

# HOUSE BILL No. 5052

July 13, 2005, Introduced by Reps. Hoogendyk, Garfield, Vagnozzi, Virgil Smith, Gosselin, Palmer, Newell, Marleau, LaJoy, Jones, Drolet, Bieda and Meisner and referred to the Committee on Judiciary.

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 2004 PA 474.

**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) "Commissioner" means the state treasurer.

8           (c) "Counterfeit cigarette" means a cigarette in an individual

1 package of cigarettes or other container with a false manufacturing  
2 label or a cigarette in an individual package of cigarettes or  
3 other container with a counterfeit stamp.

4 **(D) "COUNTERFEIT CIGARETTE PAPER" MEANS A CIGARETTE PAPER WITH**  
5 **A FALSE MANUFACTURING LABEL OR THAT HAS NOT BEEN PRINTED,**  
6 **MANUFACTURED, OR MADE BY AUTHORITY OF THE TRADEMARK OWNER.**

7 **(E)** ~~(d)~~ "Counterfeit stamp" means any stamp, label, or  
8 print, indicium, or character, that evidences, or purports to  
9 evidence, the payment of any tax levied under this act and that has  
10 not been printed, manufactured, or made by authority of the  
11 department as provided in this act and has not been issued, sold,  
12 or circulated by the department.

13 **(F)** ~~(e)~~ "Department" means the department of treasury.

14 **(G)** ~~(f)~~ "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 not  
21 limited to, balance sheets and income statements.

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

24 **(H) "GRAY MARKET CIGARETTE" MEANS ANY CIGARETTE THE PACKAGE OF**  
25 **WHICH BEARS ANY STATEMENT, LABEL, STAMP, STICKER, OR NOTICE**  
26 **INDICATING THAT THE MANUFACTURER DID NOT INTEND THE CIGARETTES TO**  
27 **BE SOLD, DISTRIBUTED, OR USED IN THE UNITED STATES, INCLUDING, BUT**

1 NOT LIMITED TO, A LABEL STATING "FOR EXPORT ONLY", "U.S. TAX  
2 EXEMPT", "FOR USE OUTSIDE U.S.", OR SIMILAR WORDING.

3 (I) "GRAY MARKET CIGARETTE PAPER" MEANS ANY CIGARETTE PAPER  
4 THE PACKAGE OF WHICH BEARS ANY STATEMENT, LABEL, STAMP, STICKER, OR  
5 NOTICE INDICATING THAT THE MANUFACTURER DID NOT INTEND THE  
6 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 (J) ~~(g)~~ "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 (K) ~~(h)~~ "Licensee" means a person licensed under this act.

16 (L) ~~(i)~~ "Manufacturer" means a person who manufactures or  
17 produces a tobacco product.

18 (M) ~~(j)~~ "Noncigarette smoking tobacco" means tobacco sold in  
19 loose or bulk form that is intended for consumption by smoking and  
20 includes roll-your-own cigarette tobacco.

21 (N) ~~(k)~~ "Person" means an individual, partnership,  
22 fiduciary, association, limited liability company, corporation, or  
23 other legal entity.

24 (O) ~~(l)~~ "Place of business" means a place where a tobacco  
25 product is sold or where a tobacco product is brought or kept for  
26 the purpose of sale or consumption, including a vessel, airplane,  
27 train, or vending machine.

1           (P) ~~(m)~~ "Retailer" means a person other than a  
2 transportation company who operates a place of business for the  
3 purpose of making sales of a tobacco product at retail.

4           (Q) ~~(n)~~ "Sale" means a transaction by which the ownership of  
5 tangible personal property is transferred for consideration and  
6 applies also to use, gifts, exchanges, barter, and theft.

7           (R) ~~(o)~~ "Secondary wholesaler" means a person who sells a  
8 tobacco product for resale, who purchases a tobacco product from a  
9 wholesaler or unclassified acquirer licensed under this act, and  
10 who maintains an established place of business in this state where  
11 a substantial portion of the business is the sale of tobacco  
12 products and related merchandise at wholesale, and where at all  
13 times a substantial stock of tobacco products and related  
14 merchandise is available to retailers for resale.

15           (S) ~~(p)~~ "Smokeless tobacco" means snuff, chewing tobacco,  
16 and any other tobacco that is intended to be consumed by means  
17 other than smoking.

