

HOUSE BILL NO. 4041

January 15, 2019, Introduced by Reps. Calley, Brann and Sabo and referred to the Committee on Regulatory Reform.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 42b and 470 (MCL 750.42b and 750.470), section 42b as added by 1992 PA 273 and section 470 as amended by 1998 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 42b. (1) Except as provided in subsection (3), a person
2 shall not sell or distribute a tobacco product **or tobacco**

1 **paraphernalia** in this state through the use of the United States
2 mail service, express mail service, parcel post service, or any
3 common carrier service except to persons who have previously paid
4 or agreed to pay for the products at fair market value. This
5 subsection ~~shall~~**does** not ~~be construed to~~ apply to any person
6 employed by the United States ~~postal service~~**Postal Service** or by
7 any common carrier while carrying or delivering a tobacco product
8 **or tobacco paraphernalia** mailed or shipped by another person.

9 (2) A person shall not, as part of his, her, or its business,
10 either directly or through an agent, distribute tobacco products **or**
11 **tobacco paraphernalia** to persons who did not previously pay or
12 agree to pay for the products unless all of the following
13 provisions are met:

14 (a) The person or agent distributing the tobacco product **or**
15 **tobacco paraphernalia** distributes only tobacco products **or tobacco**
16 **paraphernalia** regularly sold or manufactured by that person or
17 agent.

18 (b) The person distributing the tobacco product **or tobacco**
19 **paraphernalia** ascertains that the person receiving the tobacco
20 product **or tobacco paraphernalia** is ~~18~~**21** years of age or older.

21 (c) The person receiving the tobacco product **or tobacco**
22 **paraphernalia** is physically present to receive the product.

23 (d) Distribution is not prohibited by any local ordinance.

24 (3) Subsection (1) does not prohibit the sale or distribution
25 of a tobacco product **or tobacco paraphernalia** in this state through
26 the use of the United States mail service, express mail service,
27 parcel post service, or any common carrier service if the sale or
28 distribution is in response to a consumer complaint or is part of a
29 direct mail marketing of products to specifically named

1 individuals, and which response or marketing involves the prior
 2 return by the same specifically-named individual of an
 3 authorization card to the tobacco **product or tobacco paraphernalia**
 4 company that indicates that the individual is at least ~~18~~**21** years
 5 of age, is signed by the individual and is kept on file by the
 6 tobacco **product or tobacco paraphernalia** company for at least 1
 7 year.

8 (4) A person who violates subsection (1) is guilty of a
 9 misdemeanor ~~punishable by imprisonment for not more than 1 year~~
 10 ~~or by a fine of not more than \$10,000.00, or both.~~

11 (5) A person who violates subsection (2) is guilty of a
 12 misdemeanor ~~punishable by imprisonment~~**1 or more of the**
 13 **following:**

14 (a) **Imprisonment** for not more than 90 days. ~~a~~

15 (b) **A fine** of not more than \$500.00. ~~service to the~~
 16 ~~community~~

17 (c) **Community service** for not more than 180 days. ~~or any~~
 18 ~~combination thereof.~~

19 (6) As used in this section:

20 (a) "Employed" includes engaged as an agent or independent
 21 contractor.

22 (b) "Person" means an individual, **firm**, partnership, **limited**
 23 **partnership, limited liability company**, corporation, association,
 24 or other legal entity.

25 (c) "Sell or distribute" includes sending or providing free
 26 samples or any other distribution not for sale.

