



HOUSE BILL No. 4829

June 3, 1993, Introduced by Reps. Jondahl and Bryant and referred to the Committee on Taxation.

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) "Licensee" means a person licensed under this act.

5 (d) "Manufacturer" means a person who manufactures or
6 produces a tobacco product.

7 (e) "Person" means an individual, partnership, fiduciary,
8 association, corporation, or other legal entity.

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

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

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

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

22 (j) "Secondary wholesaler" means a person who sells a
23 tobacco product for resale, who purchases a tobacco product from
24 a wholesaler licensed under this act, and who maintains an estab-
25 lished place of business in this state.

26 (k) "Tobacco product" means cigars, snuff, chewing tobacco,
27 loose or bulk tobacco, or any other tobacco that is intended to

1 be consumed by smoking or other means, but does not include
2 cigarettes.

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

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

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

23 (o) "Vending machine operator" means a person who operates 1
24 or more vending machines for the sale of a tobacco product and
25 who purchases a tobacco product from a manufacturer, licensed
26 wholesaler, or secondary wholesaler.

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

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

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

1 department showing it to be licensed shall be attached to the
2 machine.

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

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

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

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

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

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

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

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

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

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

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

20 (4) If a manufacturer, wholesaler, secondary wholesaler, or
21 vending machine operator maintains more than 1 place of business,
22 the fee for each additional place of business shall be 1/4 of the
23 fee otherwise prescribed in subsection (3). A fee, or a part of
24 a fee, shall not be refunded by reason of relinquishment, suspen-
25 sion, or revocation of the license, or, except under order of a
26 court of competent jurisdiction, for any other reason or cause.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (8) A transporter desiring to possess or acquire for
27 transportation or transport a tobacco product upon a highway,

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

20 Sec. 7. (1) A tax of 48% is levied on the sale price of
21 tobacco products sold in this state.

22 (2) On or before the twentieth day of each calendar month,
23 every licensee under section 3 other than a retailer, secondary
24 wholesaler, or vending machine operator shall file a return with
25 the department stating the amount of each tobacco product sold
26 and the sale price charged for each tobacco product sold by the
27 licensee for each place of business in the preceding calendar

1 month. The return shall be signed under penalty of perjury. The
2 return shall be on a form prescribed by the department and shall
3 contain or be accompanied by any further information the depart-
4 ment requires.

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

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

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

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

24 Sec. 8. (1) A person, other than a licensee, who is in con-
25 trol or in possession of a tobacco product contrary to this act,
26 or who offers to sell or does sell a tobacco product to another
27 for purposes of resale without being licensed to do so under this

1 act, shall be considered to have possession of that tobacco
2 product as an unclassified acquirer and shall be personally
3 liable for the tax imposed by this act, plus a penalty of 100% of
4 the amount of tax due under this act.

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

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

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

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

23 (6) The attorney general has concurrent power with the pros-
24 ecuting attorneys of the state to enforce this act. In addition,
25 this act is enforceable by a local health department as described
26 in part 24 of the public health code, Act No. 368 of the Public
27 Acts of 1978, being sections 333.2401 to 333.2498 of the Michigan

1 Compiled Laws, in the same manner as regulations adopted by that
2 local health department.

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

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

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

25 (3) As soon as possible, but not more than 5 days after sei-
26 zure of any alleged contraband, the person making the seizure
27 shall deliver personally or by registered mail to the last known

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

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

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

1 (5) The department shall destroy all tobacco products that
2 are forfeited under this act. The department may sell all other
3 property forfeited pursuant to this section at public sale.
4 Public notice of the sale shall be given at least 5 days before
5 the day of sale. The proceeds derived from the sale by the
6 department shall be credited to the general fund of the state.

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

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

18 Sec. 11. (1) The proceeds derived from the payment of
19 taxes, fees, and penalties provided for under this act and the
20 license fees received by the department shall be deposited with
21 the state treasurer and disbursed only as provided in this
22 section.

23 (2) Five percent of the revenue tax collected from the tax
24 imposed under section 7 shall be credited to the state school aid
25 fund established by section 11 of article IX of the state consti-
26 tution of 1963.

1 (3) Ten percent of the revenue collected from the tax
2 imposed under section 7 shall be deposited in the health and
3 safety fund created in the health and safety fund act, Act
4 No. 264 of the Public Acts of 1987, being sections 141.471 to
5 141.479 of the Michigan Compiled Laws.

6 (4) Eighty percent of the revenue collected from the tax
7 imposed under section 7 shall be deposited in the health and edu-
8 cation fund created in section 12.

9 (5) Five percent of the revenue collected from the tax
10 imposed under section 7 shall be deposited into the respiratory
11 health account hereby created in the state treasury. Funds in
12 the respiratory health account shall be used only for purposes of
13 education, research, prevention, and cure relating to respiratory
14 illness, disease, or condition, and for the promotion of respira-
15 tory health.

16 Sec. 12. (1) The health and education fund is created in
17 the state treasury.

18 (2) The health and education fund shall be distributed
19 according to the following:

20 (a) Twenty-five percent shall be used for substance abuse
21 treatment programs, including tobacco cessation programs.

22 (b) Twenty-five percent shall be used for prenatal and
23 infant health care.

24 (c) Fifty percent shall be used to identify and aid students
25 in grades 1 to 3 who may be at risk of failing to complete high
26 school as measured by the following factors:

1 (i) Academic performance.

2 (ii) Attendance.

3 (iii) Discipline problems.

4 (iv) Other factors affecting school performance, including,
5 but not limited to, residence in a homeless shelter or temporary
6 living arrangement, substance abuse by a parent or guardian,
7 child abuse or neglect, or limited English proficiency.

8 (3) Money in the tax health and education fund that is not
9 distributed by the end of the fiscal year shall remain in the
10 fund for distribution in subsequent years only for purposes
11 described in subsection (2).

12 Sec. 13. (1) The tax imposed by this act shall be adminis-
13 tered by the revenue commissioner pursuant to Act No. 122 of the
14 Public Acts of 1941, being sections 205.1 to 205.31 of the
15 Michigan Compiled Laws, and this act. In case of conflict
16 between Act No. 122 of the Public Acts of 1941 and this act, the
17 provisions of this act apply.

18 (2) Rules shall be promulgated under this act pursuant to
19 the administrative procedures act of 1969, Act No. 306 of the
20 Public Acts of 1969, being sections 24.201 to 24.328 of the
21 Michigan Compiled Laws.

22 (3) The department shall prescribe forms for use by
23 taxpayers.

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

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