

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 5248

(As passed the House, July 3, 2002)

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending sections 7 and 12 (MCL 205.427 and 205.432), as
amended by 1997 PA 187, and by adding section 6c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 6C. (1) A NONPARTICIPATING MANUFACTURER SHALL BY APRIL
2 30 OF EACH YEAR CERTIFY TO THE DEPARTMENT THAT IT IS NOT A PAR-
3 TICIPANT IN THE MASTER SETTLEMENT AGREEMENT AND THAT IT HAS PER-
4 FORMED ITS OBLIGATION TO ESTABLISH A QUALIFIED ESCROW ACCOUNT AND
5 DEPOSITED FUNDS INTO THAT ACCOUNT UNDER 1999 PA 244, MCL 445.2051
6 TO 445.2052.
7 (2) THE CERTIFICATION OF COMPLIANCE SHALL BE ON A FORM PRE-
8 SCRIBED BY THE DEPARTMENT, SHALL CONTAIN ALL OF THE INFORMATION
9 REQUESTED ON THE FORM, AND SHALL INCLUDE A LIST OF ALL BRAND
10 NAMES OF CIGARETTES SOLD BY THE NONPARTICIPATING MANUFACTURER FOR

HB 5248, As Passed Senate, July 9, 2002

House Bill No. 5248

2

1 CONSUMPTION IN THIS STATE DURING THE CALENDAR YEAR IMMEDIATELY
2 PRECEDING THE CERTIFICATION DATE.

3 (3) A NONPARTICIPATING MANUFACTURER SHALL PROVIDE A COPY OF
4 THE CERTIFICATION OF COMPLIANCE TO THE ATTORNEY GENERAL AND ANY
5 WHOLESALE, UNCLASSIFIED ACQUIRER, OR OTHER PERSON TO WHOM THE
6 NONPARTICIPATING MANUFACTURER MAKES A SALE OF ITS CIGARETTES FOR
7 SUBSEQUENT SALE IN THIS STATE.

8 (4) A WHOLESALE, UNCLASSIFIED ACQUIRER, OR OTHER PERSON WHO
9 IS PROVIDED WITH A CERTIFICATION OF COMPLIANCE UNDER THIS SECTION
10 SHALL RETAIN THE CERTIFICATION OF COMPLIANCE FOR NOT LESS THAN 4
11 YEARS FROM THE DATE THE CERTIFICATION OF COMPLIANCE WAS
12 RECEIVED.

13 (5) A WHOLESALE OR UNCLASSIFIED ACQUIRER SHALL REPORT TO
14 THE DEPARTMENT ALL CIGARETTES THAT IT ACQUIRES THAT WERE MANUFAC-
15 TURED BY A NONPARTICIPATING MANUFACTURER. A WHOLESALE OR
16 UNCLASSIFIED ACQUIRER THAT HAS NOT VOLUNTARILY SUBMITTED ANNUAL
17 REPORTS DESCRIBED IN THIS SUBSECTION FOR PERIODS BEGINNING
18 DECEMBER 28, 1999 SHALL FILE THOSE REPORTS WITH THE DEPARTMENT
19 WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT
20 ADDED THIS SECTION. THE REPORT SHALL BE ON A FORM PRESCRIBED BY
21 THE DEPARTMENT AND ATTACHED TO THE RETURN REQUIRED UNDER
22 SECTION 7. A WHOLESALE OR UNCLASSIFIED ACQUIRER THAT HAS NOT
23 ACQUIRED ANY CIGARETTES FROM A NONPARTICIPATING MANUFACTURER
24 SHALL FILE THE REPORT WITH THE RETURN REQUIRED UNDER SECTION 7
25 STATING THAT IT HAS NOT PURCHASED, ACQUIRED, EXPORTED, OR
26 RETURNED CIGARETTES RELATED TO A NONPARTICIPATING MANUFACTURER.
27 THE INFORMATION CONTAINED IN THIS REPORT IS FOR THE PURPOSES OF

