

SENATE BILL NO. 720

November 03, 2021, Introduced by Senator RUNESTAD and referred to the Committee on Finance.

A bill to amend 1993 PA 327, entitled "Tobacco products tax act," by amending sections 2, 3, 4, 5, 5a, 6, 6a, 6b, 6c, 6d, 7, 7b, 8, 9, 11, 12, and 13 (MCL 205.422, 205.423, 205.424, 205.425, 205.425a, 205.426, 205.426a, 205.426b, 205.426c, 205.426d, 205.427, 205.427b, 205.428, 205.429, 205.431, 205.432, and 205.433), sections 2 and 11 as amended by 2020 PA 326, sections 3, 5, and 6 as amended and section 6b as added by 1997 PA 187, sections 5a and 6a as amended by 2012 PA 188, section 6c as added by 2002 PA 503, section 6d as added by 2003 PA 285, section 7 as amended by 2016 PA 86, section 7b as added by 2002 PA 607, section 8 as amended by

2008 PA 458, section 9 as amended by 2004 PA 474, section 12 as amended by 2018 PA 639, and section 13 as amended by 1995 PA 131, and by adding sections 3a and 6f.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Cigar" means any roll of tobacco wrapped in leaf tobacco
3 or in any substance containing tobacco. Cigar does not include a
4 cigarette.

5 (b) "Cigarette" means a roll for smoking **or heating that is**
6 made wholly or in part of tobacco, irrespective of size or shape
7 and irrespective of the tobacco being flavored, adulterated, or
8 mixed with any other ingredient, which roll has a wrapper or cover
9 made of paper or any other material. Cigarette does not include
10 cigars.

11 (c) "Cigarette making machine" means any machine or other
12 mechanical device ~~which~~**that** meets all of the following criteria:

13 (i) Is capable of being loaded with loose tobacco, cigarette
14 tubes or cigarette papers, and any other components related to the
15 production of cigarettes, including, but not limited to, cigarette
16 filters.

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

19 (iii) Is commercial-grade or otherwise designed or suitable for
20 commercial use.

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

23 ~~(d) "Commissioner" means the state treasurer.~~

24 **(d)** ~~(e)~~—"Container" or "shipping case" means an individual
25 receptacle within which a tobacco product or group of tobacco

1 products is placed for shipment, storage, or distribution, such as
 2 a box, case, or tote. A container or shipping case does not include
 3 any of the following:

4 (i) An individual package of cigarettes or cigarette carton
 5 containing cigarettes that are not counterfeit cigarettes.

6 (ii) Except for counterfeit cigarettes, the package or other
 7 article containing the tobacco product that is sold or transferred
 8 directly to the ultimate consumer.

9 (iii) A bag or similar package containing bulk or loose hookah
 10 tobacco, pipe tobacco, or roll-your-own cigarette tobacco that a
 11 retailer uses to fill bins, barrels, or tubs located at the
 12 retailer's place of business from which either the retailer sells a
 13 specified quantity of those tobacco products or a blend or mixture
 14 of those tobacco products to the consumer, or the consumer removes
 15 or draws a specified quantity of those tobacco products or a blend
 16 or mixture of those tobacco products for purchase at retail from
 17 the retailer.

18 (iv) A pallet or similar article or device upon which an
 19 individual receptacle or group of receptacles, containing the
 20 tobacco products, is placed for shipment, storage, or distribution.

21 (v) Property used as a protective covering for, or to keep
 22 together during shipment, storage, or distribution, a receptacle or
 23 group of receptacles within which the tobacco product is placed for
 24 shipment, storage, or distribution including shrink wrap or other
 25 wrapping materials, but excluding the protective covering ~~which~~
 26 **that** forms, gives shape to, or otherwise constitutes the receptacle
 27 within which the tobacco product is placed for shipment, storage,
 28 or distribution.

29 (e) ~~(f)~~—"Counterfeit cigarette" means a cigarette in an

1 individual package of cigarettes or other container with a false
2 manufacturing label or a cigarette in an individual package of
3 cigarettes or other container with a counterfeit stamp.

4 (f) ~~(g)~~—"Counterfeit cigarette paper" means a cigarette paper
5 with a false manufacturing label or that has not been printed,
6 manufactured, or made by authority of the trademark owner.

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

13 (h) ~~(i)~~—"Department" means the department of treasury.

14 (i) ~~(j)~~—"Financially sound" means a determination by the
15 department that the wholesaler or unclassified acquirer is able to
16 pay the tax due on the tobacco products it sells, imports, or
17 acquires, as applicable, in the ordinary course of business based
18 on 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 not
22 limited to, balance sheets and income statements.

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

25 (v) Ability to pay for its stamps, if required under this act.

26 (j) ~~(k)~~—"Gray market cigarette" means any cigarette the
27 package of which bears any statement, label, stamp, sticker, or
28 notice indicating that the manufacturer did not intend the
29 cigarettes to be sold, distributed, or used in the United States,

1 including, but not limited to, a label stating "For Export Only",
 2 "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording.

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

10 (l) ~~(m)~~—"Hookah tobacco" means tobacco that is designed,
 11 manufactured, or otherwise intended for consumption by smoking in a
 12 hookah and that is flavored with honey, molasses, fruit, or other
 13 natural or artificial flavors. Hookah tobacco includes those
 14 products commonly known or referred to as narghile, argileh,
 15 shisha, hubble-bubble, molasses tobacco, waterpipe tobacco,
 16 maassel, or goza.

17 (m) ~~(n)~~—"Hookah" means a device, including a waterpipe, used
 18 for smoking hookah tobacco that consists of a tube connected to a
 19 chamber where the smoke is cooled passing through water.

20 (n) ~~(o)~~—"Individual package" means an individual packet or
 21 pack used to contain or to convey cigarettes to the consumer.
 22 Individual package does not include cartons, cases, or shipping or
 23 storage containers that contain smaller packaging units of
 24 cigarettes.

25 (o) ~~(p)~~—"Licensee" means a person licensed under this act.

26 (p) ~~(q)~~—"Manufacturer" means, **except as otherwise provided in**
 27 **subdivision (q)**, any of the following:

28 (i) ~~Except as otherwise provided in this subdivision, a~~ **A**
 29 person who manufactures or produces a tobacco product.

1 (ii) A person who operates or who permits any other person to
 2 operate a cigarette making machine in this state for the purpose of
 3 producing, filling, rolling, dispensing, or otherwise generating
 4 cigarettes. A person who is a manufacturer under this subparagraph
 5 ~~shall constitute~~ **constitutes** a nonparticipating manufacturer for
 6 purposes of sections 6c and 6d.

7 **(q) Manufacturer does not include any of the following:**

8 (i) A person who operates or otherwise uses a machine or other
 9 mechanical device, other than a cigarette making machine, to
 10 produce, roll, fill, dispense, or otherwise generate cigarettes
 11 ~~shall not be considered a manufacturer~~ as long as the cigarettes
 12 are produced or otherwise generated in that person's dwelling and
 13 for that person's self-consumption. ~~For purposes of this act,~~ **As**
 14 **used in this subparagraph and subparagraph (ii)**, "self-consumption"
 15 means production for personal consumption or use and not for sale,
 16 resale, or any other profit-making endeavor.

17 (ii) ~~(iii)~~ A person who does any of the following: ~~shall not be~~
 18 ~~considered a manufacturer:~~

19 (A) Mixes or blends 2 or more different tobacco products to
 20 create a custom mix or blend of those products if each of the
 21 constituent tobacco products mixed or blended together is a
 22 finished tobacco product that the person could or does otherwise
 23 sell to consumers and upon which the tax under this act has been
 24 paid.

25 (B) Creates or produces, by filling a fruit with hookah
 26 tobacco, what is commonly known as a fruit bowl or fruit head for
 27 use in a hookah.

28 (C) Rolls a cigar for his or her own self-consumption.

29 (r) "Noncigarette smoking tobacco" means tobacco sold in loose

1 or bulk form that is intended for consumption by smoking and also
2 includes roll-your-own cigarette tobacco, hookah tobacco, pipe
3 tobacco, or a wrap.

4 (s) "Person" means an individual, partnership, fiduciary,
5 association, limited liability company, corporation, or other legal
6 entity.

7 (t) "Pipe tobacco" means any tobacco that, because of its
8 appearance, type, packaging, or labeling, is suitable for use and
9 likely to be offered to, or purchased by, consumers as tobacco to
10 smoke in a pipe.

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

15 (v) "Remote retail sale" means a sale of a tobacco product to
16 a consumer in this state if either of the following applies:

17 (i) The consumer submits the order for the sale by means of a
18 telephone or other method of voice transmission, the mail, or the
19 internet or other online service, or the seller is otherwise not in
20 the physical presence of the purchaser when the request for
21 purchase or order is made.

22 (ii) The tobacco product is delivered to the purchaser by
23 common carrier, private delivery service, or other method of remote
24 delivery, or the seller is not in the physical presence of the
25 purchaser when the purchaser obtains possession of the tobacco
26 product.

27 (w) ~~(v)~~ "Retailer" means a person other than a transportation
28 company who operates a place of business in this state, or who
29 directs, manages, or has control over the day-to-day operations of

1 a place of business in this state, for the purpose of making, **or**
 2 **who does make**, sales of a tobacco product at retail **other than a**
 3 **remote retail sale**. A person described in this subdivision
 4 qualifies as a retailer regardless of whether that person owns the
 5 place of business.

6 **(x)** ~~(w)~~—"Roll-your-own cigarette tobacco" means any tobacco
 7 ~~which, that~~, because of its appearance, type, packaging, or
 8 labeling, is suitable for use and likely to be offered to, or
 9 purchased by, consumers as tobacco for making cigarettes.

10 **(y)** ~~(x)~~—"Sale" means a transaction by which the ownership of
 11 tangible personal property is transferred for consideration and
 12 applies also to use, gifts, exchanges, barter, and theft.

13 **(z)** ~~(y)~~—"Secondary wholesaler" means a person, **other than a**
 14 **manufacturer or a person licensed under this act as a vending**
 15 **machine operator, wholesaler, or unclassified acquirer**, who ~~sells~~
 16 **engages in the sale of** a tobacco product for resale. ~~, who~~
 17 ~~purchases a tobacco product from a wholesaler or unclassified~~
 18 ~~acquirer licensed under this act, and who maintains an established~~
 19 ~~place of business in this state where a substantial portion of the~~
 20 ~~business is the sale of tobacco products and related merchandise at~~
 21 ~~wholesale, and where at all times a substantial stock of tobacco~~
 22 ~~products and related merchandise is available to retailers for~~
 23 ~~resale.~~ **A secondary wholesaler also includes a retailer, not**
 24 **otherwise licensed under this act, who transfers or exchanges a**
 25 **tobacco product from one place of business of the retailer to**
 26 **another place of business of the retailer.**

27 **(aa)** ~~(z)~~—"Smokeless tobacco" means snuff, snus, chewing
 28 tobacco, moist snuff, and any other tobacco that is intended to be
 29 used or consumed, whether heated, chewed, absorbed, dissolved,

1 inhaled, snorted, sniffed, or ingested, by any means other than
2 smoking or combustion.

3 **(bb)** ~~(aa)~~ "Stamp" means a distinctive character, indication,
4 or mark, as determined by the department, attached or affixed to an
5 individual package of cigarettes by mechanical device or other
6 means authorized by the department to indicate that the tax imposed
7 under this act has been paid.

8 **(cc)** ~~(bb)~~ "Stamping agent" means a wholesaler or unclassified
9 acquirer ~~other than a manufacturer~~ who is licensed and authorized
10 by the department to affix stamps to individual packages of
11 cigarettes on behalf of themselves and other wholesalers or
12 unclassified acquirers. ~~other than manufacturers.~~

13 **(dd)** ~~(ee)~~ "Tobacco product" means a product containing any
14 amount of tobacco regardless of form including, but not limited to,
15 cigarettes, cigars, noncigarette smoking tobacco, or smokeless
16 tobacco. A tobacco product does not include drugs, devices, or
17 combination products authorized for sale **as tobacco cessation**
18 **products** by the United States Food and Drug Administration, as
19 those terms are defined in **subchapter V of** the federal food, drug,
20 and cosmetic act, 21 USC 351 to ~~360fff-7.~~ **360fff-8.**

21 **(ee)** ~~(dd)~~ "Transportation company" means a person operating,
22 or 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 **(ff)** ~~(ee)~~ "Transporter" means a person importing or
26 transporting into this state, or transporting in this state, a
27 tobacco product obtained from a source located outside this state,
28 or from any person not duly licensed under this act. Transporter
29 does not include an interstate commerce carrier licensed by the

1 ~~interstate commerce commission, Interstate Commerce Commission,~~ or
 2 its successor federal agency, to carry commodities in interstate
 3 commerce, or a licensee maintaining a warehouse or place of
 4 business outside of this state if the warehouse or place of
 5 business is licensed under this act.

