

HOUSE BILL No. 5141

September 7, 2005, Introduced by Reps. Gaffney, Mortimer and Hune and referred to the Committee on Regulatory Reform.

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending section 11 (MCL 205.431), as amended by 2004 PA 474.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 11. (1) A person, either as principal or agent, shall not
2 sell or solicit a sale of a tobacco product to be shipped, mailed,
3 or otherwise sent or brought into the state, to a person not a
4 licensed manufacturer, licensed wholesaler, licensed secondary
5 wholesaler, licensed vending machine operator, licensed
6 unclassified acquirer, licensed transporter, or licensed
7 transportation company, unless the tobacco product is to be sold to
8 or through a licensed wholesaler.

9 (2) All sales conducted through the internet, by telephone, or
10 in a mail-order transaction shall not be completed unless, before

1 each delivery of cigarettes is made, whether through the mail,
2 through a transportation company, or through any other delivery
3 system, the seller has obtained from the purchaser an affirmation
4 that includes a copy of a valid government-issued document that
5 confirms the purchaser's name, address, and date of birth showing
6 that the purchaser is at least the legal minimum age to purchase
7 cigarettes; that the cigarettes purchased are not intended for
8 consumption by an individual who is younger than the legal minimum
9 age to purchase cigarettes; and a written statement signed by the
10 purchaser that affirms the purchaser's address and that the
11 purchaser is at least the minimum legal age to purchase cigarettes.
12 The statement shall also confirm that the purchaser understands
13 that signing another person's name to the affirmation is illegal;
14 that the sale of cigarettes to individuals under the legal minimum
15 purchase age is illegal; and that the purchase of cigarettes by
16 individuals under the legal minimum purchase age is illegal under
17 the laws of the state of Michigan. The seller shall verify the
18 information contained in the affirmation provided by the purchaser
19 against a commercially available database of governmental records,
20 or obtain a photocopy, fax copy, or other image of the valid,
21 government-issued identification stating the date of birth or age
22 of the purchaser.

23 (3) All invoices, ~~bills of lading,~~ sales receipts, or other
24 documents related to cigarette sales conducted through the
25 internet, by telephone, or in a mail-order transaction shall
26 contain the current seller's valid Michigan sales tax registration
27 number, business name and address of the seller, and a statement as

1 to whether all sales taxes and taxes levied under this act have
2 been paid. All packages of cigarettes shipped from a cigarette
3 seller to purchasers who reside in Michigan shall clearly print or
4 stamp the package with the word "CIGARETTES" on the outside of all
5 sides of the package so it is clearly visible to the shipper. In
6 addition, the package shall contain an externally visible and
7 clearly legible notice located on the same side of the package as
8 the address to which the package is delivered, as follows:

9 "IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER
10 LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS
11 REPORTED UNDER FEDERAL LAW THE SALE OF THESE CIGARETTES TO OUR
12 STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU
13 ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON
14 THESE CIGARETTES."

15 If an order is made as a result of advertisement over the
16 internet, the tobacco retailer shall request the electronic mail
17 address of the purchaser and shall receive payment by credit card
18 or check before shipping. This subsection and subsection (2) do not
19 apply to sales by wholesalers and unclassified acquirers.

20 (4) ~~The~~ **ANY PERSON WHO COMPLETES A SALE OF CIGARETTES**
21 **CONDUCTED THROUGH THE INTERNET, BY TELEPHONE, OR IN A MAIL-ORDER**
22 **TRANSACTION SHALL USE A METHOD OF MAILING, SHIPPING, OR DELIVERY**
23 **THAT OBLIGATES THE** deliverer of the cigarettes ~~is required to~~
24 ~~obtain proof from a valid government issued document that the~~
25 ~~person signing for the cigarettes is the purchaser~~ **TO REQUIRE AN**
26 **INDIVIDUAL WHO IS AT LEAST THE MINIMUM LEGAL AGE TO PURCHASE**
27 **CIGARETTES TO SIGN TO ACCEPT DELIVERY OF THE SHIPPING CONTAINER.**

1 (5) As used in this section:

2 (a) "Computer" means any connected, directly interoperable or
3 interactive device, equipment, or facility that uses a computer
4 program or other instructions to perform specific operations,
5 including logical, arithmetic, or memory functions with or on
6 computer data or a computer program, and that can store, retrieve,
7 alter, or communicate the results of the operations to a person,
8 computer program, computer, computer system, or computer network.

9 (b) "Computer network" means the interconnection of hardware
10 or wireless communication lines with a computer through remote
11 terminals or a complex consisting of 2 or more interconnected
12 computers.

13 (c) "Computer program" means a series of internal or external
14 instructions communicated in a form acceptable to a computer that
15 directs the functioning of a computer, computer system, or computer
16 network in a manner designed to provide or produce products or
17 results from the computer, computer system, or computer network.

18 (d) "Computer system" means related, connected or unconnected,
19 computer equipment, devices, software, or hardware.

20 (e) "Credit card" means a card or device issued by a person
21 licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the
22 consumer financial services act, 1988 PA 161, MCL 487.2051 to
23 487.2072, or issued by a depository financial institution as
24 defined in section 1a of the mortgage brokers, lenders, and
25 services licensing act, 1987 PA 173, MCL 445.1651a, under a credit
26 card arrangement.

27 (f) "Device" includes, but is not limited to, an electronic,

1 magnetic, electrochemical, biochemical, hydraulic, optical, or
2 organic object that performs input, output, or storage functions by
3 the manipulation of electronic, magnetic, or other impulses.

4 (g) "Internet" means the connection to the world wide web
5 through the use of a computer, a computer network, or a computer
6 system.

7 (h) "Sale conducted through the internet" means a sale of, a
8 solicitation to sell, a purchase of, or an offer to purchase
9 cigarettes conducted all or in part by accessing an internet
10 website.