

# SENATE BILL No. 809

October 14, 1999, Introduced by Senator EMMONS and referred to the Committee on Finance.

A bill to amend 1941 PA 122, entitled

"An act to establish a revenue division of the department of treasury; to prescribe its powers and duties as the revenue collection agency of the state; to prescribe certain powers and duties of the state treasurer; to regulate the importation, stamping, and disposition of certain tobacco products; to create the position and to define the powers and duties of the state commissioner of revenue; to provide for the transfer of powers and duties now vested in certain other state boards, commissions, departments and offices; to prescribe certain duties of and require certain reports from the department of treasury; to provide procedures for the payment, administration, audit, assessment, levy of interests or penalties on, and appeals of taxes and tax liability; to prescribe its powers and duties if an agreement to act as agent for a city to administer, collect, and enforce the city income tax act on behalf of a city is entered into with any city; to provide an appropriation; to abolish the state board of tax administration; and to declare the effect of this act,"

by amending the title and section 14 (MCL 205.14), the title as amended and section 14 as added by 1998 PA 368.

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

## 1 TITLE

2 An act to establish a revenue division of the department of  
 3 treasury; to prescribe its powers and duties as the revenue col-  
 4 lection agency of the state; to prescribe certain powers and  
 5 duties of the state treasurer; to regulate the importation,  
 6 POSSESSION, stamping, and disposition of certain tobacco pro-  
 7 ducts; to create the position and to define the powers and duties  
 8 of the state commissioner of revenue; to provide for the transfer  
 9 of powers and duties now vested in certain other state boards,  
 10 commissions, departments and offices; to prescribe certain duties  
 11 of and require certain reports from the department of treasury;  
 12 to provide procedures for the payment, administration, audit,  
 13 assessment, levy of interests or penalties on, and appeals of  
 14 taxes and tax liability; to prescribe its powers and duties if an  
 15 agreement to act as agent for a city to administer, collect, and  
 16 enforce the city income tax act on behalf of a city is entered  
 17 into with any city; to provide an appropriation; to abolish the  
 18 state board of tax administration; TO PRESCRIBE PENALTIES AND  
 19 PROVIDE REMEDIES; and to declare the effect of this act.

20 Sec. 14. (1) A person shall not ACQUIRE, POSSESS, SELL OR  
 21 DISTRIBUTE, OR import into this state a tobacco product that vio-  
 22 lates any federal ~~requirement for the placement of labels,~~  
 23 ~~warnings,~~ LAW OR REGULATION, INCLUDING, BUT NOT LIMITED TO,  
 24 REQUIREMENTS CONCERNING HEALTH WARNINGS or ~~any~~ other informa-  
 25 tion ~~, including health hazards, required to be placed~~ on the  
 26 container or individual package OF TOBACCO PRODUCTS.

1 (2) A PERSON SHALL NOT ACQUIRE, POSSESS, SELL OR DISTRIBUTE,  
2 OR IMPORT INTO THIS STATE A TOBACCO PRODUCT OR CONTAINER OF  
3 TOBACCO PRODUCTS IF 1 OR MORE OF THE FOLLOWING APPLY:

4 (A) THE TOBACCO PRODUCT OR CONTAINER OF TOBACCO PRODUCTS  
5 BEARS ANY STATEMENT, LABEL, STAMP, STICKER, OR NOTICE INDICATING  
6 THAT THE MANUFACTURER INTENDED THAT THE TOBACCO PRODUCT BE SOLD  
7 OR DISTRIBUTED OUTSIDE THE UNITED STATES, INCLUDING, BUT NOT  
8 LIMITED TO, 1 OR MORE OF THE FOLLOWING:

9 (i) A NON-UNITED STATES HEALTH WARNING.

10 (ii) LABELS OR MARKINGS STATING "FOR EXPORT ONLY", "U.S. TAX  
11 EXEMPT", "FOR USE OUTSIDE U.S.", OR SIMILAR WORDING.

12 (B) THE TOBACCO PRODUCT, CONTAINER OF TOBACCO PRODUCTS, OR  
13 ANY STATEMENT, LABEL, STAMP, STICKER, OR NOTICE ON A TOBACCO PRO-  
14 DUCT OR CONTAINER OF TOBACCO PRODUCTS HAS BEEN ALTERED FROM THE  
15 MANUFACTURER'S ORIGINAL PACKAGING TO CONCEAL THE FACT THAT THE  
16 MANUFACTURER INTENDED THAT THE TOBACCO PRODUCT BE SOLD OR DIS-  
17 TRIBUTED OUTSIDE THE UNITED STATES.

18 (C) THE TOBACCO PRODUCT OR ANY STATEMENT, LABEL, STAMP,  
19 STICKER, OR NOTICE ON A TOBACCO PRODUCT OR CONTAINER OF TOBACCO  
20 PRODUCTS HAS BEEN REMOVED FROM THE MANUFACTURER'S ORIGINAL PACK-  
21 AGING TO CONCEAL THE FACT THAT THE MANUFACTURER INTENDED THAT THE  
22 TOBACCO PRODUCT BE SOLD OR DISTRIBUTED OUTSIDE THE UNITED  
23 STATES.

