

# SENATE BILL No. 807

February 17, 2016, Introduced by Senator YOUNG and referred to the Committee on Finance.

A bill to amend 1993 PA 327, entitled  
"Tobacco products tax act,"  
by amending section 2 (MCL 205.422), as amended by 2012 PA 188.

## 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 of  
4 the tobacco being flavored, adulterated, or mixed with any other  
5 ingredient, which roll has a wrapper or cover made of paper or any  
6 other material. Cigarette does not include cigars.

7       (b) "Cigarette making machine" means any machine or other  
8 mechanical device which meets all of the following criteria:

9       (i) Is capable of being loaded with loose tobacco, cigarette  
10 tubes or cigarette papers, and any other components related to the

1 production of cigarettes, including, but not limited to, cigarette  
2 filters.

3 (ii) Is designed to automatically or mechanically produce,  
4 roll, fill, dispense, or otherwise generate cigarettes.

5 (iii) Is commercial-grade or otherwise designed or suitable  
6 for commercial use.

7 (iv) Is designed to be powered or otherwise operated by a main  
8 or primary power source other than human power.

9 (c) "Commissioner" means the state treasurer.

10 (d) "Counterfeit cigarette" means a cigarette in an individual  
11 package of cigarettes or other container with a false manufacturing  
12 label or a cigarette in an individual package of cigarettes or  
13 other container with a counterfeit stamp.

14 (e) "Counterfeit cigarette paper" means a cigarette paper with  
15 a false manufacturing label or that has not been printed,  
16 manufactured, or made by authority of the trademark owner.

17 (f) "Counterfeit stamp" means any stamp, label, or print,  
18 indicium, or character, that evidences, or purports to evidence,  
19 the payment of any tax levied under this act and that has not been  
20 printed, manufactured, or made by authority of the department as  
21 provided in this act and has not been issued, sold, or circulated  
22 by the department.

23 (g) "Department" means the department of treasury.

24 **(H) "E-CIGARETTE" MEANS AN ELECTRONIC ORAL DEVICE THAT MEETS**  
25 **ALL OF THE FOLLOWING:**

26 **(i) PROVIDES A VAPOR OF NICOTINE.**

27 **(ii) SIMULATES SMOKING THROUGH ITS USE OR THROUGH INHALATION**

1 OF THE VAPOR GENERATED BY THE DEVICE.

2 (iii) IS NOT APPROVED BY THE UNITED STATES FOOD AND DRUG  
3 ADMINISTRATION AS AN AID IN QUITTING THE USE OF TOBACCO OR A  
4 NICOTINE PRODUCT.

5 (iv) IS COMPOSED OF A HEATING ELEMENT, BATTERY, OR ELECTRONIC  
6 CIRCUIT.

7 (I) "E-CIGARETTE CARTRIDGE" MEANS A CONTAINER THAT MEETS ALL  
8 OF THE FOLLOWING:

9 (i) HAS OPENINGS ON EACH END.

10 (ii) SERVES AS A LIQUID RESERVOIR AND MOUTHPIECE.

11 (iii) ALLOWS THE PASSAGE OF LIQUID TO AN ATOMIZER AND VAPOR  
12 FROM THE ATOMIZER TO THE USER'S MOUTH.

13 (iv) CONTAINS LIQUID FOR PRODUCING VAPOR IN AN E-CIGARETTE.

14 (J) ~~(h)~~—"Financially sound" means a determination by the  
15 department that the wholesaler or unclassified acquirer is able to  
16 pay for its stamps in the ordinary course of business based on  
17 criteria including, but not limited to, all of the following:

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

19 (ii) Outstanding liabilities.

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

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

24 (K) ~~(i)~~—"Gray market cigarette" means any cigarette the  
25 package of which bears any statement, label, stamp, sticker, or  
26 notice indicating that the manufacturer did not intend the  
27 cigarettes to be sold, distributed, or used in the United States,

1 including, but not limited to, a label stating "For Export Only",  
2 "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording.

3 (I) ~~(j)~~—"Gray market cigarette paper" means any cigarette  
4 paper the package of which bears any statement, label, stamp,  
5 sticker, or notice indicating that the manufacturer did not intend  
6 the cigarette papers to be sold, distributed, or used in the United  
7 States, including, but not limited to, a label stating "For Export  
8 Only", "U.S. Tax Exempt", "For Use Outside U.S.", "For Use in  
9 \_\_\_\_\_ (another country) Only", or similar wording.

10 (M) ~~(k)~~—"Individual package" means an individual packet or  
11 pack used to contain or to convey cigarettes to the consumer.  
12 Individual package does not include cartons, cases, or shipping or  
13 storage containers that contain smaller packaging units of  
14 cigarettes.

15 (N) ~~(l)~~—"Licensee" means a person licensed under this act.

16 (O) ~~(m)~~—"Manufacturer" means any of the following:

17 (i) A person who manufactures or produces a tobacco product.

18 (ii) A person who operates or who permits any other person to  
19 operate a cigarette making machine in this state for the purpose of  
20 producing, filling, rolling, dispensing, or otherwise generating  
21 cigarettes. A person who is a manufacturer under this subparagraph  
22 shall constitute a nonparticipating manufacturer for purposes of  
23 sections 6c and 6d. A person who operates or otherwise uses a  
24 machine or other mechanical device, other than a cigarette making  
25 machine, to produce, roll, fill, dispense, or otherwise generate  
26 cigarettes shall not be considered a manufacturer as long as the  
27 cigarettes are produced or otherwise generated in that person's

1 dwelling and for that person's self-consumption. For purposes of  
2 this act, "self-consumption" means production for personal  
3 consumption or use and not for sale, resale, or any other profit-  
4 making endeavor.

