

Act No. 273
Public Acts of 1992
Approved by the Governor
December 16, 1992
Filed with the Secretary of State
December 16, 1992

**STATE OF MICHIGAN
86TH LEGISLATURE
REGULAR SESSION OF 1992**

Introduced by Reps. Dalman, Brown, McNutt, Dolan, Fitzgerald, Strand, Gire, Bennett, Pitoniak, Perry
Bullard, Johnson, Shugars, McBryde, Hillegonds, London, Nye and Horton

ENROLLED HOUSE BILL No. 5646

AN ACT to amend Act No. 328 of the Public Acts of 1931, entitled as amended "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," as amended, being sections 750.1 to 750.568 of the Michigan Compiled Laws, by adding section 42b.

The People of the State of Michigan enact:

Section 1. Act No. 328 of the Public Acts of 1931, as amended, being sections 750.1 to 750.568 of the Michigan Compiled Laws, is amended by adding section 42b to read as follows:

Sec. 42b. (1) Except as provided in subsection (3), a person shall not sell or distribute a tobacco product in this state through the use of the United States mail service, express mail service, parcel post service, or any common carrier service except to persons who have previously paid or agreed to pay for the products at fair market value. This subsection shall not be construed to apply to any person employed by the United States postal service or by any common carrier while carrying or delivering a tobacco product mailed or shipped by another person.

(2) A person shall not, as part of his, her, or its business, either directly or through an agent, distribute tobacco products to persons who did not previously pay or agree to pay for the products unless all of the following provisions are met:

(a) The person or agent distributing the tobacco product distributes only tobacco products regularly sold or manufactured by that person or agent.

(b) The person distributing the tobacco product ascertains that the person receiving the tobacco product is 18 years of age or older.

(c) The person receiving the tobacco product is physically present to receive the product.

(d) Distribution is not prohibited by any local ordinance.

(3) Subsection (1) does not prohibit the sale or distribution of a tobacco product in this state through the use of the United States mail service, express mail service, parcel post service, or any common carrier service if the sale or distribution is in response to a consumer complaint or is part of a direct mail marketing of products to specifically named individuals, and which response or marketing involves the prior return by the same specifically-named individual of an authorization card to the tobacco company that indicates that the individual is at least 18 years of age, is signed by the individual and is kept on file by the tobacco company for at least 1 year.

(4) A person who violates subsection (1) is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or by a fine of not more than \$10,000.00, or both.

(5) A person who violates subsection (2) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, a fine of not more than \$500.00, service to the community for not more than 180 days, or any combination thereof.

(6) As used in this section:

(a) "Employed" includes engaged as an agent or independent contractor.

(b) "Person" means an individual, partnership, corporation, association, or other legal entity.

(c) "Sell or distribute" includes sending or providing free samples or any other distribution not for sale.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved

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Governor.