

# SENATE BILL No. 1363

July 26, 2006, Introduced by Senators GEORGE, BIRKHOZ, JELINEK, SWITALSKI, BASHAM, HAMMERSTROM, ALLEN and GARCIA and referred to the Committee on Commerce and Labor.

A bill to amend 1993 PA 327, entitled "Tobacco products tax act," by amending sections 2, 3, 5, 6, 6a, 7, 8, 9, and 11 (MCL 205.422, 205.423, 205.425, 205.426, 205.426a, 205.427, 205.428, 205.429, and 205.431), sections 2 and 8 as amended by 2005 PA 238, sections 3, 5, and 6 as amended and section 6a as added by 1997 PA 187, section 7 as amended by 2004 PA 164, and sections 9 and 11 as amended by 2004 PA 474, and by adding sections 3a and 11a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 2. As used in this act:

2           (a) "Cigarette" means a roll for smoking made wholly or in  
3 part of tobacco, irrespective of size or shape and irrespective of  
4 the tobacco being flavored, adulterated, or mixed with any other

1 ingredient, which roll has a wrapper or cover made of paper or any  
2 other material. Cigarette does not include cigars.

3           **(B) "CIGARETTE RETAILER" MEANS A PERSON OTHER THAN A**  
4 **TRANSPORTATION COMPANY WHO OPERATES A PLACE OF BUSINESS, WHETHER**  
5 **LOCATED WITHIN OR OUTSIDE OF THIS STATE, FOR THE PURPOSE OF MAKING**  
6 **SALES OF CIGARETTES AT RETAIL.**

7           **(C) —(b)—** "Commissioner" means the state treasurer.

8           **(D) —(e)—** "Counterfeit cigarette" means a cigarette in an  
9 individual package of cigarettes or other container with a false  
10 manufacturing label or a cigarette in an individual package of  
11 cigarettes or other container with a counterfeit stamp.

12           **(E) —(d)—** "Counterfeit cigarette paper" means a cigarette  
13 paper with a false manufacturing label or that has not been  
14 printed, manufactured, or made by authority of the trademark owner.

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

21           **(G) —(f)—** "Department" means the department of treasury.

22           **(H) —(g)—** "Financially sound" means a determination by the  
23 department that the wholesaler or unclassified acquirer is able to  
24 pay for its stamps in the ordinary course of business based on  
25 criteria including, but not limited to, all of the following:

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

27           (ii) Outstanding liabilities.

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

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

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

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

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

23           (L) ~~—(k)—~~ "Licensee" means a person licensed under this act.

24           (M) ~~—(l)—~~ "Manufacturer" means a person who manufactures or  
25 produces a tobacco product.

26           (N) ~~—(m)—~~ "Noncigarette smoking tobacco" means tobacco sold in  
27 loose or bulk form that is intended for consumption by smoking and

1 includes roll-your-own cigarette tobacco.

2 (O) ~~—(n)—~~ "Person" means an individual, partnership,  
3 fiduciary, association, limited liability company, corporation, or  
4 other legal entity.

5 (P) ~~—(o)—~~ "Place of business" means a place where a tobacco  
6 product is sold or where a tobacco product is brought or kept for  
7 the purpose of sale or consumption, including a vessel, airplane,  
8 train, or vending machine.

9 (Q) ~~—(p)—~~ "Retailer" means a person other than a  
10 transportation company who operates a place of business for the  
11 purpose of making sales of a tobacco product **OTHER THAN CIGARETTES**  
12 at retail.

13 (R) ~~—(q)—~~ "Sale" means a transaction by which the ownership of  
14 tangible personal property is transferred for consideration and  
15 applies also to use, gifts, exchanges, barter, and theft.

16 (S) ~~—(r)—~~ "Secondary wholesaler" means a person who sells a  
17 tobacco product for resale, who purchases a tobacco product from a  
18 wholesaler or unclassified acquirer licensed under this act, and  
19 who maintains an established place of business in this state where  
20 a substantial portion of the business is the sale of tobacco  
21 products and related merchandise at wholesale, and where at all  
22 times a substantial stock of tobacco products and related  
23 merchandise is available to retailers **OR CIGARETTE RETAILERS** for  
24 resale.

25 (T) ~~—(s)—~~ "Smokeless tobacco" means snuff, chewing tobacco,  
26 and any other tobacco that is intended to be consumed by means  
27 other than smoking.

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

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

11           (W) ~~(v)~~ "Tobacco product" means cigarettes, cigars,  
12 noncigarette smoking tobacco, or smokeless tobacco.

13           (X) ~~(w)~~ "Transportation company" means a person operating,  
14 or supplying to common carriers, cars, boats, or other vehicles for  
15 the transportation or accommodation of passengers and engaged in  
16 the sale of a tobacco product at retail.

17           (Y) ~~(x)~~ "Transporter" means a person importing or  
18 transporting into this state, or transporting in this state, a  
19 tobacco product obtained from a source located outside this state,  
20 or from any person not duly licensed under this act. Transporter  
21 does not include an interstate commerce carrier licensed by the  
22 interstate commerce commission to carry commodities in interstate  
23 commerce, or a licensee maintaining a warehouse or place of  
24 business outside of this state if the warehouse or place of  
25 business is licensed under this act.

26           (Z) ~~(y)~~ "Unclassified acquirer" means a person, except a  
27 transportation company or a purchaser at retail from a **CIGARETTE**

1 **RETAILER OR A** retailer licensed under the general sales tax act,  
2 1933 PA 167, MCL 205.51 to 205.78, who imports or acquires a  
3 tobacco product from a source other than a wholesaler or secondary  
4 wholesaler licensed under this act for use, sale, or distribution.  
5 Unclassified acquirer also means a person who receives cigars,  
6 noncigarette smoking tobacco, or smokeless tobacco directly from a  
7 manufacturer licensed under this act or from another source outside  
8 this state, which source is not licensed under this act. An  
9 unclassified acquirer does not include a wholesaler.

10 **(AA)** ~~—(z)—~~ "Vending machine operator" means a person who  
11 operates 1 or more vending machines for the sale of a tobacco  
12 product and who purchases a tobacco product from a manufacturer,  
13 licensed wholesaler, or secondary wholesaler.

14 **(BB)** ~~—(aa)—~~ "Wholesale price" means the actual price paid for  
15 a tobacco product, including any tax, by a wholesaler or  
16 unclassified acquirer to a manufacturer, excluding any discounts or  
17 reductions.

