

**SENATE BILL NO. 136**

February 6, 1997, Introduced by Senators SHUGARS and EMMONS  
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 penal-  
ties; 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. (1) A person shall not distribute a tobacco product  
4 to a person under 18 years of age. Subject to subsection (5), a  
5 person who violates this section is responsible for a state civil  
6 infraction and is liable for a civil fine of \$150.00 for each  
7 violation.

1 (2) Evidence that a defendant carefully checked and  
2 reasonably relied on proof of age that appeared on its face to be  
3 valid is a defense to a charge brought under subsection (1).

4 (3) It is an affirmative defense to a charge under subsec-  
5 tion (1) that a defendant had in force at the time of arrest and  
6 continues to have in force a written policy that includes the  
7 requirements of section 7 to prevent the distribution of a  
8 tobacco product to persons under 18 years of age, and that the  
9 defendant enforced and continues to enforce the policy. A  
10 defendant who proposes to offer evidence of the affirmative  
11 defense described in this subsection shall file and serve notice  
12 of the defense, in writing, upon the court and the prosecuting  
13 attorney. The notice shall be served not less than 14 days  
14 before the date set for trial.

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

21 (5) A person who sells tobacco products at retail shall not  
22 be charged with a violation of subsection (1) unless enforcement  
23 action under section 3 is taken against the person under 18 years  
24 of age who purchased or attempted to purchase a tobacco product.  
25 However, this subsection does not apply if the person under 18  
26 years of age purchased a tobacco product as provided in  
27 section 10.

1           (6) It is an affirmative defense to a charge under  
2 subsection (1) that a defendant who is an individual employed by  
3 a person engaged in the business of selling tobacco products at  
4 retail was not provided the notice required under section 7. A  
5 defendant who proposes to offer evidence of the affirmative  
6 defense described in this subsection shall file and serve notice  
7 of the defense as described in subsection (3). A prosecutor who  
8 proposes to offer testimony to rebut the affirmative defense  
9 described in this subsection shall file and serve notice of  
10 rebuttal as described in subsection (4).

11           Sec. 3. (1) Unless authorized under section 10, a person  
12 under 18 years of age shall not purchase or attempt to purchase  
13 or receive or attempt to receive, or possess or attempt to pos-  
14 sess, or smoke or attempt to smoke, or otherwise use or consume  
15 or attempt to use or consume a tobacco product in a public  
16 place.

17           (2) A person who violates subsection (1) is responsible for  
18 a state civil infraction and is liable for a civil fine of not  
19 more than \$100.00 for each violation.

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

1 by this subsection shall be made not later than 48 hours after  
2 the person who allegedly violated subsection (1) is cited for the  
3 state civil infraction. The notice may be made by any means rea-  
4 sonably calculated to give prompt actual notice including, but  
5 not limited to, notice in person, by telephone, or by first-class  
6 mail. The notification requirements of this subsection do not  
7 apply if the law enforcement agency has reasonable grounds to  
8 believe the person is emancipated under 1968 PA 293, MCL 772.1 to  
9 772.6.

10 (4) This section does not prohibit a person under the age of  
11 18 from possessing a tobacco product during regular working hours  
12 and in the course of his or her employment if the tobacco product  
13 is not possessed for his or her personal consumption.

14 (5) This section does not limit the liability of a person  
15 who distributes a tobacco product to a person under the age of 18  
16 in violation of section 2(1).

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

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

21 (b) Sell a package of cigarettes that contains less than 20  
22 cigarettes.

23 (2) 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 (3) A person who sells tobacco at retail shall display  
27 single packages of cigarettes behind the counter at a point of

1 sale or within plain view of the cashier at the point of sale  
2 only. A person who violates this subsection is responsible for a  
3 state civil infraction and liable for a civil fine of \$150.00 for  
4 each violation.

5 (4) Subsections (1) and (3) do not apply to a person who  
6 sells tobacco products at retail in a tobacco specialty retail  
7 store or other retail store that deals exclusively in the sale of  
8 tobacco products and smoking paraphernalia.

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

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

15 Sec. 6. (1) A person who sells tobacco products at retail  
16 shall post, in a place close to the point of sale and conspicuous  
17 to both employees and customers, a sign produced by the depart-  
18 ment of public health that includes the following statement:

19 "The purchase of tobacco products by a person under 18 years  
20 of age and distributing tobacco products to a person under 18  
21 years of age are prohibited by law. Both a person under 18 years  
22 of age who purchases or uses tobacco products and a person who  
23 distributes tobacco products to a person under 18 years of age  
24 are responsible for a civil infraction.".

25 (2) If the sign required under subsection (1) is more than 6  
26 feet from the point of sale, it shall be 5-1/2 inches by 8-1/2  
27 inches, and the statement required under subsection (1) shall be

1 printed in 36-point boldfaced type. If the sign required under  
2 subsection (1) is 6 feet or less from the point of sale, it shall  
3 be 2 inches by 4 inches, and the statement required under subsec-  
4 tion (1) shall be printed in 20-point boldfaced type. The sign  
5 required under subsection (1) is the only notice regarding the  
6 distribution of tobacco products that is required to be posted or  
7 maintained in a store where tobacco products are sold at retail.  
8 This subsection and subsections (1) and (3) do not conflict with  
9 federal law regarding the signage or labeling of tobacco  
10 products.

