

## No. 178

## AN ACT

SB 223

Imposing a tax on the sale or possession of cigarettes and providing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

ARTICLE I  
Introductory Provisions

Section 101. Short Title.—This act shall be known and may be cited as the “Pennsylvania Cigarette Tax Act.”

Section 102. Definitions.—As used in this act:

(1) “Act” means the Pennsylvania Cigarette Tax Act and the rules and regulations promulgated thereunder.

(2) “Bureau” means the Bureau of Cigarette and Beverage Taxes of the Pennsylvania Department of Revenue.

(3) “Cigarette” means any roll for smoking made wholly or in part of tobacco, the wrapper or cover of which is made of any substance or material other than tobacco regardless of the size or shape of the roll and regardless of whether or not the tobacco is flavored, adulterated or mixed with any other ingredient.

(4) “Cigarette stamping agency” means any person, as defined in this act, who shall be licensed as such by the department for the purpose of affixing cigarette tax stamps to packages of cigarettes and transmitting the proper tax to the Commonwealth.

(5) “Cigarette tax stamp” means any stamp, tax meter impression, label, print or impression which the department by *regulation* shall authorize to evidence the payment of the tax imposed by this act.

(6) “Cigarette vending machine” means any mechanical device from which cigarettes are dispensed for a consideration.

(7) “Dealer” means any cigarette stamping agency, wholesaler or retailer as these terms are more specifically defined herein. Whenever, in the provisions of this act, the word “dealer” is used, it shall include all of the above mentioned categories. Nothing contained in this act shall preclude any person from being a cigarette stamping agency, wholesaler, and/or retailer, provided such person meets the requirements for each category of dealer.

(8) “Department” means the Department of Revenue of the Commonwealth of Pennsylvania.

(9) “Invoice or delivery ticket” means any invoice or delivery ticket which shows the true name and complete and exact address of the consignor or seller, the true name and complete and exact address of the

consignee or purchaser, the quantity and brands of the cigarettes transported, the correct date of purchase and/or shipment and the true name and complete and exact address of the person who shall assume the payment of the Pennsylvania State tax or the tax, if any, of the state or foreign country at the point of ultimate destination.

(10) "Pack of cigarettes" means the smallest package, box or container in or from which retail sales of cigarettes are normally made.

(11) "Person" means any individual, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership, conservator, and any political subdivision of the Commonwealth of Pennsylvania, or any other state. Whenever used in any of the provisions of this act prescribing and/or imposing penalties, the word "person" as applied to a partnership, unincorporated association or other joint venture, means the partners or members thereof, and as applied to a corporation, means all the officers and directors thereof.

(12) "Retailer" means (i) any person, who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale to the ultimate consumer; (ii) any person, who in the usual course of business, owns, leases, or otherwise operates one or more vending machines for the purpose of sale of cigarettes to the ultimate consumer; (iii) any person, who in any manner, buys, sells, transfers or deals in cigarettes for profit, who is not licensed as a cigarette stamping agency or wholesaler under this act.

(13) "Sale" means any transfer of ownership, custody or possession of cigarettes for a consideration; any exchange, barter or gift; or any offer to sell or transfer the ownership, custody or possession of cigarettes for consideration.

(14) "Unstamped cigarettes" means any pack of cigarettes to which the proper amount of genuine Pennsylvania cigarette tax stamps have not been affixed. Any pack of cigarettes containing a forged, bogus or counterfeit Pennsylvania cigarette tax stamp or any pack of cigarettes bearing stolen, lost or misplaced genuine Pennsylvania cigarette tax stamps which have not been affixed to said pack of cigarettes by a proper cigarette stamping agency as provided for in this act, or any pack of cigarettes bearing genuine Pennsylvania cigarette tax stamps for which the tax has not been paid as a result of any wilful or intentional act for the purpose of evading the payment of the Pennsylvania cigarette tax shall be considered, under the provisions of this act, to be a package of "unstamped cigarettes."

(15) "Vending machine operator" means any person who places or services one or more cigarette vending machines, whether owned, leased or otherwise operated by him, at locations from which cigarettes are sold to the ultimate consumer. The owner or tenant of the premises upon which a vending machine is placed shall not be considered a vending machine

operator if his sole remuneration therefrom is a flat rental fee or commission based upon the number or value of cigarettes sold from the machine, unless said owner or tenant actually owns said vending machine or leases said vending machine under an agreement whereby the profits from the sale of said cigarettes directly inure to his benefit.

(16) "Wholesaler" means any person who, in the usual course of business, sells cigarettes within this Commonwealth to retail dealers, other wholesale dealers, or any other persons who shall buy said cigarettes from him for the purpose of resale to the ultimate consumer; provided that such person maintains an established place of business for the purchase, storage and distribution of cigarettes. "Wholesaler" includes those persons who are engaged in the business of distributing cigarettes through vending machines to the ultimate consumer by means of placing said cigarette vending machines, owned or leased by them, in various outlets within the Commonwealth or elsewhere, and who shall pay to the owner or lessee of the premises upon which said cigarette vending machine is placed a commission or rental for the use of said premises: Provided, however, That such vending machine operator shall maintain an established place of business for the purchase, storage and distribution of cigarettes: And further provided, That said vending machine operator shall meet all of the other requirements for licensing of wholesalers under this act.

