

SENATE BILL No. 191

March 14, 1991, Introduced by Senator V. SMITH and
referred to the Committee on Finance.

A bill to provide for an excise 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 excise 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; and to prescribe penalties for the violation of this act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "noncigarette tobacco products tax act".

1 Sec. 2. As used in this act:

2 (a) "Commissioner" means the revenue commissioner.

3 (b) "Department" means the department of treasury.

4 (c) "Large cigars" means cigars which weigh 3 pounds or more
5 per thousand.

6 (d) "Manufacturer" means a person who manufactures or
7 produces a tobacco product.

8 (e) "Noncigarette smoking tobacco" means tobacco sold in
9 loose or bulk form which is intended for consumption by smoking.

10 (f) "Person" means an individual, partnership, fiduciary,
11 association, corporation, or other legal entity.

12 (g) "Place of business" means a place where a tobacco prod-
13 uct is sold or where a tobacco product is brought or kept for the
14 purpose of sale or consumption, including so far as applicable a
15 vessel, airplane, train, or vending machine.

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

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

22 (j) "Secondary wholesaler" means a person who sells a
23 tobacco product for resale, who purchases a tobacco product from
24 a wholesaler licensed under this act, and who maintains an estab-
25 lished place of business in this state.

26 (k) "Small cigars" means cigars which weigh less than 3
27 pounds per thousand.

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

4 (m) "Tobacco product" means small and large cigars, nonciga-
5 rette smoking tobacco, or smokeless tobacco but does not include
6 cigarettes.

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

11 (o) "Transporter" means a person importing or transporting
12 into this state, or transporting in this state, a tobacco product
13 obtained from a source located outside this state, or from any
14 person not duly licensed under this act. Transporter does not
15 include an interstate commerce carrier licensed by the interstate
16 commerce commission to carry commodities in interstate commerce,
17 or a licensee maintaining a warehouse or place of business out-
18 side of this state if the warehouse or place of business is
19 licensed under this act.

20 (p) "Unclassified acquirer" means a person, except a trans-
21 portation company or a purchaser at retail from a retailer
22 licensed under the general sales tax act, Act No. 167 of the
23 Public Acts of 1933, being sections 205.51 to 205.78 of the
24 Michigan Compiled Laws, who imports or acquires a tobacco product
25 for use, sale, or distribution from a source other than a whole-
26 saler or secondary wholesaler licensed under this act.

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

5 (r) "Wholesaler" means a person who purchases all or part of
6 his or her tobacco products from a manufacturer, who sells 75% of
7 those products to others for resale, and who maintains an estab-
8 lished business where substantially all of the business is the
9 sale of tobacco products or cigarettes and related merchandise at
10 wholesale and where at all times a substantial stock of tobacco
11 products and related merchandise is available to all retailers
12 for resale. Wholesaler includes a chain of stores retailing a
13 tobacco product to the consumer if 75% of its stock of tobacco
14 products or cigarettes is purchased directly from the
15 manufacturer.

16 Sec. 3. (1) A person shall not purchase, possess, acquire
17 for resale, or sell a tobacco product as a manufacturer, whole-
18 saler, secondary wholesaler, vending machine operator, unclassi-
19 fied acquirer, transportation company, or transporter in this
20 state unless licensed to do so.

21 (2) Upon proper application and the payment of the applica-
22 ble fee, the department may issue a license to each manufacturer,
23 wholesaler, secondary wholesaler, vending machine operator,
24 unclassified acquirer, transportation company, or transporter.
25 The application shall be on a form prescribed by the department
26 and signed under penalty of perjury. Except for transportation
27 companies, each place of business shall be separately licensed.

1 If a person acts in more than 1 capacity at any 1 place of
2 business, a license shall be procured for each capacity. Each
3 machine for vending tobacco products shall be considered a place
4 of retail business. Each license or a duplicate copy shall be
5 prominently displayed on the premises covered by the license. In
6 the case of vending machines, a disc or marker furnished by the
7 department showing it to be licensed shall be attached to the
8 machine.

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

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

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

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

13 (d) A license for vending machine operators having 50 or
14 more vending machines in operation, \$100.00.

