

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1884 Session of  
1995

INTRODUCED BY L. I. COHEN, CHADWICK, ARMSTRONG, ROBINSON,  
JOSEPHS, RUDY, HABAY, YOUNGBLOOD, TRAVAGLIO, STEIL, MELIO,  
CORPORA, RUBLEY, BELARDI, BATTISTO, STEELMAN, FLEAGLE,  
DIGIROLAMO, CARONE, BARD AND MAITLAND, JUNE 28, 1995

REFERRED TO COMMITTEE ON FINANCE, JUNE 28, 1995

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 72 (Taxation and  
2 Fiscal Affairs) of the Pennsylvania Consolidated Statutes,  
3 further providing for the sale of tobacco to minors;  
4 providing for licensing of cigarette stamping agents,  
5 wholesalers and retailers; establishing the Cigarette  
6 Licensing, Marketing and Youth Protection Board and providing  
7 for its powers and duties; providing for reports, for  
8 examination of records, equipment and premises, for sales,  
9 for advertising, for good faith, for admissible evidence, for  
10 cost survey, for admissibility, for remedies, for  
11 administrative powers and duties, for violations and for  
12 inapplicability of Unfair Sales Act; prohibiting sales to  
13 minors; and making a repeal.

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

16 Section 1. Section 6305 of Title 18 of the Pennsylvania  
17 Consolidated Statutes is repealed.

18 Section 2. Section 6306 of Title 18 is amended to read:

19 § 6306. Furnishing [cigarettes] tobacco or cigarette papers.

20 (a) Offense defined.--A person commits an offense if he:

21 (1) furnishes to any minor, by gift, sale or otherwise,

22 any [cigarettes] tobacco or cigarette [paper] papers[:];

1       (2) presents a fraudulent identification card for the  
2       purpose of procuring or having furnished to him tobacco or  
3       cigarette papers; or

4       (3) possesses a license to retail cigarettes and fails  
5       to display in a conspicuous place on the cigarette vending  
6       machine or on or next to the retail sales counter, a warning  
7       sign, each letter of the wording having a minimum height of  
8       one inch, which states the following:

9               STATE LAW PROHIBITS THE SALE OF TOBACCO TO A MINOR  
10              UNDER 21 YEARS OF AGE.

11       (b) Grading.--Whoever commits an offense under this section  
12 shall, upon being convicted thereof in a summary proceeding, be  
13 sentenced for the first offense to pay a fine not exceeding \$25  
14 and for the second offense shall be fined not exceeding \$100;  
15 and for the third or subsequent offense shall be guilty of a  
16 misdemeanor of the third degree.

17       (c) Defense.--It shall be an affirmative defense to a  
18 prosecution for an offense under subsection (a)(1) that the  
19 person selling or otherwise furnishing the tobacco or cigarette  
20 papers was presented with and reasonably relied upon an  
21 identification card which identified the person purchasing or  
22 otherwise receiving the tobacco or cigarette papers as being 21  
23 years of age or older.

24       (d) Municipal ordinances.--Nothing in this section shall be  
25 construed to prohibit a county or municipality from enacting an  
26 ordinance which further restricts the location of or prohibits  
27 vending machines that dispense cigarettes or other tobacco  
28 products.

29       (e) Definitions.--As used in this section, the following  
30 words and phrases shall have the meanings given to them in this

1 subsection:

2 "Identification card." A driver's license, a Department of  
3 Transportation nondriver's identification card or a card issued  
4 by the Pennsylvania Liquor Control Board for the purpose of  
5 identifying a person desiring liquor or malt or brewed beverages  
6 or a card which falsely purports to be any of the foregoing.

7 "Minor." An individual under 21 years of age.

8 "Tobacco." Any tobacco cigarette, cigar, pipe tobacco,  
9 smokeless tobacco, snuff or any other form of tobacco which may  
10 be utilized for smoking, chewing, inhalation or other manner of  
11 ingestion.

