

SUBSTITUTE FOR
SENATE BILL NO. 1620

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending section 9 (MCL 205.429), as amended by 2004 PA 474.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 9. (1) A tobacco product **THAT IS** held, owned, possessed,
2 transported, or in control of a person in violation of this act **OR**
3 **THAT IS NOT MARKED AS REQUIRED IN SECTION 11 OF THE FIRE SAFETY**
4 **STANDARD AND FIREFIGHTER PROTECTION ACT**, and a vending machine,
5 vehicle, and other tangible personal property containing a tobacco
6 product in violation of this act **OR THAT IS NOT MARKED AS REQUIRED**
7 **IN SECTION 11 OF THE FIRE SAFETY STANDARD AND FIREFIGHTER**
8 **PROTECTION ACT** and any related books and records are contraband and

1 may be seized and confiscated by the department as provided in this
2 section.

3 (2) If an authorized inspector of the department or a police
4 officer has reasonable cause to believe and does believe that a
5 tobacco product is being acquired, possessed, transported, kept,
6 sold, or offered for sale in violation of this act for which the
7 penalty is a felony, the inspector or police officer may
8 investigate or search the vehicle of transportation in which the
9 tobacco product is believed to be located. If a tobacco product is
10 found in a vehicle searched under this subsection or in a place of
11 business inspected under this act, the tobacco product, vending
12 machine, vehicle, other than a vehicle owned or operated by a
13 transportation company otherwise transporting tobacco products in
14 compliance with this act, or other tangible personal property
15 containing those tobacco products and any books and records in
16 possession of the person in control or possession of the tobacco
17 product may be seized by the inspector or police officer and are
18 subject to forfeiture as contraband as provided in this section.

19 (3) As soon as possible, but not more than 5 business days
20 after seizure of any alleged contraband, the person making the
21 seizure shall deliver personally or by registered mail to the last
22 known address of the person from whom the seizure was made, if
23 known, an inventory statement of the property seized. **IF THE**
24 **CONTRABAND IS CIGARETTES SEIZED BECAUSE OF AN ALLEGATION THAT THE**
25 **CIGARETTES ARE NOT MARKED AS REQUIRED IN SECTION 11 OF THE FIRE**
26 **SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT, THE PERSON MAKING**
27 **THE SEIZURE SHALL ALSO PROVIDE NOTICE OF THE SEIZURE AND AN**

1 **INVENTORY OF THE CIGARETTES SEIZED TO THE MANUFACTURER THAT**
2 **CERTIFIED THAT BRAND OF CIGARETTES UNDER SECTION 7 OF THE FIRE**
3 **SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT, IF ANY.** A copy of
4 the inventory statement shall also be filed with the state
5 treasurer. The inventory statement shall also contain a notice to
6 the effect that unless demand for hearing as provided in this
7 section is made within 10 business days, the designated property is
8 forfeited to the state. If the person from whom the seizure was
9 made is not known, the person making the seizure shall cause a copy
10 of the inventory statement, together with the notice provided for
11 in this subsection, to be published at least 3 times in a newspaper
12 of general circulation in the county where the seizure was made.
13 Within 10 business days after the date of service of the inventory
14 statement, or in the case of publication, within 10 business days
15 after the date of last publication, the person from whom the
16 property was seized or any person claiming an interest in the
17 property may by registered mail, facsimile transmission, or
18 personal service file with the state treasurer a demand for a
19 hearing before the state treasurer or a person designated by the
20 state treasurer for a determination as to whether the property was
21 lawfully subject to seizure and forfeiture. The person shall verify
22 a request for hearing filed by facsimile transmission by also
23 providing a copy of the original request for hearing by registered
24 mail or personal service. The person or persons are entitled to
25 appear before the department, to be represented by counsel, and to
26 present testimony and argument. Upon receipt of a request for
27 hearing, the department shall hold the hearing within 15 business

