

SUBSTITUTE FOR  
HOUSE BILL NO. 5111

A bill to amend 1993 PA 327, entitled  
"Tobacco products tax act,"  
by amending section 9 (MCL 205.429), as amended by 2004 PA 474.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 9. (1) A tobacco product **THAT IS** held, owned, possessed,  
2 transported, or in control of a person in violation of this act **OR**  
3 **THAT IS NOT MARKED AS REQUIRED IN SECTION 11 OF THE FIRE SAFETY**  
4 **STANDARD AND FIREFIGHTER PROTECTION ACT**, and a vending machine,  
5 vehicle, and other tangible personal property containing a tobacco  
6 product in violation of this act **OR THAT IS NOT MARKED AS REQUIRED**  
7 **IN SECTION 11 OF THE FIRE SAFETY STANDARD AND FIREFIGHTER**  
8 **PROTECTION ACT** and any related books and records are contraband and  
9 may be seized and confiscated by the department as provided in this  
10 section.

1           (2) If an authorized inspector of the department or a police  
2 officer has reasonable cause to believe and does believe that a  
3 tobacco product is being acquired, possessed, transported, kept,  
4 sold, or offered for sale in violation of this act for which the  
5 penalty is a felony, the inspector or police officer may  
6 investigate or search the vehicle of transportation in which the  
7 tobacco product is believed to be located. If a tobacco product is  
8 found in a vehicle searched under this subsection or in a place of  
9 business inspected under this act, the tobacco product, vending  
10 machine, vehicle, other than a vehicle owned or operated by a  
11 transportation company otherwise transporting tobacco products in  
12 compliance with this act, or other tangible personal property  
13 containing those tobacco products and any books and records in  
14 possession of the person in control or possession of the tobacco  
15 product may be seized by the inspector or police officer and are  
16 subject to forfeiture as contraband as provided in this section.

17           (3) As soon as possible, but not more than 5 business days  
18 after seizure of any alleged contraband, the person making the  
19 seizure shall deliver personally or by registered mail to the last  
20 known address of the person from whom the seizure was made, if  
21 known, an inventory statement of the property seized. **IF THE**  
22 **CONTRABAND IS CIGARETTES SEIZED BECAUSE OF AN ALLEGATION THAT THE**  
23 **CIGARETTES ARE NOT MARKED AS REQUIRED IN SECTION 11 OF THE FIRE**  
24 **SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT, THE PERSON MAKING**  
25 **THE SEIZURE SHALL ALSO PROVIDE NOTICE OF THE SEIZURE AND AN**  
26 **INVENTORY OF THE CIGARETTES SEIZED TO THE MANUFACTURER THAT**  
27 **CERTIFIED THAT BRAND OF CIGARETTES UNDER SECTION 7 OF THE FIRE**

1 **SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT, IF ANY.** A copy of  
2 the inventory statement shall also be filed with the state  
3 treasurer. The inventory statement shall also contain a notice to  
4 the effect that unless demand for hearing as provided in this  
5 section is made within 10 business days, the designated property is  
6 forfeited to the state. If the person from whom the seizure was  
7 made is not known, the person making the seizure shall cause a copy  
8 of the inventory statement, together with the notice provided for  
9 in this subsection, to be published at least 3 times in a newspaper  
10 of general circulation in the county where the seizure was made.  
11 Within 10 business days after the date of service of the inventory  
12 statement, or in the case of publication, within 10 business days  
13 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 by registered mail, facsimile transmission, or  
16 personal service file with the state treasurer a demand for a  
17 hearing before the state treasurer or a person designated by the  
18 state treasurer for a determination as to whether the property was  
19 lawfully subject to seizure and forfeiture. The person shall verify  
20 a request for hearing filed by facsimile transmission by also  
21 providing a copy of the original request for hearing by registered  
22 mail or personal service. The person or persons are entitled to  
23 appear before the department, to be represented by counsel, and to  
24 present testimony and argument. Upon receipt of a request for  
25 hearing, the department shall hold the hearing within 15 business  
26 days. The hearing is not a contested case proceeding and is not  
27 subject to the administrative procedures act of 1969, 1969 PA 306,

