

SUBSTITUTE FOR  
SENATE BILL NO. 576

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

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

1 another person.

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

6 (a) The person or agent ~~distributing that~~ **distributes** the  
7 tobacco product distributes only tobacco products regularly sold or  
8 manufactured by that person or agent.

9 (b) The person ~~distributing that~~ **distributes** the tobacco  
10 product ascertains that the ~~person receiving individual who~~  
11 **receives** the tobacco product is ~~18~~ **21** years of age or older.

12 (c) The ~~person receiving individual who receives~~ the tobacco  
13 product is physically present to receive the product.

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

15 (3) Subsection (1) does not prohibit the sale or distribution  
16 of a tobacco product in this state through the use of the United  
17 States mail service, express mail service, parcel post service, or  
18 any common carrier service if the sale or distribution is in  
19 response to a consumer complaint or is part of a direct mail  
20 marketing of products to specifically named individuals, and which  
21 response or marketing involves the prior return by the same  
22 specifically-named individual of an authorization card to the  
23 tobacco company that indicates that the individual is at least ~~18~~  
24 **21** years of age, is signed by the individual, and is kept on file  
25 by the tobacco company for at least 1 year.

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

29 (5) A person who violates subsection (2) is guilty of a

1 misdemeanor ~~punishable by imprisonment~~ **1 or more of the**  
 2 **following:**

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

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

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

8 (6) As used in this section:

9 (a) "Employed" includes engaged as an agent or independent  
 10 contractor.

11 (b) "Person" means an individual, partnership, corporation,  
 12 association, or other legal entity.

13 (c) "Sell or distribute" includes ~~sending to send~~ or ~~providing~~  
 14 **to provide** free samples or any other distribution not for sale.

15 Enacting section 1. This amendatory act does not take effect  
 16 unless all of the following bills of the 101st Legislature are  
 17 enacted into law:

18 (a) Senate Bill No. 577.

19 (b) Senate Bill No. 720.

20 (c) House Bill No. 6108.

21 (d) House Bill No. 6109.