12 Section 3. Title 72 is amended by adding a chapter to read:

13 CHAPTER 27

14 CIGARETTE SALES AND LICENSING

15 Sec.

16 2701. Legislative intent and findings.

17 2702. Definitions.

18 2703. Licensing of cigarette dealers.

19 2704. Licensing of cigarette stamping agents.

20 2705. Licensing of wholesalers.

21 2706. Licensing of retailers and cigarette vending machines.

22 2707. Cigarette Licensing, Marketing and Youth Protection

23 Board.

24 2708. License fees; issuance and posting of license.

25 2709. Transfer of license.

26 2710. Disposition of license fees.

27 2711. Expiration of license.

28 2712. Duplicate license.

29 2713. License for cigarette vending machines; names of owner  
30 and operator.

1 2714. Retention of records.  
2 2715. Reports.  
3 2716. Examination of records, equipment and premises.  
4 2717. Sales at less than cost.  
5 2718. Combinations sales; inducements.  
6 2719. Sales by wholesaler to wholesaler.  
7 2720. Sales; exceptions.  
8 2721. Advertising of certain sales; good faith.  
9 2722. Sales contracts void.  
10 2723. Admissible evidence.  
11 2724. Sales outside ordinary channels of business; effect.  
12 2725. Cost survey; admissibility.  
13 2726. Remedies.  
14 2727. Administration powers and duties.  
15 2728. Sales without license.  
16 2729. Violations.  
17 2730. Sales to minors.  
18 2731. Civil penalties and license suspension.  
19 2732. Enforcement by qualified local agencies.  
20 2733. Unfair Sales Act inapplicable.

21 § 2701. Legislative intent and findings.

22 (a) Intent.--It is hereby declared to be in the public  
23 interest of this Commonwealth:

24 (1) To prohibit advertising or offering cigarettes for  
25 sale below cost if the intent thereof is to increase the  
26 incidence of cigarette usage or to injure, destroy or  
27 substantially lessen competition.

28 (2) To declare such practice to be unfair, deceptive and  
29 adverse to the collection of taxes from the sale of  
30 cigarettes.

1           (3) To license cigarette dealers to effect the orderly  
2 collection of taxes.

3           (4) To promote fair competition.

4           (b) Findings.--The General Assembly finds and declares as  
5 follows:

6           (1) The National Centers for Disease Control have found  
7 that at least 434,000 Americans die each year from tobacco-  
8 caused diseases.

9           (2) The Surgeon General of the Public Health Service has  
10 determined that smoking is the leading cause of preventable  
11 death in this country.

12           (3) The National Institute on Drug Abuse has concluded  
13 that the nicotine in tobacco products is a powerful addictive  
14 drug and has identified nicotine addiction as the most  
15 widespread example of drug dependence in the United States.

16           (4) The National Institute on Drug Abuse has found that  
17 tobacco use by adolescents precedes and is predictive of  
18 adolescent illicit drug use.

19           (5) According to the Surgeon General, an estimated  
20 3,700,000 teenagers are current smokers and nearly 3,000  
21 minors begin smoking every day.

22           (6) The American Cancer Society has determined that, of  
23 the nation's 50,000,000 smokers, 60% started smoking before  
24 they were 14 years of age, and 90% started smoking before  
25 they were 20 years of age.

26           (7) Minors spend more than \$1,000,000,000 nationally on  
27 cigarettes and other tobacco products every year.

28           (8) The Surgeon General, the United States Department of  
29 Health and Human Services and local public health agencies  
30 have found that cigarettes and other tobacco products are

1 easily available to minors from retail outlets which sell  
2 tobacco products. Over 80% of the public believe it is easy  
3 for teenagers to purchase cigarettes.

4 (9) In local communities that have implemented and  
5 enforced youth access to tobacco control programs, there has  
6 been a significant reduction in the availability of tobacco  
7 products to minors. It is the purpose of this act to:

8 (i) Reduce access to tobacco products for  
9 individuals under 21 years of age.

10 (ii) Reduce the number of individuals under 21 years  
11 of age who become regular cigarette smokers every day.

