public Health Code, the following schedule of monetary civil penalties is adopted:

- (1) Any person who violates any provision of this Regulation shall be assessed a monetary civil penalty of Fifty Dollars (\$50.00) for the first violation within the tobacco retailer license period.
- (2) Any person who violates any provision of this Regulation shall be assessed a monetary civil penalty of One Hundred Dollars (\$100.00) for the second violation within the tobacco retailer license period.
- (3) Any person who violates any provision of this Regulation shall be assessed a monetary civil penalty of Two Hundred Dollars (\$200.00) for the third violation within the tobacco retailer license period.
- (4) Each day that a violation exists shall be deemed as a separate violation.

1010.2 A civil penalty may be appealed to the Health Department within 20 days of receipt of the citation, in accordance with Section 2462 of the Public Health Code. A civil penalty is payable to the Genesee County Health Department and shall be deposited with the Genesee County Treasurer.

1010.3 If applicable, an unpaid civil penalty shall be assessed against a tobacco retailer in addition to the regular license fee for the next licensing period.

#### **SECTION 1011 – APPEARANCE TICKETS**

The Health Officer and his/her designees are hereby designated as public servants authorized to issue and serve appearance tickets, in accordance with Section 2463 of the Public Health Code, for violations of this Regulation.

#### **SECTION 1012 – INJUNCTIVE PROCEEDINGS**

Notwithstanding the existence and pursuit of any other remedy, the Health Officer or his/her designee, without posting bond, may maintain an action in a court of competent jurisdiction for an injunction or other process against any person to restrain or prevent a violation of this Regulation.

**SECTION 1013 – OTHER LAWS; CONFLICT**

To the extent that any provision in Sections 1006 or 1007 of this Regulation is more restrictive than or in conflict with Sections 1006 or 1007 of the Tobacco License and Sales to Minors Regulation, the provision in this Regulation shall apply.

**SECTION 1014 – SEVERABILITY**

If any provision, clause, sentence, or paragraph of this Regulation or the application thereof to any person or circumstance shall be held to be invalid, such invalidity shall not affect the provisions of this Regulation which can be given effect without the invalid provision or application, and to this end the provisions are declared to be severable.

**SECTION 1015 – EFFECTIVE DATE**

This Regulation shall take effect ninety (90) days from and after the date of its approval by the Genesee County Board of Commissioners.

## **January 10, 2017: Public Notice Published**

### **Notice of Public Hearing on Regulation to Prohibit the Sale of Tobacco Products to Individuals Under 21 Years of Age**

The Genesee County Health Department will hold a public hearing as part of the Board of Health Meeting on January 24, 2017, at 1:30p.m., at the Genesee County Health Department, 630 S. Saginaw St., Flint, MI 48502.

The purpose of the public hearing is to receive public comment on the regulation to prohibit the sale of tobacco products to individuals under 21 years of age. A copy of the proposed regulation is available from the Genesee County Health Department at 810-257-3612.

## **January 24, 2017: Public Hearing Held**

After a public hearing, Genesee County Board of Health unanimously endorsed the attached regulation and transmitted it to the Commissioner Clack, Chair HHS Committee, for consideration by the Genesee County Board of Commissioners.

## **February 14, 2017: Regulation Adopted By Board of Commissioners**

## **May 15, 2017: Regulation Effective Date**