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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 2993 Session of  
1990

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INTRODUCED BY VEON, ROBINSON, COLAIZZO, MELIO, CARN, BATTISTO,  
PESCI, JOSEPHS, GEIST, GRUPPO, LAUGHLIN, HUGHES, SAURMAN,  
JOHNSON, TANGRETTI AND JAMES, NOVEMBER 12, 1990

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REFERRED TO COMMITTEE ON FINANCE, NOVEMBER 12, 1990

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AN ACT

1 Providing for substance abuse education and for additional  
2 duties of the Department of Health; establishing the  
3 Substance Abuse Education Board and providing for its powers  
4 and duties; establishing the Substance Abuse Education Fund;  
5 imposing a tax upon certain tobacco products and providing  
6 for collection and enforcement of the tax by the Department  
7 of Revenue; providing for the licensing of certain persons  
8 engaged in the tobacco business; and providing penalties.

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

10 CHAPTER 1

11 PRELIMINARY PROVISIONS

12 Section 101. Short title.

13 This act shall be known and may be cited as the Substance  
14 Abuse Education Act.

15 CHAPTER 3

16 SUBSTANCE ABUSE EDUCATION

17 Section 301. Definitions.

18 The following words and phrases when used in this chapter  
19 shall have the meanings given to them in this section unless the  
20 context clearly indicates otherwise:

21 "Board." The Substance Abuse Education Board.

22 "Department." The Department of Health of the Commonwealth.

23 "Education fund" or "fund." The Substance Abuse Education  
24 Fund.

25 "Educational institution." Any public or private school with  
26 grades kindergarten through 12, any day-care center or any Head  
27 Start program established under the Head Start Act (Public Law  
28 97-35, 95 Stat. 499).

29 "Public member." A person who is appointed to the Substance  
30 Abuse Education Board by the Governor and who holds no Federal,

1 State or local elected or appointed position except on a State  
2 or local educational advisory committee.

3 Section 302. Substance Abuse Education Board.

4 (a) Establishment.--The Substance Abuse Education Board is  
5 hereby created in the Department of Health. The board shall  
6 administer the program and award the grants provided for under  
7 this chapter. The department shall perform budgetary,  
8 accounting, procurement and other support services.

9 (b) Membership.--The board shall consist of 15 members.  
10 Three shall be members of the Senate appointed by the President  
11 pro tempore of the Senate, and three shall be members of the  
12 House of Representatives appointed by the Speaker of the House  
13 of Representatives. In no case shall more than two members from  
14 either the Senate or the House of Representatives be from the  
15 same political party. The Governor shall appoint nine public  
16 members, to be confirmed by majority vote of the Senate. Public  
17 members appointed under this subsection shall demonstrate  
18 knowledge in the area of education or health care of children.

19 (c) Term of office.--The term of each public member shall be  
20 three years and until a successor is appointed and qualified.  
21 However, of the public members first appointed, three shall  
22 serve for three years, three shall serve for two years and three  
23 shall serve for one year. A public member shall serve no more  
24 than two consecutive terms, whether partial or full. A vacancy  
25 shall be filled for the balance of the unexpired term in the  
26 same manner as the original appointment.

27 (d) Votes.--No member of the board may delegate his vote.

28 (e) Officers and rules.--The board shall elect a chairperson  
29 every two years from among the public members and may elect  
30 other officers and establish committees as it deems necessary

1 and as provided for in the regulations it promulgates. Business  
2 transacted by the board shall be conducted in accordance with  
3 the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine  
4 Act.

5 (f) Meetings.--The board shall meet not less than three  
6 times annually at the call of the chairperson.

7 (g) Compensation.--Board members shall serve without  
8 compensation but shall be reimbursed for actual and reasonable  
9 expenses incurred in the performance of their official duties.  
10 Reimbursements shall be allocated from funds available from the  
11 education fund.

#### 12 Section 303. Powers and duties of board.

13 The board shall:

14 (1) Assist the efforts of private organizations to  
15 educate the general public about the health hazards of  
16 drinking alcoholic beverages and using controlled substances  
17 and tobacco, by sponsoring public service announcements in  
18 communications media and by providing materials and money  
19 grants to these organizations for the educational purposes  
20 which are consistent with the provisions of this chapter.

