

HOUSE BILL NO. 4040

January 15, 2019, Introduced by Reps. Sabo, Brann, Calley, Wittenberg and Pagan and referred to the Committee on Regulatory Reform.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

TITLE

1 An act to provide for a tax upon the sale and distribution of
2 tobacco products; to regulate and license manufacturers,
3 wholesalers, secondary wholesalers, ~~vending machine operators,~~
4 unclassified acquirers, transportation companies, transporters, and
5 retailers of tobacco products; to prescribe the powers and duties
6 of the revenue division and the department of treasury in regard to
7 tobacco products; to provide for the administration, collection,
8 and disposition of the tax; to levy an assessment; to provide for
9 the administration, collection, defense, and disposition of the
10 assessment; to provide for the enforcement of this act; to provide
11 for the appointment of special investigators as peace officers for
12 the enforcement of this act; to prescribe penalties and provide
13 remedies for the violation of this act; to make and supplement
14 appropriations; and to repeal acts and parts of acts.

15 Sec. 2. As used in this act:

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

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

23 (i) Is capable of being loaded with loose tobacco, cigarette
24 tubes or cigarette papers, and any other components related to the
25 production of cigarettes, including, but not limited to, cigarette
26 filters.

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

29 (iii) Is commercial-grade or otherwise designed or suitable for

1 commercial use.

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

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

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

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

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

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

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

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

24 (ii) Outstanding liabilities.

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

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

29 (i) "Gray market cigarette" means any cigarette the package of

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

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

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

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

18 (m) "Manufacturer" means any of the following:

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

20 (ii) A person who operates or who permits any other person to
21 operate a cigarette making machine in this state for the purpose of
22 producing, filling, rolling, dispensing, or otherwise generating
23 cigarettes. A person who is a manufacturer under this subparagraph
24 shall constitute a nonparticipating manufacturer for purposes of
25 sections 6c and 6d. A person who operates or otherwise uses a
26 machine or other mechanical device, other than a cigarette making
27 machine, to produce, roll, fill, dispense, or otherwise generate
28 cigarettes shall not be considered a manufacturer as long as the
29 cigarettes are produced or otherwise generated in that person's

1 dwelling and for that person's self-consumption. For purposes of
2 this act, "self-consumption" means production for personal
3 consumption or use and not for sale, resale, or any other profit-
4 making endeavor.

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

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

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

15 (q) "Retailer" means a person other than a transportation
16 company who operates a place of business for the purpose of making
17 sales of a tobacco product at retail.

18 (r) "Sale" means a transaction by which the ownership of
19 tangible personal property is transferred for consideration and
20 applies also to use, gifts, exchanges, barter, and theft.

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

29 (t) "Smokeless tobacco" means snuff, chewing tobacco, and any

1 other tobacco that is intended to be consumed by means other than
2 smoking.

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

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

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

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

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

28 (z) "Unclassified acquirer" means a person, except a
29 transportation company or a purchaser at retail from a retailer

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

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

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

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

27 Sec. 3. (1) Beginning May 1, 1994, a person shall not
28 purchase, possess, acquire for resale, or sell a tobacco product as
29 a manufacturer, wholesaler, secondary wholesaler, ~~vending machine~~

1 ~~operator~~, unclassified acquirer, transportation company, or
 2 transporter in this state unless licensed to do so. A license
 3 granted under this act is not assignable.

4 (2) Upon proper application and the payment of the applicable
 5 fee, and subject to subsection (6), the department shall issue a
 6 license to each manufacturer, wholesaler, secondary wholesaler,
 7 ~~vending machine operator~~, unclassified acquirer, transportation
 8 company, or transporter. The application shall be on a form
 9 prescribed by the department and signed under penalty of perjury.
 10 Except for transportation companies, each place of business shall
 11 be separately licensed. If a person acts in more than 1 capacity at
 12 any 1 place 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 (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 **(c)** ~~(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.

