

# HOUSE BILL No. 5687

May 24, 2016, Introduced by Reps. Yanez, Moss, Darany, Plawecki, Greig, Liberati, Cochran, Hovey-Wright, Love, Faris and Wittenberg and referred to the Committee on Regulatory Reform.

A bill to amend 1993 PA 327, entitled "Tobacco products tax act," by amending sections 2, 7, 11, and 12 (MCL 205.422, 205.427, 205.431, and 205.432), section 2 as amended by 2012 PA 188, sections 7 and 11 as amended by 2016 PA 86, and section 12 as amended by 2014 PA 272.

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

1           Sec. 2. As used in this act:

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

7           (b) "Cigarette making machine" means any machine or other

1 mechanical device which meets all of the following criteria:

2 (i) Is capable of being loaded with loose tobacco, cigarette  
3 tubes or cigarette papers, and any other components related to the  
4 production of cigarettes, including, but not limited to, cigarette  
5 filters.

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

8 (iii) Is commercial-grade or otherwise designed or suitable  
9 for commercial use.

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

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

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

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

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

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

27 (H) **"ELECTRONIC SMOKING DEVICE" MEANS ANY DEVICE CONTAINING OR**

1 DELIVERING NICOTINE OR ANY OTHER SUBSTANCE INTENDED FOR HUMAN  
2 CONSUMPTION THROUGH THE INHALATION OF VAPOR OR AEROSOL FROM THE  
3 PRODUCT. ELECTRONIC SMOKING DEVICE ALSO INCLUDES DEVICES  
4 MANUFACTURED, DISTRIBUTED, MARKETED, OR SOLD AS AN E-CIGARETTE, E-  
5 PIPE, VAPE PEN, E-HOOKAH, OR ANY OTHER SIMILAR DEVICE. ELECTRONIC  
6 SMOKING DEVICE DOES NOT INCLUDE ANY BATTERY OR BATTERY CHARGER THAT  
7 IS SOLD SEPARATELY. IN ADDITION, ELECTRONIC SMOKING DEVICE DOES NOT  
8 INCLUDE A PRODUCT SPECIFICALLY APPROVED BY THE UNITED STATES FOOD  
9 AND DRUG ADMINISTRATION FOR SALE AS A TOBACCO CESSATION PRODUCT  
10 THAT IS BEING MARKETED AND SOLD SOLELY FOR THE APPROVED PURPOSE.

11 (I) ~~(h)~~—"Financially sound" means a determination by the  
12 department that the wholesaler or unclassified acquirer is able to  
13 pay for its stamps in the ordinary course of business based on  
14 criteria including, but not limited to, all of the following:

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

16 (ii) Outstanding liabilities.

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

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

21 (J) ~~(i)~~—"Gray market cigarette" means any cigarette the  
22 package of which bears any statement, label, stamp, sticker, or  
23 notice indicating that the manufacturer did not intend the  
24 cigarettes to be sold, distributed, or used in the United States,  
25 including, but not limited to, a label stating "For Export Only",  
26 "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording.

27 (K) ~~(j)~~—"Gray market cigarette paper" means any cigarette

1 paper the package of which bears any statement, label, stamp,  
2 sticker, or notice indicating that the manufacturer did not intend  
3 the cigarette papers to be sold, distributed, or used in the United  
4 States, including, but not limited to, a label stating "For Export  
5 Only", "U.S. Tax Exempt", "For Use Outside U.S.", "For Use in  
6 \_\_\_\_\_ (another country) Only", or similar wording.

7 (I) ~~(k)~~—"Individual package" means an individual packet or  
8 pack used to contain or to convey cigarettes to the consumer.  
9 Individual package does not include cartons, cases, or shipping or  
10 storage containers that contain smaller packaging units of  
11 cigarettes.

12 (M) ~~(l)~~—"Licensee" means a person licensed under this act.

13 (N) ~~(m)~~—"Manufacturer" means any of the following:

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

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

1 making endeavor.

2 (O) ~~(n)~~—"Noncigarette smoking tobacco" means tobacco sold in  
3 loose or bulk form that is intended for consumption by smoking and  
4 includes **PIPE TOBACCO AND** roll-your-own cigarette tobacco.

5 (P) ~~(e)~~—"Person" means an individual, partnership, fiduciary,  
6 association, limited liability company, corporation, or other legal  
7 entity.

8 (Q) ~~(p)~~—"Place of business" means a place where a tobacco  
9 product is sold or where a tobacco product is brought or kept for  
10 the purpose of sale or consumption, including a vessel, airplane,  
11 train, or vending machine.

