

HOUSE BILL No. 4578

May 2, 2017, Introduced by Reps. Yanez, Hoadley, Sowerby, Ellison, LaGrand, Elder, Robinson, Cochran, Garrett, Moss, Hammoud and Gay-Dagnogo and referred to the Committee on Regulatory Reform.

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending sections 2, 7, 11, and 12 (MCL 205.422, 205.427,
205.431, and 205.432), section 2 as amended by 2012 PA 188,
sections 7 and 11 as amended by 2016 PA 86, and section 12 as
amended by 2016 PA 309; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2. As used in this act:

(a) "Cigarette" means a roll for smoking made wholly or in
part of tobacco, irrespective of size or shape and irrespective of
the tobacco being flavored, adulterated, or mixed with any other
ingredient, which roll has a wrapper or cover made of paper or any
other material. Cigarette does not include cigars.

1 (b) "Cigarette making machine" means any machine or other
2 mechanical device which meets all of the following criteria:

3 (i) Is capable of being loaded with loose tobacco, cigarette
4 tubes or cigarette papers, and any other components related to the
5 production of cigarettes, including, but not limited to, cigarette
6 filters.

7 (ii) Is designed to automatically or mechanically produce,
8 roll, fill, dispense, or otherwise generate cigarettes.

9 (iii) Is commercial-grade or otherwise designed or suitable
10 for commercial use.

11 (iv) Is designed to be powered or otherwise operated by a main
12 or primary power source other than human power.

13 (c) "Commissioner" means the state treasurer.

14 (d) "Counterfeit cigarette" means a cigarette in an individual
15 package of cigarettes or other container with a false manufacturing
16 label or a cigarette in an individual package of cigarettes or
17 other container with a counterfeit stamp.

18 (e) "Counterfeit cigarette paper" means a cigarette paper with
19 a false manufacturing label or that has not been printed,
20 manufactured, or made by authority of the trademark owner.

21 (f) "Counterfeit stamp" means any stamp, label, or print,
22 indicium, or character, that evidences, or purports to evidence,
23 the payment of any tax levied under this act and that has not been
24 printed, manufactured, or made by authority of the department as
25 provided in this act and has not been issued, sold, or circulated
26 by the department.

27 (g) "Department" means the department of treasury.

1 (H) "ELECTRONIC SMOKING DEVICE" MEANS ANY DEVICE THAT CAN BE
2 USED TO DELIVER AEROSOLIZED OR VAPORIZED NICOTINE TO THE PERSON
3 INHALING FROM THE DEVICE, INCLUDING, BUT NOT LIMITED TO, AN E-
4 CIGARETTE, E-CIGAR, E-PIPE, VAPE PEN, OR E-HOOKAH. ELECTRONIC
5 SMOKING DEVICE INCLUDED ANY COMPONENT, PART, OR ACCESSORY OF SUCH A
6 DEVICE, WHETHER OR NOT SOLD SEPARATELY, AND INCLUDES ANY SUBSTANCE
7 INTENDED TO BE AEROSOLIZED OR VAPORIZED DURING THE USE OF THE
8 DEVICE. ELECTRONIC SMOKING DEVICE DOES NOT INCLUDE ANY BATTERY OR
9 BATTERY CHARGER WHEN SOLD SEPARATELY. IN ADDITION, ELECTRONIC
10 SMOKING DEVICE DOES NOT INCLUDE DRUGS, DEVICES, OR COMBINATION
11 PRODUCTS AUTHORIZED FOR SALE AS TOBACCO CESSATION PRODUCTS BY THE
12 UNITED STATES FOOD AND DRUG ADMINISTRATION, AS THOSE TERMS ARE
13 DEFINED UNDER SUBCHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC
14 ACT, 21 USC 351 TO 360FFF-7.

15 (I) ~~(h)~~—"Financially sound" means a determination by the
16 department that the wholesaler or unclassified acquirer is able to
17 pay for its stamps in the ordinary course of business based on
18 criteria including, but not limited to, all of the following:

19 (i) Past filing and payment history with the department.

20 (ii) Outstanding liabilities.

21 (iii) Review of current financial statements including, but
22 not limited to, balance sheets and income statements.

23 (iv) Duration that the wholesaler or unclassified acquirer has
24 been licensed under this act.

25 (J) ~~(i)~~—"Gray market cigarette" means any cigarette the
26 package of which bears any statement, label, stamp, sticker, or
27 notice indicating that the manufacturer did not intend the

1 cigarettes to be sold, distributed, or used in the United States,
2 including, but not limited to, a label stating "For Export Only",
3 "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording.

4 **(K)** ~~(j)~~—"Gray market cigarette paper" means any cigarette
5 paper the package of which bears any statement, label, stamp,
6 sticker, or notice indicating that the manufacturer did not intend
7 the cigarette papers to be sold, distributed, or used in the United
8 States, including, but not limited to, a label stating "For Export
9 Only", "U.S. Tax Exempt", "For Use Outside U.S.", "For Use in
10 _____ (another country) Only", or similar wording.

11 **(I)** ~~(k)~~—"Individual package" means an individual packet or
12 pack used to contain or to convey cigarettes to the consumer.
13 Individual package does not include cartons, cases, or shipping or
14 storage containers that contain smaller packaging units of
15 cigarettes.

16 **(M)** ~~(l)~~—"Licensee" means a person licensed under this act.

17 **(N)** ~~(m)~~—"Manufacturer" means any of the following:

18 (i) A person who manufactures or produces a tobacco product.

