

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 883

A bill to amend 1933 PA 167, entitled
"General sales tax act,"
by amending section 3 (MCL 205.53), as amended by 2004 PA 173.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. (1) Subject to ~~subsection (4)~~ **SUBSECTIONS (4) AND (5)**,
2 if a person engages or continues in a business for which a
3 privilege tax is imposed by this act, the person shall, under rules
4 the department prescribes, apply for and obtain from the department
5 a license to engage in and to conduct that business for the current
6 tax year. If the department considers it necessary in order to
7 secure the collection of the tax or if an applicant taxpayer has at
8 any time failed, refused, or neglected to pay any tax or interest
9 or penalty upon a tax or has attempted to evade the payment of any
10 tax or interest or penalty upon a tax by means of petition in

1 bankruptcy, or if the applicant taxpayer is a corporation and the
2 department has reason to believe that the management or control of
3 the corporation is under persons who have failed to pay any tax or
4 interest or penalty upon a tax under this act, the department shall
5 require a surety bond payable to the state of Michigan, upon which
6 the applicant or taxpayer shall be the obligor, in the sum of not
7 less than \$1,000.00 nor more than \$25,000.00. The surety bond shall
8 be conditioned that the applicant or taxpayer shall comply with
9 this act and shall promptly file true reports and pay the taxes,
10 interest, and penalties provided for or required by this act. The
11 bonds shall be approved as to the amount and surety by the
12 department. The applicant or taxpayer may in lieu of the surety
13 bond deposit a sum of money with the department in an amount the
14 department determines to guarantee the payment of the tax,
15 interest, and penalty and compliance with this act. However, the
16 amount determined by the department shall not exceed the estimated
17 tax payable during a 1-year period. The applicant or taxpayer shall
18 be licensed to engage in and conduct the business. The department
19 may require the applicant or taxpayer to furnish any additional
20 bond that it considers necessary within the limits in this section,
21 after giving a 30-day notice in writing. The license shall be
22 renewed annually if the taxpayer pays the tax accrued to this state
23 under this act. A person shall not engage or continue in a business
24 taxable under this act without securing a license. A person, firm,
25 or corporation engaged solely in industrial processing or
26 agricultural producing under this act and who makes no sales at
27 retail within the meaning of this act is not required to have a

1 license.

2 (2) The state treasurer or his or her designee, after notice
3 and hearing, may suspend the license of a person who violates or
4 fails to comply with this act or a rule promulgated by the
5 department under this act. The state treasurer or his or her
6 designee may restore licenses after suspension. If a person engages
7 in business taxable under this act while his or her license is in
8 suspension, the tax imposed under this act is imposed and payable
9 with respect to that business.

10 (3) A person who engages in any business in this state that is
11 taxable under this act and who fails to secure from the department
12 a license to engage in that business or who continues to engage in
13 business after the license has expired or was suspended by the
14 state treasurer or his or her designee is guilty of a misdemeanor
15 punishable by a fine of not more than \$1,000.00 or imprisonment for
16 not more than 1 year, or both.

17 (4) A seller registered under the streamlined sales and use
18 tax agreement who is not otherwise obligated to obtain a sales tax
19 license in this state is not required to obtain a sales tax license
20 because of that registration.

21 (5) A PERSON WHO ENGAGES IN ANY BUSINESS IN THIS STATE THAT IS
22 TAXABLE UNDER THIS ACT SHALL INDICATE ON THE APPLICATION OR RENEWAL
23 FOR A LICENSE ISSUED UNDER THIS SECTION IF THAT PERSON IS SUBJECT
24 TO THE TOBACCO PRODUCTS TAX ACT, 1993 PA 327, MCL 205.421 TO
25 205.436. THE STATE TREASURER OR HIS OR HER DESIGNEE MAY DENY AN
26 APPLICATION OR RENEWAL AND MAY SUSPEND A LICENSE ISSUED UNDER THIS
27 SECTION IF A PERSON FAILS TO COMPLY WITH THIS SUBSECTION OR IF A

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PERSON FRAUDULENTLY INDICATES THAT THAT PERSON IS NOT SUBJECT TO THE TOBACCO PRODUCTS TAX ACT, 1993 PA 327, MCL 205.421 TO 205.436. THE STATE TREASURER OR HIS OR HER DESIGNEE MAY RESTORE A LICENSE SUSPENDED UNDER THIS SUBSECTION IF ALL DELINQUENT TAXES, INTEREST, PENALTIES, AND FEES DUE UNDER THIS ACT OR THE TOBACCO PRODUCTS TAX ACT, 1993 PA 327, MCL 205.421 TO 205.436, ARE PAID IN FULL.