## ARTICLE II

### Imposition of Tax

Section 201. Incidence and Rate of Tax.—An excise tax is hereby imposed and assessed upon the sale or possession of cigarettes within this Commonwealth at the rate of nine-tenths of a cent per cigarette.

Section 202. Sales to Commonwealth and Political Subdivisions.—The excise tax imposed by this act is hereby levied upon the sale of cigarettes to any person as defined under the provisions of this act and to the Commonwealth of Pennsylvania or any other state, or any department, board, commission, authority or agency thereof.

Section 203. Limitation of Tax.—Only one sale shall be taxable and used in computing the amount of tax due hereunder whether said sale be of individual cigarettes, packages, cartons or cases.

Section 204. Exemptions from Tax.—(a) No tax imposed by this act shall be levied upon the possession or sale of cigarettes which this Commonwealth is prohibited from taxing under the Constitution or statutes of the United States. In addition, when the seller and purchaser have registered with the department and have obtained exemption certificates in accordance with such regulations as the department shall prescribe, the following sales are exempt:

(1) Sales to veterans' organizations approved by the department, if the

cigarettes are being purchased by the organization for gratuitous issue to veteran patients in Federal, State or State-aided hospitals;

(2) Sales to voluntary unincorporated organizations of military forces personnel operating under regulations promulgated by the United States Secretary of Defense or departments under his jurisdiction;

(3) Sales to retail dealers located in Veterans' Administration hospitals for sales to patients in such hospitals.

(b) The department may otherwise promulgate regulations to relieve manufacturers and dealers from payment of tax on cigarettes sold and delivered to points inside and outside the Commonwealth for sale and use outside the Commonwealth or sold to purchasers designated as exempt by the provisions of this section. However, all sales shall be presumed to be taxable and the burden shall be upon the person claiming an exemption to prove his right thereto.

Section 205. Liability for Collection of Tax.—Every person shall be liable to pay into the State Treasury, through the department, the tax imposed by this act on all cigarettes received by him to which Pennsylvania cigarette tax stamps have not been previously affixed, the tax paid, or exempted by the provisions of this act. Nothing in this paragraph shall relieve a cigarette stamping agency from its liability to pay the tax imposed by this act on all cigarettes received by it to which Pennsylvania cigarette tax stamps have not been previously affixed, the tax paid, or exempted by the provisions of this act.

### ARTICLE III

#### Method of Payment of Tax

Section 301. Stamp to Evidence the Tax.—(a) The department shall by regulation require every cigarette stamping agency and/or ultimate consumer, to use cigarette tax stamps to evidence the payment of the tax imposed by this act unless such stamps have been affixed to the packs of cigarettes and properly cancelled before such cigarette stamping agency and/or ultimate consumer received them.

(b) The department shall by regulation authorize the sale of cigarette tax stamps at such places and at such times as it deems necessary and the department shall prescribe the manner, time and conditions under which the payment of tax shall be made.

(c) The department shall also prescribe the type of cigarette tax stamps which shall be used, to evidence payment of the tax. Nothing in this provision shall be construed as a limitation upon the department to prescribe various methods of affixing cigarette tax stamps and said department, shall have the authority to prescribe one or more of several types of tax stamps which shall be used by a particular cigarette stamping agency whenever, in the reasonable exercise of its powers, it shall be deemed necessary for the protection of the revenue.

(d) Under no circumstances shall any cigarette stamping agency be

permitted to sell, transfer or deliver to any person any packages of unstamped cigarettes, or any unused cigarette tax stamps unless specifically permitted by the provisions of this act.

(e) The department shall by regulation permit only a Pennsylvania domiciled cigarette stamping agency to pay for purchases on a deferred basis, upon the filing of a surety bond, of the type approved by the department, with the department, in an amount deemed sufficient by the department to protect the revenue, said bond to be executed by the cigarette stamping agency as principal and by a corporate surety company, duly authorized to engage in such business in the Commonwealth of Pennsylvania, as surety.

Section 302. Commissions on Sales.—Cigarette stamping agencies shall be entitled to a commission of three per cent of the value of all Pennsylvania cigarette tax stamps purchased by them from the department or its authorized agents to be used by them in the stamping of packages of cigarettes for sale with the Commonwealth of Pennsylvania, said commission to be paid to the cigarette stamping agent as compensation for his services and expenses as agent in affixing such stamps. Said cigarette stamping agencies shall be entitled to deduct from the moneys to be paid by them for such stamps an amount, equal to three per cent of the value of said stamps purchased by them when such cigarette stamping agencies have purchased said Pennsylvania cigarette tax stamps directly from the department or its authorized agents. This paragraph shall not apply to purchases of stamps by a cigarette stamping agency in an amount less than one hundred dollars (\$100).

Section 303. Sample Packs of Cigarettes.—The department shall, by regulation, govern the receipt, distribution of and payment of tax on sample packs of cigarettes issued for free distribution.

Nothing in this act or the regulations promulgated thereunder shall prohibit the bringing into this Commonwealth by a manufacturer of sample packs of cigarettes containing not more than five cigarettes and such packs shall be delivered and distributed only through licensed dealers or the manufacturers or their sales representatives. The tax shall be paid by the manufacturer but no tax stamp or tax impression need be used on the sample packs of cigarettes provided all such packs bear the legend "all applicable State taxes have been paid." Under no circumstances shall any unstamped sample cigarettes be sold within the Commonwealth of Pennsylvania.