19 (ii) A person who operates or who permits any other person to
20 operate a cigarette making machine in this state for the purpose of
21 producing, filling, rolling, dispensing, or otherwise generating
22 cigarettes. A person who is a manufacturer under this subparagraph
23 shall constitute a nonparticipating manufacturer for purposes of
24 sections 6c and 6d. A person who operates or otherwise uses a
25 machine or other mechanical device, other than a cigarette making
26 machine, to produce, roll, fill, dispense, or otherwise generate
27 cigarettes shall not be considered a manufacturer as long as the

1 cigarettes are produced or otherwise generated in that person's
2 dwelling and for that person's self-consumption. For purposes of
3 this act, "self-consumption" means production for personal
4 consumption or use and not for sale, resale, or any other profit-
5 making endeavor.

6 (O) ~~(n)~~—"Noncigarette smoking tobacco" means tobacco sold in
7 loose or bulk form that is intended for consumption by smoking and
8 includes **PIPE TOBACCO AND** roll-your-own cigarette tobacco.

9 (P) ~~(e)~~—"Person" means an individual, partnership, fiduciary,
10 association, limited liability company, corporation, or other legal
11 entity.

12 (Q) ~~(p)~~—"Place of business" means a place where a tobacco
13 product is sold or where a tobacco product is brought or kept for
14 the purpose of sale or consumption, including a vessel, airplane,
15 train, or vending machine.

16 (R) ~~(r)~~—"Retailer" means a person other than a transportation
17 company who operates a place of business for the purpose of making
18 sales of a tobacco product at retail.

19 (S) ~~(r)~~—"Sale" means a transaction by which the ownership of
20 tangible personal property is transferred for consideration and
21 applies also to use, gifts, exchanges, barter, and theft.

22 (T) ~~(s)~~—"Secondary wholesaler" means a person who sells a
23 tobacco product for resale, who purchases a tobacco product from a
24 wholesaler or unclassified acquirer licensed under this act, and
25 who maintains an established place of business in this state where
26 a substantial portion of the business is the sale of tobacco
27 products and related merchandise at wholesale, and where at all

1 times a substantial stock of tobacco products and related
2 merchandise is available to retailers for resale.

3 (U) ~~(t)~~—"Smokeless tobacco" means snuff, **SNUS**, chewing
4 tobacco, and any other tobacco that is intended to be consumed,
5 **WHETHER HEATED, CHEWED, ABSORBED, DISSOLVED, INHALED, SNORTED,**
6 **SMIFFED, OR INGESTED**, by **ANY** means other than smoking. **BEGINNING**
7 **OCTOBER 1, 2018, SMOKELESS TOBACCO INCLUDES ELECTRONIC SMOKING**
8 **DEVICES.**

9 (V) ~~(u)~~—"Stamp" means a distinctive character, indication, or
10 mark, as determined by the department, attached or affixed to an
11 individual package of cigarettes by mechanical device or other
12 means authorized by the department to indicate that the tax imposed
13 under this act has been paid.

14 (W) ~~(v)~~—"Stamping agent" means a wholesaler or unclassified
15 acquirer other than a manufacturer who is licensed and authorized
16 by the department to affix stamps to individual packages of
17 cigarettes on behalf of themselves and other wholesalers or
18 unclassified acquirers other than manufacturers.

19 (X) ~~(w)~~—"Tobacco product" means cigarettes, cigars,
20 noncigarette smoking tobacco, or smokeless tobacco.

21 (Y) ~~(x)~~—"Transportation company" means a person operating, or
22 supplying to common carriers, cars, boats, or other vehicles for
23 the transportation or accommodation of passengers and engaged in
24 the sale of a tobacco product at retail.

25 (Z) ~~(y)~~—"Transporter" means a person importing or transporting
26 into this state, or transporting in this state, a tobacco product
27 obtained from a source located outside this state, or from any

1 person not duly licensed under this act. Transporter does not
2 include an interstate commerce carrier licensed by the interstate
3 commerce commission to carry commodities in interstate commerce, or
4 a licensee maintaining a warehouse or place of business outside of
5 this state if the warehouse or place of business is licensed under
6 this act.

7 **(AA)** ~~(z)~~—"Unclassified acquirer" means a person, except a
8 transportation company or a purchaser at retail from a retailer
9 licensed under the general sales tax act, 1933 PA 167, MCL 205.51
10 to 205.78, who imports or acquires a tobacco product from a source
11 other than a wholesaler or secondary wholesaler licensed under this
12 act for use, sale, or distribution. Unclassified acquirer also
13 means a person who receives cigars, noncigarette smoking tobacco,
14 or smokeless tobacco directly from a manufacturer licensed under
15 this act or from another source outside this state, which source is
16 not licensed under this act. An unclassified acquirer does not
17 include a wholesaler.

18 **(BB)** ~~(aa)~~—"Vending machine operator" means a person who
19 operates 1 or more vending machines for the sale of a tobacco
20 product and who purchases a tobacco product from a manufacturer,
21 licensed wholesaler, or secondary wholesaler.

22 **(CC)** ~~(bb)~~—"Wholesale price" means the actual price paid for a
23 tobacco product, including any tax, by a wholesaler or unclassified
24 acquirer to a manufacturer, excluding any discounts or reductions.

25 **(DD)** ~~(cc)~~—"Wholesaler" means a person who purchases all or
26 part of his or her tobacco products from a manufacturer, who sells
27 75% or more of those tobacco products to others for resale, and who

1 maintains an established business where substantially all of the
2 business is the sale of tobacco products or cigarettes and related
3 merchandise at wholesale and where at all times a substantial stock
4 of tobacco products and related merchandise is available to
5 retailers for resale. Wholesaler includes a chain of stores
6 retailing a tobacco product to the consumer if 75% of its stock of
7 tobacco products is purchased directly from the manufacturer.