6 **(gg)** ~~(ff)~~ "Unclassified acquirer" means a person, except a
 7 transportation company or a purchaser at retail from a retailer
 8 licensed under the general sales tax act, 1933 PA 167, MCL 205.51
 9 to 205.78, who imports or acquires a tobacco product from a source
 10 other than a wholesaler or secondary wholesaler licensed under this
 11 act for use, sale, or distribution in this state. Unclassified
 12 acquirer also means a person who purchases or receives tobacco
 13 products directly from a manufacturer licensed under this act or
 14 from another source outside this state, which source is not
 15 licensed under this act. An unclassified acquirer also includes a
 16 person not located in this state that sells a tobacco product,
 17 through a mail order, catalog sale, telephone order, internet sale,
 18 or any other means, to a retailer or other person in this state
 19 that is not licensed under this act as a wholesaler, unclassified
 20 acquirer, ~~other than a manufacturer,~~ or secondary wholesaler.
 21 **Unclassified acquirer also includes a person located within or**
 22 **outside of this state that makes a remote retail sale of a tobacco**
 23 **product to a consumer in this state.** An unclassified acquirer does
 24 not include a wholesaler.

25 **(hh)** ~~(gg)~~ "Vending machine operator" means a person who
 26 operates 1 or more vending machines in this state for the sale of a
 27 tobacco product. ~~and who purchases a tobacco product from a~~
 28 ~~manufacturer, licensed wholesaler, or secondary wholesaler.~~

29 **(ii)** ~~(hh)~~ "Wholesale price" means the actual price paid to a

1 seller for a tobacco product, by a wholesaler or unclassified
2 acquirer ~~in order~~ to acquire that tobacco product from the seller.
3 The wholesale price includes any tax, fee, licensing, or other
4 charge, except as otherwise provided in this subdivision, reflected
5 on the invoice, bill of sale, purchase order, or other document
6 evidencing the sale or purchase of the tobacco product. Wholesale
7 price does not include, if separately stated on the invoice, bill
8 of sale, purchase order, or other document evidencing the sale of
9 the tobacco product, shipping or handling charges for cigarettes,
10 and reasonable shipping or handling charges for tobacco products
11 other than cigarettes such as transportation, shipping, postage,
12 handling, crating, or packing. ~~When~~ **If** items or products, other
13 than tobacco products, are included in a transaction for the
14 purchase of tobacco products by a wholesaler or unclassified
15 acquirer, charges for those products or items that are not tobacco
16 products, including shipping and handling charges, may be excluded
17 from the wholesale price if separately stated on the invoice, bill
18 of sale, purchase order, or other document evidencing the sale or
19 purchase. The wholesale price shall not be reduced due to any
20 rebate, trade allowance, licensing or exclusivity agreement, volume
21 or other discount, or any other reduction given by the seller or
22 passed on to or otherwise received by the wholesaler or
23 unclassified acquirer from the seller. If the wholesaler or
24 unclassified acquirer **fails to keep or maintain the records as**
25 **required under section 6, or** has a relationship as described in
26 section 267(b) of the internal revenue code of 1986, 26 USC 267,
27 with the seller, the department may establish the wholesale price
28 for the tobacco products based on the best available information or
29 any other reasonable proxy for the wholesale price including, but

1 not limited to, the wholesale price paid by other taxpayers for
 2 those tobacco products within the past 4 years. **If an unclassified**
 3 **acquirer makes a remote retail sale and fails to keep or maintain**
 4 **the records required under section 6 for the remote retail sale,**
 5 **the department may determine the wholesale price of the tobacco**
 6 **product sold to the consumer in that remote retail sale based on**
 7 **the average price paid, during the immediately preceding calendar**
 8 **year, by the unclassified acquirer to acquire or purchase the same**
 9 **type of tobacco product if that information is made available to**
 10 **the department by the unclassified acquirer.**

11 (jj) ~~(ii)~~ "Wholesaler" means a person who purchases all or
 12 part of its tobacco products from a manufacturer and who sells 75%
 13 or more of those tobacco products to others for resale. Wholesaler
 14 includes a chain of stores retailing a tobacco product to the
 15 consumer if 75% of its stock of tobacco products is purchased
 16 directly from the manufacturer.

17 (kk) ~~(jj)~~ "Wrap" means an individual tobacco wrapper that is
 18 made wholly or in part from tobacco, including reconstituted
 19 tobacco, whether in the form of tobacco leaf, sheet, or tube, if
 20 the wrap is designed to be offered, or is offered, for sale to
 21 consumers to create or to use as a component part of a tobacco
 22 product.

23 Sec. 3. (1) ~~Beginning May 1, 1994,~~ **Except as otherwise**
 24 **provided in section 3a and section 6(15),** a person shall not
 25 purchase, possess, acquire for resale, **import,** or sell a tobacco
 26 product as a manufacturer, wholesaler, secondary wholesaler,
 27 vending machine operator, unclassified acquirer, transportation
 28 company, or transporter in **or into** this state unless licensed to do
 29 so. **A person shall not make a remote retail sale to a consumer in**

1 **this state unless that person is licensed under this act as an**
 2 **unclassified acquirer.** A license granted under this act is not
 3 assignable.

4 (2) Upon proper application and the payment of the applicable
 5 fee, and subject to subsection (6), the department shall issue a
 6 license to each manufacturer, wholesaler, secondary wholesaler,
 7 vending machine operator, unclassified acquirer, transportation
 8 company, or transporter. The application ~~shall~~**must** be on a form
 9 prescribed by the department and signed under penalty of perjury.
 10 **The application must state the applicant's regular business hours.**
 11 Except for transportation companies, each place of business ~~shall~~
 12 **must** be separately licensed. If a person acts in more than 1
 13 capacity at any 1 place of business, a license ~~shall~~**must** be
 14 procured for each capacity. Each machine for vending tobacco
 15 products ~~shall be~~**is** considered a place of retail business. Each
 16 license or a duplicate copy ~~shall~~**must** be prominently displayed on
 17 the premises covered by the license. In the case of vending
 18 machines, a disc or marker furnished by the department showing it
 19 to be licensed ~~shall~~**must** be attached to the front of the machine
 20 in a place clearly visible to the public. **For unclassified**
 21 **acquirers that do not maintain a place of business where tobacco**
 22 **products are sold, brought, or kept, the department may issue a**
 23 **license based on the physical address of the applicant's**
 24 **nonresidential building, office, or other facility where the**
 25 **records required under this act are to be kept and maintained.**

26 (3) The fees for licenses ~~shall be the following:~~**are as**
 27 **follows:**

28 (a) A wholesaler's license, ~~\$100.00.~~**\$200.00.**

29 (b) A secondary wholesaler's license, ~~\$25.00.~~**\$200.00.**

1 (c) A license for vending machine operators, ~~\$25.00.~~ **\$200.00.**

2 (d) An unclassified acquirer's license, as follows:

3 (i) State of Michigan, no fee.

4 (ii) Retail importer of tobacco products other than cigarettes,
5 ~~\$10.00.~~ **\$200.00.**

6 (iii) Retail importer of cigarettes, ~~\$100.00.~~ **\$200.00.**

7 (iv) Vending machine operator buying direct from a
8 manufacturer, ~~\$100.00.~~ **\$200.00.**

9 ~~(v) Manufacturer, \$100.00.~~

10 **(v)** ~~(vi)~~ Any other importer, ~~\$100.00.~~ **\$200.00.**

11 (e) A transportation company's license, ~~\$5.00.~~ **\$200.00.**

12 (f) A transporter's license, ~~\$50.00.~~ **\$200.00.**

13 **(g) A manufacturer's license, \$200.00.**

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

21 (5) A person shall not possess a machine for vending tobacco
22 products for a period in excess of 72 hours, **or operate a machine**
23 **for vending tobacco products**, unless there is a disc or marker
24 attached as provided by this section. This requirement does not
25 apply to a machine not containing **or used in selling** a tobacco
26 product. If a person possesses **or operates** a vending machine
27 containing **or used in selling** a tobacco product that is not
28 properly licensed or identified as required by this section, the
29 department may seal or seize the machine, together with ~~the~~ **any**

1 tobacco products contained in the machine. The provisions of
2 section 9 govern the seizure and subsequent disposition of a
3 machine or tobacco product seized.

4 (6) Applications from persons applying for an initial license
5 under this act ~~shall~~**must** be accompanied by satisfactory proof, as
6 determined by the department, of all the following:

7 (a) The applicant's financial responsibility, including but
8 not limited to, satisfactory proof of a minimum net worth of
9 \$25,000.00.

10 (b) That the applicant owns, or has an executed lease for, a
11 secure nonresidential facility for the purpose of receiving,
12 **storing**, and distributing ~~cigarettes~~**tobacco products** and
13 conducting its business **in accordance with this act** if the
14 applicant owns or has an executed lease for such a facility. If the
15 applicant carries on another business in conjunction with the
16 secure nonresidential facility, the other business ~~shall~~**must** also
17 be identified.

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

24 (7) The department may require an applicant who is purchasing
25 the business of a licensee to file a copy of the contract of sale
26 and any related documents with its application. The department may
27 require a licensee under this section to furnish a surety bond with
28 a surety company authorized to do business in this state in an
29 amount the department may fix, conditioned upon the payment of the

1 tax provided by this act. The department may also require a
2 licensee under this section to file a financial statement with the
3 department showing all assets and liabilities and any other
4 information the department may prescribe, to be filed within 30
5 days after the date requested. If there is a change of more than
6 50% of ownership or control or a change in the general partnership
7 of a licensee, the department may require that licensee to file a
8 new application for a license or an updated financial statement.

9 **(8) Each place of business of a retailer, and any place of**
10 **business or other nonresidential building, office, or facility**
11 **licensed under this section, must display the name and address of**
12 **the retailer or licensee in a manner that is readily visible to the**
13 **general public from outside the place of business, nonresidential**
14 **building, office, or facility, as applicable.**

15 **(9) Notwithstanding anything in this act to the contrary, the**
16 **following requirements apply to a secondary wholesaler, vending**
17 **machine operator, or wholesaler, as applicable:**

18 **(a) A secondary wholesaler may purchase or acquire a tobacco**
19 **product for resale in this state only if that purchase or**
20 **acquisition is directly from a wholesaler or unclassified acquirer**
21 **that is licensed under this act and the tax imposed under this act**
22 **has been paid on that tobacco product.**

23 **(b) A secondary wholesaler shall maintain an established place**
24 **of business in this state where a substantial portion of the**
25 **business is the sale of tobacco products and related merchandise at**
26 **wholesale and where, at all times, a substantial stock of tobacco**
27 **products and related merchandise is available for sale to retailers**
28 **for resale.**

29 **(c) A wholesaler shall maintain an established place of**

1 business in this state where substantially all of the business is
2 the sale of tobacco products and related merchandise at wholesale
3 and where, at all times, a substantial stock of tobacco products
4 and related merchandise is available for sale to retailers for
5 resale.

6 (d) A vending machine operator may purchase a tobacco product
7 only from a secondary wholesaler, a wholesaler, or an unclassified
8 acquirer that is licensed under this act.

9 Sec. 3a. (1) A creditor that acquires a tobacco product in
10 this state as a result of exercising a security interest may sell
11 that tobacco product without being licensed under this act if both
12 of the following requirements are met:

13 (a) The creditor receives written approval from the
14 department.

15 (b) The creditor sells or transfers the tobacco product to a
16 person in this state licensed under this act as either a wholesaler
17 or unclassified acquirer.

18 (2) A creditor shall apply for approval under this section on
19 a form and in a manner prescribed by the department.

20 (3) As used in this section, "creditor" and "security
21 interest" mean those terms as defined in section 1201 of the
22 uniform commercial code, 1962 PA 174, MCL 440.1201.

23 Sec. 4. ~~(1) Except as provided in subsection (2), each~~ **Each**
24 license issued under section 3 ~~shall expire~~ **expires** on the June 30
25 next succeeding the date of issuance unless revoked by the
26 department, unless the business for which the license was issued
27 changes ownership, or unless the holder of the license removes the
28 business from the location covered by the license. Upon expiration
29 of the license, revocation of the license, change of ownership of

1 the business, or removal of the business from the location covered
2 by the license, the holder of the license immediately shall return
3 the license to the department. If a business moves to another
4 location, ~~in the state,~~ the license may be reissued for the new
5 location for the balance of the unexpired term without payment of
6 an additional fee. The holder of each license may renew that
7 license for another 1-year period by filing an application
8 accompanied by the applicable fee with the department before the
9 expiration date of that license.

10 ~~(2) For licenses issued in 1994, the department may issue~~
11 ~~those licenses with an expiration date of June 30, 1995.~~

12 Sec. 5. (1) The department may suspend, revoke, or refuse to
13 issue or renew a license issued under this act for failure to
14 comply with this act or for any other good cause. A person whose
15 license is suspended, revoked, or not renewed shall not act as a
16 stamping agent or acquire a stamp from the department or any other
17 person, or sell a tobacco product during the period of suspension
18 or revocation, or until the license is renewed.

19 (2) If a person who is a manufacturer, wholesaler, or
20 unclassified acquirer licensed under this act is convicted of a
21 felony under any provision of this act, the department shall revoke
22 any license issued under this act to that person.