1 MCL 24.201 to 24.328. After the hearing, the department shall  
2 render its decision in writing within 10 business days of the  
3 hearing and, by order, shall either declare the seized property  
4 subject to seizure and forfeiture, or declare the property  
5 returnable in whole or in part to the person entitled to  
6 possession. If, within 10 business days after the date of service  
7 of the inventory statement, the person from whom the property was  
8 seized or any person claiming an interest in the property does not  
9 file with the state treasurer a demand for a hearing before the  
10 department, the property seized shall be considered forfeited to  
11 the state by operation of law and may be disposed of by the  
12 department as provided in this section. If, after a hearing before  
13 the state treasurer or person designated by the state treasurer,  
14 the department determines that the property is lawfully subject to  
15 seizure and forfeiture and the person from whom the property was  
16 seized or any persons claiming an interest in the property do not  
17 take an appeal to the circuit court of the county in which the  
18 seizure was made within the time prescribed in this section, the  
19 property seized shall be considered forfeited to the state by  
20 operation of law and may be disposed of by the department as  
21 provided in this section.

22 (4) If a person is aggrieved by the decision of the  
23 department, that person may appeal to the circuit court of the  
24 county where the seizure was made to obtain a judicial  
25 determination of the lawfulness of the seizure and forfeiture. The  
26 action shall be commenced within 20 days after notice of the  
27 department's determination is sent to the person or persons

1 claiming an interest in the seized property. The court shall hear  
2 the action and determine the issues of fact and law involved in  
3 accordance with rules of practice and procedure as in other in rem  
4 proceedings. If a judicial determination of the lawfulness of the  
5 seizure and forfeiture cannot be made before deterioration of any  
6 of the property seized, the court shall order the destruction or  
7 sale of the property with public notice as determined by the court  
8 and require the proceeds to be deposited with the court until the  
9 lawfulness of the seizure and forfeiture is finally adjudicated.

10 (5) The department shall destroy all cigarettes forfeited to  
11 this state. **HOWEVER, BEFORE DESTROYING CIGARETTES FORFEITED BECAUSE**  
12 **THE CIGARETTES WERE NOT MARKED AS REQUIRED IN SECTION 11 OF THE**  
13 **FIRE SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT, THE DEPARTMENT**  
14 **SHALL PROVIDE A MANUFACTURER THAT CERTIFIED THAT BRAND OF**  
15 **CIGARETTES UNDER SECTION 7 OF THE FIRE SAFETY STANDARD AND**  
16 **FIREFIGHTER PROTECTION ACT AN OPPORTUNITY TO INSPECT THE**  
17 **CIGARETTES.**

18 (6) The department may sell all tobacco products, except  
19 cigarettes, and other property forfeited pursuant to this section  
20 at public sale. Public notice of the sale shall be given at least 5  
21 days before the day of sale. The department may pay an amount not  
22 to exceed 25% of the proceeds of the sale to the local governmental  
23 unit whose law enforcement agency performed the seizure. The  
24 balance of the proceeds derived from the sale by the department  
25 shall be credited to the general fund of the state.

26 (7) ~~(6)~~—The seizure and destruction or sale of a tobacco  
27 product or other property under this section does not relieve a

1 person from a fine, imprisonment, or other penalty for violation of  
2 this act **OR THE FIRE SAFETY STANDARD AND FIREFIGHTER PROTECTION**  
3 **ACT**.

4 (8) ~~(7)~~—A person who is not an employee or officer of this  
5 state or a political subdivision of this state who furnishes to the  
6 department or to any law enforcement agency original information  
7 concerning a violation of this act **OR THE FIRE SAFETY STANDARD AND**  
8 **FIREFIGHTER PROTECTION ACT**, which information results in the  
9 collection and recovery of any tax or penalty or leads to the  
10 forfeiture of any cigarettes, or other property, may be awarded and  
11 paid by the state treasurer, compensation of not more than 10% of  
12 the net amount received from the sale of any forfeited cigarettes  
13 or other property, but not to exceed \$5,000.00 which shall be paid  
14 out of the receipts from the sale of the property. If any amount is  
15 ~~issued~~**PAID** to the local governmental unit under subsection ~~(5)~~  
16 (6), the amount awarded under this subsection to a person who  
17 provides original information that results in a seizure of  
18 cigarettes or other property by a local law enforcement agency  
19 shall be paid from that amount ~~issued~~**PAID** under subsection ~~(5)~~  
20 (6). If in the opinion of the attorney general and the director of  
21 the department of state police it is deemed necessary to preserve  
22 the identity of the person furnishing the information, the attorney  
23 general and the director of the department of state police shall  
24 file with the state treasurer an affidavit setting forth that  
25 necessity and a warrant may be issued jointly to the attorney  
26 general and the director of the department of state police. Upon  
27 payment to the person furnishing that information, the attorney

1 general and the director of the department of state police shall  
2 file with the state treasurer an affidavit that the money has been  
3 by them paid to the person entitled to the money under this  
4 section.

5 (9) ~~(8)~~—Beginning September 1, 1998, if a retailer possesses  
6 or sells cigarettes on which the tax imposed under this act has not  
7 been paid or accrued to a wholesaler, secondary wholesaler, or  
8 unclassified acquirer licensed under this act, the retailer shall  
9 be prohibited from purchasing, possessing, or selling any  
10 cigarettes or other tobacco products as follows:

11 (a) For a first violation, for a period of not more than 6  
12 months.

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

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

17 (10) ~~(9)~~—The prohibition described in subsection ~~(8)~~ shall be  
18 (9) IS effective upon service by certified mail or personal service  
19 on the retailer of notice issued by the department ordering the  
20 retailer to cease all sales and purchases of cigarettes and other  
21 tobacco products. Upon receipt of this notice, the retailer may  
22 return any tobacco products in the possession of the retailer upon  
23 which the tax imposed by this act has been paid or accrued to a  
24 wholesaler, secondary wholesaler, or unclassified acquirer licensed  
25 under this act. The department shall notify all licensed  
26 wholesalers, manufacturers, secondary wholesalers, vending machine  
27 operators, and unclassified acquirers of any retailer who has been

1 prohibited from purchasing cigarettes or other tobacco products and  
2 the duration of the prohibition. A wholesaler, secondary  
3 wholesaler, or unclassified acquirer shall not sell cigarettes or  
4 other tobacco products to a retailer after receipt of notice from  
5 the department that the retailer is prohibited from purchasing  
6 tobacco products. Any cigarettes or other tobacco products found on  
7 the premises of the retailer during the period of prohibition shall  
8 be considered contraband and subject to seizure under this section,  
9 and shall constitute an additional improper possession under this  
10 subsection. The retailer may contest the order prohibiting  
11 purchase, possession, or sale of tobacco products in accordance  
12 with the appeal procedures and time limits provided in subsection  
13 (3) of this section. After completion of the appeals provided or  
14 upon expiration of the period to request such appeal, the  
15 department shall issue a final order and make service upon the  
16 retailer of an order to cease all purchases, possession, and sale  
17 of all cigarettes and other tobacco products for a specified period  
18 as appropriate. This order does not relieve the retailer from  
19 seizure and sale of a tobacco product or other property under this  
20 section, or relieve the retailer from a fine, imprisonment, or  
21 other penalty for violation of this act.

22 Enacting section 1. This amendatory act takes effect 540 days  
23 after the date it is enacted into law.

24 Enacting section 2. This amendatory act does not take effect  
25 unless House Bill No. 5110 of the 94th Legislature is enacted into  
26 law.