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

10 (a) Through July 31, 2002, for cigars, noncigarette smoking
11 tobacco, and smokeless tobacco, 16% of the wholesale price.

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

13 (c) Beginning August 1, 2002, for cigarettes, in addition to
14 the tax levied in subdivision (b), an additional 15 mills per
15 cigarette.

16 (d) Beginning August 1, 2002, for cigarettes, in addition to
17 the tax levied in subdivisions (b) and (c), an additional 10 mills
18 per cigarette.

19 (e) Beginning July 1, 2004, for cigarettes, in addition to the
20 tax levied in subdivisions (b), (c), and (d), an additional 37.5
21 mills per cigarette.

22 (f) Beginning August 1, 2002 and through June 30, 2004, for
23 cigars, noncigarette smoking tobacco, and smokeless tobacco, 20% of
24 the wholesale price.

25 (g) Beginning July 1, 2004 **AND THROUGH SEPTEMBER 30, 2018**, for
26 cigars, noncigarette smoking tobacco, and smokeless tobacco **OTHER**
27 **THAN ELECTRONIC SMOKING DEVICES**, 32% of the wholesale price.

1 However, beginning November 1, 2012 and through October 31, 2021,
2 the amount of tax levied under this subdivision on cigars shall not
3 exceed 50 cents per individual cigar.

4 **(H) BEGINNING OCTOBER 1, 2018, FOR CIGARETTES, IN ADDITION TO**
5 **THE TAX LEVIED IN SUBDIVISIONS (B), (C), (D), AND (E), AN**
6 **ADDITIONAL 75 MILLS PER CIGARETTE.**

7 **(I) BEGINNING OCTOBER 1, 2018, FOR CIGARS, NONCIGARETTE**
8 **SMOKING TOBACCO, AND SMOKELESS TOBACCO INCLUDING ELECTRONIC SMOKING**
9 **DEVICES, 81% OF THE WHOLESALE PRICE.**

10 (2) On or before the twentieth day of each calendar month,
11 every licensee under section 3 other than a retailer, unclassified
12 acquirer licensed as a manufacturer, or vending machine operator
13 shall file a return with the department stating the wholesale price
14 of each tobacco product other than cigarettes purchased, the
15 quantity of cigarettes purchased, the wholesale price charged for
16 all tobacco products other than cigarettes sold, the number of
17 individual packages of cigarettes and the number of cigarettes in
18 those individual packages, and the number and denominations of
19 stamps affixed to individual packages of cigarettes sold by the
20 licensee for each place of business in the preceding calendar
21 month. The return shall also include the number and denomination of
22 unaffixed stamps in the possession of the licensee at the end of
23 the preceding calendar month. Wholesalers shall also report
24 accurate inventories of cigarettes, both stamped and unstamped at
25 the end of the preceding calendar month. Wholesalers and
26 unclassified acquirers shall also report accurate inventories of
27 affixed and unaffixed stamps by denomination at the beginning and

1 end of each calendar month and all stamps acquired during the
2 preceding calendar month. The return shall be signed under penalty
3 of perjury. The return shall be on a form prescribed by the
4 department and shall contain or be accompanied by any further
5 information the department requires. The department may also
6 require licensees to report cigarette acquisition, purchase, and
7 sales information in other formats and frequency.

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

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

15 (b) Through July 31, 2002, 1.25% of the total amount of the
16 tax due on cigarettes sold.

17 (c) Beginning August 1, 2002, 1.5% of the total amount of the
18 tax due on cigarettes sold and, beginning on June 20, 2012, for
19 sales of untaxed cigarettes to Indian tribes in this state, an
20 amount equal to 1.5% of the total amount of the tax due on those
21 cigarettes sold as if those cigarette sales were taxable sales
22 under this act.

23 (d) Beginning on the first calendar month following the
24 implementation of the use of digital stamps as provided in section
25 5a(2), for licensees who are stamping agents, 0.5% of the total
26 amount of the tax due on cigarettes sold and, for sales of untaxed
27 cigarettes to Indian tribes in this state, 0.5% of the total amount

1 of the tax due on those cigarettes sold as if those cigarette sales
2 were taxable sales under this act, until the stamping agent is
3 compensated in an amount equal to the direct cost actually incurred
4 by the stamping agent for the purchase of upgrades to technology
5 and equipment, excluding the equipment reimbursed under subdivision
6 (e), that are necessary to affix the digital stamp as determined by
7 the department. Compensation under this subdivision may also be
8 claimed by a stamping agent for the direct costs actually incurred
9 by the stamping agent, as determined by the department and
10 reflected in the net purchase price, for the initial and 1-time
11 purchase of case packers or similar machines or conveyors as
12 follows:

13 (i) Case packers or similar machines to be used exclusively to
14 repack cigarette cartons into case boxes after digital stamps have
15 been applied by eligible equipment to the individual packages of
16 cigarettes contained within those cigarette cartons. Compensation
17 under this subparagraph may only be claimed by a stamping agent if
18 the case packers or similar machines are in addition to, and not a
19 replacement for, 1 or more case packers or similar machines used in
20 connection with cigarette stamping machines which do not use the
21 digital stamp authorized under this act.

