



SENATE BILL No. 442

March 28, 1995, Introduced by Senator SCHWARZ and referred to the Committee on Health Policy and Senior Citizens.

A bill to prohibit the distribution of tobacco products to minors; to prohibit the use of tobacco products by minors; to regulate the retail sale of tobacco products; to prescribe penalties; to prescribe the powers and duties of certain state and local agencies and departments; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "youth tobacco act".

3 Sec. 2. (1) A person shall not distribute a tobacco product
4 to a person under 18 years of age. A person who violates this
5 section is guilty of a misdemeanor, punishable by a fine of
6 \$100.00 for the first offense, \$250.00 for a second offense in a
7 2-year period, and \$500.00 for a third or subsequent offense
8 within a 2-year period.

1 (2) If an ordinary, reasonable person under similar
2 circumstances would conclude on the basis of appearance that a
3 prospective recipient or purchaser of a tobacco product may be
4 under the age of 18 years, a person who sells a tobacco product
5 at retail shall obtain proof of age from the prospective recipi-
6 ent or purchaser. Evidence that a defendant obtained and reason-
7 ably relied on proof of age that appeared on its face to be valid
8 is a defense to a charge brought under this section.

9 (3) A person who sells tobacco products at retail shall
10 post, in a place close to the point of sale and conspicuous to
11 both employees and customers, a sign produced by the department
12 of public health that includes the following statement:

13 "The purchase of tobacco products by a minor under 18 years
14 of age and the provision of tobacco products to a minor are pro-
15 hibited by law. A minor unlawfully purchasing or using tobacco
16 products is subject to criminal penalties."

17 (4) If the sign required under subsection (3) is more than 6
18 feet from the point of sale, it shall be 5-1/2 inches by 8-1/2
19 inches, and the statement required under subsection (3) shall be
20 printed in 36-point boldfaced type. If the sign required under
21 subsection (3) is 6 feet or less from the point of sale, it shall
22 be 2 inches by 4 inches, and the statement required under subsec-
23 tion (3) shall be printed in 20-point boldfaced type. The sign
24 required under this section is the only notice regarding the dis-
25 tribution of tobacco products that is required to be posted or
26 maintained in a store where tobacco products are sold at retail.

1 This section does not conflict with federal law regarding the
2 signage or labeling of tobacco products.

3 (5) The department of public health shall produce the sign
4 required under subsection (3) and have adequate copies of the
5 sign ready for distribution to licensed wholesalers, secondary
6 wholesalers, and unclassified acquirers of tobacco products free
7 of charge by May 31, 1989. Licensed wholesalers, secondary
8 wholesalers, and unclassified acquirers of tobacco products shall
9 obtain copies of the sign from the department of public health
10 and distribute them free of charge, upon request, to persons who
11 are subject to subsection (3). The department of public health
12 shall provide copies of the sign free of charge, upon request, to
13 persons subject to subsection (3) who do not purchase tobacco
14 products from licensed wholesalers, secondary wholesalers, and
15 unclassified acquirers of tobacco products.

16 (6) It is an affirmative defense to a charge under subsec-
17 tion (1) that a defendant had in force at the time of arrest and
18 continues to have in force a written policy to prevent the dis-
19 tribution of a tobacco product to persons under 18 years of age,
20 and that the defendant enforced and continues to enforce the
21 policy. A defendant who proposes to offer evidence of the affir-
22 mative defense described in this subsection shall file and serve
23 notice of the defense, in writing, upon the court and the prose-
24 cuting attorney. The notice shall be served not less than 14
25 days before the date set for trial.

26 (7) A prosecuting attorney who proposes to offer testimony
27 to rebut the affirmative defense described in subsection (6)

1 shall file and serve a notice of rebuttal, in writing, upon the
2 court and the defendant. The notice shall be served not less
3 than 7 days before the date set for trial, and shall contain the
4 name and address of each rebuttal witness.

5 (8) If an employee of the owner of a store at which tobacco
6 products are sold at retail distributes a tobacco product in vio-
7 lation of this section, the employee is guilty of the violation.
8 If a violation of this section consists of a minor purchasing a
9 tobacco product through a vending machine, the proprietor of the
10 establishment where the vending machine is located is guilty of
11 the violation. However, if the proprietor has made an employee
12 responsible for monitoring purchases from the vending machine,
13 that employee is guilty of the violation.

