

# HOUSE BILL No. 5726

December 18, 2009, Introduced by Reps. Geiss, Valentine, Tlaib, Melton, Womack, Constan, Liss and Cushingberry and referred to the Committee on Judiciary.

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 held, owned, possessed,  
2 transported, or in control of a person in violation of this act,  
3 and a vending machine, vehicle, and other tangible personal  
4 property containing a tobacco product in violation of this act and  
5 any related books and records are contraband and may be seized and  
6 confiscated by the department as provided in this section.

7           (2) If an authorized inspector of the department or a police  
8 officer has reasonable cause to believe and does believe that a  
9 tobacco product is being acquired, possessed, transported, kept,

1 sold, or offered for sale in violation of this act for which the  
2 penalty is a felony, the inspector or police officer may  
3 investigate or search the vehicle of transportation in which the  
4 tobacco product is believed to be located. If a tobacco product is  
5 found in a vehicle searched under this subsection or in a place of  
6 business inspected under this act, the tobacco product, vending  
7 machine, vehicle, other than a vehicle owned or operated by a  
8 transportation company otherwise transporting tobacco products in  
9 compliance with this act, or other tangible personal property  
10 containing those tobacco products and any books and records in  
11 possession of the person in control or possession of the tobacco  
12 product may be seized by the inspector or police officer and are  
13 subject to forfeiture as contraband as provided in this section.

14 (3) As soon as possible, but not more than 5 business days  
15 after seizure of any alleged contraband, the person making the  
16 seizure shall deliver personally or by registered mail to the last  
17 known address of the person from whom the seizure was made, if  
18 known, an inventory statement of the property seized. A copy of the  
19 inventory statement shall also be filed with the state treasurer.  
20 The inventory statement shall also contain a notice ~~to the effect~~  
21 that, unless demand for hearing as provided in this section is made  
22 within 10 business days, the designated property is forfeited to  
23 the state. If the person from whom the seizure was made is not  
24 known, the person making the seizure shall ~~cause~~**HAVE** a copy of the  
25 inventory statement ~~, together with~~**AND** the notice ~~provided for in~~  
26 **REQUIRED BY** this subsection ~~, to be~~ published at least 3 times in a  
27 newspaper of general circulation in the county where the seizure

1 was made. Within 10 business days after the date of service of the  
2 inventory statement ~~, or, in the case of publication~~ **IF THE NOTICE**  
3 **IS PUBLISHED**, within 10 business days after the date of last  
4 publication, the person from whom the property was seized or any  
5 person claiming an interest in the property may, by registered  
6 mail, facsimile transmission, or personal service, file with the  
7 state treasurer a demand for a hearing before the state treasurer  
8 or a person designated by the state treasurer for a determination  
9 ~~as to~~ **OF** whether the property was lawfully subject to seizure and  
10 forfeiture. The person **DEMANDING A HEARING** shall verify a request  
11 for hearing filed by facsimile transmission by also providing a  
12 copy of the original request for hearing by registered mail or  
13 personal service. ~~The person or persons are~~ **A PERSON WHO DEMANDS A**  
14 **HEARING IS** entitled to appear before the department, to be  
15 represented by counsel, and to present testimony and argument. ~~Upon~~  
16 ~~receipt of a request for hearing, the~~ **THE** department shall hold the  
17 hearing within 15 business days **AFTER RECEIVING THE REQUEST FOR THE**  
18 **HEARING**. The hearing is not a contested case proceeding and is not  
19 subject to the administrative procedures act of 1969, 1969 PA 306,  
20 MCL 24.201 to 24.328. ~~After the hearing, the~~ **THE** department shall  
21 render its decision in writing within 10 business days ~~of~~ **AFTER** the  
22 hearing and, by order, shall either declare the seized property  
23 subject to seizure and forfeiture, or declare the property  
24 returnable in whole or in part to the person entitled to  
25 possession. If, within 10 business days after the date of service  
26 of the inventory statement, the person from whom the property was  
27 seized or any person claiming an interest in the property does not

1 file with the state treasurer a demand for a hearing before the  
2 department, the property seized shall be considered forfeited to  
3 the state by operation of law and may be disposed of by the  
4 department as provided in this section. If, after a hearing before  
5 the state treasurer or person designated by the state treasurer,  
6 the department determines that the property is lawfully subject to  
7 seizure and forfeiture and the person from whom the property was  
8 seized or any persons claiming an interest in the property do not  
9 take an appeal to the circuit court of the county in which the  
10 seizure was made within the time prescribed in this section, the  
11 property seized shall be considered forfeited to the state by  
12 operation of law and may be disposed of by the department as  
13 provided in this section.

14 (4) ~~If a~~ **A** person is aggrieved by the decision of the  
15 department, ~~that person~~ may appeal to the circuit court of the  
16 county where the seizure was made to obtain a judicial  
17 determination of the lawfulness of the seizure and forfeiture. The  
18 action shall be commenced within 20 days after notice of the  
19 department's determination is sent to the person or persons  
20 claiming an interest in the seized property. The court shall hear  
21 the action and determine the issues of fact and law involved in  
22 accordance with rules of practice and procedure as in other in rem  
23 proceedings. If a judicial determination of the lawfulness of the  
24 seizure and forfeiture cannot be made before deterioration of any  
25 of the property seized, the court shall order the destruction or  
26 sale of the property with public notice as determined by the court  
27 and require the proceeds to be deposited with the court until the

1 lawfulness of the seizure and forfeiture is finally adjudicated.