HB 5248, As Passed Senate, July 9, 2002

House Bill No. 5248

3

1 ENFORCING 1999 PA 244, MCL 445.2051 TO 445.2052, AND DOES NOT
2 CONSTITUTE INFORMATION OBTAINED IN CONNECTION WITH THE ADMINIS-
3 TRATION OF A TAX UNDER SECTION 28(1)(F) OF 1941 PA 122,
4 MCL 205.28. A WHOLESALER OR UNCLASSIFIED ACQUIRER SHALL RETAIN A
5 COPY OF THE REPORT FOR NOT LESS THAN 4 YEARS FROM THE DATE THE
6 REPORT WAS FILED WITH THE DEPARTMENT. IF A WHOLESALER OR UNCLAS-
7 SIFIED ACQUIRER DOES NOT FILE A REPORT OR KNOWINGLY FILES AN INCOMPLETE
OR
8 INACCURATE REPORT UNDER THIS SUBSECTION, THE DEPARTMENT MAY DO 1
9 OR MORE OF THE FOLLOWING:

10 (A) ASSESS A PENALTY UNDER THIS SECTION.

11 (B) PROHIBIT THE WHOLESALER OR UNCLASSIFIED ACQUIRER FROM
12 OBTAINING CIGARETTE STAMPS FROM THE DEPARTMENT UNTIL A COMPLETE
13 AND ACCURATE REPORT IS FILED.

14 (C) REVOKE THE WHOLESALER'S OR UNCLASSIFIED ACQUIRER'S
15 LICENSE UNDER SECTION 5, ONLY AFTER CONDUCTING A HEARING.

16 (6) A NONPARTICIPATING MANUFACTURER THAT HAS NOT PROVIDED
17 THE CERTIFICATION OF COMPLIANCE REQUIRED BY THIS SECTION SHALL
18 NOT MAKE A SALE OF CIGARETTES IN THIS STATE OR A SALE WITHIN OR
19 OUTSIDE THIS STATE TO ANY PERSON FOR SALE, DISTRIBUTION, OR CON-
20 SUMPTION IN THIS STATE.

21 (7) A PERSON SHALL NOT PURCHASE, ACQUIRE, POSSESS, OR SELL
22 CIGARETTES ACQUIRED FROM OR MANUFACTURED BY A NONPARTICIPATING
23 MANUFACTURER THAT HAS NOT PROVIDED THE CERTIFICATION OF COMPLI-
24 ANCE TO THE DEPARTMENT AS REQUIRED UNDER THIS SECTION AND THAT
25 HAS NOT PROVIDED THE PERSON WITH A COPY OF THE CERTIFICATION OF
26 COMPLIANCE IF REQUIRED TO DO SO UNDER SUBSECTION (3).

HB 5248, As Passed Senate, July 9, 2002

H04809'01 (H-10) R-1

HB 5248, As Passed Senate, July 9, 2002

House Bill No. 5248

4

1 (8) THE DEPARTMENT SHALL MAINTAIN AND REGULARLY UPDATE A
2 LIST OF PARTICIPATING MANUFACTURERS AND NONPARTICIPATING
3 MANUFACTURERS THAT HAVE PROVIDED THE CERTIFICATION OF COMPLIANCE
4 REQUIRED UNDER THIS SECTION. THE DEPARTMENT SHALL PUBLISH THE
5 LIST ON ITS WEBSITE AND PROVIDE A COPY OF THE LIST TO A PERSON
6 UPON REQUEST.

7 (9) IF A WHOLESALER OR UNCLASSIFIED ACQUIRER RECEIVES A CER-
8 TIFICATION OF COMPLIANCE FROM A NONPARTICIPATING MANUFACTURER
9 THAT IS NOT INCLUDED IN THE LIST MAINTAINED BY THE DEPARTMENT,
10 THE WHOLESALER OR UNCLASSIFIED ACQUIRER SHALL WITHIN 10 BUSINESS
11 DAYS AFTER RECEIVING THE CERTIFICATION OF COMPLIANCE PROVIDE A
12 COPY OF THE CERTIFICATION OF COMPLIANCE AND THE NAME AND ADDRESS
13 OF THE NONPARTICIPATING MANUFACTURER TO THE DEPARTMENT.