#### ARTICLE IV Licensing Provisions

Section 401. Licensing of Cigarette Dealers.—(a) No person, unless all of his sales of cigarettes are exempt from Pennsylvania cigarette tax, shall sell, transfer or deliver any cigarettes within this Commonwealth

without first obtaining the proper license pursuant to the provisions of this act.

(b) Every applicant for a dealer's license shall complete and file an application with the department and said application shall be in such form and contain such information as the department, by regulation, shall prescribe, and shall set forth truthfully and accurately the information desired by the department. If said application is approved, the department shall license said dealer for a period of one year and said license may be renewed annually thereafter.

Section 402. Licensing of Cigarette Stamping Agents.—(a) The department may license as its agent for a one year period (and may renew said license for further periods of one year) any person of good moral character who shall meet the requirements imposed by the following provisions for the privilege of operating as a cigarette stamping agency:

(1) Said applicant shall be a wholesale cigarette dealer licensed by the Commonwealth of Pennsylvania;

(2) The premises in which said applicant proposes to conduct his business are adequate to protect the revenue;

(3) The said applicant is a person of good moral character, of reasonable financial stability and reasonably experienced in the wholesale cigarette business;

(4) The applicant, or any officer, director or shareholder controlling more than fifty per cent of the stock if said applicant is a corporation, shall not have been convicted of any crime involving moral turpitude.

(b) The department shall, by regulation, prescribe the form, content and manner of said application by which the licensing of a cigarette stamping agency shall be made.

(c) Said cigarette stamping agency license shall be valid for one specific location only.

(d) The department may reject any application for a new or renewal license whenever it shall find that any of the aforementioned requirements have not been met, or shall find that such applicant or licensee has (i) failed to disclose any material information required; (ii) has made any material false statement in his application; (iii) has violated any provision of this act.

Section 403. Licensing of Wholesalers.—Applicants for a wholesale license or renewal thereof shall meet the following requirements:

(1) The premises on which said applicant proposes to conduct his business are adequate to protect the revenue;

(2) Said applicant is a person of reasonable financial stability and reasonable business experience. The applicant or any officer, director or shareholder controlling more than fifty per cent of the stock, if the applicant is a corporation, shall not have been convicted of any crime involving moral turpitude.

(3) Said applicant shall not have failed to disclose any material information required by the department;

(4) Said applicant shall not have made any material false statement in his application;

(5) Said applicant shall not have violated any provision of this act;

(6) The wholesale dealer's license shall be valid for one specific location only.

Section 404. Licensing of Retailers.—Applicant for retail license or renewal thereof shall meet the following requirements:

(1) The premises in which said applicant proposes to conduct his business are adequate to protect the revenues;

(2) Said applicant shall not have failed to disclose any material information required by the department;

(3) Said applicant shall not have any material false statement in his application;

(4) Said applicant shall not have violated any provision of this act.

Section 405. Suspension or Revocation of License.—If the department has reason to believe that any person holding a license has not, in good faith, complied with all of the provisions of this act or has violated any of the conditions and/or requirements imposed under sections 401, 402, 403 or 404 of this act, the department shall prepare a complaint stating the facts charged and requesting such person to show cause why his license should not be suspended or revoked. Said complaint shall be presented to the Cigarette Tax Board as mentioned hereinafter, and if after a hearing conducted by the Cigarette Tax Board as hereinafter mentioned, the department finds that such person has not in good faith complied with this act and with the conditions and/or requirements under sections 401 to 404 inclusive in this act, such license shall be suspended or revoked for such period as the department may deem proper.

Section 406. Cigarette Tax Board.—(a) There is hereby created a Cigarette Tax Board consisting of three members designated by the Secretary of Revenue, one of whom shall be a Deputy Secretary of the department, and one of whom shall be an attorney at law. The Cigarette Tax Board shall take testimony, after proper notices as hereinafter mentioned, and shall make its recommendations in writing to the Secretary of Revenue under the provisions of this act.

(b) Whenever any applicant for license or renewal thereof is aggrieved by the determination of the department or bureau, he may file a complaint with the Cigarette Tax Board, Harrisburg, Pennsylvania, assigning specifically his reasons for believing that the department or bureau acted improperly. Said complaint shall be filed within thirty days after notice by the department or bureau of its determination of his application. Whenever the bureau determines that a violation of this act has occurred, it may file a complaint with the Cigarette Tax Board assigning specifically its reasons for believing that the provisions of this act have been violated. Said complaint shall be filed by the bureau within

thirty days after final determination of those facts which give rise to its belief that the provisions of this act have been violated. Upon receipt of said complaint the Cigarette Tax Board, if it determines that said complaint raises an issue of fact, shall within thirty days after receipt of said petition, issue a citation directing the applicant, dealer or bureau, as the case may be, to appear at a hearing to be scheduled by the Cigarette Tax Board in Harrisburg within said thirty day period, and shall afford the aggrieved party an opportunity to be heard at said hearing, which shall be conducted in accordance with the provisions of the act of June 4, 1945 (P.L.1388), known as the "Administrative Agency Law."

