

Act No. 326
Public Acts of 2020
Approved by the Governor
December 29, 2020
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**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Senator Runestad

ENROLLED SENATE BILL No. 970

AN ACT to amend 1993 PA 327, entitled “An act to provide for a tax upon the sale and distribution of tobacco products; to regulate and license manufacturers, wholesalers, secondary wholesalers, vending machine operators, unclassified acquirers, transportation companies, transporters, and retailers of tobacco products; to prescribe the powers and duties of the revenue division and the department of treasury in regard to tobacco products; to provide for the administration, collection, and disposition of the tax; to levy an assessment; to provide for the administration, collection, defense, and disposition of the assessment; to provide for the enforcement of this act; to provide for the appointment of special investigators as peace officers for the enforcement of this act; to prescribe penalties and provide remedies for the violation of this act; to make and supplement appropriations; and to repeal acts and parts of acts,” by amending sections 2 and 11 (MCL 205.422 and 205.431), section 2 as amended by 2012 PA 188 and section 11 as amended by 2016 PA 86.

The People of the State of Michigan enact:

Sec. 2. As used in this act:

(a) “Cigar” means any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco. Cigar does not include a cigarette.

(b) “Cigarette” means a roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, which roll has a wrapper or cover made of paper or any other material. Cigarette does not include cigars.

(c) “Cigarette making machine” means any machine or other mechanical device which meets all of the following criteria:

(i) Is capable of being loaded with loose tobacco, cigarette tubes or cigarette papers, and any other components related to the production of cigarettes, including, but not limited to, cigarette filters.

(ii) Is designed to automatically or mechanically produce, roll, fill, dispense, or otherwise generate cigarettes.

(iii) Is commercial-grade or otherwise designed or suitable for commercial use.

(iv) Is designed to be powered or otherwise operated by a main or primary power source other than human power.

(d) “Commissioner” means the state treasurer.

(e) “Container” or “shipping case” means an individual receptacle within which a tobacco product or group of tobacco products is placed for shipment, storage, or distribution, such as a box, case, or tote. A container or shipping case does not include any of the following:

(i) An individual package of cigarettes or cigarette carton containing cigarettes that are not counterfeit cigarettes.

(ii) Except for counterfeit cigarettes, the package or other article containing the tobacco product that is sold or transferred directly to the ultimate consumer.

(iii) A bag or similar package containing bulk or loose hookah tobacco, pipe tobacco, or roll-your-own cigarette tobacco that a retailer uses to fill bins, barrels, or tubs located at the retailer's place of business from which either the retailer sells a specified quantity of those tobacco products or a blend or mixture of those tobacco products to the consumer, or the consumer removes or draws a specified quantity of those tobacco products or a blend or mixture of those tobacco products for purchase at retail from the retailer.

(iv) A pallet or similar article or device upon which an individual receptacle or group of receptacles, containing the tobacco products, is placed for shipment, storage, or distribution.

(v) Property used as a protective covering for, or to keep together during shipment, storage, or distribution, a receptacle or group of receptacles within which the tobacco product is placed for shipment, storage, or distribution including shrink wrap or other wrapping materials, but excluding the protective covering which forms, gives shape to, or otherwise constitutes the receptacle within which the tobacco product is placed for shipment, storage, or distribution.

(f) "Counterfeit cigarette" means a cigarette in an individual package of cigarettes or other container with a false manufacturing label or a cigarette in an individual package of cigarettes or other container with a counterfeit stamp.

(g) "Counterfeit cigarette paper" means a cigarette paper with a false manufacturing label or that has not been printed, manufactured, or made by authority of the trademark owner.

(h) "Counterfeit stamp" means any stamp, label, or print, indicium, or character, that evidences, or purports to evidence, the payment of any tax levied under this act and that has not been printed, manufactured, or made by authority of the department as provided in this act and has not been issued, sold, or circulated by the department.

(i) "Department" means the department of treasury.

(j) "Financially sound" means a determination by the department that the wholesaler or unclassified acquirer is able to pay the tax due on the tobacco products it sells, imports, or acquires, as applicable, in the ordinary course of business based on criteria including, but not limited to, all of the following:

(i) Past filing and payment history with the department.

(ii) Outstanding liabilities.

(iii) Review of current financial statements including, but not limited to, balance sheets and income statements.

(iv) Duration that the wholesaler or unclassified acquirer has been licensed under this act.

(v) Ability to pay for its stamps, if required under this act.

(k) "Gray market cigarette" means any cigarette the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including, but not limited to, a label stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording.