18 **(CC)** ~~—(bb)—~~ "Wholesaler" means a person who purchases all or  
19 part of his or her tobacco products from a manufacturer, who sells  
20 75% or more of those tobacco products to others for resale, and who  
21 maintains an established business where substantially all of the  
22 business is the sale of tobacco products or cigarettes and related  
23 merchandise at wholesale and where at all times a substantial stock  
24 of tobacco products and related merchandise is available to  
25 retailers **AND CIGARETTE RETAILERS** for resale. Wholesaler includes a  
26 chain of stores retailing a tobacco product to the consumer if 75%  
27 of its stock of tobacco products is purchased directly from the

1 manufacturer.

2       Sec. 3. (1) Beginning May 1, 1994, a person shall not  
3 purchase, possess, acquire for resale, or sell a tobacco product as  
4 a manufacturer, wholesaler, secondary wholesaler, vending machine  
5 operator, unclassified acquirer, transportation company, **CIGARETTE**  
6 **RETAILER**, or transporter in this state unless licensed to do so. A  
7 license granted **OR RENEWED** under this act is not assignable **AND**  
8 **SHALL NOT BE CONSIDERED A PROPERTY RIGHT OR OTHER GUARANTEE UNDER**  
9 **ANY FEDERAL OR STATE LAW. A LICENSE UNDER THIS ACT IS A PRIVILEGE**  
10 **INDICATING THE ABILITY OF A LICENSEE TO ENGAGE IN THAT BUSINESS.**

11       (2) A MANUFACTURER OR UNCLASSIFIED ACQUIRER MAY SELL OR  
12 DISTRIBUTE CIGARETTES TO A PERSON LOCATED OR DOING BUSINESS WITHIN  
13 THIS STATE, ONLY IF SUCH PERSON IS A LICENSED WHOLESALER. AN  
14 UNCLASSIFIED ACQUIRER MAY OBTAIN CIGARETTES ONLY FROM A LICENSED  
15 MANUFACTURER. A WHOLESALER OR SECONDARY WHOLESALER MAY SELL OR  
16 DISTRIBUTE CIGARETTES TO A PERSON LOCATED OR DOING BUSINESS WITHIN  
17 THIS STATE, ONLY IF SUCH PERSON IS A LICENSED WHOLESALER, SECONDARY  
18 WHOLESALER, OR CIGARETTE RETAILER. A WHOLESALER MAY OBTAIN  
19 CIGARETTES ONLY FROM A LICENSED MANUFACTURER, UNCLASSIFIED  
20 ACQUIRER, OR OTHER WHOLESALER. A SECONDARY WHOLESALER MAY OBTAIN  
21 CIGARETTES ONLY FROM A LICENSED WHOLESALER OR UNCLASSIFIED  
22 ACQUIRER. A CIGARETTE RETAILER MAY ONLY SELL CIGARETTES OBTAINED  
23 FROM A LICENSED WHOLESALER OR SECONDARY WHOLESALER.

24       (3) A MANUFACTURER, WHOLESALER, SECONDARY WHOLESALER,  
25 UNCLASSIFIED ACQUIRER, OR CIGARETTE RETAILER SHALL, PRIOR TO THE  
26 INITIAL SALE OR EXCHANGE OF CIGARETTES WITH ANY PERSON WHO IS  
27 REQUIRED TO BE LICENSED UNDER THIS SECTION, REQUIRE PROOF OF A

1 **VALID LICENSE FOR THE RELEVANT BUSINESS LOCATION ISSUED UNDER THIS**  
2 **SECTION.**

3 (4) ~~—(2)—~~ Upon proper application and the payment of the  
4 applicable fee, and subject to subsection ~~—(6)—~~ (8), the department  
5 shall issue a license **CONTAINING A UNIQUE NUMERICAL IDENTIFIER** to  
6 each manufacturer, wholesaler, secondary wholesaler, vending  
7 machine operator, unclassified acquirer, transportation company, or  
8 transporter. The application shall be on a form prescribed by the  
9 department and signed under penalty of perjury. Except for  
10 transportation companies, each place of business shall be  
11 separately licensed. If a person acts in more than 1 capacity at  
12 any 1place of business, a license shall be procured for each  
13 capacity. Each machine for vending tobacco products shall be  
14 considered a place of retail business. Each license or a duplicate  
15 copy shall be prominently displayed on the premises covered by the  
16 license. In the case of vending machines, a disc or marker  
17 furnished by the department showing it to be licensed shall be  
18 attached to the front of the machine in a place clearly visible to  
19 the public.

20 (5) ~~—(3)—~~ The fees for licenses shall be the following:

- 21 (a) A wholesaler's license, \$100.00.  
22 (b) A secondary wholesaler's license, \$25.00.  
23 (c) A license for vending machine operators, \$25.00.  
24 (d) An unclassified acquirer's license, as follows:  
25 (i) State of Michigan, no fee.  
26 (ii) Retail importer of tobacco products other than cigarettes,  
27 \$10.00.

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

2 (iv) Vending machine operator buying direct from a  
3 manufacturer, \$100.00.

4 (v) Manufacturer, \$100.00.

5 (vi) Any other importer, \$100.00.

6 (e) A transportation company's license, \$5.00.

7 (f) A transporter's license, \$50.00.

8 **(G) A CIGARETTE RETAILER'S LICENSE, NO FEE.**

9 (6) ~~—(4)—~~ If a manufacturer, wholesaler, secondary wholesaler,  
10 **CIGARETTE RETAILER**, or vending machine operator maintains more than  
11 1 place of business, the fee for each additional place of business  
12 shall be 1/4 of the fee otherwise prescribed in subsection (3). A  
13 fee, or a part of a fee, shall not be refunded by reason of  
14 relinquishment, suspension, or revocation of the license, or,  
15 except under order of a court of competent jurisdiction, for any  
16 other reason or cause.

17 (7) ~~—(5)—~~ A person shall not possess a machine for vending  
18 tobacco products for a period in excess of 72 hours unless there is  
19 a disc or marker attached as provided by this section. This  
20 requirement does not apply to a machine not containing a tobacco  
21 product. If a person possesses a vending machine containing a  
22 tobacco product that is not properly licensed or identified as  
23 required by this section, the department may seal or seize the  
24 machine, together with the tobacco products contained in the  
25 machine. The provisions of section 9 govern the seizure and  
26 subsequent disposition of a machine or tobacco product seized.

27 (8) ~~—(6)—~~ Applications from persons applying for an initial

1 license under this act shall be accompanied by satisfactory proof,  
2 as determined by the department, of all the following **INFORMATION,**  
3 **UNDER THE PENALTY OF PERJURY:**

4 (a) The applicant's financial responsibility, including but  
5 not limited to, satisfactory proof of a minimum net worth of  
6 \$25,000.00.

