



SENATE BILL No. 533

May 16, 1995, Introduced by Senator GEAKE and referred to the Committee on Finance.

A bill to amend section 9 of Act No. 327 of the Public Acts of 1993, entitled "Tobacco products tax act," being section 205.429 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 9 of Act No. 327 of the Public Acts of
2 1993, being section 205.429 of the Michigan Compiled Laws, is
3 amended to read as follows:

4 Sec. 9. (1) A tobacco product held, owned, possessed,
5 transported, or in control of a person in violation of this act,
6 and a vending machine, vehicle, and other tangible personal prop-
7 erty containing a tobacco product in violation of this act are
8 contraband and may be seized and confiscated by the department as
9 provided in this section.

1 (2) If an authorized inspector of the department or a police
2 officer has reasonable cause to believe and does believe that a
3 tobacco product is being acquired, possessed, transported, kept,
4 sold, or offered for sale in violation of this act for which the
5 penalty is a felony, the inspector or police officer may investi-
6 gate or search the vehicle of transportation in which the tobacco
7 product is believed to be located. If a tobacco product is found
8 in the vehicle, the tobacco product, vending machine, vehicle, or
9 other tangible personal property containing those tobacco prod-
10 ucts and any books and records in possession of the person in
11 control or possession of the tobacco product may be seized by the
12 inspector or police officer and are subject to forfeiture as con-
13 traband 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
17 last known address of the person from whom the seizure was made,
18 if known, an inventory statement of the property seized. ~~and~~
19 ~~file a~~ A copy OF THE INVENTORY STATEMENT SHALL ALSO BE FILED
20 with the commissioner. The inventory statement shall also con-
21 tain a notice to the effect that unless demand for hearing as
22 provided in this section is made within ~~5~~ 10 BUSINESS days, the
23 designated property is forfeited to the state. If the person
24 from whom the seizure was made is not known, the person making
25 the seizure shall cause a copy of the inventory statement,
26 together with the notice provided for in this subsection, to be
27 published at least 3 times in a newspaper of general circulation

1 in the county where the seizure was made. Within ~~5~~ 10 BUSINESS
2 days after the date of service of the inventory statement, or in
3 the case of publication, within ~~5~~ 10 BUSINESS days after the
4 date of last publication, the person from whom the property was
5 seized or any person claiming an interest in the property may BY
6 REGISTERED MAIL, FACSIMILE TRANSMISSION, OR PERSONAL SERVICE file
7 with the commissioner a demand for a hearing before the commis-
8 sioner or a person designated by the commissioner for a determi-
9 nation as to whether the property was lawfully subject to seizure
10 and forfeiture. THE PERSON SHALL VERIFY A REQUEST FOR HEARING
11 FILED BY FACSIMILE TRANSMISSION BY ALSO PROVIDING A COPY OF THE
12 ORIGINAL REQUEST FOR HEARING BY REGISTERED MAIL OR PERSONAL
13 SERVICE. The person or persons are entitled to appear before the
14 department, to be represented by counsel, and to present testi-
15 mony and argument. UPON RECEIPT OF A REQUEST FOR HEARING, THE
16 DEPARTMENT SHALL HOLD THE HEARING WITHIN 15 BUSINESS DAYS. THE
17 HEARING IS NOT A CONTESTED CASE PROCEEDING AND IS NOT SUBJECT TO
18 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE
19 PUBLIC ACTS OF 1969, BEING SECTIONS 24.201 TO 24.328 OF THE
20 MICHIGAN COMPILED LAWS. After the hearing, the department shall
21 render its decision in writing WITHIN 10 BUSINESS DAYS OF 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 ~~5~~ 10 BUSINESS days after the date of
26 service of the inventory statement, the person from whom the
27 property was seized or any person claiming an interest in the

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

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

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

3 (5) The department may sell a tobacco product or other prop-
4 erty forfeited pursuant to this section at public sale. Public
5 notice of the sale shall be given at least 5 days before the day
6 of sale. The proceeds derived from the sale by the department
7 shall be credited to the general fund of the state.

8 (6) The seizure and sale of a tobacco product or other prop-
9 erty under this section does not relieve a person from a fine,
10 imprisonment, or other penalty for violation of this act.

11 (7) A PERSON WHO IS NOT AN EMPLOYEE OR OFFICER OF THIS STATE
12 OR A POLITICAL SUBDIVISION OF THIS STATE WHO FURNISHES TO THE
13 DEPARTMENT OR TO ANY LAW ENFORCEMENT AGENCY ORIGINAL INFORMATION
14 CONCERNING A VIOLATION OF THIS ACT, WHICH INFORMATION RESULTS IN
15 THE COLLECTION AND RECOVERY OF ANY TAX OR PENALTY OR LEADS TO THE
16 FORFEITURE OF ANY CIGARETTES, OR OTHER PROPERTY, MAY BE AWARDED
17 AND PAID BY THE STATE TREASURER UPON THE CERTIFICATION OF THE
18 DEPARTMENT OF REVENUE, COMPENSATION OF NOT MORE THAN 10% OF THE
19 NET AMOUNT RECEIVED FROM THE SALE OF ANY FORFEITED CIGARETTES OR
20 OTHER PROPERTY, BUT NOT TO EXCEED \$5,000.00 WHICH SHALL BE PAID
21 OUT OF THE RECEIPTS FROM THE SALE OF THE PROPERTY. IF IN THE
22 OPINION OF THE ATTORNEY GENERAL, THE COMMISSIONER OF REVENUE, AND
23 THE COMMISSIONER OF THE MICHIGAN STATE POLICE IT IS DEEMED NECES-
24 SARY TO PRESERVE THE IDENTITY OF THE PERSON FURNISHING THE INFOR-
25 MATION, THE ATTORNEY GENERAL, THE COMMISSIONER OF REVENUE, AND
26 THE COMMISSIONER OF THE MICHIGAN STATE POLICE SHALL FILE WITH THE
27 STATE TREASURER AN AFFIDAVIT SETTING FORTH THAT NECESSITY AND A

1 WARRANT MAY BE ISSUED JOINTLY TO THE ATTORNEY GENERAL, THE
2 COMMISSIONER OF REVENUE, AND THE COMMISSIONER OF THE MICHIGAN
3 STATE POLICE. UPON PAYMENT TO THE PERSON FURNISHING THAT INFOR-
4 MATION, THE ATTORNEY GENERAL, THE COMMISSIONER OF REVENUE, AND
5 THE COMMISSIONER OF THE MICHIGAN STATE POLICE SHALL FILE WITH THE
6 STATE TREASURER AN AFFIDAVIT THAT THE MONEY HAS BEEN BY THEM PAID
7 TO THE PERSON ENTITLED TO THE MONEY UNDER THIS SECTION.