2 (5) SECTION 2977 OF THE REVISED JUDICATURE ACT OF 1961, 1961  
3 PA 236, MCL 600.2977, APPLIES TO A MOTOR VEHICLE THAT HAS BEEN  
4 SEIZED UNDER THIS ACT BUT NOT FORFEITED.

5 (6) ~~(5)~~—The department shall destroy all cigarettes forfeited  
6 to this state. The department may sell all tobacco products, except  
7 cigarettes, and other property forfeited pursuant to this section  
8 at public sale. Public notice of the sale shall be given at least 5  
9 days before the day of sale. The department may pay an amount not  
10 to exceed 25% of the proceeds of the sale to the local governmental  
11 unit whose law enforcement agency performed the seizure. The  
12 balance of the proceeds derived from the sale by the department  
13 shall be credited to the general fund of the state.

14 (7) ~~(6)~~—The seizure and destruction or sale of a tobacco  
15 product or other property under this section does not relieve a  
16 person from a fine, imprisonment, or other penalty for violation of  
17 this act.

18 (8) ~~(7)~~—A person who is not an employee or officer of this  
19 state or a political subdivision of this state who furnishes to the  
20 department or to ~~any~~**A** law enforcement agency original information  
21 concerning a violation of this act ~~, which information~~**THAT** results  
22 in the collection and recovery of ~~any~~**A** tax or penalty or leads to  
23 the forfeiture of ~~any~~ cigarettes ~~,~~ or other property ~~,~~ may be  
24 awarded and paid by the state treasurer ~~,~~ compensation of not more  
25 than 10% of the net amount received from the sale of any forfeited  
26 cigarettes or other property, but not to exceed \$5,000.00, which  
27 shall be paid out of the receipts from the sale of the property. If

1 ~~any amount~~ **MONEY** is ~~issued~~ **PAID** to the local governmental unit  
2 under subsection ~~(5)~~ **(6)**, the amount awarded under this subsection  
3 to a person ~~who provides original information that results in a~~  
4 ~~seizure of cigarettes or other property by a local law enforcement~~  
5 ~~agency shall be paid from that amount issued under subsection (5)~~  
6 **MONEY**. If in the opinion of the attorney general and the director  
7 of the department of state police it is ~~deemed~~ necessary to  
8 preserve the identity of the person furnishing the information, the  
9 attorney general and the director of the department of state police  
10 shall file with the state treasurer an affidavit ~~setting forth~~  
11 **STATING** that necessity and a warrant may be issued jointly to the  
12 attorney general and the director of the department of state  
13 police. Upon payment to ~~the~~ **A** person furnishing that information  
14 **UNDER THIS SUBSECTION**, the attorney general and the director of the  
15 department of state police shall file with the state treasurer an  
16 affidavit that **THEY HAVE PAID** the money ~~has been by them paid to~~  
17 the person. ~~entitled to the money under this section.~~

18 (9) ~~(8)~~ Beginning September 1, 1998, if a retailer possesses  
19 or sells cigarettes on which the tax imposed under this act has not  
20 been paid or accrued to a wholesaler, secondary wholesaler, or  
21 unclassified acquirer licensed under this act, the retailer shall  
22 be prohibited from purchasing, possessing, or selling any  
23 cigarettes or other tobacco products as follows:

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

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

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

3 (10) ~~(9)~~The prohibition described in subsection ~~(8)~~ shall be  
4 (9) IS effective upon service by certified mail or personal service  
5 on the retailer of notice issued by the department ordering the  
6 retailer to cease all sales and purchases of cigarettes and other  
7 tobacco products. Upon receipt of this notice, the retailer may  
8 return any tobacco products in the possession of the retailer upon  
9 which the tax imposed by this act has been paid or accrued to a  
10 wholesaler, secondary wholesaler, or unclassified acquirer licensed  
11 under this act. The department shall notify all licensed  
12 wholesalers, manufacturers, secondary wholesalers, vending machine  
13 operators, and unclassified acquirers ~~of any retailer who~~ **THAT THE**  
14 **RETAILER** has been prohibited from purchasing cigarettes or other  
15 tobacco products and the duration of the prohibition. A wholesaler,  
16 secondary wholesaler, or unclassified acquirer shall not sell  
17 cigarettes or other tobacco products to a retailer after receipt of  
18 notice from the department that the retailer is prohibited from  
19 purchasing tobacco products. Any cigarettes or other tobacco  
20 products found on the premises of the retailer during the period of  
21 prohibition ~~shall be considered~~ **ARE** contraband and subject to  
22 seizure under this section, and ~~shall constitute~~ **THEIR POSSESSION**  
23 **CONSTITUTES** an additional improper possession under this  
24 subsection. The retailer may contest the order prohibiting  
25 purchase, possession, or sale of tobacco products in accordance  
26 with the appeal procedures and time limits provided in subsection  
27 (3). ~~of this section. After completion of the appeals provided~~ **AN**

1 **APPEAL** or upon expiration of the period to request ~~such~~**AN** appeal,  
2 the department shall issue a final order and ~~make service upon~~  
3 **SERVE ON** the retailer ~~of~~ an order to cease all purchases,  
4 possession, and sale of all cigarettes and other tobacco products  
5 for a specified period as appropriate. This order does not relieve  
6 the retailer from seizure and sale of a tobacco product or other  
7 property under this section ~~, or relieve the retailer from~~ a fine,  
8 imprisonment, or other penalty for violation of this act.

9 Enacting section 1. This amendatory act does not take effect  
10 unless Senate Bill No. \_\_\_\_ or House Bill No. 5725(request no.  
11 01506'09) of the 95th Legislature is enacted into law.