18           (T) ~~(q)~~ "Stamp" means a distinctive character, indication,  
19 or mark, as determined by the department, attached or affixed to an  
20 individual package of cigarettes by mechanical device or other  
21 means authorized by the department to indicate that the tax imposed  
22 under this act has been paid.

23           (U) ~~(r)~~ "Stamping agent" means a wholesaler or unclassified  
24 acquirer other than a manufacturer who is licensed and authorized  
25 by the department to affix stamps to individual packages of  
26 cigarettes on behalf of themselves and other wholesalers or  
27 unclassified acquirers other than manufacturers.

1           (V) ~~-(s)-~~ "Tobacco product" means cigarettes, cigars,  
2 noncigarette smoking tobacco, or smokeless tobacco.

3           (W) ~~-(t)-~~ "Transportation company" means a person operating,  
4 or supplying to common carriers, cars, boats, or other vehicles for  
5 the transportation or accommodation of passengers and engaged in  
6 the sale of a tobacco product at retail.

7           (X) ~~-(u)-~~ "Transporter" means a person importing or  
8 transporting into this state, or transporting in this state, a  
9 tobacco product obtained from a source located outside this state,  
10 or from any person not duly licensed under this act. Transporter  
11 does not include an interstate commerce carrier licensed by the  
12 interstate commerce commission to carry commodities in interstate  
13 commerce, or a licensee maintaining a warehouse or place of  
14 business outside of this state if the warehouse or place of  
15 business is licensed under this act.

16           (Y) ~~-(v)-~~ "Unclassified acquirer" means a person, except a  
17 transportation company or a purchaser at retail from a retailer  
18 licensed under the general sales tax act, 1933 PA 167, MCL 205.51  
19 to 205.78, who imports or acquires a tobacco product from a source  
20 other than a wholesaler or secondary wholesaler licensed under this  
21 act for use, sale, or distribution. Unclassified acquirer also  
22 means a person who receives cigars, noncigarette smoking tobacco,  
23 or smokeless tobacco directly from a manufacturer licensed under  
24 this act or from another source outside this state, which source is  
25 not licensed under this act. An unclassified acquirer does not  
26 include a wholesaler.

27           (Z) ~~-(w)-~~ "Vending machine operator" means a person who

1 operates 1 or more vending machines for the sale of a tobacco  
2 product and who purchases a tobacco product from a manufacturer,  
3 licensed wholesaler, or secondary wholesaler.

4 (AA) ~~(x)~~ "Wholesale price" means the actual price paid for a  
5 tobacco product, including any tax, by a wholesaler or unclassified  
6 acquirer to a manufacturer, excluding any discounts or reductions.

7 (BB) ~~(y)~~ "Wholesaler" means a person who purchases all or  
8 part of his or her tobacco products from a manufacturer, who sells  
9 75% or more of those tobacco products to others for resale, and who  
10 maintains an established business where substantially all of the  
11 business is the sale of tobacco products or cigarettes and related  
12 merchandise at wholesale and where at all times a substantial stock  
13 of tobacco products and related merchandise is available to  
14 retailers for resale. Wholesaler includes a chain of stores  
15 retailing a tobacco product to the consumer if 75% of its stock of  
16 tobacco products is purchased directly from the manufacturer.

17 Sec. 8. (1) A person, other than a licensee, who is in control  
18 or in possession of a tobacco product contrary to this act, who  
19 after August 31, 1998 is in control or in possession of an  
20 individual package of cigarettes without a stamp in violation of  
21 this act, or who offers to sell or does sell a tobacco product to  
22 another for purposes of resale without being licensed to do so  
23 under this act, shall be personally liable for the tax imposed by  
24 this act, plus a penalty of 500% of the amount of tax due under  
25 this act.

26 (2) The department may permit a representative of a licensed  
27 manufacturer of tobacco products whose duties require travel in

