

SENATE BILL No. 783

March 4, 1992, Introduced by Senators SCHWARZ, GEAKE, FAUST and POLLACK and referred to the Committee on Finance.

A bill to provide for a tax upon the sale and distribution of certain tobacco products; to regulate and license manufacturers, wholesalers, secondary wholesalers, vending machine operators, unclassified acquirers, transportation companies, transporters, and retailers of certain tobacco products; to prescribe the powers and duties of the revenue division and the department of treasury in regard to certain tobacco products; to provide for the collection and disposition of the tax; to provide for the enforcement of this act; to provide for the appointment of special investigators as peace officers for the enforcement of this act; and to prescribe penalties for the violation of this act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "noncigarette tobacco products tax act".

1 Sec. 2. As used in this act:

2 (a) "Commissioner" means the revenue commissioner.

3 (b) "Department" means the department of treasury.

4 (c) "Fund" means the tobacco products tax education and
5 health fund created in section 11.

6 (d) "Licensee" means a person licensed under this act.

7 (e) "Manufacturer" means a person who manufactures or
8 produces a tobacco product.

9 (f) "Person" means an individual, partnership, fiduciary,
10 association, corporation, or other legal entity.

11 (g) "Place of business" means a place where a tobacco prod-
12 uct is sold or where a tobacco product is brought or kept for the
13 purpose of sale or consumption, including a vessel, airplane,
14 train, or vending machine.

15 (h) "Retailer" means a person other than a transportation
16 company who operates a place of business for the purpose of
17 making sales of a tobacco product at retail.

18 (i) "Sale" means a transaction by which the ownership of
19 tangible personal property is transferred for consideration and
20 applies also to use, gifts, exchanges, barter, and theft.

21 (j) "Sale price" means the actual price paid for tobacco
22 product, excluding any tax, to a licensee other than a retailer,
23 secondary wholesaler, or vending machine operator.

24 (k) "Secondary wholesaler" means a person who sells a
25 tobacco product for resale, who purchases a tobacco product from
26 a wholesaler licensed under this act, and who maintains an
27 established place of business in this state.

1 (1) "Tobacco product" means cigars, snuff, chewing tobacco,
2 loose or bulk tobacco, or any other tobacco that is intended to
3 be consumed by smoking or other means, but does not include
4 cigarettes.

5 (m) "Transportation company" means a person operating, or
6 supplying to common carriers, cars, boats, or other vehicles for
7 the transportation or accommodation of passengers and engaged in
8 the sale of a tobacco product at retail.

9 (n) "Transporter" means a person importing or transporting
10 into this state, or transporting in this state, a tobacco product
11 obtained from a source located outside this state, or from any
12 person not duly licensed under this act. Transporter does not
13 include an interstate commerce carrier licensed by the interstate
14 commerce commission to carry commodities in interstate commerce,
15 or a licensee maintaining a warehouse or place of business out-
16 side of this state if the warehouse or place of business is
17 licensed under this act.

18 (o) "Unclassified acquirer" means a person, except a trans-
19 portation company or a purchaser at retail from a retailer
20 licensed under the general sales tax act, Act No. 167 of the
21 Public Acts of 1933, being sections 205.51 to 205.78 of the
22 Michigan Compiled Laws, who imports or acquires a tobacco product
23 from a source other than a wholesaler or secondary wholesaler
24 licensed under this act for use, sale, or distribution.

25 (p) "Vending machine operator" means a person who operates 1
26 or more vending machines for the sale of a tobacco product and

1 who purchases a tobacco product from a manufacturer, licensed
2 wholesaler, or secondary wholesaler.

3 (q) "Wholesaler" means a person who sells tobacco products,
4 who sells not less than 75% of those tobacco products to others
5 for resale, who purchases all or part of those tobacco products
6 from a manufacturer, and who maintains a business where a sub-
7 stantial stock of tobacco products and related merchandise is
8 available to retailers for resale. Wholesaler includes a chain
9 of stores retailing a tobacco product to the consumer if not less
10 than 75% of its stock of tobacco products is purchased directly
11 from the manufacturer.