12 (iii) Prevent the deaths and serious health  
13 complications that result later in life when people begin  
14 to smoke at an early age.

15 (iv) Restrict the use of vending machines to sell  
16 cigarettes in this Commonwealth.

17 (v) Establish a program in this Commonwealth that  
18 will meet the standards established by regulations  
19 implementing section 1926 of the Public Health Service  
20 Act (58 Stat. 682, 42 U.S.C. § 300x-26) for reducing  
21 youth access to tobacco products.

22 § 2702. Definitions.

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

26 "Basic cost of cigarettes." The manufacturer's list price to  
27 which shall be added the full face value of any tax which may be  
28 required by law, if not already including in the manufacturer's  
29 list price. Manufacturer's list price shall mean the gross price  
30 of the cigarettes from the manufacturer to the dealer in the

1 quantities stated and shall include any Federal tax, freight or  
2 handling charges, if not already included.

3 "Board." The Cigarette Licensing, Marketing and Youth  
4 Protection Board created under section 2707 (relating to  
5 Cigarette Licensing, Marketing and Youth Protection Board).

6 "Cigarette." Includes any roll for smoking made wholly or in  
7 part of tobacco, irrespective of size or shape, and whether or  
8 not the tobacco is flavored, adulterated or mixed with any other  
9 ingredient, the wrapper or cover of which is made of paper or  
10 any other substance or material, excepting tobacco. The term  
11 shall not include cigars.

12 "Cigarette stamping agent." A person who is licensed by the  
13 Department of Revenue for the purpose of affixing cigarette tax  
14 stamps to packages of cigarettes and transmitting the proper tax  
15 to the Commonwealth.

16 "Cigarette Tax Act." Article XII of the act of March 4, 1971  
17 (P.L.6, No.2), known as the Tax Reform Code of 1971.

18 "Cigarette vending machine." Any mechanical or electrical  
19 device from which cigarettes are dispensed for a consideration.

20 "Cost of doing business." That amount, as evidenced by the  
21 standards and methods of accounting regularly employed in the  
22 determination of costs for the purpose of Federal income tax  
23 reporting, for the total operation of the establishment for the  
24 previous 12-month period, and must include, but shall not be  
25 limited to, all direct and indirect costs, such as product cost,  
26 freight charges, labor costs, cost of equipment, rental and  
27 maintenance expenses, cigarette licenses, preopening expenses,  
28 management fees, costs, rents, depreciation, selling costs,  
29 maintenance expenses, interest expenses, delivery costs, all  
30 types of licenses, all types of taxes, insurance, advertising

1 and any central and regional administrative expenses.

2 "Cost of the retailer." The basic cost of cigarettes to the  
3 retailer plus the cost of doing business by the retailer in  
4 excess of the basic cost of cigarettes, expressed as a  
5 percentage and applied to the basic cost of cigarettes. In the  
6 absence of filing of satisfactory proof of a lesser or higher  
7 cost of doing business by the retailer making the sale, the cost  
8 of doing business by the retailer shall be presumed to be 6% of  
9 the basic cost of cigarettes to the retailer. When a retailer  
10 establishes a lesser cost of doing business than the presumptive  
11 6% cost of doing business, the lesser cost of doing business may  
12 be used to compute the cost of the retailer for a period of time  
13 no greater than 12 months, at the end of which time the cost to  
14 the retailer shall be computed using the presumptive 6% cost of  
15 doing business, unless the retailer again establishes a lesser  
16 cost of doing business. Any fractional part of a cent in the  
17 cost per carton shall be rounded off to the next higher cent. A  
18 person who purchases cigarettes for sale at retail from a  
19 manufacturer of cigarettes without resort to a wholesaler shall  
20 be deemed, for the purposes of this chapter, to be engaged in  
21 the sale of cigarettes as a stamping agent, wholesaler and  
22 retailer and shall be subject to all mark-up provisions of this  
23 chapter in the order named.