(l) "Gray market cigarette paper" means any cigarette paper the package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarette papers to be sold, distributed, or used in the United States, including, but not limited to, a label stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", "For Use in _____ (another country) Only", or similar wording.

(m) "Hookah tobacco" means tobacco that is designed, manufactured, or otherwise intended for consumption by smoking in a hookah and that is flavored with honey, molasses, fruit, or other natural or artificial flavors. Hookah tobacco includes those products commonly known or referred to as narghile, argileh, shisha, hubble-bubble, molasses tobacco, waterpipe tobacco, maassel, or goza.

(n) "Hookah" means a device, including a waterpipe, used for smoking hookah tobacco that consists of a tube connected to a chamber where the smoke is cooled passing through water.

(o) "Individual package" means an individual packet or pack used to contain or to convey cigarettes to the consumer. Individual package does not include cartons, cases, or shipping or storage containers that contain smaller packaging units of cigarettes.

(p) "Licensee" means a person licensed under this act.

(q) "Manufacturer" means any of the following:

(i) Except as otherwise provided in this subdivision, a person who manufactures or produces a tobacco product.

(ii) A person who operates or who permits any other person to operate a cigarette making machine in this state for the purpose of producing, filling, rolling, dispensing, or otherwise generating cigarettes. A person who is a

manufacturer under this subparagraph shall constitute a nonparticipating manufacturer for purposes of sections 6c and 6d. A person who operates or otherwise uses a machine or other mechanical device, other than a cigarette making machine, to produce, roll, fill, dispense, or otherwise generate cigarettes shall not be considered a manufacturer as long as the cigarettes are produced or otherwise generated in that person's dwelling and for that person's self-consumption. For purposes of this act, "self-consumption" means production for personal consumption or use and not for sale, resale, or any other profit-making endeavor.

(iii) A person who does any of the following shall not be considered a manufacturer:

(A) Mixes or blends 2 or more different tobacco products to create a custom mix or blend of those products if each of the constituent tobacco products mixed or blended together is a finished tobacco product that the person could or does otherwise sell to consumers and upon which the tax under this act has been paid.

(B) Creates or produces, by filling a fruit with hookah tobacco, what is commonly known as a fruit bowl or fruit head for use in a hookah.

(C) Rolls a cigar for his or her own self-consumption.

(r) "Noncigarette smoking tobacco" means tobacco sold in loose or bulk form that is intended for consumption by smoking and also includes roll-your-own cigarette tobacco, hookah tobacco, pipe tobacco, or a wrap.

(s) "Person" means an individual, partnership, fiduciary, association, limited liability company, corporation, or other legal entity.

(t) "Pipe tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco to smoke in a pipe.

(u) "Place of business" means a place where a tobacco product is sold or where a tobacco product is brought or kept for the purpose of sale or consumption, including a vessel, airplane, train, or vending machine.

(v) "Retailer" means a person other than a transportation company who operates a place of business in this state, or who directs, manages, or has control over the day-to-day operations of a place of business in this state, for the purpose of making sales of a tobacco product at retail. A person described in this subdivision qualifies as a retailer regardless of whether that person owns the place of business.

(w) "Roll-your-own cigarette tobacco" means any tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes.

(x) "Sale" means a transaction by which the ownership of tangible personal property is transferred for consideration and applies also to use, gifts, exchanges, barter, and theft.

(y) "Secondary wholesaler" means a person who sells a tobacco product for resale, who purchases a tobacco product from a wholesaler or unclassified acquirer licensed under this act, and who maintains an established place of business in this state where a substantial portion of the business is the sale of tobacco products and related merchandise at wholesale, and where at all times a substantial stock of tobacco products and related merchandise is available to retailers for resale.

(z) "Smokeless tobacco" means snuff, snus, chewing tobacco, moist snuff, and any other tobacco that is intended to be used or consumed, whether heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested, by any means other than smoking or combustion.

(aa) "Stamp" means a distinctive character, indication, or mark, as determined by the department, attached or affixed to an individual package of cigarettes by mechanical device or other means authorized by the department to indicate that the tax imposed under this act has been paid.

(bb) "Stamping agent" means a wholesaler or unclassified acquirer other than a manufacturer who is licensed and authorized by the department to affix stamps to individual packages of cigarettes on behalf of themselves and other wholesalers or unclassified acquirers other than manufacturers.

(cc) "Tobacco product" means a product containing any amount of tobacco regardless of form including, but not limited to, cigarettes, cigars, noncigarette smoking tobacco, or smokeless tobacco. A tobacco product does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the federal food, drug, and cosmetic act, 21 USC 351 to 360fff-7.