12 Sec. 3. (1) A person shall not purchase, possess, acquire
13 for resale, or sell a tobacco product as a manufacturer, whole-
14 saler, secondary wholesaler, vending machine operator, unclassi-
15 fied acquirer, transportation company, or transporter in this
16 state unless licensed to do so.

17 (2) Upon proper application and the payment of the applica-
18 ble fee, the department shall issue a license to each manufactur-
19 er, wholesaler, secondary wholesaler, vending machine operator,
20 unclassified acquirer, transportation company, or transporter.
21 The application shall be on a form prescribed by the department
22 and signed under penalty of perjury. Except for transportation
23 companies, each place of business shall be separately licensed.
24 If a person acts in more than 1 capacity at any 1 place of busi-
25 ness, a license shall be procured for each capacity. Each
26 machine for vending tobacco products shall be considered a place
27 of retail business. Each license or a duplicate copy shall be

1 prominently displayed on the premises covered by the license. In
2 the case of vending machines, a disc or marker furnished by the
3 department showing it to be licensed shall be attached to the
4 machine.

5 (3) The fees for licenses shall be the following:

6 (a) A manufacturer's license, \$100.00.

7 (b) A wholesaler's license, \$100.00.

8 (c) A secondary wholesaler's license, \$25.00.

9 (d) A license for vending machine operators having 50 or
10 more vending machines in operation, \$100.00.

11 (e) A license for vending machine operators having not less
12 than 25 and not more than 49 machines in operation, \$50.00.

13 (f) A license for vending machine operators having not less
14 than 4 machines and not more than 24 machines in operation,
15 \$25.00.

16 (g) A license for vending machine operators having not more
17 than 3 machines, \$5.00 for each machine.

18 (h) An unclassified acquirer's license, a sum determined by
19 the department, but not to exceed \$150.00.

20 (i) A transportation company's license, \$5.00.

21 (j) A transporter's license, \$50.00.

22 (4) If a manufacturer, wholesaler, secondary wholesaler, or
23 vending machine operator maintains more than 1 place of business,
24 the fee for each additional place of business shall be 1/4 of the
25 fee otherwise prescribed in subsection (3). A fee, or a part of
26 a fee, shall not be refunded by reason of relinquishment,
27 suspension, or revocation of the license, or, except under order

1 of a court of competent jurisdiction, for any other reason or
2 cause.

3 (5) A person shall not possess a machine for vending tobacco
4 products for a period in excess of 72 hours unless there is a
5 disc or marker attached as provided by this section. This
6 requirement does not apply to a machine not containing a tobacco
7 product. If a person possesses a vending machine containing a
8 tobacco product that is not properly licensed or identified as
9 required by this section, the department may seal or seize the
10 machine, together with the tobacco products contained in the
11 machine. The provisions of section 9 govern the seizure and sub-
12 sequent disposition of a machine or tobacco product seized.

13 (6) The department may require a licensee under this section
14 to furnish a surety bond with a surety company authorized to do
15 business in this state in an amount the department may fix, con-
16 ditioned upon the payment of the tax provided by this act. The
17 department may also require a licensee under this section to file
18 a financial statement with the department showing all assets and
19 liabilities and any other information the department may pre-
20 scribe, to be filed within 30 days after the date requested.

21 Sec. 4. Each license issued under section 3 shall expire on
22 the June 30 next succeeding the date of issuance unless revoked
23 by the department, unless the business for which the license was
24 issued changes ownership, or unless the holder of the license
25 removes the business from the location covered by the license.
26 Upon expiration of the license, revocation of the license, change
27 of ownership of the business, or removal of the business from the

1 location covered by the license, the holder of the license
2 immediately shall return the license to the department. If a
3 business moves to another location in the state, the license may
4 be reissued for the new location for the balance of the unexpired
5 term without payment of an additional fee. The holder of each
6 license may renew that license for another 1-year period by
7 filing an application accompanied by the applicable fee with the
8 department before the expiration date of that license.

