



HOUSE BILL No. 5622

February 22, 1996, Introduced by Reps. London, Freeman, McBryde, Profit, Hammerstrom, LaForge, Brewer, Dobronski, Bryant, Dobb, DeHart, DeMars, Pitoniak, Dalman, McNutt, Randall, Fitzgerald, Porreca, Gernaat, Rocca, Kukuk, Agee, Baade, Olshove, Griffin, Wetters and Perricone and referred to the Committee on Tax Policy.

A bill to amend sections 6 and 7 of Act No. 327 of the Public Acts of 1993, entitled "Tobacco products tax act," being sections 205.426 and 205.427 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 6 and 7 of Act No. 327 of the Public
2 Acts of 1993, being sections 205.426 and 205.427 of the Michigan
3 Compiled Laws, are amended to read as follows:

4 Sec. 6. (1) Beginning May 1, 1994, a manufacturer, whole-
5 saler, secondary wholesaler, vending machine operator, transpor-
6 tation company, unclassified acquirer, or retailer shall keep a
7 complete and accurate record of each tobacco product
8 manufactured, purchased, or otherwise acquired. ~~Except for~~ FOR
9 ALL EXCEPT a manufacturer, the ~~records~~ RECORD shall include a

1 written statement containing the name and address of both the
2 seller and the purchaser, the date of delivery, the quantity, the
3 trade name or brand, and the price paid for each tobacco product
4 purchased. A licensee shall keep as part of the ~~records~~ RECORD
5 a true copy of all purchase orders, invoices, bills of lading,
6 and other written matter substantiating the purchase or acquisi-
7 tion of each tobacco product. Other records shall be kept by
8 these persons as the department reasonably prescribes.

9 (2) Beginning May 1, 1994, a manufacturer, wholesaler, and
10 secondary wholesaler shall deliver with each sale or consignment
11 of a tobacco product a written statement containing the name or
12 trade name and address of both the seller and the purchaser, the
13 date of delivery, the quantity, and the trade name or brand of
14 the tobacco product, correctly itemizing the prices paid for each
15 brand purchased, and shall retain a duplicate of each statement.

16 (3) Beginning May 1, 1994, a vending machine operator shall
17 keep a detailed record of each vending machine owned for the sale
18 of tobacco products showing the location of the machine, the date
19 ~~of placing~~ WHEN the machine WAS PLACED on the location, the
20 quantity of each tobacco product placed in the machine ~~—~~ AND
21 the date when IT WAS placed there, and the amount of the commis-
22 sion paid or earned on sales through the vending machine. When
23 filling or refilling the vending machine, the operator shall
24 deliver to the owner or tenant occupying the premises where the
25 machine is located a written statement containing his or her own
26 name and address, the name and address of the owner or the
27 tenant, the date when the machine was filled, and the quantity of

1 each brand of tobacco product sold from the machine since the
2 date when ~~tobacco products were~~ A TOBACCO PRODUCT WAS last
3 placed in the machine. A person in possession of premises where
4 a vending machine is located shall keep a record of each tobacco
5 product sold through the vending machine located on the premises
6 and the amount of commission paid by the person operating the
7 vending machine. The records shall consist of written statements
8 required to be given by each person operating a vending machine
9 for the sale of tobacco products as provided in this section.

10 (4) Beginning May 1, 1994, a licensee under this act shall
11 not issue or accept a written statement or invoice that is known
12 to the licensee to contain a statement or omission that falsely
13 indicates the name of the customer, the type of merchandise, the
14 ~~prices~~ PRICE, the ~~discounts~~ DISCOUNT, or the terms of sale.

15 A person shall not use a device or game of chance to aid, pro-
16 mote, or induce sales or purchases of a tobacco product, or give
17 a tobacco product in connection with a device or game of chance.

18 (5) Beginning May 1, 1994, all statements and other records
19 required by this section shall be in a form prescribed by the
20 department and shall be preserved for a period of 4 years and
21 offered for inspection at any time upon oral or written demand by
22 the department or its authorized agent.

23 (6) Beginning May 1, 1994, if a tobacco product is received
24 or acquired within this state by a wholesaler, secondary whole-
25 saler, vending machine operator, unclassified acquirer, or
26 retailer, each original manufacturer's shipping case shall bear
27 the name and address of the person making the first purchase or

1 any other markings the department prescribes. If a tobacco
2 product is found in a place of business or otherwise in the pos-
3 session of a wholesaler, secondary wholesaler, vending machine
4 operator, unclassified acquirer, transporter, or retailer without
5 proper markings on the shipping case, box, or container of the
6 tobacco product and without proper substantiation by invoices or
7 other records as required by this section, ~~the presumption shall~~
8 ~~be~~ IT IS PRESUMED that the tobacco product is kept in violation
9 of this act. If a tobacco product is shipped outside the state,
10 the licensee shipping the tobacco product shall cause to be
11 placed on every shipping case or other container in which the
12 tobacco product is shipped the name and address of the consignee
13 to whom the shipment is made outside of the state. The depart-
14 ment may require ~~reports~~ A REPORT from a common carrier who
15 transports a tobacco product to a point within this state from
16 another person who, under contract, transports a tobacco product,
17 or from a bonded warehouseperson or bailee who has in his or her
18 possession a tobacco product. A carrier, bailee, warehouseper-
19 son, or other person shall permit the examination by the depart-
20 ment or its duly authorized agent of any records relating to the
21 shipment of a tobacco product into, from, or within the state.