14 (10) THIRTY DAYS AFTER THE DEPARTMENT POSTS ON ITS WEBSITE
15 AND PROVIDES WHOLESALERS AND UNCLASSIFIED ACQUIRERS A NOTICE OF A
16 SECOND OR SUBSEQUENT KNOWING VIOLATION OF A PROVISION OF 1999
17 PA 244, MCL 445.2051 TO 445.2052, OR A NOTICE OF A JUDGMENT THE
18 DEPARTMENT HAS AGAINST A NONPARTICIPATING MANUFACTURER, THE
19 DEPARTMENT MAY SEIZE OR CONFISCATE FROM ANY PERSON ANY CIGARETTES
20 IN THAT PERSON'S POSSESSION THAT WERE ACQUIRED FROM OR MANUFAC-
21 TURED BY THAT NONPARTICIPATING MANUFACTURER. BEGINNING MAY 1,
22 2003, THE DEPARTMENT MAY SEIZE OR CONFISCATE FROM ANY PERSON ANY
23 CIGARETTES IN THAT PERSON'S POSSESSION THAT WERE ACQUIRED FROM OR
24 MANUFACTURED BY A NONPARTICIPATING MANUFACTURER IF THAT NONPAR-
25 TICIPATING MANUFACTURER HAS NOT PROVIDED THE CERTIFICATION
26 REQUIRED BY THIS SECTION. SEIZURE, CONFISCATION, FORFEITURE, AND

HB 5248, As Passed Senate, July 9, 2002

House Bill No. 5248

5

1 SALE OF CIGARETTES UNDER THIS SECTION SHALL BE ACCOMPLISHED UNDER
2 SECTION 9.

3 (11) THE DEPARTMENT MAY IMPOSE ON ANY PERSON A CIVIL FINE
4 NOT TO EXCEED \$1,000.00 FOR EACH VIOLATION OF THIS SECTION. THE
5 CIVIL FINE IS IN ADDITION TO ALL OTHER FINES OR PENALTIES IMPOSED
6 BY THIS ACT OR 1941 PA 122, MCL 205.1 TO 205.31.

7 (12) AS USED IN THIS SECTION:

8 (A) "CIGARETTE" MEANS THAT TERM AS DEFINED IN 1999 PA 244,
9 MCL 445.2051 TO 445.2052.

10 (B) "NONPARTICIPATING MANUFACTURER" MEANS A MANUFACTURER OF
11 CIGARETTES THAT IS NOT A PARTICIPATING MANUFACTURER AS THAT TERM
12 IS DEFINED IN 1999 PA 244, MCL 445.2051 TO 445.2052.
13 NONPARTICIPATING MANUFACTURER ALSO INCLUDES THE FIRST PURCHASER
14 OF CIGARETTES MANUFACTURED OUTSIDE THE UNITED STATES FOR RESALE
15 IN THE UNITED STATES.

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

18 (a) ~~For~~ THROUGH JULY 31, 2002, FOR cigars, noncigarette
19 smoking tobacco, and smokeless tobacco, 16% of the wholesale
20 price.

21 (b) For cigarettes, 37.5 mills per cigarette.

22 (C) BEGINNING AUGUST 1, 2002, FOR CIGARETTES, IN ADDITION TO
23 THE TAX LEVIED IN SUBDIVISION (B), AN ADDITIONAL 15 MILLS PER
24 CIGARETTE.

25 (D) BEGINNING AUGUST 1, 2002, FOR CIGARETTES, IN ADDITION TO
26 THE TAX LEVIED IN SUBDIVISIONS (B) AND (C), AN ADDITIONAL 10
27 MILLS PER CIGARETTE.

HB 5248, As Passed Senate, July 9, 2002

House Bill No. 5248

6

1 (E) BEGINNING AUGUST 1, 2002, FOR CIGARS, NONCIGARETTE
2 SMOKING TOBACCO, AND SMOKELESS TOBACCO, 20% OF THE WHOLESALE
3 PRICE.

