

SENATE BILL NO. 273

February 4, 1999, Introduced by Senator SHUGARS and referred to the Committee on Health Policy.

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 prevention act".

3 Sec. 2. As used in this act:

4 (a) "Department" means the department of community health.

5 (b) "Distribute" means to sell, give, or furnish.

6 Distribute does not include either of the following as regulated
7 under section 42b of the Michigan penal code, 1931 PA 328, MCL
8 750.42b:

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 (c) "Driver license" means a license issued under
7 chapter III of the Michigan vehicle code, 1949 PA 300, MCL
8 257.301 to 257.329, or a license to operate a motor vehicle
9 issued in another state.

10 (d) "Employee" means an employee, agent, or independent
11 contractor.

12 (e) "Law enforcement agency" does not include the department
13 of community health or a local health department.

14 (f) "Official state personal identification card" means an
15 identification card issued under 1972 PA 222, MCL 28.291 to
16 28.300, or an official personal identification card issued in
17 another state.

18 (g) "Person" means an individual, corporation, partnership,
19 limited liability company, or other business entity.

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

24 (i) "Proof of age" means a driver license, official state
25 personal identification card, or other identification issued by a
26 governmental agency, not including a school or university student
27 identification card, that meets all of the following criteria:

1 (i) Describes the individual identified as 18 years of age
2 or older.

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

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

7 (k) "State civil infraction" means that term as defined in
8 section 113 of the revised judicature act of 1961, 1961 PA 236,
9 MCL 600.113.

10 (l) "Tobacco product" means a product that contains tobacco
11 and is intended for human consumption, including but not limited
12 to cigarettes, noncigarette smoking tobacco, or smokeless tobac-
13 co, as those terms are defined in section 2 of the tobacco pro-
14 ducts tax act, 1993 PA 327, MCL 205.422, and cigars.

15 Sec. 3. (1) A person shall not distribute a tobacco product
16 to a person under 18 years of age. Subject to subsection (5), a
17 person who violates this section is responsible for a state civil
18 infraction and is liable for the payment of a civil fine of
19 \$150.00 for each violation.

20 (2) Evidence that a defendant carefully checked and reason-
21 ably relied on proof of age that appeared on its face to be valid
22 is a defense to a charge brought under subsection (1).

23 (3) It is an affirmative defense to a charge under subsec-
24 tion (1) that a defendant had in force at the time of arrest and
25 continues to have in force a written policy that includes the
26 requirements of section 8 to prevent the distribution of a
27 tobacco product to persons under 18 years of age, and that the

1 defendant enforced and continues to enforce the policy. A
2 defendant who proposes to offer evidence of the affirmative
3 defense described in this subsection shall file and serve notice
4 of the defense, in writing, upon the court and the prosecuting
5 attorney. The notice shall be served not less than 14 days
6 before the date set for trial.

7 (4) A prosecutor who proposes to offer testimony to rebut
8 the affirmative defense described in subsection (3) shall file
9 and serve a notice of rebuttal, in writing, upon the court and
10 the defendant. The notice shall be served not less than 7 days
11 before the date set for trial, and shall contain the name and
12 address of each rebuttal witness.

13 (5) A prosecutor shall not charge a person who sells tobacco
14 products at retail with a violation of subsection (1) unless
15 enforcement action under section 4 is taken against the person
16 under 18 years of age who purchased or attempted to purchase a
17 tobacco product. This subsection does not apply if the person
18 under 18 years of age purchased a tobacco product as provided in
19 section 11.

20 (6) It is an affirmative defense to a charge under subsec-
21 tion (1) that a defendant who is an individual employed by a
22 person engaged in the business of selling tobacco products at
23 retail was not provided the notice required under section 8. A
24 defendant who proposes to offer evidence of the affirmative
25 defense described in this subsection shall file and serve notice
26 of the defense as described in subsection (3). A prosecutor who
27 proposes to offer testimony to rebut the affirmative defense

1 described in this subsection shall file and serve notice of
2 rebuttal as described in subsection (4).

3 Sec. 4. (1) Unless authorized under section 11, a person
4 under 18 years of age shall not purchase or attempt to purchase,
5 or receive or attempt to receive, or possess or attempt to pos-
6 sess, or smoke or attempt to smoke, or otherwise use or consume
7 or attempt to use or consume a tobacco product in a public
8 place.

9 (2) A person who violates subsection (1) is responsible for
10 a state civil infraction and is liable for the payment of a civil
11 fine of not more than \$100.00 for each violation.