22 (ii) Conveyors to be used exclusively for that portion of a
23 cigarette stamping line that is necessary for and dedicated to
24 cigarette stamping operations using eligible equipment to affix
25 digital stamps to individual packages of cigarettes to be sold in
26 this state. Compensation under this subparagraph may only be
27 claimed by a stamping agent if the cigarette stamping line served

1 by the conveyors is in addition to 1 or more distinct and existing
2 cigarette stamping lines using stamping machines which do not use
3 the digital stamp authorized under this act and that compensation
4 shall not exceed a total of 50% of the amount reimbursed under
5 subdivision (e) for any particular stamping agent.

6 (iii) Compensation under subparagraphs (i) and (ii) shall also
7 include any applicable sales or use taxes paid, and shipping and
8 crating charges actually incurred, by the stamping agent in
9 connection with the purchase, but shall exclude any other costs
10 incurred by the stamping agent not otherwise expressly provided for
11 in this subdivision, including, but not limited to, charges for
12 installation and ongoing maintenance.

13 (e) Beginning in the first calendar month following the
14 implementation of the use of digital stamps as provided in section
15 5a(2) and continuing for the immediately succeeding 17 months, for
16 licensees who are stamping agents, reimbursement of direct costs
17 actually incurred by the stamping agent, as determined by the
18 department, for the initial purchase of eligible equipment in an
19 amount equal to 5.55% of the total net purchase price of the
20 eligible equipment necessary to affix the digital stamp. The
21 reimbursement provided under this subdivision shall also include
22 reimbursement for any applicable sales or use taxes paid and
23 shipping and crating charges actually incurred by the stamping
24 agent for the initial purchase of eligible equipment, but shall
25 exclude reimbursement for any other costs incurred by the stamping
26 agent not otherwise expressly provided for in this subdivision,
27 including, but not limited to, charges for installation and ongoing

1 maintenance related to eligible equipment. A stamping agent may
2 only receive reimbursement under this subdivision to the extent
3 that the eligible equipment purchased by the stamping agent does
4 not exceed the total number of the stamping agent's existing
5 equipment as certified by the stamping agent on a form prescribed
6 by the department.

7 (f) Beginning in the first calendar month following the
8 implementation of the use of digital stamps as provided in section
9 5a(2), for licensees who are stamping agents, reimbursement of
10 qualified equipment costs actually incurred by the stamping agent,
11 not otherwise compensated or reimbursed under subdivision (d) or
12 (e), as determined by the department. The reimbursement provided
13 under this subdivision shall not exceed \$60,000.00 for all stamping
14 agents combined.

15 (4) Every licensee and retailer who, on August 1, 2002, has on
16 hand for sale any cigarettes upon which a tax has been paid
17 pursuant to subsection (1)(b) shall file a complete inventory of
18 those cigarettes before September 1, 2002 and shall pay to the
19 department at the time of filing this inventory a tax equal to the
20 difference between the tax imposed in subsection (1)(b), (c), and
21 (d) and the tax that has been paid under subsection (1)(b). Every
22 licensee and retailer who, on August 1, 2002, has on hand for sale
23 any cigars, noncigarette smoking tobacco, or smokeless tobacco upon
24 which a tax has been paid pursuant to subsection (1)(a) shall file
25 a complete inventory of those cigars, noncigarette smoking tobacco,
26 and smokeless tobacco before September 1, 2002 and shall pay to the
27 department at the time of filing this inventory a tax equal to the

1 difference between the tax imposed in subsection (1)(f) and the tax
2 that has been paid under subsection (1)(a).

3 (5) Every licensee and retailer who, on July 1, 2004, has on
4 hand for sale any cigarettes upon which a tax has been paid
5 pursuant to subsection (1)(b), (c), and (d) shall file a complete
6 inventory of those cigarettes before August 1, 2004 and shall pay
7 to the department at the time of filing this inventory a tax equal
8 to the difference between the tax imposed in subsection (1)(b),
9 (c), (d), and (e) and the tax that has been paid under subsection
10 (1)(b), (c), and (d). Every licensee and retailer who, on July 1,
11 2004, has on hand for sale any cigars, noncigarette smoking
12 tobacco, or smokeless tobacco upon which a tax has been paid
13 pursuant to subsection (1)(f) shall file a complete inventory of
14 those cigars, noncigarette smoking tobacco, and smokeless tobacco
15 before August 1, 2004 and shall pay to the department at the time
16 of filing this inventory a tax equal to the difference between the
17 tax imposed in subsection (1)(g) and the tax that has been paid
18 under subsection (1)(f). The proceeds derived under this subsection
19 shall be credited to the Michigan Medicaid benefits trust fund
20 created under section 5 of the Michigan trust fund act, 2000 PA
21 489, MCL 12.255.

22 (6) EVERY LICENSEE AND RETAILER WHO, ON OCTOBER 1, 2018, HAS
23 ON HAND FOR SALE ANY CIGARETTES UPON WHICH A TAX HAS BEEN PAID
24 PURSUANT TO SUBSECTION (1)(B), (C), (D), AND (E) SHALL FILE A
25 COMPLETE INVENTORY OF THOSE CIGARETTES BEFORE NOVEMBER 1, 2018 AND
26 SHALL PAY TO THE DEPARTMENT AT THE TIME OF FILING THIS INVENTORY A
27 TAX EQUAL TO THE DIFFERENCE BETWEEN THE TAX IMPOSED IN SUBSECTION