(c) Within thirty days after the termination of said hearing, the Cigarette Tax Board shall make its recommendation to the Secretary of Revenue, in writing, and within fifteen days subsequent thereto, the Secretary of Revenue shall render a final decision. Any party aggrieved by the final decision of the Secretary of Revenue shall have the right to appeal therefrom in accordance with the provisions of the act of June 4, 1945 (P.L.1388), known as the "Administrative Agency Law."

(d) Whenever any person is aggrieved by an assessment issued by the department for taxes due the Commonwealth he may file an appeal from said assessment in accordance with the procedures of the act of April 9, 1929 (P.L.343), known as "The Fiscal Code."

Section 407. License Fees; Issuance and Posting of License.—(a) At the time making any application, an applicant for a wholesale cigarette dealer's license shall pay to the department a license fee of fifty dollars (\$50), an applicant for a retail cigarette dealer's license or vending machine license shall pay to the department a license fee of one dollar (\$1), an applicant for a cigarette stamping agency license, shall pay to the department a fee of two hundred dollars (\$200).

(b) Upon approval of the application and payment of the fees, the department shall issue the proper license to be conspicuously displayed at the place for which issued.

Section 408. Transfer of Licenses.—The department may permit a dealer, under such conditions as the department may impose by regulation, to transfer a license from one location to another or from one cigarette vending machine to another.

Section 409. Disposition of License Fees.—All license fees imposed and collected under the provisions of this act shall be paid into the General Fund.

Section 410. Expiration of License.—(a) Every license shall expire on the last day of February next succeeding the date upon which it was issued unless sooner suspended, surrendered, or revoked. Licenses issued during 1970 and bearing the expiration date of December 31, 1970 shall automatically be valid until February 28, 1971.

(b) After the expiration date of the license, or unless sooner suspended, surrendered, or revoked, it shall be illegal for any dealer to



engage directly or indirectly in the business heretofore conducted by him for which said license was issued. Any licensee who shall, after the expiration date of said license, engage in the business theretofore conducted by him either by way of purchase, sale, stamping, distribution, or in any other manner directly or indirectly engage in the business of dealing with cigarettes for profit shall be in violation of section 901 and be subject to the penalties provided therein.

Section 411. Duplicate License.—(a) Whenever any license is defaced, destroyed, or lost, the department may issue a duplicate to the holder of the defaced, destroyed, or lost license upon submission of a duplicate license application. Except as provided in subsection (b) of this section, at the time of making any application for a duplicate license, the applicant shall pay to the department a fee of one dollar (\$1). The duplicate license application shall be in such form and contain such information as the department shall prescribe and shall set forth truthfully and accurately the information called for on the form.

(b) In the event a license is defaced or destroyed in the performance of any duty imposed by this act, the department may, by regulation, waive the fee imposed by subsection (a) of this section.

(c) No license shall be issued by the department to any person within one year after rejection of an application, refusal to renew, or revocation of an existing license; said period of one year to commence from the date that said license is returned to the department, or application is rejected.

## ARTICLE V

### Cigarette Vending Machines

Section 501. Cigarette Vending Machines; Names of Owner and Operator.—There shall be conspicuously and visibly placed on every cigarette vending machine the name and address of the owner and the name and address of the operator.

Section 502. License for Machine.—Each cigarette vending machine shall have a license which shall be conspicuously and visibly placed on the machine.

## ARTICLE VI

### Business Records

Section 601. Retention of Records.—Every licensed dealer shall keep and maintain for a period of four years, such records, in such form, as the department shall by regulation prescribe.

Section 602. Reports.—Every licensed dealer shall file reports at such times and in such form as the department by regulation may prescribe.

Section 603. Examination of Records; Equipment and Premises.—(a) The department is hereby authorized to examine the books and records, the inventory of cigarettes and the premises and equipment of any dealer

in order to determine compliance with the provisions of this act and to verify the accuracy of the payment of the tax imposed by this act. Every such person is hereby directed and required to give to the department or its duly authorized representative, the means, facilities, and opportunity for such examinations.

(b) Any person who prevents or hinders the department or any designated agent thereof from making a full inspection of the premises where cigarettes are sold or stored, or prevents or hinders the inspection of invoices, books, records, equipment, inventory, or papers required to be kept, shall be guilty of a violation of section 906 (b) and subject to the penalties provided therein.

## ARTICLE VII Refunds and Allowances

Section 701. Refund of Tax.—A refund of any tax imposed by this act shall be made to a person on proof satisfactory to the department, that the claimant:

- (1) Paid the tax on cigarettes withdrawn by him from the market;
- (2) Shipped cigarettes into another state for sale or use therein under the conditions as provided by the regulations promulgated by the department;
- (3) Sold to persons exempt from the tax under the provisions of this act or regulations prescribed thereunder;
- (4) Had possession of cigarettes which were lost (otherwise than by theft) or destroyed by fire, casualty, or act of God;
- (5) Paid the tax in error;
- (6) Has no further use for cigarette stamps originally purchased by him.

Section 702. Allowance for Nonpayment of Tax.—If the tax has not yet been paid on cigarettes for which a refund of said tax would be allowed under section 701 of this act, relief from the payment of the tax on such cigarettes may be given upon the filing of a claim for allowance in the same manner as a claim for refund, or in any other manner provided by regulations.