4 (2) On or before the twentieth day of each calendar month,
5 every licensee under section 3 other than a retailer, secondary
6 wholesaler, unclassified acquirer licensed as a manufacturer, or
7 vending machine operator shall file a return with the department
8 stating the wholesale price of each tobacco product other than
9 cigarettes purchased, the quantity of cigarettes purchased, the
10 wholesale price charged for all tobacco products other than ciga-
11 rettes sold, the number of individual packages of cigarettes and
12 the number of cigarettes in those individual packages, and the
13 number and denominations of stamps affixed to individual packages
14 of cigarettes sold by the licensee for each place of business in
15 the preceding calendar month. The return shall also include the
16 number and denomination of unaffixed stamps in the possession of
17 the licensee at the end of the preceding calendar month.
18 Wholesalers shall also report accurate inventories of cigarettes,
19 both stamped and unstamped at the end of the preceding calendar
20 month. Wholesalers and unclassified acquirers shall also report
21 accurate inventories of affixed and unaffixed stamps by denomina-
22 tion at the beginning and end of each calendar month and all
23 stamps acquired during the preceding calendar month. The return
24 shall be signed under penalty of perjury. The return shall be on
25 a form prescribed by the department and shall contain or be
26 accompanied by any further information the department requires.

HB 5248, As Passed Senate, July 9, 2002

House Bill No. 5248

7

1 (3) To cover the cost of expenses incurred in the
2 administration of this act, at the time of the filing of the
3 return, the licensee shall pay to the department the tax levied
4 in subsection (1) for tobacco products sold during the calendar
5 month covered by the return, less compensation equal to both of
6 the following:

7 (a) One percent of the total amount of the tax due on
8 tobacco products sold other than cigarettes.

9 (b) ~~One and one-fourth percent~~ THROUGH JULY 31, 2002,
10 1.25% of the total amount of the tax due on cigarettes sold.

11 (c) BEGINNING AUGUST 1, 2002, 1.5% OF THE TOTAL AMOUNT OF
12 THE TAX DUE ON CIGARETTES SOLD.

13 (4) Every licensee and retailer who, on ~~May 1, 1994~~ AUGUST
14 1, 2002, has on hand for sale any cigarettes ~~acquired after~~
15 ~~February 1, 1994~~ upon which a tax has been paid pursuant to
16 ~~former 1947 PA 265~~ SUBSECTION (1)(B) shall file a complete
17 inventory of those cigarettes before ~~June 1, 1994~~ SEPTEMBER 1,
18 2002 and shall pay to the department at the time of filing this
19 inventory a tax equal to the difference between the tax imposed
20 in subsection ~~(1)~~ (1)(B), (C), AND (D) and the tax that has
21 been paid ~~pursuant to former 1947 PA 265~~ UNDER SUBSECTION
22 (1)(B). EVERY LICENSEE AND RETAILER WHO, ON AUGUST 1, 2002, HAS
23 ON HAND FOR SALE ANY CIGARS, NONCIGARETTE SMOKING TOBACCO, OR
24 SMOKELESS TOBACCO UPON WHICH A TAX HAS BEEN PAID PURSUANT TO SUB-
25 SECTION (1)(A) SHALL FILE A COMPLETE INVENTORY OF THOSE CIGARS,
26 NONCIGARETTE SMOKING TOBACCO, AND SMOKELESS TOBACCO BEFORE
27 SEPTEMBER 1, 2002 AND SHALL PAY TO THE DEPARTMENT AT THE TIME OF

HB 5248, As Passed Senate, July 9, 2002

House Bill No. 5248

8

1 FILING THIS INVENTORY A TAX EQUAL TO THE DIFFERENCE BETWEEN THE
2 TAX IMPOSED IN SUBSECTION (1)(E) AND THE TAX THAT HAS BEEN PAID
3 UNDER SUBSECTION (1)(A).

4 (5) The department may require the payment of the tax
5 imposed by this act upon the importation or acquisition of a
6 tobacco product. A tobacco product for which the tax under this
7 act has once been imposed and that has not been refunded if paid
8 is not subject upon a subsequent sale to the tax imposed by this
9 act.

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

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

17 (8) A wholesaler, unclassified acquirer, or other person
18 shall not sell or transfer any unaffixed stamps acquired by the
19 wholesaler or unclassified acquirer from the department. A
20 wholesaler or unclassified acquirer who has any unaffixed stamps
21 on hand at the time its license is revoked or expires, or at the
22 time it discontinues the business of selling cigarettes, shall
23 return those stamps to the department. The department shall
24 refund the value of the stamps, less the appropriate discount
25 paid.

