

HOUSE BILL No. 4739

June 8, 2017, Introduced by Reps. Sabo, Gay-Dagnogo, Brann, Hammoud, Bizon, Howell, Noble, Jones, Rabhi, Clemente, Moss, Wittenberg, Chang, Yanez and Greig and referred to the Committee on Regulatory Reform.

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending the title and sections 2, 3, 6, 6a, 7, 8, 9, and 11
(MCL 205.422, 205.423, 205.426, 205.426a, 205.427, 205.428,
205.429, and 205.431), the title and sections 2 and 6a as amended
by 2012 PA 188, sections 3 and 6 as amended by 1997 PA 187,
sections 7 and 11 as amended by 2016 PA 86, section 8 as amended by
2008 PA 458, and section 9 as amended by 2004 PA 474.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

TITLE

An act to provide for a tax upon the sale and distribution of
tobacco products; to regulate and license manufacturers,
wholesalers, secondary wholesalers, ~~vending machine operators,~~
unclassified acquirers, transportation companies, transporters, and
retailers of tobacco products; to prescribe the powers and duties

1 of the revenue division and the department of treasury in regard to
2 tobacco products; to provide for the administration, collection,
3 and disposition of the tax; to levy an assessment; to provide for
4 the administration, collection, defense, and disposition of the
5 assessment; to provide for the enforcement of this act; to provide
6 for the appointment of special investigators as peace officers for
7 the enforcement of this act; to prescribe penalties and provide
8 remedies for the violation of this act; to make and supplement
9 appropriations; and to repeal acts and parts of acts.

10 Sec. 2. As used in this act:

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

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

18 (i) Is capable of being loaded with loose tobacco, cigarette
19 tubes or cigarette papers, and any other components related to the
20 production of cigarettes, including, but not limited to, cigarette
21 filters.

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

24 (iii) Is commercial-grade or otherwise designed or suitable
25 for commercial use.

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

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

2 (d) "Counterfeit cigarette" means a cigarette in an individual
3 package of cigarettes or other container with a false manufacturing
4 label or a cigarette in an individual package of cigarettes or
5 other container with a counterfeit stamp.

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

9 (f) "Counterfeit stamp" means any stamp, label, or print,
10 indicium, or character, that evidences, or purports to evidence,
11 the payment of any tax levied under this act and that has not been
12 printed, manufactured, or made by authority of the department as
13 provided in this act and has not been issued, sold, or circulated
14 by the department.

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

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

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

21 (ii) Outstanding liabilities.

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

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

26 (i) "Gray market cigarette" means any cigarette the package of
27 which bears any statement, label, stamp, sticker, or notice

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

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

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

16 (l) "Licensee" means a person licensed under this act.

17 (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 (n) "Noncigarette smoking tobacco" means tobacco sold in loose
7 or bulk form that is intended for consumption by smoking and
8 includes roll-your-own cigarette tobacco.

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

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

16 (q) "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 (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 (s) "Secondary wholesaler" means a person who sells a tobacco
23 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 (t) "Smokeless tobacco" means snuff, chewing tobacco, and any
4 other tobacco that is intended to be consumed by means other than
5 smoking.

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

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

16 (w) "Tobacco product" means cigarettes, cigars, noncigarette
17 smoking tobacco, or smokeless tobacco.

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

22 (y) "Transporter" means a person importing or transporting
23 into this state, or transporting in this state, a tobacco product
24 obtained from a source located outside this state, or from any
25 person not duly licensed under this act. Transporter does not
26 include an interstate commerce carrier licensed by the interstate
27 commerce commission to carry commodities in interstate commerce, or

1 a licensee maintaining a warehouse or place of business outside of
2 this state if the warehouse or place of business is licensed under
3 this act.

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

15 (aa) "Vending machine operator" means a person who operates 1
16 or more vending machines for the sale of a tobacco product and who
17 purchases a tobacco product from a manufacturer, licensed
18 wholesaler, or secondary wholesaler.

19 (bb) "Wholesale price" means the actual price paid for a
20 tobacco product, including any tax, by a wholesaler or unclassified
21 acquirer to a manufacturer, excluding any discounts or reductions.

22 (cc) "Wholesaler" means a person who purchases all or part of
23 his or her tobacco products from a manufacturer, who sells 75% or
24 more of those tobacco products to others for resale, and who
25 maintains an established business where substantially all of the
26 business is the sale of tobacco products or cigarettes and related
27 merchandise at wholesale and where at all times a substantial stock

1 of tobacco products and related merchandise is available to
2 retailers for resale. Wholesaler includes a chain of stores
3 retailing a tobacco product to the consumer if 75% of its stock of
4 tobacco products is purchased directly from the manufacturer.

5 Sec. 3. (1) Beginning May 1, 1994, a person shall not
6 purchase, possess, acquire for resale, or sell a tobacco product as
7 a manufacturer, wholesaler, secondary wholesaler, ~~vending machine~~
8 ~~operator~~, unclassified acquirer, transportation company, or
9 transporter in this state unless licensed to do so. A license
10 granted under this act is not assignable.