Section 703. Limitations.—Claims for refund or allowance of tax imposed by this act shall be filed within one year from the date of payment of the tax or from the date of the occurrence giving rise to the refund or allowance and shall be in such form and contain such information as the department shall, by regulation, prescribe.

Section 704. Procedures for Claiming Refund.—(a) A dealer shall make a claim for a refund of tax on a form and in the manner prescribed by the department;

(b) If the department is satisfied that the dealer is entitled to the refund it shall certify the proposed amount of such refund to the Board of

Finance and Revenue for approval and, having obtained approval from the Board of Finance and Revenue, it shall thereafter issue to the dealer the proper refund.

(c) Claims for allowance for nonpayment of tax shall be allowed by the department if the department shall be satisfied that the dealer is entitled to such allowance.

## ARTICLE VIII

### Advertising

Section 801. Advertising.—Any dealer may state the amount of the tax separately from the price of the cigarettes on any displays, signs, sales slips, delivery slips or statements which advertise or indicate the price of such cigarettes.

## ARTICLE IX

### Penalties and Enforcement

Section 901. Sales without License.—Any dealer or other person who shall, without being the holder of a proper unexpired dealer's license or vending machine license properly affixed as required by this act, engage in the business of purchasing, selling, stamping, distributing or in any other manner directly or indirectly engaging in the business of dealing with cigarettes for profit shall be in violation of this act, and upon conviction in a summary proceeding shall be sentenced to pay a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) and costs of prosecution and in default of payment thereof to undergo imprisonment for not more than thirty days.

Section 902. Sales of Unstamped Cigarettes.—(a) Any person who shall sell any pack of cigarettes which does not have affixed thereto the proper amount of genuine Pennsylvania cigarette tax stamps shall, upon conviction in a summary proceeding be sentenced to pay a fine of not less than twenty-five dollars (\$25) nor more than one thousand dollars (\$1000) and costs of prosecution and in default of payment thereof to undergo imprisonment for not more than sixty days.

(b) Any person who shall falsely or fraudulently, maliciously, intentionally or wilfully with intent to evade the payment of the Pennsylvania cigarette tax, sell any pack of cigarettes which do not have affixed thereto the proper amount of genuine Pennsylvania cigarette tax stamps shall be guilty of a felony and upon conviction thereof shall be sentenced to pay a fine of not more than five thousand dollars (\$5000) and to suffer imprisonment for a term of not more than five years.

(c) For the purposes of this section, the sale of cigarettes having affixed thereto genuine Pennsylvania cigarette tax stamps for which the tax has not been paid as a result of any wilful or intentional act for the purpose of avoiding the payment of the Pennsylvania cigarette tax shall

be considered an illegal sale subjecting the seller to the penalties provided in section 902 (b).

Section 903. Possession of Unstamped Cigarettes.—(a) Any person other than a duly licensed stamping agency or other person specifically exempted by the provisions of this act who shall possess more than two hundred but less than five thousand cigarettes, packages of which do not have affixed thereto the proper amount of genuine cigarette tax stamps shall be guilty of a summary offense and upon conviction thereof shall pay a fine of twenty-five dollars (\$25) per two hundred cigarettes or fraction thereof, (all of which shall be considered as one violation) plus costs of prosecution and in default thereof to suffer imprisonment for not more than sixty days.

(b) Any person other than a duly licensed stamping agency or other person specifically exempted by the provisions of this act who shall possess more than five thousand cigarettes, the packages of which do not have affixed thereto the proper amount of genuine Pennsylvania cigarette tax stamps shall be guilty of a misdemeanor and upon conviction thereof shall be sentenced to a fine of not less than a thousand dollars (\$1000) nor more than five thousand dollars (\$5000) and costs of prosecution or in default thereof to suffer imprisonment for not more than ninety days.

(c) Any person who shall falsely or fraudulently, maliciously, intentionally or wilfully with intent to evade the payment of the Pennsylvania cigarette tax possess any pack of cigarettes which does not have affixed thereto the proper amount of genuine Pennsylvania cigarette tax stamps shall be guilty of a felony and upon conviction thereof shall be sentenced to pay a fine of not more than five thousand dollars (\$5000) and costs of prosecution and to suffer imprisonment for a term of not more than five years.

(d) Every person other than a common carrier engaged in interstate commerce who shall possess or transport more than two hundred unstamped cigarettes upon the public highways, roads or streets of this Commonwealth, shall be required to have in his possession invoices or delivery tickets for such cigarettes. The invoices or delivery tickets shall show the correct date of purchase and/or shipment, true name and complete and exact address of the consignor or seller, the true name and complete and exact address of the consignee or purchaser, the quantity and brands of the cigarettes so transported and the true name and complete and exact address of the person who shall assume the payment of the Pennsylvania State tax or the tax, if any, of the state or foreign country at the point of ultimate destination. If the cigarettes are consigned to or purchased by any person in the Commonwealth of Pennsylvania such consignee or purchaser must be a licensed cigarette stamping agency or otherwise authorized by this act to possess unstamped cigarettes within the boundaries of this Commonwealth. The absence of such invoices or delivery tickets shall be prima facie evidence that the possession of such

cigarettes is contrary to the provisions of this act and shall subject the possessor to the penalties imposed herein.