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

29 ~~(iv) Vending machine operator buying direct from a~~

1 ~~manufacturer, \$100.00.~~

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

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

4 (d) ~~(e)~~ A transportation company's license, \$5.00.

5 (e) ~~(f)~~ A transporter's license, \$50.00.

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

13 (5) ~~A person shall not possess a machine for vending tobacco~~
 14 ~~products for a period in excess of 72 hours unless there is a disc~~
 15 ~~or marker attached as provided by this section. **Beginning July 1,**~~
 16 **2019, a person shall not possess a machine for vending tobacco**
 17 **products.** This requirement does not apply to a machine not
 18 containing a tobacco product. If a person possesses a vending
 19 machine containing a tobacco product ~~that is not properly licensed~~
 20 ~~or identified as required by~~ **in violation of** this section, the
 21 department may seal or seize the machine, together with the tobacco
 22 products contained in the machine. The provisions of section 9
 23 govern the seizure and subsequent disposition of a machine or
 24 tobacco product seized.

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

28 (a) The applicant's financial responsibility, including but
 29 not limited to, satisfactory proof of a minimum net worth of

1 \$25,000.00.

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

9 (c) United States citizenship or eligibility to obtain
10 employment within the United States if not a citizen. If the
11 applicant is not an individual, the controlling shareholders,
12 partners, directors, and principal officers shall be United States
13 citizens or eligible to obtain employment within the United States
14 if not a citizen.

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

29 Sec. 6. (1) A manufacturer, wholesaler, secondary wholesaler,

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

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

29 (3) A vending machine operator **in business on or before June**

1 **30, 2019** shall keep a detailed record of each vending machine owned
2 for the sale of tobacco products showing the location of the
3 machine, the date of placing the machine on the location, the
4 quantity of each tobacco product placed in the machine, the date
5 when placed there, and the amount of the commission paid or earned
6 on sales through the vending machine. When filling or refilling the
7 vending machine **on or before June 30, 2019**, the operator shall
8 deliver to the owner or tenant occupying the premises where the
9 machine is located a written statement containing his or her own
10 name and address, the name and address of the owner or the tenant,
11 the date when the machine was filled, and the quantity of each
12 brand of tobacco product sold from the machine since the date when
13 tobacco products were last placed in the machine. A person in
14 possession of premises where a vending machine is located **on or**
15 **before June 30, 2019** shall keep a record of each tobacco product
16 sold through the vending machine located on the premises and the
17 amount of commission paid by the person operating the vending
18 machine. The records shall consist of written statements required
19 to be given by each person operating a vending machine for the sale
20 of tobacco products as provided in this section.

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

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

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

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

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

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

1 remittance of a fee of \$1.00. If a transporter transports a tobacco
2 product into this state, the transporter shall stop at the nearest
3 state police post within this state on the route authorized by the
4 permit and disclose the tobacco products in his or her possession
5 and the papers required by this section to be in his or her
6 possession.

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

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

29 (3) A retailer or person licensed under this act, other than a

1 wholesaler or unclassified acquirer or a person acting as a
2 transporter for a wholesaler or unclassified acquirer, shall not
3 acquire for resale an individual package of cigarettes or a
4 cigarette from an individual package unless that individual package
5 of cigarettes has affixed to it a stamp as provided in this act.

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

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

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

27 (7) A person shall not prevent or hinder the department or its
28 authorized agents from making a full inspection of any place ~~or~~
29 ~~vending machine~~ where cigarettes or tobacco products other than

1 cigarettes subject to the tax under this act are sold or stored, or
2 prevent or hinder the full inspection of invoices, books, records,
3 or other papers required to be kept by this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 However, beginning November 1, 2012 and through October 31, 2021,
28 the amount of tax levied under this subdivision on cigars shall not
29 exceed 50 cents per individual cigar.

