

**SUBSTITUTE FOR
HOUSE BILL NO. 5052**

A bill to amend 1993 PA 327, entitled
"Tobacco products tax act,"
by amending sections 2 and 8 (MCL 205.422 and 205.428), as amended
by 2004 PA 474.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

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

7 (b) "Commissioner" means the state treasurer.

8 (c) "Counterfeit cigarette" means a cigarette in an individual

1 package of cigarettes or other container with a false manufacturing
2 label or a cigarette in an individual package of cigarettes or
3 other container with a counterfeit stamp.

4 (D) "COUNTERFEIT CIGARETTE PAPER" MEANS A CIGARETTE PAPER WITH
5 A FALSE MANUFACTURING LABEL OR THAT HAS NOT BEEN PRINTED,
6 MANUFACTURED, OR MADE BY AUTHORITY OF THE TRADEMARK OWNER.

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

13 (F) ~~(e)~~ "Department" means the department of treasury.

14 (G) ~~(f)~~ "Financially sound" means a determination by the
15 department that the wholesaler or unclassified acquirer is able to
16 pay for its stamps in the ordinary course of business based on
17 criteria including, but not limited to, all of the following:

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

19 (ii) Outstanding liabilities.

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

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

24 (H) "GRAY MARKET CIGARETTE" MEANS ANY CIGARETTE THE PACKAGE OF
25 WHICH BEARS ANY STATEMENT, LABEL, STAMP, STICKER, OR NOTICE
26 INDICATING THAT THE MANUFACTURER DID NOT INTEND THE CIGARETTES TO
27 BE SOLD, DISTRIBUTED, OR USED IN THE UNITED STATES, INCLUDING, BUT

1 NOT LIMITED TO, A LABEL STATING "FOR EXPORT ONLY", "U.S. TAX
2 EXEMPT", "FOR USE OUTSIDE U.S.", OR SIMILAR WORDING.

3 (I) "GRAY MARKET CIGARETTE PAPER" MEANS ANY CIGARETTE PAPER
4 THE PACKAGE OF WHICH BEARS ANY STATEMENT, LABEL, STAMP, STICKER, OR
5 NOTICE INDICATING THAT THE MANUFACTURER DID NOT INTEND THE
6 CIGARETTE PAPERS TO BE SOLD, DISTRIBUTED, OR USED IN THE UNITED
7 STATES, INCLUDING, BUT NOT LIMITED TO, A LABEL STATING "FOR EXPORT
8 ONLY", "U.S. TAX EXEMPT", "FOR USE OUTSIDE U.S.", "FOR USE IN
9 _____ (ANOTHER COUNTRY) ONLY", OR SIMILAR WORDING.

10 (J) ~~(g)~~ "Individual package" means an individual packet or
11 pack used to contain or to convey cigarettes to the consumer.
12 Individual package does not include cartons, cases, or shipping or
13 storage containers that contain smaller packaging units of
14 cigarettes.

15 (K) ~~(h)~~ "Licensee" means a person licensed under this act.

16 (L) ~~(i)~~ "Manufacturer" means a person who manufactures or
17 produces a tobacco product.

18 (M) ~~(j)~~ "Noncigarette smoking tobacco" means tobacco sold in
19 loose or bulk form that is intended for consumption by smoking and
20 includes roll-your-own cigarette tobacco.

21 (N) ~~(k)~~ "Person" means an individual, partnership,
22 fiduciary, association, limited liability company, corporation, or
23 other legal entity.

24 (O) ~~(l)~~ "Place of business" means a place where a tobacco
25 product is sold or where a tobacco product is brought or kept for
26 the purpose of sale or consumption, including a vessel, airplane,
27 train, or vending machine.

1 (P) ~~(m)~~ "Retailer" means a person other than a
2 transportation company who operates a place of business for the
3 purpose of making sales of a tobacco product at retail.

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

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

15 (S) ~~(p)~~ "Smokeless tobacco" means snuff, chewing tobacco,
16 and any other tobacco that is intended to be consumed by means
17 other than smoking.

