

HOUSE BILL No. 5111

August 21, 2007, Introduced by Reps. Sak, Scott, Johnson, Marleau, Wojno, Bieda, Ward, Virgil Smith, Tobocman, Farrah, Gaffney and Dean and referred to the Committee on Regulatory Reform.

A bill to amend 1993 PA 327, entitled "Tobacco products tax act," by amending sections 6a and 9 (MCL 205.426a and 205.429), section 6a as added by 1997 PA 187 and section 9 as amended by 2004 PA 474.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 6a. (1) Beginning April 15, 1998, a wholesaler or
2 unclassified acquirer other than a manufacturer may apply to the
3 department for stamps to affix as provided in this act. The
4 department may prescribe the method of shipment of the stamps. The
5 department shall keep a record of all stamps disbursed, name of
6 wholesaler or unclassified acquirer, and date of disbursement. The
7 department may release the identity of the wholesaler or
8 unclassified acquirer to whom specific stamps were disbursed to

1 state or local police agencies.

2 (2) Beginning May 1, 1998, before delivery, sale, or transfer
3 to any person in this state, a wholesaler or an unclassified
4 acquirer shall place or cause to be placed on the bottom of each
5 individual package of cigarettes to be sold within this state a
6 stamp provided by the department. Stamps shall be firmly affixed in
7 such a manner that the stamps cannot be removed without being
8 mutilated or destroyed. A stamp shall be affixed to each individual
9 package in an aggregate denomination equal to the amount of the tax
10 upon the contents of the individual package of cigarettes. A stamp
11 is considered affixed if more than 50% of the stamp is affixed to
12 the individual package, as determined by the department.

13 (3) Beginning May 1, 1998, a retailer or person licensed under
14 this act, other than a wholesaler or unclassified acquirer or a
15 person acting as a transporter for a wholesaler or unclassified
16 acquirer, shall not acquire for resale an individual package of
17 cigarettes or a cigarette from an individual package unless that
18 individual package of cigarettes has affixed to it a stamp as
19 provided in this act.

20 (4) Beginning September 1, 1998, a retailer or vending machine
21 operator shall not sell or offer for sale an individual package of
22 cigarettes to the general public that does not have affixed the
23 stamp required by this act. Beginning September 1, 1998, cigarettes
24 without stamps may not be placed or stored in a vending machine.

25 (5) ~~The~~ **FOR PURPOSES OF THIS ACT AND THE FIRE SAFETY STANDARD**
26 **AND FIREFIGHTER PROTECTION ACT, THE** department or its authorized
27 agents may inspect or conduct an inventory of a wholesaler's or

1 unclassified acquirer's stock of cigarettes, tobacco products other
2 than cigarettes, and stamps during regular business hours and
3 inspect the related statements and other records required in
4 section 6.

5 (6) ~~The~~ **FOR PURPOSES OF THIS ACT AND THE FIRE SAFETY STANDARD**
6 **AND FIREFIGHTER PROTECTION ACT, THE** department or its authorized
7 agents may inspect the operations of a secondary wholesaler,
8 vending machine operator, or retailer, or the contents of a
9 specific vending machine, during regular business hours. This
10 inspection shall include inspection of all statements and other
11 records required by section 6 of this act, of packages of
12 cigarettes and tobacco products other than cigarettes, and of the
13 contents of cartons and shipping or storage containers to ascertain
14 that all individual packages of cigarettes have an affixed stamp of
15 proper denomination as required by this act **AND THAT ALL CIGARETTES**
16 **ARE MARKED AS REQUIRED UNDER SECTION 11 OF THE FIRE SAFETY STANDARD**
17 **AND FIREFIGHTER PROTECTION ACT.** This inspection may also verify
18 that all the stamps were produced under the authority of the
19 department. **THE DEPARTMENT SHALL NOTIFY THE DEPARTMENT OF LABOR AND**
20 **ECONOMIC GROWTH IF IT FINDS ANY CIGARETTES THAT ARE NOT MARKED AS**
21 **REQUIRED UNDER SECTION 11 OF THE FIRE SAFETY STANDARD AND**
22 **FIREFIGHTER PROTECTION ACT.**

23 (7) A person shall not prevent or hinder the department or its
24 authorized agents from making a full inspection of any place or
25 vending machine where cigarettes or tobacco products other than
26 cigarettes subject to the tax under this act are sold or stored, or
27 prevent or hinder the full inspection of invoices, books, records,

