

Act No. 459  
Public Acts of 2008  
Approved by the Governor  
January 9, 2009  
Filed with the Secretary of State  
January 9, 2009  
EFFECTIVE DATE: January 9, 2009

**STATE OF MICHIGAN  
94TH LEGISLATURE  
REGULAR SESSION OF 2008**

Introduced by Senators Allen, George, Pappageorge, Jelinek and Gleason

**ENROLLED SENATE BILL No. 883**

AN ACT to amend 1933 PA 167, entitled "An act to provide for the raising of additional public revenue by prescribing certain specific taxes, fees, and charges to be paid to the state for the privilege of engaging in certain business activities; to provide, incident to the enforcement thereof, for the issuance of licenses to engage in such occupations; to provide for the ascertainment, assessment and collection thereof; to appropriate the proceeds thereof; and to prescribe penalties for violations of the provisions of this act," by amending section 3 (MCL 205.53), as amended by 2004 PA 173.

*The People of the State of Michigan enact:*

Sec. 3. (1) Subject to subsections (4) and (5), if a person engages or continues in a business for which a privilege tax is imposed by this act, the person shall, under rules the department prescribes, apply for and obtain from the department a license to engage in and to conduct that business for the current tax year. If the department considers it necessary in order to secure the collection of the tax or if an applicant taxpayer has at any time failed, refused, or neglected to pay any tax or interest or penalty upon a tax or has attempted to evade the payment of any tax or interest or penalty upon a tax by means of petition in bankruptcy, or if the applicant taxpayer is a corporation and the department has reason to believe that the management or control of the corporation is under persons who have failed to pay any tax or interest or penalty upon a tax under this act, the department shall require a surety bond payable to the state of Michigan, upon which the applicant or taxpayer shall be the obligor, in the sum of not less than \$1,000.00 nor more than \$25,000.00. The surety bond shall be conditioned that the applicant or taxpayer shall comply with this act and shall promptly file true reports and pay the taxes, interest, and penalties provided for or required by this act. The bonds shall be approved as to the amount and surety by the department. The applicant or taxpayer may in lieu of the surety bond deposit a sum of money with the department in an amount the department determines to guarantee the payment of the tax, interest, and penalty and compliance with this act. However, the amount determined by the department shall not exceed the estimated tax payable during a 1-year period. The applicant or taxpayer shall be licensed to engage in and conduct the business. The department may require the applicant or taxpayer to furnish any additional bond that it considers necessary within the limits in this section, after giving a 30-day notice in writing. The license shall be renewed annually if the taxpayer pays the tax accrued to this state under this act. A person shall not engage or continue in a business taxable under this act without securing a license. A person, firm, or corporation engaged solely in industrial processing or agricultural producing under this act and who makes no sales at retail within the meaning of this act is not required to have a license.

(2) The state treasurer or his or her designee, after notice and hearing, may suspend the license of a person who violates or fails to comply with this act or a rule promulgated by the department under this act. The state treasurer or his or her designee may restore licenses after suspension. If a person engages in business taxable under this act while his or her license is in suspension, the tax imposed under this act is imposed and payable with respect to that business.

(3) A person who engages in any business in this state that is taxable under this act and who fails to secure from the department a license to engage in that business or who continues to engage in business after the license has expired

or was suspended by the state treasurer or his or her designee is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both.

(4) A seller registered under the streamlined sales and use tax agreement who is not otherwise obligated to obtain a sales tax license in this state is not required to obtain a sales tax license because of that registration.

(5) A person who engages in any business in this state that is taxable under this act shall indicate on the application or renewal for a license issued under this section if that person is subject to the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436. The state treasurer or his or her designee may deny an application or renewal and may suspend a license issued under this section if a person fails to comply with this subsection or if a person fraudulently indicates that that person is not subject to the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436. The state treasurer or his or her designee may restore a license suspended under this subsection if all delinquent taxes, interest, penalties, and fees due under this act or the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, are paid in full.

(6) The state treasurer or his or her designee may prohibit the sale of any products subject to the tax levied under this act at any location where a person knowingly violated section 8(3) to (7) and (11) of the tobacco products tax act, 1993 PA 327, MCL 205.428.

(7) Notwithstanding section 28(1)(f) of 1941 PA 122, MCL 205.28, if a person is prohibited from the sale of products subject to the tax levied under this act under this section, the department shall identify the name, address, and location where the person knowingly violated the tobacco products tax act, 1993 PA 327, MCL 205.421 to 205.436, on the department website.

(8) A person that knowingly violated section 8(3) to (7) and (11) of the tobacco products tax act, 1993 PA 327, MCL 205.428, which violation resulted in a seizure of tobacco products under section 9 of the tobacco products liability act, 1993 PA 327, MCL 205.429, is subject to the following penalties:

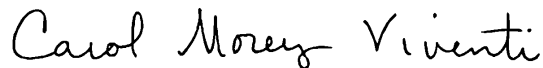
(a) For a first offense, if the amount of the illegal tobacco products seized is less than an aggregate retail value of \$5,000.00, a fine of \$400.00, or, if the amount of the illegal tobacco products seized is \$5,000.00 or more in aggregate retail value, a fine of not less than \$1,000.00 and suspension of his or her sales tax license at that location where the violation occurred for not less than 3 days.

(b) For a second offense, if the amount of the illegal tobacco products seized is less than an aggregate retail value of \$3,000.00, a fine of \$700.00, or, if the amount of the illegal tobacco products seized is \$3,000.00 or more in aggregate retail value, a fine of not less than \$1,000.00 and suspension of his or her sales tax license at that location where the violation occurred for not less than 3 days.

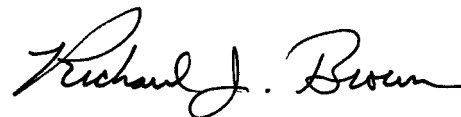
(c) For a third offense and each subsequent offense, a fine of not less than \$1,000.00 and suspension of his or her sales tax license at that location where the violation occurred for not less than 3 days.

(9) It is an affirmative defense in an action against a retailer or a person licensed under this section for a violation committed by an employee of the retailer or licensed person that the retailer or licensed person had in force at the time of the violation and continues to have in force a written policy prohibiting sale of prohibited products by employees and that the retailer or licensed person enforced and continues to enforce that policy.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved \_\_\_\_\_

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Governor