(6) THE STATE TREASURER OR HIS OR HER DESIGNEE MAY PROHIBIT THE SALE OF ANY PRODUCTS SUBJECT TO THE TAX LEVIED UNDER THIS ACT AT ANY LOCATION WHERE A PERSON KNOWINGLY VIOLATED SECTION 8(3) TO (7) AND (11) OF THE TOBACCO PRODUCTS TAX ACT, 1993 PA 327, MCL 205.428.

(7) [NOTWITHSTANDING SECTION 28(1)(F) OF 1941 PA 122, MCL 205.28, IF] A PERSON IS PROHIBITED FROM THE SALE OF PRODUCTS SUBJECT TO THE TAX LEVIED UNDER THIS ACT UNDER THIS [SECTION], THE DEPARTMENT SHALL IDENTIFY THE NAME, ADDRESS, AND LOCATION WHERE THE PERSON KNOWINGLY VIOLATED THE TOBACCO PRODUCTS TAX ACT, 1993 PA 327, MCL 205.421 TO 205.436, ON THE DEPARTMENT WEBSITE.

(8) A PERSON THAT KNOWINGLY VIOLATED SECTION 8(3) TO (7) AND (11) OF THE TOBACCO PRODUCTS TAX ACT, 1993 PA 327, MCL 205.428, [WHICH VIOLATION RESULTED IN A SEIZURE OF TOBACCO PRODUCTS UNDER SECTION 9 OF THE TOBACCO PRODUCTS LIABILITY ACT, 1993 PA 327, MCL 205.429,] IS SUBJECT TO THE FOLLOWING PENALTIES:

(A) FOR A FIRST OFFENSE, IF THE AMOUNT OF THE ILLEGAL TOBACCO PRODUCTS SEIZED IS LESS THAN [AN AGGREGATE RETAIL VALUE OF] \$5,000.00, A FINE OF \$400.00, OR, IF THE AMOUNT OF THE ILLEGAL TOBACCO PRODUCTS SEIZED IS \$5,000.00 OR MORE [IN AGGREGATE RETAIL VALUE], A FINE OF NOT LESS THAN \$1,000.00 AND SUSPENSION OF HIS OR HER SALES TAX LICENSE AT THAT LOCATION WHERE THE VIOLATION OCCURRED FOR NOT LESS THAN 3 DAYS.

(B) FOR A SECOND OFFENSE, IF THE AMOUNT OF THE ILLEGAL TOBACCO PRODUCTS SEIZED IS LESS THAN [AN AGGREGATE RETAIL VALUE OF] \$3,000.00, A FINE OF \$700.00, OR, IF

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1 THE AMOUNT OF THE ILLEGAL TOBACCO PRODUCTS SEIZED IS \$3,000.00 OR
2 MORE [IN AGGREGATE RETAIL VALUE], A FINE OF NOT LESS THAN \$1,000.00 AND
3 SUSPENSION OF HIS OR
4 HER SALES TAX LICENSE AT THAT LOCATION WHERE THE VIOLATION OCCURRED
5 FOR NOT LESS THAN 3 DAYS.

6 (C) FOR A THIRD OFFENSE AND EACH SUBSEQUENT OFFENSE, A FINE OF
7 NOT LESS THAN \$1,000.00 AND SUSPENSION OF HIS OR HER SALES TAX
8 LICENSE AT THAT LOCATION WHERE THE VIOLATION OCCURRED FOR NOT LESS
9 THAN 3 DAYS.

10 (9) IT IS AN AFFIRMATIVE DEFENSE IN AN ACTION AGAINST A
11 RETAILER OR A PERSON LICENSED UNDER THIS SECTION FOR A VIOLATION
12 COMMITTED BY AN EMPLOYEE OF THE RETAILER OR LICENSED PERSON THAT
13 THE RETAILER OR LICENSED PERSON HAD IN FORCE AT THE TIME OF THE
14 VIOLATION AND CONTINUES TO HAVE IN FORCE A WRITTEN POLICY
15 PROHIBITING SALE OF PROHIBITED PRODUCTS BY EMPLOYEES AND THAT THE
16 RETAILER OR LICENSED PERSON ENFORCED AND CONTINUES TO ENFORCE THAT
POLICY.