24 "Cost of the stamping agent." The basic cost of cigarettes  
25 plus the cost of doing business by the cigarette stamping agent  
26 in excess of the basic cost of cigarettes, expressed as a  
27 percentage and applied to the basic cost of cigarettes. Any  
28 fractional part of a cent in the cost per carton of cigarettes  
29 shall be rounded off to the next higher cent. In the case of  
30 sales at retail by cigarette stamping agents, the cost of the

1 cigarette stamping agent shall be the same as the cost of the  
2 retailer. A separate cost of the cigarette stamping agent shall  
3 be determined for sales to wholesale dealers and for sales to  
4 retail dealers. In the absence of filing of satisfactory proof  
5 of a lesser cost of doing business of the cigarette stamping  
6 agent making the sale, the cost of doing business shall be  
7 presumed to be the basic cost of cigarettes for sales to  
8 wholesale dealers and 4% of the basic cost of cigarettes with  
9 respect to sales to retail dealers. When a cigarette stamping  
10 agent establishes a lesser cost of doing business than the  
11 presumptive costs contained herein, the lesser cost of doing  
12 business may be used to compute the cost of the cigarette  
13 stamping agent for a period of time no greater than twelve  
14 months, at the end of which time the cost of the cigarette  
15 stamping agent shall be computed using the presumptive costs  
16 contained herein, unless the cigarette stamping agent again  
17 establishes a lesser cost of doing business.

18 "Cost of the wholesaler." The basic cost of cigarettes to  
19 the wholesaler plus the cost of doing business by the wholesaler  
20 in excess of the basic cost of cigarettes, expressed as a  
21 percentage and applied to the basic cost of cigarettes. Any  
22 fractional part of a cent in the cost to the wholesaler per  
23 carton of cigarettes shall be rounded off to the next higher  
24 cent. A separate cost of the wholesaler shall be determined for  
25 sale to retail dealers. In the absence of filing satisfactory  
26 proof of a lesser cost of doing business by the wholesaler with  
27 respect to sales to retail dealers, the cost of doing business  
28 shall be presumed to be 4% of the basic cost of cigarettes. When  
29 a wholesaler establishes a lesser cost of doing business than  
30 the presumptive cost of doing business, the lesser cost of doing

1 business may be used to compute the cost of the wholesaler for a  
2 period of time no greater than 12 months, at the end of which  
3 time the cost of the wholesaler shall be computed using the  
4 presumptive 4% cost of doing business, unless the wholesaler  
5 again establishes a lesser cost of doing business.

6 "Dealer." A cigarette stamping agency, wholesaler or  
7 retailer, as these terms are more specifically defined herein.  
8 When used in this chapter, the term shall include all of the  
9 above-mentioned categories. Nothing contained in this chapter  
10 shall preclude a person from being a cigarette stamping agency,  
11 wholesaler or retailer if the person meets the requirements for  
12 each category of dealer.

13 "Department." The Department of Revenue of the Commonwealth.

14 "Franchisee." A person engaged in the sale of cigarettes who  
15 is granted the right to engage in the business of offering,  
16 selling or distributing goods or services under a marketing plan  
17 or system prescribed in substantial part by the grantor of that  
18 right, for which a direct or indirect fee is paid, and whose  
19 franchisor franchises five or more retail outlets in this  
20 Commonwealth through which cigarettes are sold.

21 "Person." An individual, unincorporated association,  
22 company, corporation, joint stock company, group, agency,  
23 syndicate, trust or trustee, receiver, fiduciary, partnership,  
24 conservator and any political subdivision of the Commonwealth or  
25 any other state. As applied to a partnership, unincorporated  
26 association or other joint venture, the term shall also mean the  
27 partners or members and, as applied to a corporation, shall also  
28 mean all the officers and directors.

29 "Retailer."

30 (1) A person who, in the usual course of business,

1 purchases or receives cigarettes from any source whatsoever  
2 for the purpose of sale to the ultimate consumer.

3 (2) A person, who in the usual course of business, owns  
4 or manages an establishment in which a vending machine is  
5 located for the purpose of sale of cigarettes to the ultimate  
6 consumer.

