



SENATE BILL No. 1136

May 3, 1994, Introduced by Senator EMMONS and referred to
the Committee on Finance

A bill to amend sections 2, 7, and 12 of Act No 327 of the
Public Acts of 1993, entitled
"Tobacco products tax act "
being sections 205 422, 205 427 and 205 432 of the Michigan
Compiled Laws and to repeal certain parts of the act

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 2, 7, and 12 of Act No 327 of the
2 Public Acts of 1993, being sections 205 422, 205 427, and 205 432
3 of the Michigan Compiled Laws are amended to read as follows

4 Sec 2 As used in this act

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

- 1 (b) "Commissioner" means the revenue commissioner
- 2 (c) "Department" means the department of treasury
- 3 (d) "Licensee" means a person licensed under this act
- 4 (e) "Manufacturer" means a person who manufactures or
5 produces a tobacco product
- 6 (f) "Noncigarette smoking tobacco" means tobacco sold in
7 loose or bulk form that is intended for consumption by smoking
- 8 (g) "Person" means an individual, partnership, fiduciary,
9 association, corporation, LIMITED LIABILITY COMPANY, or other
10 legal entity
- 11 (h) "Place of business" means a place where a tobacco prod-
12 uct is sold or where a tobacco product is brought or kept for the
13 purpose of sale or consumption, including a vessel airplane,
14 train, or vending machine
- 15 (i) "Retailer" means a person other than a transportation
16 company who operates a place of business for the purpose of
17 making sales of a tobacco product at retail
- 18 (j) "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 (k) "Secondary wholesaler" means a person who sells a
22 tobacco product for resale, who purchases a tobacco product from
23 a wholesaler licensed under this act, and who maintains an estab-
24 lished place of business in this state WHERE SUBSTANTIALLY ALL OF
25 THE BUSINESS IS THE SALE OF TOBACCO PRODUCTS AND RELATED MERCHAN-
26 DISE AT WHOLESALE, AND WHERE AT ALL TIMES A SUBSTANTIAL STOCK OF

1 TOBACCO PRODUCTS AND RELATED MERCHANDISE IS AVAILABLE TO ALL
2 RETAILERS FOR RESALE

3 (l) "Smokeless tobacco" means snuff, chewing tobacco, and
4 any other tobacco that is intended to be consumed by means other
5 than smoking

6 (m) "Tobacco product" means cigarettes, cigars, noncigarette
7 smoking tobacco, or smokeless tobacco

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

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

21 (p) "Unclassified acquirer" means a person, except a trans-
22 portation company or a purchaser at retail from a retailer
23 licensed under the general sales tax act, Act No 167 of the
24 Public Acts of 1933, being sections 205 51 to 205 78 of the
25 Michigan Compiled Laws, who imports or acquires a tobacco product
26 from a source other than a wholesaler or secondary wholesaler
27 licensed under this act for use, sale, or distribution

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) "Wholesale price" means the actual price paid for a
6 tobacco product, including any tax, by a wholesaler to a manufac-
7 turer, excluding any discounts or reductions

8 (s) "Wholesaler" means a person who purchases all or part of
9 his or her tobacco products from a manufacturer who sells 75% or
10 more of those tobacco products to others for resale and who
11 maintains an established business where substantially all of the
12 business is the sale of tobacco products or cigarettes and
13 related merchandise at wholesale and where at all times a sub-
14 stantial stock of tobacco products and related merchandise is
15 available to retailers for resale Wholesaler includes a chain
16 of stores retailing a tobacco product to the consumer if 75% of
17 its stock of tobacco products is purchased directly from the
18 manufacturer

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

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

23 ~~-(b) For cigarettes, if the sales tax is levied at a rate of~~
24 ~~4% under the general sales tax act, Act No 167 of the Public~~
25 ~~Acts of 1933, being sections 205 51 to 205 78 of the Michigan~~
26 ~~Compiled Laws, 20 mills per cigarette~~

1 (B) ~~(c)~~ For cigarettes, ~~if the sales tax is levied at a~~
2 ~~rate of 6¢ under the general sales tax act, Act No 167 of the~~
3 ~~Public Acts of 1933, being sections 205 51 to 205 78 of the~~
4 ~~Michigan Compiled Laws,~~ 37 5 mills per cigarette

5 (2) On or before the twentieth day of each calendar month,
6 every licensee under section 3 other than a retailer, secondary
7 wholesaler, or vending machine operator shall file a return with
8 the department stating the amount of each tobacco product sold
9 and specifying the wholesale price charged for all tobacco prod-
10 ucts sold by the licensee for each place of business in the pre-
11 ceding calendar month The return shall be signed under penalty
12 of perjury The return shall be on a form prescribed by the
13 department and shall contain or be accompanied by any further
14 information the department requires

