

## THE MICHIGAN PENAL CODE (EXCERPT)

### Act 328 of 1931

#### CHAPTER VI ADVERTISING

##### **750.33 False advertising; penalty; excepted participants in publication.**

Sec. 33. (1) A person who, with intent to sell, purchase, dispose of, or acquire merchandise, securities, service, or anything offered or sought by the person, directly or indirectly, to or from the public for sale, purchase, or distribution, or with intent to increase the consumption of merchandise, securities, service, or other thing offered or sought, or to induce the public in any manner to enter into an obligation relating to or interest in the merchandise, securities, service, or other thing offered or sought, makes, publishes, disseminates, circulates, or places before the public, or causes directly or indirectly to be made, published, disseminated, circulated, or placed before or communicated to the public, in a newspaper or by radio broadcast, television, telephone, or telegraph or other mode of communication or publication or in the form of a book, notice, handbill, poster, bill, circular, pamphlet, letter, or communication, including communication by telephone or telegraph to 2 or more persons, or in any other way, in advertisement of any sort regarding merchandise, securities, service, or anything so offered to or sought from the public, or regarding the motive or purpose of a sale, purchase, distribution, or acquisition, which advertisement contains an assertion, representation, or statement or illustration, including statements of present or former sale price or value, which is false, deceptive, or misleading, or calculated to subject another person to disadvantage or injury through the publication of false or deceptive statements or as part of a plan or scheme with the intent, design, or purpose not to sell the merchandise, commodities, or service so advertised at the price stated therein, or otherwise communicated, or with intent not to sell the merchandise, commodities, or service so advertised is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00.

(2) Subsection (1) does not apply to an owner, publisher, printer, agent, or employee of a newspaper or other publication, periodical, or circular, or of a radio station or television station, who in good faith and without knowledge of the falsity or deceptive character thereof, publishes, causes to be published, or takes part in the publication of an advertisement described in subsection (1).

(3) Subsection (1) does not apply to any person, firm, or corporation providing telephone service to subscribers as a public utility.

**History:** 1931, Act 328, Eff. Sept. 18, 1931;—Am. 1941, Act 340, Eff. Jan. 10, 1942;—CL 1948, 750.33;—Am. 1955, Act 176, Eff. Oct. 14, 1955;—Am. 1957, Act 180, Eff. Sept. 27, 1957;—Am. 2002, Act 672, Eff. Mar. 31, 2003.

**Former law:** See sections 1 and 2 of Act 245 of 1899, being CL 1915, §§ 15340 and 15341, and CL 1929, §§ 16988 and 16989; and section 1 of Act 319 of 1925, being CL 1929, § 16990.

##### **750.33a Character or extent of business misrepresentation; penalty.**

Sec. 33a. Any person who states, in an advertisement of his goods, that he is a producer, manufacturer, processor, wholesaler or importer, or that he owns or controls a factory or other source of supply of goods, when such is not the fact, or in any other manner knowingly misrepresents the character, extent, volume or type of his business, is guilty of a misdemeanor.

**History:** Add. 1965, Act 105, Eff. Mar. 31, 1966.

##### **750.34 Repealed. 2015, Act 210, Eff. Mar. 14, 2016.**

**Compiler's note:** The repealed section pertained to advertising relating to certain sexual diseases.

##### **750.35 Repealed. 2015, Act 210, Eff. Mar. 14, 2016.**

**Compiler's note:** The repealed section pertained to publishing and distributing immoral advertising.

##### **750.36 Repealed. 2015, Act 210, Eff. Mar. 14, 2016.**

**Compiler's note:** The repealed section pertained to evidence of guilt relating to immoral advertising.

##### **750.37 Repealed. 2015, Act 210, Eff. Mar. 14, 2016.**

**Compiler's note:** The repealed section pertained to penalty relating to immoral advertising.

##### **750.38 Personal violence or human form; displaying.**

Sec. 38. Displaying, etc., pictures, etc., representing personal violence or human form—Any person who shall post, place or display on any sign board, bill board, fence, building, sidewalk, or other object, or in any

street, road, or other public place, any sign, picture, printing or other representation of murder, assassination, stabbing, fighting or of any personal violence, or of the commission of any crime, or any representation of the human form in an attitude or dress which would be indecent in the case of a living person, if such person so appeared in any public street, square or highway, shall be guilty of a misdemeanor.