7 (3) A person who buys, sells, transfers or deals in  
8 cigarettes for profit and is not licensed as a cigarette  
9 stamping agency or wholesaler under this chapter.

10 "Sale" or "sell." Any transfer for a consideration, in  
11 exchange, as barter, as a gift, as an offer for sale or in  
12 distribution, in any manner or by any means whatsoever.

13 "Secretary." The Secretary of Revenue of the Commonwealth.

14 "Tobacco product." Any tobacco cigarette, cigar, pipe  
15 tobacco, smokeless tobacco, snuff or any other form of tobacco  
16 which may be utilized for smoking, chewing, inhalation or other  
17 manner of ingestion.

18 "Vending machine operator." Any person who places or  
19 services one or more cigarette vending machines whether owned,  
20 leased or otherwise operated by him at locations from which  
21 cigarettes are sold to the ultimate consumer. The owner or  
22 tenant of the premises upon which a vending machine is placed  
23 shall not be considered a vending machine operator if his sole  
24 remuneration therefrom is a flat rental fee or commission based  
25 upon the number or value of cigarettes sold from the machine,  
26 unless the owner or tenant actually owns the vending machine or  
27 leases the vending machine under an agreement whereby the  
28 profits from the sale of the cigarettes directly inure to his  
29 benefit.

30 "Wholesaler." Includes:

1           (1) Any person who, in the usual course of business,  
2 purchases cigarettes from a cigarette stamping agent or other  
3 wholesaler and receives, stores, sells and distributes within  
4 this Commonwealth at least 75% of all cigarettes purchased by  
5 him or her to retail dealers or wholesale dealers or any  
6 combination who shall buy the cigarettes from him or her for  
7 the purpose of resale to the ultimate consumer. The person  
8 shall maintain an established place of business for the  
9 receiving, storage and distribution of cigarettes.

10          (2) Any person who is engaged in the business of  
11 distributing cigarettes through vending machines to the  
12 ultimate consumer by means of placing the cigarette vending  
13 machines, owned or leased by him, in various outlets within  
14 this Commonwealth and who pays to the owner or lessee of the  
15 premises, who shall possess a retail license issued under  
16 section 2706 (relating to licensing of retailers and  
17 cigarette vending machines), a commission or rental for the  
18 use of the premises. The vending machine operator shall  
19 operate at least ten vending machines provided the vending  
20 machine operator meets all the other requirements for  
21 licensing of wholesalers under this chapter, including  
22 maintaining an established place of business for the  
23 receiving, storage and distribution of cigarettes.

24          (3) Any person, including a franchisee, who owns and  
25 operates no less than five retail outlets in this  
26 Commonwealth, having 100% common ownership, who purchases  
27 cigarettes from a cigarette stamping agency or another  
28 wholesaler for resale to the ultimate consumer. The person  
29 shall maintain complete and accurate records of all purchases  
30 and sales in his or her main office and also in the retail

1 outlet.

2 § 2703. Licensing of cigarette dealers.

3 (a) General rule.--No person, unless all of his sales of  
4 cigarettes are exempt from Pennsylvania cigarette tax, shall  
5 sell, transfer or deliver any cigarettes within this  
6 Commonwealth without first obtaining the proper license pursuant  
7 to the provisions of this chapter.

8 (b) Application.--Every applicant for a dealer's license  
9 shall complete and file an application with the department. The  
10 application shall be in the form and contain the information as  
11 the department by regulation shall prescribe and shall set forth  
12 truthfully and accurately the information desired by the  
13 department. If the application is approved, the department shall  
14 license the dealer for a period of one year and the license may  
15 be renewed annually thereafter.

16 § 2704. Licensing of cigarette stamping agents.

17 (a) General rule.--The department may license as its agent  
18 for a one-year period, and may renew the license for further  
19 periods of one year if the agent is and remains of good moral  
20 character, a person who meets the requirements imposed by the  
21 following provisions for the privilege of operating as a  
22 cigarette stamping agency:

23 (1) The applicant is a wholesale dealer licensed by the  
24 Commonwealth.