9 Sec. 5. The department may suspend, revoke, or refuse to
10 issue or renew a license issued under this act for failure to
11 comply with this act or for any other good cause. A person whose
12 license is suspended, revoked, or not renewed shall not sell a
13 tobacco product during the period of suspension or revocation, or
14 until the license is renewed. A person aggrieved by the suspen-
15 sion, revocation, or refusal to issue or renew a license may
16 apply to the revenue division of the department for a hearing
17 within 20 days after notice of the suspension, revocation, or
18 refusal to issue or renew the license. A hearing and decision
19 shall be had in the same manner provided in section 9.

20 Sec. 6. (1) A manufacturer, wholesaler, secondary wholesal-
21 er, vending machine operator, transportation company, unclassi-
22 fied acquirer, or retailer shall keep a complete and accurate
23 record of each tobacco product manufactured, purchased, or other-
24 wise acquired. Except for a manufacturer, the records shall
25 include a written statement containing the name and address of
26 both the seller and the purchaser, the date of delivery, the
27 quantity, the trade name or brand, and the price paid for each

1 tobacco product purchased. A licensee shall keep as part of the
2 records a true copy of all purchase orders, invoices, bills of
3 lading, and other written matter substantiating the purchase or
4 acquisition of each tobacco product. Other records shall be kept
5 by these persons as the department reasonably prescribes.

6 (2) A manufacturer, wholesaler, and secondary wholesaler
7 shall deliver with each sale or consignment of a tobacco product
8 a written statement containing the name or trade name and address
9 of both the seller and the purchaser, the date of delivery, the
10 quantity, and the trade name or brand of the tobacco product,
11 correctly itemizing the prices paid for each brand purchased, and
12 shall retain a duplicate of each statement.

13 (3) A vending machine operator shall keep a detailed record
14 of each vending machine owned for the sale of tobacco products
15 showing the location of the machine, the date of placing the
16 machine on the location, the quantity of each tobacco product
17 placed in the machine, the date when placed there, and the amount
18 of the commission paid or earned on sales through the vending
19 machine. When filling or refilling the vending machine, the
20 operator shall deliver to the owner or tenant occupying the
21 premises where the machine is located a written statement con-
22 taining his or her own name and address, the name and address of
23 the owner or the tenant, the date when the machine was filled,
24 and the quantity of each brand of tobacco product sold from the
25 machine since the date when tobacco products were last placed in
26 the machine. A person in possession of premises where a vending
27 machine is located shall keep a record of each tobacco product

1 sold through the vending machine located on the premises and the
2 amount of commission paid by the person operating the vending
3 machine. The records shall consist of written statements
4 required to be given by each person operating a vending machine
5 for the sale of tobacco products as provided in this section.

6 (4) A licensee under this act shall not issue or accept a
7 written statement or invoice that is known to the licensee to
8 contain a statement or omission that falsely indicates the name
9 of the customer, the type of merchandise, the prices, the dis-
10 counts, or the terms of sale. A person shall not use a device or
11 game of chance to aid, promote, or induce sales or purchases of a
12 tobacco product, or give a tobacco product in connection with a
13 device or game of chance.

14 (5) All statements and other records required by this sec-
15 tion shall be in a form prescribed by the department and shall be
16 preserved for a period of 3 years and offered for inspection at
17 any time upon oral or written demand by the department or its
18 authorized agent.

19 (6) If a tobacco product is received or acquired within this
20 state by a wholesaler, secondary wholesaler, vending machine
21 operator, unclassified acquirer, or retailer, each original
22 manufacturer's shipping case shall bear the name and address of
23 the person making the first purchase or any other markings the
24 department prescribes. If a tobacco product is found in a place
25 of business or otherwise in the possession of a wholesaler, sec-
26 ondary wholesaler, vending machine operator, unclassified
27 acquirer, transporter, or retailer without proper markings on the

1 shipping case, box, or container of the tobacco product and
2 without proper substantiation by invoices or other records as
3 required by this section, the presumption shall be that the
4 tobacco product is kept in violation of this act. If a tobacco
5 product is shipped outside the state, the licensee shipping the
6 tobacco product shall cause to be placed on every shipping case
7 or other container in which the tobacco product is shipped the
8 name and address of the consignee to whom the shipment is made
9 outside of the state. The department may require reports from a
10 common carrier who transports a tobacco product to a point within
11 this state from another person who, under contract, transports a
12 tobacco product, or from a bonded warehouseperson or bailee who
13 has in his or her possession a tobacco product. A carrier,
14 bailee, warehouseperson, or other person shall permit the exami-
15 nation by the department or its duly authorized agent of any
16 records relating to the shipment of a tobacco product into, from,
17 or within the state.