(e) In the absence of such invoices or delivery tickets or, if the name or address of the purchaser or consignor is falsified, or if the purchaser or consignee in this Commonwealth is not authorized to possess unstamped cigarettes then and in that event the cigarettes so transported shall be subject to confiscation at the discretion of the Secretary of Revenue as is more fully described in section 1001.

(f) For the purpose of this section the possession of genuine Pennsylvania cigarette tax stamps for which the tax has not been paid as a result of any wilful or intentional act for the purpose of avoiding the payment of the Pennsylvania cigarette tax shall be considered a violation of this act subjecting the possessor thereof to the penalties provided in section 903 (c).

(g) Transportation of cigarettes from a point outside of this Commonwealth to a final destination outside of this Commonwealth shall not be considered a violation of this section provided that the person so transporting such cigarettes has in his possession invoices, bills of lading or delivery tickets which give the true name and true address of such out-of-state consignor or seller and such out-of-state consignee or purchaser: Provided, however, That such consignor or consignee shall be authorized by the laws of such states to receive or possess cigarettes on which the taxes imposed by such other states have not been paid.

(h) In any case, where agents of the department have reason to believe that any vehicle is carrying or transporting cigarettes in violation of this act, then and in that event, the agents of the department shall be and are hereby authorized to stop such vehicle, make an inspection and confiscate all such unstamped or improperly stamped cigarettes found therein and confiscate the vehicle used to transport such unstamped or improperly stamped cigarettes.

Section 904. Counterfeiting.—(a) Any person who falsely or fraudulently makes, forges, alters, or counterfeits, or who has in his possession any stamping device, stencil, machine, or other material of any nature whatsoever designed to produce counterfeit tax stamps with the intent to produce counterfeit tax stamps or who causes or procures to be falsely or fraudulently made, forged, altered, or counterfeited any cigarette tax stamp or any stamping device, stencil, machine, or other material of any nature whatsoever designed to produce counterfeit stamps with the intent to produce counterfeit stamps or knowingly and wilfully possesses, utters, purchases, publishes, sells, passes, distributes, or tenders any such false, altered, forged, or counterfeit stamp or any stamping device, stencil, machine or other material of any nature whatsoever designed to produce counterfeit stamps with the intent to produce counterfeit stamps for the purpose of evading the tax hereby imposed and assessed, shall be guilty of a felony, and upon conviction thereof shall be

sentenced to pay a fine of not more than ten thousand dollars (\$10,000) and costs of prosecution and suffer imprisonment for a term of not more than ten years.

(b) Possession of a forged, altered or counterfeited stamp or of any stamping device, stencil, machine, or other material, of any nature whatsoever designed to produce counterfeit stamps shall be prima facie evidence that such person has intended to produce counterfeit stamps for the purpose of evading the tax due under the provisions of this act.

Section 905. Defacing of Cigarette Stamping Equipment.—Any person who shall wilfully, maliciously and for the purpose of evading the tax hereby imposed and assessed, shall in any manner deface, modify, change, tamper with, alter any cigarette tax meter, machine, or stamping equipment or do any other act, the result of which would be likely to affect the proper working order of said cigarette tax meter, machine, or stamping equipment shall be guilty of a felony, and upon conviction thereof shall be sentenced to pay a fine of five thousand dollars (\$5000) and to suffer imprisonment for a term of not more than five years.

Section 906. Failure to Furnish Information, Returning False Information or Failure to Permit an Inspection.—(a) Any dealer who fails to keep or make any record, return, report, inventory or statement, or keeps or makes any false or fraudulent record, return, report, inventory or statement required by this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of five hundred dollars (\$500) and costs of prosecution and to suffer imprisonment of not more than one year, or both, in the discretion of the court.

(b) The department is hereby authorized to examine the books and records, the stock of cigarettes and the premises and equipment of any dealer in order to verify the accuracy of the payment of the tax imposed by this act. Every such person is hereby directed and required to give to the department or its duly authorized representative, the means, facilities and opportunity for such examinations. Wilful refusal to cooperate with or permit such examination to the satisfaction of the department shall be sufficient grounds for the suspension or revocation of any license issued hereunder, and in addition thereto shall constitute a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of five hundred dollars (\$500) and costs of prosecution and to suffer imprisonment of not more than one year or both.

Section 907. Right of Department to Impound Vending Machines and Contents.—Whenever any cigarettes are found or are suspected to be in any vending machine in violation of the provisions of this act, or whenever a vending machine is not properly licensed or labeled, the duly authorized agents or employes of the department shall seal the machine by the means of impounding stickers to prevent sale or removal of any cigarettes from the machine until such time as the violation is corrected in the presence of a duly authorized agent or employe of the department.

Anyone other than the duly authorized agents or employes of the department who shall remove or otherwise tamper with any impounding stickers placed on any vending machine, contents, or other evidence shall be guilty of a misdemeanor and subject to a fine of not more than one thousand dollars (\$1000) and costs of prosecution and to suffer imprisonment of not more than one year, or both.

Section 908. Other Violations.—(a) Any person who wilfully omits, neglects, or refuses to comply with any duty imposed upon him by this act or does anything prohibited by this act for which no specific penalty is otherwise provided, shall upon conviction in a summary proceeding be sentenced to pay a fine not to exceed five hundred dollars (\$500) and costs of prosecution, and, in default of payment thereof, to undergo imprisonment for not more than thirty days.