1 days. The hearing is not a contested case proceeding and is not
2 subject to the administrative procedures act of 1969, 1969 PA 306,
3 MCL 24.201 to 24.328. After the hearing, the department shall
4 render its decision in writing within 10 business days of the
5 hearing and, by order, shall either declare the seized property
6 subject to seizure and forfeiture, or declare the property
7 returnable in whole or in part to the person entitled to
8 possession. If, within 10 business days after the date of service
9 of the inventory statement, the person from whom the property was
10 seized or any person claiming an interest in the property does not
11 file with the state treasurer a demand for a hearing before the
12 department, the property seized shall be considered forfeited to
13 the state by operation of law and may be disposed of by the
14 department as provided in this section. If, after a hearing before
15 the state treasurer or person designated by the state treasurer,
16 the department determines that the property is lawfully subject to
17 seizure and forfeiture and the person from whom the property was
18 seized or any persons claiming an interest in the property do not
19 take an appeal to the circuit court of the county in which the
20 seizure was made within the time prescribed in this section, the
21 property seized shall be considered forfeited to the state by
22 operation of law and may be disposed of by the department as
23 provided in this section.

24 (4) If a person is aggrieved by the decision of the
25 department, that person may appeal to the circuit court of the
26 county where the seizure was made to obtain a judicial
27 determination of the lawfulness of the seizure and forfeiture. The

1 action shall be commenced within 20 days after notice of the
2 department's determination is sent to the person or persons
3 claiming an interest in the seized property. The court shall hear
4 the action and determine the issues of fact and law involved in
5 accordance with rules of practice and procedure as in other in rem
6 proceedings. If a judicial determination of the lawfulness of the
7 seizure and forfeiture cannot be made before deterioration of any
8 of the property seized, the court shall order the destruction or
9 sale of the property with public notice as determined by the court
10 and require the proceeds to be deposited with the court until the
11 lawfulness of the seizure and forfeiture is finally adjudicated.

12 (5) The department shall destroy all cigarettes forfeited to
13 this state. **HOWEVER, BEFORE DESTROYING CIGARETTES FORFEITED BECAUSE**
14 **THE CIGARETTES WERE NOT MARKED AS REQUIRED IN SECTION 11 OF THE**
15 **FIRE SAFETY STANDARD AND FIREFIGHTER PROTECTION ACT, THE DEPARTMENT**
16 **SHALL PROVIDE A MANUFACTURER THAT CERTIFIED THAT BRAND OF**
17 **CIGARETTES UNDER SECTION 7 OF THE FIRE SAFETY STANDARD AND**
18 **FIREFIGHTER PROTECTION ACT AN OPPORTUNITY TO INSPECT THE**
19 **CIGARETTES.**

20 (6) The department may sell all tobacco products, except
21 cigarettes, and other property forfeited pursuant to this section
22 at public sale. Public notice of the sale shall be given at least 5
23 days before the day of sale. The department may pay an amount not
24 to exceed 25% of the proceeds of the sale to the local governmental
25 unit whose law enforcement agency performed the seizure. The
26 balance of the proceeds derived from the sale by the department
27 shall be credited to the general fund of the state.

1 (7) ~~(6)~~—The seizure and destruction or sale of a tobacco
2 product or other property under this section does not relieve a
3 person from a fine, imprisonment, or other penalty for violation of
4 this act **OR THE FIRE SAFETY STANDARD AND FIREFIGHTER PROTECTION**
5 **ACT**.

