

TOBACCO PRODUCTS TAX ACT (EXCERPT)
Act 327 of 1993

205.428 Personal liability for payment of tax; penalty; duties of manufacturer's representative; violations as felony; violations as misdemeanor; enforcement; exception; additional violations.

Sec. 8. (1) A person, other than a licensee, is personally liable for the tax imposed by this act, plus a penalty of 500% of the amount of that tax, under any of the following circumstances:

(a) The person is in control or in possession of a tobacco product contrary to this act or is in control or in possession of an individual package of cigarettes without a stamp in violation of this act.

(b) The person offers to sell or does sell a tobacco product to another for purposes of resale without being licensed to do so under this act.

(c) The person offers to sell at retail, or does sell at retail, an individual package of cigarettes without a stamp or any tobacco product purchased or acquired from a person that was not licensed under this act as secondary wholesaler, wholesaler, or unclassified acquirer, at the time of purchase or acquisition.

(2) The department may permit a representative of a licensed manufacturer of tobacco products whose duties require travel in this state to transport up to 138,000 cigarettes, of which not more than 36,000 cigarettes may bear no tax indicia or the tax indicia of another state. All 138,000 cigarettes must bear the stamp approved by the department or the tax indicia of another state, if any. The total value of tobacco products, excluding cigarettes, carried by a representative shall not exceed a wholesale value of \$5,000.00. A manufacturer shall notify the department of the manufacturer's representatives that it currently employs who carry cigarettes or tobacco products other than cigarettes in performing work duties in this state. The manufacturer shall maintain a record of each transaction by the manufacturer's representative for a period of 4 years immediately following the transaction and shall produce the records upon request of the state treasurer or the state treasurer's authorized agent. Each record must identify the quantity and identity of the tobacco products, detail whether exchanged, received, removed, or otherwise disposed of, and identify the retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer involved. The representative of the manufacturer shall provide a copy of the record to the retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer at the time of the exchange or disposal. The retailer, wholesaler, secondary wholesaler, vending machine operator, or unclassified acquirer shall retain the copy of the record in the same place and for the same time period as other records required by this section. A representative shall not exchange, or otherwise dispose of, within this state tobacco products bearing the tax indicia of another state or receive tobacco products bearing the tax indicia of another state from retailers located within this state. A representative who sells, exchanges, or otherwise disposes of cigarettes or tobacco products other than cigarettes that do not bear the stamp or other marking required by the department or sells, exchanges, or otherwise disposes of cigarettes or tobacco products other than cigarettes bearing the tax indicia of another state is guilty of a felony, punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 5 years, or both.

(3) A person who possesses, acquires, transports, or offers for sale contrary to this act 3,000 or more cigarettes, tobacco products other than cigarettes with an aggregate wholesale price of \$250.00 or more, 3,000 or more counterfeit cigarettes, 3,000 or more counterfeit cigarette papers, 3,000 or more gray market cigarettes, or 3,000 or more gray market cigarette papers is guilty of a felony, punishable by a fine of not more than \$50,000.00 or imprisonment for not more than 5 years, or both.

(4) A person who possesses, acquires, transports, or offers for sale contrary to this act 1,200 or more, but not more than 2,999, cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of \$100.00 or more but less than \$250.00, or 1,200 or more, but not more than 2,999, counterfeit cigarettes, counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment of not more than 1 year, or both.

(5) A person who violates a provision of this act for which a criminal punishment is not otherwise provided is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00 or 5 times the retail value of the tobacco products involved, whichever is greater, or imprisonment for not more than 1 year, or both. This subsection does not apply to conduct described in subsection (12).

(6) A person who manufactures, possesses, or uses a stamp or manufactures, possesses, or uses a counterfeit stamp or writing or device intended to replicate a stamp without authorization of the department, a licensee who purchases or obtains a stamp from any person other than the department, or who falsifies a manufacturer's label on cigarettes, counterfeit cigarettes, gray market cigarette papers, or counterfeit cigarette papers is guilty of a felony and shall be punished by imprisonment for not less than 1 year or more than 10 years and may be punished by a fine of not more than \$50,000.00.

(7) A person who falsely makes, counterfeits, or alters a license, vending machine disc, or marker, or who purchases or receives a false or altered license, vending machine disc, or marker, or who assists in or causes to be made a false or altered license, vending machine disc, or marker, or who possesses a device used to forge, alter, or counterfeit a license, vending machine disc, or marker is guilty of a felony punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 5 years, or both. A person who alters or falsifies records or markings required under this act is guilty of a felony punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 5 years, or both.

(8) The attorney general has concurrent power with the prosecuting attorneys of this state to enforce this act.

(9) At the request of the department or its duly authorized agent, the state police and all local police authorities shall enforce the provisions of this act.

(10) The department does not have the authority to enforce the provisions of this section regarding gray market cigarette papers or counterfeit cigarette papers.

(11) A person who knowingly possesses, acquires, transports, or offers for sale contrary to this act 600 or more, but not more than 1,199, cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of \$50.00 or more but less than \$100.00, or 600 or more, but not more than 1,199, counterfeit cigarettes, counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 or imprisonment of not more than 90 days, or both.

(12) A person shall not possess, acquire, transport, or offer for sale contrary to this act less than 600 cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of less than \$50.00, or less than 600 counterfeit cigarettes, counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers. A person who possesses, acquires, transports, or offers for sale contrary to this act 180 or more, but not more than 599, cigarettes, tobacco products other than cigarettes with an aggregate wholesale value of \$25.00 or more but less than \$50.00, or 180 or more, but not more than 599, counterfeit cigarettes, counterfeit cigarette papers, gray market cigarettes, or gray market cigarette papers is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00.

History: 1993, Act 327, Eff. Mar. 15, 1994;—Am. 1997, Act 187, Eff. Apr. 15, 1998;—Am. 2004, Act 474, Imd. Eff. Dec. 28, 2004;—Am. 2005, Act 238, Eff. Jan. 1, 2006;—Am. 2008, Act 458, Imd. Eff. Jan. 9, 2009;—Am. 2022, Act 171, Imd. Eff. July 21, 2022.