(b) Any person who wilfully omits or neglects to pay any tax imposed by this act, or attempts in any manner to evade or defeat the tax or payment thereof, shall, in addition to any other penalty provided in this act, be liable to a penalty equal to the amount of tax evaded or not paid, which penalty shall be added to the tax and assessed and collected at the same time in the same manner as a part of the tax.

(c) Any person who fails to pay tax at the time prescribed shall, in addition to any other penalty provided in this act, be liable to a penalty of five per cent of the tax due but unpaid, together with the interest at the rate of six per cent per annum on such tax from the time the tax became due, but no interest for a fraction of a month shall be demanded. The penalties provided in this subsection shall be added to the tax and assessed and collected at the same time in the same manner and as a part of the tax.

Section 909. Peace Officers; Powers.—Such employes of the department as are officially designated by the Secretary of Revenue as field investigators of the bureau, and who carry identification of such capacity, are hereby declared to be peace officers and they, as well as other peace officers of the Commonwealth are hereby given police powers and authority throughout the Commonwealth to arrest on view, except in private homes, without warrant, any person actually engaged in the unlawful sale of unstamped or counterfeit cigarettes or any counterfeit devices, or any person unlawfully having in his possession unstamped cigarettes, counterfeit cigarettes or counterfeiting devices contrary to the provisions of this act. Such peace officer shall have the power and authority upon reasonable and probable cause to search for and seize without warrant or process, except in private homes, any unstamped cigarettes, counterfeit cigarettes or counterfeiting devices which are unlawfully possessed.

Section 910. Fines and Penalties Payable to Commonwealth.—All fines and penalties imposed and collected under the provisions of this act

shall be payable to the Commonwealth and are hereby appropriated to the department to be used in enforcing this act.

## ARTICLE X Confiscation and Forfeiture

Section 1001. Property Rights.—(a) No property rights shall exist in any vending machine in which unstamped cigarettes are found, nor shall any property rights exist in any motor vehicle containing more than five thousand unstamped cigarettes or containing more than two hundred unstamped cigarettes if the owner has been previously convicted of the illegal sale, possession or transportation of unstamped cigarettes in this or any other jurisdiction. The said vending machine, the cigarettes contained therein, and the motor vehicle used to transport said unstamped cigarettes shall be deemed contraband and shall be confiscated at the discretion of the Secretary of Revenue, and shall be forfeited to the Commonwealth as provided in subsections (e) and (f) of this section. No such property, when in the custody of the department, the police or other proper peace officers shall be seized or taken therefrom by any writ of replevin or other judicial process unless a petition for forfeiture is not timely filed or a hearing is not held within the time prescribed by other subsections of this section.

(b) Upon said forfeiture or confiscation, the department shall dispose of any forfeited machine and/or forfeited cigarettes in accordance with subsections (e) and (f) of this section.

(c) No property rights shall exist in any packages of cigarettes which have been taken from any person who has been found in violation of the provisions of section 903 of this act and all such packages of cigarettes shall be deemed contraband, shall be confiscated and shall be forfeited to the Commonwealth without further proceedings and shall be delivered to the agents of the department at the time of conviction by the judge, justice of the peace, magistrate or alderman.

(d) No property rights shall exist in any machinery, equipment, fixtures, stenciling device, stamp, stamping device, or other paraphernalia designed or used to counterfeit Pennsylvania cigarette tax stamps nor shall any property rights exist in any packages of cigarettes confiscated in connection with the operation of any counterfeiting or other scheme designed to evade the payment of proper Pennsylvania cigarette tax. Said machinery, equipment, fixtures, stenciling device, stamp, stamping device or other paraphernalia and cigarettes shall be confiscated and at the discretion of the Secretary of Revenue, shall be forfeited to the Commonwealth in accordance with the provisions of this act.

(e) The department shall dispose of cigarettes forfeited under the provisions of this act by the sale of same through the Division of Escheats, Bureau of County Collections, pursuant to regulations promulgated by the Secretary of Revenue.

(f) The proceedings for the forfeiture of any cigarette vending



machine or motor vehicle, in which are found unstamped cigarettes shall be in rem. The Commonwealth shall be the plaintiff and the property shall be the defendant. A petition shall be filed within five days after confiscation in the court of common pleas of the county in which the property or vehicle was taken by agents of the department, the police or other such authorized peace officer, verified by oath or affirmation of any cigarette tax enforcement officer, police officer or other person. In the event that such petition is not filed within the time prescribed herein, such confiscated vending machine or motor vehicle shall be immediately returned to the person from whom confiscated or the owner thereof.

(g) The petition shall contain the following:

- (1) The description of the property or vehicle seized;
- (2) A statement of the time when and place where seized;
- (3) The name and address of the owner, if known;
- (4) The name and address of the person in possession, if known;
- (5) The statement of the circumstances under which the property was found and the number and description of all unstamped or improperly stamped cigarettes found therein; and

(6) A prayer for an order forfeiting said property to the Commonwealth, unless cause be shown to the contrary.