11 (2) Upon proper application and the payment of the applicable
12 fee, and subject to subsection (6), the department shall issue a
13 license to each manufacturer, wholesaler, secondary wholesaler,
14 ~~vending machine operator~~, unclassified acquirer, transportation
15 company, or transporter. The application shall be on a form
16 prescribed by the department and signed under penalty of perjury.
17 Except for transportation companies, each place of business shall
18 be separately licensed. If a person acts in more than 1 capacity at
19 any 1 place of business, a license shall be procured for each
20 capacity. ~~Each machine for vending tobacco products shall be~~
21 ~~considered a place of retail business.~~ Each license or a duplicate
22 copy shall be prominently displayed on the premises covered by the
23 license. ~~In the case of vending machines, a disc or marker~~
24 ~~furnished by the department showing it to be licensed shall be~~
25 ~~attached to the front of the machine in a place clearly visible to~~
26 ~~the public.~~

27 (3) The fees for licenses shall be the following:

1 (a) A wholesaler's license, \$100.00.

2 (b) A secondary wholesaler's license, \$25.00.

3 ~~(c) A license for vending machine operators, \$25.00.~~

4 (C) ~~(d)~~ An unclassified acquirer's license, as follows:

5 (i) State of Michigan, no fee.

6 (ii) Retail importer of tobacco products other than
7 cigarettes, \$10.00.

8 (iii) Retail importer of cigarettes, \$100.00.

9 ~~(iv) Vending machine operator buying direct from a
10 manufacturer, \$100.00.~~

11 (iv) ~~(v)~~ Manufacturer, \$100.00.

12 (v) ~~(vi)~~ Any other importer, \$100.00.

13 (D) ~~(e)~~ A transportation company's license, \$5.00.

14 (E) ~~(f)~~ A transporter's license, \$50.00.

15 (4) If a manufacturer, wholesaler, **OR** secondary wholesaler ~~or~~
16 ~~or vending machine operator~~ maintains more than 1 place of
17 business, the fee for each additional place of business shall be
18 1/4 of the fee otherwise prescribed in subsection (3). A fee, or a
19 part of a fee, shall not be refunded by reason of relinquishment,
20 suspension, or revocation of the license, or, except under order of
21 a court of competent jurisdiction, for any other reason or cause.

22 (5) ~~A person shall not possess a machine for vending tobacco
23 products for a period in excess of 72 hours unless there is a disc
24 or marker attached as provided by this section. BEGINNING JULY 1,
25 **2018, A PERSON SHALL NOT POSSESS A MACHINE FOR VENDING TOBACCO**
26 **PRODUCTS.** This requirement does not apply to a machine not
27 containing a tobacco product. If a person possesses a vending~~

1 machine containing a tobacco product ~~that is not properly licensed~~
2 ~~or identified as required by~~ **IN VIOLATION OF** this section, the
3 department may seal or seize the machine, together with the tobacco
4 products contained in the machine. The provisions of section 9
5 govern the seizure and subsequent disposition of a machine or
6 tobacco product seized.

7 (6) Applications from persons applying for an initial license
8 under this act shall be accompanied by satisfactory proof, as
9 determined by the department, of all the following:

10 (a) The applicant's financial responsibility, including but
11 not limited to, satisfactory proof of a minimum net worth of
12 \$25,000.00.

13 (b) That the applicant owns, or has an executed lease for, a
14 secure nonresidential facility for the purpose of receiving and
15 distributing cigarettes and conducting its business if the
16 applicant owns or has an executed lease for such a facility. If the
17 applicant carries on another business in conjunction with the
18 secure nonresidential facility, the other business shall also be
19 identified.

20 (c) United States citizenship or eligibility to obtain
21 employment within the United States if not a citizen. If the
22 applicant is not an individual, the controlling shareholders,
23 partners, directors, and principal officers shall be United States
24 citizens or eligible to obtain employment within the United States
25 if not a citizen.

26 (7) The department may require an applicant who is purchasing
27 the business of a licensee to file a copy of the contract of sale

1 and any related documents with its application. The department may
2 require a licensee under this section to furnish a surety bond with
3 a surety company authorized to do business in this state in an
4 amount the department may fix, conditioned upon the payment of the
5 tax provided by this act. The department may also require a
6 licensee under this section to file a financial statement with the
7 department showing all assets and liabilities and any other
8 information the department may prescribe, to be filed within 30
9 days after the date requested. If there is a change of more than
10 50% of ownership or control or a change in the general partnership
11 of a licensee, the department may require that licensee to file a
12 new application for a license or an updated financial statement.

13 Sec. 6. (1) A manufacturer, wholesaler, secondary wholesaler,
14 ~~vending machine operator,~~ transportation company, unclassified
15 acquirer, or retailer shall keep a complete and accurate record of
16 each tobacco product manufactured, purchased, or otherwise
17 acquired. Except for a manufacturer, the records shall include a
18 written statement containing the name and address of both the
19 seller and the purchaser, the date of delivery, the quantity, the
20 trade name or brand, and the price paid for each tobacco product
21 purchased. A licensee shall keep as part of the records a true copy
22 of all purchase orders, invoices, bills of lading, and other
23 written matter substantiating the purchase or acquisition of each
24 tobacco product at the location where the tobacco product is stored
25 or offered for sale. A retailer shall keep as part of the records a
26 true copy of all purchase orders, invoices, bills of lading, and
27 other written matter substantiating the purchase or acquisition of

1 each tobacco product at the location where the tobacco product is
2 offered for sale for a period of 4 months from the date of purchase
3 or acquisition. The department may, by giving prior written
4 approval, authorize a person licensed under this act or a retailer
5 to maintain records in a manner other than that required by this
6 subsection. Other records shall be kept by these persons as the
7 department reasonably prescribes.