18 (7) A transporter transporting, possessing, or acquiring for
19 the purpose of transporting a tobacco product upon a public high-
20 way, road, or street of this state shall have in his or her
21 actual possession invoices or bills of lading containing the name
22 and address of both the seller and the purchaser, the date of
23 delivery, the name and address of the transporter, the quantity
24 and trade name or brand of each tobacco product, the price paid
25 for each trade name or brand in the transporter's possession or
26 custody, and the license as prescribed under this act.

1 (8) A transporter desiring to possess or acquire for
2 transportation or transport a tobacco product upon a highway,
3 road, or street of this state shall obtain a permit from the
4 department authorizing the transporter to possess or acquire for
5 transportation or transport tobacco products and shall have the
6 permit in his or her possession while the tobacco product is in
7 his or her possession. This permit shall be obtained for each
8 load being transported and shall contain a statement setting
9 forth the name and address of the purchaser, seller, and trans-
10 porter, the license number of the purchaser, the date of the
11 delivery of the tobacco product or date of importation into this
12 state, the route to be followed if a tobacco product is being
13 transported from an out-of-state source, and any other informa-
14 tion the department requires. The department shall provide a
15 permit on a form prescribed by it upon the application of a
16 transporter with the remittance of a fee of \$1.00. If a trans-
17 porter transports a tobacco product into this state, the trans-
18 porter shall stop at the nearest state police post within this
19 state on the route authorized by the permit and disclose the
20 tobacco products in his or her possession and the papers required
21 by this section to be in his or her possession.

22 Sec. 7. (1) A tax of 25% is levied on the sale price of
23 tobacco products sold in this state.

24 (2) On or before the twentieth day of each calendar month,
25 every licensee under section 3 other than a retailer, secondary
26 wholesaler, or vending machine operator shall file a return with
27 the department stating the amount of each tobacco product sold

1 and the sale price charged for each tobacco product sold by the
2 licensee for each place of business in the preceding calendar
3 month. The return shall be signed under penalty of perjury. The
4 return shall be on a form prescribed by the department and shall
5 contain or be accompanied by any further information the depart-
6 ment requires.

7 (3) At the time of the filing of the return, the licensee
8 shall pay to the department the tax levied in subsection (1) for
9 tobacco products sold during the calendar month covered by the
10 return, less compensation equal to 1% of the total amount of the
11 tax due to cover the cost of expenses incurred in the administra-
12 tion of this act.

13 (4) The department may require the payment of the tax
14 imposed by this act upon the importation or acquisition of a
15 tobacco product. A tobacco product for which the tax under this
16 act has once been imposed and that has not been refunded if paid
17 is not subject upon a subsequent sale to the tax imposed by this
18 act.

19 (5) An abatement or refund of the tax provided by this act
20 may be made by the department for causes the department considers
21 expedient. The department shall certify the amount and the state
22 treasurer shall pay that amount out of the proceeds of the tax.

23 (6) A person liable for the tax may reimburse itself by
24 adding to the price of the tobacco products an amount equal to
25 the tax levied under this act.

26 Sec. 8. (1) A person, other than a licensee, who is in
27 control or in possession of a tobacco product contrary to this

1 act, or who offers to sell or does sell a tobacco product to
2 another for purposes of resale without being licensed to do so
3 under this act, shall be considered to have possession of that
4 tobacco product as an unclassified acquirer and shall be person-
5 ally liable for the tax imposed by this act, plus a penalty of
6 100% of the amount of tax due under this act.

7 (2) A person, either as principal or agent, shall not sell
8 or solicit orders for a tobacco product to be shipped, mailed, or
9 otherwise sent or brought into the state, to a person not a
10 licensed manufacturer, licensed wholesaler, licensed secondary
11 wholesaler, licensed vending machine operator, licensed unclassi-
12 fied acquirer, licensed transporter, or licensed transportation
13 company, unless the tobacco product is to be sold to or through a
14 licensed wholesaler.