25 (2) The applicant maintains warehousing facilities,  
26 adequate to protect the revenue, for the purpose of  
27 receiving, storing and distributing cigarettes and conducting  
28 their business and has received commitments from at least two  
29 cigarette manufacturers whose aggregate share is at least 40%  
30 of the Commonwealth's cigarette market.

1           (3) The applicant is a person of good moral character  
2           and of reasonable financial stability and is reasonably  
3           experienced in the wholesale cigarette business.

4           (4) The applicant, or a shareholder controlling more  
5           than 10% of the stock or any officer or director, if the  
6           applicant is a corporation, shall not have been convicted of  
7           any crime involving moral turpitude.

8           (5) The applicant shall have filed all required State  
9           tax reports and paid any State taxes not subject to a timely  
10          perfected administrative or judicial appeal or subject to a  
11          duly authorized deferred payment plan.

12          (b) Application.--The department shall, by regulation,  
13          prescribe the form, content and manner of the application.

14          (c) Validity.--The cigarette stamping agency license shall  
15          be valid for one specific location only.

16          (d) Grounds for rejection.--The department may reject an  
17          application for a new or renewal license if it finds that any of  
18          the aforementioned requirements have not been met or finds that  
19          the applicant or licensee has:

20                (1) failed to disclose any material information  
21                required;

22                (2) made any material false statement in the  
23                application; or

24                (3) violated any provisions of this chapter.

25          (e) Good moral character.--For purposes of this section, a  
26          person convicted of committing a felony, an infamous crime or a  
27          crime involving moral turpitude shall not be a person of good  
28          moral character and shall not be licensed as a cigarette  
29          stamping agent.

30   § 2705. Licensing of wholesalers.

(a) Requirements.--Applicants for a wholesale license or renewal thereof shall meet the following requirements:

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

(2) The applicant is a person of reasonable financial stability and reasonable business experience.

(3) The applicant, or any shareholder controlling more than 10% of the stock or any officer or director, if the applicant is a corporation, shall not have been convicted of any crime involving moral turpitude.

(4) The applicant shall not have failed to disclose any material information required by the department, including information that the applicant has complied with this chapter by providing a signed statement, under penalty of perjury, of adherence to State presumptive minimum prices or written approval from the department to sell at a specific different price.

(5) The applicant shall not have made any material false statement in his application.

(6) The applicant shall not have violated any provision of this chapter.

(7) The applicant shall have filed all required State tax reports and paid any State taxes not subject to a timely perfected administrative or judicial appeal or subject to a duly authorized deferred payment plan.

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

§ 2706. Licensing of retailers and cigarette vending machines.

Applicants for retail license or retail cigarette vending machine license or renewal thereof shall meet the following

1 requirements:

2 (1) The premises in which the applicant proposes to  
3 conduct business are adequate to protect the revenues.

4 (2) The applicant shall not have failed to disclose any  
5 material information required by the department, including  
6 information that the applicant has complied with this chapter  
7 by providing a signed statement, under penalty of perjury, of  
8 adherence to State presumptive minimum prices or written  
9 approval from the department to sell at a specific different  
10 price.

11 (3) The applicant shall not have any material false  
12 statement in the application.

13 (4) The applicant shall not have violated any provision  
14 of sections 2701 (relating to legislative intent and  
15 findings) through 2729 (relating to violations).

16 (5) The applicant shall have filed all required State  
17 tax reports and paid any State taxes not subject to a timely  
18 perfected administrative or judicial appeal or subject to a  
19 duly authorized deferred payment plan.

20 (6) The applicant whose license is suspended under  
21 section 2731 (relating to civil penalties and license  
22 suspension) shall not be issued a license or license renewal  
23 until expiration of the period of suspension.

24 § 2707. Cigarette Licensing, Marketing and Youth Protection  
25 Board.

