

SENATE BILL No. 139

February 2, 2005, Introduced by Senators LELAND, GARCIA, BARCIA, CLARKE, BRATER and GEORGE 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

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

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

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

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

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

1 and require the proceeds to be deposited with the court until the
2 lawfulness of the seizure and forfeiture is finally adjudicated.

3 (5) SECTION 2975 OF THE REVISED JUDICATURE ACT OF 1961, 1961
4 PA 236, MCL 600.2975, APPLIES TO A MOTOR VEHICLE THAT HAS BEEN
5 SEIZED UNDER THIS ACT BUT NOT FORFEITED.

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

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

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

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

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

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

27 (b) For a second violation within a period of 5 years, for a

1 period of at least 6 months and not more than 36 months.

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

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

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

10 Enacting section 1. This amendatory act does not take effect
11 unless Senate Bill No. 138

12 of the 93rd Legislature is enacted into law.