7 (b) That the applicant owns, or has an executed lease for, a  
8 secure nonresidential facility for the purpose of receiving and  
9 distributing cigarettes and conducting its business if the  
10 applicant owns or has an executed lease for such a facility. If the  
11 applicant carries on another business in conjunction with the  
12 secure nonresidential facility, the other business shall also be  
13 identified.

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

20 (D) IF THE APPLICANT IS AN INDIVIDUAL, THE NAME AND BUSINESS  
21 ADDRESS OF THE APPLICANT.

22 (E) IF THE APPLICANT IS A FIRM, PARTNERSHIP, OR ASSOCIATION,  
23 THE NAME AND BUSINESS ADDRESS OF EACH OF ITS MEMBERS.

24 (F) IF THE APPLICANT IS A CORPORATION OR LIMITED LIABILITY  
25 COMPANY, THE NAME AND ADDRESS OF EACH OF ITS OFFICERS AND THE NAME  
26 AND BUSINESS ADDRESS OF ANY PERSON WHO OWNS, DIRECTLY OR  
27 INDIRECTLY, IN THE AGGREGATE, MORE THAN 10% OF THE OWNERSHIP

1 INTERESTS IN THE CORPORATION OR LIMITED LIABILITY COMPANY.

2 (G) THE NAME OR NAMES UNDER WHICH THE APPLICANT REGULARLY DOES  
3 BUSINESS.

4 (H) THE PHYSICAL ADDRESS OF THE APPLICANT'S PRINCIPAL PLACE OF  
5 BUSINESS AND ANY OTHER PLACE OF BUSINESS WITHIN THIS STATE.

6 (I) IN THE CASE OF A MANUFACTURER OR UNCLASSIFIED ACQUIRER,  
7 THE BRAND STYLES OF CIGARETTES THE APPLICANT MANUFACTURES OR  
8 IMPORTS.

9 (J) THE KIND OR NATURE OF THE BUSINESS TO BE CONDUCTED.

10 (K) SUFFICIENT INFORMATION TO DEMONSTRATE THAT THE APPLICANT  
11 HAS COMPLIED OR WILL COMPLY WITH ALL OF THE REQUIREMENTS OF THIS  
12 ACT.

13 (9) ~~—(7)—~~ The department may require an applicant who is  
14 purchasing the business of a licensee to file a copy of the  
15 contract of sale and any related documents with its application.  
16 The department may require a licensee under this section to furnish  
17 a surety bond with a surety company authorized to do business in  
18 this state in an amount the department may fix, conditioned upon  
19 the payment of the tax provided by this act. The department may  
20 also require a licensee under this section to file a financial  
21 statement with the department showing all assets and liabilities  
22 and any other information the department may prescribe, to be filed  
23 within 30 days after the date requested. If there is a change of  
24 more than 50% of ownership or control or a change in the general  
25 partnership of a licensee, the department may require that licensee  
26 to file a new application for a license or an updated financial  
27 statement. **A LICENSEE SHALL NOTIFY THE DEPARTMENT OF ANY CHANGE IN**

1 THE INFORMATION CONTAINED ON THE APPLICATION FORM AND SHALL DO SO  
2 WITHIN 30 DAYS OF ANY SUCH CHANGE.

3 SEC. 3A. (1) NOT LATER THAN 30 DAYS AFTER THE EFFECTIVE DATE  
4 OF THE AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSIONER  
5 SHALL CREATE AND MAINTAIN A WEBSITE SETTING FORTH THE IDENTITY OF  
6 ALL PERSONS ISSUED LICENSES UNDER THIS ACT AND THE BUSINESS  
7 LOCATIONS OF EACH LICENSEE, ITEMIZED BY TYPE OF LICENSE POSSESSED,  
8 AND SHALL UPDATE THE WEBSITE NOT LESS FREQUENTLY THAN ONCE PER  
9 MONTH. THE COMMISSIONER SHALL, AT A MINIMUM, INCLUDE IN THAT  
10 PUBLICATION THE LEGAL NAME OF THE LICENSEE, THE UNIQUE NUMERICAL  
11 IDENTIFIER ISSUED TO THE LICENSEE, AND ANY NAME UNDER WHICH SUCH  
12 LICENSEE REGULARLY DOES BUSINESS.

13 (2) NOT LATER THAN 30 DAYS AFTER THE EFFECTIVE DATE OF THE  
14 AMENDATORY ACT THAT ADDED THIS SECTION, THE COMMISSIONER SHALL  
15 CREATE AND MAINTAIN A WEBSITE SETTING FORTH THE IDENTITY OF ALL  
16 PERSONS WHOSE LICENSES HAVE BEEN SUSPENDED OR REVOKED UNDER THIS  
17 ACT WITHIN THE PAST 3 YEARS, ITEMIZED BY TYPE OF LICENSE, AND SHALL  
18 UPDATE THE WEBSITE WITHIN 30 DAYS OF THE DATE THE COMMISSIONER  
19 SUSPENDS OR REVOKES ANY PERSON'S LICENSE. THE COMMISSIONER SHALL,  
20 AT A MINIMUM, INCLUDE IN THAT PUBLICATION THE LEGAL NAME OF THE  
21 LICENSEE, THE BUSINESS LOCATIONS OF THE LICENSEE, THE UNIQUE  
22 NUMERICAL IDENTIFIER ISSUED TO THE LICENSEE PRIOR TO THE SUSPENSION  
23 OR REVOCATION OF THE LICENSE, AND ANY NAME UNDER WHICH SUCH  
24 LICENSEE REGULARLY DOES BUSINESS.

25 Sec. 5. (1) The department may suspend, revoke, or refuse to  
26 issue or renew a license issued under this act for failure to  
27 comply with this act or for any other good cause. A person whose

1 license is suspended, revoked, or not renewed shall not act as a  
2 stamping agent or acquire a stamp from the department or any other  
3 person, or sell a tobacco product during the period of suspension  
4 or revocation, or until the license is renewed.

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

9 (3) THE COMMISSIONER SHALL NOT GRANT OR RENEW A LICENSE AND  
10 SHALL TERMINATE A LICENSE IF THE COMMISSIONER DETERMINES THE  
11 APPLICANT MEETS 1 OR MORE OF THE FOLLOWING:

12 (A) OWES \$500.00 OR MORE IN DELINQUENT CIGARETTE TAXES.

13 (B) HAS HAD A LICENSE UNDER THIS ACT REVOKED BY THE DEPARTMENT  
14 WITHIN THE IMMEDIATELY PRECEDING 2 YEARS.

15 (C) HAS BEEN CONVICTED OF A CRIME RELATING TO STOLEN,  
16 COUNTERFEIT, CONTRABAND, OR GRAY MARKET CIGARETTES, UNDER STATE OR  
17 FEDERAL LAW.

