

HOUSE BILL No. 4737

June 8, 2017, Introduced by Reps. Hammoud, Gay-Dagnogo, Moss, Sabo, Love, Wittenberg, Brann, Bizon and Yanez and referred to the Committee on Regulatory Reform.

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending section 2 (MCL 205.422), as amended by 2012 PA 188, and
by adding section 11a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

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

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

9 (i) Is capable of being loaded with loose tobacco, cigarette

1 tubes or cigarette papers, and any other components related to the
2 production of cigarettes, including, but not limited to, cigarette
3 filters.

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

6 (iii) Is commercial-grade or otherwise designed or suitable
7 for commercial use.

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

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

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

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

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

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

25 (h) "Financially sound" means a determination by the
26 department that the wholesaler or unclassified acquirer is able to
27 pay for its stamps in the ordinary course of business based on

1 criteria including, but not limited to, all of the following:

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

3 (ii) Outstanding liabilities.

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

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

8 (i) "Gray market cigarette" means any cigarette the package of
9 which bears any statement, label, stamp, sticker, or notice
10 indicating that the manufacturer did not intend the cigarettes to
11 be sold, distributed, or used in the United States, including, but
12 not limited to, a label stating "For Export Only", "U.S. Tax
13 Exempt", "For Use Outside U.S.", or similar wording.

14 (j) "Gray market cigarette paper" means any cigarette paper
15 the package of which bears any statement, label, stamp, sticker, or
16 notice indicating that the manufacturer did not intend the
17 cigarette papers to be sold, distributed, or used in the United
18 States, including, but not limited to, a label stating "For Export
19 Only", "U.S. Tax Exempt", "For Use Outside U.S.", "For Use in
20 _____ (another country) Only", or similar wording.

21 **(K) "HOOKAH" MEANS A DEVICE USED FOR SMOKING HOOKAH TOBACCO**
22 **THAT CONSISTS OF A TUBE CONNECTED TO A CONTAINER WHERE THE SMOKE IS**
23 **COOLED PASSING THROUGH WATER.**

24 **(I) "HOOKAH TOBACCO" MEANS TOBACCO SOLD IN LOOSE OR BULK FORM**
25 **THAT IS INTENDED FOR CONSUMPTION BY SMOKING IN A HOOKAH THAT IS**
26 **FLAVORED WITH HONEY, MOLASSES, FRUIT, OR OTHER FLAVORS.**

27 **(M) ~~(k)~~—"Individual package" means an individual packet or**

1 pack used to contain or to convey cigarettes to the consumer.
2 Individual package does not include cartons, cases, or shipping or
3 storage containers that contain smaller packaging units of
4 cigarettes.

5 (N) ~~(L)~~ "Licensee" means a person licensed under this act.

6 (O) ~~(M)~~ "Manufacturer" means any of the following:

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

8 (ii) A person who operates or who permits any other person to
9 operate a cigarette making machine in this state for the purpose of
10 producing, filling, rolling, dispensing, or otherwise generating
11 cigarettes. A person who is a manufacturer under this subparagraph
12 shall constitute a nonparticipating manufacturer for purposes of
13 sections 6c and 6d. A person who operates or otherwise uses a
14 machine or other mechanical device, other than a cigarette making
15 machine, to produce, roll, fill, dispense, or otherwise generate
16 cigarettes shall not be considered a manufacturer as long as the
17 cigarettes are produced or otherwise generated in that person's
18 dwelling and for that person's self-consumption. For purposes of
19 this act, "self-consumption" means production for personal
20 consumption or use and not for sale, resale, or any other profit-
21 making endeavor.

22 (P) ~~(N)~~ "Noncigarette smoking tobacco" means tobacco sold in
23 loose or bulk form that is intended for consumption by smoking and
24 includes roll-your-own cigarette tobacco **AND HOOKAH TOBACCO**.

25 (Q) ~~(O)~~ "Person" means an individual, partnership, fiduciary,
26 association, limited liability company, corporation, or other legal
27 entity.

1 **(R)** ~~(p)~~ "Place of business" means a place where a tobacco
2 product is sold or where a tobacco product is brought or kept for
3 the purpose of sale or consumption, including a vessel, airplane,
4 train, or vending machine.

5 **(S)** ~~(q)~~ "Retailer" means a person other than a transportation
6 company who operates a place of business for the purpose of making
7 sales of a tobacco product at retail.

8 **(T)** ~~(r)~~ "Sale" means a transaction by which the ownership of
9 tangible personal property is transferred for consideration and
10 applies also to use, gifts, exchanges, barter, and theft.

