



HOUSE BILL No. 5105

October 12, 1993, Introduced by Reps. Bryant, Gilmer, Bandstra, Munsell, Dalman, Hill, Bobier and Middleton and referred to the Committee on Taxation.

A bill to amend sections 1 and 6 of Act No. 265 of the Public Acts of 1947, entitled as amended

"An act to impose an excise and specific tax upon the sale and distribution of cigarettes; to regulate and license manufacturers, wholesalers, vending machine operators, unclassified acquirers, transportation companies, transporters and retailers thereof, as herein defined; to prescribe the powers and duties of the Michigan department of treasury, revenue division with respect thereto; to provide for the collection of such tax and the disposition thereof; to create the working capital reserve account in the state general fund in the state treasury into which certain collections are deposited and to regulate appropriations of these collections from this account; 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; to make an appropriation; and to prescribe penalties for the violation of this act,"

section 1 as amended by Act No. 475 of the Public Acts of 1982, being sections 205.501 and 205.506 of the Michigan Compiled Laws; to add sections 7b and 23; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 1 and 6 of Act No. 265 of the Public
2 Acts of 1947, section 1 as amended by Act No. 475 of the Public
3 Acts of 1982, being sections 205.501 and 205.506 of the Michigan
4 Compiled Laws, are amended and sections 7b and 23 are added to
5 read as follows:

6 Sec. 1. As used in this act:

7 (a) "Cigarettes" ~~shall mean~~ MEANS and ~~include~~ INCLUDES
8 any roll for smoking made wholly or in part of tobacco, irrespec-
9 tive of size or shape and irrespective of tobacco being flavored,
10 adulterated, or mixed with any other ingredient, where ~~such~~
11 THAT roll has a wrapper or cover made of paper or any other
12 material. ~~The term shall not be construed to~~ CIGARETTES DOES
13 NOT include cigars.

14 (b) "Person" includes ~~any~~ AN individual, firm, copartner-
15 ship, joint ~~adventure~~ VENTURE, association, LIMITED LIABILITY
16 COMPANY, municipal or private corporation whether organized for
17 profit or not, this state, or any ~~of its~~ political
18 ~~subdivisions~~ SUBDIVISION OF THIS STATE, A company, estate,
19 trust, or any other group or combination acting as a unit, and
20 the plural as well as the singular number, unless the intention
21 to give a more limited meaning is disclosed by the context.

22 (c) "Manufacturer" means ~~any~~ A person who manufactures or
23 produces cigarettes whether within or without this state.

24 (d) "Wholesaler" means ~~any~~ A person who purchases a por-
25 tion or all of his or her cigarettes directly from the
26 manufacturer, who sells ~~at least~~ 75% OR MORE of all cigarettes

1 purchased to others for resale, and who maintains an established
2 place of business where substantially all of the business is the
3 sale of cigarettes and related merchandise at wholesale and where
4 at all times a substantial stock of cigarettes and related mer-
5 chandise is available to all retailers for resale. ~~and any~~
6 WHOLESALER INCLUDES A chain of stores retailing cigarettes to the
7 consumer ~~provided~~ IF 75% of the purchases are made directly
8 from the manufacturer.

9 (e) "Secondary wholesaler" means ~~any~~ A person who sells
10 ~~for resale~~ cigarettes ~~purchased by him or her~~ FOR RESALE, who
11 purchases cigarettes from a wholesaler licensed under this act,
12 and who maintains an established place of business in this state
13 where substantially all of the business is the sale of cigarettes
14 and related merchandise at wholesale and where at all times a
15 substantial stock of cigarettes and related merchandise is avail-
16 able to all retailers for resale. The provision requiring such a
17 place of business shall not apply to persons holding a secondary
18 wholesaler's license on May 28, 1951.

19 (f) "Vending machine operator" means ~~any~~ A person who
20 operates 1 or more vending machines for the sale of cigarettes
21 and who purchases cigarettes from a manufacturer, licensed whole-
22 saler or secondary wholesaler.

23 (g) "Unclassified acquirer" means ~~any~~ A person, except a
24 transportation company or a purchaser at retail from a retailer
25 licensed under THE GENERAL SALES TAX ACT, Act No. 167 of the
26 Public Acts of 1933, as amended, being sections 205.51 to 205.78
27 of the Michigan Compiled Laws, who imports or acquires cigarettes

1 for use, sale, or distribution from ~~any~~ A source other than a
2 wholesaler or a secondary wholesaler licensed under this act.