21 (2) Develop, equip and coordinate a speakers' bureau  
22 that has speakers trained in communicating the health hazards  
23 of drinking alcoholic beverages and using controlled  
24 substances and tobacco and that has audiovisual aids to  
25 assist speakers. These speakers shall be available to travel  
26 throughout this Commonwealth and speak to student and adult  
27 groups, both of a public and private nature. Also, there  
28 shall be a division of this bureau which shall regularly  
29 appear in public high schools to present a program on the  
30 health hazards of drinking alcoholic beverages and using

1 controlled substances and tobacco as part of the health  
2 curriculum.

3 (3) Organize, equip with teaching apparatus and  
4 personnel and promote programs designed to help people quit  
5 drinking alcoholic beverages and using controlled substances  
6 and tobacco.

7 (4) Develop, within one year of its establishment, a  
8 State plan for the distribution of funds from the education  
9 fund.

10 (5) Provide for the coordination and exchange of  
11 information regarding the dangers of drinking alcoholic  
12 beverages and using controlled substances and tobacco.

13 (6) Promulgate regulations providing for the criteria  
14 for the granting of fund money to eligible educational  
15 institutions and provide for publicizing the criteria.

16 (7) Administer and award fund money and monitor the  
17 expenditure thereof by eligible educational institutions.  
18 Moneys shall be awarded to educational institutions which  
19 establish educational and action programs to reduce alcoholic  
20 beverage, controlled substance and tobacco use among  
21 children. These programs may include information about the  
22 addictive nature of alcoholic beverages, controlled  
23 substances and tobacco and the accompanying health risks.

24 (8) Prepare an annual report for the Governor and the  
25 General Assembly, including recommendations for legislative  
26 action and regulatory change when needed and appropriate.

27 (9) Accept gifts and donations from individuals, private  
28 organizations or foundations. Moneys received shall be  
29 transmitted to the State Treasurer for deposit in the fund.

30 Section 304. Substance Abuse Education Fund.



to be sold by those retailers.

"Licensing period." The two-year period during which licenses are issued. A licensing period begins on January 1 of each even-numbered year and ends on December 31 of the following odd-numbered year.

"Manufacturer." A person who manufactures and sells tobacco products.

"Person." Any individual, firm, trade association, company, partnership, joint stock company, corporation, club, syndicate or agency or any legal representative of any of the foregoing engaged in the sale of tobacco.

"Place of business." Any place where tobacco products are sold or where tobacco products are manufactured, stored or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or vending machine.

"Retail outlet." Each place of business from which tobacco products are sold to consumers.

"Retailer." Any person engaged in this Commonwealth in the business of selling or offering to sell tobacco at retail.

"Sale." Any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration. The term includes all sales made by any person. The term also includes a gift by a person engaged in the business of selling tobacco products, for advertising, as a means of evading the provisions of this chapter or for any other purposes whatsoever.

"Storage." Any keeping or retention of tobacco products for use or consumption in this Commonwealth.

"Subjobber." Any person, other than a manufacturer or distributor, who buys from a distributor tobacco products upon which the tax imposed by this chapter has been paid and sells

1 them to persons other than the ultimate consumers, and any  
2 licensed distributor who delivers, sells or distributes tobacco  
3 products upon which the tax imposed by this chapter has been  
4 paid from a place of business other than that licensed in the  
5 distributor's license.

6 "Tobacco products." The term includes cigars; little cigars;  
7 cheroots; stogies; periques; granulated, plug-cut, crimp-cut,  
8 ready-rubbed and other smoking tobacco; snuff; snuff flour;  
9 cavendish; plug and twist tobacco; fine-cut and other chewing  
10 tobaccos; shorts; refuse scraps, clippings, cuttings and  
11 sweepings of tobacco; and other kinds and forms of tobacco,  
12 prepared in such manner as to be suitable for chewing or smoking  
13 in a pipe, or otherwise, or both for chewing and smoking. The  
14 term does not include cigarettes as defined in Article XII of  
15 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform  
16 Code of 1971.

17 "Use." The exercise of any right or power incidental to the  
18 ownership of tobacco products.

19 "Wholesale sales price." The established price for which a  
20 manufacturer sells a tobacco product to a distributor, exclusive  
21 of any discount or other reduction.

22 Section 502. Imposition of tax.

23 (a) Rate.--

24 (1) A tax is hereby imposed upon all tobacco products in  
25 this Commonwealth and upon any person engaged in business as  
26 a distributor thereof at the rate of 35% of the wholesale  
27 sales price of the tobacco products. This tax shall be  
28 imposed at the time the distributor:

29 (i) brings or causes to be brought into this  
30 Commonwealth from outside this Commonwealth tobacco



1 products for sale;

2 (ii) makes, manufactures or fabricates tobacco  
3 products in this Commonwealth for sale in this  
4 Commonwealth; or

5 (iii) ships or transports tobacco products to  
6 retailers in this Commonwealth to be sold by those  
7 retailers.

8 (2) A tax is hereby imposed upon the use or storage by  
9 consumers of tobacco products in this Commonwealth and upon  
10 such consumers at the rate of 35% of the cost of the tobacco  
11 products. The tax imposed by this paragraph shall not apply  
12 if the tax imposed by paragraph (1) on the tobacco products  
13 has been paid. This tax shall not apply to the use or storage  
14 of tobacco products in quantities of:

15 (i) not more than 50 cigars;

16 (ii) not more than ten ounces of snuff or snuff  
17 powder; or

18 (iii) not more than one pound of smoking or chewing  
19 tobacco or other tobacco products not specifically  
20 mentioned in this chapter in the possession of any one  
21 consumer.

22 (b) Limits on taxation.--

23 (1) Any tobacco product with respect to which a tax has  
24 once been imposed under this chapter shall not again be  
25 subject to tax under this chapter.

26 (2) The tax imposed by this section shall not apply with  
27 respect to any tobacco product which, under the Constitution  
28 and laws of the United States, may not be made the subject of  
29 taxation by this Commonwealth.

30 (c) Municipal taxes and fees.--The tax imposed by this

1 section shall be in addition to all other occupation or  
2 privilege taxes or license fees now or hereafter imposed by any  
3 municipality.

4 (d) Disposition of revenue.--Revenue derived from the taxes  
5 imposed by this section shall be deposited by the department in  
6 the State Treasury and shall be credited to the Substance Abuse  
7 Education Fund.

8 Section 503. Licensing of distributors and subjobbers.

9 (a) License requirement.--No person shall engage in the  
10 business of a distributor or subjobber of tobacco products at  
11 any place of business without first receiving a license from the  
12 department to engage in that business at that place of business.

13 (b) Procedure.--Every application for a license shall be  
14 made on a form prescribed by the department and shall state the  
15 name and address of the applicant; if the applicant is a firm,  
16 partnership or association, the name and address of each of its  
17 members; if the applicant is a corporation, the name and address  
18 of each of its officers; the address of its principal place of  
19 business; the place where the business to be licensed is to be  
20 conducted; and any other information as the department may  
21 require.

22 (c) Out-of-State entities.--A person outside this  
23 Commonwealth who ships or transports tobacco products to  
24 retailers in this Commonwealth to be sold by those retailers may  
25 make application for license as a distributor, be granted such a  
26 license by the department and thereafter be subject to all the  
27 provisions of this chapter and entitled to act as a licensed  
28 distributor, on filing proof with the application of having  
29 appointed the Secretary of the Commonwealth for service of  
30 process relating to any matter or issue arising under this

chapter. A foreign corporation applying for a distributor's license need not qualify as such if it files the proof of appointment of the Secretary of the Commonwealth for service of process as provided in this subsection.

(d) License fees.--

(1) Each application for a distributor's license shall be accompanied by a fee of \$75.

(2) Each application for a subjobber's license shall be accompanied by a fee of \$20.

(3) A distributor or subjobber applying for a license during the second year of a licensing period shall be required to pay only one-half of the license fee provided in this subsection.

