



HOUSE BILL No. 4567

March 9, 1995, Introduced by Reps. Baird, DeMars, LaForge, Pitoniak, Martinez, Brater, Gire, Gubow and Byl and referred to the Committee on Health Policy.

A bill to amend section 42b of Act No. 328 of the Public Acts of 1931, entitled as amended
"The Michigan penal code,"
as added by Act No. 273 of the Public Acts of 1992, being
section 750.42b of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 42b of Act No. 328 of the Public Acts of
2 1931, as added by Act No. 273 of the Public Acts of 1992, being
3 section 750.42b of the Michigan Compiled Laws, is amended to read
4 as follows:

5 Sec. 42b. (1) ~~Except as provided in subsection (3), a~~ A
6 person shall not sell or distribute a tobacco product in this
7 state through the use of the United States mail service, express
8 mail service, parcel post service, or any common carrier service
9 except to persons who have previously paid or agreed to pay for

1 the products at fair market value. This subsection ~~shall~~ DOES
2 not ~~be construed to~~ apply to ~~any~~ A person employed by the
3 United States postal service or by ~~any~~ A common carrier while
4 carrying or delivering a tobacco product mailed or shipped by
5 another person.

6 (2) A person shall not, as part of his, her, or its busi-
7 ness, either directly or through an agent, distribute A tobacco
8 ~~products to persons~~ PRODUCT TO A PERSON who did not previously
9 pay or agree to pay for the ~~products~~ PRODUCT unless all of the
10 following provisions are met:

11 (a) The person or agent distributing the tobacco product
12 distributes only THE tobacco ~~products~~ PRODUCT regularly sold or
13 manufactured by that person or agent.

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

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

19 (d) Distribution is not prohibited by ~~any~~ A local
20 ordinance.

21 ~~(3) Subsection (1) does not prohibit the sale or distribu-~~
22 ~~tion of a tobacco product in this state through the use of the~~
23 ~~United States mail service, express mail service, parcel post~~
24 ~~service, or any common carrier service if the sale or distribu-~~
25 ~~tion is in response to a consumer complaint or is part of a~~
26 ~~direct mail marketing of products to specifically named~~
27 ~~individuals, and which response or marketing involves the prior~~

1 ~~return by the same specifically named individual of an~~
2 ~~authorization card to the tobacco company that indicates that the~~
3 ~~individual is at least 18 years of age, is signed by the individ-~~
4 ~~ual and is kept on file by the tobacco company for at least 1~~
5 ~~year.~~

6 (3) ~~(4)~~ A person who violates subsection (1) is guilty of
7 a misdemeanor, punishable by imprisonment for not more than 1
8 year, or by a fine of not more than \$10,000.00, or both.

9 (4) ~~(5)~~ A person who violates subsection (2) is guilty of
10 a misdemeanor, punishable by imprisonment for not more than 90
11 days, a fine of not more than ~~\$500.00~~ \$1,000.00, service to the
12 community for not more than 180 days, or any combination
13 thereof.

14 (5) ~~(6)~~ As used in this section:

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

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

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