

TOBACCO PRODUCTS TAX ACT (EXCERPT)
Act 327 of 1993

***** 205.431.amended THIS AMENDED SECTION IS EFFECTIVE JANUARY 1, 2022 *****

205.431.amended Sale or solicitation of orders to be shipped, mailed, sent, or brought into state; license required; sales conducted through internet, by telephone, or mail-order transaction; affirmation; purchasers responsible to pay unpaid state taxes on cigars; sign; definitions.

Sec. 11. (1) A person, not licensed under this act as either a wholesaler or unclassified acquirer that is not a manufacturer, shall not sell or solicit a sale of a tobacco product to be shipped, mailed, or otherwise imported, sent or brought into the state, to a person not licensed under this act, unless the tobacco product is to be sold through a wholesaler or unclassified acquirer other than a manufacturer, licensed under this act.

(2) A person, in this state, that is not licensed under this act, shall not order, purchase, or otherwise engage in a transaction to acquire a tobacco product that is to be shipped, mailed, imported, sent, or brought into this state unless that tobacco product is to be sold through a wholesaler or unclassified acquirer other than a manufacturer, licensed under this act. A tobacco product ordered, purchased, or acquired by a person in violation of this subsection is contraband subject to seizure and forfeiture under section 9. A person who violates this subsection shall be considered to be in control or possession of a tobacco product in violation of this act for purposes of section 8(1), regardless of whether that tobacco product has been sold, consumed, or otherwise disposed of. Any limitation on the tax applicable to cigars under section 7(1)(g) shall not apply, or otherwise be taken into account, for purposes of determining the liability for taxes and penalties under section 8(1) arising from a violation of this subsection.

(3) Except as provided in section 8(2) regarding representatives of a licensed manufacturer, a retailer in this state shall not purchase, possess, acquire for resale at retail, or sell a tobacco product in this state unless that tobacco product was purchased or otherwise acquired directly from a wholesaler, unclassified acquirer other than a manufacturer, or secondary wholesaler, licensed under this act. A retailer who violates this subsection shall be considered to be in control or possession of a tobacco product in violation of this act for purposes of section 8(1), regardless of whether that tobacco product has been sold, consumed, or otherwise disposed of. Any limitation on the tax applicable to cigars under section 7(1)(g) shall not apply, or otherwise be taken into account, for purposes of determining the liability for taxes and penalties under section 8(1) arising from a violation of this subsection.

(4) A retailer shall be considered to have purchased or otherwise acquired a tobacco product in compliance with subsection (3) if all of the following conditions are met:

(a) The retailer obtains a copy of the license of the wholesaler, secondary wholesaler, or unclassified acquirer other than a manufacturer at the time of purchase or acquisition.

(b) The license described in subdivision (a) was not expired at the time the tobacco product was purchased or otherwise acquired by the retailer.

(c) The copy of the license is preserved by the retailer in the same manner, for the same period of time, and offered for inspection as required of other statements and records under section 6.

(5) Notwithstanding anything in this act to the contrary, a licensee may provide a copy of its license to a retailer for purposes of this section. A retailer that obtains a copy of the license for a particular licensee under this section is not required to obtain another copy of the license for subsequent purchases or acquisitions of tobacco products from that licensee which are made during the active license year and prior to the expiration of that license.

(6) Subject to subsection (1), all sales conducted through the internet, by telephone, or in a mail-order transaction shall not be completed unless, before each delivery of tobacco products is made, whether through the mail, through a transportation company, or through any other delivery system, the seller has obtained from the purchaser an affirmation that includes a copy of a valid government-issued document that confirms the purchaser's name, address, and date of birth showing that the purchaser is at least the legal minimum age to purchase tobacco products; that the tobacco products purchased are not intended for consumption by an individual who is younger than the legal minimum age to purchase tobacco products; and a written statement signed by the purchaser that affirms the purchaser's address and that the purchaser is at least the minimum legal age to purchase tobacco products. The statement shall also confirm that the purchaser understands that signing another person's name to the affirmation is illegal; that the sale of tobacco products to individuals under the legal minimum purchase age is illegal; and that the purchase of tobacco products by individuals under the legal minimum purchase age is illegal under the laws of the state of Michigan. The seller shall verify the information contained in the affirmation provided by the purchaser against a commercially

available database of governmental records, or obtain a photocopy, fax copy, or other image of the valid, government-issued identification stating the date of birth or age of the purchaser.

(7) Subject to subsection (1), all invoices, bills of lading, sales receipts, or other documents related to tobacco product sales conducted through the internet, by telephone, or in a mail-order transaction shall contain the current seller's valid Michigan sales tax license number or use tax registration number, business name and address of the seller, and a statement as to whether all sales taxes or use taxes, as applicable, and taxes levied under this act have been paid. All packages of tobacco products shipped from a tobacco product seller to purchasers who reside in Michigan shall clearly print or stamp the package with the word "TOBACCO PRODUCTS" on the outside of all sides of the package so it is clearly visible to the shipper. If an order is made as a result of advertisement over the internet, the tobacco retailer shall request the electronic mail address of the purchaser and shall receive payment by credit card or check before completing the sale. This subsection does not apply to sales by wholesalers and unclassified acquirers licensed under this act.

(8) The deliverer of the tobacco products is required to obtain proof from a valid government-issued document that the person signing for the tobacco products is the purchaser.

(9) Beginning November 1, 2012, a retailer not otherwise licensed or required to be licensed under this act shall post a sign, visible to the public inside the retail establishment that informs purchasers of cigars through catalog sales, telephone or mail orders, or internet sales of their liability for any applicable unpaid state taxes on those cigars and that cigars purchased in violation of this act are contraband.

(10) As used in this section:

(a) "Computer" means any connected, directly interoperable or interactive device, equipment, or facility that uses a computer program or other instructions to perform specific operations, including logical, arithmetic, or memory functions with or on computer data or a computer program, and that can store, retrieve, alter, or communicate the results of the operations to a person, computer program, computer, computer system, or computer network.

(b) "Computer network" means the interconnection of hardware or wireless communication lines with a computer through remote terminals or a complex consisting of 2 or more interconnected computers.

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

(d) "Computer system" means related, connected or unconnected, computer equipment, devices, software, or hardware.

(e) "Credit card" means a card or device issued by a person licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, or issued by a depository financial institution as defined in section 1a of the mortgage brokers, lenders, and services licensing act, 1987 PA 173, MCL 445.1651a, under a credit card arrangement.

(f) "Device" includes, but is not limited to, an electronic, magnetic, electrochemical, biochemical, hydraulic, optical, or organic object that performs input, output, or storage functions by the manipulation of electronic, magnetic, or other impulses.

(g) "Internet" means the connection to the World Wide Web through the use of a computer, a computer network, or a computer system.

(h) "Sale conducted through the internet" means a sale of, a solicitation to sell, a purchase of, or an offer to purchase tobacco products conducted all or in part by accessing an internet website.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 2004, Act 474, Imd. Eff. Dec. 28, 2004;—Am. 2012, Act 325, Imd. Eff. Oct. 9, 2012;—Am. 2016, Act 86, Imd. Eff. Apr. 19, 2016;—Am. 2020, Act 326, Eff. Jan. 1, 2022.