**History:** 1931, Act 328, Eff. Sept. 18, 1931;—CL 1948, 750.38.

**Former law:** See sections 1 and 2 of Act 205 of 1885, being How., §§ 9314f and 9314h; Act 148 of 1889; CL 1897, §§ 11724 and 11726; CL 1915, §§ 15515 and 15517; and CL 1929, §§ 16880 and 16882.

#### **750.39 Repealed. 2015, Act 210, Eff. Mar. 14, 2016.**

**Compiler's note:** The repealed section pertained to publication of virtues of patent medicine in immoral or ambiguous language.

#### **750.40 Repealed. 2023, Act 12, Eff. Feb. 13, 2024.**

**Compiler's note:** The repealed section pertained to publication of cures for contraceptive preventatives.

#### **750.41 Repealed. 2002, Act 211, Imd. Eff. Apr. 29, 2002.**

**Compiler's note:** The repealed section pertained to sale and distribution of criminal news printed matter.

#### **750.42 Repealed. 2000, Act 238, Imd. Eff. June 27, 2000.**

**Compiler's note:** The repealed section pertained to advertisements of intoxicating liquors referring to deceased ex-presidents of the United States.

#### **750.42a Outdoor sign advertising smokeless tobacco product; warning statements; local ordinance, regulation, or other law.**

Sec. 42a. (1) A person who uses an outdoor sign to advertise a smokeless tobacco product shall display on the outdoor sign 1 of the following statements:

- (a) "WARNING: This product may cause mouth cancer."
- (b) "WARNING: This product may cause gum disease and tooth loss."
- (c) "WARNING: This product is not a safe alternative to cigarettes."

(2) The warning statements required under subsection (1) shall be rotated every 4 months, and shall meet all of the following requirements:

(a) Be surrounded by a black border, the width of which is not less than the width of the vertical element of a letter in the warning statement. There shall be a 1-1/2 inch white border surrounding the black border.

(b) Be printed in capital letters that are black on a white background, and in the following size and type:

(i) For an outdoor sign that has a surface area of more than 150 square feet, but less than 350 square feet, the letters shall be not less than 5-1/2 inches in height and printed in univers 67 cold type.

(ii) For an outdoor sign that has a surface area of 350 square feet or more, but less than 1,200 square feet, the letters shall be not less than 6 inches in height and printed in univers 59 cold type.

(iii) For an outdoor sign that has a surface area of 1,200 square feet or more, the letters shall be not less than 8 inches in height and printed in univers 57 cold type.

(3) An ordinance, regulation, or other law enacted by a local unit of government shall not require either of the following for an outdoor sign that advertises a smokeless tobacco product:

(a) A statement other than 1 of the statements required under subsection (1).

(b) For the statements required under subsection (1), a format and type style other than the format and type style required under subsection (2).

(4) A person who violates this section is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.

(5) As used in this section:

(a) "Outdoor sign" means a sign, display, device, figure, painting, drawing, message, placard, poster, or billboard that is placed outdoors, is stationary, has a surface area of more than 150 square feet, and is designed, intended, or used to advertise or promote.

(b) "Person" means an individual, corporation, partnership, or other business entity that manufactures, packages, or imports smokeless tobacco products.

(c) "Smokeless tobacco product" means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity.

**History:** Add. 1988, Act 295, Eff. Mar. 30, 1989.

#### **750.42b Selling or distributing tobacco products through U.S. mail service, express mail service, parcel post service, or common carrier prohibited; exceptions; violation as misdemeanor; penalty; definitions.**

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 does not 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 that distributes the tobacco product distributes only tobacco products regularly sold or manufactured by that person or agent.

(b) The person that distributes the tobacco product ascertains that the individual who receives the tobacco product is 21 years of age or older.

(c) The individual who receives 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 21 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 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 1 or more of the following:

(a) Imprisonment for not more than 90 days.

(b) A fine of not more than \$500.00.

(c) Community service for not more than 180 days.

(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 to send or to provide free samples or any other distribution not for sale.

**History:** Add. 1992, Act 273, Imd. Eff. Dec. 16, 1992;—Am. 2022, Act 169, Imd. Eff. July 21, 2022.