3 (h) "Transportation company" means ~~any~~ A person operating,
4 or supplying to a common carrier, cars, boats, or other vehicles
5 for the transportation or accommodation of passengers and engaged
6 in the sale of cigarettes at retail.

7 (i) "Retailer" means ~~any~~ A person ~~—~~ other than a trans-
8 portation company ~~—~~ who operates a place of business for the
9 purpose of making sales of cigarettes at retail.

10 (j) "Sale" or "sales" ~~in addition to their ordinary meaning~~
11 ~~shall include or apply~~ MEANS A TRANSACTION BY WHICH THE OWNER-
12 SHIP OF TANGIBLE PERSONAL PROPERTY IS TRANSFERRED FOR CONSIDERA-
13 TION AND ALSO APPLIES to use, gifts, exchanges, barter, LOSS, and
14 theft.

15 (k) "Place of business" means ~~any~~ A place where cigarettes
16 are sold or where cigarettes are brought or kept for the purpose
17 of sale or consumption, including so far as applicable ~~any~~ A
18 vessel, airplane, train, or vending machine. ~~selling~~
19 ~~cigarettes.~~

20 (l) "Department" means the revenue division of the depart-
21 ment of treasury and ~~any~~ A duly authorized ~~assistants~~
22 ASSISTANT and ~~employees~~ EMPLOYEE of the REVENUE division.

23 (m) "Commissioner" means the REVENUE commissioner. ~~of the~~
24 ~~department.~~

25 (n) "Transporter" means ~~any~~ A person importing or trans-
26 porting into this state, or transporting in this state,
27 cigarettes obtained from a source located outside the state, or

1 from any person not duly licensed under this act. ~~A transporter~~
 2 ~~shall~~ TRANSPORTER DOES not include an interstate commerce car-
 3 rier licensed by the interstate commerce commission to carry com-
 4 modities in interstate commerce, or a licensee maintaining a
 5 warehouse or place of business outside of Michigan ~~when such~~ IF
 6 THE warehouse or place of business is licensed under this act, or
 7 any person transporting not more than 4,000 cigarettes at 1
 8 time.

9 Sec. 6. (1) Every manufacturer, wholesaler, secondary
 10 wholesaler, vending machine operator, transportation company,
 11 unclassified acquirer, or retailer shall keep a complete and
 12 accurate record of all cigarettes manufactured, purchased or oth-
 13 erwise acquired. ~~Such~~ EXCEPT FOR A MANUFACTURER, THE records
 14 ~~except in the case of a manufacturer~~ shall include a written
 15 statement containing the name and address of both the seller and
 16 the purchaser, the date of delivery, the quantity, ~~of~~
 17 ~~cigarettes,~~ the trade name or brand, ~~thereof,~~ and the price
 18 paid for each brand of cigarettes purchased. Every licensee
 19 shall keep as part of ~~his~~ THE records a true copy of all pur-
 20 chase orders, invoices, bills of lading, and other written matter
 21 substantiating the purchase or acquisition of cigarettes. ~~Such~~
 22 ~~other~~ OTHER records shall be kept ~~by the foregoing persons~~ as
 23 the department ~~shall~~ reasonably ~~prescribe~~ REQUIRES.

24 (2) Every manufacturer, ~~every~~ wholesaler, and ~~every~~ sec-
 25 ondary wholesaler shall deliver with each sale or consignment of
 26 cigarettes a written statement containing the name or trade name
 27 and address of both the seller and the purchaser, the date of

1 delivery, the quantity, ~~of cigarettes,~~ AND the trade name or
2 brand, ~~thereof,~~ correctly itemizing the prices paid for each
3 brand of cigarettes purchased, and shall retain a duplicate of
4 each ~~such~~ statement.

5 (3) Every vending machine operator shall keep a detailed
6 record of each vending machine owned for the sale of cigarettes
7 showing the location of the machine, the date of placing the
8 machine on the location, the quantity of cigarettes placed in the
9 machine, the date when placed ~~therein~~ THERE, and the amount of
10 the commission paid or earned on sales through ~~such~~ THE vending
11 machine. ~~He shall, whenever he fills or refills the vending~~
12 ~~machine,~~ WHEN FILLING OR REFILLING THE VENDING MACHINE, THE
13 OPERATOR SHALL deliver to the owner or tenant occupying the
14 premises where the machine is located a written statement con-
15 taining ~~his own~~ THE name and address OF THE OPERATOR, the name
16 and address of the owner or the tenant, the date when the machine
17 was filled, and the quantity of each brand of cigarettes sold
18 from the machine since the date when cigarettes were last previ-
19 ously placed in the machine. ~~Any~~ A person in possession of
20 premises where a vending machine is located shall keep a record
21 of all cigarettes sold through the vending machine ~~so~~ located
22 on ~~his~~ THE premises and the amount of commission paid by the
23 person operating the cigarette vending machine. ~~, and the~~ THE
24 records shall consist of written statements required to be given
25 by each person operating vending machines for the sale of ciga-
26 rettes as ~~herein~~ provided IN THIS SECTION. ~~No~~

1 (4) A licensee under this act shall NOT issue or accept
2 ~~any~~ A written statement ~~which~~ OR INVOICE THAT is known to
3 ~~him~~ THE LICENSEE to contain ~~any~~ A statement ~~which~~ OR OMIS-
4 SION THAT falsely indicates the name of the customer, the type of
5 merchandise, the prices, the discounts, or the terms of sale. →
6 ~~nor shall there be inserted~~ A LICENSEE SHALL NOT INSERT in any
7 invoice given or accepted by any licensee any statement ~~which~~
8 THAT makes the invoice a false record, wholly or in part, of the
9 transaction represented ~~therein, nor shall there be withheld~~ BY
10 THE INVOICE. A LICENSEE SHALL NOT WITHHOLD from any invoice
11 given or accepted by any licensee any statements ~~which~~ THAT
12 properly should be included ~~therein~~ ON THE INVOICE, so that in
13 the absence of such statements the invoice does not truly reflect
14 the transaction involved. ~~The~~ A PERSON SHALL NOT use ~~of any~~
15 A device or game of chance to aid, promote, or induce sales or
16 purchases of cigarettes, or ~~the giving of any~~ GIVE cigarettes
17 in connection with ~~any~~ A device or game of chance. ~~is~~
18 ~~prohibited.~~

19 (5) All statements and other records required by this sec-
20 tion shall be in ~~such~~ A form ~~as~~ PRESCRIBED BY the department
21 ~~shall prescribe~~ and shall be preserved for a period of ~~3~~ 4
22 years and ~~shall be~~ offered for inspection at any time upon oral
23 or written demand by the department or its authorized agent.
24 ~~Whenever~~

25 (6) IF cigarettes are received or acquired within this state
26 by a wholesaler, secondary wholesaler, vending machine operator,
27 unclassified acquirer, or retailer, each original manufacturer's

1 shipping case ~~of such cigarettes~~ shall bear the name and
2 address of the person making the first purchase or ~~such~~ ANY
3 other markings as the department ~~may prescribe. Whenever any~~
4 PRESCRIBES. IF cigarettes are found in a place of business or
5 otherwise in the possession of ~~any~~ A wholesaler, secondary
6 wholesaler, vending machine operator, unclassified acquirer,
7 transporter, or retailer without proper markings on the shipping
8 cases, boxes, or containers of ~~such~~ THE cigarettes and without
9 proper substantiation by invoices or other records as required by
10 this section, the presumption shall be that ~~such~~ THE cigarettes
11 are kept ~~therein~~ in violation of ~~the provisions of~~ this act.
12 ~~Whenever~~ IF cigarettes are shipped outside the state, ~~every~~
13 THE licensee ~~under section 3 so~~ shipping them shall cause to be
14 placed on every shipping case or other container in which the
15 cigarettes are shipped, the name and address of the consignee to
16 whom the shipment is made outside of the state. The department
17 may require reports from ~~any~~ A common carrier who transports
18 cigarettes to ~~any~~ A point within this state and from ~~any~~
19 ~~other~~ ANOTHER person who, under contract, ~~so~~ transports ciga-
20 rettes ~~and~~ OR from ~~any~~ A bonded ~~warehouseman~~
21 WAREHOUSEPERSON or bailee who has in his OR HER possession ~~any~~
22 cigarettes. ~~, such~~ THE reports ~~to~~ SHALL contain ~~such~~ infor-
23 mation concerning shipments of cigarettes as PRESCRIBED BY the
24 department. ~~shall determine. All such carriers~~ CARRIERS, bail-
25 ees, ~~warehousemen~~ WAREHOUSEPERSONS, and other persons shall
26 permit the examination by the department or its duly authorized

1 agent of any records relating to the shipment of cigarettes into,
2 ~~or~~ from, ~~or the receipt thereof,~~ OR within the state.

3 (7) ~~Every~~ A transporter who shall transport, ~~or~~ possess,
4 or acquire for the purpose of transporting ~~any~~ cigarettes upon
5 the public highways, roads or streets of this state shall ~~be~~
6 ~~required to~~ have in his OR HER actual possession invoices or
7 bills of lading containing the name and address of both the
8 seller and the purchaser, the date of delivery, the name and
9 address of the transporter, the quantity of cigarettes, the trade
10 name or brand, ~~thereof,~~ the price paid for each brand of ciga-
11 rettes in such transporter's possession or custody, and the
12 license as prescribed under this act.

13 (8) ~~Any~~ A transporter desiring to possess or acquire for
14 transportation or transport any cigarettes upon the highways,
15 roads or streets of this state shall obtain a permit from the
16 department authorizing ~~such~~ THE transporter to possess or
17 acquire for transportation or transport ~~any~~ cigarettes and
18 shall have ~~such~~ THE permit in his possession while ~~such~~ THE
19 cigarettes are in his OR HER possession. This permit shall be
20 obtained for each load being transported and shall contain
21 ~~therein~~ a statement setting forth the name and address of the
22 purchaser, seller, and the transporter; ~~—~~ the license number of
23 the purchaser; ~~—~~ the date of the delivery of the cigarettes or
24 date of importation into this state; ~~—~~ the route to be followed
25 in the event the cigarettes are being transported from an out of
26 state source; and ~~such~~ other information as the department may
27 require. ~~The~~ UPON THE APPLICATION OF A TRANSPORTER WITH

1 REMITTANCE OF A FEE OF \$1.00, THE department shall ~~make~~
2 ~~available such permits on~~ PROVIDE A PERMIT IN a form prescribed
3 by ~~it on the application of any transporter with remittance of a~~
4 ~~fee of \$1.00~~ THE DEPARTMENT.

5 (9) ~~Whenever any~~ IF A transporter transports ~~any~~ ciga-
6 rettes into this state, ~~such~~ THE transporter shall stop at the
7 nearest state police post within this state on the route autho-
8 rized by the permit and disclose the cigarettes in his OR HER
9 possession and the papers required BY THIS SECTION to be in his
10 OR HER possession. ~~by the provisions of this section.~~

11 SEC. 7B. (1) COMMENCING ON JANUARY 1, 1994, THE TAX IMPOSED
12 PURSUANT TO SECTIONS 7 AND 7A FOR EACH CIGARETTE SOLD IN THIS
13 STATE SHALL BE INCREASED BY 25 MILLS TO 37.5 MILLS.

14 (2) IF A LICENSEE OR RETAILER HAS ON HAND FOR SALE, ON
15 JANUARY 1, 1994, ANY CIGARETTES UPON WHICH A TAX OF 12.5 MILLS
16 HAS BEEN PAID, THE LICENSEE OR RETAILER SHALL FILE A COMPLETE
17 INVENTORY OF THOSE CIGARETTES WITHIN 20 DAYS AND SHALL PAY TO THE
18 DEPARTMENT AT THE TIME OF THE FILING OF THE INVENTORY A TAX COM-
19 PUTED AT THE RATE OF 25 MILLS FOR EACH OF THOSE CIGARETTES. ALL
20 PERTINENT PROVISIONS OF THIS ACT RELATIVE TO THE COLLECTION, VER-
21 IFICATION, AND ADMINISTRATION OF THE TAX IMPOSED BY THIS ACT
22 SHALL BE APPLICABLE TO THE TAX IMPOSED BY THIS SUBSECTION.

23 (3) THE PROCEEDS OF 25 MILLS OF THE TAX SHALL BE DEPOSITED
24 WITH THE STATE TREASURER AND CREDITED TO THE STATE SCHOOL AID
25 FUND ESTABLISHED BY SECTION 11 OF ARTICLE IX OF THE STATE CONSTI-
26 TUTION OF 1963. THIS DISTRIBUTION IS IN ADDITION TO AND IS NOT

1 INTENDED AS A REPLACEMENT FOR ANY OTHER STATE PAYMENTS TO THIS
2 FUND.

3 SEC. 23. NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT TO
4 THE CONTRARY, BEGINNING ON JANUARY 1, 1994, THE PROVISIONS OF
5 THIS ACT DO NOT APPLY IN ANY MONTH IN WHICH CIGARETTES ARE TAXED
6 PURSUANT TO THE TOBACCO PRODUCTS TAX ACT.

7 Section 2. Sections 8 and 14 of Act No. 265 of the Public
8 Acts of 1947, being sections 205.508 and 205.514 of the Michigan
9 Compiled Laws, are repealed.

10 Section 3. This amendatory act shall not take effect unless
11 Senate Bill No. _____ or House Bill No. 5104 (request
12 no. 04938'93 *) of the 87th Legislature is enacted into law.