15 (e) A license for vending machine operators having not less
16 than 25 and not more than 49 machines in operation, \$50.00.

17 (f) A license for vending machine operators having not less
18 than 4 machines and not more than 24 machines in operation,
19 \$25.00.

20 (g) A license for vending machine operators having not more
21 than 3 machines, \$5.00 for each machine.

22 (h) An unclassified acquirer's license, a sum determined by
23 the department, but not to exceed \$150.00.

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

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

26 (4) If a manufacturer, wholesaler, secondary wholesaler, or
27 vending machine operator maintains more than 1 place of business,

1 the fee for each additional place of business shall be 1/4 of the
2 fee otherwise prescribed in subsection (3). If a person applying
3 for a license under this act as a manufacturer, wholesaler, sec-
4 ondary wholesaler, vending machine operator, unclassified acquir-
5 er, transportation company, or transporter has an equivalent
6 license under Act No. 265 of the Public Acts of 1947, being sec-
7 tions 205.501 to 205.522 of the Michigan Compiled Laws, the
8 license fee shall be waived. A fee, or a part of a fee, shall
9 not be refunded by reason of relinquishment, suspension, or revo-
10 cation of the license, or, except under order of a court of com-
11 petent jurisdiction, for any other reason or cause.

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

22 (6) The department may require a licensee under this section
23 to furnish a surety company bond with a surety company authorized
24 to do business in this state as a surety in an amount the depart-
25 ment may fix, conditioned upon the payment of the tax provided by
26 this act. The department may also require a licensee under this
27 section to file a financial statement with the department showing

1 all assets and liabilities and any other information the
2 department may prescribe, to be filed within 30 days after the
3 date requested.

4 Sec. 4. Each license issued under section 3 shall expire on
5 the June 30 next succeeding the date of issuance unless revoked
6 by the department, unless the business for which the license was
7 issued changes ownership, or unless the holder of the license
8 removes the business from the location covered by the license.
9 Upon expiration of the license, revocation of the license, change
10 of ownership, or removal of the business from the location cov-
11 ered by the license, the holder of the license immediately shall
12 return the license to the department. If a business moves to
13 another location in the state, the license may be reissued for
14 the new location for the balance of the unexpired term without
15 payment of an additional fee. The holder of each license may
16 renew that license for another 1-year period by filing an appli-
17 cation accompanied by the applicable fee with the department
18 before the expiration date of that license.

19 Sec. 5. The department may suspend, revoke, or refuse to
20 issue or renew a license issued under this act for failure to
21 comply with this act or for any other good cause. A person whose
22 license is suspended, revoked, or not renewed shall not sell a
23 tobacco product during the period of suspension or revocation, or
24 until the license is renewed. A person aggrieved by the suspen-
25 sion, revocation, or refusal to issue or renew a license may
26 apply to the revenue division of the department for a hearing
27 within 20 days after notice of the suspension, revocation, or

1 refusal to issue or renew the license. A hearing and decision
2 shall be had in the same manner provided in section 9.

3 Sec. 6. (1) Every manufacturer, wholesaler, secondary
4 wholesaler, vending machine operator, transportation company,
5 unclassified acquirer, or retailer shall keep a complete and
6 accurate record of each tobacco product manufactured, purchased,
7 or otherwise acquired. Except for a manufacturer, the records
8 shall include a written statement containing the name and address
9 of both the seller and the purchaser, the date of delivery, the
10 quantity, the trade name or brand, and the price paid for each
11 tobacco product purchased. Every licensee shall keep as part of
12 the records a true copy of all purchase orders, invoices, bills
13 of lading, and other written matter substantiating the purchase
14 or acquisition of each tobacco product. Other records shall be
15 kept by these persons as the department reasonably prescribes.

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

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

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

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

24 (5) All statements and other records required by this sec-
25 tion shall be in a form prescribed by the department and shall be
26 preserved for a period of 3 years and offered for inspection at

1 any time upon oral or written demand by the department or its
2 authorized agent.