(dd) "Transportation company" means a person operating, or supplying to common carriers, cars, boats, or other vehicles for the transportation or accommodation of passengers and engaged in the sale of a tobacco product at retail.

(ee) "Transporter" means a person importing or transporting into this state, or transporting in this state, a tobacco product obtained from a source located outside this state, or from any person not duly licensed under this act. Transporter does not include an interstate commerce carrier licensed by the interstate commerce commission, or its successor federal agency, to carry commodities in interstate commerce, or a licensee maintaining a warehouse or place of business outside of this state if the warehouse or place of business is licensed under this act.

(ff) "Unclassified acquirer" means a person, except a transportation company or a purchaser at retail from a retailer licensed under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, who imports or acquires a tobacco product from a source other than a wholesaler or secondary wholesaler licensed under this act for use, sale, or distribution in this state. Unclassified acquirer also means a person who purchases or receives tobacco products directly from a manufacturer licensed under this act or from another source outside this state, which source is not licensed under this act. An unclassified acquirer also includes a person not located in this state that sells a tobacco product, through a mail order, catalog sale, telephone order, internet sale, or any other means, to a retailer or other person in this state that is not licensed under this act as a wholesaler, unclassified acquirer other than a manufacturer, or secondary wholesaler. An unclassified acquirer does not include a wholesaler.

(gg) "Vending machine operator" means a person who operates 1 or more vending machines in this state for the sale of a tobacco product and who purchases a tobacco product from a manufacturer, licensed wholesaler, or secondary wholesaler.

(hh) "Wholesale price" means the actual price paid to a seller for a tobacco product, by a wholesaler or unclassified acquirer in order to acquire that tobacco product from the seller. The wholesale price includes any tax, fee, licensing, or other charge, except as otherwise provided in this subdivision, reflected on the invoice, bill of sale, purchase order, or other document evidencing the sale or purchase of the tobacco product. Wholesale price does not include, if separately stated on the invoice, bill of sale, purchase order, or other document evidencing the sale of the tobacco product, shipping or handling charges for cigarettes, and reasonable shipping or handling charges for tobacco products other than cigarettes such as transportation, shipping, postage, handling, crating, or packing. When items or products, other than tobacco products, are included in a transaction for the purchase of tobacco products by a wholesaler or unclassified acquirer, charges for those products or items that are not tobacco products, including shipping and handling charges, may be excluded from the wholesale price if separately stated on the invoice, bill of sale, purchase order, or other document evidencing the sale or purchase. The wholesale price shall not be reduced due to any rebate, trade allowance, licensing or exclusivity agreement, volume or other discount, or any other reduction given by the seller or passed on to or otherwise received by the wholesaler or unclassified acquirer from the seller. If the wholesaler or unclassified acquirer has a relationship as described in section 267(b) of the internal revenue code of 1986, 26 USC 267, with the seller, the department may establish the wholesale price for the tobacco products based on the best available information or any other reasonable proxy for the wholesale price including, but not limited to, the wholesale price paid by other taxpayers for those tobacco products within the past 4 years.

(ii) "Wholesaler" means a person who purchases all or part of its tobacco products from a manufacturer and who sells 75% or more of those tobacco products to others for resale. Wholesaler includes a chain of stores retailing a tobacco product to the consumer if 75% of its stock of tobacco products is purchased directly from the manufacturer.

(jj) "Wrap" means an individual tobacco wrapper that is made wholly or in part from tobacco, including reconstituted tobacco, whether in the form of tobacco leaf, sheet, or tube, if the wrap is designed to be offered, or is offered, for sale to consumers to create or to use as a component part of a tobacco product.

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 hardwire 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.

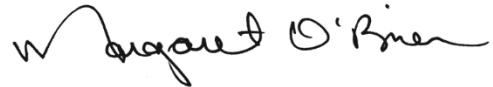
(e) "Credit card" means a card or device issued by a person licensed under 1984 PA 379, MCL 493.101 to 493.114, or under the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072, or issued by a depository financial institution as defined in section 1a of the mortgage brokers, lenders,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

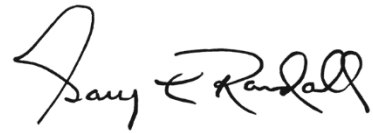
(g) "Internet" means the connection to the World Wide Web through the use of a computer, a computer network, or a computer system.

(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.

Enacting section 1. This amendatory act takes effect January 1, 2022.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor