

HOUSE BILL No. 6072

July 6, 2004, Introduced by Rep. Julian and referred to the Committee on Regulatory Reform.

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending section 9 (MCL 205.429), as amended by 1997 PA 187.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

8 (2) If an authorized inspector of the department or a police
9 officer has reasonable cause to believe and does believe that a
10 tobacco product is being acquired, possessed, transported, kept,
11 sold, or offered for sale in violation of this act for which the

1 penalty is a felony, the inspector or police officer may
2 investigate or search the vehicle of transportation in which the
3 tobacco product is believed to be located. If a tobacco product
4 is found in a vehicle searched under this subsection or in a
5 place of business inspected under this act, the tobacco product,
6 vending machine, vehicle, or other tangible personal property
7 containing those tobacco products and any books and records in
8 possession of the person in control or possession of the tobacco
9 product may be seized by the inspector or police officer and are
10 subject to forfeiture as contraband as provided in this section.

11 (3) As soon as possible, but not more than 5 business days
12 after seizure of any alleged contraband, the person making the
13 seizure shall deliver personally or by registered mail to the
14 last known address of the person from whom the seizure was made,
15 if known, an inventory statement of the property seized. A copy
16 of the inventory statement shall also be filed with the
17 ~~commissioner~~ **state treasurer**. The inventory statement shall
18 also contain a notice to the effect that unless demand for
19 hearing as provided in this section is made within 10 business
20 days, the designated property is forfeited to the state. If the
21 person from whom the seizure was made is not known, the person
22 making the seizure shall cause a copy of the inventory statement,
23 together with the notice provided for in this subsection, to be
24 published at least 3 times in a newspaper of general circulation
25 in the county where the seizure was made. Within 10 business
26 days after the date of service of the inventory statement, or in
27 the case of publication, within 10 business days after the date

1 of last publication, the person from whom the property was seized
2 or any person claiming an interest in the property may by
3 registered mail, facsimile transmission, or personal service file
4 with the ~~commissioner~~ **state treasurer** a demand for a hearing
5 before the ~~commissioner~~ **state treasurer** or a person designated
6 by the ~~commissioner~~ **state treasurer** for a determination as to
7 whether the property was lawfully subject to seizure and
8 forfeiture. The person shall verify a request for hearing filed
9 by facsimile transmission by also providing a copy of the
10 original request for hearing by registered mail or personal
11 service. The person or persons are entitled to appear before the
12 department, to be represented by counsel, and to present
13 testimony and argument. Upon receipt of a request for hearing,
14 the department shall hold the hearing within 15 business days.
15 The hearing is not a contested case proceeding and is not subject
16 to the administrative procedures act of 1969, 1969 PA 306, MCL
17 24.201 to 24.328. After the hearing, the department shall render
18 its decision in writing within 10 business days of the hearing
19 and, by order, shall either declare the seized property subject
20 to seizure and forfeiture, or declare the property returnable in
21 whole or in part to the person entitled to possession. If,
22 within 10 business days after the date of service of the
23 inventory statement, the person from whom the property was seized
24 or any person claiming an interest in the property does not file
25 with the ~~commissioner~~ **state treasurer** a demand for a hearing
26 before the department, the property seized shall be considered
27 forfeited to the state by operation of law and may be disposed of

1 by the department as provided in this section. If, after a
2 hearing before the ~~commissioner~~ **state treasurer** or person
3 designated by the ~~commissioner~~ **state treasurer**, the department
4 determines that the property is lawfully subject to seizure and
5 forfeiture and the person from whom the property was seized or
6 any persons claiming an interest in the property do not take an
7 appeal to the circuit court of the county in which the seizure
8 was made within the time prescribed in this section, the property
9 seized shall be considered forfeited to the state by operation of
10 law and may be disposed of by the department as provided in this
11 section.

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

1 (5) **The department shall destroy all cigarettes forfeited to**
2 **this state.** The department may sell ~~a~~ **all** tobacco ~~product or~~
3 **products, except cigarettes, and** other property forfeited
4 pursuant to this section at public sale. Public notice of the
5 sale shall be given at least 5 days before the day of sale. The
6 department may pay an amount not to exceed 25% of the proceeds of
7 the sale to the local governmental unit whose law enforcement
8 agency performed the seizure. The balance of the proceeds
9 derived from the sale by the department shall be credited to the
10 general fund of the state.

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

15 (7) A person who is not an employee or officer of this state
16 or a political subdivision of this state who furnishes to the
17 department or to any law enforcement agency original information
18 concerning a violation of this act, which information results in
19 the collection and recovery of any tax or penalty or leads to the
20 forfeiture of any cigarettes, or other property, may be awarded
21 and paid by the state treasurer, ~~upon the certification of the~~
22 ~~commissioner,~~ compensation of not more than 10% of the net
23 amount received from the sale of any forfeited cigarettes or
24 other property, but not to exceed \$5,000.00 which shall be paid
25 out of the receipts from the sale of the property. If any amount
26 is issued to the local governmental unit under subsection (5),
27 the amount awarded under this subsection to a person who provides

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

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

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

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

27 (c) For a third or subsequent violation within a period of 5

1 years, for a period of at least 1 year and not more than 5
2 years.

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

1 expiration of the period to request such appeal, the department
2 shall issue a final order and make service upon the retailer of
3 an order to cease all purchases, possession, and sale of all
4 cigarettes and other tobacco products for a specified period as
5 appropriate. This order does not relieve the retailer from
6 seizure and sale of a tobacco product or other property under
7 this section, or relieve the retailer from a fine, imprisonment,
8 or other penalty for violation of this act.