15 (3) A person who possesses, acquires, transports, or offers
16 for sale contrary to this act tobacco products whose wholesale
17 price is \$50.00 or more is guilty of a felony, punishable by a
18 fine of not more than \$5,000.00 or imprisonment for not more than
19 5 years, or both.

20 (4) A person who violates a provision of this act for which
21 a criminal punishment is not otherwise provided is guilty of a
22 misdemeanor, punishable by a fine of not more than \$1,000.00 or
23 imprisonment for not more than 1 year, or both.

24 (5) Each violation of this act is a separate offense.

25 (6) The attorney general has concurrent power with the pros-
26 ecuting attorneys of the state to enforce this act. In addition,
27 this act is enforceable by a local health department as described

1 in part 24 of the public health code, Act No. 368 of the Public
2 Acts of 1978, being sections 333.2401 to 333.2498 of the Michigan
3 Compiled Laws, in the same manner as regulations adopted by that
4 local health department.

5 (7) At the request of the department or its duly authorized
6 agent, the state police and all local police authorities shall
7 enforce the provisions of this act.

8 Sec. 9. (1) A tobacco product held, owned, possessed,
9 transported, or in control of a person in violation of this act,
10 and a vending machine, vehicle, and other tangible personal prop-
11 erty containing a tobacco product in violation of this act are
12 contraband and may be seized and confiscated by the department as
13 provided in this section.

14 (2) If an authorized inspector of the department or a police
15 officer has reasonable cause to believe and does believe that a
16 tobacco product is being acquired, possessed, transported, kept,
17 sold, or offered for sale in violation of this act for which the
18 penalty is a felony, the inspector or police officer may investi-
19 gate or search the vehicle of transportation in which the tobacco
20 product is believed to be located. If a tobacco product is found
21 in the vehicle, the tobacco product, vending machine, vehicle, or
22 other tangible personal property containing those tobacco prod-
23 ucts and any books and records in possession of the person in
24 control or possession of the tobacco product may be seized by the
25 inspector or police officer and are subject to forfeiture as con-
26 traband as provided in this section.

1 (3) As soon as possible, but not more than 5 days after
2 seizure of any alleged contraband, the person making the seizure
3 shall deliver personally or by registered mail to the last known
4 address of the person from whom the seizure was made, if known,
5 an inventory statement of the property seized, and file a copy
6 with the commissioner. The inventory statement shall also con-
7 tain a notice to the effect that unless demand for hearing as
8 provided in this section is made within 5 days, the designated
9 property is forfeited to the state. If the person from whom the
10 seizure was made is not known, the person making the seizure
11 shall cause a copy of the inventory statement, together with the
12 notice provided for in this subsection, to be published at least
13 3 times in a newspaper of general circulation in the county where
14 the seizure was made. Within 5 days after the date of service of
15 the inventory statement, or in the case of publication, within 5
16 days after the date of last publication, the person from whom the
17 property was seized or any person claiming an interest in the
18 property may file with the commissioner a demand for a hearing
19 before the commissioner or a person designated by the commis-
20 sioner for a determination as to whether the property was law-
21 fully subject to seizure and forfeiture. The person or persons
22 are entitled to appear before the department, to be represented
23 by counsel, and to present testimony and argument. After the
24 hearing, the department shall render its decision in writing and,
25 by order, shall either declare the seized property subject to
26 seizure and forfeiture, or declare the property returnable to the
27 person entitled to possession. If, within 5 days after the date

1 of service of the inventory statement, the person from whom the
2 property was seized or any person claiming an interest in the
3 property does not file with the commissioner a demand for a hear-
4 ing before the department, the property seized shall be consid-
5 ered forfeited to the state by operation of law and shall be dis-
6 posed of by the department as provided in this section. If,
7 after a hearing before the commissioner or person designated by
8 the commissioner, the department determines that the property is
9 lawfully subject to seizure and forfeiture and the person from
10 whom the property was seized or any persons claiming an interest
11 in the property do not take an appeal to the circuit court of the
12 county in which the seizure was made within the time prescribed
13 in this section, the property seized shall be considered for-
14 feited to the state by operation of law and shall be disposed of
15 by the department as provided in this section.