26 (a) Establishment.--The Cigarette Licensing, Marketing and  
27 Youth Protection Board is hereby established. The board shall  
28 consist of five members including three who are designated by  
29 the secretary, one of whom shall be a deputy secretary of the  
30 department and one of whom shall be an attorney; and two who are

1 designated by the Secretary of Health, both of whom shall have  
2 expertise in the prevention of tobacco sales to minors. The  
3 board shall take testimony, after proper notices as hereinafter  
4 mentioned, and shall make its recommendations in writing to the  
5 secretary under the provisions of this chapter.

6 (b) Complaints.--Any applicant for license or renewal who is  
7 aggrieved by the determination of the department may file a  
8 complaint with the board, assigning specific reasons for  
9 believing that the department acted improperly. The complaint  
10 shall be filed within 30 days after notice by the department of  
11 its determination of the application. Whenever the department  
12 determines that a violation of this chapter has occurred, it may  
13 file a complaint with the board assigning its specific reasons  
14 for believing that the provisions of this chapter have been  
15 violated. The complaint shall be filed by the department within  
16 30 days after final determination of those facts which give rise  
17 to its belief that the provisions of this chapter have been  
18 violated. Upon receipt of the complaint, the board, if it  
19 determines that the complaint raises an issue of fact, shall,  
20 within 30 days after receipt of the complaint, issue a citation  
21 directing the applicant, dealer or department, as the case may  
22 be, to appear at a hearing scheduled by the board within 30  
23 days. The board shall afford the aggrieved party an opportunity  
24 to be heard at the hearing, which shall be conducted in  
25 accordance with the provisions of Title 2 (relating to  
26 administrative law and procedure).

27 (c) Recommendations.--Within 30 days after the termination  
28 of the hearing, the board shall make its recommendations to the  
29 secretary in writing, and within 15 days subsequent thereto, the  
30 secretary shall render a final decision. Any party aggrieved by

1 the final decision shall have the right of appeal in accordance  
2 with the provisions of Title 2.

3 (d) Assessment.--If any person is aggrieved by an assessment  
4 issued by the department for taxes due the Commonwealth, he may  
5 file an appeal from the assessment in accordance with the  
6 procedures of this chapter.

7 § 2708. License fees; issuance and posting of license.

8 (a) General rule.--At the time of making any application, an  
9 applicant for a wholesale cigarette dealer's license shall pay  
10 to the department a license fee of \$500, an applicant for a  
11 retail cigarette dealer's license shall pay to the department a  
12 license fee of \$150, an applicant for a retail cigarette vending  
13 machine license shall pay to the department a license fee of  
14 \$50, and an applicant for a cigarette stamping agency license  
15 shall pay to the department a fee of \$1,000. Fees shall not be  
16 prorated.

17 (b) Display of license.--Upon approval of the application  
18 and payment of the fees, the department shall issue the proper  
19 license which must be conspicuously displayed at the place for  
20 which issued.

21 § 2709. Transfer of licenses.

22 The department may permit a dealer, under such conditions as  
23 the department may impose by regulation, to transfer a license  
24 from one location to another.

25 § 2710. Disposition of license fees.

26 Fees received by the department under this chapter shall be  
27 distributed as follows:

28 (1) Twenty percent paid into the General Fund.

29 (2) Twenty-five percent for use by the department to  
30 implement the enforcement and audit provisions of this

chapter and the Cigarette Tax Act;

(3) Forty-five percent for use by the department for contracts, issued on a consistent per capita basis, to implement section 2732 (relating to enforcement by qualified local agencies).

(4) Ten percent for use by the Department of Health Tobacco Control Program for training and education materials and services that assist with implementation of sections 2730 (relating to sales to minors), 2731 (relating to civil penalties and license suspension) and 2732 and support other programs to prevent the use of tobacco products by minors under 21 years of age.

§ 2711. Expiration of license.

(a) General rule.--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.

(b) Effect of expiration, suspension, surrender or revocation.--After the expiration date of the license, or sooner if the license is suspended, surrendered or revoked, it shall be illegal for a dealer to engage directly or indirectly in the business conducted by him for which the license was issued. A licensee who shall, after the expiration date of the license, engage in the business previously 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 this chapter and be subject to the penalties provided under this chapter.