12 (R) ~~(q)~~—"Retailer" means a person other than a transportation  
13 company who operates a place of business for the purpose of making  
14 sales of a tobacco product at retail.

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

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

26 (U) ~~(t)~~—"Smokeless tobacco" means snuff, **SNUS**, chewing  
27 tobacco, and any other tobacco that is intended to be consumed,

1 WHETHER HEATED, CHEWED, ABSORBED, DISSOLVED, INHALED, SNORTED,  
2 SNIFFED, OR INGESTED, by ANY means other than smoking. BEGINNING  
3 OCTOBER 1, 2016, SMOKELESS TOBACCO INCLUDES ELECTRONIC SMOKING  
4 DEVICES.

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

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

15 (X) ~~(w)~~—"Tobacco product" means cigarettes, cigars,  
16 noncigarette smoking tobacco, or smokeless tobacco.

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

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

1 this state if the warehouse or place of business is licensed under  
2 this act.

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

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

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

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

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

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

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

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

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

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

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

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

21 (g) Beginning July 1, 2004, for cigars, noncigarette smoking  
22 tobacco, and smokeless tobacco **OTHER THAN ELECTRONIC SMOKING**  
23 **DEVICES**, 32% of the wholesale price. However, beginning November 1,  
24 2012 and through October 31, 2021, the amount of tax levied under  
25 this subdivision on cigars shall not exceed 50 cents per individual  
26 cigar.

27 **(H) BEGINNING OCTOBER 1, 2016, FOR ELECTRONIC SMOKING DEVICES,**

1 **32% OF THE WHOLESALE PRICE.**

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

27 (3) To cover the cost of expenses incurred in the

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

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

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

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

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

1 by the stamping agent, as determined by the department and  
2 reflected in the net purchase price, for the initial and 1-time  
3 purchase of case packers or similar machines or conveyors as  
4 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 do not use the  
13 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 do not use  
22 the digital stamp authorized under this act and that compensation  
23 shall not exceed a total of 50% of the amount reimbursed under  
24 subdivision (e) for any particular stamping agent.

25 (iii) Compensation under subparagraphs (i) and (ii) shall also  
26 include any applicable sales or use taxes paid, and shipping and  
27 crating charges actually incurred, by the stamping agent in

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

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

26 (f) Beginning in the first calendar month following the  
27 implementation of the use of digital stamps as provided in section

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

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

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

1 (c), (d), and (e) and the tax that has been paid under subsection  
2 (1)(b), (c), and (d). Every licensee and retailer who, on July 1,  
3 2004, has on hand for sale any cigars, noncigarette smoking  
4 tobacco, or smokeless tobacco upon which a tax has been paid  
5 pursuant to subsection (1)(f) shall file a complete inventory of  
6 those cigars, noncigarette smoking tobacco, and smokeless tobacco  
7 before August 1, 2004 and shall pay to the department at the time  
8 of filing this inventory a tax equal to the difference between the  
9 tax imposed in subsection (1)(g) and the tax that has been paid  
10 under subsection (1)(f). The proceeds derived under this subsection  
11 shall 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 (6) The department may require the payment of the tax imposed  
15 by this act upon the importation or acquisition of a tobacco  
16 product. A tobacco product for which the tax under this act has  
17 once been imposed and that has not been refunded if paid is not  
18 subject upon a subsequent sale to the tax imposed by this act.

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

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

26 (9) A wholesaler, unclassified acquirer, or other person shall  
27 not sell or transfer any unaffixed stamps acquired by the

1 wholesaler or unclassified acquirer from the department. A  
2 wholesaler or unclassified acquirer who has any unaffixed stamps on  
3 hand at the time its license is revoked or expires, or at the time  
4 it discontinues the business of selling cigarettes, shall return  
5 those stamps to the department. The department shall refund the  
6 value of the stamps, less the appropriate discount paid.

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

27 (11) On or before the twentieth of each month, each

1 manufacturer shall file a report with the department listing all  
2 sales of tobacco products to wholesalers and unclassified acquirers  
3 during the preceding calendar month and any other information the  
4 department finds necessary for the administration of this act. This  
5 report shall be in the form and manner specified by the department.

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

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

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

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

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

25 (iii) Was purchased to be used for the primary purpose of  
26 permitting the stamping agent to affix digital stamps to individual  
27 packages of cigarettes to be sold in this state following the

1 implementation of the use of digital stamps as provided in section  
2 5a(2).