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

26 (3) To cover the cost of expenses incurred in the
27 administration of this act, at the time of the filing of the
28 return, the licensee shall pay to the department the tax levied in
29 subsection (1) for tobacco products sold during the calendar month

1 covered by the return, less compensation equal to the following:

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

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

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

12 (d) Beginning on the first calendar month following the
13 implementation of the use of digital stamps as provided in section
14 5a(2), for licensees who are stamping agents, 0.5% of the total
15 amount of the tax due on cigarettes sold and, for sales of untaxed
16 cigarettes to Indian tribes in this state, 0.5% of the total amount
17 of the tax due on those cigarettes sold as if those cigarette sales
18 were taxable sales under this act, until the stamping agent is
19 compensated in an amount equal to the direct cost actually incurred
20 by the stamping agent for the purchase of upgrades to technology
21 and equipment, excluding the equipment reimbursed under subdivision
22 (e), that are necessary to affix the digital stamp as determined by
23 the department. Compensation under this subdivision may also be
24 claimed by a stamping agent for the direct costs actually incurred
25 by the stamping agent, as determined by the department and
26 reflected in the net purchase price, for the initial and 1-time
27 purchase of case packers or similar machines or conveyors as
28 follows:

29 (i) Case packers or similar machines to be used exclusively to

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

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

20 (iii) Compensation under subparagraphs (i) and (ii) shall also
21 include any applicable sales or use taxes paid, and shipping and
22 crating charges actually incurred, by the stamping agent in
23 connection with the purchase, but shall exclude any other costs
24 incurred by the stamping agent not otherwise expressly provided for
25 in this subdivision, including, but not limited to, charges for
26 installation and ongoing maintenance.

27 (e) Beginning in the first calendar month following the
28 implementation of the use of digital stamps as provided in section
29 5a(2) and continuing for the immediately succeeding 17 months, for

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

19 (f) Beginning in the first calendar month following the
20 implementation of the use of digital stamps as provided in section
21 5a(2), for licensees who are stamping agents, reimbursement of
22 qualified equipment costs actually incurred by the stamping agent,
23 not otherwise compensated or reimbursed under subdivision (d) or
24 (e), as determined by the department. The reimbursement provided
25 under this subdivision shall not exceed \$60,000.00 for all stamping
26 agents combined.

27 (4) Every licensee and retailer who, on August 1, 2002, has on
28 hand for sale any cigarettes upon which a tax has been paid
29 pursuant to subsection (1)(b) shall file a complete inventory of

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

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

1 created under section 5 of the Michigan trust fund act, 2000 PA
2 489, MCL 12.255.

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

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

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

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

23 (10) If the wholesaler or unclassified acquirer has unsalable
24 packs returned from a retailer, secondary wholesaler, ~~vending~~
25 ~~machine operator,~~ wholesaler, or unclassified acquirer with stamps
26 affixed, the department shall refund the amount of the tax less the
27 appropriate discount paid. If the wholesaler or unclassified
28 acquirer has unaffixed unsalable stamps, the department shall
29 exchange with the wholesaler or unclassified acquirer new stamps in

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

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

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

1 state, country, or province reciprocating in this privilege.

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

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

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

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

10 (iii) Was purchased to be used for the primary purpose of
11 permitting the stamping agent to affix digital stamps to individual
12 packages of cigarettes to be sold in this state following the
13 implementation of the use of digital stamps as provided in section
14 5a(2).

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

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

19 (ii) Was a cigarette tax stamping machine used prior to January
20 1, 2012 by the stamping agent to apply stamps using stamp rolls of
21 30,000 stamps.

22 (c) "Qualified equipment" means equipment that was placed in
23 service by a stamping agent that included conveyors and additional
24 associated electrical line and compressed air line before August
25 15, 2014 in connection with the implementation of a digital
26 stamping line under a pilot program with the department as
27 determined by the department. Qualified equipment does not include
28 the cost of installation of a conveyor.