1 this state to transport up to 138,000 cigarettes, of which not more  
2 than 36,000 cigarettes may bear no tax indicia or the tax indicia  
3 of another state. All 138,000 cigarettes must bear the stamp  
4 approved by the department or the tax indicia of another state, if  
5 any. The total value of tobacco products, excluding cigarettes,  
6 carried by a representative shall not exceed a wholesale value of  
7 \$5,000.00. A manufacturer shall notify the department of the  
8 manufacturer's representatives that it currently employs who carry  
9 cigarettes or tobacco products other than cigarettes in performing  
10 work duties in this state. The manufacturer shall maintain a record  
11 of each transaction by the manufacturer's representative for a  
12 period of 4 years immediately following the transaction and shall  
13 produce the records upon request of the state treasurer or the  
14 state treasurer's authorized agent. Each record shall identify the  
15 quantity and identity of the tobacco products, detail whether  
16 exchanged, received, removed, or otherwise disposed of and the  
17 identity of the retailer, wholesaler, secondary wholesaler, vending  
18 machine operator, or unclassified acquirer involved. The  
19 representative of the manufacturer shall provide a copy of the  
20 record to the retailer, wholesaler, secondary wholesaler, vending  
21 machine operator, or unclassified acquirer at the time of the  
22 exchange or disposal. The retailer, wholesaler, secondary  
23 wholesaler, vending machine operator, or unclassified acquirer  
24 shall retain the copy of the record in the same place and for the  
25 same time period as other records required by this section. A  
26 representative shall not exchange, or otherwise dispose of, within  
27 this state tobacco products bearing the tax indicia of another

1 state or receive tobacco products bearing the tax indicia of  
2 another state from retailers located within this state. A  
3 representative who sells, exchanges, or otherwise disposes of  
4 cigarettes or tobacco products other than cigarettes that do not  
5 bear the stamp or other marking required by the department or  
6 sells, exchanges, or otherwise disposes of cigarettes or tobacco  
7 products other than cigarettes bearing the tax indicia of another  
8 state is guilty of a felony, punishable by a fine of not more than  
9 \$5,000.00 or imprisonment for not more than 5 years, or both.

10 (3) A person who possesses, acquires, transports, or offers  
11 for sale contrary to this act 3,000 or more cigarettes, tobacco  
12 products other than cigarettes with an aggregate wholesale price of  
13 \$250.00 or more, ~~or~~ 3,000 or more counterfeit cigarettes,  
14 **COUNTERFEIT CIGARETTE PAPER, GRAY MARKET CIGARETTES, OR GRAY MARKET**  
15 **CIGARETTE PAPER** is guilty of a felony, punishable by a fine of not  
16 more than \$50,000.00 or imprisonment for not more than 5 years, or  
17 both.

18 (4) A person who possesses, acquires, transports, or offers  
19 for sale contrary to this act 1,200 or more, but not more than  
20 2,999, cigarettes, tobacco products other than cigarettes with an  
21 aggregate wholesale value of \$100.00 or more but less than \$250.00,  
22 ~~or~~ 1,200 or more, but not more than 2,999, counterfeit cigarettes,  
23 **COUNTERFEIT CIGARETTE PAPER, GRAY MARKET CIGARETTES, OR GRAY MARKET**  
24 **CIGARETTE PAPER** is guilty of a misdemeanor punishable by a fine of  
25 not more than \$5,000.00 or imprisonment of not more than 1 year, or  
26 both.

27 (5) A person who violates a provision of this act for which a



1 criminal punishment is not otherwise provided is guilty of a  
2 misdemeanor, punishable by a fine of not more than \$1,000.00 or 5  
3 times the retail value of the tobacco products involved, whichever  
4 is greater, or imprisonment for not more than 1 year, or both.

5 (6) A person who manufactures, possesses, or uses a stamp or  
6 manufactures, possesses, or uses a counterfeit stamp or writing or  
7 device intended to replicate a stamp without authorization of the  
8 department, a licensee who purchases or obtains a stamp from any  
9 person other than the department, or who falsifies a manufacturer's  
10 label on cigarettes, ~~or~~ counterfeit cigarettes, **OR COUNTERFEIT**  
11 **CIGARETTE PAPERS** is guilty of a felony and shall be punished by  
12 imprisonment for not less than 1 year or more than 10 years and may  
13 be punished by a fine of not more than \$50,000.00.

14 (7) A person who falsely makes, counterfeits, or alters a  
15 license, vending machine disc, or marker, or who purchases or  
16 receives a false or altered license, vending machine disc, or  
17 marker, or who assists in or causes to be made a false or altered  
18 license, vending machine disc, or marker, or who possesses a device  
19 used to forge, alter, or counterfeit a license, vending machine  
20 disc, or marker is guilty of a felony punishable by a fine of not  
21 more than \$5,000.00 or imprisonment for not more than 5 years, or  
22 both. A person who alters or falsifies records or markings required  
23 under this act is guilty of a felony punishable by a fine of not  
24 more than \$5,000.00 or imprisonment for not more than 5 years, or  
25 both.

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

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