16 (4) If a person is aggrieved by the decision of the depart-
17 ment, that person may appeal to the circuit court of the county
18 where the seizure was made to obtain a judicial determination of
19 the lawfulness of the seizure and forfeiture. The action shall
20 be commenced within 20 days after notice of the department's
21 determination is sent to the person or persons claiming an inter-
22 est in the seized property. The court shall hear the action and
23 determine the issues of fact and law involved in accordance with
24 rules of practice and procedure as in other in rem proceedings.
25 If a judicial determination of the lawfulness of the seizure and
26 forfeiture cannot be made before deterioration of any of the
27 property seized, the court shall order the sale of the property

1 with public notice as determined by the court and require the
2 proceeds to be deposited with the court until the lawfulness of
3 the seizure and forfeiture is finally adjudicated.

4 (5) The department shall destroy all tobacco products that
5 are forfeited under this act. The department may sell all other
6 property forfeited pursuant to this section at public sale.

7 Public notice of the sale shall be given at least 5 days before
8 the day of sale. The proceeds derived from the sale by the
9 department shall be credited to the general fund of the state.

10 (6) The seizure, forfeiture, sale, or destruction of a
11 tobacco product or other property under this section does not
12 relieve a person from a fine, imprisonment, or other penalty for
13 violation of this act.

14 Sec. 10. The seizure, forfeiture, sale, or destruction of a
15 tobacco product or other property, or an action for recovery of
16 amounts due, does not constitute a defense to the person owning
17 or having control or possession of that property from criminal
18 prosecution for an act or omission made or offense committed
19 under this act or from liability to pay penalties provided by
20 this act.

21 Sec. 11. (1) The proceeds derived from the payment of
22 taxes, license and other fees, and penalties provided for under
23 this act shall be deposited with the state treasurer, credited to
24 the tobacco products tax education and health fund, and distrib-
25 uted only as provided in this section.

26 (2) The tobacco products tax education and health fund is
27 created in the state treasury.

1 (3) Sixty percent of the money in the fund shall be used for
2 educational purposes as follows:

3 (a) Sixty-five and one-tenth percent of the amount described
4 in this subsection shall be used for instructional costs of ele-
5 mentary and secondary education.

6 (b) Twenty-nine and four-tenths percent of the amount
7 described in this subsection shall be used for state universities
8 as described in section 4, 5, or 6 of article VIII of the state
9 constitution of 1963 for instructional costs.

10 (c) Five and one-half percent of the amount described in
11 this subsection shall be used for community colleges or junior
12 colleges established under section 7 of article VIII of the state
13 constitution of 1963 or part 25 of the school code of 1976, Act
14 No. 451 of the Public Acts of 1976, being sections 380.1601 to
15 380.1607 of the Michigan Compiled Laws, for instructional costs.

16 (4) Forty percent of the money in the fund shall be used for
17 health purposes.

18 (5) Money in the fund that is not distributed by the end of
19 the fiscal year shall remain in the fund for distribution in sub-
20 sequent years only for purposes described in this section.

21 (6) Distributions made pursuant to this section are intended
22 as additional funding and are not intended as a replacement for
23 any other funding for education or health purposes.

24 Sec. 12. (1) The tax imposed by this act shall be adminis-
25 tered by the revenue commissioner pursuant to Act No. 122 of the
26 Public Acts of 1941, being sections 205.1 to 205.31 of the
27 Michigan Compiled Laws, and this act. In case of conflict

1 between Act No. 122 of the Public Acts of 1941 and this act, the
2 provisions of this act apply.

3 (2) Rules shall be promulgated under this act pursuant to
4 the administrative procedures act of 1969, Act No. 306 of the
5 Public Acts of 1969, being sections 24.201 to 24.328 of the
6 Michigan Compiled Laws.

7 (3) The department shall prescribe forms for use by
8 taxpayers.

9 (4) The tax imposed by this act is in addition to all other
10 taxes for which the taxpayer may be liable.

11 (5) The commissioner may appoint any revenue division
12 employee as a special investigator, who shall be vested with the
13 power to arrest, without warrant, a person violating this act.