

SENATE BILL No. 265

February 19, 2009, Introduced by Senators HUNTER, BASHAM, SCOTT, BRATER and THOMAS and referred to the Committee on Commerce and Tourism.

A bill to amend 1993 PA 327, entitled "Tobacco products tax act," by amending section 9 (MCL 205.429), as amended by 2004 PA 474.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. (1) A tobacco product **THAT IS** held, owned, possessed,
2 transported, or in control of a person in violation of this act **OR**
3 **THAT IS NOT MARKED AS REQUIRED IN SECTION 11 OF THE FIRE SAFETY**
4 **STANDARD AND FIREFIGHTER PROTECTION ACT**, and a vending machine,
5 vehicle, and other tangible personal property containing a tobacco
6 product in violation of this act **OR THAT IS NOT MARKED AS REQUIRED**
7 **IN SECTION 11 OF THE FIRE SAFETY STANDARD AND FIREFIGHTER**
8 **PROTECTION ACT** and any related books and records are contraband and
9 may be seized and confiscated by the department as provided in this

1 section.

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

18 (3) As soon as possible, but not more than 5 business days
19 after seizure of any alleged contraband, the person making the
20 seizure shall deliver personally or by registered mail to the last
21 known address of the person from whom the seizure was made, if
22 known, an inventory statement of the property seized. **IF THE**
23 **CONTRABAND IS CIGARETTES SEIZED BECAUSE OF AN ALLEGATION THAT THE**
24 **CIGARETTES ARE NOT MARKED AS REQUIRED IN SECTION 11 OF THE FIRE**
25 **SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT, THE PERSON MAKING**
26 **THE SEIZURE SHALL ALSO PROVIDE NOTICE OF THE SEIZURE AND AN**
27 **INVENTORY OF THE CIGARETTES SEIZED TO THE MANUFACTURER THAT**

1 CERTIFIED THAT BRAND OF CIGARETTES UNDER SECTION 7 OF THE FIRE
2 SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT, IF ANY. A copy of
3 the inventory statement shall also be filed with the state
4 treasurer. The inventory statement shall also contain a notice ~~to~~
5 ~~the effect that~~, unless demand for hearing as provided in this
6 section is made within 10 business days, the designated property is
7 forfeited to the state. If the person from whom the seizure was
8 made is not known, the person making the seizure shall ~~cause~~**HAVE** a
9 copy of the inventory statement ~~, together with~~**AND** the notice
10 ~~provided for in~~**REQUIRED BY** this subsection ~~, to be published at~~
11 least 3 times in a newspaper of general circulation in the county
12 where the seizure was made. Within 10 business days after the date
13 of service of the inventory statement ~~, or, in the case of~~
14 ~~publication~~**IF THE NOTICE IS PUBLISHED**, within 10 business days
15 after the date of last publication, the person from whom the
16 property was seized or any person claiming an interest in the
17 property may by registered mail, facsimile transmission, or
18 personal service file with the state treasurer a demand for a
19 hearing before the state treasurer or a person designated by the
20 state treasurer for a determination ~~as to~~**OF** whether the property
21 was lawfully subject to seizure and forfeiture. The person **WHO**
22 **DEMANDS A HEARING** shall verify a request for hearing filed by
23 facsimile transmission by also providing a copy of the original
24 request for hearing by registered mail or personal service. ~~The~~
25 ~~person or persons are~~**A PERSON WHO DEMANDS A HEARING IS** entitled to
26 appear before the department, to be represented by counsel, and to
27 present testimony and argument. ~~Upon receipt of a request for~~

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

25 (4) ~~If a~~ **A** person is aggrieved by the decision of the
26 department, ~~that person~~ may appeal to the circuit court of the
27 county where the seizure was made to obtain a judicial