3 (6) If a tobacco product is received or acquired within this
4 state by a wholesaler, secondary wholesaler, vending machine
5 operator, unclassified acquirer, or retailer, each original
6 manufacturer's shipping case shall bear the name and address of
7 the person making the first purchase or any other markings the
8 department prescribes. If a tobacco product is found in a place
9 of business or otherwise in the possession of a wholesaler, sec-
10 ondary wholesaler, vending machine operator, unclassified acquir-
11 er, transporter, or retailer without proper markings on the ship-
12 ping case, box, or container of the tobacco product and without
13 proper substantiation by invoices or other records as required by
14 this section, the presumption shall be that the tobacco product
15 is kept in violation of this act. If a tobacco product is
16 shipped outside the state, the licensee shipping the tobacco
17 product shall cause to be placed on every shipping case or other
18 container in which the tobacco product is shipped the name and
19 address of the consignee to whom the shipment is made outside of
20 the state. The department may require reports from a common car-
21 rier who transports a tobacco product to a point within this
22 state from another person who, under contract, transports a
23 tobacco product, or from a bonded warehouseperson or bailee who
24 has in his or her possession a tobacco product. A carrier,
25 bailee, warehouseperson, or other person shall permit the exami-
26 nation by the department or its duly authorized agent of any

1 records relating to the shipment of a tobacco product into, from,
2 or within the state.

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

12 (8) A transporter desiring to possess or acquire for trans-
13 portation or transport a tobacco product upon a highway, road, or
14 street of this state shall obtain a permit from the department
15 authorizing the transporter to possess or acquire for transporta-
16 tion or transport tobacco products and shall have the permit in
17 his or her possession while the tobacco product is in his or her
18 possession. This permit shall be obtained for each load being
19 transported and shall contain a statement setting forth the name
20 and address of the purchaser, seller, and transporter, the
21 license number of the purchaser, the date of the delivery of the
22 tobacco product or date of importation into this state, the route
23 to be followed if a tobacco product is being transported from an
24 out-of-state source, and any other information the department
25 requires. The department shall provide a permit on a form pre-
26 scribed by it upon the application of a transporter with the
27 remittance of a fee of \$1.00. If a transporter transports a

1 tobacco product into this state, the transporter shall stop at
2 the nearest state police post within this state on the route
3 authorized by the permit and disclose the tobacco products in his
4 or her possession and the papers required by this section to be
5 in his or her possession.

6 Sec. 7. (1) On or before the twentieth day of each calendar
7 month, every licensee under section 3 other than a retailer, sec-
8 ondary wholesaler, or vending machine operator shall file a
9 return with the department stating the number of small cigars,
10 the number of large cigars, and the amount by weight of nonciga-
11 rette smoking tobacco and smokeless tobacco sold by the licensee
12 for each place of business in the preceding calendar month. The
13 return shall be signed under penalty of perjury. The return
14 shall be on a form prescribed by the department and shall contain
15 or be accompanied by any further information the department
16 requires.

17 (2) At the time of the filing of the return, the licensee
18 shall pay to the department an excise tax equal to 33% of the
19 wholesale price of each tobacco product sold during the calendar
20 month covered by the return, less compensation equal to 1% of the
21 total amount of the tax due to cover the cost of expenses
22 incurred in the administration of this act.

23 (3) This act does not prohibit the department from requiring
24 the payment of the excise tax imposed by this act upon the impor-
25 tation or acquisition of a tobacco product. A tobacco product
26 for which the excise tax under this act has once been imposed and

1 that has not been refunded if paid shall not be subject upon a
2 subsequent sale to the excise tax imposed by this act.

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

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

11 Sec. 8. (1) A person, other than a licensee, in control or
12 in possession of a tobacco product contrary to this act, or who
13 offers to sell or does sell a tobacco product to others for pur-
14 poses of resale without being licensed to do so under this act,
15 shall be considered to have possession of that tobacco product as
16 an unclassified acquirer and shall be personally liable for the
17 tax imposed by this act, plus a penalty of 100% of the amount of
18 tax due under this act.

19 (2) A person who possesses, acquires, transports, or offers
20 for sale a tobacco product contrary to this act, and the whole-
21 sale price of the tobacco products involved amounts to or exceeds
22 the amount of \$50.00, is guilty of a felony, punishable by a fine
23 of not more than \$5,000.00 or imprisonment for not more than 5
24 years, or both.