5 (P) ~~(n)~~—"Noncigarette smoking tobacco" means tobacco sold in  
6 loose or bulk form that is intended for consumption by smoking and  
7 includes roll-your-own cigarette tobacco.

8 (Q) ~~(e)~~—"Person" means an individual, partnership, fiduciary,  
9 association, limited liability company, corporation, or other legal  
10 entity.

11 (R) ~~(p)~~—"Place of business" means a place where a tobacco  
12 product is sold or where a tobacco product is brought or kept for  
13 the purpose of sale or consumption, including a vessel, airplane,  
14 train, or vending machine.

15 (S) ~~(q)~~—"Retailer" means a person other than a transportation  
16 company who operates a place of business for the purpose of making  
17 sales of a tobacco product at retail.

18 (T) ~~(r)~~—"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 (U) ~~(s)~~—"Secondary wholesaler" means a person who sells a  
22 tobacco product for resale, who purchases a tobacco product from a  
23 wholesaler or unclassified acquirer licensed under this act, and  
24 who maintains an established place of business in this state where  
25 a substantial portion of the business is the sale of tobacco  
26 products and related merchandise at wholesale, and where at all  
27 times a substantial stock of tobacco products and related

1 merchandise is available to retailers for resale.

2 (V) ~~(t)~~—"Smokeless tobacco" means snuff, chewing tobacco, and  
 3 any other tobacco that is intended to be consumed by means other  
 4 than smoking. **BEGINNING OCTOBER 1, 2016, SMOKELESS TOBACCO INCLUDES**  
 5 **E-CIGARETTES AND E-CIGARETTE CARTRIDGES.**

6 (W) ~~(u)~~—"Stamp" means a distinctive character, indication, or  
 7 mark, as determined by the department, attached or affixed to an  
 8 individual package of cigarettes by mechanical device or other  
 9 means authorized by the department to indicate that the tax imposed  
 10 under this act has been paid.

11 (X) ~~(v)~~—"Stamping agent" means a wholesaler or unclassified  
 12 acquirer other than a manufacturer who is licensed and authorized  
 13 by the department to affix stamps to individual packages of  
 14 cigarettes on behalf of themselves and other wholesalers or  
 15 unclassified acquirers other than manufacturers.

16 (Y) ~~(w)~~—"Tobacco product" means cigarettes, cigars,  
 17 noncigarette smoking tobacco, or smokeless tobacco.

18 (Z) ~~(x)~~—"Transportation company" means a person operating, or  
 19 supplying to common carriers, cars, boats, or other vehicles for  
 20 the transportation or accommodation of passengers and engaged in  
 21 the sale of a tobacco product at retail.

22 (AA) ~~(y)~~—"Transporter" means a person importing or  
 23 transporting into this state, or transporting in this state, a  
 24 tobacco product obtained from a source located outside this state,  
 25 or from any person not duly licensed under this act. Transporter  
 26 does not include an interstate commerce carrier licensed by the  
 27 ~~interstate commerce commission~~ **INTERSTATE COMMERCE COMMISSION** to

1 carry commodities in interstate commerce, or a licensee maintaining  
2 a warehouse or place of business outside of this state if the  
3 warehouse or place of business is licensed under this act.

4 (BB) ~~(z)~~ "Unclassified acquirer" means a person, except a  
5 transportation company or a purchaser at retail from a retailer  
6 licensed under the general sales tax act, 1933 PA 167, MCL 205.51  
7 to 205.78, who imports or acquires a tobacco product from a source  
8 other than a wholesaler or secondary wholesaler licensed under this  
9 act for use, sale, or distribution. Unclassified acquirer also  
10 means a person who receives cigars, noncigarette smoking tobacco,  
11 or smokeless tobacco directly from a manufacturer licensed under  
12 this act or from another source outside this state, which source is  
13 not licensed under this act. An unclassified acquirer does not  
14 include a wholesaler.

15 (CC) ~~(aa)~~ "Vending machine operator" means a person who  
16 operates 1 or more vending machines for the sale of a tobacco  
17 product and who purchases a tobacco product from a manufacturer,  
18 licensed wholesaler, or secondary wholesaler.

19 (DD) ~~(bb)~~ "Wholesale price" means the actual price paid for a  
20 tobacco product, including any tax, by a wholesaler or unclassified  
21 acquirer to a manufacturer, excluding any discounts or reductions.

22 (EE) ~~(ee)~~ "Wholesaler" means a person who purchases all or  
23 part of his or her tobacco products from a manufacturer, who sells  
24 75% or more of those tobacco products to others for resale, and who  
25 maintains an established business where substantially all of the  
26 business is the sale of tobacco products or cigarettes and related  
27 merchandise at wholesale and where at all times a substantial stock

1 of tobacco products and related merchandise is available to  
2 retailers for resale. Wholesaler includes a chain of stores  
3 retailing a tobacco product to the consumer if 75% of its stock of  
4 tobacco products is purchased directly from the manufacturer.