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

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

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

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

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

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

1 through the mail, through a transportation company, or through any  
2 other delivery system, the seller has obtained from the purchaser  
3 an 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~~, **TOBACCO PRODUCTS**; that the ~~cigarettes~~  
7 **TOBACCO PRODUCTS** purchased are not intended for consumption by an  
8 individual who is younger than the legal minimum age to purchase  
9 ~~cigarettes~~, **TOBACCO PRODUCTS**; and a written statement signed by the  
10 purchaser that affirms the purchaser's address and that the  
11 purchaser is at least the minimum legal age to purchase ~~cigarettes~~.  
12 **TOBACCO PRODUCTS**. The statement shall also confirm that the  
13 purchaser understands that signing another person's name to the  
14 affirmation is illegal; that the sale of ~~cigarettes~~ **TOBACCO**  
15 **PRODUCTS** to individuals under the legal minimum purchase age is  
16 illegal; and that the purchase of ~~cigarettes~~ **TOBACCO PRODUCTS** by  
17 individuals under the legal minimum purchase age is illegal under  
18 the laws of the state of Michigan. The seller shall verify the  
19 information contained in the affirmation provided by the purchaser  
20 against a commercially available database of governmental records,  
21 or obtain a photocopy, fax copy, or other image of the valid,  
22 government-issued identification stating the date of birth or age  
23 of the purchaser.

24 (3) All invoices, bills of lading, sales receipts, or other  
25 documents related to ~~cigarette~~ **TOBACCO PRODUCT** sales conducted  
26 through the ~~internet~~, **INTERNET**, by telephone, or in a mail-order  
27 transaction shall contain the current seller's valid Michigan sales

1 tax registration number, business name and address of the seller,  
2 and a statement as to whether all sales taxes and taxes levied  
3 under this act have been paid. All packages of ~~cigarettes~~**TOBACCO**  
4 **PRODUCTS** shipped from a ~~cigarette~~**TOBACCO PRODUCT** seller to  
5 purchasers who reside in Michigan shall clearly print or stamp the  
6 package with the word "~~CIGARETTES~~"**"TOBACCO PRODUCTS"** on the  
7 outside of all sides of the package so it is clearly visible to the  
8 shipper. In addition, the package shall contain an externally  
9 visible and clearly legible notice located on the same side of the  
10 package as the address to which the package is delivered, as  
11 follows:

12 "IF THESE ~~CIGARETTES~~**TOBACCO PRODUCTS** HAVE BEEN SHIPPED TO YOU  
13 FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE  
14 SELLER HAS REPORTED UNDER FEDERAL LAW THE SALE OF THESE ~~CIGARETTES~~  
15 **TOBACCO PRODUCTS** TO OUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR  
16 NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE  
17 UNPAID STATE TAXES ON THESE ~~CIGARETTES~~**"TOBACCO PRODUCTS."**

18 If an order is made as a result of advertisement over the  
19 Internet, the tobacco retailer shall request the electronic mail  
20 address of the purchaser and shall receive payment by credit card  
21 or check before shipping. This subsection and subsection (2) do not  
22 apply to sales by wholesalers and unclassified acquirers.

23 (4) The deliverer of the ~~cigarettes~~**TOBACCO PRODUCTS** is  
24 required to obtain proof from a valid government-issued document  
25 that the person signing for the ~~cigarettes~~**TOBACCO PRODUCTS** is the  
26 purchaser.

27 (5) Beginning November 1, 2012, a retailer that is not

1 licensed as an unclassified acquirer, retail importer of tobacco  
2 products other than cigarettes, shall post a sign, visible to the  
3 public inside the retail establishment that informs purchasers of  
4 cigars through catalog sales or Internet sales of their  
5 responsibility to pay all applicable unpaid state taxes on those  
6 cigars.

7 (6) As used in this section:

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

15 (b) "Computer network" means the interconnection of hardwire  
16 or wireless communication lines with a computer through remote  
17 terminals or a complex consisting of 2 or more interconnected  
18 computers.

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

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

26 (e) "Credit card" means a card or device issued by a person  
27 licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the

1 consumer financial services act, 1988 PA 161, MCL 487.2051 to  
2 487.2072, or issued by a depository financial institution as  
3 defined in section 1a of the mortgage brokers, lenders, and  
4 services licensing act, 1987 PA 173, MCL 445.1651a, under a credit  
5 card arrangement.

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

10 (g) "Internet" means the connection to the World Wide Web  
11 through the use of a computer, a computer network, or a computer  
12 system.