15 (3) At the time of the filing of the return, the licensee
16 shall pay to the department the tax levied in subsection (1) for
17 tobacco products sold during the calendar month covered by the
18 return, less compensation equal to 1¢ of the total amount of the
19 tax due to cover the cost of expenses incurred in the administra-
20 tion of this act

21 (4) Every licensee and retailer who, on May 1 1994, has on
22 hand for sale any cigarettes acquired after February 1 1994 upon
23 which a tax has been paid pursuant to Act No 265 of the Public
24 Acts of 1947, being sections 205 501 to 205 522 of the Michigan
25 Compiled Laws, shall file a complete inventory of those ciga-
26 rettes before June 1, 1994 and shall pay to the department at the
27 time of filing this inventory a tax equal to the difference

1 between the tax imposed in subsection (1) and the tax that has
2 been paid pursuant to Act No 265 of the Public Acts of 1947

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

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

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

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

21 (2) The proceeds of the tax imposed under section 7(1)(a)
22 shall be credited to the state school aid fund established by
23 section 11 of article IX of the state constitution of 1963

24 ~~(3) If the sales tax is levied at a rate of 4% under the~~
25 ~~general sales tax act, Act No 167 of the Public Acts of 1933-~~
26 ~~the tax imposed on cigarettes pursuant to section 7(1)(b) shall~~
27 ~~be disbursed as follows:~~

1 ~~(a) The proceeds of 1.5 mills shall be credited to the~~
 2 ~~health and safety fund created in the health and safety fund act,~~
 3 ~~Act No. 264 of the Public Acts of 1987 being sections 141-471 to~~
 4 ~~141-479 of the Michigan Compiled Laws.~~

5 ~~(b) The proceeds of .95 mills shall be credited to the gen-~~
 6 ~~eral fund of this state.~~

7 ~~(c) The proceeds of .85 mills shall be credited to the state~~
 8 ~~school aid fund established by section 11 of article IX of the~~
 9 ~~state constitution of 1963.~~

10 ~~(d) The proceeds of .5 mills shall be distributed to city,~~
 11 ~~district, and county health departments created pursuant to~~
 12 ~~sections 2413, 2415, and 2421 of the public health code, Act~~
 13 ~~No. 368 of the Public Acts of 1978 being sections 333-2413,~~
 14 ~~333-2415, and 333-2421 of the Michigan Compiled Laws, on a per~~
 15 ~~capita basis according to the most recent federal decennial~~
 16 ~~census. The distribution under this subdivision shall be used~~
 17 ~~only for public health prevention programs and services. This~~
 18 ~~distribution is in addition to and is not intended as a replace-~~
 19 ~~ment for any other state payments to these local health~~
 20 ~~departments.~~

21 ~~(3) -(4) If the sales tax is levied at a rate of 6% under~~
 22 ~~the general sales tax act, Act No. 167 of the Public Acts of~~
 23 ~~1933, being sections 205-51 to 205-78 of the Michigan Compiled~~
 24 ~~Laws, the~~ THE tax imposed on cigarettes pursuant to section
 25 ~~7(1)(e)~~ 7(1)(B) AND 7(4) shall be disbursed as follows

26 (a) ~~4%~~ 5.3% of the proceeds shall be credited to the
 27 health and safety fund created in the health and safety fund act,

1 Act No 264 of the Public Acts of 1987, being sections 141 471 to
2 141 479 of the Michigan Compiled Laws

3 (b) 25 3¹ of the proceeds shall be credited to the general
4 fund of this state

5 (c) 63 4² of the proceeds shall be credited to the state
6 school aid fund established by section 11 of article IX of the
7 state constitution of 1963

8 ~~(d) 1 3⁴ of the proceeds shall be distributed to city, dis-~~
9 ~~trict, and county health departments created pursuant to~~
10 ~~sections 2413, 2415, and 2421 of the public health code, Act~~
11 ~~No 368 of the Public Acts of 1978 being sections 333 2413,~~
12 ~~333 2415 and 333 2421 of the Michigan Compiled Laws, on a per~~
13 ~~capita basis according to the most recent federal decennial~~
14 ~~census—The distribution under this subdivision shall be used~~
15 ~~only for public health prevention programs and services—This~~
16 ~~distribution is in addition to and is not intended as a replace-~~
17 ~~ment for any other state payments to these local health~~
18 ~~departments—~~

19 (D) ~~(e)~~ 6¹ of the proceeds shall be dedicated to improving
20 the health care of the residents of this state

21 (4) ~~(5)~~ The proceeds of the fees and penalties provided
22 for in this act shall be used for the administration of this
23 act

24 Section 2 Section 14 of Act No 327 of the Public Acts of
25 1993, being section 205 434 of the Michigan Compiled Laws, is
26 repealed