23 (3) Before the department suspends, revokes, or refuses to
24 renew a license under this act, the department shall notify the
25 person of its intent to hold a hearing before a representative of
26 the ~~commissioner~~ **state treasurer** for purposes of determining
27 whether to suspend, revoke, or refuse to renew a license ~~at least~~
28 **not less than** 14 days before the scheduled hearing date.

29 (4) A person aggrieved by the suspension, revocation, or

1 refusal to issue or renew a license may apply to the ~~revenue~~
2 ~~division of the~~ department for a hearing within 20 days after
3 notice of the suspension, revocation, or refusal to issue or renew
4 the license. A hearing ~~shall be had~~ **must be held** in the same manner
5 provided in section 21 of 1941 PA 122, MCL 205.21. The decision in
6 case of suspension, revocation, or refusal to renew ~~shall~~ **must** be
7 issued within 45 days of receipt of the request for hearing.

8 Sec. 5a. (1) The department shall procure stamps as needed in
9 the various designs, denominations, and forms necessary as
10 determined by the department. The department shall pay for the
11 stamps.

12 (2) Not later than ~~45 days after the effective date of the~~
13 ~~amendatory act that added this subsection,~~ **June 20, 2012**, the
14 department shall issue a request for proposal to acquire and use
15 digital stamps that contain a unique nonrepeating code that can be
16 read by a device that identifies the taxed product and also contain
17 other security and enforcement features as determined by the
18 department. The request for proposal ~~shall~~ **must** include a provision
19 that requires the successful bidder on the proposal to share
20 digital stamp technology so that handheld devices, including, but
21 not limited to, smartphones, can be readily utilized in furtherance
22 of the implementation of the use of digital stamps and so that the
23 technology and equipment used by the stamping agents to affix the
24 stamp to the product can be supplied, as may be permitted by the
25 department, by the successful bidder on the proposal or by any
26 other providers. The request for proposal ~~shall~~ **must** also include a
27 provision permitting the department to manage or restrict access
28 rights to all or part of the information contained within, or
29 accessible from, the stamps and a provision requiring the

1 successful bidder on the proposal to guarantee that the stamps will
2 be designed and manufactured to ensure that stamps can be affixed
3 to individual packages of cigarettes in accordance with the
4 requirements under section 6a(2) **and (3)**.

5 Sec. 6. (1) A manufacturer, wholesaler, secondary wholesaler,
6 vending machine operator, transportation company, unclassified
7 acquirer, or retailer shall keep a complete and accurate record of
8 each tobacco product manufactured, purchased, or otherwise
9 acquired. Except for a manufacturer, the records ~~shall~~**must** include
10 a written statement containing the name and address of both the
11 seller and the purchaser, the date of delivery, the quantity, the
12 trade name or brand, and the price paid for each tobacco product
13 purchased **or otherwise acquired**. A licensee shall keep as part of
14 the records a true copy of all purchase orders, invoices, bills of
15 lading, and other written matter substantiating the purchase or
16 acquisition of each tobacco product at the location where the
17 tobacco product is stored or offered for sale. A retailer shall
18 keep as part of the records a true copy of all purchase orders,
19 invoices, bills of lading, and other written matter substantiating
20 the purchase or acquisition of each tobacco product **and related to**
21 **any tobacco products subject to subsection (15), if applicable**, at
22 the location where the tobacco product is offered for sale for a
23 period of 4 months from the date of purchase or acquisition. The
24 department may, by giving prior written approval, authorize a
25 person licensed under this act or a retailer to maintain records in
26 a manner other than that required by this subsection. Other records
27 shall be kept by these persons as the department reasonably
28 prescribes.

29 (2) A manufacturer, wholesaler, unclassified acquirer, and

1 secondary wholesaler shall deliver with each sale or consignment of
 2 a tobacco product a written statement containing the name or trade
 3 name and address of both the seller and the purchaser, the date of
 4 delivery, the quantity, and the trade name or brand of the tobacco
 5 product, correctly itemizing the prices paid for each brand
 6 purchased, and shall retain a duplicate of each statement.

7 (3) A vending machine operator shall keep a detailed record of
 8 each vending machine owned for the sale of tobacco products showing
 9 the location of the machine, the date of placing the machine on the
 10 location, the quantity of each tobacco product placed in the
 11 machine, the date when placed there, and the amount of the
 12 commission paid or earned on sales through the vending machine.
 13 When filling or refilling the vending machine, the operator shall
 14 deliver to the owner or tenant occupying the premises where the
 15 machine is located a written statement containing ~~his or her~~ **the**
 16 **operator's** own name and address, the name and address of the owner
 17 or the tenant, the date when the machine was filled, and the
 18 quantity of each brand of tobacco product sold from the machine
 19 since the date when tobacco products were last placed in the
 20 machine. A person in possession of premises where a vending machine
 21 is located shall keep a record of each tobacco product sold through
 22 the vending machine located on the premises and the amount of
 23 commission paid by the person operating the vending machine. The
 24 records ~~shall~~ **must** consist of written statements required to be
 25 given by each person operating a vending machine for the sale of
 26 tobacco products as provided in this section.

27 (4) A licensee under this act shall not issue or accept a
 28 written statement or invoice that is known to the licensee to
 29 contain a statement or omission that falsely indicates the name of

1 the customer, the type, trade name, or brand of merchandise, the
 2 quantity of each type, trade name, or brand of merchandise, the
 3 prices, the discounts, the date of the transaction, or the terms of
 4 sale. A person shall not use a device or game of chance to aid,
 5 promote, or induce sales or purchases of a tobacco product, or give
 6 a tobacco product in connection with a device or game of chance.

7 (5) ~~All~~ **Except as otherwise provided in subsection (6), all**
 8 statements and other records required by this section ~~shall~~ **must** be
 9 in a form prescribed by the department and ~~shall~~ **must** be preserved
 10 for a period of 4 years **from the date of purchase or acquisition of**
 11 **the tobacco product** and offered for inspection at any time upon
 12 oral or written demand by the department or its authorized agent by
 13 every wholesaler, secondary wholesaler, vending machine operator,
 14 unclassified acquirer, and retailer.

15 (6) **A licensee or retailer in possession or control of a**
 16 **tobacco product that has not preserved the statements and records**
 17 **required by this section because the licensee or retailer claims**
 18 **the tobacco product was purchased or acquired more than 4 years ago**
 19 **has the burden of proving that the tobacco product was purchased or**
 20 **acquired more than 4 years ago. A licensee or retailer that fails**
 21 **to preserve documentation sufficient to meet this burden of proof**
 22 **is in violation of the record-keeping requirements under this**
 23 **section for that tobacco product.**

24 (7) ~~(6) If~~ **A shipping case or container of** a tobacco product
 25 other than cigarettes ~~is~~ received or acquired within this state by
 26 a wholesaler ~~, secondary wholesaler, vending machine operator, or~~
 27 unclassified acquirer ~~, or retailer, each original manufacturer's~~
 28 ~~shipping case shall~~ **from a manufacturer or any person located**
 29 **outside this state must** bear **either** the name and address of the

1 ~~person making~~ wholesaler or unclassified acquirer that made the
2 first purchase of that shipping case or container or any other
3 markings the department prescribes. The point at which a shipping
4 case or container is considered to be received or acquired in this
5 state is to be determined based on the facts and circumstances
6 including, but not limited to, all of the following:

7 (a) Ownership of the shipping case or container when it enters
8 this state's borders or when it is delivered to the wholesaler or
9 unclassified acquirer.

10 (b) The risk of loss.

11 (c) The use of a common carrier or a vehicle owned or leased
12 by the wholesaler or unclassified acquirer to import or transport
13 the shipping case or container into this state or deliver the
14 shipping case or container to the wholesaler or unclassified
15 acquirer.

16 (8) A wholesaler or unclassified acquirer, licensed under this
17 act, shall place or otherwise affix the markings prescribed by the
18 department on every shipping case or container of a tobacco product
19 other than cigarettes that is sold, transferred, shipped, or
20 delivered by the wholesaler or unclassified acquirer to a retailer
21 or another licensee, in this state.

22 (9) If a marking prescribed by the department is to be affixed
23 to a shipping case or container of tobacco products other than
24 cigarettes by means of a mechanical or other device that applies
25 the marking, the wholesaler or unclassified acquirer must obtain
26 prior approval from the department to purchase, possess, or
27 otherwise be permitted to use such a device. A wholesaler or
28 unclassified acquirer whose license is revoked, is terminated, or
29 has expired shall return all such devices in its possession to the

1 department within 60 days of the revocation, termination, or
2 expiration of its license. In addition to any other fine or any
3 civil or criminal penalty or charge allowed by law, a wholesaler or
4 unclassified acquirer that fails to return each device in its
5 possession as required by this subsection is liable for a fine of
6 \$500.00 for each device not timely returned.

7 (10) The markings required by this section on shipping cases
8 and containers of tobacco products other than cigarettes must not
9 be affixed in a manner that makes the markings illegible or that
10 covers up, in whole or in part, or that otherwise obstructs or
11 makes illegible the information or markings described in subsection
12 (7).

13 (11) If a tobacco product other than cigarettes is found in a
14 place of business or otherwise in the possession of a wholesaler,
15 secondary wholesaler, vending machine operator, unclassified
16 acquirer, transporter, or retailer without ~~proper~~**the** markings
17 **prescribed by the department or the information required by this**
18 **section** on the shipping case ~~box~~ or container of the tobacco
19 product, **if required by this section**, or if an individual package
20 of cigarettes is found without a stamp affixed as provided under
21 this act or if a tobacco product is found, **or was acquired,**
22 **imported, transferred, or sold**, without proper substantiation by
23 invoices or other records as required by this section, the
24 presumption shall be that the tobacco product is kept in violation
25 of this act **and constitutes contraband subject to seizure and**
26 **forfeiture under section 9.** Notwithstanding anything in this act to
27 the contrary, if any tobacco product is adjudicated by a court of
28 competent jurisdiction to have been lawfully seized under this act,
29 and if the adjudication of lawful seizure survives the exhaustion

1 or lapse of any appeal rights, the tobacco product shall be
2 automatically forfeited to this state and the person from whom that
3 tobacco product was seized shall be liable for the tax imposed
4 under this act on that tobacco product.

5 (12) If a tobacco product is ~~shipped outside the state, to be~~
6 or is being transported on a public highway, road, or street in
7 this state for shipment outside this state, as indicated by the
8 bills of lading, invoices, packing slips, or other documentation
9 related to that shipment, the licensee shipping the tobacco product
10 shall cause to be placed on every shipping case or ~~other~~ container
11 in which the tobacco product is shipped the name and address of the
12 consignee or purchaser to whom the shipment is made outside of the
13 state and, for tobacco products other than cigarettes, the marking
14 prescribed by the department unless the shipping case or other
15 container already bears that marking from the licensee. A tobacco
16 product that was located in this state is considered to have been
17 shipped outside this state for purposes of this subsection if the
18 tobacco product crosses the border of this state regardless of
19 whether the tobacco product is delivered to or accepted by the
20 consignee or purchaser to whom the shipment is made outside this
21 state.

22 (13) The department may require reports from a common carrier
23 who transports a tobacco product to a point within this state from
24 another person who, under contract, transports a tobacco product,
25 or from a bonded warehouseperson or bailee who has in his or her
26 possession a tobacco product. A carrier, bailee, warehouseperson,
27 or other person shall permit the inspection of the tobacco products
28 and examination by the department or its duly authorized agent of
29 any records relating to the shipment of a tobacco product into,

1 from, or within ~~the~~**this** state.

2 **(14)** ~~(7)~~ A transporter or other licensee ~~Except as otherwise~~
3 **provided in subsection (15), any person** transporting, possessing,
4 or acquiring for the purpose of transporting a tobacco product upon
5 a public highway, road, or street of this state shall **be licensed**
6 **under this act as a transporter, unless that person is licensed**
7 **under this act as an unclassified acquirer, wholesaler,**
8 **transportation company, vending machine operator, or secondary**
9 **wholesaler, and shall** have in ~~his or her~~**the person's** actual
10 possession invoices or bills of lading containing the name and
11 address of both the seller and the purchaser, the **actual or**
12 **estimated** date of delivery, the **person's** name and address, ~~of the~~
13 ~~transporter,~~ the quantity and trade name or brand of each tobacco
14 product, the price paid for each trade name or brand in the
15 ~~transporter's~~**person's** possession or custody, and **a copy of** the
16 license as prescribed under this act.

