

SENATE BILL No. 1213

March 9, 2010, Introduced by Senators HUNTER, BARCIA, SCOTT and THOMAS 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,
10 sold, or offered for sale in violation of this act for which the

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

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

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

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

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

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

4 (6) ~~(5)~~—The department shall destroy all cigarettes forfeited
5 to this state. The department may sell all tobacco products, except
6 cigarettes, and other property forfeited pursuant to this section
7 at public sale. Public notice of the sale shall be given at least 5
8 days before the day of sale. The department may pay an amount not
9 to exceed 25% of the proceeds of the sale to the local governmental
10 unit whose law enforcement agency performed the seizure. The
11 balance of the proceeds derived from the sale by the department
12 shall be credited to the general fund of the state.

13 (7) ~~(6)~~—The seizure and destruction or sale of a tobacco
14 product or other property under this section does not relieve a
15 person from a fine, imprisonment, or other penalty for violation of
16 this act.

17 (8) ~~(7)~~—A person who is not an employee or officer of this
18 state or a political subdivision of this state who furnishes to the
19 department or to ~~any~~ **A** law enforcement agency original information
20 concerning a violation of this act ~~, which information~~ **THAT** results
21 in the collection and recovery of ~~any~~ **A** tax or penalty or leads to
22 the forfeiture of ~~any~~ cigarettes ~~, or other property~~ **may** be
23 awarded and paid by the state treasurer ~~, compensation of not more~~
24 than 10% of the net amount received from the sale of any forfeited
25 cigarettes or other property, but not to exceed \$5,000.00, which
26 shall be paid out of the receipts from the sale of the property. If
27 ~~any amount~~ **MONEY** is ~~issued~~ **PAID** to the local governmental unit

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

17 **(9)** ~~(8)~~ Beginning September 1, 1998, if a retailer possesses
 18 or sells cigarettes on which the tax imposed under this act has not
 19 been paid or accrued to a wholesaler, secondary wholesaler, or
 20 unclassified acquirer licensed under this act, the retailer shall
 21 be prohibited from purchasing, possessing, or selling any
 22 cigarettes or other tobacco products as follows:

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

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

27 (c) For a third or subsequent violation within a period of 5

1 years, for a period of at least 1 year and not more than 5 years.

2 (10) ~~(9)~~ The prohibition described in subsection ~~(8)~~ shall be
3 (9) IS effective upon service by certified mail or personal service
4 on the retailer of notice issued by the department ordering the
5 retailer to cease all sales and purchases of cigarettes and other
6 tobacco products. Upon receipt of this notice, the retailer may
7 return any tobacco products in the possession of the retailer upon
8 which the tax imposed by this act has been paid or accrued to a
9 wholesaler, secondary wholesaler, or unclassified acquirer licensed
10 under this act. The department shall notify all licensed
11 wholesalers, manufacturers, secondary wholesalers, vending machine
12 operators, and unclassified acquirers ~~of any retailer who~~ **THAT THE**
13 **RETAILER** has been prohibited from purchasing cigarettes or other
14 tobacco products and the duration of the prohibition. A wholesaler,
15 secondary wholesaler, or unclassified acquirer shall not sell
16 cigarettes or other tobacco products to a retailer after receipt of
17 notice from the department that the retailer is prohibited from
18 purchasing tobacco products. Any cigarettes or other tobacco
19 products found on the premises of the retailer during the period of
20 prohibition ~~shall be considered~~ **ARE** contraband and subject to
21 seizure under this section, and ~~shall constitute~~ **THEIR POSSESSION**
22 **CONSTITUTES** an additional improper possession under this
23 subsection. The retailer may contest the order prohibiting
24 purchase, possession, or sale of tobacco products in accordance
25 with the appeal procedures and time limits provided in subsection
26 (3). ~~of this section. After completion of the appeals provided~~ **AN**
27 **APPEAL** or upon expiration of the period to request ~~such~~ **AN** appeal,

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

8 Enacting section 1. This amendatory act does not take effect
9 unless Senate Bill No. 1212

10 of the 95th Legislature is enacted into law.