11 **(U)** ~~(s)~~ "Secondary wholesaler" means a person who sells a
12 tobacco product for resale, who purchases a tobacco product from a
13 wholesaler or unclassified acquirer licensed under this act, and
14 who maintains an established place of business in this state where
15 a substantial portion of the business is the sale of tobacco
16 products and related merchandise at wholesale, and where at all
17 times a substantial stock of tobacco products and related
18 merchandise is available to retailers for resale.

19 **(V)** ~~(t)~~ "Smokeless tobacco" means snuff, chewing tobacco, and
20 any other tobacco that is intended to be consumed by means other
21 than smoking.

22 **(W)** ~~(u)~~ "Stamp" means a distinctive character, indication, or
23 mark, as determined by the department, attached or affixed to an
24 individual package of cigarettes by mechanical device or other
25 means authorized by the department to indicate that the tax imposed
26 under this act has been paid.

27 **(X)** ~~(v)~~ "Stamping agent" means a wholesaler or unclassified

1 acquirer other than a manufacturer who is licensed and authorized
2 by the department to affix stamps to individual packages of
3 cigarettes on behalf of themselves and other wholesalers or
4 unclassified acquirers other than manufacturers.

5 **(Y)** ~~(w)~~—"Tobacco product" means cigarettes, cigars,
6 noncigarette smoking tobacco, or smokeless tobacco.

7 **(Z)** ~~(x)~~—"Transportation company" means a person operating, or
8 supplying to common carriers, cars, boats, or other vehicles for
9 the transportation or accommodation of passengers and engaged in
10 the sale of a tobacco product at retail.

11 **(AA)** ~~(y)~~—"Transporter" means a person importing or
12 transporting into this state, or transporting in this state, a
13 tobacco product obtained from a source located outside this state,
14 or from any person not duly licensed under this act. Transporter
15 does not include an interstate commerce carrier licensed by the
16 interstate commerce commission to carry commodities in interstate
17 commerce, or a licensee maintaining a warehouse or place of
18 business outside of this state if the warehouse or place of
19 business is licensed under this act.

20 **(BB)** ~~(z)~~—"Unclassified acquirer" means a person, except a
21 transportation company or a purchaser at retail from a retailer
22 licensed under the general sales tax act, 1933 PA 167, MCL 205.51
23 to 205.78, who imports or acquires a tobacco product from a source
24 other than a wholesaler or secondary wholesaler licensed under this
25 act for use, sale, or distribution. Unclassified acquirer also
26 means a person who receives cigars, noncigarette smoking tobacco,
27 or smokeless tobacco directly from a manufacturer licensed under

1 this act or from another source outside this state, which source is
2 not licensed under this act. An unclassified acquirer does not
3 include a wholesaler.

4 (CC) ~~(aa)~~ "Vending machine operator" means a person who
5 operates 1 or more vending machines for the sale of a tobacco
6 product and who purchases a tobacco product from a manufacturer,
7 licensed wholesaler, or secondary wholesaler.

8 (DD) ~~(bb)~~ "Wholesale price" means the actual price paid for a
9 tobacco product, including any tax, by a wholesaler or unclassified
10 acquirer to a manufacturer, excluding any discounts or reductions.

11 (EE) ~~(cc)~~ "Wholesaler" means a person who purchases all or
12 part of his or her tobacco products from a manufacturer, who sells
13 75% or more of those tobacco products to others for resale, and who
14 maintains an established business where substantially all of the
15 business is the sale of tobacco products or cigarettes and related
16 merchandise at wholesale and where at all times a substantial stock
17 of tobacco products and related merchandise is available to
18 retailers for resale. Wholesaler includes a chain of stores
19 retailing a tobacco product to the consumer if 75% of its stock of
20 tobacco products is purchased directly from the manufacturer.

21 **SEC. 11A. (1) BEGINNING OCTOBER 1, 2017, A RETAILER OR**
22 **UNCLASSIFIED ACQUIRER SHALL NOT STORE HOOKAH TOBACCO IN AN AREA OR**
23 **SPACE WITH FOOD OR IN AN AREA OR SPACE THAT COMES INTO CONTACT WITH**
24 **FOOD.**

25 **(2) BEGINNING OCTOBER 1, 2017, A RETAILER OR UNCLASSIFIED**
26 **ACQUIRER FOR ALL RETAIL SALES SHALL STORE HOOKAH TOBACCO BEHIND AN**
27 **ENCLOSURE OR OTHER AREA THAT IS NOT READILY ACCESSIBLE TO THE**

- 1 PUBLIC WITHOUT ASSISTANCE FROM SOMEONE EMPLOYED BY THE RETAILER OR
- 2 UNCLASSIFIED ACQUIRER.