17 ~~(8)~~ A transporter ~~desiring to possess or acquire for~~
18 ~~transportation or transport a tobacco product upon a highway, road,~~
19 ~~or street of this state shall obtain a permit from the department~~
20 ~~authorizing the transporter to possess or acquire for~~
21 ~~transportation or transport tobacco products and shall have the~~
22 ~~permit in his or her possession while the tobacco product is in his~~
23 ~~or her possession. This permit shall be obtained for each load~~
24 ~~being transported and shall contain a statement setting forth the~~
25 ~~name and address of the purchaser, seller, and transporter, the~~
26 ~~license number of the purchaser, the date of the delivery of the~~
27 ~~tobacco product or date of importation into this state, the route~~
28 ~~to be followed if a tobacco product is being transported from an~~
29 ~~out of state source, and any other information the department~~

1 ~~requires. The department shall provide a permit on a form~~
2 ~~prescribed by it upon the application of a transporter with the~~
3 ~~remittance of a fee of \$1.00. If a transporter transports a tobacco~~
4 ~~product into this state, the transporter shall stop at the nearest~~
5 ~~state police post within this state on the route authorized by the~~
6 ~~permit and disclose the tobacco products in his or her possession~~
7 ~~and the papers required by this section to be in his or her~~
8 ~~possession.~~

9 (15) Notwithstanding anything in this act to the contrary, a
10 retailer in this state, or other person acting on behalf of a
11 retailer in this state, is not required to be licensed under this
12 act to transport a tobacco product upon a public highway, road, or
13 street of this state for the purpose of delivering a tobacco
14 product to a consumer in this state if all of the following
15 conditions are met:

16 (a) The tobacco product was purchased by the consumer from the
17 retailer at retail.

18 (b) The consumer has paid for the tobacco product in full
19 before the shipment and delivery of the tobacco product to the
20 consumer.

21 (c) The retailer or other person making the delivery has in
22 its possession, at all times during which the tobacco product is
23 being transported on a public highway, road, or street of this
24 state, an invoice, receipt, or other documentation substantiating
25 the sale to the consumer that states the name and address of the
26 retailer, the name and address of the consumer, the delivery date,
27 the trade name or brand of the tobacco product, the quantity, and
28 the price paid for the tobacco product.

29 Sec. 6a. (1) A wholesaler or unclassified acquirer ~~other than~~

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

8 (2) ~~Before~~ **Except as otherwise provided in this subsection,**
 9 **before** delivery, sale, or transfer to any person in this state, a
 10 wholesaler or an unclassified acquirer shall place or cause to be
 11 placed on the bottom of each individual package of cigarettes to be
 12 sold within this state a stamp provided by the department. **If**
 13 **approved by the department, a stamp may be placed in a location**
 14 **other than the bottom of each individual package of cigarettes.**

15 (3) Stamps ~~shall~~ **must** be firmly affixed in such a manner that
 16 the stamps cannot be removed without being mutilated or destroyed.
 17 A stamp ~~shall~~ **must** be affixed to each individual package in an
 18 aggregate denomination equal to the amount of the tax upon the
 19 contents of the individual package of cigarettes. ~~Except as~~
 20 ~~otherwise provided in this subsection, a stamp is considered~~
 21 ~~affixed if more than 50% of the stamp is affixed to the individual~~
 22 ~~package, as determined by the department. Upon implementation of~~
 23 ~~the digital stamps as provided in section 5a(2), a~~ **A** stamp is
 24 considered affixed if 90% or more of the stamp is affixed to the
 25 individual package.

26 (4) ~~(3)~~ A retailer or person licensed under this act, other
 27 than a wholesaler or unclassified acquirer or a person acting as a
 28 transporter for a wholesaler or unclassified acquirer, shall not
 29 acquire for resale an individual package of cigarettes or a

1 cigarette from an individual package unless that individual package
2 of cigarettes has affixed to it a stamp as provided in this act.

3 (5) ~~(4)~~—A retailer or vending machine operator shall not sell
4 or offer for sale an individual package of cigarettes to the
5 general public that does not have affixed the stamp required by
6 this act. ~~Cigarettes without stamps~~ **An individual package of**
7 **cigarettes without a stamp** may not be **sold from, or** placed or
8 stored in, a vending machine. **Except as otherwise provided by law,**
9 **a person shall not sell a cigarette separately from its individual**
10 **package.**

11 (6) ~~(5)~~—The department or its authorized agents may inspect ~~or~~
12 **the operations of a wholesaler and an unclassified acquirer for**
13 **purposes of ensuring compliance with this act and to** conduct an
14 inventory of a wholesaler's or unclassified acquirer's stock of
15 cigarettes, tobacco products other than cigarettes, and stamps
16 during regular business hours and inspect the related statements
17 and other records required in section 6. **This inspection shall also**
18 **verify that shipping cases and containers of tobacco products other**
19 **than cigarettes bear any markings required by this act. An**
20 **inspection under this section must be conducted during the regular**
21 **business hours of the wholesaler or unclassified acquirer. Unless**
22 **otherwise approved by the department, the regular business hours of**
23 **a wholesaler or unclassified acquirer are those hours disclosed on**
24 **that wholesaler's or unclassified acquirer's license application as**
25 **required under section 3.**

26 (7) ~~(6)~~—The department or its authorized agents may inspect
27 the operations of a secondary wholesaler, vending machine operator,
28 or retailer, or the contents of a specific vending machine, during
29 regular business hours. This inspection shall include inspection of

1 all statements and other records required by section 6, ~~of this~~
 2 ~~act,~~ of packages of cigarettes and tobacco products other than
 3 cigarettes, and of the contents of cartons and shipping or storage
 4 containers to ascertain that all individual packages of cigarettes
 5 have an affixed stamp of proper denomination as required by this
 6 act. This inspection may also verify that all the stamps were
 7 produced under the authority of the department **and that shipping**
 8 **cases and containers of tobacco products other than cigarettes bear**
 9 **any markings required by this act. Unless otherwise approved by the**
 10 **department, the regular business hours of a secondary wholesaler or**
 11 **vending machine operator are those hours disclosed on that**
 12 **secondary wholesaler's or vending machine operator's license**
 13 **application as required under section 3. The regular business hours**
 14 **of a retailer are those hours that the retailer is open for**
 15 **business as evidenced by the retailer's commercial activity and**
 16 **signage, advertisements, or other information communicated to the**
 17 **general public.**

18 (8) ~~(7)~~ A person shall not prevent or hinder the department or
 19 its authorized agents from ~~making a full inspection of any place or~~
 20 ~~vending machine where cigarettes or tobacco products other than~~
 21 ~~cigarettes subject to the tax under this act are sold or stored, or~~
 22 ~~prevent or hinder the full inspection of invoices, books, records,~~
 23 ~~or other papers required to be kept~~ **conducting an inspection**
 24 **authorized** by this act.

25 (9) ~~(8)~~ The department may require wholesalers and
 26 unclassified acquirers to exchange unaffixed stamps with the
 27 department as the department considers necessary. The department
 28 may require wholesalers, unclassified acquirers, secondary
 29 wholesalers, vending machine operators and retailers to discontinue

1 offering for sale any unsold individual packages of cigarettes
2 bearing a prior version of the stamp that the department has
3 withdrawn from circulation. The department may set a reasonable
4 timeline after which the prior version of the stamp may no longer
5 be offered for sale and the new version of the stamp is required. A
6 secondary wholesaler, retailer, or vending machine operator may
7 return cigarette packages bearing discontinued stamps to a
8 wholesaler for credit. A wholesaler or unclassified acquirer may
9 take credit on its tax returns for individual packages of
10 cigarettes bearing discontinued stamps that are returned to the
11 manufacturer for credit less the appropriate discount paid.

12 (10) ~~(9)~~—Except as provided in subsection ~~(10)~~, **(11)**, a
13 wholesaler or unclassified acquirer shall not give, sell, or lend
14 any unaffixed stamps to another person and except as otherwise
15 provided in this act, a person shall not accept, purchase, or
16 borrow any unaffixed stamps from another person.

17 (11) ~~(10)~~—Upon written authorization of the department, a
18 wholesaler or unclassified acquirer licensed under this act may
19 appoint a stamping agent to affix stamps to individual packages of
20 cigarettes.

21 (12) ~~(11)~~—Stamps may only be affixed to an individual package
22 of cigarettes if the manufacturer of the cigarettes is identified
23 on the lists of participating manufacturers or nonparticipating
24 manufacturers maintained by the department pursuant to ~~section~~
25 ~~6c(8)~~. **sections 6c and 6d.**

26 (13) ~~(12)~~—The department of state police shall initiate
27 inquiries to or otherwise access data from the department to
28 support or in furtherance of its enforcement activities under this
29 act.

1 Sec. 6b. (1) ~~Beginning April 15, 1998,~~ **Upon proper request and**
 2 **payment of the cost of the stamps, in the form and manner**
 3 **prescribed by the department,** a wholesaler or unclassified acquirer
 4 may obtain stamps from the department. ~~and shall remit the unpaid~~
 5 ~~balance of the tax at the time of filing the return provided in~~
 6 ~~section 7 at a discount from the face amount of the stamps as~~
 7 ~~provided in section 7(3). If the department determines that a~~
 8 ~~wholesaler or unclassified acquirer is not financially sound, the~~
 9 ~~department shall issue stamps only if 1 of the following is met:~~

10 ~~(a) On the filing with the department of a bond or other~~
 11 ~~security as determined by the department in an amount to be~~
 12 ~~determined by the department.~~

13 ~~(b) The department requires returns and payments to be made~~
 14 ~~more frequently than provided in section 7.~~

15 ~~(c) The department requires the wholesaler or unclassified~~
 16 ~~acquirer to pay for the stamps at the time of obtaining them, less~~
 17 ~~a discount from the face amount of the stamps equal to the discount~~
 18 ~~provided in section 7(3).~~ **A wholesaler or unclassified acquirer is**
 19 **liable for the tax on any stamps that are lost or unaccounted for.**
 20 **For purposes of the requirement to purchase stamps under this**
 21 **section, the cost of the stamp does not include the tax levied**
 22 **under this act.**

23 (2) The department shall not issue any stamps to a wholesaler
 24 or unclassified acquirer ~~who~~ **that has not paid for the stamps under**
 25 **subsection (1) or** is delinquent in paying the tax under this act.

26 Sec. 6c. (1) ~~A~~ **Every** nonparticipating manufacturer **whose**
 27 **cigarettes are sold in this state, whether directly or through a**
 28 **licensee or other distributor, retailer, or similar intermediary,**
 29 shall by April 30 of each year certify to the department that it is

1 not a participant in the master settlement agreement and that it
2 has performed its obligation to establish a qualified escrow
3 account and deposited funds into that account under 1999 PA 244,
4 MCL 445.2051 to 445.2052.

5 (2) The certification of compliance ~~shall~~**must** be on a form
6 prescribed by the department, ~~shall~~**must** contain all of the
7 information requested on the form, and ~~shall~~**must** include a list of
8 all brand names of cigarettes sold by the nonparticipating
9 manufacturer, **whether directly or through a licensee or other**
10 **distributor, retailer, or similar intermediary**, for consumption in
11 this state during the calendar year immediately preceding the
12 certification date.

13 (3) A nonparticipating manufacturer shall provide a copy of
14 the certification of compliance to the attorney general and any
15 wholesaler, unclassified acquirer, or other person to whom the
16 nonparticipating manufacturer makes a sale of its cigarettes for
17 subsequent sale **or consumption** in this state.

18 (4) A wholesaler, unclassified acquirer, or other person who
19 is provided with a certification of compliance under this section
20 shall retain the certification of compliance for not less than 4
21 years from the date the certification of compliance was received.

22 (5) A wholesaler or unclassified acquirer shall report to the
23 department all cigarettes that it acquires that were manufactured
24 by a nonparticipating manufacturer. ~~A wholesaler or unclassified~~
25 ~~acquirer that has not voluntarily submitted annual reports~~
26 ~~described in this subsection for periods beginning December 28,~~
27 ~~1999 shall file those reports with the department within 60 days of~~
28 ~~the effective date of the amendatory act that added this section.~~
29 The report ~~shall~~**must** be on a form prescribed by the department and

1 attached to the return required under section 7. A wholesaler or
2 unclassified acquirer that has not acquired any cigarettes from a
3 nonparticipating manufacturer shall file the report with the return
4 required under section 7 stating that it has not purchased,
5 acquired, exported, or returned cigarettes related to a
6 nonparticipating manufacturer. The information contained in this
7 report is for the purposes of enforcing 1999 PA 244, MCL 445.2051
8 to 445.2052, and does not constitute information obtained in
9 connection with the administration of a tax under section 28(1)(f)
10 of 1941 PA 122, MCL 205.28. A wholesaler or unclassified acquirer
11 shall retain a copy of the report for not less than 4 years from
12 the date the report was filed with the department. If a wholesaler
13 or unclassified acquirer does not file a report or knowingly files
14 an incomplete or inaccurate report under this subsection, the
15 department may do 1 or more of the following:

16 (a) Assess a penalty under this section.

17 (b) Prohibit the wholesaler or unclassified acquirer from
18 obtaining cigarette stamps from the department until a complete and
19 accurate report is filed.

20 (c) Revoke the wholesaler's or unclassified acquirer's license
21 under section 5, only after conducting a hearing.

22 (6) A nonparticipating manufacturer that has not provided the
23 certification of compliance required by this section shall not make
24 a sale of cigarettes in this state or a sale within or outside this
25 state to any person for sale, distribution, or consumption in this
26 state.

27 (7) A person shall not purchase, acquire, possess, or sell
28 cigarettes acquired from or manufactured by a nonparticipating
29 manufacturer that has not provided the certification of compliance

1 to the department as required under this section and that has not
2 provided the person with a copy of the certification of compliance
3 if required to do so under subsection (3).

4 (8) The department shall maintain and regularly update a list
5 of participating manufacturers and nonparticipating manufacturers
6 that have provided the certification of compliance required under
7 this section. The department shall publish the list on its website
8 and provide a copy of the list to a person upon request. **Subject to**
9 **section 6f, the department may delist a manufacturer that no longer**
10 **complies with this section.**

11 (9) If a wholesaler or unclassified acquirer receives a
12 certification of compliance from a nonparticipating manufacturer
13 that is not included in the list maintained by the department, the
14 wholesaler or unclassified acquirer shall within 10 business days
15 after receiving the certification of compliance provide a copy of
16 the certification of compliance and the name and address of the
17 nonparticipating manufacturer to the department.

18 (10) Thirty days after the department posts on its website and
19 provides wholesalers and unclassified acquirers a notice of a
20 second or subsequent knowing violation of a provision of 1999 PA
21 244, MCL 445.2051 to 445.2052, or a notice of a judgment the
22 department has against a nonparticipating manufacturer, the
23 department may seize or confiscate from any person any cigarettes
24 in that person's possession that were acquired from or manufactured
25 by that nonparticipating manufacturer. ~~Beginning May 1, 2003, the~~
26 **The** department may seize or confiscate from any person any
27 cigarettes in that person's possession that were acquired from or
28 manufactured by a nonparticipating manufacturer if that
29 nonparticipating manufacturer has not provided the certification

1 required by this section. Seizure, confiscation, forfeiture, and
 2 sale of cigarettes under this section shall be accomplished under
 3 section 9.

4 (11) The department may impose on any person a civil fine not
 5 to exceed \$1,000.00 for each violation of this section. The civil
 6 fine is in addition to all other fines or penalties imposed by this
 7 act or 1941 PA 122, MCL 205.1 to 205.31.

8 (12) As used in this section:

9 (a) "Cigarette" means that term as defined in 1999 PA 244, MCL
 10 445.2051 to 445.2052.

11 (b) "Nonparticipating manufacturer" means a manufacturer of
 12 cigarettes that is not a participating manufacturer as that term is
 13 defined in 1999 PA 244, MCL 445.2051 to 445.2052. Nonparticipating
 14 manufacturer also includes the first purchaser **anywhere for resale**
 15 **in the United States** of cigarettes manufactured ~~outside the United~~
 16 ~~States for resale~~ **anywhere that the manufacturer does not intend to**
 17 **be sold** in the United States.

18 Sec. 6d. (1) Before commencing sales of cigarettes in this
 19 state, **whether directly or through a licensee or other distributor,**
 20 **retailer, or similar intermediary,** a nonparticipating manufacturer
 21 shall provide to the department the information described in
 22 subsection (3) and shall pay the equity assessment as provided in
 23 subsections (4) and (5).

24 (2) A nonparticipating manufacturer selling cigarettes in this
 25 state on ~~the effective date of the amendatory act that added this~~
 26 ~~subsection~~ **January 8, 2004,** shall provide to the department the
 27 information described in subsection (3) and pay the equity
 28 assessment as provided in subsections (4) and (5) ~~within 30 days~~
 29 ~~after the effective date of the amendatory act that added this~~

1 ~~subsection.~~ **before February 8, 2004.** If a nonparticipating
2 manufacturer is not selling cigarettes in this state on ~~the~~
3 ~~effective date of the amendatory act that added this subsection,~~
4 **January 8, 2004,** before selling cigarettes in this state, the
5 nonparticipating manufacturer shall pay the equity assessment
6 imposed under subsections (4) and (5) for all cigarettes that are
7 anticipated to be sold in the current calendar year as described in
8 subsection (5).

9 (3) A nonparticipating manufacturer shall provide to the
10 department on a form prescribed by the department the following
11 information:

12 (a) The complete name, address, and telephone number of the
13 nonparticipating manufacturer.

14 (b) The date that the nonparticipating manufacturer intends to
15 begin or began selling cigarettes in this state.

16 (c) The brand names of the cigarettes the nonparticipating
17 manufacturer will sell or is selling in this state.

18 (d) A statement of the nonparticipating manufacturer's
19 intention to comply with its escrow obligation under 1999 PA 244,
20 MCL 445.2051 to 445.2052, obligations under section 6c, and the
21 obligations in this section.

22 (e) The name, address, and telephone number of the resident
23 agent of the nonparticipating manufacturer.

24 (f) The name, address, telephone number, and signature of an
25 officer of the nonparticipating manufacturer attesting to all of
26 the information described in this subsection.

27 (4) An equity assessment in the amount of 17.5 mills per
28 cigarette is imposed upon all cigarettes sold by a nonparticipating
29 manufacturer, **whether directly or through a licensee or other**

1 **distributor, retailer, or similar intermediary**, in this state. The
2 purpose of the equity assessment is to fund enforcement and
3 administration of 1999 PA 244, MCL 445.2051 to 445.2052, and this
4 act. The equity assessment is in addition to all other fees,
5 assessments, and taxes levied by law. The equity assessment shall
6 be collected by the department from each nonparticipating
7 manufacturer selling cigarettes in this state. The equity
8 assessment shall be collected and reconciled by April 15 of each
9 year for cigarettes sold in the previous calendar year. The
10 department shall credit a nonparticipating manufacturer with any
11 prepayment made by the nonparticipating manufacturer pursuant to
12 subsection (5) for that calendar year.

13 (5) Except as provided in subsection (2), a nonparticipating
14 manufacturer selling cigarettes in this state, **whether directly or**
15 **through a licensee or other distributor, retailer, or similar**
16 **intermediary**, shall prepay the equity assessment imposed in
17 subsection (4) not later than March 1 for all cigarettes that are
18 anticipated to be sold in the current calendar year. The prepayment
19 amount shall be determined by multiplying 17.5 mills times the
20 number of cigarettes that the department reasonably determines that
21 the nonparticipating manufacturer will sell in this state in the
22 current calendar year or \$10,000.00, whichever is more. The
23 department may require a nonparticipating manufacturer to provide
24 any information reasonably necessary to determine the equity
25 assessment prepayment amount. Not later than February 15 of each
26 year, the department shall notify the nonparticipating manufacturer
27 of the amount of the prepayment due for the current year. The
28 department shall increase the equity assessment prepayment amount
29 during the year if the increase is justified by the

1 nonparticipating manufacturer's actual sales of cigarettes.

2 (6) A stamping agent shall not affix to any package of
3 cigarettes or shipping container of roll-your-own tobacco of a
4 nonparticipating manufacturer the stamp required under this act
5 unless the nonparticipating manufacturer is listed on the
6 department website as provided in subsection (9) or after receiving
7 notice that the nonparticipating manufacturer has not prepaid or
8 paid in full the equity assessment imposed under this section. A
9 stamping agent that violates this subsection is subject to the
10 penalties described in section 5. If a stamping agent intentionally
11 and knowingly violates this subsection, the department may seize or
12 confiscate any cigarettes in the stamping agent's possession that
13 were stamped in violation of this subsection. Seizure,
14 confiscation, forfeiture, and sale of cigarettes shall be
15 accomplished under section 9.

16 (7) A nonparticipating manufacturer that does not provide the
17 information required under subsection (3) or pay the equity
18 assessment required by this section shall not make a sale of
19 cigarettes in this state to any person for sale, distribution, or
20 consumption in this state.

21 (8) A person shall not purchase, acquire, possess, or sell
22 cigarettes acquired from or manufactured by a nonparticipating
23 manufacturer that has not provided the information required under
24 subsection (3) or made the payment of the equity assessment
25 required by this section.

26 (9) The department shall maintain and regularly update a list
27 of nonparticipating manufacturers that have complied with the
28 requirements of this section. The department shall publish the list
29 on its website and provide a copy of the list to a person upon

1 request. **Subject to section 6f, the department may delist a**
2 **manufacturer that no longer complies with this section.**

3 (10) Ninety days after the department posts on its website and
4 provides wholesalers and unclassified acquirers notice that a
5 nonparticipating manufacturer is in violation of subsection (1) or
6 (2), the department may seize or confiscate from any person any
7 cigarettes in that person's possession that were acquired from or
8 manufactured by that nonparticipating manufacturer. Seizure,
9 confiscation, forfeiture, and sale of cigarettes under this section
10 shall be accomplished under section 9.

11 (11) The department may impose on any person a civil fine not
12 to exceed \$1,000.00 for each violation of this section. The civil
13 fine is in addition to all other fines or penalties imposed by this
14 act or 1941 PA 122, MCL 205.1 to 205.31.

15 (12) A nonparticipating manufacturer shall appoint and
16 continually engage a resident agent for service of process. That
17 service ~~shall constitute~~ **constitutes** legal and valid service of
18 process on the nonparticipating manufacturer.

19 (13) For purposes of this section, a nonparticipating
20 manufacturer that intends to sell or is selling a brand of
21 cigarettes in or into this state is presumed to be the same
22 manufacturer that previously sold that same brand in or into the
23 state, unless the nonparticipating manufacturer can prove that the
24 2 manufacturers are not affiliated. A nonparticipating manufacturer
25 shall not ~~be authorized to~~ sell in or into this state a cigarette
26 brand that was previously sold in or into this state by another
27 nonparticipating manufacturer if that other nonparticipating
28 manufacturer did not escrow the entire amount due under 1999 PA
29 244, MCL 445.2051 to 445.2052, or pay the equity assessment due

1 under this section.

2 (14) The department shall conduct an audit or review of
3 nonparticipating manufacturers to ensure compliance with this
4 section.

5 (15) As used in this section:

6 (a) "Cigarette" means that term as defined in 1999 PA 244, MCL
7 445.2051 to 445.2052.

8 (b) "Nonparticipating manufacturer" means a manufacturer of
9 cigarettes that is not a participating manufacturer as that term is
10 defined in 1999 PA 244, MCL 445.2051 to 445.2052. Nonparticipating
11 manufacturer also includes the first purchaser **anywhere for resale**
12 **in the United States** of cigarettes manufactured ~~outside the United~~
13 ~~States for resale anywhere that the manufacturer does not intend to~~
14 **be sold** in the United States.

15 **Sec. 6f. (1) This section establishes and sets forth the**
16 **process by which the department may remove a tobacco product**
17 **manufacturer or any associated or affiliated brand families of a**
18 **tobacco product manufacturer from the directory, or refuse to list**
19 **a tobacco product manufacturer or any associated or affiliated**
20 **brand families of a tobacco product manufacturer on the directory.**
21 **This section does not apply to any tobacco product manufacturer**
22 **that voluntarily requests removal from, or rescinds a request to**
23 **become listed on, the directory for either itself or an associated**
24 **or an affiliated brand family of the tobacco product manufacturer.**

25 (2) Except as otherwise provided in this section, the
26 department shall not include in the directory or retain a tobacco
27 product manufacturer or any brand family of a tobacco product
28 manufacturer in the directory, if any of the following apply:

29 (a) The tobacco product manufacturer has not performed any of

1 its obligations under this act, including those obligations set
2 forth in sections 6c and 6d, or 1999 PA 244, MCL 445.2051 to
3 445.2052.

4 (b) The tobacco product manufacturer or any of the tobacco
5 product manufacturer's brand families have been removed from a list
6 maintained by another state that is equivalent to, or otherwise
7 serves the same purposes as, the directory, based on acts or
8 omissions that would, if the acts or omissions occurred in this
9 state, serve as a basis for removal from the directory.

10 (c) The tobacco product manufacturer, or any of its officers
11 or directors, have, in any jurisdiction, pleaded guilty or nolo
12 contendere to, or been found guilty of, a felony relating to the
13 sale, distribution, or taxation of a tobacco product.

14 (d) The tobacco product manufacturer sold, transferred, or
15 distributed a tobacco product to a wholesaler or unclassified
16 acquirer that it knew or had reason to know was not licensed under
17 this act or whose license was suspended or revoked under this act.

18 (3) If the department intends to remove from the directory, or
19 not include on the directory, a tobacco product manufacturer or an
20 associated or affiliated brand family of a tobacco product
21 manufacturer, the department shall send a notice to the tobacco
22 product manufacturer or, if applicable, its agent for service of
23 process. The notice must include all of the following:

24 (a) The factual and legal deficiencies upon which the
25 department's intended action rests.

26 (b) The action that the tobacco product manufacturer must take
27 to cure those deficiencies.

28 (c) A statement that the tobacco product manufacturer has 15
29 calendar days, from the date of the notice, to cure those

1 deficiencies and submit documentation of its attempt to cure.

2 (4) For good cause shown, as determined by the department in
3 its discretion, the department may extend the 15 calendar day
4 period under subsection (3) for a tobacco product manufacturer to
5 cure its deficiencies up to an additional 15 calendar days.

6 (5) If the tobacco product manufacturer does not cure the
7 deficiencies to the satisfaction of the department within the
8 applicable period under subsections (3) and (4), the department
9 shall issue a notice to the tobacco product manufacturer that,
10 unless a demand for a hearing is made as provided in subsection
11 (6), the department intends remove the tobacco product manufacturer
12 or any of its brand families from, or not include the tobacco
13 product manufacturer or any of its brand families on, the
14 directory.