11 (3) The department shall produce the sign required under  
12 subsection (1) and have adequate copies of the sign ready for  
13 distribution to licensed wholesalers, secondary wholesalers, and  
14 unclassified acquirers of tobacco products free of charge within  
15 30 days of the effective date of this act. Licensed wholesalers,  
16 secondary wholesalers, and unclassified acquirers of tobacco pro-  
17 ducts shall obtain copies of the sign from the department of  
18 public health and distribute them free of charge, upon request,  
19 to persons who are subject to subsection (1). The department  
20 shall provide copies of the sign free of charge, upon request, to  
21 persons subject to subsection (1) who do not purchase tobacco  
22 products from licensed wholesalers, secondary wholesalers, and  
23 unclassified acquirers of tobacco products.

24 (4) A person who violates this section is responsible for a  
25 state civil infraction and is liable for a civil fine of \$150.00  
26 for each violation.

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

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

8           (b) That state law permits a defense to a charge of distrib-  
9 uting a tobacco product to a person under 18 years of age based  
10 on evidence that the defendant carefully checked and reasonably  
11 relied on proof of age that appeared on its face to be valid.

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

14           (2) The notice required by this section shall be provided  
15 before the individual commences work as a retail sales clerk or  
16 within 30 days of the effective date of this act if the individ-  
17 ual is employed as a retail sales clerk on the effective date of  
18 this act. The individual shall signify that he or she has  
19 received the notice required by this section by signing a form  
20 that states the following:

21           "I understand that state law prohibits the distribution of  
22 tobacco products to persons under 18 years of age and prohibits  
23 out-of-package cigarette sales, and permits a defense based on  
24 evidence that a prospective purchaser's proof of age was care-  
25 fully checked, reasonably relied upon, and appeared on its face  
26 to be valid. I understand that if I sell, give, or furnish  
27 tobacco products to a person under 18 years of age, I may be

1 found responsible for a state civil infraction and be liable for  
2 a civil fine of \$150.00. I promise to comply with this law."

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

8 (4) A person engaged in the business of selling tobacco pro-  
9 ducts at retail shall give each individual employed by that  
10 person as a retail sales clerk a true copy of this act before the  
11 individual commences work as a retail sales clerk or within 30  
12 days of the effective date of this act if the individual is  
13 employed as a retail sales clerk on the effective date of this  
14 act. Beginning 30 days after the effective date of this act, for  
15 180 days the department shall provide 1 copy of this act free of  
16 charge upon request to a person subject to this section.

17 (5) An employer who fails to comply with this section is  
18 responsible for a state civil infraction and is liable for a  
19 civil fine of \$200.00 for each violation.

20 Sec. 8. The department shall work with state and local law  
21 enforcement agencies, the department of the attorney general, and  
22 local prosecutors to enforce this act in a manner that can rea-  
23 sonably be expected to reduce the extent to which tobacco pro-  
24 ducts are sold or otherwise distributed to persons under the age  
25 of 18 years, and shall annually conduct random, unannounced  
26 inspections at locations where tobacco products are sold at

1 retail or otherwise distributed to ensure compliance with this  
2 act.

3       Sec. 9. Proceedings under sections 2, 3, 4(3), 6, and 7  
4 shall be conducted under chapter 88 of the revised judicature act  
5 of 1961, 1961 PA 236, MCL 600.8801 to 600.8835, and fines and  
6 costs collected under those sections shall be disbursed as pro-  
7 vided by that chapter.

8       Sec. 10. (1) The state police or a local law enforcement  
9 agency may engage a person under 18 years of age as part of an  
10 enforcement action under this act if the initial or contemporane-  
11 ous receipt or purchase of a tobacco product by a person under 18  
12 years of age occurs under the direction of the state police or  
13 the local law enforcement agency and was part of the enforcement  
14 action.

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

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

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

23       Sec. 11. Beginning 1 year after the effective date of this  
24 act, the department shall prepare for submission to the standing  
25 committee of each house of the legislature that has responsibil-  
26 ity for public health matters and to the standing committee in  
27 each house of the legislature that has responsibility for

1 appropriations an annual written report that describes the  
2 methodology used and the results of all surveys that the depart-  
3 ment conducts to determine the rate that persons engaged in the  
4 business of selling tobacco products at retail comply with this  
5 act. The annual written report shall include all surveys that  
6 the federal government requires to be conducted by the department  
7 as a condition of the federal funding of programs of this state  
8 that concern the use of tobacco products by persons under the age  
9 of 18.

10 Sec. 12. As used in this act:

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

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

13 Distribute does not include either of the following as regulated  
14 under section 42b of the Michigan penal code, 1931 PA 328, MCL  
15 750.42b:

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

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

21 (c) "Driver license" means a license issued under  
22 chapter III of the Michigan vehicle code, 1949 PA 300, MCL  
23 257.301 to 257.329, or a license to operate a motor vehicle  
24 issued in another state.

25 (d) "Employee" means an employee, agent, or independent  
26 contractor.

1 (e) "Law enforcement agency" does not include the department  
2 of public health or a local health department.

3 (f) "Official state personal identification card" means an  
4 identification card issued under 1972 PA 222, MCL 28.291 to  
5 28.295, or an official personal identification card issued in  
6 another state.

7 (g) "Person" means an individual, corporation, partnership,  
8 or other business entity.

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

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

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

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

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

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

26 (l) "Tobacco product" means a product that contains tobacco  
27 and is intended for human consumption, including but not limited

1 to cigarettes, noncigarette smoking tobacco, or smokeless  
2 tobacco, as those terms are defined in section 2 of the tobacco  
3 products tax act, 1993 PA 327, MCL 205.422, and cigars.

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