26 (9) If the wholesaler or unclassified acquirer has unsalable
27 packs returned from a retailer, secondary wholesaler, vending

HB 5248, As Passed Senate, July 9, 2002

House Bill No. 5248

9

1 machine operator, wholesaler, or unclassified acquirer with
2 stamps affixed, the department shall refund the amount of the tax
3 less the appropriate discount paid. If the wholesaler or unclas-
4 sified acquirer has unaffixed unsalable stamps, the department
5 shall exchange with the wholesaler or unclassified acquirer new
6 stamps in the same quantity as the unaffixed unsalable stamps.
7 An application for refund of the tax shall be filed on a form
8 prescribed by the department for that purpose, within 4 years
9 from the date the stamps were originally acquired from the
10 department. A wholesaler or unclassified acquirer shall make
11 available for inspection by the department the unused or spoiled
12 stamps and the stamps affixed to unsalable individual packages of
13 cigarettes. The department may, at its own discretion, witness
14 and certify the destruction of the unused or spoiled stamps and
15 unsalable individual packages of cigarettes that are not return-
16 able to the manufacturer. The wholesaler or unclassified
17 acquirer shall provide certification from the manufacturer for
18 any unsalable individual packages of cigarettes that are returned
19 to the manufacturer.

20 (10) On or before the twentieth of each month, each manufac-
21 turer shall file a report with the department listing all sales
22 of tobacco products to wholesalers and unclassified acquirers
23 during the preceding calendar month and any other information the
24 department finds necessary for the administration of this act.
25 This report shall be in the form and manner specified by the
26 department.

HB 5248, As Passed Senate, July 9, 2002

House Bill No. 5248

10

1 (11) Each wholesaler or unclassified acquirer shall submit
2 to the department an unstamped cigarette sales report on or
3 before the twentieth day of each month covering the sale, deliv-
4 ery, or distribution of unstamped cigarettes during the preceding
5 calendar month to points outside of Michigan. A separate sched-
6 ule shall be filed for each state, country, or province into
7 which shipments are made. For purposes of the report described
8 in this subsection, "unstamped cigarettes" means individual pack-
9 ages of cigarettes that do not bear a Michigan stamp. The
10 department may provide the information contained in this report
11 to a proper officer of another state, country, or province recip-
12 rocating in this privilege.

13 Sec. 12. (1) The proceeds derived from the payment of
14 taxes, fees, and penalties provided for under this act and the
15 license fees received by the department shall be deposited with
16 the state treasurer and disbursed only as provided in this
17 section.

18 (2) The tax imposed under section 7(1)(a) shall be disbursed
19 as follows:

20 (a) 94% of the proceeds shall be credited to the state
21 school aid fund established by section 11 of article IX of the
22 state constitution of 1963.

23 (b) 6% of the proceeds shall be credited to the healthy
24 Michigan fund created under section 5953 of the public health
25 code, 1978 PA 368, MCL 333.5953.

26 (3) The tax imposed on cigarettes ~~pursuant to~~ UNDER
27 section 7(1)(b) shall be disbursed as follows:

HB 5248, As Passed Senate, July 9, 2002

House Bill No. 5248

11

1 (a) Beginning May 1, 1994, 5.3% of the proceeds shall be
2 credited to the health and safety fund created in the health and
3 safety fund act, 1987 PA 264, MCL 141.471 to 141.479.

4 (b) 25.3% of the proceeds shall be credited to the general
5 fund of this state.

6 (c) 63.4% of the proceeds shall be credited to the state
7 school aid fund established by section 11 of article IX of the
8 state constitution of 1963.

9 (d) 6% of the proceeds shall be credited to the healthy
10 Michigan fund created under section 5953 of the public health
11 code, 1978 PA 368, MCL 333.5953.