1 (1) (B), (C), (D), (E), AND (H) AND THE TAX THAT HAS BEEN PAID UNDER
2 SUBSECTION (1) (B), (C), (D) AND (E). EVERY LICENSEE AND RETAILER
3 WHO, ON OCTOBER 1, 2018, HAS ON HAND FOR SALE ANY CIGARS,
4 NONCIGARETTE SMOKING TOBACCO, OR SMOKELESS TOBACCO OTHER THAN
5 ELECTRONIC SMOKING DEVICES UPON WHICH A TAX HAS BEEN PAID PURSUANT
6 TO SUBSECTION (1) (G) SHALL FILE A COMPLETE INVENTORY OF THOSE
7 CIGARS, NONCIGARETTE SMOKING TOBACCO, AND SMOKELESS TOBACCO BEFORE
8 NOVEMBER 1, 2018 AND SHALL PAY TO THE DEPARTMENT AT THE TIME OF
9 FILING THIS INVENTORY A TAX EQUAL TO THE DIFFERENCE BETWEEN THE TAX
10 IMPOSED IN SUBSECTION (1) (I) AND THE TAX THAT HAS BEEN PAID UNDER
11 SUBSECTION (1) (G). THE PROCEEDS DERIVED UNDER THIS SUBSECTION SHALL
12 BE CREDITED TO THE HEALTHY MICHIGAN FUND CREATED UNDER SECTION 5953
13 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5953.

14 (7) ~~(6)~~—The department may require the payment of the tax
15 imposed by this act upon the importation or acquisition of a
16 tobacco product. A tobacco product for which the tax under this act
17 has once been imposed and that has not been refunded if paid is not
18 subject upon a subsequent sale to the tax imposed by this act.

19 (8) ~~(7)~~—An abatement or refund of the tax provided by this act
20 may be made by the department for causes the department considers
21 expedient. The department shall certify the amount and the state
22 treasurer shall pay that amount out of the proceeds of the tax.

23 (9) ~~(8)~~—A person liable for the tax may reimburse itself by
24 adding to the price of the tobacco products an amount equal to the
25 tax levied under this act.

26 (10) ~~(9)~~—A wholesaler, unclassified acquirer, or other person
27 shall not sell or transfer any unaffixed stamps acquired by the

1 wholesaler or unclassified acquirer from the department. A
2 wholesaler or unclassified acquirer who has any unaffixed stamps on
3 hand at the time its license is revoked or expires, or at the time
4 it discontinues the business of selling cigarettes, shall return
5 those stamps to the department. The department shall refund the
6 value of the stamps, less the appropriate discount paid.

7 **(11)** ~~(10)~~—If the wholesaler or unclassified acquirer has
8 unsalable packs returned from a retailer, secondary wholesaler,
9 vending machine operator, wholesaler, or unclassified acquirer with
10 stamps affixed, the department shall refund the amount of the tax
11 less the appropriate discount paid. If the wholesaler or
12 unclassified acquirer has unaffixed unsalable stamps, the
13 department shall exchange with the wholesaler or unclassified
14 acquirer new stamps in the same quantity as the unaffixed unsalable
15 stamps. An application for refund of the tax shall be filed on a
16 form prescribed by the department for that purpose, within 4 years
17 from the date the stamps were originally acquired from the
18 department. A wholesaler or unclassified acquirer shall make
19 available for inspection by the department the unused or spoiled
20 stamps and the stamps affixed to unsalable individual packages of
21 cigarettes. The department may, at its own discretion, witness and
22 certify the destruction of the unused or spoiled stamps and
23 unsalable individual packages of cigarettes that are not returnable
24 to the manufacturer. The wholesaler or unclassified acquirer shall
25 provide certification from the manufacturer for any unsalable
26 individual packages of cigarettes that are returned to the
27 manufacturer.

1 **(12)** ~~(11)~~—On or before the twentieth of each month, each
2 manufacturer shall file a report with the department listing all
3 sales of tobacco products to wholesalers and unclassified acquirers
4 during the preceding calendar month and any other information the
5 department finds necessary for the administration of this act. This
6 report shall be in the form and manner specified by the department.

7 **(13)** ~~(12)~~—Each wholesaler or unclassified acquirer shall
8 submit to the department an unstamped cigarette sales report on or
9 before the twentieth day of each month covering the sale, delivery,
10 or distribution of unstamped cigarettes during the preceding
11 calendar month to points outside of this state. A separate schedule
12 shall be filed for each state, country, or province into which
13 shipments are made. For purposes of the report described in this
14 subsection, "unstamped cigarettes" means individual packages of
15 cigarettes that do not bear a Michigan stamp. The department may
16 provide the information contained in this report to a proper
17 officer of another state, country, or province reciprocating in
18 this privilege.

19 **(14)** ~~(13)~~—As used in subsection (3):

20 (a) "Eligible equipment" means a cigarette tax stamping
21 machine that meets all of the following conditions:

22 (i) Was purchased by a stamping agent who was licensed as a
23 stamping agent as of December 31, 2011.

24 (ii) Enables the stamping agent to affix digital stamps to
25 individual packages of cigarettes in accordance with the
26 requirements under section 6a(2).

27 (iii) Was purchased to be used for the primary purpose of

1 permitting the stamping agent to affix digital stamps to individual
2 packages of cigarettes to be sold in this state following the
3 implementation of the use of digital stamps as provided in section
4 5a(2).

5 (b) "Existing equipment" means a cigarette tax stamping
6 machine that meets all of the following conditions:

7 (i) Was owned by a person who was licensed as a stamping agent
8 as of December 31, 2011.

9 (ii) Was a cigarette tax stamping machine used prior to
10 January 1, 2012 by the stamping agent to apply stamps using stamp
11 rolls of 30,000 stamps.

12 (c) "Qualified equipment" means equipment that was placed in
13 service by a stamping agent that included conveyors and additional
14 associated electrical line and compressed air line before August
15 15, 2014 in connection with the implementation of a digital
16 stamping line under a pilot program with the department as
17 determined by the department. Qualified equipment does not include
18 the cost of installation of a conveyor.

19 Sec. 11. (1) A person, either as principal or agent, shall not
20 sell or solicit a sale of a tobacco product to be shipped, mailed,
21 or otherwise sent or brought into the state, to a person not a
22 licensed manufacturer, licensed wholesaler, licensed secondary
23 wholesaler, licensed vending machine operator, licensed
24 unclassified acquirer, licensed transporter, or licensed
25 transportation company, unless the tobacco product is to be sold to
26 or through a licensed wholesaler.

27 (2) All sales conducted through the ~~Internet~~, **INTERNET**, by

1 telephone, or in a mail-order transaction shall not be completed
2 unless, before each delivery of ~~cigarettes~~**TOBACCO PRODUCTS** is
3 made, whether through the mail, through a transportation company,
4 or through any other delivery system, the seller has obtained from
5 the purchaser an affirmation that includes a copy of a valid
6 government-issued document that confirms the purchaser's name,
7 address, and date of birth showing that the purchaser is at least
8 the legal minimum age to purchase ~~cigarettes~~**TOBACCO PRODUCTS**;
9 that the ~~cigarettes~~**TOBACCO PRODUCTS** purchased are not intended for
10 consumption by an individual who is younger than the legal minimum
11 age to purchase ~~cigarettes~~**TOBACCO PRODUCTS**; and a written
12 statement signed by the purchaser that affirms the purchaser's
13 address and that the purchaser is at least the minimum legal age to
14 purchase ~~cigarettes~~**TOBACCO PRODUCTS**. The statement shall also
15 confirm that the purchaser understands that signing another
16 person's name to the affirmation is illegal; that the sale of
17 ~~cigarettes~~**TOBACCO PRODUCTS** to individuals under the legal minimum
18 purchase age is illegal; and that the purchase of ~~cigarettes~~
19 **TOBACCO PRODUCTS** by individuals under the legal minimum purchase
20 age is illegal under the laws of the state of Michigan. The seller
21 shall verify the information contained in the affirmation provided
22 by the purchaser against a commercially available database of
23 governmental records, or obtain a photocopy, fax copy, or other
24 image of the valid, government-issued identification stating the
25 date of birth or age of the purchaser.

26 (3) All invoices, bills of lading, sales receipts, or other
27 documents related to ~~cigarette~~**TOBACCO PRODUCT** sales conducted

1 through the internet, by telephone, or in a mail-order transaction
 2 shall contain the current seller's valid Michigan sales tax
 3 registration number, business name and address of the seller, and a
 4 statement as to whether all sales taxes and taxes levied under this
 5 act have been paid. All packages of ~~cigarettes~~**TOBACCO PRODUCTS**
 6 shipped from a ~~cigarette~~**TOBACCO PRODUCT** seller to purchasers who
 7 reside in Michigan shall clearly print or stamp the package with
 8 the word "~~CIGARETTES~~"**"TOBACCO PRODUCTS"** on the outside of all
 9 sides of the package so it is clearly visible to the shipper. In
 10 addition, the package shall contain an externally visible and
 11 clearly legible notice located on the same side of the package as
 12 the address to which the package is delivered, as follows:

13 "IF THESE ~~CIGARETTES~~**TOBACCO PRODUCTS** HAVE BEEN SHIPPED TO YOU
 14 FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE
 15 SELLER HAS REPORTED UNDER FEDERAL LAW THE SALE OF THESE ~~CIGARETTES~~
 16 **TOBACCO PRODUCTS** TO OUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR
 17 NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE
 18 UNPAID STATE TAXES ON THESE ~~CIGARETTES~~**"TOBACCO PRODUCTS."**

19 If an order is made as a result of advertisement over the
 20 ~~Internet~~**,INTERNET**, the tobacco retailer shall request the
 21 electronic mail address of the purchaser and shall receive payment
 22 by credit card or check before shipping. This subsection and
 23 subsection (2) do not apply to sales by wholesalers and
 24 unclassified acquirers.

25 (4) The deliverer of the ~~cigarettes~~**TOBACCO PRODUCTS** is
 26 required to obtain proof from a valid government-issued document
 27 that the person signing for the ~~cigarettes~~**TOBACCO PRODUCTS** is the

1 purchaser.

2 (5) Beginning November 1, 2012, a retailer that is not
3 licensed as an unclassified acquirer, retail importer of tobacco
4 products other than cigarettes, shall post a sign, visible to the
5 public inside the retail establishment that informs purchasers of
6 cigars through catalog sales or ~~Internet~~**INTERNET** sales of their
7 responsibility to pay all applicable unpaid state taxes on those
8 cigars.

9 (6) As used in this section:

10 (a) "Computer" means any connected, directly interoperable or
11 interactive device, equipment, or facility that uses a computer
12 program or other instructions to perform specific operations,
13 including logical, arithmetic, or memory functions with or on
14 computer data or a computer program, and that can store, retrieve,
15 alter, or communicate the results of the operations to a person,
16 computer program, computer, computer system, or computer network.

17 (b) "Computer network" means the interconnection of hardwire
18 or wireless communication lines with a computer through remote
19 terminals or a complex consisting of 2 or more interconnected
20 computers.

21 (c) "Computer program" means a series of internal or external
22 instructions communicated in a form acceptable to a computer that
23 directs the functioning of a computer, computer system, or computer
24 network in a manner designed to provide or produce products or
25 results from the computer, computer system, or computer network.

26 (d) "Computer system" means related, connected or unconnected,
27 computer equipment, devices, software, or hardware.

1 (e) "Credit card" means a card or device issued by a person
2 licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the
3 consumer financial services act, 1988 PA 161, MCL 487.2051 to
4 487.2072, or issued by a depository financial institution as
5 defined in section 1a of the mortgage brokers, lenders, and
6 services licensing act, 1987 PA 173, MCL 445.1651a, under a credit
7 card arrangement.

8 (f) "Device" includes, but is not limited to, an electronic,
9 magnetic, electrochemical, biochemical, hydraulic, optical, or
10 organic object that performs input, output, or storage functions by
11 the manipulation of electronic, magnetic, or other impulses.

12 (g) "Internet" means the connection to the World Wide Web
13 through the use of a computer, a computer network, or a computer
14 system.

15 (h) "Sale conducted through the ~~Internet~~"-**INTERNET** means a
16 sale of, a solicitation to sell, a purchase of, or an offer to
17 purchase ~~cigarettes~~-**TOBACCO PRODUCTS** conducted all or in part by
18 accessing an ~~Internet~~-**INTERNET** website.

19 Sec. 12. (1) The proceeds derived from the payment of taxes,
20 fees, and penalties provided for under this act and the license
21 fees received by the department shall be deposited with the state
22 treasurer and disbursed only as provided in this section and
23 section 7(5). However, before a distribution of funds is made under
24 this section, subject to appropriation, the funds described in this
25 section may be used by the department, the attorney general, and
26 the department of state police for enforcement and administration
27 of this act.

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

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

6 (b) 6% of the proceeds shall be credited to the Healthy
7 Michigan fund created under section 5953 of the public health code,
8 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described
9 in this subdivision that are used for smoking prevention programs
10 shall be used by the department of health and human services to
11 expand the free smokers quit kit program to include the nicotine
12 patch or nicotine gum.

13 (3) The tax imposed on cigarettes under section 7(1)(b) shall
14 be disbursed as follows:

15 (a) Beginning May 1, 1994 and through June 30, 2004, 5.3% of
16 the proceeds shall be credited to the health and safety fund
17 created in the health and safety fund act, 1987 PA 264, MCL 141.471
18 to 141.479.

19 (b) Beginning July 1, 2004, 6.5% of the proceeds shall be
20 credited to the health and safety fund created in the health and
21 safety fund act, 1987 PA 264, MCL 141.471 to 141.479.

22 (c) Through June 30, 2004, 25.3% of the proceeds shall be
23 credited to the general fund of this state.

24 (d) Beginning July 1, 2004 and through September 30, 2014,
25 24.1% of the proceeds shall be credited to the general fund of this
26 state.

27 (e) 63.4% of the proceeds shall be credited to the state

1 school aid fund established by section 11 of article IX of the
2 state constitution of 1963.

3 (f) 6% of the proceeds shall be credited to the Healthy
4 Michigan fund created under section 5953 of the public health code,
5 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described
6 in this subdivision that are used for smoking prevention programs
7 shall be used by the department of health and human services to
8 expand the free smokers quit kit program to include the nicotine
9 patch or nicotine gum.

10 (g) Beginning October 1, 2014, 24.1% of the proceeds shall be
11 disbursed as follows:

12 (i) For the 2014-2015 fiscal year and each subsequent fiscal
13 year, \$3,000,000.00 to the Michigan state capitol historic site
14 fund created in section 7 of the Michigan state capitol historic
15 site act, 2013 PA 240, MCL 4.1947. For the 2015-2016 fiscal year
16 and each subsequent fiscal year, the state treasurer shall adjust
17 the figure described in this subparagraph by an amount determined
18 by the state treasurer at the end of each calendar year to reflect
19 the cumulative annual percentage change in the consumer price
20 index. Beginning for the 2015-2016 fiscal year and each subsequent
21 fiscal year, if the cumulative annual percentage change in the
22 consumer price index is negative, then the adjustment for that
23 fiscal year is zero. As used in this subsection, "consumer price
24 index" means the most comprehensive index of consumer prices
25 available for this state from the Bureau of Labor Statistics of the
26 United States Department of Labor. From the funds described in this
27 subparagraph, not later than February 1 of each year, the Michigan

1 state capitol commission created in section 5 of the Michigan state
2 capitol historic site act, 2013 PA 240, MCL 4.1945, shall report to
3 the Michigan capitol committee created in section 701 of the
4 legislative council act, 1986 PA 268, MCL 4.1701, and to the
5 chairpersons of the house and senate appropriations committees. The
6 report shall contain all of the following:

7 (A) The proposed maintenance plan for the Michigan State
8 Capitol Historical Site for the immediately following fiscal year.

9 (B) The projected 5-year maintenance plan for the Michigan
10 State Capitol Historical Site for the immediately following 5
11 fiscal years.

12 (C) Projected large-scale projects for the Michigan State
13 Capitol Historical Site that exceed \$1,000,000.00.

14 (ii) The remaining proceeds shall be credited to the general
15 fund of this state.

16 (4) Beginning August 1, 2002, the tax imposed on cigarettes
17 under section 7(1)(c) shall be disbursed as follows:

18 (a) Through June 30, 2004, 74.2%, and beginning July 1, 2004,
19 9.0% of the proceeds shall be credited to the general fund of this
20 state.

21 (b) Through June 30, 2004, 4.6%, and beginning July 1, 2004,
22 56.3% of the proceeds shall be credited to the state school aid
23 fund established by section 11 of article IX of the state
24 constitution of 1963.