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

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

1 (V) ~~—(s)—~~ "Tobacco product" means cigarettes, cigars,
2 nonsmoking tobacco, or smokeless tobacco.

3 (W) ~~—(t)—~~ "Transportation company" means a person operating,
4 or supplying to common carriers, cars, boats, or other vehicles for
5 the transportation or accommodation of passengers and engaged in
6 the sale of a tobacco product at retail.

7 (X) ~~—(u)—~~ "Transporter" means a person importing or
8 transporting into this state, or transporting in this state, a
9 tobacco product obtained from a source located outside this state,
10 or from any person not duly licensed under this act. Transporter
11 does not include an interstate commerce carrier licensed by the
12 interstate commerce commission to carry commodities in interstate
13 commerce, or a licensee maintaining a warehouse or place of
14 business outside of this state if the warehouse or place of
15 business is licensed under this act.

16 (Y) ~~—(v)—~~ "Unclassified acquirer" means a person, except a
17 transportation company or a purchaser at retail from a retailer
18 licensed under the general sales tax act, 1933 PA 167, MCL 205.51
19 to 205.78, who imports or acquires a tobacco product from a source
20 other than a wholesaler or secondary wholesaler licensed under this
21 act for use, sale, or distribution. Unclassified acquirer also
22 means a person who receives cigars, nonsmoking tobacco,
23 or smokeless tobacco directly from a manufacturer licensed under
24 this act or from another source outside this state, which source is
25 not licensed under this act. An unclassified acquirer does not
26 include a wholesaler.

27 (Z) ~~—(w)—~~ "Vending machine operator" means a person who

1 operates 1 or more vending machines for the sale of a tobacco
2 product and who purchases a tobacco product from a manufacturer,
3 licensed wholesaler, or secondary wholesaler.

4 (AA) ~~(x)~~ "Wholesale price" means the actual price paid for a
5 tobacco product, including any tax, by a wholesaler or unclassified
6 acquirer to a manufacturer, excluding any discounts or reductions.

7 (BB) ~~(y)~~ "Wholesaler" means a person who purchases all or
8 part of his or her tobacco products from a manufacturer, who sells
9 75% or more of those tobacco products to others for resale, and who
10 maintains an established business where substantially all of the
11 business is the sale of tobacco products or cigarettes and related
12 merchandise at wholesale and where at all times a substantial stock
13 of tobacco products and related merchandise is available to
14 retailers for resale. Wholesaler includes a chain of stores
15 retailing a tobacco product to the consumer if 75% of its stock of
16 tobacco products is purchased directly from the manufacturer.

17 Sec. 8. (1) A person, other than a licensee, who is in control
18 or in possession of a tobacco product contrary to this act, who
19 after August 31, 1998 is in control or in possession of an
20 individual package of cigarettes without a stamp in violation of
21 this act, or who offers to sell or does sell a tobacco product to
22 another for purposes of resale without being licensed to do so
23 under this act, shall be personally liable for the tax imposed by
24 this act, plus a penalty of 500% of the amount of tax due under
25 this act.

26 (2) The department may permit a representative of a licensed
27 manufacturer of tobacco products whose duties require travel in

