

# HOUSE BILL No. 4285

February 11, 1997, Introduced by Reps. Brackenridge, Hammerstrom, McBryde, Profit, Wetters and Jelinek 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. (1) A person shall not distribute a tobacco product  
4 to an individual who is under 18 years of age. Except as other-  
5 wise provided in this subsection and subject to subsection (5), a  
6 person who violates this subsection is responsible for a state  
7 civil infraction and is liable for a civil fine of \$150.00 for  
8 each violation. However, if the person who violates this

1 subsection is a person who sells tobacco products at retail, then  
2 that person is responsible for a state civil infraction and is  
3 liable for a civil fine of \$500.00 for each violation.

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

7 (3) It is an affirmative defense to a citation issued under  
8 subsection (1) for a person who sells tobacco products at retail  
9 that he or she had in force at the time the citation is issued  
10 and continues to have in force a written policy that includes the  
11 requirements of section 7 to prevent the distribution of a  
12 tobacco product to individuals under 18 years of age, and that he  
13 or she enforced and continues to enforce the policy. A defendant  
14 who proposes to offer evidence of the affirmative defense  
15 described in this subsection shall file and serve notice of the  
16 defense, in writing, upon the court and the prosecuting  
17 attorney. However, if an informal hearing on the civil infrac-  
18 tion is requested, then the prosecuting attorney shall give this  
19 information to the law enforcement agency that issued the  
20 citation. The notice shall be served not less than 14 days  
21 before the date set for formal or informal hearing.

22 (4) A prosecuting attorney or law enforcement agency that  
23 proposes to offer testimony to rebut the affirmative defense  
24 described in subsection (3) shall file and serve a notice of  
25 rebuttal, in writing, upon the court and the defendant. The  
26 notice shall be served not less than 7 days before the date set

1 for formal or informal hearing, and shall contain the name and  
2 address of each rebuttal witness.

3 (5) A person who sells tobacco products at retail shall not  
4 be charged with a violation of subsection (1) unless enforcement  
5 action under section 3(1) is taken against the individual under  
6 18 years of age who purchased or attempted to purchase a tobacco  
7 product. However, this subsection does not apply if the individ-  
8 ual under 18 years of age purchased a tobacco product as provided  
9 in section 10.

10 (6) It is an affirmative defense to a citation issued under  
11 subsection (1) that a cited individual employed by a person who  
12 sells tobacco products at retail was not provided the notice  
13 required under section 7. A defendant who proposes to offer evi-  
14 dence of the affirmative defense described in this subsection  
15 shall file and serve notice of the defense as described in sub-  
16 section (3). A prosecutor or law enforcement agency that pro-  
17 poses to offer testimony to rebut the affirmative defense  
18 described in this subsection shall file and serve notice of  
19 rebuttal as described in subsection (4).

20 Sec. 3. (1) Unless authorized under section 10, an individ-  
21 ual under 18 years of age shall not purchase or attempt to pur-  
22 chase or receive or attempt to receive, or possess or attempt to  
23 possess, or use or attempt to use a tobacco product in a public  
24 place.

25 (2) An individual who violates subsection (1) is responsible  
26 for a state civil infraction and is liable for a civil fine of  
27 not more than \$100.00 for each violation.

1           (3) Except as otherwise provided in this subsection, a law  
2 enforcement agency, upon determining that an individual under 18  
3 years of age allegedly purchased, received, possessed, or used,  
4 or attempted to purchase, receive, possess, or use, a tobacco  
5 product in violation of subsection (1) shall notify the  
6 individual's parent or parents, custodian, or guardian as to the  
7 nature of the violation if the name of a parent, guardian, or  
8 custodian is reasonably ascertainable by the law enforcement  
9 agency. The notice required by this subsection shall be made not  
10 later than 48 hours after the individual who allegedly violated  
11 subsection (1) is cited for the state civil infraction. The  
12 notice may be made by any means reasonably calculated to give  
13 prompt actual notice including, but not limited to, notice in  
14 person, by telephone, or by first-class mail. The notification  
15 requirements of this subsection do not apply if the law enforce-  
16 ment agency has reasonable grounds to believe the individual is  
17 emancipated under 1968 PA 293, MCL 722.1 to 722.6.

18           (4) This section does not prohibit an individual under the  
19 age of 18 from possessing a tobacco product during regular work-  
20 ing hours and in the course of his or her employment if the  
21 tobacco product is not possessed for his or her personal  
22 consumption.

23           (5) This section does not limit the liability of a person  
24 who distributes a tobacco product to an individual under the age  
25 of 18 in violation of section 2(1).