8 (2) A manufacturer, wholesaler, unclassified acquirer, and
9 secondary wholesaler shall deliver with each sale or consignment of
10 a tobacco product a written statement containing the name or trade
11 name and address of both the seller and the purchaser, the date of
12 delivery, the quantity, and the trade name or brand of the tobacco
13 product, correctly itemizing the prices paid for each brand
14 purchased, and shall retain a duplicate of each statement.

15 (3) A vending machine operator **IN BUSINESS ON OR BEFORE JUNE**
16 **30, 2018** shall keep a detailed record of each vending machine owned
17 for the sale of tobacco products showing the location of the
18 machine, the date of placing the machine on the location, the
19 quantity of each tobacco product placed in the machine, the date
20 when placed there, and the amount of the commission paid or earned
21 on sales through the vending machine. When filling or refilling the
22 vending machine **ON OR BEFORE JUNE 30, 2018**, the operator shall
23 deliver to the owner or tenant occupying the premises where the
24 machine is located a written statement containing his or her own
25 name and address, the name and address of the owner or the tenant,
26 the date when the machine was filled, and the quantity of each
27 brand of tobacco product sold from the machine since the date when

1 tobacco products were last placed in the machine. A person in
2 possession of premises where a vending machine is located **ON OR**
3 **BEFORE JUNE 30, 2018** shall keep a record of each tobacco product
4 sold through the vending machine located on the premises and the
5 amount of commission paid by the person operating the vending
6 machine. The records shall consist of written statements required
7 to be given by each person operating a vending machine for the sale
8 of tobacco products as provided in this section.

9 (4) A licensee under this act shall not issue or accept a
10 written statement or invoice that is known to the licensee to
11 contain a statement or omission that falsely indicates the name of
12 the customer, the type, trade name, or brand of merchandise, the
13 quantity of each type, trade name, or brand of merchandise, the
14 prices, the discounts, the date of the transaction, or the terms of
15 sale. A person shall not use a device or game of chance to aid,
16 promote, or induce sales or purchases of a tobacco product, or give
17 a tobacco product in connection with a device or game of chance.

18 (5) All statements and other records required by this section
19 shall be in a form prescribed by the department and shall be
20 preserved for a period of 4 years and offered for inspection at any
21 time upon oral or written demand by the department or its
22 authorized agent by every wholesaler, secondary wholesaler, vending
23 machine operator, unclassified acquirer, and retailer.

24 (6) If a tobacco product other than cigarettes is received or
25 acquired within this state by a wholesaler, secondary wholesaler,
26 ~~vending machine operator~~, unclassified acquirer, or retailer, each
27 original manufacturer's shipping case shall bear the name and

1 address of the person making the first purchase or any other
2 markings the department prescribes. If a tobacco product other than
3 cigarettes is found in a place of business or otherwise in the
4 possession of a wholesaler, secondary wholesaler, ~~vending machine~~
5 ~~operator~~, unclassified acquirer, transporter, or retailer without
6 proper markings on the shipping case, box, or container of the
7 tobacco product or if an individual package of cigarettes is found
8 without a stamp affixed as provided under this act or if a tobacco
9 product is found without proper substantiation by invoices or other
10 records as required by this section, the presumption shall be that
11 the tobacco product is kept in violation of this act. If a tobacco
12 product is shipped outside the state, the licensee shipping the
13 tobacco product shall cause to be placed on every shipping case or
14 other container in which the tobacco product is shipped the name
15 and address of the consignee or purchaser to whom the shipment is
16 made outside of the state. The department may require reports from
17 a common carrier who transports a tobacco product to a point within
18 this state from another person who, under contract, transports a
19 tobacco product, or from a bonded warehouseperson or bailee who has
20 in his or her possession a tobacco product. A carrier, bailee,
21 warehouseperson, or other person shall permit the inspection of the
22 tobacco products and examination by the department or its duly
23 authorized agent of any records relating to the shipment of a
24 tobacco product into, from, or within the state.

25 (7) A transporter or other licensee transporting, possessing,
26 or acquiring for the purpose of transporting a tobacco product upon
27 a public highway, road, or street of this state shall have in his

1 or her actual possession invoices or bills of lading containing the
2 name and address of both the seller and the purchaser, the date of
3 delivery, the name and address of the transporter, the quantity and
4 trade name or brand of each tobacco product, the price paid for
5 each trade name or brand in the transporter's possession or
6 custody, and the license as prescribed under this act.

7 (8) A transporter desiring to possess or acquire for
8 transportation or transport a tobacco product upon a highway, road,
9 or street of this state shall obtain a permit from the department
10 authorizing the transporter to possess or acquire for
11 transportation or transport tobacco products and shall have the
12 permit in his or her possession while the tobacco product is in his
13 or her possession. This permit shall be obtained for each load
14 being transported and shall contain a statement setting forth the
15 name and address of the purchaser, seller, and transporter, the
16 license number of the purchaser, the date of the delivery of the
17 tobacco product or date of importation into this state, the route
18 to be followed if a tobacco product is being transported from an
19 out-of-state source, and any other information the department
20 requires. The department shall provide a permit on a form
21 prescribed by it upon the application of a transporter with the
22 remittance of a fee of \$1.00. If a transporter transports a tobacco
23 product into this state, the transporter shall stop at the nearest
24 state police post within this state on the route authorized by the
25 permit and disclose the tobacco products in his or her possession
26 and the papers required by this section to be in his or her
27 possession.

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

9 (2) Before delivery, sale, or transfer to any person in this
10 state, a wholesaler or an unclassified acquirer shall place or
11 cause to be placed on the bottom of each individual package of
12 cigarettes to be sold within this state a stamp provided by the
13 department. Stamps shall be firmly affixed in such a manner that
14 the stamps cannot be removed without being mutilated or destroyed.
15 A stamp shall be affixed to each individual package in an aggregate
16 denomination equal to the amount of the tax upon the contents of
17 the individual package of cigarettes. Except as otherwise provided
18 in this subsection, a stamp is considered affixed if more than 50%
19 of the stamp is affixed to the individual package, as determined by
20 the department. Upon implementation of the digital stamps as
21 provided in section 5a(2), a stamp is considered affixed if 90% or
22 more of the stamp is affixed to the individual package.

23 (3) A retailer or person licensed under this act, other than a
24 wholesaler or unclassified acquirer or a person acting as a
25 transporter for a wholesaler or unclassified acquirer, shall not
26 acquire for resale an individual package of cigarettes or a
27 cigarette from an individual package unless that individual package

1 of cigarettes has affixed to it a stamp as provided in this act.

2 (4) A retailer ~~or vending machine operator~~ shall not sell or
3 offer for sale an individual package of cigarettes to the general
4 public that does not have affixed the stamp required by this act.
5 ~~Cigarettes without stamps may not be placed or stored in a vending~~
6 ~~machine.~~

7 (5) The department or its authorized agents may inspect or
8 conduct an inventory of a wholesaler's or unclassified acquirer's
9 stock of cigarettes, tobacco products other than cigarettes, and
10 stamps during regular business hours and inspect the related
11 statements and other records required in section 6.

12 (6) The department or its authorized agents may inspect the
13 operations of a secondary wholesaler ~~, vending machine operator, or~~
14 ~~retailer, or the contents of a specific vending machine,~~ during
15 regular business hours. This inspection shall include inspection of
16 all statements and other records required by section 6 of this act,
17 of packages of cigarettes and tobacco products other than
18 cigarettes, and of the contents of cartons and shipping or storage
19 containers to ascertain that all individual packages of cigarettes
20 have an affixed stamp of proper denomination as required by this
21 act. This inspection may also verify that all the stamps were
22 produced under the authority of the department.

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 this act.

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

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

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

27 (11) Stamps may only be affixed to an individual package of

1 cigarettes if the manufacturer of the cigarettes is identified on
2 the lists of participating manufacturers or nonparticipating
3 manufacturers maintained by the department pursuant to section
4 6c(8).

5 (12) The department of state police shall initiate inquiries
6 to or otherwise access data from the department to support or in
7 furtherance of its enforcement activities under this act.

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, for cigars, noncigarette smoking
26 tobacco, and smokeless tobacco, 32% of the wholesale price.

27 However, beginning November 1, 2012 and through October 31, 2021,

1 the amount of tax levied under this subdivision on cigars shall not
2 exceed 50 cents per individual cigar.

3 (2) On or before the twentieth day of each calendar month,
4 every licensee under section 3 other than a retailer ~~—OR~~
5 unclassified acquirer licensed as a manufacturer ~~—or vending~~
6 ~~machine operator~~ shall file a return with the department stating
7 the wholesale price of each tobacco product other than cigarettes
8 purchased, the quantity of cigarettes purchased, the wholesale
9 price charged for all tobacco products other than cigarettes sold,
10 the number of individual packages of cigarettes and the number of
11 cigarettes in those individual packages, and the number and
12 denominations of stamps affixed to individual packages of
13 cigarettes sold by the licensee for each place of business in the
14 preceding calendar month. The return shall also include the number
15 and denomination of unaffixed stamps in the possession of the
16 licensee at the end of the preceding calendar month. Wholesalers
17 shall also report accurate inventories of cigarettes, both stamped
18 and unstamped at the end of the preceding calendar month.
19 Wholesalers and unclassified acquirers shall also report accurate
20 inventories of affixed and unaffixed stamps by denomination at the
21 beginning and end of each calendar month and all stamps acquired
22 during the preceding calendar month. The return shall be signed
23 under penalty of perjury. The return shall be on a form prescribed
24 by the department and shall contain or be accompanied by any
25 further information the department requires. The department may
26 also require licensees to report cigarette acquisition, purchase,
27 and sales information in other formats and frequency.