18 (D) IS A MANUFACTURER OF CIGARETTES THAT IS NOT EITHER OF THE  
19 FOLLOWING:

20 (i) A PARTICIPATING MANUFACTURER AS DEFINED IN SECTION 1 OF  
21 1999 PA 244, MCL 445.2051.

22 (ii) IN FULL COMPLIANCE WITH SECTION 6C.

23 (E) HAS BEEN FOUND TO HAVE VIOLATED, AT LEAST 2 TIMES IN A 6-  
24 MONTH PERIOD, ANY LAW RELATED TO THE SALE OF TOBACCO TO MINORS.

25 (F) HAS BEEN FOUND TO HAVE IMPORTED OR CAUSED TO BE IMPORTED  
26 INTO THE UNITED STATES FOR SALE OR DISTRIBUTION ANY CIGARETTE IN  
27 VIOLATION OF 19 USC 1681A.

1           (G) HAS BEEN FOUND TO HAVE IMPORTED OR CAUSED TO BE IMPORTED  
2 INTO THE UNITED STATES FOR SALE OR DISTRIBUTION OR MANUFACTURED FOR  
3 SALE OR DISTRIBUTION IN THE UNITED STATES ANY CIGARETTE THAT DOES  
4 NOT FULLY COMPLY WITH THE FEDERAL CIGARETTE LABELING AND  
5 ADVERTISING ACT, 15 USC 1331-1340.

6           (4) ~~—(3)—~~ Before the department suspends, revokes, or refuses  
7 to renew a license under this act, the department shall notify the  
8 person of its intent to hold a hearing before a representative of  
9 the commissioner for purposes of determining whether to suspend,  
10 revoke, or refuse to renew a license at least 14 days before the  
11 scheduled hearing date.

12           (5) ~~—(4)—~~ A person aggrieved by the suspension, revocation, or  
13 refusal to issue or renew a license may apply to the revenue  
14 division of the department for a hearing within 20 days after  
15 notice of the suspension, revocation, or refusal to issue or renew  
16 the license. A hearing shall be had in the same manner provided in  
17 section 21 of 1941 PA 122, MCL 205.21. The decision in case of  
18 suspension, revocation, or refusal to renew shall be issued within  
19 45 days of receipt of the request for hearing.

20           Sec. 6. (1) A manufacturer, wholesaler, secondary wholesaler,  
21 vending machine operator, transportation company, unclassified  
22 acquirer, **CIGARETTE RETAILER**, or retailer shall keep a complete and  
23 accurate record of each tobacco product manufactured, purchased, or  
24 otherwise acquired. **THE RECORD SHALL INCLUDE THE QUANTITIES OF**  
25 **CIGARETTE, BY BRAND STYLE, ON HAND BOTH AT THE BEGINNING AND ENDING**  
26 **OF EACH MONTH.** Except for a manufacturer, the records shall include  
27 a written statement containing the name and address of both the

1 seller and the purchaser, the date of delivery, the quantity, the  
2 trade name or brand, and the price paid for each tobacco product  
3 purchased. A licensee shall keep as part of the records a true copy  
4 of all purchase orders, invoices, bills of lading, and other  
5 written matter substantiating the purchase or acquisition of each  
6 tobacco product at the location where the tobacco product is stored  
7 or offered for sale. A **CIGARETTE RETAILER AND A** retailer shall keep  
8 as part of the records a true copy of all purchase orders,  
9 invoices, bills of lading, and other written matter substantiating  
10 the purchase or acquisition of each tobacco product at the location  
11 where the tobacco product is offered for sale for a period of 4  
12 months from the date of purchase or acquisition. The department  
13 may, by giving prior written approval, authorize a person licensed  
14 under this act or a retailer to maintain records in a manner other  
15 than that required by this subsection. Other records shall be kept  
16 by these persons as the department reasonably prescribes.

17 (2) A manufacturer, wholesaler, unclassified acquirer, and  
18 secondary wholesaler shall deliver with each sale or consignment of  
19 a tobacco product a written statement containing the name or trade  
20 name and address of both the seller and the purchaser, the date of  
21 delivery, the quantity, and the trade name or brand of the tobacco  
22 product, correctly itemizing the prices paid for each brand  
23 purchased, and shall retain a duplicate of each statement.

24 (3) A vending machine operator shall keep a detailed record of  
25 each vending machine owned for the sale of tobacco products showing  
26 the location of the machine, the date of placing the machine on the  
27 location, the quantity of each tobacco product placed in the

1 machine, the date when placed there, and the amount of the  
2 commission paid or earned on sales through the vending machine.  
3 When filling or refilling the vending machine, the operator shall  
4 deliver to the owner or tenant occupying the premises where the  
5 machine is located a written statement containing his or her own  
6 name and address, the name and address of the owner or the tenant,  
7 the date when the machine was filled, and the quantity of each  
8 brand of tobacco product sold from the machine since the date when  
9 tobacco products were last placed in the machine. A person in  
10 possession of premises where a vending machine is located shall  
11 keep a record of each tobacco product sold through the vending  
12 machine located on the premises and the amount of commission paid  
13 by the person operating the vending machine. The records shall  
14 consist of written statements required to be given by each person  
15 operating a vending machine for the sale of tobacco products as  
16 provided in this section.

17 (4) A licensee under this act shall not issue or accept a  
18 written statement or invoice that is known to the licensee to  
19 contain a statement or omission that falsely indicates the name of  
20 the customer, the type, trade name, or brand of merchandise, the  
21 quantity of each type, trade name, or brand of merchandise, the  
22 prices, the discounts, the date of the transaction, or the terms of  
23 sale. A person shall not use a device or game of chance to aid,  
24 promote, or induce sales or purchases of a tobacco product, or give  
25 a tobacco product in connection with a device or game of chance.

26 (5) All statements and other records required by this section  
27 shall be in a form prescribed by the department and shall be

1 preserved for a period of 4 years and offered for inspection at any  
2 time upon oral or written demand by the department or its  
3 authorized agent by every wholesaler, secondary wholesaler, vending  
4 machine operator, unclassified acquirer, **CIGARETTE RETAILER**, and  
5 retailer.