1           Sec. 4. (1) Except as otherwise provided in subsection (6),  
2 a person who sells tobacco products at retail or from a vending  
3 machine shall not do 1 or more of the following:

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

5           (b) Sell a package of cigarettes that contains less than 20  
6 cigarettes.

7           (2) A person who sells tobacco products at retail and an  
8 employee of a person who sells tobacco products at retail shall  
9 not entice an individual under 18 years of age to purchase a  
10 tobacco product. However, this subsection does not apply to  
11 advertisements or promotions, including but not limited to sig-  
12 nage, displays, or coupons, that are directed to the legal con-  
13 sumers of tobacco products.

14           (3) A person who sells tobacco products at retail shall not  
15 encourage his or her employee to sell a tobacco product to an  
16 individual under 18 years of age by 1 or more of the following  
17 methods:

18           (a) The promise of additional compensation or the payment of  
19 additional compensation, or both.

20           (b) The threat of the loss of employment.

21           (4) A person who violates subsection (1), (2), or (3) is  
22 guilty of a misdemeanor, punishable by a fine of not more than  
23 \$500.00 for each offense.

24           (5) A person who sells tobacco products at retail shall dis-  
25 play single packages of cigarettes behind the sales counter at a  
26 point of sale or within plain view of the cashier at the point of  
27 sale only. A person who violates this subsection is responsible

1 for a state civil infraction and liable for a civil fine of  
2 \$150.00 for each violation.

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

7 (7) If a person who sells tobacco products at retail or 1 or  
8 more employees of a person who sells tobacco products at retail,  
9 or both, is required to pay, either individually or collectively,  
10 3 or more civil fines for violations of section 2(1) issued at a  
11 single retail establishment within a period of 24 months, then  
12 the person who sells tobacco products at retail is responsible  
13 for a state civil infraction and is liable for a civil fine of  
14 \$300.00 for each violation.

15 (8) A law enforcement officer who issues a citation for a  
16 state civil infraction under this act to a person who sells  
17 tobacco products at retail shall send a copy of the citation or a  
18 notice of the issuance of the citation to the owner or proprietor  
19 of the retail establishment at the address where the citation was  
20 issued.

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

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

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

5           "Warning! It is illegal to sell tobacco products to persons  
6 under 18 years of age. It is illegal for persons under 18 years  
7 of age to possess tobacco products.".

8           (2) If the sign required under subsection (1) is more than 6  
9 feet from the point of sale, it shall be 8-1/2 inches by 11  
10 inches. If the sign required under subsection (1) is not more  
11 than 6 feet from the point of sale, it shall be 3 inches by 5  
12 inches. The sign required under subsection (1) is the only  
13 notice regarding the distribution of tobacco products that is  
14 required to be posted or maintained in a store where tobacco pro-  
15 ducts are sold at retail. This subsection and subsections (1)  
16 and (3) do not conflict with federal law regarding the signage or  
17 labeling of tobacco products.

18           (3) The department shall produce the sign required under  
19 subsection (1) and have adequate copies of the sign ready for  
20 distribution to licensed wholesalers, secondary wholesalers, and  
21 unclassified acquirers of tobacco products free of charge within  
22 30 days of the effective date of this act. Licensed wholesalers,  
23 secondary wholesalers, and unclassified acquirers of tobacco pro-  
24 ducts shall obtain copies of the sign from the department of  
25 public health and distribute them free of charge, upon request,  
26 to persons who are subject to subsection (1). The department  
27 shall provide copies of the sign free of charge, upon request, to

1 persons subject to subsection (1) who do not purchase tobacco  
2 products from licensed wholesalers, secondary wholesalers, and  
3 unclassified acquirers of tobacco products.

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

7 Sec. 7. (1) A person who sells tobacco products at retail  
8 shall notify each individual employed by that person as a retail  
9 salesclerk whose duties may include consummating the sale of  
10 tobacco products at a point of sale of all of the following:

11 (a) That state law prohibits the distribution of a tobacco  
12 product to an individual under 18 years of age and the purchase,  
13 receipt, possession, or use of a tobacco product by an individual  
14 under 18 years of age.

15 (b) That state law permits a defense to a state civil  
16 infraction citation for distributing a tobacco product to an  
17 individual under 18 years of age based on evidence that the  
18 defendant carefully checked and reasonably relied on proof of age  
19 that appeared on its face to be valid.