15 (6) Within 10 business days after the date of service of the
16 notice issued under subsection (5), the tobacco product
17 manufacturer may, by registered mail or personal service, file with
18 the state treasurer a demand for a hearing before a representative
19 of the department to determine whether the department's intention
20 to remove from, or not include on, the directory the tobacco
21 product manufacturer or any of its brand families is justified. If,
22 within 10 business days after the date of service of the notice
23 issued under subsection (5), the tobacco product manufacturer does
24 not file with the state treasurer a demand for a hearing before the
25 department as provided in this subsection, the department shall
26 immediately remove from the directory, or refuse to include on the
27 directory, the tobacco product manufacturer or any of its brand
28 families at issue.

29 (7) Upon receipt of a demand for a hearing under subsection

1 (6), the department shall hold the hearing within 15 business days.
2 At the hearing, the tobacco product manufacturer is entitled to
3 appear before the department, to be represented by counsel, and to
4 present testimony and argument. The hearing is not a contested case
5 proceeding and is not subject to the administrative procedures act
6 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

7 (8) After the hearing under subsection (7), the department
8 shall render its decision in writing within 10 business days of the
9 hearing and, by order, shall declare 1 of the following:

10 (a) That the tobacco product manufacturer or any of the
11 associated or affiliated brand families at issue be removed from,
12 or not included on, the directory.

13 (b) That the tobacco product manufacturer or any of the
14 associated or affiliated brand families at issue be retained or
15 included on the directory.

16 (9) If the department orders under subsection (8)(a) that the
17 tobacco product manufacturer or its associated or affiliated brand
18 families at issue should be removed from, or not included on, the
19 directory and the tobacco product manufacturer does not appeal that
20 order under subsection (10), the department shall immediately
21 remove from the directory, or refuse to include on the directory,
22 the tobacco product manufacturer or any of its brand families at
23 issue.

24 (10) A tobacco product manufacturer aggrieved by the decision
25 of the department under subsection (8) may appeal the department's
26 order by filing an appeal to the Ingham County circuit court,
27 designated as Michigan's master settlement court, within 30 days of
28 the date the department mails the order to the aggrieved tobacco
29 product manufacturer. If a proper appeal is taken in accordance

1 with this section and applicable law, the department shall not
2 remove a tobacco product manufacturer or any of its associated
3 brand families from the directory until all appeal rights have been
4 exhausted.

5 (11) As used in this section:

6 (a) "Directory" means the lists established and described
7 under sections 6c and 6d, separately or collectively, as applicable
8 to the tobacco product manufacturer.

9 (b) "Master settlement agreement" means the settlement
10 agreement (and related documents) entered into on November 23,
11 1998, and incorporated into a consent decree and final judgment
12 entered into on December 7, 1998, in *Kelley Ex Rel. Michigan v*
13 *Philip Morris Incorporated, et al.*, Ingham County circuit court,
14 docket no. 96-84281CZ.

15 (c) "Nonparticipating manufacturer" means a manufacturer of
16 cigarettes that is not a participating manufacturer.
17 Nonparticipating manufacturer also includes the first purchaser
18 anywhere for resale in the United States of cigarettes manufactured
19 anywhere that the manufacturer does not intend to be sold in the
20 United States.

21 (d) "Participating manufacturer" means that term as defined in
22 the master settlement agreement.

23 (e) "Tobacco product manufacturer" means a participating
24 manufacturer or a nonparticipating manufacturer, as applicable.

25 Sec. 7. (1) ~~Beginning May 1, 1994,~~ Subject to subsection (2),
26 a tax is levied on the sale of tobacco products sold in this state
27 or sold for consumption in this state, which consumption is
28 presumed when sold to a retailer or consumer in this state, as
29 follows:

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

3 ~~(a) (b) For cigarettes, 37.5-100 mills per cigarette.~~

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

7 ~~(d) Beginning August 1, 2002, for cigarettes, in addition to~~
8 ~~the tax levied in subdivisions (b) and (c), an additional 10 mills~~
9 ~~per cigarette.~~

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

13 ~~(f) Beginning August 1, 2002 and through June 30, 2004, for~~
14 ~~cigars, noncigarette smoking tobacco, and smokeless tobacco, 20% of~~
15 ~~the wholesale price.~~

16 ~~(b) (g) Beginning July 1, 2004, for~~ **For** cigars, noncigarette
17 smoking tobacco, and smokeless tobacco, 32% of the wholesale price.
18 However, beginning November 1, 2012 and through October 31, 2021,
19 the amount of tax levied under this subdivision on cigars shall not
20 exceed 50 cents per individual cigar.

21 **(2) Notwithstanding any other provision of law, if the**
22 **Secretary of the United States Department of Health and Human**
23 **Services has issued an order for a product under 21 USC 387k(g) and**
24 **the manufacturer has notified the department of that order on a**
25 **form and in a manner prescribed by the department, the tax imposed**
26 **on the sale of that product under this section is as follows:**

27 **(a) If the order is a modified risk tobacco product order**
28 **issued under 21 USC 387k(g) (1), 50% of the otherwise applicable**
29 **rate under subsection (1).**

1 (b) If the order is issued under 21 USC 387k(g) (2), 25% of the
2 otherwise applicable rate under subsection (1).

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

1 (4) ~~(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)~~ **this section** for tobacco products sold during the
 5 calendar month covered by the return, less compensation equal to
 6 the following:

7 (a) ~~One percent~~ **1%** of the total amount of the tax due on
 8 tobacco products sold other than cigarettes.

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

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

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

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

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

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

26 (iii) Compensation under subparagraphs (i) and (ii) shall also
27 include any applicable sales or use taxes paid, and shipping and
28 crating charges actually incurred, by the stamping agent in
29 connection with the purchase, but shall exclude any other costs

1 incurred by the stamping agent not otherwise expressly provided for
2 in this subdivision, including, but not limited to, charges for
3 installation and ongoing maintenance.

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

25 **(e)** ~~(f)~~ ~~Beginning in the first calendar month following the~~
26 ~~implementation of the use of digital stamps as provided in section~~
27 ~~5a(2), for~~ **For** licensees who are stamping agents, reimbursement of
28 qualified equipment costs actually incurred by the stamping agent,
29 not otherwise compensated or reimbursed under subdivision **(c)** **or**

1 (d), ~~or (e)~~, as determined by the department. The reimbursement
2 provided under this subdivision shall not exceed \$60,000.00 for all
3 stamping agents combined.

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

19 ~~(5) Every licensee and retailer who, on July 1, 2004, has on~~
20 ~~hand for sale any cigarettes upon which a tax has been paid~~
21 ~~pursuant to subsection (1) (b), (c), and (d) shall file a complete~~
22 ~~inventory of those cigarettes before August 1, 2004 and shall pay~~
23 ~~to the department at the time of filing this inventory a tax equal~~
24 ~~to the difference between the tax imposed in subsection (1) (b),~~
25 ~~(c), (d), and (e) and the tax that has been paid under subsection~~
26 ~~(1) (b), (c), and (d). Every licensee and retailer who, on July 1,~~
27 ~~2004, has on hand for sale any cigars, noncigarette smoking~~
28 ~~tobacco, or smokeless tobacco upon which a tax has been paid~~
29 ~~pursuant to subsection (1) (f) shall file a complete inventory of~~

1 ~~those cigars, noncigarette smoking tobacco, and smokeless tobacco~~
 2 ~~before August 1, 2004 and shall pay to the department at the time~~
 3 ~~of filing this inventory a tax equal to the difference between the~~
 4 ~~tax imposed in subsection (1)(g) and the tax that has been paid~~
 5 ~~under subsection (1)(f). The proceeds derived under this subsection~~
 6 ~~shall be credited to the Michigan Medicaid benefits trust fund~~
 7 ~~created under section 5 of the Michigan trust fund act, 2000 PA~~
 8 ~~489, MCL 12.255.~~

9 (5) ~~(6)~~—The department may require the payment of the tax
 10 imposed by this act upon the importation or acquisition of a
 11 tobacco product **in or into this state**. A tobacco product for which
 12 the tax under this act has once been imposed and that has not been
 13 refunded if paid is not subject upon a subsequent sale to the tax
 14 imposed by this act.

15 (6) ~~(7)~~—An abatement or refund of the tax provided by this act
 16 may be made by the department for causes the department considers
 17 expedient. The department shall certify the amount and the state
 18 treasurer shall pay that amount out of the proceeds of the tax.

19 (7) ~~(8)~~—A person liable for the tax may reimburse itself by
 20 adding to the price of the tobacco products an amount equal to the
 21 tax levied under this act.

22 (8) ~~(9)~~—A wholesaler, unclassified acquirer, or other person
 23 shall not sell or transfer any unaffixed stamps acquired by the
 24 wholesaler or unclassified acquirer from the department. A
 25 wholesaler or unclassified acquirer who has any unaffixed stamps on
 26 hand ~~at the time~~ **when** its license is revoked or expires, or ~~at the~~
 27 ~~time~~ **when** it discontinues the business of selling cigarettes, shall
 28 return those stamps to the department. The department shall refund
 29 the value of the stamps, less the appropriate discount paid.

1 (9) ~~(10)~~—If the wholesaler or unclassified acquirer has
2 unsalable packs returned from a retailer, secondary wholesaler,
3 vending machine operator, wholesaler, or unclassified acquirer with
4 stamps affixed, the department shall refund the amount of the tax
5 less the appropriate discount paid. If the wholesaler or
6 unclassified acquirer has unaffixed unsalable stamps, the
7 department shall exchange with the wholesaler or unclassified
8 acquirer new stamps in the same quantity as the unaffixed unsalable
9 stamps. An application for refund of the tax ~~shall~~**must** be filed on
10 a form **and in the manner** prescribed by the department for that
11 purpose, within 4 years from the date the stamps were originally
12 acquired from the department. A wholesaler or unclassified acquirer
13 shall make available for inspection by the department the unused or
14 spoiled stamps and the stamps affixed to unsalable individual
15 packages of cigarettes. The department may, at its own discretion,
16 witness and certify the destruction of the unused or spoiled stamps
17 and unsalable individual packages of cigarettes that are not
18 returnable to the manufacturer. The wholesaler or unclassified
19 acquirer shall provide certification from the manufacturer for any
20 unsalable individual packages of cigarettes that are returned to
21 the manufacturer.

22 (10) ~~(11)~~—On or before the twentieth of each month, each
23 manufacturer shall file a report with the department listing all
24 sales of tobacco products to wholesalers and unclassified acquirers
25 during the preceding calendar month and any other information the
26 department finds necessary for the administration of this act. This
27 report ~~shall~~**must** be in the form and manner specified by the
28 department.

29 (11) ~~(12)~~—Each wholesaler or unclassified acquirer shall

1 submit to the department an unstamped cigarette sales report on or
2 before the twentieth day of each month covering the sale, delivery,
3 or distribution of unstamped cigarettes during the preceding
4 calendar month to points outside of this state. A separate schedule
5 ~~shall~~**must** be filed for each state, country, or province into which
6 shipments are made. For purposes of the report described in this
7 subsection, "unstamped cigarettes" means individual packages of
8 cigarettes that do not bear a Michigan stamp. The department may
9 provide the information contained in this report to a proper
10 officer of another state, country, or province reciprocating in
11 this privilege.

12 **(12)** ~~(13)~~—As used in subsection ~~(3)~~**(4)**:

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

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

17 (ii) Enables the stamping agent to affix digital stamps to
18 individual packages of cigarettes in accordance with the
19 requirements under section 6a(2) **and (3)**.

20 (iii) Was purchased to be used for the primary purpose of
21 permitting the stamping agent to affix digital stamps to individual
22 packages of cigarettes to be sold in this state following the
23 implementation of the use of digital stamps as provided in section
24 5a(2).

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

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

29 (ii) Was a cigarette tax stamping machine used prior to January

1 1, 2012 by the stamping agent to apply stamps using stamp rolls of
2 30,000 stamps.

3 (c) "Qualified equipment" means equipment that was placed in
4 service by a stamping agent that included conveyors and additional
5 associated electrical line and compressed air line before August
6 15, 2014 in connection with the implementation of a digital
7 stamping line under a pilot program with the department as
8 determined by the department. Qualified equipment does not include
9 the cost of installation of a conveyor.

10 Sec. 7b. (1) ~~Beginning January 1, 2003, a~~ **A** licensee may
11 deduct the amount of bad debts from the tax levied under section 7.
12 The amount deducted must be charged off as uncollectible on the
13 books of the licensee. If a person pays all or part of a bad debt
14 with respect to which a licensee claimed a deduction under this
15 section, the licensee ~~shall be~~ **is** liable for the amount of taxes
16 deducted in connection with that portion of the debt for which
17 payment is received and shall remit these taxes in his or her next
18 payment to the department under section 7.

19 (2) Any claim for a bad debt deduction under this section
20 ~~shall~~ **must** be supported by all of the following:

21 (a) A copy of the original invoice.

22 (b) Evidence that the tobacco products described in the
23 invoice were delivered to the person who ordered them.

24 (c) Evidence that the person who ordered and received the
25 tobacco products did not pay the licensee for the tobacco products
26 and that the licensee used reasonable collection practices in
27 attempting to collect the debt.