(h) A copy of the petition shall be served personally on the owner if he can be found within the Commonwealth. If the owner cannot be found within the Commonwealth, a copy of the petition shall be served on the owner by registered mail or certified mail, return receipt requested, addressed to the last known address of the owner. The person in possession and all encumbrance holders having a perfected security interest in the property confiscated shall be notified in a like manner. The copies shall have endorsed thereon a notice substantially similar to the following:

“To the claimant of the within property: You are required to file an answer to this petition setting forth your title in and right to possession of said property, within twenty days from the service hereof, and you are also notified that if you fail to file said answer, a decree of forfeiture will be entered against said property.”

(i) The notice shall be signed by the petitioner or his attorney or the district attorney or Attorney General.

(j) If the owner of the property is unknown, notice of the petition shall also be given by an advertisement in only one newspaper of general circulation published in the county where the property was seized, once a week for two successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding. The notice shall contain a statement of the seizure of the property, with the description thereof, the place and date of seizure, and shall direct any claimants thereof to file a claim therefor, on or before a date given in the

notice, which shall not be less than ten days from the date of the last publication.

(k) Upon the filing of any claim for the property setting forth a right of possession thereof, the case shall be deemed at issue and a hearing shall be held within five days thereof.

(l) At the time of the hearing, if the Commonwealth shall prove by competent evidence to the satisfaction of the court that the machine or motor vehicle in question was found to contain unstamped or improperly stamped cigarettes, then and in that event the claimant shall show that he is the owner of the cigarette vending machine or other equipment, motor vehicle or cigarettes, and that all cigarettes found in the machine, or any other place from which the cigarettes were seized, did contain the proper amount of genuine Pennsylvania cigarette tax stamps, or that he is otherwise not subject to the provisions of this section as the result of any exemption or allowance provided for in other sections of this act.

(m) The claimant shall have the burden of proving that he is not subject to the provisions of this section, but the burden of proof shall be upon the Commonwealth to prove all other facts necessary for the forfeiture of a cigarette vending machine or motor vehicle. In the event that the Commonwealth has not met its burden by a preponderance of the evidence, or the claimant has proved that he is not subject to the provisions of this section, the court shall order the machine, motor vehicle or other equipment returned to the claimant; otherwise, the court shall order the same forfeited to the Commonwealth: Provided, however, That in the case of a motor vehicle, should the claimant prove to the satisfaction of the court that he is the registered owner of the motor vehicle and that he did not know, nor had reason to know, that it was being used to carry unstamped or improperly stamped cigarettes or tobacco products, the court in its discretion, may order the same returned to the claimant.

(n) In the case of a motor vehicle, should the claimant prove that he holds a valid encumbrance upon such motor vehicle, notice of which encumbrance has been duly noted on the certificate of title to said motor vehicle in accordance with the provisions of the act of April 29, 1959 (P.L.58), known as "The Vehicle Code," such forfeiture shall be subject to such encumbrance and before said motor vehicle may be sold, exchanged or otherwise transferred or retained for use by the Commonwealth, the outstanding amount of such encumbrance shall be paid to the claimant; or possession of the motor vehicle shall be turned over to the claimant who shall expose the same to public sale and shall pay over to the Commonwealth any amount realized in excess of the outstanding amount of such encumbrance less the reasonable costs incurred by claimant in conducting such sale.

## ARTICLE XI

### Enforcement and Regulations

Section 1101. Enforcement; Regulations.—The department is hereby charged with the enforcement of the provisions of this act and it is hereby authorized to promulgate regulations relating to the administration and enforcement of the provisions of this act. The violation of a regulation promulgated under the authority of this act shall be considered to be a violation of the act.

## ARTICLE XII

### Saving Clause; Payment; Repealer

Section 1201. Saving Clause.—(a) This act shall not be deemed to be a continuation of prior law. However, all cigarette tax stamps and licenses sold or issued pursuant to any act repealed hereby shall continue in full force and effect in accordance with their terms and any cigarettes upon which tax has once been paid shall not be taxed a second time. All licenses issued after the effective date of this act shall be issued in accordance with the requirements of and the schedule of fees provided in this act. The enactment of this act shall not affect or impair any act done or right existing or accrued or affect any action presently pending before a court involving the enactment or validity of the act or any criminal suit, action, proceeding or prosecution to enforce any right acquired or prosecute any violation committed under the provisions of any law repealed hereby.

(b) If any section, sentence, clause or part of this act is for any reason held to be unconstitutional, the decision of the court shall not affect or impair the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted had such unconstitutional section, sentence, clause or part thereof not been included therein.

Section 1202. Payment.—Beginning immediately, fourteen per cent of the tax revenues collected by the Department of Revenue under this act or the same percentage of tax revenues heretofore collected by such department under the act of July 8, 1957 (P.L.594); known as the "Pennsylvania Cigarette Tax Act," shall be paid into the State Treasury to the credit of the Pennsylvania Nonpublic Elementary and Secondary Education Fund created by the act of June 19, 1968 (Act No. 109), known as the "Nonpublic Elementary and Secondary Education Act," as amended, for the purposes of said act.

Section 1203. Repealer.—The act of July 8, 1957 (P.L.594), known as the "Pennsylvania Cigarette Tax Act," is repealed.

Section 1204. Effective Date.—This act shall take effect immediately.

APPROVED—The 22nd day of July, A. D. 1970.

RAYMOND P. SHAFER

The foregoing is a true and correct copy of Act of the General Assembly  
No. 178.

A handwritten signature in cursive script, appearing to read "Joseph P. Kelley".

*Secretary of the Commonwealth.*