1 or other papers required to be kept ~~by~~ **UNDER** this act **OR THE FIRE**
2 **SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT.**

3 (8) The department may require wholesalers and unclassified
4 acquirers to exchange unaffixed stamps with the department as the
5 department considers necessary. The department may require
6 wholesalers, unclassified acquirers, secondary wholesalers, vending
7 machine operators and retailers to discontinue offering for sale
8 any unsold individual packages of cigarettes bearing a prior
9 version of the stamp that the department has withdrawn from
10 circulation. The department may set a reasonable timeline after
11 which the prior version of the stamp may no longer be offered for
12 sale and the new version of the stamp is required. A secondary
13 wholesaler, retailer, or vending machine operator may return
14 cigarette packages bearing discontinued stamps to a wholesaler for
15 credit. A wholesaler or unclassified acquirer may take credit on
16 its tax returns for individual packages of cigarettes bearing
17 discontinued stamps that are returned to the manufacturer for
18 credit less the appropriate discount paid.

19 (9) Except as provided in subsection (10), a wholesaler or
20 unclassified acquirer shall not give, sell, or lend any unaffixed
21 stamps to another person and except as otherwise provided in this
22 act, a person shall not accept, purchase, or borrow any unaffixed
23 stamps from another person.

24 (10) Upon written authorization of the department, a
25 wholesaler or unclassified acquirer licensed under this act may
26 appoint a stamping agent to affix stamps to individual packages of
27 cigarettes.

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

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

25 (3) As soon as possible, but not more than 5 business days
26 after seizure of any alleged contraband, the person making the
27 seizure shall deliver personally or by registered mail to the last

1 known address of the person from whom the seizure was made, if
2 known, an inventory statement of the property seized. **IF THE**
3 **CONTRABAND IS CIGARETTES SEIZED BECAUSE OF AN ALLEGATION THAT THE**
4 **CIGARETTES VIOLATE THE FIRE SAFETY STANDARD AND FIREFIGHTER**
5 **PROTECTION ACT, THE PERSON MAKING THE SEIZURE SHALL ALSO PROVIDE**
6 **NOTICE OF THE SEIZURE AND AN INVENTORY OF THE CIGARETTES SEIZED TO**
7 **THE MANUFACTURER THAT CERTIFIED THAT BRAND OF CIGARETTES UNDER**
8 **SECTION 7 OF THE FIRE SAFETY STANDARD AND FIREFIGHTER PROTECTION**
9 **ACT, IF ANY.** A copy of the inventory statement shall also be filed
10 with the state treasurer. The inventory statement shall also
11 contain a notice to the effect that unless demand for hearing as
12 provided in this section is made within 10 business days, the
13 designated property is forfeited to the state. If the person from
14 whom the seizure was made is not known, the person making the
15 seizure shall cause a copy of the inventory statement, together
16 with the notice provided for in this subsection, to be published at
17 least 3 times in a newspaper of general circulation in the county
18 where the seizure was made. Within 10 business days after the date
19 of service of the inventory statement, or in the case of
20 publication, within 10 business days after the date of last
21 publication, the person from whom the property was seized or any
22 person claiming an interest in the property may by registered mail,
23 facsimile transmission, or personal service file with the state
24 treasurer a demand for a hearing before the state treasurer or a
25 person designated by the state treasurer for a determination as to
26 whether the property was lawfully subject to seizure and
27 forfeiture. The person shall verify a request for hearing filed by

1 facsimile transmission by also providing a copy of the original
2 request for hearing by registered mail or personal service. The
3 person or persons are entitled to appear before the department, to
4 be represented by counsel, and to present testimony and argument.
5 Upon receipt of a request for hearing, the department shall hold
6 the hearing within 15 business days. The hearing is not a contested
7 case proceeding and is not subject to the administrative procedures
8 act of 1969, 1969 PA 306, MCL 24.201 to 24.328. After the hearing,
9 the department shall render its decision in writing within 10
10 business days of the hearing and, by order, shall either declare
11 the seized property subject to seizure and forfeiture, or declare
12 the property returnable in whole or in part to the person entitled
13 to possession. If, within 10 business days after the date of
14 service of the inventory statement, the person from whom the
15 property was seized or any person claiming an interest in the
16 property does not file with the state treasurer a demand for a
17 hearing before the department, the property seized shall be
18 considered forfeited to the state by operation of law and may be
19 disposed of by the department as provided in this section. If,
20 after a hearing before the state treasurer or person designated by
21 the state treasurer, the department determines that the property is
22 lawfully subject to seizure and forfeiture and the person from whom
23 the property was seized or any persons claiming an interest in the
24 property do not take an appeal to the circuit court of the county
25 in which the seizure was made within the time prescribed in this
26 section, the property seized shall be considered forfeited to the
27 state by operation of law and may be disposed of by the department

1 as provided in this section.

2 (4) If a person is aggrieved by the decision of the
3 department, that person may appeal to the circuit court of the
4 county where the seizure was made to obtain a judicial
5 determination of the lawfulness of the seizure and forfeiture. The
6 action shall be commenced within 20 days after notice of the
7 department's determination is sent to the person or persons
8 claiming an interest in the seized property. The court shall hear
9 the action and determine the issues of fact and law involved in
10 accordance with rules of practice and procedure as in other in rem
11 proceedings. If a judicial determination of the lawfulness of the
12 seizure and forfeiture cannot be made before deterioration of any
13 of the property seized, the court shall order the destruction or
14 sale of the property with public notice as determined by the court
15 and require the proceeds to be deposited with the court until the
16 lawfulness of the seizure and forfeiture is finally adjudicated.

17 (5) The department shall destroy all cigarettes forfeited to
18 this state. **HOWEVER, BEFORE DESTROYING CIGARETTES FORFEITED BECAUSE**
19 **THE CIGARETTES VIOLATED THE FIRE SAFETY STANDARD AND FIREFIGHTER**
20 **PROTECTION ACT, THE DEPARTMENT SHALL PROVIDE A MANUFACTURER THAT**
21 **CERTIFIED THAT BRAND OF CIGARETTES UNDER SECTION 7 OF THE FIRE**
22 **SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT AN OPPORTUNITY TO**
23 **INSPECT THE CIGARETTES.**

24 (6) The department may sell all tobacco products, except
25 cigarettes, and other property forfeited pursuant to this section
26 at public sale. Public notice of the sale shall be given at least 5
27 days before the day of sale. The department may pay an amount not

1 to exceed 25% of the proceeds of the sale to the local governmental
2 unit whose law enforcement agency performed the seizure. The
3 balance of the proceeds derived from the sale by the department
4 shall be credited to the general fund of the state.

5 (7) ~~(6)~~—The seizure and destruction or sale of a tobacco
6 product or other property under this section does not relieve a
7 person from a fine, imprisonment, or other penalty for violation of
8 this act **OR THE FIRE SAFETY STANDARD AND FIREFIGHTER PROTECTION**
9 **ACT**.

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

1 the identity of the person furnishing the information, the attorney
2 general and the director of the department of state police shall
3 file with the state treasurer an affidavit setting forth that
4 necessity and a warrant may be issued jointly to the attorney
5 general and the director of the department of state police. Upon
6 payment to the person furnishing that information, the attorney
7 general and the director of the department of state police shall
8 file with the state treasurer an affidavit that the money has been
9 by them paid to the person entitled to the money under this
10 section.

11 (9) ~~(8)~~ Beginning September 1, 1998, if a retailer possesses
12 or sells cigarettes on which the tax imposed under this act has not
13 been paid or accrued to a wholesaler, secondary wholesaler, or
14 unclassified acquirer licensed under this act, the retailer shall
15 be prohibited from purchasing, possessing, or selling any
16 cigarettes or other tobacco products as follows:

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

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

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

23 (10) ~~(9)~~ The prohibition described in subsection ~~(8)~~ shall be
24 (9) IS effective upon service by certified mail or personal service
25 on the retailer of notice issued by the department ordering the
26 retailer to cease all sales and purchases of cigarettes and other
27 tobacco products. Upon receipt of this notice, the retailer may

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

1 Enacting section 1. This amendatory act takes effect 1 year
2 after the date this amendatory act is enacted.

3 Enacting section 2. This amendatory act does not take effect
4 unless Senate Bill No. ____ or House Bill No. 5110(request no.
5 02225'07 **) of the 94th Legislature is enacted into law.