24 (D) THE PERSON KNEW OR SHOULD HAVE KNOWN THAT THE MANUFAC-  
25 TURER INTENDED THE TOBACCO PRODUCT TO BE SOLD OR DISTRIBUTED OUT-  
26 SIDE THE UNITED STATES.

1 (E) THE TOBACCO PRODUCT WAS IMPORTED INTO THE UNITED STATES  
2 AFTER JANUARY 1, 2000 IN VIOLATION OF 26 U.S.C. 5754.

3 (3) ~~(2)~~ A person shall not place a stamp or a counterfeit  
4 stamp on a tobacco product unless that package of tobacco pro-  
5 ducts complies with SUBSECTION (2) AND all ~~federal tax laws,~~  
6 ~~federal trademark and copyright laws, and all~~ federal laws  
7 ~~regarding the placement of labels, warnings, or any other infor-~~  
8 ~~mation upon a package of tobacco products~~ AND REGULATIONS.

9 (4) ~~(3)~~ A person that acquires, possesses, sells, or offers  
10 for sale packages of tobacco products stamped or marked in viola-  
11 tion of this section is subject to the same penalties as  
12 described in section 9 of the tobacco products tax act, 1993  
13 PA 327, MCL 205.429. A person that acquires, possesses, sells,  
14 ~~or~~ offers for sale, IMPORTS, OR DISTRIBUTES packages of tobacco  
15 products ~~stamped or marked~~ WHO KNOWS OR HAS REASON TO KNOW THAT  
16 THE TOBACCO PRODUCT IS POSSESSED, SOLD, OFFERED FOR SALE,  
17 IMPORTED, OR DISTRIBUTED in violation of ~~this section~~  
18 SUBSECTION (1) OR (2) is subject to criminal charges as provided  
19 in SECTION 8 OF the tobacco products tax act, 1993 PA 327,  
20 ~~MCL 205.421 to 205.436~~ MCL 205.428.

21 (5) ~~(4)~~ A TOBACCO PRODUCT OR CONTAINER OF TOBACCO PRODUCTS  
22 THAT DOES NOT COMPLY WITH SUBSECTION (1), (2), OR (3) AND BOOKS  
23 AND RECORDS ASSOCIATED WITH THOSE TOBACCO PRODUCTS ARE SUBJECT TO  
24 SEIZURE AND CONFISCATION BY THE DEPARTMENT, A POLICE OFFICER, OR  
25 DESIGNATED AGENT UNDER THE SAME TERMS AND CONDITIONS AS PROVIDED  
26 IN SECTION 9 OF THE TOBACCO PRODUCTS TAX ACT, 1993 PA 327, MCL  
27 205.429. The department may revoke OR SUSPEND the license of a

1 licensee under the tobacco products tax act, 1993 PA 327,  
2 MCL 205.421 to 205.436, for a violation of this section.

3       (6) ~~—(5)—~~ The department is authorized to obtain and  
4 exchange information with the United States customs service, ANY  
5 OTHER FEDERAL LAW ENFORCEMENT AGENCY, OR ANY STATE LAW ENFORCE-  
6 MENT AGENCY for the purpose of enforcing this section.

7       (7) ~~—(6)—~~ The department may assess tax due, penalty, and  
8 interest on tobacco products acquired, possessed, sold, or  
9 offered for sale in violation of this section.

10       (8) ANY PERSON WHO IS INJURED BY ANOTHER PERSON WHO VIOLATES  
11 THIS SECTION MAY BRING AN ACTION IN CIRCUIT COURT FOR DAMAGES OR  
12 EQUITABLE OR INJUNCTIVE RELIEF INCLUDING REASONABLE ATTORNEY  
13 FEES. IN AWARDING DAMAGES, THE COURT MAY AWARD UP TO 3 TIMES THE  
14 ACTUAL DAMAGES IF THE VIOLATION OF THIS SECTION IS INTENTIONAL.  
15 A MANUFACTURER OF TOBACCO PRODUCTS WHOSE TOBACCO PRODUCTS ARE  
16 ACQUIRED, POSSESSED, SOLD, DISTRIBUTED, OR IMPORTED INTO THIS  
17 STATE IN VIOLATION OF SUBSECTION (1) OR (2) IS PRESUMED TO BE  
18 INJURED UNDER THIS SUBSECTION.

19       (9) ~~—(7)—~~ As used in this section:

20       (A) "LICENSEE" MEANS A PERSON LICENSED UNDER THE TOBACCO  
21 PRODUCTS TAX ACT, 1993 PA 327, MCL 205.421 TO 205.436.

22       (B) ~~—(a)—~~ "Stamp" or "counterfeit stamp" means those terms  
23 as defined in section 2 of the tobacco products tax act, 1993  
24 PA 327, MCL 205.422.

25       (C) ~~—(b)—~~ "Tobacco product" means that term as defined in  
26 SECTION 2 OF the tobacco products tax act, 1993 PA 327,  
27 MCL 205.422.