

SENATE BILL No. 260

March 6, 2003, Introduced by Senators LELAND, SCHAUER, BERNERO, EMERSON, CHERRY, JACOBS, CLARK-COLEMAN, THOMAS, PATTERSON, CASSIS, GARCIA, TOY, GOSCHKA, CLARKE, OLSHOVE and BRATER and referred to the Committee on Judiciary.

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending section 9 (MCL 205.429), as amended by 1997 PA 187.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. (1) A tobacco product held, owned, possessed,
2 transported, or in control of a person in violation of this act,
3 ~~and~~ a vending machine, vehicle, ~~and~~ or other tangible
4 personal property containing a tobacco product in violation of
5 this act, and any related books and records are contraband and
6 may be seized and confiscated by the department as provided in
7 this section.

8 (2) If an authorized inspector of the department or a police
9 officer has reasonable cause to believe and does believe that a
10 tobacco product is being acquired, possessed, transported, kept,
11 sold, or offered for sale in violation of this act for which the

1 penalty is a felony, the inspector or police officer may
2 investigate or search the vehicle ~~of transportation~~ in which
3 the tobacco product is believed to be located. If a tobacco
4 product is found in a vehicle searched under this subsection or
5 in a place of business inspected under this act, the tobacco
6 product, vending machine, vehicle, or other tangible personal
7 property containing those tobacco products and any books and
8 records in possession of the person in control or possession of
9 the tobacco product may be seized by the inspector or police
10 officer and are subject to forfeiture as contraband as provided
11 in this section.

12 (3) As soon as possible, but not more than 5 business days
13 after seizure of any alleged contraband, the person making the
14 seizure shall deliver personally or by registered mail to the
15 last known address of the person from whom the seizure was made,
16 if known, an inventory statement of the property seized. A copy
17 of the inventory statement shall also be filed with the
18 commissioner. The inventory statement shall also contain a
19 notice ~~to the effect~~ that unless demand for hearing as provided
20 in this section is made within 10 business days, the designated
21 property is forfeited to the state. If the person from whom the
22 seizure was made is not known, the person making the seizure
23 shall ~~cause~~ **have** a copy of the inventory statement ~~together~~
24 ~~with~~ **and** the notice ~~provided for in~~ **required by** this
25 subsection ~~to be~~ published at least 3 times in a newspaper of
26 general circulation in the county where the seizure was made.
27 Within 10 business days after the date of service of the

1 inventory statement ~~—, or, —in the case of publication—~~ **if the**
2 **notice is published**, within 10 business days after the date of
3 last publication, the person from whom the property was seized or
4 any person claiming an interest in the property may, by
5 registered mail, facsimile transmission, or personal service,
6 file with the commissioner a demand for a hearing before the
7 commissioner or a person designated by the commissioner for a
8 determination ~~as to~~ whether the property was lawfully subject
9 to seizure and forfeiture. The person **demanding a hearing** shall
10 verify a request for hearing filed by facsimile transmission by
11 also providing a copy of the original request for hearing by
12 registered mail or personal service. ~~The person or persons are~~
13 **A person who demands a hearing is** entitled to appear before the
14 department, to be represented by counsel, and to present
15 testimony and argument. ~~Upon receipt of a request for hearing,~~
16 ~~the~~ **The** department shall hold the hearing within 15 business
17 days **after receiving the request for the hearing**. The hearing is
18 not a contested case proceeding and is not subject to the
19 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
20 24.328. ~~After the hearing, the~~ **The** department shall render its
21 decision in writing within 10 business days ~~of~~ **after** the
22 hearing and, by order, shall either declare the seized property
23 subject to seizure and forfeiture, or declare the property
24 returnable in whole or in part to the person entitled to
25 possession. If, within 10 business days after the date of
26 service of the inventory statement, the person from whom the
27 property was seized or any person claiming an interest in the

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

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

1 lawfulness of the seizure and forfeiture is finally adjudicated.

2 **(5) Section 2974 of the revised judicature act of 1961, 1961**
 3 **PA 236, MCL 600.2974, applies to a motor vehicle that has been**
 4 **seized under this act but not finally forfeited.**

5 **(6) —(5)—** The department may sell a tobacco product or 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 department may pay an amount not to exceed
 9 25% of the proceeds of the sale to the local governmental unit
 10 whose law enforcement agency performed the seizure. The balance
 11 of the proceeds derived from the sale by the department shall be
 12 credited to the general fund of the state.

13 **(7) —(6)—** The seizure and sale of a tobacco product or other
 14 property under this section does not relieve a person from a
 15 fine, imprisonment, or other penalty for violation of this act.

16 **(8) —(7)—** A person who is not an employee or officer of this
 17 state or a political subdivision of this state who furnishes to
 18 the department or to ~~any~~ a law enforcement agency original
 19 information concerning a violation of this act ~~—, which~~
 20 ~~information~~ **that** results in the collection and recovery of ~~any~~
 21 a tax or penalty or leads to the forfeiture of ~~any~~ cigarettes
 22 ~~—, or other property —,~~ may be awarded and paid by the state
 23 treasurer upon the certification of the commissioner ~~—,~~
 24 compensation of not more than 10% of the net amount received from
 25 the sale of any forfeited cigarettes or other property, but not
 26 to exceed \$5,000.00, which shall be paid out of the receipts from
 27 the sale of the property. If ~~any amount is issued~~ **money is**

1 **paid** to the local governmental unit under subsection ~~-(5)-~~ **(6)**,
 2 the amount awarded under this subsection ~~to a person who~~
 3 ~~provides original information that results in a seizure of~~
 4 ~~cigarettes or other property by a local law enforcement agency~~
 5 shall be paid from that ~~amount issued under subsection (5)~~
 6 **money**. If in the opinion of the attorney general, the
 7 commissioner, and the director of the department of state police
 8 it is ~~deemed~~ necessary to preserve the identity of the person
 9 furnishing the information, the attorney general, the
 10 commissioner, and the director of the department of state police
 11 shall file with the state treasurer an affidavit ~~setting forth~~
 12 **stating** that necessity and a warrant may be issued jointly to the
 13 attorney general, the commissioner, and the director of the
 14 department of state police. Upon payment to ~~the~~ **a person**
 15 ~~furnishing that information~~ **entitled to payment under this**
 16 **subsection**, the attorney general, the commissioner, and the
 17 director of the department of state police shall file with the
 18 state treasurer an affidavit that **they have paid** the money ~~has~~
 19 ~~been by them paid~~ to the person. ~~entitled to the money under~~
 20 ~~this section.~~

21 **(9)** ~~-(8)-~~ Beginning September 1, 1998, if a retailer
 22 possesses or sells cigarettes on which the tax imposed under this
 23 act has not been paid or accrued to a wholesaler, secondary
 24 wholesaler, or unclassified acquirer licensed under this act, the
 25 retailer shall be prohibited from purchasing, possessing, or
 26 selling any cigarettes or other tobacco products as follows:

27 (a) For a first violation, for a period of not more than 6

1 months.

2 (b) For a second violation within a period of 5 years, for a
3 period of at least 6 months and not more than 36 months.

4 (c) For a third or subsequent violation within a period of 5
5 years, for a period of at least 1 year and not more than 5
6 years.

7 **(10)** ~~-(9)-~~ The prohibition described in subsection ~~-(8)-~~ shall
8 ~~be~~ **(9) is** effective upon service by certified mail or personal
9 service on the retailer of notice issued by the department
10 ordering the retailer to cease all sales and purchases of
11 cigarettes and other tobacco products. Upon receipt of this
12 notice, the retailer may return any tobacco products in the
13 possession of the retailer upon which the tax imposed by this act
14 has been paid or accrued to a wholesaler, secondary wholesaler,
15 or unclassified acquirer licensed under this act. The department
16 shall notify all licensed wholesalers, manufacturers, secondary
17 wholesalers, vending machine operators, and unclassified
18 acquirers ~~of any retailer who~~ **that the retailer** has been
19 prohibited from purchasing cigarettes or other tobacco products
20 and the duration of the prohibition. A wholesaler, secondary
21 wholesaler, or unclassified acquirer shall not sell cigarettes or
22 other tobacco products to a retailer after receipt of notice from
23 the department that the retailer is prohibited from purchasing
24 tobacco products. Any cigarettes or other tobacco products found
25 on the premises of the retailer during the period of prohibition
26 ~~shall be considered~~ **are** contraband and subject to seizure under
27 this section, and ~~shall constitute an additional improper~~

1 ~~possession under this subsection~~ **their possession constitutes an**
2 **additional violation of subsection (9).** The retailer may contest
3 the order prohibiting purchase, possession, or sale of tobacco
4 products in accordance with the appeal procedures and time limits
5 provided in subsection (3). ~~of this section.~~ After completion
6 of ~~the appeals provided~~ **an appeal** or upon expiration of the
7 period to request ~~such~~ **an** appeal, the department shall issue a
8 final order and ~~make service upon~~ **serve on** the retailer ~~of~~ an
9 order to cease all purchases, possession, and sale of all
10 cigarettes and other tobacco products for a specified period as
11 appropriate. This order does not relieve the retailer from
12 seizure and sale of a tobacco product or other property under
13 this section, or ~~relieve the retailer~~ from a fine,
14 imprisonment, or other penalty for violation of this act.

15 Enacting section 1. This amendatory act does not take
16 effect unless Senate Bill No. 259
17 of the 92nd Legislature is enacted into
18 law.