27 (d) "**Tobacco paraphernalia**" means that term as defined in
 28 **section 4 of the youth tobacco act, 1915 PA 31, MCL 722.644.**

29 (e) "**Tobacco product**" means that term as defined in **section 4**

1 **of the youth tobacco act, 1915 PA 31, MCL 722.644.**

2 Sec. 470. (1) Except as provided in subsection (2), a person,
 3 in a place of public accommodation, ~~to which access by minors is~~
 4 ~~not prohibited by law,~~ shall not sell or distribute cigarettes,
 5 ~~cigars, or other~~ tobacco products **or tobacco paraphernalia** through
 6 the use of a vending machine, or install or maintain a vending
 7 machine with the intent of selling or distributing cigarettes,
 8 ~~cigars, or other~~ tobacco products **or tobacco paraphernalia**. For
 9 ~~purposes of this section, "place of public accommodation" has the~~
 10 ~~same meaning as that term has in section 301(a) of the persons with~~
 11 ~~disabilities civil rights act, 1976 PA 220, MCL 37.1301.~~

12 (2) ~~This~~ **Until June 30, 2019, this** section does not apply to a
 13 ~~cigarette~~ **tobacco products or tobacco paraphernalia** vending machine
 14 that meets ~~either~~ **any** of the following criteria:

15 (a) The **tobacco products or tobacco paraphernalia vending**
 16 **machine is a** cigarette vending machine **that** is located in an
 17 establishment that has a class C license as defined in section ~~2~~
 18 **107** of the Michigan liquor control act, ~~1933 (Ex Sess) code of~~
 19 **1998, 1998** PA ~~8, 58,~~ MCL ~~436.2t,~~ **436.1107,** and 1 of the following
 20 applies:

21 (i) If the establishment has a bar that is located in a room
 22 that is separated from the remainder of the establishment by a wall
 23 and a doorway, the cigarette vending machine is located entirely in
 24 that room.

25 (ii) If the establishment has a bar that is not located in a
 26 room that is separated from the remainder of the establishment by a
 27 wall and a doorway, the cigarette vending machine is located not
 28 more than 20 feet from the bar, is located clearly within the bar
 29 area and not in a hallway, coat room, rest room, or similar

1 unrelated area, and is under the direct visual supervision of an
2 adult.

3 (b) The **tobacco products or tobacco paraphernalia vending**
4 **machine is a** cigarette vending machine **that** is located entirely in
5 an area, office, plant, factory, or private membership club that is
6 not open to the public, and is located not less than 20 feet from
7 all entrances and exits that are accessible to the general public.

8 (c) **The tobacco products or tobacco paraphernalia vending**
9 **machine is located in a place of public accommodation to which**
10 **access by individuals under 21 years of age is prohibited by law.**

11 (3) A person who violates this section is guilty of a
12 misdemeanor ~~punishable by imprisonment~~ **1 or more of the**
13 **following:**

14 (a) **Imprisonment** for not more than 6 months. ~~service to the~~
15 ~~community~~

16 (b) **Community service** for a period of not more than 45 days. ~~or a~~
17 ~~or a~~

18 (c) **A** fine of not more than \$1,000.00. ~~or any combination of~~
19 ~~imprisonment, community service, or fine.~~

20 (4) Each day that a person has a vending machine that
21 dispenses ~~cigarettes, cigars, or other~~ tobacco products **or tobacco**
22 **paraphernalia in violation of this section** constitutes a separate
23 offense.

24 (5) ~~(4)~~The provisions of this section ~~shall be~~ **are**
25 enforceable by a local health department to the same extent and by
26 the same means as regulations adopted by that local health
27 department.

28 (6) **As used in this section:**

29 (a) **"Person"** means that term as defined in section 4 of the

1 youth tobacco act, 1915 PA 31, MCL 722.644.

2 (b) "Place of public accommodation" means that term as defined
3 in section 301 of the persons with disabilities civil rights act,
4 1976 PA 220, MCL 37.1301.

5 (c) "Tobacco paraphernalia" means that term as defined in
6 section 4 of the youth tobacco act, 1915 PA 31, MCL 722.644.

7 (d) "Tobacco product" means that term as defined in section 4
8 of the youth tobacco act, 1915 PA 31, MCL 722.644.

9 Enacting section 1. This amendatory act takes effect 180 days
10 after the date it is enacted into law.

11 Enacting section 2. This amendatory act does not take effect
12 unless Senate Bill No.____ or House Bill No.____ (request no.
13 00156'19) of the 100th Legislature is enacted into law.