28 (3) As used in this section, "bad debt" means the taxes
29 attributable to any portion of a debt that is related to a sale of

1 tobacco products subject to tax under section 7 that is not
 2 otherwise deductible or excludable, that has become worthless or
 3 uncollectible in the time period between the date when taxes accrue
 4 to the state for the licensee's preceding tax return and the date
 5 when taxes accrue to the state for the present return, and that is
 6 eligible to be claimed, or could be eligible to be claimed if the
 7 licensee kept accounts on an accrual basis, as a deduction pursuant
 8 to section 166 of the internal revenue code **of 1986, 26 USC 166**. A
 9 bad debt ~~shall~~**does** not include any interest on the wholesale price
 10 of a tobacco product, uncollectible amounts on property that
 11 remains in the possession of the licensee until the full purchase
 12 price is paid, expenses incurred in attempting to collect any
 13 account receivable or any portion of the debt recovered, any
 14 accounts receivable that have been sold to a third party for
 15 collection, and repossessed property.

16 Sec. 8. (1) A person, other than a licensee, ~~who~~**is personally**
 17 **liable for the tax imposed by this act, plus a penalty of 500% of**
 18 **the amount of that tax, under any of the following circumstances:**

19 (a) **The person** is in control or in possession of a tobacco
 20 product contrary to this act, ~~who after August 31, 1998~~**or** is in
 21 control or in possession of an individual package of cigarettes
 22 without a stamp in violation of this act. ~~or who~~

23 (b) **The person** offers to sell or does sell a tobacco product
 24 to another for purposes of resale without being licensed to do so
 25 under this act. ~~shall be personally liable for the tax imposed by~~
 26 ~~this act, plus a penalty of 500% of the amount of tax due under~~
 27 ~~this act.~~

28 (c) **The person** offers to sell at retail, or does sell at
 29 **retail, an individual package of cigarettes without a stamp or any**

1 tobacco product purchased or acquired from a person that was not
2 licensed under this act as secondary wholesaler, wholesaler, or
3 unclassified acquirer, at the time of purchase or acquisition.

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

1 for the same time period as other records required by this section.
2 A representative shall not exchange, or otherwise dispose of,
3 within this state tobacco products bearing the tax indicia of
4 another state or receive tobacco products bearing the tax indicia
5 of another state from retailers located within this state. A
6 representative who sells, exchanges, or otherwise disposes of
7 cigarettes or tobacco products other than cigarettes that do not
8 bear the stamp or other marking required by the department or
9 sells, exchanges, or otherwise disposes of cigarettes or tobacco
10 products other than cigarettes bearing the tax indicia of another
11 state is guilty of a felony, punishable by a fine of not more than
12 \$5,000.00 or imprisonment for not more than 5 years, or both.

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

21 (4) A person who possesses, acquires, transports, or offers
22 for sale contrary to this act 1,200 or more, but not more than
23 2,999, cigarettes, tobacco products other than cigarettes with an
24 aggregate wholesale value of \$100.00 or more but less than \$250.00,
25 or 1,200 or more, but not more than 2,999, counterfeit cigarettes,
26 counterfeit cigarette papers, gray market cigarettes, or gray
27 market cigarette papers is guilty of a misdemeanor punishable by a
28 fine of not more than \$5,000.00 or imprisonment of not more than 1
29 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
28 both.

29 (8) The attorney general has concurrent power with the

1 prosecuting attorneys of ~~the~~**this** state to enforce this act.

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

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

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

17 (12) A person shall not possess, acquire, transport, or offer
18 for sale contrary to this act less than 600 cigarettes, tobacco
19 products other than cigarettes with an aggregate wholesale value of
20 less than \$50.00, or less than 600 counterfeit cigarettes,
21 counterfeit cigarette papers, gray market cigarettes, or gray
22 market cigarette papers. A person who possesses, acquires,
23 transports, or offers for sale contrary to this act 180 or more,
24 but not more than 599, cigarettes, tobacco products other than
25 cigarettes with an aggregate wholesale value of \$25.00 or more but
26 less than \$50.00, or 180 or more, but not more than 599,
27 counterfeit cigarettes, counterfeit cigarette papers, gray market
28 cigarettes, or gray market cigarette papers is responsible for a
29 state civil infraction and may be ordered to pay a civil fine of

1 not more than \$100.00.

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

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

24 (3) As soon as possible, but not more than 5 business days
25 after seizure of any alleged contraband, the person making the
26 seizure shall deliver personally or by registered mail to the last
27 known address of the person from whom the seizure was made, if
28 known, an inventory statement of the property seized. A copy of the
29 inventory statement ~~shall~~**must** also be filed with the state

1 treasurer. The inventory statement ~~shall~~**must** also contain a notice
2 to the effect that unless demand for hearing as provided in this
3 section is made within 10 business days, the designated property is
4 forfeited to the state. If the person from whom the seizure was
5 made is not known, the person making the seizure shall cause a copy
6 of the inventory statement, together with the notice provided for
7 in this subsection, to be published at least 3 times in a newspaper
8 of general circulation in the county where the seizure was made.
9 Within 10 business days after the date of service of the inventory
10 statement, or in the case of publication, within 10 business days
11 after the date of last publication, the person from whom the
12 property was seized or any person claiming an interest in the
13 property may by registered mail, facsimile transmission, or
14 personal service file with the state treasurer a demand for a
15 hearing before the state treasurer or a person designated by the
16 state treasurer for a determination as to whether the property was
17 lawfully subject to seizure and forfeiture. The person shall verify
18 a request for hearing filed by facsimile transmission by also
19 providing a copy of the original request for hearing by registered
20 mail or personal service. The person or persons are entitled to
21 appear before the department, to be represented by counsel, and to
22 present testimony and argument. Upon receipt of a request for
23 hearing, the department shall hold the hearing within 15 business
24 days. The hearing is not a contested case proceeding and is not
25 subject to the administrative procedures act of 1969, 1969 PA 306,
26 MCL 24.201 to 24.328. After the hearing, the department shall
27 render its decision in writing within 10 business days of the
28 hearing and, by order, shall either declare the seized property
29 subject to seizure and forfeiture, or declare the property

1 returnable in whole or in part to the person entitled to
2 possession. If, within 10 business days after the date of service
3 of the inventory statement, the person from whom the property was
4 seized or any person claiming an interest in the property does not
5 file with the state treasurer a demand for a hearing before the
6 department, the property seized ~~shall be~~ **is** considered forfeited to
7 the state by operation of law and may be disposed of by the
8 department as provided in this section. If, after a hearing before
9 the state treasurer or person designated by the state treasurer,
10 the department determines that the property is lawfully subject to
11 seizure and forfeiture and the person from whom the property was
12 seized or any persons claiming an interest in the property do not
13 take an appeal to the circuit court of the county in which the
14 seizure was made within the time prescribed in this section, the
15 property seized shall be considered forfeited to the state by
16 operation of law and may be disposed of by the department as
17 provided in this section.

18 (4) If a person is aggrieved by the decision of the
19 department, that person may appeal to the circuit court of the
20 county where the seizure was made to obtain a judicial
21 determination of the lawfulness of the seizure and forfeiture. The
22 action ~~shall~~ **must** be commenced within 20 days after notice of the
23 department's determination is sent to the person or persons
24 claiming an interest in the seized property. The court shall hear
25 the action and determine the issues of fact and law involved in
26 accordance with rules of practice and procedure as in other in rem
27 proceedings. If a judicial determination of the lawfulness of the
28 seizure and forfeiture cannot be made before deterioration of any
29 of the property seized, the court shall order the destruction or

1 sale of the property with public notice as determined by the court
2 and require the proceeds to be deposited with the court until the
3 lawfulness of the seizure and forfeiture is finally adjudicated.

4 (5) The department shall destroy all cigarettes forfeited to
5 this state. The department may sell all tobacco products, except
6 cigarettes, and other property forfeited pursuant to this section
7 at public sale. Public notice of the sale ~~shall~~**must** be given at
8 least 5 days before the day of sale. The department may pay an
9 amount not to exceed 25% of the proceeds of the sale to the local
10 governmental unit whose law enforcement agency performed the
11 seizure. The balance of the proceeds derived from the sale by the
12 department ~~shall~~**must** be credited to the general fund of the state.

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

16 (7) A person who is not an employee or officer of this state
17 or a political subdivision of this state who furnishes to the
18 department or to any law enforcement agency original information
19 concerning a violation of this act, which information results in
20 the collection and recovery of any tax or penalty or leads to the
21 forfeiture of any cigarettes, or other property, may be awarded and
22 paid by the state treasurer, compensation of not more than 10% of
23 the net amount received from the sale of any forfeited cigarettes
24 or other property, but not to exceed \$5,000.00 which ~~shall~~**must** be
25 paid out of the receipts from the sale of the property. If any
26 amount is issued to the local governmental unit under subsection
27 (5), the amount awarded under this subsection to a person who
28 provides original information that results in a seizure of
29 cigarettes or other property by a local law enforcement agency

1 ~~shall~~**must** be paid from that amount issued under subsection (5). If
 2 in the opinion of the attorney general and the director of the
 3 department of state police it is ~~deemed~~**considered** necessary to
 4 preserve the identity of the person furnishing the information, the
 5 attorney general and the director of the department of state police
 6 shall file with the state treasurer an affidavit setting forth that
 7 necessity and a warrant may be issued jointly to the attorney
 8 general and the director of the department of state police. Upon
 9 payment to the person furnishing that information, the attorney
 10 general and the director of the department of state police shall
 11 file with the state treasurer an affidavit that the money has been
 12 by them paid to the person entitled to the money under this
 13 section.

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

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

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

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

26 (9) The prohibition described in subsection (8) ~~shall be~~**is**
 27 effective upon service by certified mail or personal service on the
 28 retailer of notice issued by the department ordering the retailer
 29 to cease all sales and purchases of cigarettes and other tobacco

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

29 Sec. 11. (1) A person, not licensed under this act as either a

1 wholesaler or unclassified acquirer, ~~that is not a manufacturer,~~
 2 shall not sell or solicit a sale of a tobacco product to be
 3 shipped, mailed, or otherwise imported, sent or brought into ~~the~~
 4 **this state, to a person in this state that is** not licensed under
 5 this act, unless the tobacco product is to be sold through a
 6 wholesaler or unclassified acquirer, ~~other than a manufacturer,~~
 7 licensed under this act.

8 (2) A person, in this state, that is not licensed under this
 9 act, shall not order, purchase, or otherwise engage in a
 10 transaction to acquire a tobacco product that is to be shipped,
 11 mailed, imported, sent, or brought into this state unless that
 12 tobacco product is to be sold through a wholesaler or unclassified
 13 acquirer, ~~other than a manufacturer,~~ licensed under this act. **A**
 14 **consumer in this state shall not purchase or otherwise acquire a**
 15 **tobacco product through a remote retail sale unless the seller is**
 16 **licensed under this act as an unclassified acquirer.** A tobacco
 17 product ordered, purchased, or acquired by a person in violation of
 18 this subsection is contraband subject to seizure and forfeiture
 19 under section 9. A person who violates this subsection ~~shall be~~ **is**
 20 considered to be in control or possession of a tobacco product in
 21 violation of this act for purposes of section 8(1), regardless of
 22 whether that tobacco product has been sold, consumed, or otherwise
 23 disposed of. Any limitation on the tax applicable to cigars under
 24 section ~~7(1)(g)~~ **7(1)(b)** shall not apply, or otherwise be taken into
 25 account, for purposes of determining the liability for taxes and
 26 penalties under section 8(1) arising from a violation of this
 27 subsection.

28 (3) Except as provided in section 8(2) regarding
 29 representatives of a licensed manufacturer, a retailer in this

1 state shall not purchase, possess, acquire for resale at retail, or
 2 sell a tobacco product in this state unless that tobacco product
 3 was purchased or otherwise acquired directly from a wholesaler,
 4 unclassified acquirer, ~~other than a manufacturer,~~ or secondary
 5 wholesaler, licensed under this act. A retailer who violates this
 6 subsection ~~shall be~~ **is** considered to be in control or possession of
 7 a tobacco product in violation of this act for purposes of section
 8 8(1), regardless of whether that tobacco product has been sold,
 9 consumed, or otherwise disposed of. Any limitation on the tax
 10 applicable to cigars under section ~~7(1)(g)~~ **7(1)(b)** shall not apply,
 11 or otherwise be taken into account, for purposes of determining the
 12 liability for taxes and penalties under section 8(1) arising from a
 13 violation of this subsection.

14 (4) A retailer ~~shall be~~ **is** considered to have purchased or
 15 otherwise acquired a tobacco product in compliance with subsection
 16 (3) if all of the following conditions are met:

17 (a) The retailer obtains a copy of the license of the
 18 wholesaler, secondary wholesaler, or unclassified acquirer ~~other~~
 19 ~~than a manufacturer~~ at the time of purchase or acquisition.

20 (b) The license described in subdivision (a) was not expired
 21 ~~at the time~~ **when** the tobacco product was purchased or otherwise
 22 acquired by the retailer.

23 (c) The copy of the license is preserved by the retailer in
 24 the same manner, for the same period of time, and offered for
 25 inspection as required of other statements and records under
 26 section 6.

