

**SUBSTITUTE FOR  
SENATE BILL NO. 882**

A bill to amend 1993 PA 327, entitled  
"Tobacco products tax act,"  
by amending sections 7 and 8 (MCL 205.427 and 205.428), section 7  
as amended by 2004 PA 164 and section 8 as amended by 2005 PA 238.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

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

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

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

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

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

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

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

12 (2) On or before the twentieth day of each calendar month,  
13 every licensee under section 3 other than a retailer, ~~secondary~~  
14 ~~wholesaler~~, unclassified acquirer licensed as a manufacturer, or  
15 vending machine operator shall file a return with the department  
16 stating the wholesale price of each tobacco product other than  
17 cigarettes purchased, the quantity of cigarettes purchased, the  
18 wholesale price charged for all tobacco products other than  
19 cigarettes sold, the number of individual packages of cigarettes  
20 and the number of cigarettes in those individual packages, and the  
21 number and denominations of stamps affixed to individual packages  
22 of cigarettes sold by the licensee for each place of business in  
23 the preceding calendar month. The return shall also include the  
24 number and denomination of unaffixed stamps in the possession of  
25 the licensee at the end of the preceding calendar month.  
26 Wholesalers shall also report accurate inventories of cigarettes,  
27 both stamped and unstamped at the end of the preceding calendar

1 month. Wholesalers and unclassified acquirers shall also report  
2 accurate inventories of affixed and unaffixed stamps by  
3 denomination at the beginning and end of each calendar month and  
4 all stamps acquired during the preceding calendar month. The return  
5 shall be signed under penalty of perjury. The return shall be on a  
6 form prescribed by the department and shall contain or be  
7 accompanied by any further information the department requires.

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

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

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

18 (c) Beginning August 1, 2002, 1.5% of the total amount of the  
19 tax due on cigarettes sold.

20 (4) Every licensee and retailer who, on August 1, 2002, has on  
21 hand for sale any cigarettes upon which a tax has been paid  
22 pursuant to subsection (1)(b) shall file a complete inventory of  
23 those cigarettes before September 1, 2002 and shall pay to the  
24 department at the time of filing this inventory a tax equal to the  
25 difference between the tax imposed in subsection (1)(b), (c), and  
26 (d) and the tax that has been paid under subsection (1)(b). Every  
27 licensee and retailer who, on August 1, 2002, has on hand for sale

1 any cigars, noncigarette smoking tobacco, or smokeless tobacco upon  
2 which a tax has been paid pursuant to subsection (1)(a) shall file  
3 a complete inventory of those cigars, noncigarette smoking tobacco,  
4 and smokeless tobacco before September 1, 2002 and shall pay to the  
5 department at the time of filing this inventory a tax equal to the  
6 difference between the tax imposed in subsection (1)(f) and the tax  
7 that has been paid under subsection (1)(a).

8 (5) Every licensee and retailer who, on July 1, 2004, has on  
9 hand for sale any cigarettes upon which a tax has been paid  
10 pursuant to subsection (1)(b), (c), and (d) shall file a complete  
11 inventory of those cigarettes before August 1, 2004 and shall pay  
12 to the department at the time of filing this inventory a tax equal  
13 to the difference between the tax imposed in subsection (1)(b),  
14 (c), (d), and (e) and the tax that has been paid under subsection  
15 (1)(b), (c), and (d). Every licensee and retailer who, on July 1,  
16 2004, has on hand for sale any cigars, noncigarette smoking  
17 tobacco, or smokeless tobacco upon which a tax has been paid  
18 pursuant to subsection (1)(f) shall file a complete inventory of  
19 those cigars, noncigarette smoking tobacco, and smokeless tobacco  
20 before August 1, 2004 and shall pay to the department at the time  
21 of filing this inventory a tax equal to the difference between the  
22 tax imposed in subsection (1)(g) and the tax that has been paid  
23 under subsection (1)(f). The proceeds derived under this subsection  
24 shall be credited to the medicaid benefits trust fund created under  
25 section 5 of the Michigan trust fund act, 2000 PA 489, MCL 12.255.

26 (6) The department may require the payment of the tax imposed  
27 by this act upon the importation or acquisition of a tobacco

1 product. A tobacco product for which the tax under this act has  
2 once been imposed and that has not been refunded if paid is not  
3 subject upon a subsequent sale to the tax imposed by this act.

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

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

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

19 (10) If the wholesaler or unclassified acquirer has unsalable  
20 packs returned from a retailer, secondary wholesaler, vending  
21 machine operator, wholesaler, or unclassified acquirer with stamps  
22 affixed, the department shall refund the amount of the tax less the  
23 appropriate discount paid. If the wholesaler or unclassified  
24 acquirer has unaffixed unsalable stamps, the department shall  
25 exchange with the wholesaler or unclassified acquirer new stamps in  
26 the same quantity as the unaffixed unsalable stamps. An application  
27 for refund of the tax shall be filed on a form prescribed by the

1 department for that purpose, within 4 years from the date the  
2 stamps were originally acquired from the department. A wholesaler  
3 or unclassified acquirer shall make available for inspection by the  
4 department the unused or spoiled stamps and the stamps affixed to  
5 unsalable individual packages of cigarettes. The department may, at  
6 its own discretion, witness and certify the destruction of the  
7 unused or spoiled stamps and unsalable individual packages of  
8 cigarettes that are not returnable to the manufacturer. The  
9 wholesaler or unclassified acquirer shall provide certification  
10 from the manufacturer for any unsalable individual packages of  
11 cigarettes that are returned to the manufacturer.

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

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

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

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

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

1 exchanged, received, removed, or otherwise disposed of and the  
2 identity of the retailer, wholesaler, secondary wholesaler, vending  
3 machine operator, or unclassified acquirer involved. The  
4 representative of the manufacturer shall provide a copy of the  
5 record to the retailer, wholesaler, secondary wholesaler, vending  
6 machine operator, or unclassified acquirer at the time of the  
7 exchange or disposal. The retailer, wholesaler, secondary  
8 wholesaler, vending machine operator, or unclassified acquirer  
9 shall retain the copy of the record in the same place and for the  
10 same time period as other records required by this section. A  
11 representative shall not exchange, or otherwise dispose of, within  
12 this state tobacco products bearing the tax indicia of another  
13 state or receive tobacco products bearing the tax indicia of  
14 another state from retailers located within this state. A  
15 representative who sells, exchanges, or otherwise disposes of  
16 cigarettes or tobacco products other than cigarettes that do not  
17 bear the stamp or other marking required by the department or  
18 sells, exchanges, or otherwise disposes of cigarettes or tobacco  
19 products other than cigarettes bearing the tax indicia of another  
20 state is guilty of a felony, punishable by a fine of not more than  
21 \$5,000.00 or imprisonment for not more than 5 years, or both.

22 (3) A person who possesses, acquires, transports, or offers  
23 for sale contrary to this act 3,000 or more cigarettes, tobacco  
24 products other than cigarettes with an aggregate wholesale price of  
25 \$250.00 or more, 3,000 or more counterfeit cigarettes, 3,000 or  
26 more counterfeit cigarette papers, 3,000 or more gray market  
27 cigarettes, or 3,000 or more gray market cigarette papers is guilty



1 of a felony, punishable by a fine of not more than \$50,000.00 or  
2 imprisonment for not more than 5 years, or both.

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

12 (5) A person who violates a provision of this act for which a  
13 criminal punishment is not otherwise provided is guilty of a  
14 misdemeanor, punishable by a fine of not more than \$1,000.00 or 5  
15 times the retail value of the tobacco products involved, whichever  
16 is greater, or imprisonment for not more than 1 year, or both. **THIS**  
17 **SUBSECTION DOES NOT APPLY TO CONDUCT DESCRIBED IN SUBSECTION (12).**

18 (6) A person who manufactures, possesses, or uses a stamp or  
19 manufactures, possesses, or uses a counterfeit stamp or writing or  
20 device intended to replicate a stamp without authorization of the  
21 department, a licensee who purchases or obtains a stamp from any  
22 person other than the department, or who falsifies a manufacturer's  
23 label on cigarettes, counterfeit cigarettes, gray market cigarette  
24 papers, or counterfeit cigarette papers is guilty of a felony and  
25 shall be punished by imprisonment for not less than 1 year or more  
26 than 10 years and may be punished by a fine of not more than  
27 \$50,000.00.

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

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

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

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

21           **(11) A PERSON WHO KNOWINGLY POSSESSES, ACQUIRES, TRANSPORTS,**  
22 **OR OFFERS FOR SALE CONTRARY TO THIS ACT 600 OR MORE, BUT NOT MORE**  
23 **THAN 1,199, CIGARETTES, TOBACCO PRODUCTS OTHER THAN CIGARETTES WITH**  
24 **AN AGGREGATE WHOLESALE VALUE OF \$50.00 OR MORE BUT LESS THAN**  
25 **\$100.00, OR 600 OR MORE, BUT NOT MORE THAN 1,199, COUNTERFEIT**  
26 **CIGARETTES, COUNTERFEIT CIGARETTE PAPERS, GRAY MARKET CIGARETTES,**  
27 **OR GRAY MARKET CIGARETTE PAPERS IS GUILTY OF A MISDEMEANOR**

1 PUNISHABLE BY A FINE OF NOT MORE THAN \$1,000.00 OR IMPRISONMENT OF  
2 NOT MORE THAN 90 DAYS, OR BOTH.

3 (12) A PERSON SHALL NOT POSSESS, ACQUIRE, TRANSPORT, OR OFFER  
4 FOR SALE LESS THAN 600 CIGARETTES, TOBACCO PRODUCTS OTHER THAN  
5 CIGARETTES WITH AN AGGREGATE WHOLESALE VALUE OF LESS THAN \$50.00,  
6 OR LESS THAN 600 COUNTERFEIT CIGARETTES, COUNTERFEIT CIGARETTE  
7 PAPERS, GRAY MARKET CIGARETTES, OR GRAY MARKET CIGARETTE PAPERS. A  
8 PERSON WHO POSSESSES, ACQUIRES, TRANSPORTS, OR OFFERS FOR SALE  
9 CONTRARY TO THIS ACT 201 OR MORE, BUT NOT MORE THAN 599,  
10 CIGARETTES, TOBACCO PRODUCTS OTHER THAN CIGARETTES WITH AN  
11 AGGREGATE WHOLESALE VALUE OF \$25.00 OR MORE BUT LESS THAN \$50.00,  
12 OR 201 OR MORE, BUT NOT MORE THAN 599, COUNTERFEIT CIGARETTES,  
13 COUNTERFEIT CIGARETTE PAPERS, GRAY MARKET CIGARETTES, OR GRAY  
14 MARKET CIGARETTE PAPERS IS RESPONSIBLE FOR A STATE CIVIL INFRACTION  
15 AND MAY BE ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN \$100.00.