29 Sec. 8. (1) A person, other than a licensee, who is in control

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

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

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

18 (3) A person who possesses, acquires, transports, or offers
19 for sale contrary to this act 3,000 or more cigarettes, tobacco
20 products other than cigarettes with an aggregate wholesale price of
21 \$250.00 or more, 3,000 or more counterfeit cigarettes, 3,000 or
22 more counterfeit cigarette papers, 3,000 or more gray market
23 cigarettes, or 3,000 or more gray market cigarette papers is guilty
24 of a felony, punishable by a fine of not more than \$50,000.00 or
25 imprisonment for not more than 5 years, or both.

26 (4) A person who possesses, acquires, transports, or offers
27 for sale contrary to this act 1,200 or more, but not more than
28 2,999, cigarettes, tobacco products other than cigarettes with an
29 aggregate wholesale value of \$100.00 or more but less than \$250.00,

1 or 1,200 or more, but not more than 2,999, counterfeit cigarettes,
2 counterfeit cigarette papers, gray market cigarettes, or gray
3 market cigarette papers is guilty of a misdemeanor punishable by a
4 fine of not more than \$5,000.00 or imprisonment of not more than 1
5 year, or both.

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

12 (6) A person who manufactures, possesses, or uses a stamp or
13 manufactures, possesses, or uses a counterfeit stamp or writing or
14 device intended to replicate a stamp without authorization of the
15 department, a licensee who purchases or obtains a stamp from any
16 person other than the department, or who falsifies a manufacturer's
17 label on cigarettes, counterfeit cigarettes, gray market cigarette
18 papers, or counterfeit cigarette papers is guilty of a felony and
19 shall be punished by imprisonment for not less than 1 year or more
20 than 10 years and may be punished by a fine of not more than
21 \$50,000.00.

22 (7) A person who falsely makes, counterfeits, or alters a
23 license, ~~vending machine disc, or marker,~~ or who purchases or
24 receives a false or altered license, ~~vending machine disc, or~~
25 ~~marker,~~ or who assists in or causes to be made a false or altered
26 license, ~~vending machine disc, or marker,~~ or who possesses a device
27 used to forge, alter, or counterfeit a license, ~~vending machine~~
28 ~~disc, or marker~~ is guilty of a felony punishable by a fine of not
29 more than \$5,000.00 or imprisonment for not more than 5 years, or

1 both. A person who alters or falsifies records or markings required
2 under this act is guilty of a felony punishable by a fine of not
3 more than \$5,000.00 or imprisonment for not more than 5 years, or
4 both.

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

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

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

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

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

1 cigarettes with an aggregate wholesale value of \$25.00 or more but
2 less than \$50.00, or 180 or more, but not more than 599,
3 counterfeit cigarettes, counterfeit cigarette papers, gray market
4 cigarettes, or gray market cigarette papers is responsible for a
5 state civil infraction and may be ordered to pay a civil fine of
6 not more than \$100.00.

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

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

29 (3) As soon as possible, but not more than 5 business days

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

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

23 (4) If a person is aggrieved by the decision of the
24 department, that person may appeal to the circuit court of the
25 county where the seizure was made to obtain a judicial
26 determination of the lawfulness of the seizure and forfeiture. The
27 action shall be commenced within 20 days after notice of the
28 department's determination is sent to the person or persons
29 claiming an interest in the seized property. The court shall hear

1 the action and determine the issues of fact and law involved in
2 accordance with rules of practice and procedure as in other in rem
3 proceedings. If a judicial determination of the lawfulness of the
4 seizure and forfeiture cannot be made before deterioration of any
5 of the property seized, the court shall order the destruction or
6 sale of the property with public notice as determined by the court
7 and require the proceeds to be deposited with the court until the
8 lawfulness of the seizure and forfeiture is finally adjudicated.

