

Act No. 187
Public Acts of 1997
Approved by the Governor
December 30, 1997
Filed with the Secretary of State
December 30, 1997
EFFECTIVE DATE: December 30, 1997

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1997

Introduced by Reps. Profit, Owen, Quarles, London, Brackenridge, Dobb, Wetters, Wallace, Hanley, Cherry, DeHart, Olshove and Palamara

ENROLLED HOUSE BILL No. 4215

AN ACT to amend 1993 PA 327, entitled "An act to provide for a tax upon the sale and distribution of tobacco products; to regulate and license manufacturers, wholesalers, secondary wholesalers, vending machine operators, unclassified acquirers, transportation companies, transporters, and retailers of tobacco products; to prescribe the powers and duties of the revenue division and the department of treasury in regard to tobacco products; to provide for the collection and disposition of the tax; to provide for the enforcement of this act; to provide for the appointment of special investigators as peace officers for the enforcement of this act; to prescribe penalties and provide remedies for the violation of this act; and to repeal certain acts and parts of acts on a specific date," by amending the title and sections 2, 3, 5, 6, 7, 8, 9, and 12 (MCL 205.422, 205.423, 205.425, 205.426, 205.427, 205.428, 205.429, and 205.432), section 9 as amended by 1995 PA 118, and by adding sections 5a, 5b, 6a, 6b, and 7a.

The People of the State of Michigan enact:

TITLE

An act to provide for a tax upon the sale and distribution of tobacco products; to regulate and license manufacturers, wholesalers, secondary wholesalers, vending machine operators, unclassified acquirers, transportation companies, transporters, and retailers of tobacco products; to prescribe the powers and duties of the revenue division and the department of treasury in regard to tobacco products; to provide for the administration, collection, and disposition of the tax; to provide for the enforcement of this act; to provide for the appointment of special investigators as peace officers for the enforcement of this act; to prescribe penalties and provide remedies for the violation of this act; and to repeal acts and parts of acts.

Sec. 2. As used in this act:

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

(b) "Commissioner" means the revenue commissioner.

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

(d) "Department" means the department of treasury.

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

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

(ii) Outstanding liabilities.

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

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

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

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

(h) "Manufacturer" means a person who manufactures or produces a tobacco product.

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

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

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

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

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

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

(o) "Smokeless tobacco" means snuff, chewing tobacco, and any other tobacco that is intended to be consumed by means other than smoking.

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

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

(r) "Tobacco product" means cigarettes, cigars, noncigarette smoking tobacco, or smokeless tobacco.

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

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

(u) "Unclassified acquirer" means a person, except a transportation company or a purchaser at retail from a retailer licensed under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, who imports or acquires a tobacco product from a source other than a wholesaler or secondary wholesaler licensed under this act for use, sale, or distribution. Unclassified acquirer also means a person who receives cigars, noncigarette smoking tobacco, or smokeless tobacco directly from a manufacturer licensed under this act or from another source outside this state, which source is not licensed under this act. An unclassified acquirer does not include a wholesaler.

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

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

(x) "Wholesaler" means a person who purchases all or part of his or her tobacco products from a manufacturer, who sells 75% or more of those tobacco products to others for resale, and who maintains an established business where substantially all of the business is the sale of tobacco products or cigarettes and related merchandise at wholesale and

where at all times a substantial stock of tobacco products and related merchandise is available to retailers for resale. Wholesaler includes a chain of stores retailing a tobacco product to the consumer if 75% of its stock of tobacco products is purchased directly from the manufacturer.

Sec. 3. (1) Beginning May 1, 1994, a person shall not purchase, possess, acquire for resale, or sell a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter in this state unless licensed to do so. A license granted under this act is not assignable.

(2) Upon proper application and the payment of the applicable fee, and subject to subsection (6), the department shall issue a license to each manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter. The application shall be on a form prescribed by the department and signed under penalty of perjury. Except for transportation companies, each place of business shall be separately licensed. If a person acts in more than 1 capacity at any 1 place of business, a license shall be procured for each capacity. Each machine for vending tobacco products shall be considered a place of retail business. Each license or a duplicate copy shall be prominently displayed on the premises covered by the license. In the case of vending machines, a disc or marker furnished by the department showing it to be licensed shall be attached to the front of the machine in a place clearly visible to the public.

(3) The fees for licenses shall be the following:

(a) A wholesaler's license, \$100.00.

(b) A secondary wholesaler's license, \$25.00.

(c) A license for vending machine operators, \$25.00.

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

(i) State of Michigan, no fee.

(ii) Retail importer of tobacco products other than cigarettes, \$10.00.

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

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

(v) Manufacturer, \$100.00.

(vi) Any other importer, \$100.00.

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

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

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

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

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

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

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

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

(7) The department may require an applicant who is purchasing the business of a licensee to file a copy of the contract of sale and any related documents with its application. The department may require a licensee under this section to furnish a surety bond with a surety company authorized to do business in this state in an amount the department may fix, conditioned upon the payment of the tax provided by this act. The department may also require a licensee under this section to file a financial statement with the department showing all assets and liabilities and any

other information the department may prescribe, to be filed within 30 days after the date requested. If there is a change of more than 50% of ownership or control or a change in the general partnership of a licensee, the department may require that licensee to file a new application for a license or an updated financial statement.

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

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

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

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

Sec. 5a. The department shall procure stamps as needed in the various designs, denominations, and forms necessary as determined by the department. The department shall pay for the stamps.

Sec. 5b. The department shall advise all stamping agents of all persons licensed under this act and any manufacturer, wholesaler, secondary wholesaler, unclassified acquirer, or other person whose license is suspended, revoked, or not renewed under this act. The department shall advise all stamping agents of any person whose license is reinstated. A stamping agent shall not disclose licensing information provided to the agent by the department. The department may disclose whether a person holds a license under this act.

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

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

(3) A vending machine operator shall keep a detailed record of each vending machine owned for the sale of tobacco products showing the location of the machine, the date of placing the machine on the location, the quantity of each tobacco product placed in the machine, the date when placed there, and the amount of the commission paid or earned on sales through the vending machine. When filling or refilling the vending machine, the operator shall deliver to the owner or tenant occupying the premises where the machine is located a written statement containing his or her own name and address, the name and address of the owner or the tenant, the date when the machine was filled, and the quantity of each brand of tobacco product sold from the machine since the date when tobacco products were last placed in the machine. A person in possession of premises where a vending machine is located shall keep a record of each tobacco product sold through the vending machine located on the premises and the amount of commission paid by the person operating the vending machine. The records shall consist of written statements required to be given by each person operating a vending machine for the sale of tobacco products as provided in this section.

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

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

(6) If a tobacco product other than cigarettes is received or acquired within this state by a wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, or retailer, each original manufacturer's shipping case shall bear the name and address of the person making the first purchase or any other markings the department prescribes. If a tobacco product other than cigarettes is found in a place of business or otherwise in the possession of a wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transporter, or retailer without proper markings on the shipping case, box, or container of the tobacco product or if an individual package of cigarettes is found without a stamp affixed as provided under this act or if a tobacco product is found without proper substantiation by invoices or other records as required by this section, the presumption shall be that the tobacco product is kept in violation of this act. If a tobacco product is shipped outside the state, the licensee shipping the tobacco product shall cause to be placed on every shipping case or other container in which the tobacco product is shipped the name and address of the consignee or purchaser to whom the shipment is made outside of the state. The department may require reports from a common carrier who transports a tobacco product to a point within this state from another person who, under contract, transports a tobacco product, or from a bonded warehouseperson or bailee who has in his or her possession a tobacco product. A carrier, bailee, warehouseperson, or other person shall permit the inspection of the tobacco products and examination by the department or its duly authorized agent of any records relating to the shipment of a tobacco product into, from, or within the state.

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

(8) A transporter desiring to possess or acquire for transportation or transport a tobacco product upon a highway, road, or street of this state shall obtain a permit from the department authorizing the transporter to possess or acquire for transportation or transport tobacco products and shall have the permit in his or her possession while the tobacco product is in his or her possession. This permit shall be obtained for each load being transported and shall contain a statement setting forth the name and address of the purchaser, seller, and transporter, the license number of the purchaser, the date of the delivery of the tobacco product or date of importation into this state, the route to be followed if a tobacco product is being transported from an out-of-state source, and any other information the department requires. The department shall provide a permit on a form prescribed by it upon the application of a transporter with the remittance of a fee of \$1.00. If a transporter transports a tobacco product into this state, the transporter shall stop at the nearest state police post within this state on the route authorized by the permit and disclose the tobacco products in his or her possession and the papers required by this section to be in his or her possession.

Sec. 6a. (1) Beginning April 15, 1998, a wholesaler or unclassified acquirer other than a manufacturer may apply to the department for stamps to affix as provided in this act. The department may prescribe the method of shipment of the stamps. The department shall keep a record of all stamps disbursed, name of wholesaler or unclassified acquirer, and date of disbursement. The department may release the identity of the wholesaler or unclassified acquirer to whom specific stamps were disbursed to state or local police agencies.

(2) Beginning May 1, 1998, before delivery, sale, or transfer to any person in this state, a wholesaler or an unclassified acquirer shall place or cause to be placed on the bottom of each individual package of cigarettes to be sold within this state a stamp provided by the department. Stamps shall be firmly affixed in such a manner that the stamps cannot be removed without being mutilated or destroyed. A stamp shall be affixed to each individual package in an aggregate denomination equal to the amount of the tax upon the contents of the individual package of cigarettes. A stamp is considered affixed if more than 50% of the stamp is affixed to the individual package, as determined by the department.

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

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

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

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

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

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

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

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

Sec. 6b. (1) Beginning April 15, 1998, a wholesaler or unclassified acquirer may obtain stamps from the department and shall remit the unpaid balance of the tax at the time of filing the return provided in section 7 at a discount from the face amount of the stamps as provided in section 7(3). If the department determines that a wholesaler or unclassified acquirer is not financially sound, the department shall issue stamps only if 1 of the following is met:

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

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

(c) The department requires the wholesaler or unclassified acquirer to pay for the stamps at the time of obtaining them, less a discount from the face amount of the stamps equal to the discount provided in section 7(3).

(2) The department shall not issue any stamps to a wholesaler or unclassified acquirer who is delinquent in paying the tax under this act.

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

(a) For cigars, noncigarette smoking tobacco, and smokeless tobacco, 16% of the wholesale price.

(b) For cigarettes, 37.5 mills per cigarette.

(2) On or before the twentieth day of each calendar month, every licensee under section 3 other than a retailer, secondary wholesaler, unclassified acquirer licensed as a manufacturer, or vending machine operator shall file a return with the department stating the wholesale price of each tobacco product other than cigarettes purchased, the quantity of cigarettes purchased, the wholesale price charged for all tobacco products other than cigarettes sold, the number of individual packages of cigarettes and the number of cigarettes in those individual packages, and the number and denominations of stamps affixed to individual packages of cigarettes sold by the licensee for each place of business in the preceding calendar month. The return shall also include the number and denomination of unaffixed stamps in the possession of the licensee at the end of the preceding calendar month. Wholesalers shall also report accurate inventories of cigarettes, both stamped and unstamped at the end of the preceding calendar month. Wholesalers and unclassified acquirers shall also report accurate inventories of affixed and unaffixed stamps by denomination at the beginning and end of each calendar month and all stamps acquired during the preceding calendar month. The return shall be signed under penalty of perjury. The return shall be on a form prescribed by the department and shall contain or be accompanied by any further information the department requires.

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

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

(b) One and one-fourth percent of the total amount of the tax due on cigarettes sold.

(4) Every licensee and retailer who, on May 1, 1994, has on hand for sale any cigarettes acquired after February 1, 1994 upon which a tax has been paid pursuant to former 1947 PA 265 shall file a complete inventory of those cigarettes before June 1, 1994 and shall pay to the department at the time of filing this inventory a tax equal to the difference between the tax imposed in subsection (1) and the tax that has been paid pursuant to former 1947 PA 265.

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

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

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

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

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

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

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

Sec. 7a. It is the intent of this act to impose the tax levied under this act upon the consumer of the tobacco products by requiring the consumer to pay the tax at the specified rate.

Sec. 8. (1) A person, other than a licensee, who is in control or in possession of a tobacco product contrary to this act, who after August 31, 1998 is in control or in possession of an individual package of cigarettes without a stamp in violation of this act, or who offers to sell or does sell a tobacco product to another for purposes of resale without being licensed to do so under this act, shall be personally liable for the tax imposed by this act, plus a penalty of 100% of the amount of tax due under this act.

(2) The commissioner of revenue may permit a representative of a licensed manufacturer of tobacco products whose duties require travel in this state to transport up to 138,000 cigarettes, of which not more than 36,000 cigarettes may bear no tax indicia or the tax indicia of another state. All 138,000 cigarettes must bear the stamp approved by the department or the tax indicia of another state, if any. The total value of tobacco products, excluding cigarettes, carried by a representative shall not exceed a wholesale value of \$5,000.00. A manufacturer shall notify the department of the manufacturer's representatives that it currently employs who carry cigarettes or tobacco products other than cigarettes in performing work duties in this state. The manufacturer shall maintain a record of each transaction by the manufacturer's representative for a period of 4 years immediately following the transaction and shall produce the records upon request of the commissioner or the commissioner's authorized agent. Each record shall identify the quantity and identity of the tobacco products, detail whether exchanged, received, removed, or otherwise disposed of

and the identity of the retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer involved. The representative of the manufacturer shall provide a copy of the record to the retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer at the time of the exchange or disposal. The retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer shall retain the copy of the record in the same place and for the same time period as other records required by this section. A representative shall not exchange, or otherwise dispose of, within this state tobacco products bearing the tax indicia of another state or receive tobacco products bearing the tax indicia of another state from retailers located within this state. A representative who sells, exchanges, or otherwise disposes of cigarettes or tobacco products other than cigarettes that do not bear the stamp or other marking required by the department or sells, exchanges, or otherwise disposes of cigarettes or tobacco products other than cigarettes bearing the tax indicia of another state is guilty of a felony, punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 5 years, or both.

(3) A person who possesses, acquires, transports, or offers for sale contrary to this act 3,000 or more cigarettes or tobacco products other than cigarettes with an aggregate wholesale price of \$250.00 or more is guilty of a felony, punishable by a fine of not more than \$50,000.00 or imprisonment for not more than 5 years, or both.

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

(5) A person who violates a provision of this act for which a criminal punishment is not otherwise provided is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00 or imprisonment for not more than 1 year, or both.

(6) A person who manufactures, possesses, or uses a stamp or manufactures, possesses, or uses a counterfeit stamp or writing or device intended to replicate a stamp without authorization of the department, or a licensee who purchases or obtains a stamp from any person other than the department, is guilty of a felony and shall be punished by imprisonment for not less than 1 year or more than 10 years and may be punished by a fine of not more than \$50,000.00.

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

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

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

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

(2) If an authorized inspector of the department or a police officer has reasonable cause to believe and does believe that a tobacco product is being acquired, possessed, transported, kept, sold, or offered for sale in violation of this act for which the penalty is a felony, the inspector or police officer may investigate or search the vehicle of transportation in which the tobacco product is believed to be located. If a tobacco product is found in a vehicle searched under this subsection or in a place of business inspected under this act, the tobacco product, vending machine, vehicle, or other tangible personal property containing those tobacco products and any books and records in possession of the person in control or possession of the tobacco product may be seized by the inspector or police officer and are subject to forfeiture as contraband as provided in this section.

(3) As soon as possible, but not more than 5 business days after seizure of any alleged contraband, the person making the seizure shall deliver personally or by registered mail to the last known address of the person from whom the seizure was made, if known, an inventory statement of the property seized. A copy of the inventory statement shall also be filed with the commissioner. The inventory statement shall also contain a notice to the effect that unless demand for hearing as provided in this section is made within 10 business days, the designated property is forfeited to the state. If the person from whom the seizure was made is not known, the person making the seizure shall cause a copy of the inventory statement, together with the notice provided for in this subsection, to be published at least 3 times in a newspaper of general circulation in the county where the seizure was made. Within 10 business days after the date of service of the inventory statement, or in the case of publication, within 10 business days after the date of last publication, the person from whom the property was seized or any person claiming an interest in the property may by registered mail, facsimile transmission, or personal service file with the commissioner a demand for a hearing before the commissioner or a person designated by the commissioner for a determination as to whether the property was lawfully subject to seizure and forfeiture. The person shall verify a request for hearing filed by facsimile transmission by also providing a copy of the

original request for hearing by registered mail or personal service. The person or persons are entitled to appear before the department, to be represented by counsel, and to present testimony and argument. Upon receipt of a request for hearing, the department shall hold the hearing within 15 business days. The hearing is not a contested case proceeding and is not subject to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. After the hearing, the department shall render its decision in writing within 10 business days of the hearing and, by order, shall either declare the seized property subject to seizure and forfeiture, or declare the property returnable in whole or in part to the person entitled to possession. If, within 10 business days after the date of service of the inventory statement, the person from whom the property was seized or any person claiming an interest in the property does not file with the commissioner a demand for a hearing before the department, the property seized shall be considered forfeited to the state by operation of law and may be disposed of by the department as provided in this section. If, after a hearing before the commissioner or person designated by the commissioner, the department determines that the property is lawfully subject to seizure and forfeiture and the person from whom the property was seized or any persons claiming an interest in the property do not take an appeal to the circuit court of the county in which the seizure was made within the time prescribed in this section, the property seized shall be considered forfeited to the state by operation of law and may be disposed of by the department as provided in this section.

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

(5) The department may sell a tobacco product or other property forfeited pursuant to this section at public sale. Public notice of the sale shall be given at least 5 days before the day of sale. The department may pay an amount not to exceed 25% of the proceeds of the sale to the local governmental unit whose law enforcement agency performed the seizure. The balance of the proceeds derived from the sale by the department shall be credited to the general fund of the state.

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

(7) A person who is not an employee or officer of this state or a political subdivision of this state who furnishes to the department or to any law enforcement agency original information concerning a violation of this act, which information results in the collection and recovery of any tax or penalty or leads to the forfeiture of any cigarettes, or other property, may be awarded and paid by the state treasurer upon the certification of the commissioner, compensation of not more than 10% of the net amount received from the sale of any forfeited cigarettes or other property, but not to exceed \$5,000.00 which shall be paid out of the receipts from the sale of the property. If any amount is issued to the local governmental unit under subsection (5), the amount awarded under this subsection to a person who provides original information that results in a seizure of cigarettes or other property by a local law enforcement agency shall be paid from that amount issued under subsection (5). If in the opinion of the attorney general, the commissioner, and the director of the department of state police it is deemed necessary to preserve the identity of the person furnishing the information, the attorney general, the commissioner, and the director of the department of state police shall file with the state treasurer an affidavit setting forth that necessity and a warrant may be issued jointly to the attorney general, the commissioner, and the director of the department of state police. Upon payment to the person furnishing that information, the attorney general, the commissioner, and the director of the department of state police shall file with the state treasurer an affidavit that the money has been by them paid to the person entitled to the money under this section.

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

- (a) For a first violation, for a period of not more than 6 months.
- (b) For a second violation within a period of 5 years, for a period of at least 6 months and not more than 36 months.
- (c) For a third or subsequent violation within a period of 5 years, for a period of at least 1 year and not more than 5 years.

(9) The prohibition described in subsection (8) shall be effective upon service by certified mail or personal service on the retailer of notice issued by the department ordering the retailer to cease all sales and purchases of cigarettes and other tobacco products. Upon receipt of this notice, the retailer may return any tobacco products in the possession of the retailer upon which the tax imposed by this act has been paid or accrued to a wholesaler, secondary wholesaler, or unclassified acquirer licensed under this act. The department shall notify all licensed wholesalers, manufacturers, secondary wholesalers, vending machine operators, and unclassified acquirers of any retailer who has been prohibited

from purchasing cigarettes or other tobacco products and the duration of the prohibition. A wholesaler, secondary wholesaler, or unclassified acquirer shall not sell cigarettes or other tobacco products to a retailer after receipt of notice from the department that the retailer is prohibited from purchasing tobacco products. Any cigarettes or other tobacco products found on the premises of the retailer during the period of prohibition shall be considered contraband and subject to seizure under this section, and shall constitute an additional improper possession under this subsection. The retailer may contest the order prohibiting purchase, possession, or sale of tobacco products in accordance with the appeal procedures and time limits provided in subsection (3) of this section. After completion of the appeals provided or upon expiration of the period to request such appeal, the department shall issue a final order and make service upon the retailer of an order to cease all purchases, possession, and sale of all cigarettes and other tobacco products for a specified period as appropriate. This order does not relieve the retailer from seizure and sale of a tobacco product or other property under this section, or relieve the retailer from a fine, imprisonment, or other penalty for violation of this act.

Sec. 12. (1) The proceeds derived from the payment of taxes, fees, and penalties provided for under this act and the license fees received by the department shall be deposited with the state treasurer and disbursed only as provided in this section.

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

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

(b) 6% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953.

(3) The tax imposed on cigarettes pursuant to section 7(1)(b) shall be disbursed as follows:

(a) Beginning May 1, 1994, 5.3% of the proceeds shall be credited to the health and safety fund created in the health and safety fund act, 1987 PA 264, MCL 141.471 to 141.479.

(b) 25.3% of the proceeds shall be credited to the general fund of this state.

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

(d) 6% of the proceeds shall be credited to the healthy Michigan fund created under section 5953 of the public health code, 1978 PA 368, MCL 333.5953.

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

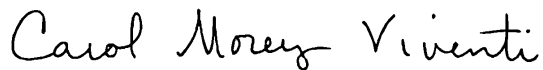
Enacting section 1. (1) Sections 6, 7, and 8 of the tobacco products tax act, 1993 PA 327, MCL 205.426, 205.427, and 205.428, as amended by this amendatory act, take effect April 15, 1998.

(2) Section 6b of the tobacco products tax act, 1993 PA 327, as added by this amendatory act, takes effect April 15, 1998.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.