22 (7) BEGINNING MAY 1, 1996, A WHOLESALER SHALL AFFIX TO EVERY
23 CIGARETTE PACKAGE A STICKER OF A DESIGN AND AFFIXED IN A MANNER
24 THAT THE DEPARTMENT PRESCRIBES. IF A CIGARETTE PACKAGE IS FOUND
25 IN A PLACE OF BUSINESS OR OTHERWISE IN POSSESSION OF A SECONDARY
26 WHOLESALER, VENDING MACHINE OPERATOR, UNCLASSIFIED ACQUIRER, OR
27 RETAILER WITHOUT A STICKER AFFIXED AS REQUIRED BY THIS

1 SUBSECTION, IT SHALL BE PRESUMED THAT THE CIGARETTE PACKAGE IS
2 KEPT IN VIOLATION OF THIS ACT. FOR PURPOSES OF THIS SECTION,
3 "CIGARETTE PACKAGE" MEANS A PACKAGE THAT COMMONLY CONTAINS 20 OR
4 25 CIGARETTES AND THAT IS INTENDED FOR SALE AT RETAIL OR BY VEND-
5 ING MACHINE.

6 (8) ~~(7)~~ Beginning May 1, 1994, a transporter transporting,
7 possessing, or acquiring for the purpose of transporting a
8 tobacco product upon a public highway, road, or street of this
9 state shall have in his or her actual possession invoices or
10 bills of lading containing the name and address of both the
11 seller and the purchaser, the date of delivery, the name and
12 address of the transporter, the quantity and trade name or brand
13 of each tobacco product, the price paid for each trade name or
14 brand in the transporter's possession or custody, and the license
15 as prescribed under this act.

16 (9) ~~(8)~~ Beginning May 1, 1994, a transporter desiring to
17 possess or acquire for transportation or transport a tobacco
18 product upon a highway, road, or street of this state shall
19 obtain a permit from the department authorizing the transporter
20 to possess or acquire for transportation or transport tobacco
21 products and shall have the permit in his or her possession while
22 the tobacco product is in his or her possession. This permit
23 shall be obtained for each load being transported and shall con-
24 tain a statement setting forth the name and address of the pur-
25 chaser, seller, and transporter, the license number of the pur-
26 chaser, the date of the delivery of the tobacco product or date
27 of importation into this state, the route to be followed if a

1 tobacco product is being transported from an out-of-state source,
2 and any other information the department requires. The depart-
3 ment shall provide a permit on a form prescribed by it upon the
4 application of a transporter with the remittance of a fee of
5 \$1.00. If a transporter transports a tobacco product into this
6 state, the transporter shall stop at the nearest state police
7 post within this state on the route authorized by the permit and
8 disclose the tobacco products in his or her possession and the
9 papers required by this section to be in his or her possession.

10 Sec. 7. (1) Beginning May 1, 1994, a tax is levied on the
11 sale of tobacco products sold in this state as follows:

12 (a) For cigars, noncigarette smoking tobacco, and smokeless
13 tobacco, 16% of the wholesale price.

14 (b) For cigarettes, if the sales tax is levied at a rate of
15 4% under the general sales tax act, Act No. 167 of the Public
16 Acts of 1933, being sections 205.51 to 205.78 of the Michigan
17 Compiled Laws, 20 mills per cigarette.

18 (c) For cigarettes, if the sales tax is levied at a rate of
19 6% under the general sales tax act, Act No. 167 of the Public
20 Acts of 1933, ~~being sections 205.51 to 205.78 of the Michigan~~
21 ~~Compiled Laws,~~ 37.5 mills per cigarette.

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 specifying the wholesale price charged for all tobacco
27 products sold by the licensee for each place of business in the

1 preceding calendar month. The return shall be signed under
2 penalty of perjury. The return shall be on a form prescribed by
3 the department and shall contain or be accompanied by any further
4 information the department 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 ~~+%~~ 2% of the total amount of
9 the tax due to cover the cost of expenses incurred in the admin-
10 istration of this act.

11 (4) Every licensee and retailer who, on May 1, 1994, has on
12 hand for sale any cigarettes acquired after February 1, 1994 upon
13 which a tax ~~has been~~ WAS paid ~~pursuant to~~ UNDER FORMER Act
14 No. 265 of the Public Acts of 1947, ~~being sections 205.501 to~~
15 ~~205.522 of the Michigan Compiled Laws,~~ shall file a complete
16 inventory of those cigarettes before June 1, 1994 and shall pay
17 to the department at the time of filing this inventory a tax
18 equal to the difference between the tax imposed in subsection (1)
19 and the tax that ~~has been~~ WAS paid ~~pursuant to~~ UNDER FORMER
20 Act No. 265 of the Public Acts of 1947.

21 (5) The department may require the payment of the tax
22 imposed by this act upon the importation or acquisition of a
23 tobacco product. A tobacco product for which the tax under this
24 act has once been imposed and that has not been refunded if paid
25 is not subject upon a subsequent sale to the tax imposed by this
26 act.

1 (6) An abatement or refund of the tax provided by this act
2 may be made by the department for causes the department considers
3 expedient. The department shall certify the amount and the state
4 treasurer shall pay that amount out of the proceeds of the tax.

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