13 (h) "Sale conducted through the Internet" means a sale of, a  
14 solicitation to sell, a purchase of, or an offer to purchase  
15 ~~cigarettes~~**TOBACCO PRODUCTS** conducted all or in part by accessing  
16 an Internet website.

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

26 (2) The tax imposed under section 7(1)(a) shall be disbursed  
27 as follows:

1 (a) 94% of the proceeds shall be credited to the state school  
2 aid fund established by section 11 of article IX of the state  
3 constitution of 1963.

4 (b) 6% of the proceeds shall be credited to the ~~healthy~~  
5 **HEALTHY** Michigan fund created under section 5953 of the public  
6 health code, 1978 PA 368, MCL 333.5953. Fifty percent of the  
7 proceeds described in this subdivision that are used for smoking  
8 prevention programs shall be used by the department of ~~community~~  
9 health **AND HUMAN SERVICES** to expand the free smokers quit kit  
10 program to include the nicotine patch or nicotine gum.

11 (3) The tax imposed on cigarettes under section 7(1)(b) shall  
12 be disbursed as follows:

13 (a) Beginning May 1, 1994 and through June 30, 2004, 5.3% of  
14 the proceeds shall be credited to the health and safety fund  
15 created in the health and safety fund act, 1987 PA 264, MCL 141.471  
16 to 141.479.

17 (b) Beginning July 1, 2004, 6.5% of the proceeds shall be  
18 credited to the health and safety fund created in the health and  
19 safety fund act, 1987 PA 264, MCL 141.471 to 141.479.

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

22 (d) Beginning July 1, 2004 and through September 30, 2014,  
23 24.1% of the proceeds shall be credited to the general fund of this  
24 state.

25 (e) 63.4% of the proceeds shall be credited to the state  
26 school aid fund established by section 11 of article IX of the  
27 state constitution of 1963.

1 (f) 6% 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 ~~community~~ health **AND HUMAN**  
6 **SERVICES** to expand the free smokers quit kit program to include the  
7 nicotine patch or nicotine gum.

8 (g) Beginning October 1, 2014, 24.1% of the proceeds shall be  
9 disbursed as follows:

10 (i) For the 2014-2015 fiscal year and each subsequent fiscal  
11 year, \$3,000,000.00 to the Michigan state capitol historic site  
12 fund created in section 7 of the Michigan state capitol historic  
13 site act, 2013 PA 240, MCL 4.1947. For the 2015-2016 fiscal year  
14 and each subsequent fiscal year, the state treasurer shall adjust  
15 the figure described in this subparagraph by an amount determined  
16 by the state treasurer at the end of each calendar year to reflect  
17 the cumulative annual percentage change in the consumer price  
18 index. As used in this subsection, "consumer price index" means the  
19 most comprehensive index of consumer prices available for this  
20 state from the ~~bureau of labor statistics~~ **BUREAU OF LABOR**  
21 **STATISTICS** of the United States ~~department of labor~~ **DEPARTMENT OF**  
22 **LABOR**. From the funds described in this subparagraph, not later  
23 than February 1 of each year, the Michigan state capitol commission  
24 created in section 5 of the Michigan state capitol historic site  
25 act, 2013 PA 240, MCL 4.1945, shall report to the Michigan capitol  
26 committee created in section 701 of the legislative council act,  
27 1986 PA 268, MCL 4.1701, and to the chairpersons of the house and

1 senate appropriations committees. The report shall contain all of  
2 the following:

3 (A) The proposed maintenance plan for the Michigan ~~state~~  
4 ~~capitol historic site~~ **STATE CAPITOL HISTORIC SITE** for the  
5 immediately following fiscal year.

6 (B) The projected 5-year maintenance plan for the Michigan  
7 ~~state capitol historic site~~ **STATE CAPITOL HISTORIC SITE** for the  
8 immediately following 5 fiscal years.

9 (C) Projected large-scale projects for the Michigan ~~state~~  
10 ~~capitol historic site~~ **STATE CAPITOL HISTORIC SITE** that exceed  
11 \$1,000,000.00.

12 (ii) The remaining proceeds shall be credited to the general  
13 fund of this state.

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

16 (a) Through June 30, 2004, 74.2%, and beginning July 1, 2004,  
17 9.0% of the proceeds shall be credited to the general fund of this  
18 state.

19 (b) Through June 30, 2004, 4.6%, and beginning July 1, 2004,  
20 56.3% of the proceeds shall be credited to the state school aid  
21 fund established by section 11 of article IX of the state  
22 constitution of 1963.