14 (9) Each separate location of a franchise or other business
15 that is owned by a person and operated in multiple locations is a
16 separate entity for purposes of calculating second and subsequent
17 offenses under subsection (1).

18 Sec. 3. Unless authorized under section 10, a person under
19 18 years of age shall not purchase, receive, possess, smoke, or
20 otherwise use or consume a tobacco product in a public place. A
21 person who violates this section is guilty of a misdemeanor, pun-
22 ishable by a fine of not more than \$50.00 for each offense.
23 Pursuant to a probation order, the court may require a person who
24 violates this section to participate in a health promotion and
25 risk reduction assessment program, if available. A person who
26 violates this section is also subject to the following:

1 (a) For the first violation, the court may order the person
2 to do 1 of the following:

3 (i) Perform not more than 16 hours of community service in a
4 hospice, nursing home, or long-term care facility.

5 (ii) Participate in a health promotion and risk reduction
6 program.

7 (b) For a second violation, in addition to participation in
8 a health promotion and risk reduction program, the court may
9 order the person to perform not more than 32 hours of community
10 service in a hospice, nursing home, or long-term care facility.

11 (c) For a third or subsequent violation, in addition to par-
12 ticipation in a health promotion and risk reduction program, the
13 court may order the person to perform not more than 48 hours of
14 community service in a hospice, nursing home, or long-term care
15 facility.

16 Sec. 4. (1) Except as otherwise provided in subsection (2),
17 a person who sells tobacco products at retail shall not sell a
18 cigarette separately from its package.

19 (2) Subsection (1) does not apply to a person who sells
20 tobacco products at retail in a tobacco specialty retail store or
21 other retail store that deals exclusively in the sale of tobacco
22 products and smoking paraphernalia.

23 (3) A person who violates subsection (1) is guilty of a mis-
24 demeanor, punishable by a fine of not more than \$500.00 for each
25 offense.

26 Sec. 5. This act does not apply to either or both of the
27 following:

1 (a) Giving or furnishing a tobacco product to a personal
2 acquaintance or a family member for noncommercial purposes.

3 (b) Giving or furnishing a tobacco product to an employee if
4 required in the performance of the employee's duties.

5 Sec. 6. This act does not interfere with the right of a
6 parent or legal guardian in the rearing and management of his or
7 her minor children or wards within the bounds of his or her own
8 private premises.

9 Sec. 7. (1) A person engaged in the business of selling
10 tobacco products at retail shall notify each individual employed
11 by that person as a retail sales clerk of all of the following:

12 (a) That state law prohibits the distribution of a tobacco
13 product to a person under 18 years of age and the purchase,
14 receipt, possession, smoking, or other use or consumption of a
15 tobacco product by a person under 18 years of age.

16 (b) That state law prohibits the sale of a cigarette sepa-
17 rately from its package.

18 (c) That state law requires that proof of age be obtained
19 from a prospective purchaser or recipient if an ordinary, reason-
20 able person under similar circumstances would conclude on the
21 basis of appearance that the prospective purchaser or recipient
22 may be under 18 years of age.

23 (2) The notice required by this section shall be provided
24 before the individual commences work as a retail sales clerk or
25 within 30 days of the effective date of this act if the individ-
26 ual is employed as a retail sales clerk on the effective date of
27 this act. The individual shall signify that he or she has

1 received the notice required by this section by signing a form
2 that states the following:

3 "I understand that state law prohibits the distribution of
4 tobacco products to persons under 18 years of age and prohibits
5 out-of-package sales, and requires that proof of age be obtained
6 from a prospective purchaser or recipient if an ordinary, reason-
7 able person under similar circumstances would conclude on the
8 basis of appearance that the prospective purchaser or recipient
9 may be under 18 years of age. I promise to comply with this
10 law."

11 (3) Each form signed by a retail sales clerk under subsec-
12 tion (2) shall indicate the date of signature. The employer
13 shall retain the form during the individual's term of employment
14 and for not less than 120 days after the individual has left the
15 employer's employ.

16 (4) A person engaged in the business of selling tobacco
17 products at retail shall, at his or her expense, give each indi-
18 vidual employed by that person as a retail sales clerk a true
19 copy of this act before the individual commences work as a retail
20 sales clerk or within 30 days of the effective date of this act
21 if the individual is employed as a retail sales clerk on the
22 effective date of this act.

23 (5) An employer who fails to comply with this section is
24 guilty of a misdemeanor punishable by a fine of \$100.00 for the
25 first offense and \$200.00 for each succeeding violation within a
26 2-year period.