6 (6) If a tobacco product other than cigarettes is received or  
7 acquired within this state by a wholesaler, secondary wholesaler,  
8 vending machine operator, unclassified acquirer, **CIGARETTE**  
9 **RETAILER**, or retailer, each original manufacturer's shipping case  
10 shall bear the name and address of the person making the first  
11 purchase or any other markings the department prescribes. If a  
12 tobacco product other than cigarettes is found in a place of  
13 business or otherwise in the possession of a wholesaler, secondary  
14 wholesaler, vending machine operator, unclassified acquirer,  
15 transporter, **CIGARETTE RETAILER**, or retailer without proper  
16 markings on the shipping case, box, or container of the tobacco  
17 product or if an individual package of cigarettes is found without  
18 a stamp affixed as provided under this act or if a tobacco product  
19 is found without proper substantiation by invoices or other records  
20 as required by this section, the presumption shall be that the  
21 tobacco product is kept in violation of this act. If a tobacco  
22 product is shipped outside ~~the~~ **THIS** state, the licensee shipping  
23 the tobacco product shall cause to be placed on every shipping case  
24 or other container in which the tobacco product is shipped the name  
25 and address of the consignee or purchaser to whom the shipment is  
26 made outside of ~~the~~ **THIS** state. The department may require  
27 reports from a common carrier who transports a tobacco product to a

1 point within this state from another person who, under contract,  
2 transports a tobacco product, or from a bonded warehouseperson or  
3 bailee who has in his or her possession a tobacco product. A  
4 carrier, bailee, warehouseperson, or other person shall permit the  
5 inspection of the tobacco products and examination by the  
6 department or its duly authorized agent of any records relating to  
7 the shipment of a tobacco product into, from, or within the state.

8 (7) A transporter or other licensee transporting, possessing,  
9 or acquiring for the purpose of transporting a tobacco product upon  
10 a public highway, road, or street of this state shall have in his  
11 or her actual possession invoices or bills of lading containing the  
12 name and address of both the seller and the purchaser, the date of  
13 delivery, the name and address of the transporter, the quantity and  
14 trade name or brand of each tobacco product, the price paid for  
15 each trade name or brand in the transporter's possession or  
16 custody, and the 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

1 to be followed if a tobacco product is being transported from an  
2 out-of-state source, and any other information the department  
3 requires. The department shall provide a permit on a form  
4 prescribed by it upon the application of a transporter with the  
5 remittance of a fee of \$1.00. If a transporter transports a tobacco  
6 product into this state, the transporter shall stop at the nearest  
7 state police post within this state on the route authorized by the  
8 permit and disclose the tobacco products in his or her possession  
9 and the papers required by this section to be in his or her  
10 possession.

11 Sec. 6a. (1) Beginning April 15, 1998, a wholesaler or  
12 unclassified acquirer other than a manufacturer may apply to the  
13 department for stamps to affix as provided in this act. The  
14 department may prescribe the method of shipment of the stamps. The  
15 department shall keep a record of all stamps disbursed, name of  
16 wholesaler or unclassified acquirer, and date of disbursement. **EACH**  
17 **STAMP, ROLL OF STAMPS, OR SHEETS OF STAMPS SHALL HAVE A SEPARATE**  
18 **SERIAL NUMBER, WHICH SHALL BE VISIBLE AND CLEARLY IDENTIFIABLE AT**  
19 **THE POINT OF SALE ON EACH PACK OF CIGARETTES. THE COMMISSIONER**  
20 **SHALL KEEP RECORDS OF WHICH WHOLESALER OR UNCLASSIFIED ACQUIRER**  
21 **PURCHASES EACH ROLL OR GROUP OF SHEETS IDENTIFIED BY SERIAL NUMBER.**  
22 **IF THE COMMISSIONER PERMITS THE PURCHASE OF PARTIAL ROLLS OR**  
23 **SHEETS, IN NO CASE MAY STAMPS BEARING THE SAME SERIAL NUMBER BE**  
24 **SOLD TO MORE THAN 1 WHOLESALER OR UNCLASSIFIED ACQUIRER.** The  
25 department may release the identity of the wholesaler or  
26 unclassified acquirer to whom specific stamps were disbursed to  
27 state or local police agencies.

1           (2) Beginning May 1, 1998, before delivery, sale, or transfer  
2 to any person in this state, a wholesaler or an unclassified  
3 acquirer shall, **WITHIN 10 DAYS OF RECEIPT OF AN INDIVIDUAL PACKAGE**  
4 **OF CIGARETTES**, place or cause to be placed on the bottom of each  
5 individual package of cigarettes to be sold within this state a  
6 stamp provided by the department. Stamps shall be firmly affixed in  
7 such a manner that the stamps cannot be removed without being  
8 mutilated or destroyed. A stamp shall be affixed to each individual  
9 package in an aggregate denomination equal to the amount of the tax  
10 upon the contents of the individual package of cigarettes. A stamp  
11 is considered affixed if more than 50% of the stamp is affixed to  
12 the individual package, as determined by the department.

13           (3) Beginning May 1, 1998, a retailer or person licensed under  
14 this act, other than a wholesaler or unclassified acquirer or a  
15 person acting as a transporter for a wholesaler or unclassified  
16 acquirer, shall not acquire for resale an individual package of  
17 cigarettes or a cigarette from an individual package unless that  
18 individual package of cigarettes has affixed to it a stamp as  
19 provided in this act.

20           (4) Beginning September 1, 1998, a **CIGARETTE RETAILER**,  
21 retailer, or vending machine operator shall not sell or offer for  
22 sale an individual package of cigarettes to the general public that  
23 does not have affixed the stamp required by this act. Beginning  
24 September 1, 1998, cigarettes without stamps may not be placed or  
25 stored in a vending machine.

26           (5) The department or its authorized agents may inspect or  
27 conduct an inventory of a wholesaler's or unclassified acquirer's

1 stock of cigarettes, tobacco products other than cigarettes, and  
2 stamps during regular business hours and inspect the related  
3 statements and other records required in section 6.

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

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

22 (8) The department may require wholesalers and unclassified  
23 acquirers to exchange unaffixed stamps with the department as the  
24 department considers necessary. The department may require  
25 wholesalers, unclassified acquirers, secondary wholesalers, vending  
26 machine operators, **CIGARETTE RETAILERS**, and retailers to  
27 discontinue offering for sale any unsold individual packages of

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

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

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

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

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

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

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

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

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

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

10 (g) Beginning July 1, 2004, for cigars, noncigarette smoking  
11 tobacco, and smokeless tobacco, 32% of the wholesale price.

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

1 calendar month. Wholesalers and unclassified acquirers shall also  
2 report accurate inventories of affixed and unaffixed stamps by  
3 denomination at the beginning and end of each calendar month and  
4 all stamps acquired during the preceding calendar month. The return  
5 shall be signed under penalty of perjury. The return shall be on a  
6 form prescribed by the department and shall contain or be  
7 accompanied by any further information the department requires.

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

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

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

18 (c) Beginning August 1, 2002, 1.5% of the total amount of the  
19 tax due on cigarettes sold.

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

1 any cigars, noncigarette smoking tobacco, or smokeless tobacco upon  
2 which a tax has been paid pursuant to subsection (1)(a) shall file  
3 a complete inventory of those cigars, noncigarette smoking tobacco,  
4 and smokeless tobacco before September 1, 2002 and shall pay to the  
5 department at the time of filing this inventory a tax equal to the  
6 difference between the tax imposed in subsection (1)(f) and the tax  
7 that has been paid under subsection (1)(a).

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

26 (6) The department may require the payment of the tax imposed  
27 by this act upon the importation or acquisition of a tobacco

1 product. A tobacco product for which the tax under this act has  
2 once been imposed and that has not been refunded if paid is not  
3 subject upon a subsequent sale to the tax imposed by this act.

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

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

11 (9) A wholesaler, unclassified acquirer, or other person shall  
12 not sell or transfer any unaffixed stamps acquired by the  
13 wholesaler or unclassified acquirer from the department. A  
14 wholesaler or unclassified acquirer who has any unaffixed stamps on  
15 hand at the time its license is revoked or expires, or at the time  
16 it discontinues the business of selling cigarettes, shall return  
17 those stamps to the department. The department shall refund the  
18 value of the stamps, less the appropriate discount paid.

19 (10) If the wholesaler or unclassified acquirer has unsalable  
20 packs returned from a **CIGARETTE RETAILER**, retailer, secondary  
21 wholesaler, vending machine operator, wholesaler, or unclassified  
22 acquirer with stamps affixed, the department shall refund the  
23 amount of the tax less the appropriate discount paid. If the  
24 wholesaler or unclassified acquirer has unaffixed unsalable stamps,  
25 the department shall exchange with the wholesaler or unclassified  
26 acquirer new stamps in the same quantity as the unaffixed unsalable  
27 stamps. An application for refund of the tax shall be filed on a

1 form prescribed by the department for that purpose, within 4 years  
2 from the date the stamps were originally acquired from the  
3 department. A wholesaler or unclassified acquirer shall make  
4 available for inspection by the department the unused or spoiled  
5 stamps and the stamps affixed to unsalable individual packages of  
6 cigarettes. The department may, at its own discretion, witness and  
7 certify the destruction of the unused or spoiled stamps and  
8 unsalable individual packages of cigarettes that are not returnable  
9 to the manufacturer. The wholesaler or unclassified acquirer shall  
10 provide certification from the manufacturer for any unsalable  
11 individual packages of cigarettes that are returned to the  
12 manufacturer.

13 (11) On or before the twentieth of each month, each  
14 manufacturer shall file a report with the department listing all  
15 sales of tobacco products to wholesalers and unclassified acquirers  
16 during the preceding calendar month and any other information the  
17 department finds necessary for the administration of this act. This  
18 report shall be in the form and manner specified by the department.

19 (12) Each wholesaler or unclassified acquirer shall submit to  
20 the department an unstamped cigarette sales report on or before the  
21 twentieth day of each month covering the sale, delivery, or  
22 distribution of unstamped cigarettes during the preceding calendar  
23 month to points outside of Michigan. A separate schedule shall be  
24 filed for each state, country, or province into which shipments are  
25 made. For purposes of the report described in this subsection,  
26 "unstamped cigarettes" means individual packages of cigarettes that  
27 do not bear a Michigan stamp. The department may provide the

1 information contained in this report to a proper officer of another  
2 state, country, or province reciprocating in this privilege.

3       Sec. 8. (1) A person, other than a licensee, who is in control  
4 or in possession of a tobacco product contrary to this act, who  
5 after August 31, 1998 is in control or in possession of an  
6 individual package of cigarettes without a stamp in violation of  
7 this act, or who offers to sell or does sell a tobacco product to  
8 another for purposes of resale without being licensed to do so  
9 under this act, shall be personally liable for the tax imposed by  
10 this act, plus a penalty of 500% of the amount of tax due under  
11 this act.

12       (2) The department may permit a representative of a licensed  
13 manufacturer of tobacco products whose duties require travel in  
14 this state to transport up to 138,000 cigarettes, of which not more  
15 than 36,000 cigarettes may bear no tax indicia or the tax indicia  
16 of another state. All 138,000 cigarettes must bear the stamp  
17 approved by the department or the tax indicia of another state, if  
18 any. The total value of tobacco products, excluding cigarettes,  
19 carried by a representative shall not exceed a wholesale value of  
20 \$5,000.00. A manufacturer shall notify the department of the  
21 manufacturer's representatives that it currently employs who carry  
22 cigarettes or tobacco products other than cigarettes in performing  
23 work duties in this state. The manufacturer shall maintain a record  
24 of each transaction by the manufacturer's representative for a  
25 period of 4 years immediately following the transaction and shall  
26 produce the records upon request of the state treasurer or the  
27 state treasurer's authorized agent. Each record shall identify the

1 quantity and identity of the tobacco products, detail whether  
2 exchanged, received, removed, or otherwise disposed of and the  
3 identity of the **CIGARETTE RETAILER**, retailer, wholesaler, secondary  
4 wholesaler, vending machine operator, or unclassified acquirer  
5 involved. The representative of the manufacturer shall provide a  
6 copy of the record to the **CIGARETTE RETAILER**, retailer, wholesaler,  
7 secondary wholesaler, vending machine operator, or unclassified  
8 acquirer at the time of the exchange or disposal. The **CIGARETTE**  
9 **RETAILER**, retailer, wholesaler, secondary wholesaler, vending  
10 machine operator, or unclassified acquirer shall retain the copy of  
11 the record in the same place and for the same time period as other  
12 records required by this section. A representative shall not  
13 exchange, or otherwise dispose of, within this state tobacco  
14 products bearing the tax indicia of another state or receive  
15 tobacco products bearing the tax indicia of another state from  
16 **CIGARETTE RETAILERS OR** retailers located within this state. A  
17 representative who sells, exchanges, or otherwise disposes of  
18 cigarettes or tobacco products other than cigarettes that do not  
19 bear the stamp or other marking required by the department or  
20 sells, exchanges, or otherwise disposes of cigarettes or tobacco  
21 products other than cigarettes bearing the tax indicia of another  
22 state is guilty of a felony, punishable by a fine of not more than  
23 \$5,000.00 or imprisonment for not more than 5 years, or both.

24 (3) A person who possesses, acquires, transports, or offers  
25 for sale contrary to this act 3,000 or more cigarettes, tobacco  
26 products other than cigarettes with an aggregate wholesale price of  
27 \$250.00 or more, 3,000 or more counterfeit cigarettes, 3,000 or

1 more counterfeit cigarette papers, 3,000 or more gray market  
2 cigarettes, or 3,000 or more gray market cigarette papers is guilty  
3 of a felony, punishable by a fine of not more than \$50,000.00 or  
4 imprisonment for not more than 5 years, or both.

5 (4) A person who possesses, acquires, transports, or offers  
6 for sale contrary to this act 1,200 or more, but not more than  
7 2,999, cigarettes, tobacco products other than cigarettes with an  
8 aggregate wholesale value of \$100.00 or more but less than \$250.00,  
9 or 1,200 or more, but not more than 2,999, counterfeit cigarettes,  
10 counterfeit cigarette papers, gray market cigarettes, or gray  
11 market cigarette papers is guilty of a misdemeanor punishable by a  
12 fine of not more than \$5,000.00 or imprisonment of not more than 1  
13 year, or both.

14 (5) A person who violates a provision of this act for which a  
15 criminal punishment is not otherwise provided is guilty of a  
16 misdemeanor, punishable by a fine of not more than \$1,000.00 or 5  
17 times the retail value of the tobacco products involved, whichever  
18 is greater, or imprisonment for not more than 1 year, or both.

19 (6) A person who manufactures, possesses, or uses a stamp or  
20 manufactures, possesses, or uses a counterfeit stamp or writing or  
21 device intended to replicate a stamp without authorization of the  
22 department, a licensee who purchases or obtains a stamp from any  
23 person other than the department, or who falsifies a manufacturer's  
24 label on cigarettes, counterfeit cigarettes, gray market cigarette  
25 papers, or counterfeit cigarette papers is guilty of a felony and  
26 shall be punished by imprisonment for not less than 1 year or more  
27 than 10 years and may be punished by a fine of not more than

1 \$50,000.00.

2 (7) A person who falsely makes, counterfeits, or alters a  
3 license, vending machine disc, or marker, or who purchases or  
4 receives a false or altered license, vending machine disc, or  
5 marker, or who assists in or causes to be made a false or altered  
6 license, vending machine disc, or marker, or who possesses a device  
7 used to forge, alter, or counterfeit a license, vending machine  
8 disc, or marker is guilty of a felony punishable by a fine of not  
9 more than \$5,000.00 or imprisonment for not more than 5 years, or  
10 both. A person who alters or falsifies records or markings required  
11 under this act is guilty of a felony punishable by a fine of not  
12 more than \$5,000.00 or imprisonment for not more than 5 years, or  
13 both.

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

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

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

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

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

17           (3) As soon as possible, but not more than 5 business days  
18 after seizure of any alleged contraband, the person making the  
19 seizure shall deliver personally or by registered mail to the last  
20 known address of the person from whom the seizure was made, if  
21 known, an inventory statement of the property seized. A copy of the  
22 inventory statement shall also be filed with the state treasurer.  
23 The inventory statement shall also contain a notice to the effect  
24 that unless demand for hearing as provided in this section is made  
25 within 10 business days, the designated property is forfeited to  
26 ~~the~~ **THIS** state. If the person from whom the seizure was made is  
27 not known, the person making the seizure shall cause a copy of the

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

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

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

1 and require the proceeds to be deposited with the court until the  
2 lawfulness of the seizure and forfeiture is finally adjudicated.

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

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

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

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

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

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

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

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

27 (9) The prohibition described in subsection (8) shall be

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

1 the department shall issue a final order and make service upon the  
2 **CIGARETTE RETAILER OR** retailer of an order to cease all purchases,  
3 possession, and sale of all cigarettes and other tobacco products  
4 for a specified period as appropriate. This order does not relieve  
5 the **CIGARETTE RETAILER OR** retailer from seizure and sale of a  
6 tobacco product or other property under this section, or relieve  
7 the **CIGARETTE RETAILER OR** retailer from a fine, imprisonment, or  
8 other penalty for violation of this act.

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

17       **(2) A PERSON SHALL NOT MAKE A SALE OF CIGARETTES CONDUCTED**  
18 **THROUGH THE INTERNET, BY TELEPHONE, OR IN A MAIL-ORDER TRANSACTION**  
19 **TO ANY INDIVIDUAL WHO IS UNDER THE LEGAL MINIMUM AGE.**

20       **(3) EACH PERSON MAKING A SALE OF CIGARETTES CONDUCTED THROUGH**  
21 **THE INTERNET, BY TELEPHONE, OR IN A MAIL-ORDER TRANSACTION SHALL**  
22 **COMPLY WITH THE PROVISIONS OF THIS ACT AND ALL OTHER LAWS OF THIS**  
23 **STATE GENERALLY APPLICABLE TO SALES OF CIGARETTES THAT OCCUR**  
24 **ENTIRELY WITHIN THIS STATE.**

25       **(4) ~~(2)~~** All sales conducted through the internet, by  
26 telephone, or in a mail-order transaction shall not be completed  
27 unless, before each delivery of cigarettes is made, whether through

1 the mail, through a transportation company, or through any other  
2 delivery system, the seller has obtained from the purchaser an  
3 affirmation that includes a copy of a valid government-issued  
4 document that confirms the purchaser's name, address, and date of  
5 birth showing that the purchaser is at least the legal minimum age  
6 to purchase cigarettes; that the cigarettes purchased are not  
7 intended for consumption by an individual who is younger than the  
8 legal minimum age to purchase cigarettes; and a written statement  
9 signed by the purchaser that affirms the purchaser's address and  
10 that the purchaser is at least the minimum legal age to purchase  
11 cigarettes. The statement shall also confirm that the purchaser  
12 understands that signing another person's name to the affirmation  
13 is illegal; that the sale of cigarettes to individuals under the  
14 legal minimum purchase age is illegal; and that the purchase of  
15 cigarettes by individuals under the legal minimum purchase age is  
16 illegal under the laws of the state of Michigan. **THE STATEMENT**  
17 **SHALL ALSO INCLUDE 1 OF THE WARNINGS SET FORTH IN SECTION 4(A)(1)**  
18 **OF THE FEDERAL CIGARETTE LABELING AND ADVERTISING ACT, 15 USC**  
19 **1333(A)(1), ROTATED ON A QUARTERLY BASIS AND A NOTICE THAT**  
20 **CIGARETTE SALES ARE SUBJECT TO TAX UNDER THE LAWS OF THE STATE OF**  
21 **MICHIGAN, AND AN EXPLANATION OF HOW THE TAX HAS BEEN, OR IS TO BE,**  
22 **PAID WITH RESPECT TO THE SALE.** The seller shall verify the  
23 information contained in the affirmation provided by the purchaser  
24 against a commercially available database of governmental records,  
25 or obtain a photocopy, fax copy, or other image of the valid,  
26 government-issued identification stating the date of birth or age  
27 of the purchaser. **THE SELLER MUST ENSURE THAT THE PACKAGE IS**

1 DELIVERED TO THE SAME ADDRESS AS IS PROVIDED ON THE GOVERNMENT-  
2 ISSUED IDENTIFICATION OR AS IS INCLUDED IN THE COMMERCIALY  
3 AVAILABLE DATABASE AND THAT THE PACKAGE IS NOT DELIVERED TO ANY  
4 POST OFFICE BOX.

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

18 "IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER  
19 LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS  
20 REPORTED UNDER FEDERAL LAW THE SALE OF THESE CIGARETTES TO OUR  
21 STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU  
22 ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON  
23 THESE CIGARETTES."

24 If an order is made as a result of advertisement over the  
25 internet, the tobacco retailer shall request the electronic mail  
26 address of the purchaser and shall receive payment by credit card  
27 or check **IN THE PURCHASER'S NAME** before shipping. This subsection

1 and subsection ~~—(2)—~~ (4) do not apply to sales by wholesalers and  
2 unclassified acquirers.

3 (6) ~~—(4)—~~ The deliverer of the cigarettes is required to  
4 obtain proof from a valid government-issued document that the  
5 person signing for the cigarettes is the purchaser.

6 (7) EACH PERSON MAKING A SALE OF CIGARETTES CONDUCTED THROUGH  
7 THE INTERNET, BY TELEPHONE, OR IN A MAIL-ORDER TRANSACTION TO A  
8 CONSUMER LOCATED WITHIN THIS STATE SHALL FILE WITH THE DEPARTMENT  
9 FOR EACH INDIVIDUAL SALE ALL OF THE FOLLOWING:

10 (A) A STATEMENT SETTING FORTH THE PERSON'S NAME, TRADE NAME,  
11 AND THE ADDRESS OF THE PERSON'S PRINCIPAL PLACE OF BUSINESS AND ANY  
12 OTHER PLACE OF BUSINESS.

13 (B) NOT LATER THAN THE TENTH DAY OF EACH CALENDAR MONTH, A  
14 MEMORANDUM OR COPY OF THE INVOICE FOR EACH SALE MADE DURING THE  
15 PREVIOUS CALENDAR MONTH THAT INCLUDES ALL OF THE FOLLOWING  
16 INFORMATION:

17 (i) THE NAME AND ADDRESS OF THE PURCHASER TO WHOM SUCH SALE WAS  
18 MADE.

19 (ii) THE BRAND STYLE OR BRAND STYLES OF THE CIGARETTES THAT  
20 WERE SOLD.

21 (iii) THE QUANTITY OF CIGARETTES THAT WERE SOLD.

22 (iv) AN INDICATION OF WHETHER OR NOT THE CIGARETTES SOLD IN THE  
23 SALE BORE A TAX STAMP EVIDENCING PAYMENT OF THE TAX UNDER THE LAWS  
24 OF THIS STATE.

25 (8) EACH PERSON ENGAGED IN BUSINESS WITHIN THIS STATE THAT  
26 MAKES A SALE OF CIGARETTES CONDUCTED THROUGH THE INTERNET, BY  
27 TELEPHONE, OR IN A MAIL-ORDER TRANSACTION TO A CONSUMER LOCATED

1 OUTSIDE OF THIS STATE SHALL, FOR EACH INDIVIDUAL SALE, SUBMIT TO  
2 THE APPROPRIATE TAX OFFICIAL OF THE STATE IN WHICH THE PURCHASER IS  
3 LOCATED THE INFORMATION REQUIRED IN SUBSECTION (7) (A) .

4 (9) ANY PERSON THAT SATISFIES THE REQUIREMENTS OF 15 USC 376  
5 SHALL BE CONSIDERED TO HAVE SATISFIED THE REQUIREMENTS OF  
6 SUBSECTIONS (7) AND (8) .

7 (10) THE COMMISSIONER IS AUTHORIZED TO DISCLOSE TO THE  
8 ATTORNEY GENERAL ANY INFORMATION RECEIVED UNDER THIS ACT AND  
9 REQUESTED BY THE ATTORNEY GENERAL FOR PURPOSES OF DETERMINING  
10 COMPLIANCE WITH AND ENFORCING THE PROVISIONS OF THIS ACT. THE  
11 COMMISSIONER AND THE ATTORNEY GENERAL SHALL SHARE WITH EACH OTHER  
12 THE INFORMATION RECEIVED UNDER THIS ACT AND MAY SHARE THE  
13 INFORMATION WITH OTHER FEDERAL, STATE, OR LOCAL AGENCIES FOR  
14 PURPOSES OF ENFORCEMENT OF THIS ACT OR THE LAWS OF THE FEDERAL  
15 GOVERNMENT OR OF OTHER STATES .

16 (11) A STATEMENT MEETS THE REQUIREMENT OF SUBSECTION (4) IF  
17 ALL OF THE FOLLOWING ARE MET:

18 (A) THE STATEMENT IS CLEAR AND CONSPICUOUS .

19 (B) THE STATEMENT IS CONTAINED IN A PRINTED BOX SET APART FROM  
20 THE OTHER CONTENTS OF THE COMMUNICATION .

21 (C) THE STATEMENT IS PRINTED IN BOLD AND CAPITAL LETTERS .

22 (D) THE STATEMENT IS PRINTED WITH A DEGREE OF COLOR CONTRAST  
23 BETWEEN THE BACKGROUND AND THE PRINTED STATEMENT THAT IS NO LESS  
24 THAN THE COLOR CONTRAST BETWEEN THE BACKGROUND AND THE LARGEST TEXT  
25 USED IN THE COMMUNICATION .

26 (E) FOR ANY PRINTED MATERIAL DELIVERED BY ELECTRONIC MEANS,  
27 THE STATEMENT APPEARS AT BOTH THE TOP AND THE BOTTOM OF THE

1 **ELECTRONIC MAIL MESSAGE OR BOTH THE TOP AND THE BOTTOM OF THE**  
2 **INTERNET WEBSITE HOMEPAGE.**

3 (12) ~~—(5)—~~ 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 licensing act, 1987 PA 173, MCL 445.1651a, under a credit

1 card arrangement.

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

6 (g) "Internet" means the connection to the world wide web  
7 through the use of a computer, a computer network, or a computer  
8 system.

9 (h) "Sale conducted through the internet" means a sale of, a  
10 solicitation to sell, a purchase of, or an offer to purchase  
11 cigarettes conducted all or in part by accessing an internet  
12 website.

13 **SEC. 11A. NOT LATER THAN 120 DAYS AFTER THE EFFECTIVE DATE OF**  
14 **THE AMENDATORY ACT THAT ADDED THIS SECTION, THE DEPARTMENT SHALL**  
15 **ESTABLISH, PUBLICIZE, AND MAINTAIN A TOLL-FREE TELEPHONE NUMBER TO**  
16 **RECEIVE INFORMATION RELATED TO VIOLATIONS OF THIS ACT.**