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

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

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

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

16 (d) Beginning on the first calendar month following the
17 implementation of the use of digital stamps as provided in section
18 5a(2), for licensees who are stamping agents, 0.5% of the total
19 amount of the tax due on cigarettes sold and, for sales of untaxed
20 cigarettes to Indian tribes in this state, 0.5% of the total amount
21 of the tax due on those cigarettes sold as if those cigarette sales
22 were taxable sales under this act, until the stamping agent is
23 compensated in an amount equal to the direct cost actually incurred
24 by the stamping agent for the purchase of upgrades to technology
25 and equipment, excluding the equipment reimbursed under subdivision
26 (e), that are necessary to affix the digital stamp as determined by
27 the department. Compensation under this subdivision may also be

1 claimed by a stamping agent for the direct costs actually incurred
2 by the stamping agent, as determined by the department and
3 reflected in the net purchase price, for the initial and 1-time
4 purchase of case packers or similar machines or conveyors as
5 follows:

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

15 (ii) Conveyors to be used exclusively for that portion of a
16 cigarette stamping line that is necessary for and dedicated to
17 cigarette stamping operations using eligible equipment to affix
18 digital stamps to individual packages of cigarettes to be sold in
19 this state. Compensation under this subparagraph may only be
20 claimed by a stamping agent if the cigarette stamping line served
21 by the conveyors is in addition to 1 or more distinct and existing
22 cigarette stamping lines using stamping machines which do not use
23 the digital stamp authorized under this act and that compensation
24 shall not exceed a total of 50% of the amount reimbursed under
25 subdivision (e) for any particular stamping agent.

26 (iii) Compensation under subparagraphs (i) and (ii) shall also
27 include any applicable sales or use taxes paid, and shipping and

1 crating charges actually incurred, by the stamping agent in
2 connection with the purchase, but shall exclude any other costs
3 incurred by the stamping agent not otherwise expressly provided for
4 in this subdivision, including, but not limited to, charges for
5 installation and ongoing maintenance.

6 (e) Beginning in the first calendar month following the
7 implementation of the use of digital stamps as provided in section
8 5a(2) and continuing for the immediately succeeding 17 months, for
9 licensees who are stamping agents, reimbursement of direct costs
10 actually incurred by the stamping agent, as determined by the
11 department, for the initial purchase of eligible equipment in an
12 amount equal to 5.55% of the total net purchase price of the
13 eligible equipment necessary to affix the digital stamp. The
14 reimbursement provided under this subdivision shall also include
15 reimbursement for any applicable sales or use taxes paid and
16 shipping and crating charges actually incurred by the stamping
17 agent for the initial purchase of eligible equipment, but shall
18 exclude reimbursement for any other costs incurred by the stamping
19 agent not otherwise expressly provided for in this subdivision,
20 including, but not limited to, charges for installation and ongoing
21 maintenance related to eligible equipment. A stamping agent may
22 only receive reimbursement under this subdivision to the extent
23 that the eligible equipment purchased by the stamping agent does
24 not exceed the total number of the stamping agent's existing
25 equipment as certified by the stamping agent on a form prescribed
26 by the department.

27 (f) Beginning in the first calendar month following the

1 implementation of the use of digital stamps as provided in section
2 5a(2), for licensees who are stamping agents, reimbursement of
3 qualified equipment costs actually incurred by the stamping agent,
4 not otherwise compensated or reimbursed under subdivision (d) or
5 (e), as determined by the department. The reimbursement provided
6 under this subdivision shall not exceed \$60,000.00 for all stamping
7 agents combined.

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

23 (5) Every licensee and retailer who, on July 1, 2004, has on
24 hand for sale any cigarettes upon which a tax has been paid
25 pursuant to subsection (1)(b), (c), and (d) shall file a complete
26 inventory of those cigarettes before August 1, 2004 and shall pay
27 to the department at the time of filing this inventory a tax equal

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

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

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

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

27 (9) A wholesaler, unclassified acquirer, or other person shall

1 not sell or transfer any unaffixed stamps acquired by the
2 wholesaler or unclassified acquirer from the department. A
3 wholesaler or unclassified acquirer who has any unaffixed stamps on
4 hand at the time its license is revoked or expires, or at the time
5 it discontinues the business of selling cigarettes, shall return
6 those stamps to the department. The department shall refund the
7 value of the stamps, less the appropriate discount paid.

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

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

18 (13) As used in subsection (3):

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

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

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

26 (iii) Was purchased to be used for the primary purpose of
27 permitting the stamping agent to affix digital stamps to individual

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

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

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

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

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

18 Sec. 8. (1) A person, other than a licensee, who is in control
19 or in possession of a tobacco product contrary to this act, who
20 after August 31, 1998 is in control or in possession of an
21 individual package of cigarettes without a stamp in violation of
22 this act, or who offers to sell or does sell a tobacco product to
23 another for purposes of resale without being licensed to do so
24 under this act, shall be personally liable for the tax imposed by
25 this act, plus a penalty of 500% of the amount of tax due under
26 this act.

27 (2) The department may permit a representative of a licensed

1 manufacturer of tobacco products whose duties require travel in
2 this state to transport up to 138,000 cigarettes, of which not more
3 than 36,000 cigarettes may bear no tax indicia or the tax indicia
4 of another state. All 138,000 cigarettes must bear the stamp
5 approved by the department or the tax indicia of another state, if
6 any. The total value of tobacco products, excluding cigarettes,
7 carried by a representative shall not exceed a wholesale value of
8 \$5,000.00. A manufacturer shall notify the department of the
9 manufacturer's representatives that it currently employs who carry
10 cigarettes or tobacco products other than cigarettes in performing
11 work duties in this state. The manufacturer shall maintain a record
12 of each transaction by the manufacturer's representative for a
13 period of 4 years immediately following the transaction and shall
14 produce the records upon request of the state treasurer or the
15 state treasurer's authorized agent. Each record shall identify the
16 quantity and identity of the tobacco products, detail whether
17 exchanged, received, removed, or otherwise disposed of and the
18 identity of the retailer, wholesaler, secondary wholesaler, ~~vending~~
19 ~~machine operator,~~ or unclassified acquirer involved. The
20 representative of the manufacturer shall provide a copy of the
21 record to the retailer, wholesaler, secondary wholesaler, ~~vending~~
22 ~~machine operator,~~ or unclassified acquirer at the time of the
23 exchange or disposal. The retailer, wholesaler, secondary
24 wholesaler, ~~vending machine operator,~~ or unclassified acquirer
25 shall retain the copy of the record in the same place and for the
26 same time period as other records required by this section. A
27 representative shall not exchange, or otherwise dispose of, within

1 this state tobacco products bearing the tax indicia of another
2 state or receive tobacco products bearing the tax indicia of
3 another state from retailers located within this state. A
4 representative who sells, exchanges, or otherwise disposes of
5 cigarettes or tobacco products other than cigarettes that do not
6 bear the stamp or other marking required by the department or
7 sells, exchanges, or otherwise disposes of cigarettes or tobacco
8 products other than cigarettes bearing the tax indicia of another
9 state is guilty of a felony, punishable by a fine of not more than
10 \$5,000.00 or imprisonment for not more than 5 years, or both.

11 (3) A person who possesses, acquires, transports, or offers
12 for sale contrary to this act 3,000 or more cigarettes, tobacco
13 products other than cigarettes with an aggregate wholesale price of
14 \$250.00 or more, 3,000 or more counterfeit cigarettes, 3,000 or
15 more counterfeit cigarette papers, 3,000 or more gray market
16 cigarettes, or 3,000 or more gray market cigarette papers is guilty
17 of a felony, punishable by a fine of not more than \$50,000.00 or
18 imprisonment for not more than 5 years, or both.

19 (4) A person who possesses, acquires, transports, or offers
20 for sale contrary to this act 1,200 or more, but not more than
21 2,999, cigarettes, tobacco products other than cigarettes with an
22 aggregate wholesale value of \$100.00 or more but less than \$250.00,
23 or 1,200 or more, but not more than 2,999, counterfeit cigarettes,
24 counterfeit cigarette papers, gray market cigarettes, or gray
25 market cigarette papers is guilty of a misdemeanor punishable by a
26 fine of not more than \$5,000.00 or imprisonment of not more than 1
27 year, or both.

1 (5) A person who violates a provision of this act for which a
2 criminal punishment is not otherwise provided is guilty of a
3 misdemeanor, punishable by a fine of not more than \$1,000.00 or 5
4 times the retail value of the tobacco products involved, whichever
5 is greater, or imprisonment for not more than 1 year, or both. This
6 subsection does not apply to conduct described in subsection (12).

7 (6) A person who manufactures, possesses, or uses a stamp or
8 manufactures, possesses, or uses a counterfeit stamp or writing or
9 device intended to replicate a stamp without authorization of the
10 department, a licensee who purchases or obtains a stamp from any
11 person other than the department, or who falsifies a manufacturer's
12 label on cigarettes, counterfeit cigarettes, gray market cigarette
13 papers, or counterfeit cigarette papers is guilty of a felony and
14 shall be punished by imprisonment for not less than 1 year or more
15 than 10 years and may be punished by a fine of not more than
16 \$50,000.00.

17 (7) A person who falsely makes, counterfeits, or alters a
18 license, ~~vending machine disc, or marker,~~ or who purchases or
19 receives a false or altered license, ~~vending machine disc, or~~
20 ~~marker,~~ or who assists in or causes to be made a false or altered
21 license, ~~vending machine disc, or marker,~~ or who possesses a device
22 used to forge, alter, or counterfeit a license ~~, vending machine~~
23 ~~disc, or marker~~ is guilty of a felony punishable by a fine of not
24 more than \$5,000.00 or imprisonment for not more than 5 years, or
25 both. A person who alters or falsifies records or markings required
26 under this act is guilty of a felony punishable by a fine of not
27 more than \$5,000.00 or imprisonment for not more than 5 years, or

1 both.

2 (8) The attorney general has concurrent power with the
3 prosecuting attorneys of the state to enforce this act.

4 (9) At the request of the department or its duly authorized
5 agent, the state police and all local police authorities shall
6 enforce the provisions of this act.

7 (10) The department does not have the authority to enforce the
8 provisions of this section regarding gray market cigarette papers
9 or counterfeit cigarette papers.

10 (11) A person who knowingly possesses, acquires, transports,
11 or offers for sale contrary to this act 600 or more, but not more
12 than 1,199, cigarettes, tobacco products other than cigarettes with
13 an aggregate wholesale value of \$50.00 or more but less than
14 \$100.00, or 600 or more, but not more than 1,199, counterfeit
15 cigarettes, counterfeit cigarette papers, gray market cigarettes,
16 or gray market cigarette papers is guilty of a misdemeanor
17 punishable by a fine of not more than \$1,000.00 or imprisonment of
18 not more than 90 days, or both.

19 (12) A person shall not possess, acquire, transport, or offer
20 for sale contrary to this act less than 600 cigarettes, tobacco
21 products other than cigarettes with an aggregate wholesale value of
22 less than \$50.00, or less than 600 counterfeit cigarettes,
23 counterfeit cigarette papers, gray market cigarettes, or gray
24 market cigarette papers. A person who possesses, acquires,
25 transports, or offers for sale contrary to this act 180 or more,
26 but not more than 599, cigarettes, tobacco products other than
27 cigarettes with an aggregate wholesale value of \$25.00 or more but

1 less than \$50.00, or 180 or more, but not more than 599,
2 counterfeit cigarettes, counterfeit cigarette papers, gray market
3 cigarettes, or gray market cigarette papers is responsible for a
4 state civil infraction and may be ordered to pay a civil fine of
5 not more than \$100.00.

6 Sec. 9. (1) A tobacco product held, owned, possessed,
7 transported, or in control of a person in violation of this act,
8 ~~and a vending machine,~~ vehicle ~~,~~ and other tangible personal
9 property containing a tobacco product in violation of this act, and
10 any related books and records are contraband and may be seized and
11 confiscated by the department as provided in this section.

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

1 (3) As soon as possible, but not more than 5 business days
2 after seizure of any alleged contraband, the person making the
3 seizure shall deliver personally or by registered mail to the last
4 known address of the person from whom the seizure was made, if
5 known, an inventory statement of the property seized. A copy of the
6 inventory statement shall also be filed with the state treasurer.
7 The inventory statement shall also contain a notice to the effect
8 that unless demand for hearing as provided in this section is made
9 within 10 business days, the designated property is forfeited to
10 the state. If the person from whom the seizure was made is not
11 known, the person making the seizure shall cause a copy of the
12 inventory statement, together with the notice provided for in this
13 subsection, to be published at least 3 times in a newspaper of
14 general circulation in the county where the seizure was made.
15 Within 10 business days after the date of service of the inventory
16 statement, or in the case of publication, within 10 business days
17 after the date of last publication, the person from whom the
18 property was seized or any person claiming an interest in the
19 property may by registered mail, facsimile transmission, or
20 personal service file with the state treasurer a demand for a
21 hearing before the state treasurer or a person designated by the
22 state treasurer for a determination as to whether the property was
23 lawfully subject to seizure and forfeiture. The person shall verify
24 a request for hearing filed by facsimile transmission by also
25 providing a copy of the original request for hearing by registered
26 mail or personal service. The person or persons are entitled to
27 appear before the department, to be represented by counsel, and to

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

26 (4) If a person is aggrieved by the decision of the
27 department, that person may appeal to the circuit court of the

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

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

23 (6) The seizure and destruction or sale of a tobacco product
24 or other property under this section does not relieve a person from
25 a fine, imprisonment, or other penalty for violation of this act.

26 (7) A person who is not an employee or officer of this state
27 or a political subdivision of this state who furnishes to the

1 department or to any law enforcement agency original information
2 concerning a violation of this act, which information results in
3 the collection and recovery of any tax or penalty or leads to the
4 forfeiture of any cigarettes, or other property, may be awarded and
5 paid by the state treasurer, compensation of not more than 10% of
6 the net amount received from the sale of any forfeited cigarettes
7 or other property, but not to exceed \$5,000.00 which shall be paid
8 out of the receipts from the sale of the property. If any amount is
9 issued to the local governmental unit under subsection (5), the
10 amount awarded under this subsection to a person who provides
11 original information that results in a seizure of cigarettes or
12 other property by a local law enforcement agency shall be paid from
13 that amount issued under subsection (5). If in the opinion of the
14 attorney general and the director of the department of state police
15 it is deemed necessary to preserve the identity of the person
16 furnishing the information, the attorney general and the director
17 of the department of state police shall file with the state
18 treasurer an affidavit setting forth that necessity and a warrant
19 may be issued jointly to the attorney general and the director of
20 the department of state police. Upon payment to the person
21 furnishing that information, the attorney general and the director
22 of the department of state police shall file with the state
23 treasurer an affidavit that the money has been by them paid to the
24 person entitled to the money under this section.

25 (8) Beginning September 1, 1998, if a retailer possesses or
26 sells cigarettes on which the tax imposed under this act has not
27 been paid or accrued to a wholesaler, secondary wholesaler, or

1 unclassified acquirer licensed under this act, the retailer shall
2 be prohibited from purchasing, possessing, or selling any
3 cigarettes or other tobacco products as follows:

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

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

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

10 (9) The prohibition described in subsection (8) shall be
11 effective upon service by certified mail or personal service on the
12 retailer of notice issued by the department ordering the retailer
13 to cease all sales and purchases of cigarettes and other tobacco
14 products. Upon receipt of this notice, the retailer may return any
15 tobacco products in the possession of the retailer upon which the
16 tax imposed by this act has been paid or accrued to a wholesaler,
17 secondary wholesaler, or unclassified acquirer licensed under this
18 act. The department shall notify all licensed wholesalers,
19 manufacturers, secondary wholesalers, ~~vending machine operators,~~
20 and unclassified acquirers of any retailer who has been prohibited
21 from purchasing cigarettes or other tobacco products and the
22 duration of the prohibition. A wholesaler, secondary wholesaler, or
23 unclassified acquirer shall not sell cigarettes or other tobacco
24 products to a retailer after receipt of notice from the department
25 that the retailer is prohibited from purchasing tobacco products.
26 Any cigarettes or other tobacco products found on the premises of
27 the retailer during the period of prohibition shall be considered

1 contraband and subject to seizure under this section, and shall
2 constitute an additional improper possession under this subsection.
3 The retailer may contest the order prohibiting purchase,
4 possession, or sale of tobacco products in accordance with the
5 appeal procedures and time limits provided in subsection (3) of
6 this section. After completion of the appeals provided or upon
7 expiration of the period to request such appeal, the department
8 shall issue a final order and make service upon the retailer of an
9 order to cease all purchases, possession, and sale of all
10 cigarettes and other tobacco products for a specified period as
11 appropriate. This order does not relieve the retailer from seizure
12 and sale of a tobacco product or other property under this section,
13 or relieve the retailer from a fine, imprisonment, or other penalty
14 for violation of this act.

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

23 (2) All sales conducted through the ~~Internet,~~ **INTERNET**, by
24 telephone, or in a mail-order transaction shall not be completed
25 unless, before each delivery of cigarettes is made, whether through
26 the mail, through a transportation company, or through any other
27 delivery system, the seller has obtained from the purchaser an

1 affirmation that includes a copy of a valid government-issued
2 document that confirms the purchaser's name, address, and date of
3 birth showing that the purchaser is at least the legal minimum age
4 to purchase cigarettes; that the cigarettes purchased are not
5 intended for consumption by an individual who is younger than the
6 legal minimum age to purchase cigarettes; and a written statement
7 signed by the purchaser that affirms the purchaser's address and
8 that the purchaser is at least the minimum legal age to purchase
9 cigarettes. The statement shall also confirm that the purchaser
10 understands that signing another person's name to the affirmation
11 is illegal; that the sale of cigarettes to individuals under the
12 legal minimum purchase age is illegal; and that the purchase of
13 cigarettes by individuals under the legal minimum purchase age is
14 illegal under the laws of the state of Michigan. The seller shall
15 verify the information contained in the affirmation provided by the
16 purchaser against a commercially available database of governmental
17 records, or obtain a photocopy, fax copy, or other image of the
18 valid, government-issued identification stating the date of birth
19 or age of the purchaser.

20 (3) All invoices, bills of lading, sales receipts, or other
21 documents related to cigarette sales conducted through the
22 internet, by telephone, or in a mail-order transaction shall
23 contain the current seller's valid Michigan sales tax registration
24 number, business name and address of the seller, and a statement as
25 to whether all sales taxes and taxes levied under this act have
26 been paid. All packages of cigarettes shipped from a cigarette
27 seller to purchasers who reside in Michigan shall clearly print or

1 stamp the package with the word "CIGARETTES" on the outside of all
2 sides of the package so it is clearly visible to the shipper. In
3 addition, the package shall contain an externally visible and
4 clearly legible notice located on the same side of the package as
5 the address to which the package is delivered, as follows:

6 "IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER
7 LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS
8 REPORTED UNDER FEDERAL LAW THE SALE OF THESE CIGARETTES TO OUR
9 STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU
10 ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON
11 THESE CIGARETTES."

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

18 (4) The deliverer of the cigarettes is required to obtain
19 proof from a valid government-issued document that the person
20 signing for the cigarettes is the purchaser.

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

1 (6) As used in this section:

2 (a) "Computer" means any connected, directly interoperable or
3 interactive device, equipment, or facility that uses a computer
4 program or other instructions to perform specific operations,
5 including logical, arithmetic, or memory functions with or on
6 computer data or a computer program, and that can store, retrieve,
7 alter, or communicate the results of the operations to a person,
8 computer program, computer, computer system, or computer network.

9 (b) "Computer network" means the interconnection of hardware
10 or wireless communication lines with a computer through remote
11 terminals or a complex consisting of 2 or more interconnected
12 computers.

13 (c) "Computer program" means a series of internal or external
14 instructions communicated in a form acceptable to a computer that
15 directs the functioning of a computer, computer system, or computer
16 network in a manner designed to provide or produce products or
17 results from the computer, computer system, or computer network.

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

20 (e) "Credit card" means a card or device issued by a person
21 licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the
22 consumer financial services act, 1988 PA 161, MCL 487.2051 to
23 487.2072, or issued by a depository financial institution as
24 defined in section 1a of the mortgage brokers, lenders, and
25 services licensing act, 1987 PA 173, MCL 445.1651a, under a credit
26 card arrangement.

27 (f) "Device" includes, but is not limited to, an electronic,

1 magnetic, electrochemical, biochemical, hydraulic, optical, or
2 organic object that performs input, output, or storage functions by
3 the manipulation of electronic, magnetic, or other impulses.

4 (g) "Internet" means the connection to the World Wide Web
5 through the use of a computer, a computer network, or a computer
6 system.

7 (h) "Sale conducted through the ~~Internet~~ **INTERNET**" means a
8 sale of, a solicitation to sell, a purchase of, or an offer to
9 purchase cigarettes conducted all or in part by accessing an
10 ~~Internet~~ **INTERNET** website.

11 Enacting section 1. This amendatory act takes effect on July
12 1, 2018.