1 Sec. 8. The department of public health shall enforce this
2 act and is responsible for ensuring the state's compliance with
3 subpart II of part B of title XIX of the public health service
4 act, chapter 373, 106 Stat. 394, 42 U.S.C. 300x-26, and with the
5 implementing regulations promulgated by the United States depart-
6 ment of health and human services.

7 Sec. 9. The department of public health shall work with
8 state and local law enforcement agencies, the department of the
9 attorney general, and local prosecutors to enforce this act in a
10 manner that can reasonably be expected to reduce the extent to
11 which tobacco products are sold or otherwise distributed to per-
12 sons under the age of 18 years, and shall annually conduct
13 random, unannounced inspections at locations where tobacco prod-
14 ucts are sold at retail or otherwise distributed to ensure com-
15 pliance with this act.

16 Sec. 10. A person under 18 years of age may be engaged by
17 the state police, the department of public health, or a local law
18 enforcement agency as part of an enforcement action under this
19 act if the initial or contemporaneous receipt or purchase of a
20 tobacco product by a person under 18 years of age occurs under
21 the direction of the state police, the department of public
22 health, or the local law enforcement agency and was part of the
23 enforcement action. The state police, the department of public
24 health, or the local law enforcement agency shall not recruit or
25 attempt to recruit a person under 18 years of age to participate
26 in an enforcement action at the scene of a violation of section
27 2.

1 Sec. 11. The department of public health shall prepare for
2 submission annually to the secretary of the United States depart-
3 ment of health and human services the report required by subpart
4 II of part B of title XIX of the public health service act, chap-
5 ter 373, 106 Stat. 394, 42 U.S.C. 300x-26 and with the implement-
6 ing regulations promulgated under that section.

7 Sec. 12. Beginning on the effective date of this act, a
8 city, township, village, county, or other local unit of govern-
9 ment shall not impose a new requirement or prohibition pertaining
10 to the sale, distribution, advertising, promotion, or display of
11 tobacco products. This section does not invalidate or otherwise
12 restrict a requirement or prohibition described in this section
13 existing on the effective date of the tobacco products tax act,
14 Act No. 327 of the Public Acts of 1993, being sections 205.421 to
15 205.436 of the Michigan Compiled Laws.

16 Sec. 13. As used in this act:

17 (a) "Distribute" means to sell, give, or furnish.
18 Distribute does not include sampling.

19 (b) "Driver license" means a license issued under
20 chapter III of the Michigan vehicle code, Act No. 300 of the
21 Public Acts of 1949, being sections 257.301 to 257.329 of the
22 Michigan Compiled Laws, or a license to operate a motor vehicle
23 issued in another state.

24 (c) "Employee" means an employee, agent, or independent
25 contractor.

26 (d) "Official state personal identification card" means an
27 identification card issued under Act No. 222 of the Public Acts

1 of 1972, being sections 28.291 to 28.295 of the Michigan Compiled
2 Laws, or an official personal identification card issued in
3 another state.

4 (e) "Person" means an individual, corporation, partnership,
5 or other business entity.

6 (f) "Person who sells tobacco products at retail" means a
7 person whose ordinary course of business consists, in whole or in
8 part, of the retail sale of tobacco products subject to state
9 sales tax.

10 (g) "Proof of age" means a driver license, official state
11 personal identification card, or other identification issued by a
12 governmental agency, not including a school or university student
13 identification card, that meets all of the following criteria:

14 (i) Describes the individual identified as 18 years of age
15 or older.

16 (ii) Contains a photograph of the identified individual.

17 (h) "Public place" means a public street, sidewalk, park, or
18 any area open to the general public in a publicly owned or oper-
19 ated building or public place of business.

20 (i) "Sample" or "sampling" means the transfer of a tobacco
21 product to a member of the general public at no cost in a public
22 place for the purpose of promoting the tobacco product.

23 (j) "Tobacco product" means a product that contains tobacco
24 and is intended for human consumption, including but not limited
25 to cigarettes, cigars, noncigarette smoking tobacco, or smokeless
26 tobacco, as those terms are defined in section 2 of the tobacco

1 products tax act, Act No. 327 of the Public Acts of 1993, being
2 section 205.422 of the Michigan Compiled Laws.

3 Sec. 14. Act No. 31 of the Public Acts of 1915, being
4 sections 722.641 to 722.645 of the Michigan Compiled Laws, is
5 repealed.