



SENATE BILL No. 730

October 19, 1995, Introduced by Senator SHUGARS 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, \$150.00 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. Evidence that a defendant obtained and

1 reasonably relied on proof of age that appeared on its face to be
2 valid is a defense to a charge brought under this subsection.

3 (2) A person who sells a tobacco product at retail shall
4 make a diligent effort to obtain proof of age from the prospec-
5 tive purchaser. A charge shall not be brought under this subsec-
6 tion against a person who, without first obtaining proof of age,
7 sells a tobacco product to a purchaser who is later determined to
8 be 18 years of age or older.

9 (3) It is an affirmative defense to a charge under subsec-
10 tion (1) that a defendant had in force at the time of arrest and
11 continues to have in force a written policy that includes the
12 requirements of section 6 to prevent the distribution of a
13 tobacco product to persons under 18 years of age, and that the
14 defendant enforced and continues to enforce the policy. A
15 defendant who proposes to offer evidence of the affirmative
16 defense described in this subsection shall file and serve notice
17 of the defense, in writing, upon the court and the prosecuting
18 attorney. The notice shall be served not less than 14 days
19 before the date set for trial.

20 (4) A prosecuting attorney who proposes to offer testimony
21 to rebut the affirmative defense described in subsection (3)
22 shall file and serve a notice of rebuttal, in writing, upon the
23 court and the defendant. The notice shall be served not less
24 than 7 days before the date set for trial, and shall contain the
25 name and address of each rebuttal witness.

26 (5) A person who sells tobacco products at retail shall
27 post, in a place close to the point of sale and conspicuous to

1 both employees and customers, a sign produced by the department
2 of public health that includes the following statement:

3 "The purchase of tobacco products by a person under 18 years
4 of age and distributing tobacco products to a person under 18
5 years of age are prohibited by law. A person under 18 years of
6 age who purchases or uses tobacco products is responsible for a
7 civil infraction. A person who distributes tobacco products to a
8 person under 18 years of age is subject to criminal penalties.".

9 (6) If the sign required under subsection (5) is more than 6
10 feet from the point of sale, it shall be 5-1/2 inches by 8-1/2
11 inches, and the statement required under subsection (5) shall be
12 printed in 36-point boldfaced type. If the sign required under
13 subsection (5) is 6 feet or less from the point of sale, it shall
14 be 2 inches by 4 inches, and the statement required under subsec-
15 tion (5) shall be printed in 20-point boldfaced type. The sign
16 required under this section is the only notice regarding the dis-
17 tribution of tobacco products that is required to be posted or
18 maintained in a store where tobacco products are sold at retail.
19 This section does not conflict with federal law regarding the
20 signage or labeling of tobacco products.

21 (7) The department shall produce the sign required under
22 subsection (5) and have adequate copies of the sign ready for
23 distribution to licensed wholesalers, secondary wholesalers, and
24 unclassified acquirers of tobacco products free of charge within
25 30 days of the effective date of this act. Licensed wholesalers,
26 secondary wholesalers, and unclassified acquirers of tobacco
27 products shall obtain copies of the sign from the department of

1 public health and distribute them free of charge, upon request,
2 to persons who are subject to subsection (5). The department
3 shall provide copies of the sign free of charge, upon request, to
4 persons subject to subsection (5) who do not purchase tobacco
5 products from licensed wholesalers, secondary wholesalers, and
6 unclassified acquirers of tobacco products.

7 Sec. 3. (1) Unless authorized under section 8, a person
8 under 18 years of age shall not purchase, receive, possess,
9 smoke, or otherwise use or consume a tobacco product in a public
10 place.

11 (2) A person who violates subsection (1) is responsible for
12 a state civil infraction as defined in section 113 of the revised
13 judicature act of 1961, Act No. 236 of the Public Acts of 1961,
14 being section 600.113 of the Michigan Compiled Laws, and is
15 liable for a civil fine of not more than \$100.00 for each
16 violation. A proceeding under this subsection shall be conducted
17 under chapter 88 of Act No. 236 of the Public Acts of 1961, being
18 sections 600.8801 to 600.8835 of the Michigan Compiled Laws.

19 (3) Fines and costs collected under this section shall be
20 disbursed as provided by law.

21 (4) A law enforcement agency, upon determining that a person
22 under 18 years of age allegedly purchased, received, possessed,
23 smoked, or otherwise used, or attempted to purchase, receive,
24 possess, smoke, or otherwise use, a tobacco product in violation
25 of subsection (1) shall notify the person's parent or parents,
26 custodian, or guardian as to the nature of the violation if the
27 name of a parent, guardian, or custodian is reasonably

1 ascertainable by the law enforcement agency. The notice required
2 by this subsection shall be made not later than 48 hours after
3 the law enforcement agency determines that the person who
4 allegedly violated subsection (1) is a person under 18 years of
5 age. The notice may be made by any means reasonably calculated
6 to give prompt actual notice including, but not limited to,
7 notice in person, by telephone, or by first-class mail. The
8 notification requirements of this subsection do not apply if the
9 law enforcement agency has reasonable grounds to believe the
10 person is emancipated under Act No. 293 of the Public Acts of
11 1968, being sections 772.1 to 772.6 of the Michigan Compiled
12 Laws.

13 (5) This section does not prohibit a person under the age of
14 18 from possessing a tobacco product during regular working hours
15 and in the course of his or her employment if employed by a
16 person who sells tobacco products at retail, if the tobacco prod-
17 uct is not possessed for his or her personal consumption.

18 (6) This section does not limit the liability of a person
19 who distributes a tobacco product to a person under the age of 18
20 in violation of section 2.

21 Sec. 4. (1) Except as otherwise provided in subsection (2),
22 a person who sells tobacco products at retail or from a vending
23 machine shall not do 1 or more of the following:

24 (a) Sell a cigarette separately from its package.

25 (b) Sell a package of cigarettes that contains less than 20
26 cigarettes.

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

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

8 Sec. 5. (1) This act does not interfere with the right of a
9 parent or legal guardian in the rearing and management of his or
10 her minor children or wards within the bounds of his or her own
11 private premises.

12 (2) This act does not apply to giving or furnishing a
13 tobacco product to a family member for noncommercial purposes.

14 Sec. 6. (1) A person engaged in the business of selling
15 tobacco products at retail shall notify each individual employed
16 by that person as a retail sales clerk of all of the following:

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

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

23 (c) That state law requires that a diligent effort be made
24 to obtain proof of age from a prospective purchaser or
25 recipient.

26 (2) The notice required by this section shall be provided
27 before the individual commences work as a retail sales clerk or

1 within 30 days of the effective date of this act if the
2 individual is employed as a retail sales clerk on the effective
3 date of this act. The individual shall signify that he or she
4 has received the notice required by this section by signing a
5 form that states the following:

6 "I understand that state law prohibits the distribution of
7 tobacco products to persons under 18 years of age and prohibits
8 out-of-package cigarette sales, and requires that a diligent
9 effort be made to obtain proof of age from a prospective pur-
10 chaser or recipient. I promise to comply with this 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 give each individual employed by that
18 person as a retail sales clerk a true copy of this act before the
19 individual commences work as a retail sales clerk or within 30
20 days of the effective date of this act if the individual is
21 employed as a retail sales clerk on the effective date of this
22 act. The department shall provide copies of this act free of
23 charge upon request to persons subject to this section within 30
24 days of the effective date of this act.

25 (5) An employer who fails to comply with this section is
26 guilty of a misdemeanor punishable by a fine of \$100.00 for the

1 first offense and \$200.00 for each succeeding violation within a
2 2-year period.

3 Sec. 7. The department shall work with state and local law
4 enforcement agencies, the department of the attorney general, and
5 local prosecutors to enforce this act in a manner that can rea-
6 sonably be expected to reduce the extent to which tobacco prod-
7 ucts are sold or otherwise distributed to persons under the age
8 of 18 years, and shall annually conduct random, unannounced
9 inspections at locations where tobacco products are sold at
10 retail or otherwise distributed to ensure compliance with this
11 act.

12 Sec. 8. (1) The state police or a local law enforcement
13 agency may engage a person under 18 years of age as part of an
14 enforcement action under this act if the initial or contemporane-
15 ous receipt or purchase of a tobacco product by a person under 18
16 years of age occurs under the direction of the state police or
17 the local law enforcement agency and was part of the enforcement
18 action.

19 (2) The state police or the local law enforcement agency
20 shall not do either or both of the following:

21 (a) Recruit or attempt to recruit a person under 18 years of
22 age to participate in an enforcement action at the scene of a
23 violation of section 2.

24 (b) Allow a person under 18 years of age to purchase or
25 receive a tobacco product as part of an enforcement action with-
26 out the permission of the minor's parents or legal guardians.

1 Sec. 9. The department shall prepare for submission to the
2 standing committee of each house of the legislature that has
3 responsibility for public health matters and to the standing com-
4 mittee in each house of the legislature that has responsibility
5 for appropriations an annual written report that separately iden-
6 tifies each of the following:

7 (a) The number of prosecutions under this act.

8 (b) The number of convictions under this act.

9 (c) The number of persons who sell tobacco at retail who
10 were charged or convicted of selling a tobacco product to a
11 person under 18 years of age in violation of this act.

12 (d) The change in the number and percentage of sales of
13 tobacco products to persons under 18 years of age.

14 (e) The methodology used to obtain and determine the infor-
15 mation required in subdivisions (a) through (d).

16 Sec. 10. As used in this act:

17 (a) "Department" means the department of public health.

18 (b) "Diligent effort" means a good faith effort to determine
19 the age of the individual that includes at least an examination
20 of proof of age.

21 (c) "Distribute" means to sell, give, or furnish.

22 Distribute does not include either of the following as regulated
23 under section 42b of the Michigan penal code, Act No. 328 of the
24 Public Acts of 1931, being section 750.42b of the Michigan
25 Compiled Laws:

1 (i) The sale or distribution of a tobacco product in this
2 state through the use of the United States mail service, express
3 mail service, parcel post service, or a common carrier service.

4 (ii) The distribution of a tobacco product to a person who
5 did not previously pay or agree to pay for the tobacco product.

6 (d) "Driver license" means a license issued under
7 chapter III of the Michigan vehicle code, Act No. 300 of the
8 Public Acts of 1949, being sections 257.301 to 257.329 of the
9 Michigan Compiled Laws, or a license to operate a motor vehicle
10 issued in another state.

11 (e) "Employee" means an employee, agent, or independent
12 contractor.

13 (f) "Law enforcement agency" does not include the department
14 of public health or a local health department.

15 (g) "Official state personal identification card" means an
16 identification card issued under Act No. 222 of the Public Acts
17 of 1972, being sections 28.291 to 28.295 of the Michigan Compiled
18 Laws, or an official personal identification card issued in
19 another state.

20 (h) "Person" means an individual, corporation, partnership,
21 or other business entity.

22 (i) "Person who sells tobacco products at retail" means a
23 person whose ordinary course of business consists, in whole or in
24 part, of the retail sale of tobacco products subject to state
25 sales tax.

26 (j) "Proof of age" means a driver license, official state
27 personal identification card, or other identification issued by a

1 governmental agency, not including a school or university student
2 identification card, that meets all of the following criteria:

3 (i) Describes the individual identified as 18 years of age
4 or older.

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

6 (k) "Public place" means a public street, sidewalk, park, or
7 any area open to the general public in a publicly owned or oper-
8 ated building or public place of business.

9 (l) "Tobacco product" means a product that contains tobacco
10 and is intended for human consumption, including but not limited
11 to cigarettes, noncigarette smoking tobacco, or smokeless tobac-
12 co, as those terms are defined in section 2 of the tobacco prod-
13 ucts tax act, Act No. 327 of the Public Acts of 1993, being sec-
14 tion 205.422 of the Michigan Compiled Laws, and cigars.

15 Sec. 11. Act No. 31 of the Public Acts of 1915, being
16 sections 722.641 to 722.645 of the Michigan Compiled Laws, is
17 repealed.