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

22 (2) The notice required by this section shall be provided  
23 before the individual commences work as a retail salesclerk or  
24 within 30 days of the effective date of this act if the individ-  
25 ual is employed as a retail salesclerk on the effective date of  
26 this act. The individual shall signify that he or she has



1 received the notice required by this section by signing a form  
2 that states the following:

3 "I understand that state law prohibits the distribution of  
4 tobacco products to persons under 18 years of age and prohibits  
5 out-of-package cigarette sales, and permits a defense based on  
6 evidence that a prospective purchaser's proof of age was care-  
7 fully checked, reasonably relied upon, and appeared on its face  
8 to be valid. I understand that if I sell, give, or furnish  
9 tobacco products to a person under 18 years of age, I may be  
10 found responsible for a state civil infraction and be liable for  
11 a civil fine of \$150.00. I promise to comply with this law.".

12 (3) Each form signed by a retail salesclerk under subsection  
13 (2) shall indicate the date of signature. The employer shall  
14 retain the form during the individual's term of employment and  
15 for not less than 120 days after the individual has left the  
16 employer's employ.

17 (4) A person who sells tobacco products at retail shall give  
18 each individual employed by that person as a retail salesclerk  
19 whose duties may include consummating the sale of tobacco pro-  
20 ducts at a point of sale a true copy of this act before the indi-  
21 vidual commences work as a retail salesclerk or within 30 days of  
22 the effective date of this act if the individual is employed as a  
23 retail salesclerk on the effective date of this act. Beginning  
24 30 days after the effective date of this act, for 180 days the  
25 department shall provide 1 copy of this act free of charge upon  
26 request to a person subject to this section.

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

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

13 Sec. 9. Proceedings under sections 2, 3, 4(3), 4(5), 4(7),  
14 6, and 7 shall be conducted under chapter 88 of the revised judi-  
15 cature act of 1961, 1961 PA 236, MCL 600.8801 to 600.8835, and  
16 fines and costs collected under those sections shall be disbursed  
17 as provided by that chapter.

18 Sec. 10. (1) The state police or a local law enforcement  
19 agency may engage an individual under 18 years of age as part of  
20 an enforcement action under this act if the initial or contempo-  
21 raneous receipt or purchase of a tobacco product by an individual  
22 under 18 years of age occurs under the direction of the state  
23 police or the local law enforcement agency and was part of the  
24 enforcement action.

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

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

4 (b) Allow an individual under 18 years of age to purchase or  
5 receive a tobacco product as part of an enforcement action with-  
6 out the permission of the individual's parents or legal  
7 guardians.

8 Sec. 11. Beginning 1 year after the effective date of this  
9 act and each year thereafter, the department shall prepare for  
10 submission to the standing committee of each house of the legis-  
11 lature that has responsibility for public health matters and to  
12 the standing committee in each house of the legislature that has  
13 responsibility for appropriations an annual written report that  
14 describes the methodology used and the results of all surveys  
15 that the department conducts to determine the rate that persons  
16 engaged in the business of selling tobacco products at retail  
17 comply with this act. The annual written report shall include  
18 all surveys that the federal government requires to be conducted  
19 by the department as a condition of the federal funding of pro-  
20 grams of this state that concern the use of tobacco products by  
21 individuals under the age of 18.

22 Sec. 12. This act does not conflict with section 14 of the  
23 tobacco products tax act, 1993 PA 327, MCL 205.434.

24 Sec. 13. As used in this act:

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

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

27 Distribute does not include either of the following as regulated

1 under section 42b of the Michigan penal code, 1931 PA 328, MCL  
2 750.42b:

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

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

8 (c) "Driver license" means a license issued under  
9 chapter III of the Michigan vehicle code, 1949 PA 300, MCL  
10 257.301 to 257.329, or a license to operate a motor vehicle  
11 issued in another state.

12 (d) "Employee" means an employee, agent, or independent  
13 contractor.

14 (e) "Official state personal identification card" means an  
15 identification card issued under 1972 PA 222, MCL 28.291 to  
16 28.295, or an official personal identification card issued in  
17 another state.

18 (f) "Person" means an individual, corporation, partnership,  
19 or other business entity.

20 (g) "Person who sells tobacco products at retail" means a  
21 person whose business consists, in whole or in part, of the  
22 retail sale of tobacco products subject to state sales tax.  
23 Person who sells tobacco products at retail does not include an  
24 employee.

25 (h) "Proof of age" means a driver license, official state  
26 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 (i) "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 (j) "State civil infraction" means that term as defined in  
10 section 113 of the revised judicature act of 1961, 1961 PA 236,  
11 MCL 600.113.

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

17 (l) "Use a tobacco product" means to smoke or otherwise con-  
18 sume a tobacco product.

19 Enacting section 1. The youth tobacco act, 1915 PA 31, MCL  
20 722.641 to 722.645, is repealed.

21 Enacting section 2. This act takes effect October 1, 1997.