(e) Place of license and period of licensing.--

(1) A separate application for license shall be made for each place of business at which a distributor proposes to engage in business under this chapter. A separate application for a subjobber's license may be made by a licensed distributor for each place of business, other than that licensed in the distributor's license, to which the distributor sells or distributes tobacco products upon which the tax imposed by this chapter has been imposed to other than the ultimate consumer.

(2) All licenses shall expire on December 31 of the second year of the licensing period in which they are issued.

(f) Issuance.--The department, upon receipt of the application in proper form and payment of the required license fee, shall issue the applicant a license in the form prescribed by the department. This license shall permit the applicant to whom it is issued to engage in business as a distributor or

1 subjobber at the place of business shown in the application. The  
2 department shall assign a permit number to each person licensed  
3 as a distributor at the time of issuance of the first license,  
4 which shall be inscribed upon all licenses issued to that  
5 distributor.

6 (g) Revocation, display, etc.--

7 (1) Each license shall expire on December 31 of the  
8 second year of the licensing period unless sooner revoked by  
9 the department or unless the business with respect to which  
10 the license was issued is transferred. In either case, the  
11 holder of the license shall immediately surrender it to the  
12 department.

13 (2) Each license shall be prominently displayed on the  
14 premises covered by the license.

15 (3) No license shall be transferable to any other  
16 person.

17 (4) The department may revoke, cancel or suspend the  
18 license or licenses of any distributor or subjobber for  
19 violation of any of the provisions of this chapter, or any  
20 rule promulgated by the department under this chapter. No  
21 license shall be revoked, canceled or suspended except after  
22 notice and a hearing by the department in the manner provided  
23 by 2 Pa.C.S. (relating to administrative law and procedure).

24 (5) No license shall be issued to any person within one  
25 year of the date of final determination of a revocation of  
26 any previous license held.

27 Section 504. Duties of licensees.

28 (a) Books, papers and records.--

29 (1) Every distributor shall keep at each licensed place  
30 of business complete and accurate records for that place of

1 business, including itemized invoices of tobacco products  
2 held, purchased, manufactured, brought in or caused to be  
3 brought in from outside this Commonwealth or shipped or  
4 transported to retailers within this Commonwealth, and of all  
5 sales of tobacco products made, except sales to the ultimate  
6 consumer.

7 (2) When a licensed distributor sells tobacco products  
8 exclusively to the ultimate consumer at the address given in  
9 the license, no invoice of those sales shall be required, but  
10 itemized invoices shall be made of all tobacco products  
11 transferred to other retail outlets owned or controlled by  
12 that licensed distributor. All books, records and other  
13 papers and documents required by this section to be kept  
14 shall be preserved for a period of at least one year after  
15 the date of the documents, or the date of the entries thereof  
16 appearing in the records, unless the department in writing  
17 authorizes their destruction or disposal at an earlier date.  
18 At any time during usual business hours, the department or  
19 its duly authorized agents or employees may enter any place  
20 of business of a distributor without a search warrant and  
21 inspect the premises, the records required to be kept under  
22 this section and the tobacco products contained therein to  
23 determine whether or not all the provisions of this chapter  
24 are being fully complied with. If the department, or any  
25 agent or employee thereof, is denied free access or is  
26 hindered or interfered with in making such examination, the  
27 license of the distributor at the premises shall be subject  
28 to revocation by the department.

29 (b) Invoices.--

30 (1) Every person who sells tobacco products to persons

1 other than the ultimate consumer shall render with each sale  
2 itemized invoices showing the seller's name and address, the  
3 purchaser's name and address, the date of sale and all prices  
4 and discounts and shall preserve legible copies of all  
5 invoices for one year from the date of sale.

6 (2) Every retailer and subjobber shall procure itemized  
7 invoices of all tobacco products purchased. The invoices  
8 shall show the name and address of the seller and the date of  
9 purchase. The retailer and subjobber shall preserve a legible  
10 copy of each invoice for one year from the date of purchase.  
11 Invoices shall be available for inspection by the department  
12 or authorized agents or employees of the retailer's or  
13 subjobber's place of business.

