

TOBACCO PRODUCTS TAX ACT (EXCERPT)
Act 327 of 1993

205.423 Purchase, possession, importation, acquisition for resale or sale of tobacco product; remote retail sale; unclassified acquirer; license required; fees; disc or marker attached to vending machine; proof to be furnished with application; surety bond; financial statement; display of license; secondary wholesaler, vending machine operator, and wholesaler requirements.

Sec. 3.

(1) Except as otherwise provided in section 3a and section 6(15), a person shall not purchase, possess, acquire for resale, import, or sell a tobacco product as a manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter in or into this state unless licensed to do so. A person shall not make a remote retail sale to a consumer in this state unless that person is licensed under this act as an unclassified acquirer. A license granted under this act is not assignable.

(2) Upon proper application and the payment of the applicable fee, and subject to subsection (6), the department shall issue a license to each manufacturer, wholesaler, secondary wholesaler, vending machine operator, unclassified acquirer, transportation company, or transporter. The application must be on a form prescribed by the department and signed under penalty of perjury. The application must state the applicant's regular business hours. Except for transportation companies, each place of business must be separately licensed. If a person acts in more than 1 capacity at any 1 place of business, a license must be procured for each capacity. Each machine for vending tobacco products is considered a place of retail business. Each license or a duplicate copy must be prominently displayed on the premises covered by the license. In the case of vending machines, a disc or marker furnished by the department showing it to be licensed must be attached to the front of the machine in a place clearly visible to the public. For unclassified acquirers that do not maintain a place of business where tobacco products are sold, brought, or kept, the department may issue a license based on the physical address of the applicant's nonresidential building, office, or other facility where the records required under this act are to be kept and maintained.

(3) The fees for licenses are as follows:

- (a) A wholesaler's license, \$100.00.
- (b) A secondary wholesaler's license, \$25.00.
- (c) A license for vending machine operators, \$25.00.
- (d) An unclassified acquirer's license, as follows:
 - (i) State of Michigan, no fee.
 - (ii) Retail importer of tobacco products other than cigarettes, \$10.00.
 - (iii) Retail importer of cigarettes, \$100.00.
 - (iv) Vending machine operator buying direct from a manufacturer, \$100.00.
 - (v) Any other importer, \$100.00.
- (e) A transportation company's license, \$5.00.
- (f) A transporter's license, \$50.00.
- (g) A manufacturer's license, \$100.00.

(4) If a manufacturer, wholesaler, secondary wholesaler, or vending machine operator maintains more than 1 place of business, the fee for each additional place of business is 1/4 of the fee otherwise prescribed in subsection (3). A fee, or a part of a fee, shall not be refunded by reason of relinquishment, suspension, or revocation of the license, or, except under order of a court of competent jurisdiction, for any other reason or cause.

(5) A person shall not possess a machine for vending tobacco products for a period in excess of 72 hours, or operate a machine for vending tobacco products, unless there is a disc or marker attached as provided by this section. This requirement does not apply to a machine not containing or used in selling a tobacco product. If a person possesses or operates a vending machine containing or used in selling a tobacco product that is not properly licensed or identified as required by this section, the department may seal or seize the machine, together with any tobacco products contained in the machine. The provisions of section 9 govern the seizure and subsequent disposition of a machine or tobacco product seized.

(6) Applications from persons applying for an initial license under this act must be accompanied by satisfactory proof, as determined by the department, of all the following:

(a) The applicant's financial responsibility, including but not limited to, satisfactory proof of a minimum net worth of \$25,000.00.

(b) That the applicant owns, or has an executed lease for, a secure nonresidential facility for the purpose of receiving, storing, and distributing tobacco products, if applicable, and conducting its business in accordance with this act if the applicant owns or has an executed lease for such a facility. If the applicant carries on another business in conjunction with the secure nonresidential facility, the other business must also be identified.

(c) United States citizenship or eligibility to obtain employment within the United States if not a citizen. If the

applicant is not an individual, the controlling shareholders, partners, directors, and principal officers shall be United States citizens or eligible to obtain employment within the United States if not a citizen.

(7) The department may require an applicant who is purchasing the business of a licensee to file a copy of the contract of sale and any related documents with its application. The department may require a licensee under this section to furnish a surety bond with a surety company authorized to do business in this state in an amount the department may fix, conditioned upon the payment of the tax provided by this act. The department may also require a licensee under this section to file a financial statement with the department showing all assets and liabilities and any other information the department may prescribe, to be filed within 30 days after the date requested. If there is a change of more than 50% of ownership or control or a change in the general partnership of a licensee, the department may require that licensee to file a new application for a license or an updated financial statement.

(8) Each place of business of a retailer, and any place of business or other nonresidential building, office, or facility licensed under this section, must display the name and address of the retailer or licensee in a manner that is readily visible to the general public from outside the place of business, nonresidential building, office, or facility, as applicable.

(9) Notwithstanding anything in this act to the contrary, the following requirements apply to a secondary wholesaler, vending machine operator, or wholesaler, as applicable:

(a) A secondary wholesaler may purchase or acquire a tobacco product for resale in this state only if that purchase or acquisition is directly from a wholesaler or unclassified acquirer that is licensed under this act and the tax imposed under this act has been paid on that tobacco product.

(b) Except for a secondary wholesaler described in section 2(z)(ii), a secondary wholesaler shall maintain 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 for sale to retailers for resale.

(c) A wholesaler shall maintain an established place of business in this state where substantially all 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 for sale to retailers for resale.

(d) A vending machine operator may purchase a tobacco product only from a secondary wholesaler, a wholesaler, or an unclassified acquirer that is licensed under this act.

History: 1993, Act 327, Eff. Mar. 15, 1994 ;-- Am. 1997, Act 187, Imd. Eff. Dec. 30, 1997 ;-- Am. 2022, Act 171, Imd. Eff. July 21, 2022