

# HOUSE BILL No. 5668

March 18, 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 sections 2 and 8 (MCL 205.422 and 205.428), as  
amended by 1997 PA 187.

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

1       Sec. 2. As used in this act:

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

7       (b) "Commissioner" means the revenue commissioner.

8       (c) "Counterfeit cigarette" means a cigarette in an  
9 individual package of cigarettes or other container with a false  
10 manufacturing label or a cigarette in an individual package of

1 **cigarettes or other container with a counterfeit stamp.**

2       (d) ~~-(e)-~~ "Counterfeit stamp" means any stamp, label, or  
3 print, indicium, or character, that evidences, or purports to  
4 evidence, the payment of any tax levied under this act and that  
5 has not been printed, manufactured, or made by authority of the  
6 department as provided in this act and has not been issued, sold,  
7 or circulated by the department.

8       (e) ~~-(d)-~~ "Department" means the department of treasury.

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

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

14       (ii) Outstanding liabilities.

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

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

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

24       (h) ~~-(g)-~~ "Licensee" means a person licensed under this act.

25       (i) ~~-(h)-~~ "Manufacturer" means a person who manufactures or  
26 produces a tobacco product.

27       (j) ~~-(i)-~~ "Noncigarette smoking tobacco" means tobacco sold

1 in loose or bulk form that is intended for consumption by smoking  
2 and includes roll-your-own cigarette tobacco.

3       **(k)** ~~-(j)-~~ "Person" means an individual, partnership,  
4 fiduciary, association, limited liability company, corporation,  
5 or other legal entity.

6       **(l)** ~~-(k)-~~ "Place of business" means a place where a tobacco  
7 product is sold or where a tobacco product is brought or kept for  
8 the purpose of sale or consumption, including a vessel, airplane,  
9 train, or vending machine.

10       **(m)** ~~-(l)-~~ "Retailer" means a person other than a  
11 transportation company who operates a place of business for the  
12 purpose of making sales of a tobacco product at retail.

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

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

24       **(p)** ~~-(o)-~~ "Smokeless tobacco" means snuff, chewing tobacco,  
25 and any other tobacco that is intended to be consumed by means  
26 other than smoking.

27       **(q)** ~~-(p)-~~ "Stamp" means a distinctive character, indication,

1 or mark, as determined by the department, attached or affixed to  
2 an individual package of cigarettes by mechanical device or other  
3 means authorized by the department to indicate that the tax  
4 imposed under this act has been paid.

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

10       **(s)** ~~-(r)-~~ "Tobacco product" means cigarettes, cigars,  
11 noncigarette smoking tobacco, or smokeless tobacco.

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

16       **(u)** ~~-(t)-~~ "Transporter" means a person importing or  
17 transporting into this state, or transporting in this state, a  
18 tobacco product obtained from a source located outside this  
19 state, or from any person not duly licensed under this act.  
20 Transporter does not include an interstate commerce carrier  
21 licensed by the interstate commerce commission to carry  
22 commodities in interstate commerce, or a licensee maintaining a  
23 warehouse or place of business outside of this state if the  
24 warehouse or place of business is licensed under this act.

25       **(v)** ~~-(u)-~~ "Unclassified acquirer" means a person, except a  
26 transportation company or a purchaser at retail from a retailer  
27 licensed under the general sales tax act, 1933 PA 167, MCL 205.51

1 to 205.78, who imports or acquires a tobacco product from a  
2 source other than a wholesaler or secondary wholesaler licensed  
3 under this act for use, sale, or distribution. Unclassified  
4 acquirer also means a person who receives cigars, noncigarette  
5 smoking tobacco, or smokeless tobacco directly from a  
6 manufacturer licensed under this act or from another source  
7 outside this state, which source is not licensed under this act.  
8 An unclassified acquirer does not include a wholesaler.

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

13       **(x)** ~~-(w)-~~ "Wholesale price" means the actual price paid for a  
14 tobacco product, including any tax, by a wholesaler or  
15 unclassified acquirer to a manufacturer, excluding any discounts  
16 or reductions.

17       **(y)** ~~-(x)-~~ "Wholesaler" means a person who purchases all or  
18 part of his or her tobacco products from a manufacturer, who  
19 sells 75% or more of those tobacco products to others for resale,  
20 and who maintains an established business where substantially all  
21 of the business is the sale of tobacco products or cigarettes and  
22 related merchandise at wholesale and where at all times a  
23 substantial stock of tobacco products and related merchandise is  
24 available to retailers for resale. Wholesaler includes a chain  
25 of stores retailing a tobacco product to the consumer if 75% of  
26 its stock of tobacco products is purchased directly from the  
27 manufacturer.

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

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

23 (3) A person who possesses, acquires, transports, or offers  
24 for sale contrary to this act 3,000 or more cigarettes, ~~or~~  
25 tobacco products other than cigarettes with an aggregate  
26 wholesale price of \$250.00 or more, **or 3,000 or more counterfeit**  
27 **cigarettes** is guilty of a felony, punishable by a fine of not

1 more than \$50,000.00 or imprisonment for not more than 5 years,  
2 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, ~~or~~ tobacco products other than cigarettes  
6 with an aggregate wholesale value of \$100.00 or more but less  
7 than \$250.00, **or 1,200 or more, but not more than 2,999,**  
8 **counterfeit cigarettes,** is guilty of a misdemeanor punishable by  
9 a fine of not more than \$5,000.00 or imprisonment of not more  
10 than 1 year, or both.

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

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

24 (7) A person who falsely makes, counterfeits, or alters a  
25 license, vending machine disc, or marker, or who purchases or  
26 receives a false or altered license, vending machine disc, or  
27 marker, or who assists in or causes to be made a false or altered

1 license, vending machine disc, or marker, or who possesses a  
2 device used to forge, alter, or counterfeit a license, vending  
3 machine disc, or marker is guilty of a felony punishable by a  
4 fine of not more than \$5,000.00 or imprisonment for not more than  
5 5 years, or both. A person who alters or falsifies records or  
6 markings required under this act is guilty of a felony punishable  
7 by a fine of not more than \$5,000.00 or imprisonment for not more  
8 than 5 years, or both.

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

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