14 (c) Delivery and transportation.--

15 (1) Records of all deliveries or shipments of tobacco  
16 products from any warehouse of first destination in this  
17 Commonwealth shall be kept by the warehouse and shall be  
18 available to the department for inspection. These records  
19 shall show the name and address of the consignee, the date,  
20 the quantity of tobacco products delivered and such other  
21 information as the department may require. These records  
22 shall be preserved for one year from the date of delivery of  
23 the tobacco products.

24 (2) The transportation of tobacco products into this  
25 Commonwealth by means other than common carrier must be  
26 reported to the department within 30 days, with the following  
27 exceptions:

28 (i) The transportation of not more than 50 cigars,  
29 not more than ten ounces of snuff or snuff powder or not  
30 more than one pound of smoking or chewing tobacco or

1 other tobacco products not specifically mentioned in this  
2 chapter.

3 (ii) The transportation by a person with a place of  
4 business outside this Commonwealth, who is licensed as a  
5 distributor under this chapter, of tobacco products sold  
6 by such person to a retailer in this Commonwealth.

7 Such report shall be made on forms provided by the  
8 department.

9 (3) (i) Common carriers transporting tobacco products  
10 into this Commonwealth shall file with the department  
11 reports of all shipments other than those which are  
12 delivered to warehouses of first destination in this  
13 Commonwealth. These reports shall be filed on or before  
14 the tenth day of each month and shall show with respect  
15 to deliveries made in the preceding month: the date,  
16 point of origin, point of delivery, name of consignee,  
17 description and quantity of tobacco products delivered  
18 and such information as the department may otherwise  
19 require.

20 (ii) All common carriers transporting tobacco  
21 products into this Commonwealth shall permit examination  
22 by the department of their records relating to the  
23 shipment of tobacco products.

24 (d) Penalty.--Any person who fails or refuses to transmit to  
25 the department the required reports or whoever refuses to permit  
26 the examination of the records by the department commits a  
27 misdemeanor of the third degree.

28 Section 505. Monthly returns.

29 (a) Time and content of filing.--On or before the 18th day  
30 of each calendar month, every distributor with a place of

1 business in this Commonwealth shall file a return with the  
2 department showing the quantity and wholesale sales price of  
3 each tobacco product brought or caused to be brought into this  
4 Commonwealth for sale and each tobacco product made,  
5 manufactured or fabricated in this Commonwealth for sale in this  
6 Commonwealth during the preceding calendar month. Every licensed  
7 distributor outside this Commonwealth shall in like manner file  
8 a return showing the quantity and wholesale sales price of each  
9 tobacco product shipped or transported to retailers in this  
10 Commonwealth to be sold by those retailers during the preceding  
11 calendar month. Returns shall be made upon forms furnished and  
12 prescribed by the department and shall contain such other  
13 information as the department may require. Each return shall be  
14 accompanied by a remittance for the full tax liability shown  
15 therein, less 1.5% of the liability as compensation to reimburse  
16 the distributor for expenses incurred in the administration of  
17 this chapter.

18 (b) Deficiencies and assessments.--As soon as practicable  
19 after any return is filed, the department shall examine each  
20 return and correct it, if necessary, according to the  
21 department's best judgment and information. On finding that any  
22 amount of tax is due from the taxpayer and unpaid, the  
23 department shall notify the taxpayer of the deficiency and of  
24 the intention to assess the amount due, together with interest  
25 and penalties as provided in this chapter. If a deficiency  
26 disclosed by the department's examination cannot be allocated to  
27 a particular month or months, the department shall notify the  
28 taxpayer of the deficiency and of the intention to assess the  
29 amount due for a given period without allocating it to any  
30 particular month or months. If any taxpayer making any return



1 shall die or shall become incompetent at any time before the  
2 department issues the notice of intention to assess an amount  
3 due, that notice shall be issued to the administrator, executor  
4 or other legal representative, as such, of that taxpayer.