23 (c) 6.0% of the proceeds shall be credited to the ~~healthy~~  
24 **HEALTHY** Michigan fund created under section 5953 of the public  
25 health code, 1978 PA 368, MCL 333.5953. Fifty percent of the  
26 proceeds described in this subdivision that are used for smoking  
27 prevention programs shall be used by the department of ~~community~~

1 health **AND HUMAN SERVICES** to expand the free smokers quit kit  
2 program to include the nicotine patch or nicotine gum.

3 (d) Through June 30, 2004, 3.0%, and beginning July 1, 2004,  
4 3.7% of the proceeds shall be paid to counties with a 2000  
5 population of more than 2,000,000, to be used only for indigent  
6 health care.

7 (e) Through June 30, 2004, 12.2%, and beginning July 1, 2004,  
8 25.0% of the proceeds shall be credited to the ~~medicaid~~**MEDICAID**  
9 benefits trust fund created under section 5 of the Michigan trust  
10 fund act, 2000 PA 489, MCL 12.255.

11 (5) Beginning August 1, 2002, the tax imposed under section  
12 7(1)(f) shall be disbursed as follows:

13 (a) 75.6% of the proceeds shall be credited to the state  
14 school aid fund established by section 11 of article IX of the  
15 state constitution of 1963.

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

23 (c) 18.4% of the proceeds shall be credited to the general  
24 fund of this state.

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

27 (a) 94.0% of the proceeds shall be credited to the state

1 school aid fund established by section 11 of article IX of the  
2 state constitution of 1963.

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

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

12 (a) Beginning July 1, 2004 and through September 30, 2005,  
13 100% of the proceeds shall be credited to the Michigan ~~medicaid~~  
14 **MEDICAID** benefits trust fund created under section 5 of the  
15 Michigan trust fund act, 2000 PA 489, MCL 12.255.

16 (b) Beginning October 1, 2005, 75.0% of the proceeds shall be  
17 credited to the ~~medicaid~~-**MEDICAID** benefits trust fund created under  
18 section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

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

21 (8) Beginning July 1, 2004, the tax imposed under section  
22 7(1)(g) shall be disbursed as follows:

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

27 (b) Beginning October 1, 2005, 75.0% of the proceeds shall be

1 credited to the ~~medicaid~~ **MEDICAID** benefits trust fund created under  
2 section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

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

5 (9) BEGINNING OCTOBER 1, 2016, THE TAX IMPOSED UNDER SECTION  
6 7(1) (H) SHALL BE DISBURSED AS FOLLOWS IN THE FOLLOWING ORDER OF  
7 PRIORITY:

8 (A) BEGINNING OCTOBER 1, 2016, EXCEPT AS OTHERWISE PROVIDED IN  
9 THIS SUBDIVISION, THE FIRST \$3,000,000.00 OF THE PROCEEDS SHALL BE  
10 CREDITED TO THE FIRST RESPONDER PRESUMED COVERAGE FUND CREATED IN  
11 SECTION 405 OF THE WORKER'S DISABILITY COMPENSATION ACT OF 1969,  
12 1969 PA 317, MCL 418.405. HOWEVER, IF THE BALANCE OF THE FIRST  
13 RESPONDER PRESUMED COVERAGE FUND FALLS BELOW \$1,500,000.00 AT ANY  
14 TIME DURING THE FISCAL YEAR, THEN AN ADDITIONAL AMOUNT SO THAT THE  
15 BALANCE OF THE FIRST RESPONDER PRESUMED COVERAGE FUND IS NOT LESS  
16 THAN \$3,000,000.00 SHALL BE DISBURSED.

17 (B) BEGINNING OCTOBER 1, 2016, 18% OF THE PROCEEDS SHALL BE  
18 USED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES FOR THE SMOKING  
19 PREVENTION PROGRAM.

20 (C) BEGINNING OCTOBER 1, 2016, THE BALANCE OF THE PROCEEDS  
21 SHALL BE CREDITED TO A RESTRICTED ACCOUNT CREATED BY THE DEPARTMENT  
22 OF HEALTH AND HUMAN SERVICES AND USED ONLY FOR THE STATE MATCH FOR  
23 THE HEALTHY MICHIGAN PLAN OPERATED BY THE DEPARTMENT OF HEALTH AND  
24 HUMAN SERVICES.

25 (10) ~~(9)~~—The proceeds of the fees and penalties provided for  
26 in this act shall be used for the administration of this act.