25 (c) 6.0% of the proceeds shall be credited to the Healthy
26 Michigan fund created under section 5953 of the public health code,
27 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described

1 in this subdivision that are used for smoking prevention programs
2 shall be used by the department of health and human services to
3 expand the free smokers quit kit program to include the nicotine
4 patch or nicotine gum.

5 (d) Through June 30, 2004, 3.0%, and beginning July 1, 2004,
6 3.7% of the proceeds shall be paid to counties with a 2000
7 population of more than 2,000,000, to be used only for indigent
8 health care.

9 (e) Through June 30, 2004, 12.2%, and beginning July 1, 2004,
10 25.0% of the proceeds shall be credited to the Medicaid benefits
11 trust fund created under section 5 of the Michigan trust fund act,
12 2000 PA 489, MCL 12.255.

13 (5) Beginning August 1, 2002, the tax imposed under section
14 7(1)(f) shall be disbursed as follows:

15 (a) 75.6% of the proceeds shall be credited to the state
16 school aid fund established by section 11 of article IX of the
17 state constitution of 1963.

18 (b) 6.0% of the proceeds shall be credited to the Healthy
19 Michigan fund created under section 5953 of the public health code,
20 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described
21 in this subdivision that are used for smoking prevention programs
22 shall be used by the department of health and human services to
23 expand the free smokers quit kit program to include the nicotine
24 patch or nicotine gum.

25 (c) 18.4% of the proceeds shall be credited to the general
26 fund of this state.

27 (6) Beginning August 1, 2002, the tax imposed on cigarettes

1 under section 7(1)(d) shall be disbursed as follows:

2 (a) 94.0% of the proceeds shall be credited to the state
3 school aid fund established by section 11 of article IX of the
4 state constitution of 1963.

5 (b) 6.0% of the proceeds shall be credited to the Healthy
6 Michigan fund created under section 5953 of the public health code,
7 1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described
8 in this subdivision that are used for smoking prevention programs
9 shall be used by the department of health and human services to
10 expand the free smokers quit kit program to include the nicotine
11 patch or nicotine gum.

12 (7) Beginning July 1, 2004, the tax imposed on cigarettes
13 under section 7(1)(e) shall be disbursed as follows:

14 (a) Beginning July 1, 2004 and through September 30, 2005,
15 100% of the proceeds shall be credited to the Michigan Medicaid
16 benefits trust fund created under section 5 of the Michigan trust
17 fund act, 2000 PA 489, MCL 12.255.

18 (b) Beginning October 1, 2005, 75.0% of the proceeds shall be
19 credited to the Michigan Medicaid benefits trust fund created under
20 section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

21 (c) Beginning October 1, 2005, 25.0% of the proceeds shall be
22 credited to the general fund of this state.

23 (8) Beginning July 1, 2004, the tax imposed under section
24 7(1)(g) shall be disbursed as follows:

25 (a) Beginning July 1, 2004 and through September 30, 2005,
26 100% of the proceeds shall be credited to the Michigan Medicaid
27 benefits trust fund created under section 5 of the Michigan trust

1 fund act, 2000 PA 489, MCL 12.255.

2 (b) Beginning October 1, 2005, 75.0% of the proceeds shall be
3 credited to the Michigan Medicaid benefits trust fund created under
4 section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

5 (c) Beginning October 1, 2005, 25.0% of the proceeds shall be
6 credited to the general fund of this state.

7 (9) BEGINNING OCTOBER 1, 2018, THE TAX IMPOSED UNDER SECTION
8 7(1) (H) SHALL BE DISBURSED AS FOLLOWS:

9 (A) BEGINNING OCTOBER 1, 2018, 10% OF THE PROCEEDS SHALL BE
10 CREDITED TO THE HEALTHY MICHIGAN FUND CREATED UNDER SECTION 5953 OF
11 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.5953. THE FUNDS
12 DESCRIBED UNDER THIS SUBDIVISION SHALL BE USED BY THE DEPARTMENT OF
13 HEALTH AND HUMAN SERVICES FOR CANCER PREVENTION, TOBACCO
14 PREVENTION, AND CARDIOVASCULAR HEALTH.

15 (B) BEGINNING OCTOBER 1, 2018, 90% OF THE PROCEEDS SHALL BE
16 CREDITED TO THE GENERAL FUND OF THE STATE.

17 (10) BEGINNING OCTOBER 1, 2018, THE TAX IMPOSED UNDER SECTION
18 7(1) (I) SHALL BE DISBURSED AS FOLLOWS:

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

22 (B) 6.0% OF THE PROCEEDS SHALL BE CREDITED TO THE HEALTHY
23 MICHIGAN FUND CREATED UNDER SECTION 5953 OF THE PUBLIC HEALTH CODE,
24 1978 PA 368, MCL 333.5953. THE FUNDS DESCRIBED UNDER THIS
25 SUBDIVISION SHALL BE USED BY THE DEPARTMENT OF HEALTH AND HUMAN
26 SERVICES FOR CANCER PREVENTION, TOBACCO PREVENTION, AND
27 CARDIOVASCULAR HEALTH.

1 (C) 18.4% OF THE PROCEEDS SHALL BE CREDITED TO THE GENERAL
2 FUND OF THIS STATE.

3 (11) ~~(9)~~—The proceeds of the fees and penalties provided for
4 in this act shall be used for the administration of this act.

5 Enacting section 1. Section 14 of the tobacco products tax
6 act, 1993 PA 327, MCL 205.434, is repealed effective October 1,
7 2018.