

No. 1978-139

## AN ACT

SB 1340

Amending the act of July 22, 1970 (P.L.513, No.178), entitled "An act imposing a tax on the sale or possession of cigarettes and providing penalties," further defining "wholesaler," increasing license fees; providing an exemption; increasing penalties; providing for record retention; and providing for the seizure of vehicles and contraband cigarettes.

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

Section 1. Clause (16) of section 102, sections 204 and 302, subsection (a) of section 402, sections 403, 407, 502, 601, 901, subsections (a) and (b) of section 902, subsections (a) and (b) of section 903 and subsections (a), (h) and (n) of section 1001, act of July 22, 1970 (P.L.513, No.178), known as the "Pennsylvania Cigarette Tax Act," are amended to read:

Section 102. Definitions.—\* \* \*

(16) "Wholesaler" means *(i)* 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 *or her* 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]; (ii) any person who is** engaged in the business of distributing cigarettes through vending machines to the ultimate consumer by means of placing said cigarette vending machine, 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:] operate at least ten vending machines:** And further provided, That said vending machine operator shall meet all of the other requirements for licensing of wholesalers under this act, *including maintaining an established place of business for the storage and distribution of cigarettes; (iii) any person who owns and operates no less than five stores which are retail outlets and who purchases cigarettes from a cigarette stamping agency or another wholesaler for resale to the ultimate consumer: Provided, That such person maintains complete and accurate records of all purchases and sales in his or her main office and also in the retail outlet.*

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.

**(4) Sales to retail dealers in institutions under the jurisdiction of the United States Department of Justice for sales to persons incarcerated in such institutions.**

(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 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] within** the Commonwealth of Pennsylvania, said commission to be paid to the cigarette stamping agent as compensation for his **or her** 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 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 *or her* 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**] *ten per cent* of the stock if said applicant is a corporation *or any officer or director if said applicant is a corporation*, shall not have been convicted of any crime involving moral turpitude.

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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 *or her* 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**] *ten per cent* of the stock, if the applicant is a corporation *or any officer or director if said 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 407. License Fees; Issuance and Posting of License.—(a) At the time *of* making any application, an applicant for a wholesale cigarette dealer's license shall pay to the department a license fee of [**fifty dollars (\$50)**] *two hundred fifty dollars (\$250)*, 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)**] *five dollars (\$5)*, *an applicant for a vending machine license shall pay to the department a license fee of five dollars (\$5)*, an applicant for a cigarette stamping agency license, shall pay to the department a fee of [**two hundred dollars (\$200)**] *five hundred dollars (\$500)*.

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

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

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 *and said records must be maintained at the location for which the license is issued.*

Section 901. Sales without License.—(a) 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] two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000)**, costs of prosecution **[and in default of payment thereof] or to [undergo] suffer** imprisonment for *a term of* not more than thirty days, *or both, at the discretion of the court.*

(b) *Open display of cigarettes in any manner shall be prima facie evidence that the person displaying such cigarettes is directly or indirectly engaging in the business of dealing with cigarettes for profit.*

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 *costs of prosecution and* a fine of not less than **[twenty-five dollars (\$25)] one hundred dollars (\$100)** nor more than one thousand dollars (\$1000) **[and costs of prosecution and in default of payment thereof to undergo] or to suffer** imprisonment for *a term of* not more than sixty days, *or both, at the discretion of the court.*

(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] fifteen thousand dollars (\$15,000), plus costs of prosecution or** to suffer imprisonment for a term of not more than five years, *or both, at the discretion of the court.*

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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] one 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)] three hundred dollars (\$300)**, plus costs of prosecution **[and in**

**default thereof] or to suffer imprisonment for not more than [sixty] ninety days, or both, at the discretion of the court.**

(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] one thousand or more** 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)] fifteen thousand dollars (\$15,000)** and costs of prosecution or **[in default thereof]** to suffer imprisonment for not more than **[ninety days] three years, or both, at the discretion of the court.**

\* \* \*

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] two thousand or more** 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] all** cigarettes contained therein, and the **[motor]** vehicle **[used to transport] which contained** 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.]**

\* \* \*

(h) A copy of the petition shall be served **[personally] in any manner provided by law for service of process or complaint in an action in assumpsit** 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.”

\* \* \*

(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,"] *Title 75 of the Pennsylvania Consolidated Statutes (relating to vehicles)*, such forfeiture shall be subject to such encumbrance *as of the date of the seizure less prepaid or unearned interest* 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.

Section 2. This act shall take effect in 60 days.

Office of Secretary of the Commonwealth

July 7, 1978

I do certify that the above bill, entitled "An act amending the act of July 22, 1970 (P.L.513, No.178), entitled 'An act imposing a tax on the sale or possession of cigarettes and providing penalties,' further defining wholesaler, increasing license fees; providing an exemption; increasing penalties; providing for record retention; and providing for the seizure of vehicles and contraband cigarettes," was presented to the Governor on the twenty-seventh day of June, one thousand nine hundred and seventy-eight, and was not returned within ten days after it had been presented to him, wherefore it has, agreeably to the Constitution of this Commonwealth, become a law in like manner as if he had signed it.

BARTON A. FIELDS

Secretary of the Commonwealth

*Note.* The date of final enactment of Act No. 1978-139 is July 7, 1978.