27 (5) Notwithstanding anything in this act to the contrary, a
 28 licensee may provide a copy of its license to a retailer for
 29 purposes of this section. A retailer that obtains a copy of the

1 license for a particular licensee under this section is not
2 required to obtain another copy of the license for subsequent
3 purchases or acquisitions of tobacco products from that licensee
4 ~~which-that~~ are made during the active license year and ~~prior to~~
5 **before** the expiration of that license.

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

1 or age of the purchaser.

2 (7) Subject to subsection (1), all invoices, bills of lading,
 3 sales receipts, or other documents related to tobacco product sales
 4 conducted through the internet, by telephone, or in a mail-order
 5 transaction ~~shall~~**must** contain the current seller's valid Michigan
 6 sales tax license number or use tax registration number, business
 7 name and address of the seller, and a statement as to whether all
 8 sales taxes or use taxes, as applicable, and taxes levied under
 9 this act have been paid. All packages of tobacco products shipped
 10 from a tobacco product seller to purchasers who reside in Michigan,
 11 **including consumers in a remote retail sale, shall**~~must be~~ clearly
 12 ~~print or stamp the package~~**printed or stamped** with the word
 13 "TOBACCO PRODUCTS" on the outside of all sides of the package so it
 14 is clearly visible to the shipper. If an order is made as a result
 15 of advertisement over the internet, the tobacco retailer, **and an**
 16 **unclassified acquirer making a remote retail sale,** shall request
 17 the ~~electronic mail~~**email** address of the purchaser and shall
 18 receive payment by credit card or check before completing the sale.
 19 This subsection does not apply to sales by wholesalers and
 20 unclassified acquirers licensed under this act **other than remote**
 21 **retail sales.**

22 (8) The deliverer of the tobacco products ~~is required to~~**shall**
 23 obtain proof from a valid government-issued document that the
 24 person signing for the tobacco products is the purchaser.

25 (9) ~~Beginning November 1, 2012, a~~**A** retailer not otherwise
 26 licensed or required to be licensed under this act shall post a
 27 sign, visible to the public inside the retail establishment that
 28 informs purchasers of cigars through catalog sales, telephone or
 29 mail orders, or internet sales of their liability for any

1 applicable unpaid state taxes on those cigars and that cigars
2 purchased in violation of this act are contraband.

3 (10) As used in this section:

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

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

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

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

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

29 (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" means a sale of, a
 8 solicitation to sell, a purchase of, or an offer to purchase
 9 tobacco products conducted all or in part by accessing an internet
 10 website **and includes a remote retail sale.**

11 Sec. 12. (1) The proceeds derived from the payment of taxes,
 12 fees, and penalties provided for under this act and the license
 13 fees received by the department shall be deposited with the state
 14 treasurer and disbursed only as provided in this section. ~~and~~
 15 ~~section 7(5).~~ However, before a distribution of funds is made under
 16 this section, subject to appropriation, the funds described in this
 17 section may be used by the department, the attorney general, and
 18 the department of state police for enforcement and administration
 19 of this act.

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

22 ~~(a) 94% of the proceeds shall be credited to the state school~~
 23 ~~aid fund established by section 11 of article IX of the state~~
 24 ~~constitution of 1963.~~

25 ~~(b) 6% 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~~
 28 ~~in this subdivision that are used for smoking prevention programs~~
 29 ~~shall be used by the department of health and human services to~~

1 ~~expand the free smokers quit kit program to include the nicotine~~
 2 ~~patch or nicotine gum.~~

3 (2) ~~(3)~~The tax imposed on cigarettes under section 7(1)(b)
 4 shall ~~7(1) (a)~~ **must** be disbursed as follows:

5 ~~(a) Beginning May 1, 1994 and through June 30, 2004, 5.3% of~~
 6 ~~the proceeds shall be credited to the health and safety fund~~
 7 ~~created in the health and safety fund act, 1987 PA 264, MCL 141.471~~
 8 ~~to 141.479.~~

9 (a) ~~(b)~~ Beginning July 1, 2004, ~~6.5%~~ **2.4375%** of the proceeds
 10 shall ~~must~~ be credited to the health and safety fund created in the
 11 health and safety fund act, 1987 PA 264, MCL 141.471 to 141.479.

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

14 ~~(d) Beginning July 1, 2004 and through September 30, 2014,~~
 15 ~~24.1% of the proceeds shall be credited to the general fund of this~~
 16 ~~state.~~

17 (b) ~~(e)~~ ~~63.4%~~ **41.6200%** of the proceeds shall ~~must~~ be credited
 18 to the state school aid fund established by section 11 of article
 19 IX of the state constitution of 1963.

20 (c) ~~(f)~~ ~~6%~~ **3.7500%** of the proceeds shall be credited to the
 21 ~~Healthy~~ **healthy** Michigan fund created under section 5953 of the
 22 public health code, 1978 PA 368, MCL 333.5953. Fifty percent of the
 23 proceeds described in this subdivision that are used for smoking
 24 prevention programs shall be used by the department of health and
 25 human services to expand the free smokers quit kit program to
 26 include the nicotine patch or nicotine gum.

27 (d) ~~(g)~~ Beginning October 1, 2014, ~~24.1%~~ **19.7625%** of the
 28 proceeds shall ~~must~~ be disbursed as follows:

29 (i) For ~~the 2014-2015 fiscal year and each subsequent fiscal~~

1 year, \$3,000,000.00 to the Michigan state capitol historic site
 2 fund created in section 7 of the Michigan state capitol historic
 3 site act, 2013 PA 240, MCL 4.1947. For ~~the 2015-2016 fiscal year~~
 4 ~~and each subsequent~~ fiscal year, the state treasurer shall adjust
 5 the figure described in this subparagraph by an amount determined
 6 by the state treasurer at the end of each calendar year to reflect
 7 the cumulative annual percentage change in the ~~consumer price~~
 8 ~~index~~. Beginning for the ~~2015-2016 fiscal year~~ and **Consumer Price**
 9 **Index**. For each ~~subsequent~~ fiscal year, if the cumulative annual
 10 percentage change in the ~~consumer price index~~ **Consumer Price Index**
 11 is negative, then the adjustment for that fiscal year is zero. As
 12 used in this subsection, "~~consumer price index~~" "**Consumer Price**
 13 **Index**" means the most comprehensive index of consumer prices
 14 available for this state from the Bureau of Labor Statistics of the
 15 United States Department of Labor. From the funds described in this
 16 subparagraph, not later than February 1 of each year, the Michigan
 17 state capitol commission created in section 5 of the Michigan state
 18 capitol historic site act, 2013 PA 240, MCL 4.1945, shall report to
 19 the chairpersons of the house and senate appropriations committees.
 20 The report ~~shall~~ **must** contain all of the following:

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

23 (B) The projected 5-year maintenance plan for the Michigan
 24 State Capitol Historical Site for the immediately following 5
 25 fiscal years.

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

28 (ii) The remaining proceeds ~~shall~~ **must** be credited to the
 29 general fund of this state.

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

3 ~~(a) Through June 30, 2004, 74.2%, and beginning July 1, 2004,~~
 4 ~~9.0% of the proceeds shall be credited to the general fund of this~~
 5 ~~state.~~

6 ~~(b) Through June 30, 2004, 4.6%, and beginning July 1, 2004,~~
 7 ~~56.3% of the proceeds shall be credited to the state school aid~~
 8 ~~fund established by section 11 of article IX of the state~~
 9 ~~constitution of 1963.~~

10 ~~(c) 6.0% of the proceeds shall be credited to the Healthy~~
 11 ~~Michigan fund created under section 5953 of the public health code,~~
 12 ~~1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described~~
 13 ~~in this subdivision that are used for smoking prevention programs~~
 14 ~~shall be used by the department of health and human services to~~
 15 ~~expand the free smokers quit kit program to include the nicotine~~
 16 ~~patch or nicotine gum.~~

17 ~~(e) (d) Through June 30, 2004, 3.0%, and beginning July 1,~~
 18 ~~2004, 3.7% **0.5550%** of the proceeds shall **must** be paid to counties~~
 19 ~~with a 2000 population of more than 2,000,000, to be used only for~~
 20 ~~indigent health care.~~

21 ~~(f) (e) Through June 30, 2004, 12.2%, and beginning July 1,~~
 22 ~~2004, 25.0% **31.8750%** of the proceeds shall **must** be credited to the~~
 23 ~~**Michigan** Medicaid benefits trust fund created under section 5 of~~
 24 ~~the Michigan trust fund act, 2000 PA 489, MCL 12.255.~~

25 ~~(5) Beginning August 1, 2002, the tax imposed under section~~
 26 ~~7(1)(f) shall be disbursed as follows:~~

27 ~~(a) 75.6% of the proceeds shall be credited to the state~~
 28 ~~school aid fund established by section 11 of article IX of the~~
 29 ~~state constitution of 1963.~~

1 ~~(b) 6.0% of the proceeds shall be credited to the Healthy~~
2 ~~Michigan fund created under section 5953 of the public health code,~~
3 ~~1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described~~
4 ~~in this subdivision that are used for smoking prevention programs~~
5 ~~shall be used by the department of health and human services to~~
6 ~~expand the free smokers quit kit program to include the nicotine~~
7 ~~patch or nicotine gum.~~

8 ~~(c) 18.4% of the proceeds shall be credited to the general~~
9 ~~fund of this state.~~

10 ~~(6) Beginning August 1, 2002, the tax imposed on cigarettes~~
11 ~~under section 7(1)(d) shall be disbursed as follows:~~

12 ~~(a) 94.0% of the proceeds shall be credited to the state~~
13 ~~school aid fund established by section 11 of article IX of the~~
14 ~~state constitution of 1963.~~

15 ~~(b) 6.0% of the proceeds shall be credited to the Healthy~~
16 ~~Michigan fund created under section 5953 of the public health code,~~
17 ~~1978 PA 368, MCL 333.5953. Fifty percent of the proceeds described~~
18 ~~in this subdivision that are used for smoking prevention programs~~
19 ~~shall be used by the department of health and human services to~~
20 ~~expand the free smokers quit kit program to include the nicotine~~
21 ~~patch or nicotine gum.~~

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

24 ~~(a) Beginning July 1, 2004 and through September 30, 2005,~~
25 ~~100% of the proceeds shall be credited to the Michigan Medicaid~~
26 ~~benefits trust fund created under section 5 of the Michigan trust~~
27 ~~fund act, 2000 PA 489, MCL 12.255.~~

28 ~~(b) Beginning October 1, 2005, 75.0% of the proceeds shall be~~
29 ~~credited to the Michigan Medicaid benefits trust fund created under~~

1 ~~section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.~~

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

4 ~~(3) (8) Beginning July 1, 2004, the~~ **The** tax imposed under
 5 section ~~7(1)(g) shall~~ **7(1)(b) must** be disbursed as follows:

6 ~~(a) Beginning July 1, 2004 and through September 30, 2005,~~
 7 ~~100% of the proceeds shall be credited to the Michigan Medicaid~~
 8 ~~benefits trust fund created under section 5 of the Michigan trust~~
 9 ~~fund act, 2000 PA 489, MCL 12.255.~~

10 ~~(a) (b) Beginning October 1, 2005,~~ 75.0% of the proceeds ~~shall~~
 11 **must** be credited to the Michigan Medicaid benefits trust fund
 12 created under section 5 of the Michigan trust fund act, 2000 PA
 13 489, MCL 12.255.

14 ~~(b) (c) Beginning October 1, 2005,~~ 25.0% of the proceeds ~~shall~~
 15 **must** be credited to the general fund of this state.

16 ~~(4) (9)~~ The proceeds of the fees and penalties provided for in
 17 this act shall be used for the administration of this act.

18 Sec. 13. (1) The tax imposed by this act shall be administered
 19 by the ~~revenue commissioner~~ **department** pursuant to ~~Act No. 122 of~~
 20 ~~the Public Acts of 1941, being sections 205.1 to 205.31 of the~~
 21 ~~Michigan Compiled Laws, 1941 PA 122, MCL 205.1 to 205.31,~~ and this
 22 act. In case of conflict between ~~Act No. 122 of the Public Acts of~~
 23 ~~1941~~ **1941 PA 122, MCL 205.1 to 205.31,** and this act, the provisions
 24 of this act control.

25 (2) The ~~revenue commissioner~~ **department** may promulgate rules
 26 to implement this act pursuant to the administrative procedures act
 27 of 1969, ~~Act No. 306 of the Public Acts of 1969, being sections~~
 28 ~~24.201 to 24.328 of the Michigan Compiled Laws.~~ **1969 PA 306, MCL**
 29 **24.201 to 24.328.**

1 (3) The department shall prescribe forms for use by taxpayers
2 **and the manner in which the forms must be filed.**

3 (4) The tax imposed by this act is in addition to all other
4 taxes for which the taxpayer may be liable.

5 (5) The ~~commissioner~~**state treasurer** may appoint any ~~revenue~~
6 ~~division~~**department** employee as a special investigator, who shall
7 ~~be vested with~~**have** the power to arrest a person violating this
8 act.