12 (4) BEGINNING AUGUST 1, 2002, THE TAX IMPOSED ON CIGARETTES
13 UNDER SECTION 7(1)(C) SHALL BE DISBURSED AS FOLLOWS:

14 (A) 74.2% OF THE PROCEEDS SHALL BE CREDITED TO THE GENERAL
15 FUND OF THIS STATE. HOWEVER, BEGINNING OCTOBER 1, 2004 AND
16 THROUGH SEPTEMBER 30, 2007, THE PROCEEDS DESCRIBED IN THIS SUBDI-
17 VISION SHALL BE CREDITED TO THE COUNTERCYCLICAL BUDGET AND ECO-
18 NOMIC STABILIZATION FUND CREATED UNDER SECTION 351 OF THE MANAGE-
19 MENT AND BUDGET ACT, 1984 PA 431, MCL 18.1351.

20 (B) 4.6% OF THE PROCEEDS SHALL BE CREDITED TO THE STATE
21 SCHOOL AID FUND ESTABLISHED BY SECTION 11 OF ARTICLE IX OF THE
22 STATE CONSTITUTION OF 1963.

23 (C) 6.0% OF THE PROCEEDS SHALL BE CREDITED TO THE HEALTHY
24 MICHIGAN FUND CREATED UNDER SECTION 5953 OF THE PUBLIC HEALTH
25 CODE, 1978 PA 368, MCL 333.5953.

HB 5248, As Passed Senate, July 9, 2002

House Bill No. 5248

12

1 (D) 3.0% OF THE PROCEEDS SHALL BE PAID TO COUNTIES WITH A
2 2000 POPULATION OF MORE THAN 2,000,000, TO BE USED ONLY FOR
3 INDIGENT HEALTH CARE.

4 (E) 12.2% OF THE PROCEEDS SHALL BE CREDITED TO THE MEDICAID
5 BENEFITS TRUST FUND CREATED UNDER SECTION 5 OF THE MICHIGAN TRUST
6 FUND ACT, 2000 PA 489, MCL 12.255.

7 (5) BEGINNING AUGUST 1, 2002, THE TAX IMPOSED UNDER SECTION
8 7(1)(E) SHALL BE DISBURSED AS FOLLOWS:

9 (A) 75.6% OF THE PROCEEDS SHALL BE CREDITED TO THE STATE
10 SCHOOL AID FUND ESTABLISHED BY SECTION 11 OF ARTICLE IX OF THE
11 STATE CONSTITUTION OF 1963.

12 (B) 6.0% OF THE PROCEEDS SHALL BE CREDITED TO THE HEALTHY
13 MICHIGAN FUND CREATED UNDER SECTION 5953 OF THE PUBLIC HEALTH
14 CODE, 1978 PA 368, MCL 333.5953.

15 (C) 18.4% OF THE PROCEEDS SHALL BE CREDITED TO THE GENERAL
16 FUND OF THIS STATE. HOWEVER, BEGINNING OCTOBER 1, 2004 AND
17 THROUGH SEPTEMBER 30, 2007, THE PROCEEDS DESCRIBED IN THIS SUBDI-
18 VISION SHALL BE CREDITED TO THE COUNTERCYCLICAL BUDGET AND ECO-
19 NOMIC STABILIZATION FUND CREATED UNDER SECTION 351 OF THE MANAGE-
20 MENT AND BUDGET ACT, 1984 PA 431, MCL 18.1351.

21 (6) BEGINNING AUGUST 1, 2002, THE TAX IMPOSED ON CIGARETTES
22 UNDER SECTION 7(1)(D) SHALL BE DISBURSED AS FOLLOWS:

23 (A) 94.0% OF THE PROCEEDS SHALL BE CREDITED TO THE STATE
24 SCHOOL AID FUND ESTABLISHED BY SECTION 11 OF ARTICLE IX OF THE
25 STATE CONSTITUTION OF 1963.

HB 5248, As Passed Senate, July 9, 2002

House Bill No. 5248

13

1 (B) 6.0% OF THE PROCEEDS SHALL BE CREDITED TO THE HEALTHY
2 MICHIGAN FUND CREATED UNDER SECTION 5953 OF THE PUBLIC HEALTH
3 CODE, 1978 PA 368, MCL 333.5953.

4 (7) ~~—(4)—~~ The proceeds of the fees and penalties provided
5 for in this act shall be used for the administration of this
6 act.