1 this state to transport up to 138,000 cigarettes, of which not more
2 than 36,000 cigarettes may bear no tax indicia or the tax indicia
3 of another state. All 138,000 cigarettes must bear the stamp
4 approved by the department or the tax indicia of another state, if
5 any. The total value of tobacco products, excluding cigarettes,
6 carried by a representative shall not exceed a wholesale value of
7 \$5,000.00. A manufacturer shall notify the department of the
8 manufacturer's representatives that it currently employs who carry
9 cigarettes or tobacco products other than cigarettes in performing
10 work duties in this state. The manufacturer shall maintain a record
11 of each transaction by the manufacturer's representative for a
12 period of 4 years immediately following the transaction and shall
13 produce the records upon request of the state treasurer or the
14 state treasurer's authorized agent. Each record shall identify the
15 quantity and identity of the tobacco products, detail whether
16 exchanged, received, removed, or otherwise disposed of and the
17 identity of the retailer, wholesaler, secondary wholesaler, vending
18 machine operator, or unclassified acquirer involved. The
19 representative of the manufacturer shall provide a copy of the
20 record to the retailer, wholesaler, secondary wholesaler, vending
21 machine operator, or unclassified acquirer at the time of the
22 exchange or disposal. The retailer, wholesaler, secondary
23 wholesaler, vending machine operator, or unclassified acquirer
24 shall retain the copy of the record in the same place and for the
25 same time period as other records required by this section. A
26 representative shall not exchange, or otherwise dispose of, within
27 this state tobacco products bearing the tax indicia of another

1 state or receive tobacco products bearing the tax indicia of
2 another state from retailers located within this state. A
3 representative who sells, exchanges, or otherwise disposes of
4 cigarettes or tobacco products other than cigarettes that do not
5 bear the stamp or other marking required by the department or
6 sells, exchanges, or otherwise disposes of cigarettes or tobacco
7 products other than cigarettes bearing the tax indicia of another
8 state is guilty of a felony, punishable by a fine of not more than
9 \$5,000.00 or imprisonment for not more than 5 years, or both.

10 (3) A person who possesses, acquires, transports, or offers
11 for sale contrary to this act 3,000 or more cigarettes, tobacco
12 products other than cigarettes with an aggregate wholesale price of
13 \$250.00 or more, ~~or~~ 3,000 or more counterfeit cigarettes, **3,000**
14 **OR MORE COUNTERFEIT CIGARETTE PAPERS, 3,000 OR MORE GRAY MARKET**
15 **CIGARETTES, OR 3,000 OR MORE GRAY MARKET CIGARETTE PAPERS** is guilty
16 of a felony, punishable by a fine of not more than \$50,000.00 or
17 imprisonment for not more than 5 years, or both.

18 (4) A person who possesses, acquires, transports, or offers
19 for sale contrary to this act 1,200 or more, but not more than
20 2,999, cigarettes, tobacco products other than cigarettes with an
21 aggregate wholesale value of \$100.00 or more but less than \$250.00,
22 or 1,200 or more, but not more than 2,999, counterfeit cigarettes,
23 **COUNTERFEIT CIGARETTE PAPERS, GRAY MARKET CIGARETTES, OR GRAY**
24 **MARKET CIGARETTE PAPERS** is guilty of a misdemeanor punishable by a
25 fine of not more than \$5,000.00 or imprisonment of not more than 1
26 year, or both.

27 (5) A person who violates a provision of this act for which a

1 criminal punishment is not otherwise provided is guilty of a
2 misdemeanor, punishable by a fine of not more than \$1,000.00 or 5
3 times the retail value of the tobacco products involved, whichever
4 is greater, or imprisonment for not more than 1 year, or both.

5 (6) A person who manufactures, possesses, or uses a stamp or
6 manufactures, possesses, or uses a counterfeit stamp or writing or
7 device intended to replicate a stamp without authorization of the
8 department, a licensee who purchases or obtains a stamp from any
9 person other than the department, or who falsifies a manufacturer's
10 label on cigarettes, ~~or~~ counterfeit cigarettes, **GRAY MARKET**
11 **CIGARETTE PAPERS, OR COUNTERFEIT CIGARETTE PAPERS** is guilty of a
12 felony and shall be punished by imprisonment for not less than 1
13 year or more than 10 years and may be punished by a fine of not
14 more than \$50,000.00.

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

27 (8) The attorney general has concurrent power with the

House Bill No. 5052 as amended November 8, 2005

1 prosecuting attorneys of the state to enforce this act.

2 (9) At the request of the department or its duly authorized
3 agent, the state police and all local police authorities shall
4 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.>>**

5 Enacting section 1. This amendatory act takes effect January
6 1, 2006.