12 (3) A law enforcement agency that determines that a person
13 under 18 years of age allegedly purchased, received, possessed,
14 smoked, or otherwise used, or attempted to purchase, receive,
15 possess, smoke, or otherwise use, a tobacco product in violation
16 of subsection (1) shall notify the person's parent or parents,
17 custodian, or guardian as to the nature of the violation if the
18 law enforcement agency can reasonably ascertain the name of a
19 parent, guardian, or custodian. The law enforcement agency shall
20 provide the notice required by this subsection not later than 48
21 hours after the person who allegedly violated subsection (1) is
22 cited for the violation. The notice may be made by any means
23 reasonably calculated to give prompt actual notice, including,
24 but not limited to, notice in person, by telephone, or by
25 first-class mail. This subsection does not apply if the law
26 enforcement agency has reasonable grounds to believe the person
27 is emancipated under 1968 PA 293, MCL 722.1 to 722.6.

1 (4) This section does not prohibit a person under the age of
2 18 from possessing a tobacco product during regular working hours
3 and in the course of his or her employment if the tobacco product
4 is not possessed for his or her personal consumption.

5 (5) This section does not limit the liability of a person
6 who distributes a tobacco product to a person under the age of 18
7 in violation of section 3(1).

8 Sec. 5. (1) Except as otherwise provided in subsection (4),
9 a person who sells tobacco products at retail or from a vending
10 machine shall not do 1 or more of the following:

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

12 (b) Sell a package of cigarettes that contains less than 20
13 cigarettes.

14 (2) A person who violates subsection (1) is guilty of a mis-
15 demeanor, punishable by a fine of not more than \$500.00 for each
16 offense.

17 (3) A person who sells tobacco at retail shall display
18 single packages of cigarettes only behind the counter at a point
19 of sale or within plain view of the cashier at the point of
20 sale. A person who violates this subsection is responsible for a
21 state civil infraction and liable for the payment of a civil fine
22 of \$150.00 for each violation.

23 (4) This section does not apply to a person who sells
24 tobacco products at retail in a tobacco specialty retail store or
25 other retail store that deals exclusively in the sale of tobacco
26 products and smoking paraphernalia.

1 Sec. 6. (1) This act does not interfere with the right of a
2 parent or legal guardian in the rearing and management of his or
3 her minor children or wards within his or her own private
4 premises.

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

7 Sec. 7. (1) A person who sells tobacco products at retail
8 shall post, in a place close to the point of sale and conspicuous
9 to both employees and customers, a sign produced by the depart-
10 ment of community health that includes the following statement:

11 "The purchase of tobacco products by a person under 18 years
12 of age and distributing tobacco products to a person under 18
13 years of age are prohibited by law. Both a person under 18 years
14 of age who purchases or uses tobacco products and a person who
15 distributes tobacco products to a person under 18 years of age
16 are responsible for the payment of a civil fine.".

17 (2) If the sign required under subsection (1) 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 (1) shall be
20 printed in 36-point boldfaced type. If the sign required under
21 subsection (1) 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 (1) shall be printed in 20-point boldfaced type. The sign
24 required under subsection (1) is the only notice regarding the
25 distribution of tobacco products that is required to be posted or
26 maintained in a store where tobacco products are sold at retail.
27 This subsection and subsections (1) and (3) do not conflict with

1 federal law regarding the signage or labeling of tobacco
2 products.

3 (3) The department shall produce the sign required under
4 subsection (1) and have adequate copies of the sign ready for
5 distribution to licensed wholesalers, secondary wholesalers, and
6 unclassified acquirers of tobacco products free of charge within
7 30 days of the effective date of this act. Licensed wholesalers,
8 secondary wholesalers, and unclassified acquirers of tobacco pro-
9 ducts shall obtain copies of the sign from the department and
10 distribute them free of charge, upon request, to persons who are
11 subject to subsection (1). The department shall provide copies
12 of the sign free of charge, upon request, to persons subject to
13 subsection (1) who do not purchase tobacco products from licensed
14 wholesalers, secondary wholesalers, and unclassified acquirers of
15 tobacco products.

16 (4) A person who violates this section is responsible for a
17 state civil infraction and is liable for the payment of a civil
18 fine of \$150.00 for each violation.

19 Sec. 8. (1) A person engaged in the business of selling
20 tobacco products at retail shall notify each individual employed
21 by that person as a retail sales clerk of all of the following:

22 (a) That state law prohibits both the distribution of a
23 tobacco product to a person under 18 years of age and the pur-
24 chase, receipt, possession, smoking, or other use or consumption
25 of a tobacco product by a person under 18 years of age.

26 (b) That state law permits a defense to a charge of
27 distributing a tobacco product to a person under 18 years of age

1 based on evidence that the defendant carefully checked and
2 reasonably relied on proof of age that appeared on its face to be
3 valid.

4 (c) That state law prohibits the sale of a cigarette sepa-
5 rately from its package.

6 (2) A person engaged in the business of selling tobacco pro-
7 ducts at retail shall provide the notice required by this section
8 before the individual commences work as a retail sales clerk or
9 within 30 days of the effective date of this act if the individ-
10 ual is employed as a retail sales clerk on the effective date of
11 this act. The individual shall signify that he or she has
12 received the notice required by this section by signing a form
13 that states the following:

14 "I understand that state law prohibits the distribution of
15 tobacco products to persons under 18 years of age and prohibits
16 out-of-package cigarette sales, and permits a defense based on
17 evidence that a prospective purchaser's proof of age was care-
18 fully checked, reasonably relied upon, and appeared on its face
19 to be valid. I understand that if I sell, give, or furnish
20 tobacco products to a person under 18 years of age, I may be
21 found responsible for a state civil infraction and be liable for
22 the payment of a civil fine of \$150.00 for each violation. I
23 promise to comply with this law."

24 (3) Each form signed by a retail sales clerk under subsec-
25 tion (2) shall indicate the date of signature. The employer
26 shall retain the form during the individual's term of employment

1 and for not less than 120 days after the individual has left the
2 employer's employ.

3 (4) A person engaged in the business of selling tobacco pro-
4 ducts at retail shall give each individual employed by that
5 person as a retail sales clerk a true copy of this act before the
6 individual commences work as a retail sales clerk or within 30
7 days of the effective date of this act if the individual is
8 employed as a retail sales clerk on the effective date of this
9 act. Beginning 30 days after the effective date of this act, for
10 180 days the department shall provide 1 copy of this act free of
11 charge upon request to a person subject to this section.

12 (5) A person engaged in the business of selling tobacco pro-
13 ducts at retail who fails to comply with this section is respon-
14 sible for a state civil infraction and is liable for the payment
15 of a civil fine of \$200.00 for each violation.

16 Sec. 9. The department of community health shall work with
17 state and local law enforcement agencies, the department of the
18 attorney general, and local prosecutors to enforce this act in a
19 manner that can reasonably be expected to reduce the extent to
20 which tobacco products are sold or otherwise distributed to per-
21 sons under the age of 18 years, and shall annually conduct
22 random, unannounced inspections at locations where tobacco pro-
23 ducts are sold at retail or otherwise distributed to ensure com-
24 pliance with this act.

25 Sec. 10. Proceedings under sections 3, 4, 5(3), 7, and 8
26 shall be conducted under chapter 88 of the revised judicature act
27 of 1961, 1961 PA 236, MCL 600.8801 to 600.8835, and fines and

1 costs collected under those sections shall be disbursed as
2 provided by that chapter.

3 Sec. 11. (1) The state police or a local law enforcement
4 agency may engage a person under 18 years of age as part of an
5 enforcement action under this act if the initial or contemporane-
6 ous receipt or purchase of a tobacco product by a person under 18
7 years of age occurs under the direction of the state police or
8 the local law enforcement agency and was part of the enforcement
9 action.

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

12 (a) Recruit or attempt to recruit a person under 18 years of
13 age to participate in an enforcement action at the scene of a
14 violation of section 3.

15 (b) Allow a person under 18 years of age to purchase or
16 receive a tobacco product as part of an enforcement action with-
17 out the permission of the minor's parent or legal guardian.

18 Sec. 12. Beginning 1 year after the effective date of this
19 act, the department shall prepare for submission to the standing
20 committee of each house of the legislature that has responsibil-
21 ity for public health matters and to the standing committee in
22 each house of the legislature that has responsibility for appro-
23 priations an annual written report that describes the methodology
24 used and the results of all surveys that the department conducts
25 to determine the rate that persons engaged in the business of
26 selling tobacco products at retail comply with this act. The
27 annual written report shall include all surveys that the federal

1 government requires to be conducted by the department as a
2 condition of the federal funding of programs of this state that
3 concern the use of tobacco products by persons under the age of
4 18.

5 Sec. 13. The youth tobacco act, 1915 PA 31, MCL 722.641 to
6 722.645, is repealed.