6 (8) ~~(7)~~—A person who is not an employee or officer of this
7 state or a political subdivision of this state who furnishes to the
8 department or to any law enforcement agency original information
9 concerning a violation of this act **OR THE FIRE SAFETY STANDARD AND**
10 **FIREFIGHTER PROTECTION ACT**, which information results in the
11 collection and recovery of any tax or penalty or leads to the
12 forfeiture of any cigarettes, or other property, may be awarded and
13 paid by the state treasurer, compensation of not more than 10% of
14 the net amount received from the sale of any forfeited cigarettes
15 or other property, but not to exceed \$5,000.00 which shall be paid
16 out of the receipts from the sale of the property. If any amount is
17 ~~issued~~**PAID** to the local governmental unit under subsection ~~(5)~~
18 ~~(6)~~, the amount awarded under this subsection to a person who
19 provides original information that results in a seizure of
20 cigarettes or other property by a local law enforcement agency
21 shall be paid from that amount ~~issued~~**PAID** under subsection ~~(5)~~
22 ~~(6)~~. If in the opinion of the attorney general and the director of
23 the department of state police it is deemed necessary to preserve
24 the identity of the person furnishing the information, the attorney
25 general and the director of the department of state police shall
26 file with the state treasurer an affidavit setting forth that
27 necessity and a warrant may be issued jointly to the attorney

1 general and the director of the department of state police. Upon
2 payment to the person furnishing that information, the attorney
3 general and the director of the department of state police shall
4 file with the state treasurer an affidavit that the money has been
5 by them paid to the person entitled to the money under this
6 section.

7 (9) ~~(8)~~—Beginning September 1, 1998, if a retailer possesses
8 or sells cigarettes on which the tax imposed under this act has not
9 been paid or accrued to a wholesaler, secondary wholesaler, or
10 unclassified acquirer licensed under this act, the retailer shall
11 be prohibited from purchasing, possessing, or selling any
12 cigarettes or other tobacco products as follows:

13 (a) For a first violation, for a period of not more than 6
14 months.

15 (b) For a second violation within a period of 5 years, for a
16 period of at least 6 months and not more than 36 months.

17 (c) For a third or subsequent violation within a period of 5
18 years, for a period of at least 1 year and not more than 5 years.

19 (10) ~~(9)~~—The prohibition described in subsection ~~(8)~~ shall be
20 (9) IS effective upon service by certified mail or personal service
21 on the retailer of notice issued by the department ordering the
22 retailer to cease all sales and purchases of cigarettes and other
23 tobacco products. Upon receipt of this notice, the retailer may
24 return any tobacco products in the possession of the retailer upon
25 which the tax imposed by this act has been paid or accrued to a
26 wholesaler, secondary wholesaler, or unclassified acquirer licensed
27 under this act. The department shall notify all licensed

1 wholesalers, manufacturers, secondary wholesalers, vending machine
2 operators, and unclassified acquirers of any retailer who has been
3 prohibited from purchasing cigarettes or other tobacco products and
4 the duration of the prohibition. A wholesaler, secondary
5 wholesaler, or unclassified acquirer shall not sell cigarettes or
6 other tobacco products to a retailer after receipt of notice from
7 the department that the retailer is prohibited from purchasing
8 tobacco products. Any cigarettes or other tobacco products found on
9 the premises of the retailer during the period of prohibition shall
10 be considered contraband and subject to seizure under this section,
11 and shall constitute an additional improper possession under this
12 subsection. The retailer may contest the order prohibiting
13 purchase, possession, or sale of tobacco products in accordance
14 with the appeal procedures and time limits provided in subsection
15 (3) of this section. After completion of the appeals provided or
16 upon expiration of the period to request such appeal, the
17 department shall issue a final order and make service upon the
18 retailer of an order to cease all purchases, possession, and sale
19 of all cigarettes and other tobacco products for a specified period
20 as appropriate. This order does not relieve the retailer from
21 seizure and sale of a tobacco product or other property under this
22 section, or relieve the retailer from a fine, imprisonment, or
23 other penalty for violation of this act.

24 Enacting section 1. This amendatory act takes effect January
25 1, 2010.

26 Enacting section 2. This amendatory act does not take effect
27 unless Senate Bill No. 1621 of the 94th Legislature is enacted into

1 law.