5 (c) Hearing.--If, within 30 days after mailing of notice of  
6 the assessment, the taxpayer or a legal representative shall  
7 file a protest to the assessment and request a hearing thereon,  
8 the department shall give notice to that taxpayer or legal  
9 representative of the time and place fixed for the hearing and  
10 shall hold a hearing on the protest. Any tax due and owing after  
11 an assessment order has been issued to the distributor or legal  
12 representative of the distributor shall be paid within 60 days.  
13 Any assessment made by the department shall be prima facie  
14 correct and valid, and the taxpayer shall have the burden of  
15 establishing its incorrectness or invalidity in any action or  
16 proceeding in respect thereto.

17 (d) Consumer returns.--On or before the 18th day of each  
18 calendar month, every consumer who, during the preceding  
19 calendar month, has acquired title to or possession of tobacco  
20 products for use or storage in this Commonwealth, upon which  
21 tobacco products the tax imposed by section 502 has not been  
22 paid, shall file a return with the department, showing the  
23 quantity of tobacco products so acquired. This return shall be  
24 made upon a form furnished and prescribed by the department and  
25 shall contain such other information as the department may  
26 require. The return shall be accompanied by a remittance for the  
27 full unpaid tax liability shown by it.

28 Section 506. Enforcement and penalties.

29 (a) Unlicensed tobacco business.--Any person who engages in  
30 the tobacco business as described in this chapter without having

1 a valid license issued under this chapter commits a misdemeanor  
2 of the second degree.

3 (b) Evasion of taxes.--Any person who intentionally or  
4 willfully evades or attempts to evade the tax imposed under this  
5 chapter commits a misdemeanor of the second degree.

6 (c) Failure to furnish information.--Any person who fails to  
7 keep or make any record, return, report, inventory or statement,  
8 or keeps or makes any false or fraudulent record, return,  
9 report, inventory or statement, required by this chapter commits  
10 a misdemeanor of the third degree.

11 (d) Other violations.--Any person who willfully omits,  
12 neglects or refuses to comply with any duty imposed upon him by  
13 this chapter or does anything prohibited by this chapter for  
14 which no specific penalty is otherwise provided shall, upon  
15 conviction in a summary proceeding, be sentenced to pay a fine  
16 of not more than \$500 and costs of prosecution and, in default  
17 of payment thereof, to imprisonment for not more than 30 days.

18 (e) Tax penalties.--

19 (1) Any person who willfully omits or neglects to pay  
20 any tax imposed by this chapter or attempts in any manner to  
21 evade or defeat the tax or payment thereof shall, in addition  
22 to any other penalty provided in this chapter, be liable to a  
23 penalty equal to the amount of tax evaded or not paid, which  
24 penalty shall be added to the tax and assessed and collected  
25 at the same time in the same manner as a part of the tax.

26 (2) Any person who fails to pay tax at the time  
27 prescribed shall, in addition to any other penalty provided  
28 in this chapter, be liable to a penalty of 5% of the tax due  
29 but unpaid, together with the interest at the rate of 6% per  
30 year on such tax from the time the tax became due, but no

1 interest for a fraction of a month shall be demanded. The  
2 penalties provided in this subsection shall be added to the  
3 tax and assessed and collected at the same time in the same  
4 manner and as a part of the tax.

5 Section 507. Confiscation and forfeiture.

6 Insofar as they may be applied, the confiscation and  
7 forfeiture provisions of Part X of Article XII of the act of  
8 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of  
9 1971, shall apply to tobacco products, vehicles and other  
10 property in cases where the tobacco products are the subject of  
11 the evasion of the tax or licensing provision of this chapter or  
12 where the vehicles or other property are involved in the  
13 unlawful sale, processing, transportation or storage of tobacco  
14 products in violation of this act.

15 Section 508. Rules and regulations.

16 The department shall, in the manner provided by law,  
17 promulgate the rules and regulations necessary to administer and  
18 enforce this chapter. These regulations shall include provisions  
19 relating to tax credits, refunds and other appropriate tax  
20 adjustments. A violation of a regulation promulgated under this  
21 section shall be considered to be a violation of this chapter.

22 CHAPTER 11

23 MISCELLANEOUS PROVISIONS

24 Section 1101. Effective date.

25 This act shall take effect in six months.