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

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

21 (7) A person who is not an employee or officer of this state
22 or a political subdivision of this state who furnishes to the
23 department or to any law enforcement agency original information
24 concerning a violation of this act, which information results in
25 the collection and recovery of any tax or penalty or leads to the
26 forfeiture of any cigarettes, or other property, may be awarded and
27 paid by the state treasurer, compensation of not more than 10% of
28 the net amount received from the sale of any forfeited cigarettes
29 or other property, but not to exceed \$5,000.00 which shall be paid

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

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

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

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

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

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

1 and sale of a tobacco product or other property under this section,
2 or relieve the retailer from a fine, imprisonment, or other penalty
3 for violation of this act.

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

12 (2) All sales conducted through the ~~Internet,~~ **internet**, by
13 telephone, or in a mail-order transaction shall not be completed
14 unless, before each delivery of cigarettes is made, whether through
15 the mail, through a transportation company, or through any other
16 delivery system, the seller has obtained from the purchaser an
17 affirmation that includes a copy of a valid government-issued
18 document that confirms the purchaser's name, address, and date of
19 birth showing that the purchaser is at least the legal minimum age
20 to purchase cigarettes; that the cigarettes purchased are not
21 intended for consumption by an individual who is younger than the
22 legal minimum age to purchase cigarettes; and a written statement
23 signed by the purchaser that affirms the purchaser's address and
24 that the purchaser is at least the minimum legal age to purchase
25 cigarettes. The statement shall also confirm that the purchaser
26 understands that signing another person's name to the affirmation
27 is illegal; that the sale of cigarettes to individuals under the
28 legal minimum purchase age is illegal; and that the purchase of
29 cigarettes by individuals under the legal minimum purchase age is

1 illegal under the laws of the state of Michigan. The seller shall
2 verify the information contained in the affirmation provided by the
3 purchaser against a commercially available database of governmental
4 records, or obtain a photocopy, fax copy, or other image of the
5 valid, government-issued identification stating the date of birth
6 or age of the purchaser.

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

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

26 If an order is made as a result of advertisement over the
27 ~~Internet,~~**internet**, the tobacco retailer shall request the
28 electronic mail address of the purchaser and shall receive payment
29 by credit card or check before shipping. This subsection and

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

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

6 (5) Beginning November 1, 2012, a retailer that is not
7 licensed as an unclassified acquirer, retail importer of tobacco
8 products other than cigarettes, shall post a sign, visible to the
9 public inside the retail establishment that informs purchasers of
10 cigars through catalog sales or ~~Internet~~**internet** sales of their
11 responsibility to pay all applicable unpaid state taxes on those
12 cigars.

13 (6) As used in this section:

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

21 (b) "Computer network" means the interconnection of hardware
22 or wireless communication lines with a computer through remote
23 terminals or a complex consisting of 2 or more interconnected
24 computers.

25 (c) "Computer program" means a series of internal or external
26 instructions communicated in a form acceptable to a computer that
27 directs the functioning of a computer, computer system, or computer
28 network in a manner designed to provide or produce products or
29 results from the computer, computer system, or computer network.

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

3 (e) "Credit card" means a card or device issued by a person
4 licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the
5 consumer financial services act, 1988 PA 161, MCL 487.2051 to
6 487.2072, or issued by a depository financial institution as
7 defined in section 1a of the mortgage brokers, lenders, and
8 ~~services~~**servicers** licensing act, 1987 PA 173, MCL 445.1651a, under
9 a credit card arrangement.

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

14 (g) "Internet" means the connection to the World Wide Web
15 through the use of a computer, a computer network, or a computer
16 system.

17 (h) "Sale conducted through the ~~Internet~~**internet**" means a
18 sale of, a solicitation to sell, a purchase of, or an offer to
19 purchase cigarettes conducted all or in part by accessing an
20 ~~Internet~~**internet** website.

21 Enacting section 1. This amendatory act takes effect on July
22 1, 2019.