25 (3) A person who violates a provision of this act for which
26 a provision for criminal punishment is not made is guilty of a

1 misdemeanor, punishable by a fine of not more than \$1,000.00 or
2 imprisonment for not more than 1 year, or both.

3 (4) The attorney general has concurrent power with the pros-
4 ecuting attorneys of the state to enforce this act.

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

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

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

1 (3) As soon as possible, but not to exceed 5 days after
2 seizure of any alleged contraband, the person making the seizure
3 shall deliver personally or by registered mail to the last known
4 address of the person from whom the seizure was made, if known,
5 an inventory statement of the property seized, and file a copy
6 with the commissioner. The inventory statement shall also con-
7 tain a notice to the effect that unless demand for hearing as
8 provided in this section is made within 5 days, the designated
9 property is forfeited to the state. If the person from whom the
10 seizure was made is not known, the person making the seizure
11 shall cause a copy of the inventory statement, together with the
12 notice provided for in this subsection, to be published at least
13 3 times in a newspaper of general circulation in the county where
14 the seizure was made. Within 5 days after the date of service of
15 the inventory statement, or in the case of publication, within 5
16 days 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 file with the commissioner a demand for a hearing
19 before the commissioner or a person designated by the commis-
20 sioner for a determination as to whether the property was law-
21 fully subject to seizure and forfeiture. The person or persons
22 are entitled to appear before the department, to be represented
23 by counsel, and to present testimony and argument. After the
24 hearing, the department shall render its decision in writing and,
25 by order, shall either declare the seized property subject to
26 seizure and forfeiture, or declare the property returnable to the
27 person entitled to possession. If, within 5 days after the date

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

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

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

3 (5) The department may sell a tobacco product or other prop-
4 erty forfeited pursuant to this section at public sale. Public
5 notice of the sale shall be given at least 5 days before the day
6 of sale. The proceeds derived from the sale by the department
7 shall be credited to the general fund of the state.

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

11 Sec. 10. The seizure, forfeiture, and sale of a tobacco
12 product or other property, or an action for recovery of amounts
13 due, does not constitute a defense to the person owning or having
14 control or possession of that property from criminal prosecution
15 for an act or omission made or offense committed under this act
16 or from liability to pay penalties provided by this act.

17 Sec. 11. A person, either as principal or agent, shall not
18 sell or solicit orders for a tobacco product to be shipped,
19 mailed, or otherwise sent or brought into the state, to a person
20 not a licensed manufacturer, licensed wholesaler, licensed sec-
21 ondary wholesaler, licensed vending machine operator, licensed
22 unclassified acquirer, licensed transporter, or licensed trans-
23 portation company, unless the tobacco product is to be sold to or
24 through a licensed wholesaler. Each violation of this act is a
25 separate offense.

26 Sec. 12. Except as otherwise provided by law, the proceeds
27 derived from the payment of a tax, fee, or penalty provided for

1 under this act, or a license fee received by the department,
2 shall be deposited in the general fund in the state treasury.

3 Sec. 13. (1) The tax imposed by this act shall be adminis-
4 tered by the revenue commissioner pursuant to Act No. 122 of the
5 Public Acts of 1941, being sections 205.1 to 205.31 of the
6 Michigan Compiled Laws, and this act. In case of conflict
7 between Act No. 122 of the Public Acts of 1941 and this act, the
8 provisions of this act apply.

9 (2) Rules shall be promulgated under this act pursuant to
10 the administrative procedures act of 1969, Act No. 306 of the
11 Public Acts of 1969, being sections 24.201 to 24.328 of the
12 Michigan Compiled Laws.

13 (3) The department shall prescribe forms for use by
14 taxpayers.

15 (4) The tax imposed by this act is in addition to all other
16 taxes for which the taxpayer may be liable.

17 (5) The commissioner may appoint any revenue division
18 employee as a special investigator, who shall be vested with the
19 power to arrest, without warrant, a person violating this act.

20 Sec. 14. This act shall take effect on January 1, 1993.