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

13 (5) The department shall destroy all cigarettes forfeited to
14 this state. **HOWEVER, BEFORE DESTROYING CIGARETTES FORFEITED BECAUSE**
15 **THE CIGARETTES WERE NOT MARKED AS REQUIRED IN SECTION 11 OF THE**
16 **FIRE SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT, THE DEPARTMENT**
17 **SHALL PROVIDE A MANUFACTURER THAT CERTIFIED THAT BRAND OF**
18 **CIGARETTES UNDER SECTION 7 OF THE FIRE SAFETY STANDARD AND**
19 **FIREFIGHTER PROTECTION ACT AN OPPORTUNITY TO INSPECT THE**
20 **CIGARETTES.**

21 (6) The department may sell all tobacco products, except
22 cigarettes, and other property forfeited pursuant to this section
23 at public sale. Public notice of the sale shall be given at least 5
24 days before the day of sale. The department may pay an amount not
25 to exceed 25% of the proceeds of the sale to the local governmental
26 unit whose law enforcement agency performed the seizure. The
27 balance of the proceeds derived from the sale by the department

1 shall be credited to the general fund of the state.

2 (7) ~~(6)~~—The seizure and destruction or sale of a tobacco
3 product or other property under this section does not relieve a
4 person from a fine, imprisonment, or other penalty for violation of
5 this act **OR THE FIRE SAFETY STANDARD AND FIREFIGHTER PROTECTION**
6 **ACT**.

7 (8) ~~(7)~~—A person who is not an employee or officer of this
8 state or a political subdivision of this state who furnishes to the
9 department or to ~~any~~**A** law enforcement agency original information
10 concerning a violation of this act ~~, which information~~**OR THE FIRE**
11 **SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT THAT** results in the
12 collection and recovery of ~~any~~**A** tax or penalty or leads to the
13 forfeiture of ~~any~~ cigarettes ~~,~~ or other property ~~,~~ may be awarded
14 and paid by the state treasurer ~~,~~ compensation of not more than 10%
15 of the net amount received from the sale of any forfeited
16 cigarettes or other property, but not to exceed \$5,000.00, which
17 shall be paid out of the receipts from the sale of the property. If
18 ~~any amount~~**MONEY** is ~~issued~~**PAID** to the local governmental unit
19 under subsection ~~(5)~~**(6)**, the amount awarded under this subsection
20 to a person ~~who provides original information that results in a~~
21 ~~seizure of cigarettes or other property by a local law enforcement~~
22 ~~agency shall be paid from that amount issued under subsection (5)~~
23 **MONEY**. If in the opinion of the attorney general and the director
24 of the department of state police it is ~~deemed~~ necessary to
25 preserve the identity of the person furnishing the information, the
26 attorney general and the director of the department of state police
27 shall file with the state treasurer an affidavit ~~setting forth~~

1 **STATING** that necessity and a warrant may be issued jointly to the
2 attorney general and the director of the department of state
3 police. Upon payment to ~~the~~**A** person furnishing that information
4 **UNDER THIS SUBSECTION**, the attorney general and the director of the
5 department of state police shall file with the state treasurer an
6 affidavit that **THEY HAVE PAID** the money ~~has been by them paid to~~
7 the person. ~~entitled to the money under this section.~~

8 (9) ~~(8)~~ Beginning September 1, 1998, if a retailer possesses
9 or sells cigarettes on which the tax imposed under this act has not
10 been paid or accrued to a wholesaler, secondary wholesaler, or
11 unclassified acquirer licensed under this act, the retailer shall
12 be prohibited from purchasing, possessing, or selling any
13 cigarettes or other tobacco products as follows:

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

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

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

20 (10) ~~(9)~~ The prohibition described in subsection ~~(8)~~ shall be
21 (9) **IS** effective upon service by certified mail or personal service
22 on the retailer of notice issued by the department ordering the
23 retailer to cease all sales and purchases of cigarettes and other
24 tobacco products. Upon receipt of this notice, the retailer may
25 return any tobacco products in the possession of the retailer upon
26 which the tax imposed by this act has been paid or accrued to a
27 wholesaler, secondary wholesaler, or unclassified acquirer licensed

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

26 Enacting section 1. This amendatory act takes effect January
27 1, 2010.

1 Enacting section 2. This amendatory act does not take effect
2 unless Senate Bill No. 264
3 of the 95th Legislature is enacted into law.