§ 2712. Duplicate license.

(a) General rule.--If a license is defaced, destroyed or

1 lost, the department may issue a duplicate to the holder of the  
2 defaced, destroyed or lost license upon submission of a  
3 duplicate license application. Except as provided in subsection  
4 (b), at the time of making any application for a duplicate  
5 license, the applicant shall pay to the department a fee of \$5.  
6 The duplicate license application shall be in such form and  
7 contain such information as the department shall prescribe and  
8 shall set forth truthfully and accurately the information called  
9 for on the form.

10 (b) Waiver of fee.--In the event a license is defaced or  
11 destroyed in the performance of any duty imposed by this  
12 chapter, the department may, by regulation, waive the fee  
13 imposed by subsection (a).

14 (c) One-year hiatus.--No license shall be issued by the  
15 department to any person within one year after rejection of an  
16 application, refusal to renew or revocation of an existing  
17 license, the period of one year to commence from the date that  
18 the license is returned to the department or application is  
19 rejected.

20 § 2713. License for cigarette vending machines; names of owner  
21 and operator.

22 Each cigarette vending machine accessible to consumers shall  
23 have a current retail cigarette vending machine license, issued  
24 under section 2706 (relating to licensing of retailers and  
25 cigarette vending machines), conspicuously and visibly placed on  
26 the machine. There shall be conspicuously and visibly placed on  
27 every cigarette vending machine the name and address of the  
28 owner and the name and address of the operator.

29 § 2714. Retention of records.

30 Every licensed dealer shall keep and maintain for a period of

1 four years such records in such form as the department shall by  
2 regulation prescribe. The records shall be maintained at the  
3 location for which the license is issued.

4 § 2715. Reports.

5 Every licensed dealer shall file reports at such times and in  
6 such form as the department by regulation may prescribe.

7 § 2716. Examination of records, equipment and premises.

8 (a) General rule.--The department is authorized to examine  
9 the books and records, the inventory of cigarettes and the  
10 premises and equipment of any dealer in order to determine  
11 compliance with the provisions of this chapter and to verify the  
12 accuracy of the payment of the tax imposed by the Cigarette Tax  
13 Act. Every dealer is required to give to the department or its  
14 duly authorized representative the means, facilities and  
15 opportunity for the examinations under this subsection.

16 (b) Violations.--Any person who prevents or hinders the  
17 department or its designated agent from making a full inspection  
18 of the premises where cigarettes are sold or stored or prevents  
19 or hinders the inspection of invoices, books, records,  
20 equipment, inventory or papers required to be kept violates this  
21 chapter and is subject to the penalties provided for under this  
22 chapter.

23 § 2717. Sales at less than cost.

24 (a) Violations.--It shall be unlawful:

25 (1) For a dealer, with intent to injure competitors or  
26 destroy or substantially lessen competition or with intent to  
27 avoid the collection or paying over of the taxes required by  
28 law, to advertise, offer to sell or sell cigarettes at less  
29 than cost of the dealer.

30 (2) For a wholesaler:

1           (i) to induce or attempt to induce or to procure or  
2 attempt to procure the purchase of cigarettes or to  
3 accept cigarettes at a price less than the cost of the  
4 cigarette dealer from whom the purchase or acceptance of  
5 cigarettes was made; or

6           (ii) to induce or attempt to induce or to procure or  
7 attempt to procure or to accept any unauthorized rebate  
8 or concession of any kind or nature whatsoever, other  
9 than a rebate or concession authorized by the department,  
10 in connection with the purchase of cigarettes.

11       (3) For a retail dealer:

12           (i) to induce or attempt to induce or to procure or  
13 attempt to procure the purchase of cigarettes or to  
14 accept cigarettes at a price less than the cost to the  
15 cigarette dealer from whom the purchase or acceptance of  
16 cigarettes was made; or

17           (ii) to induce or attempt to induce or to procure or  
18 attempt to procure or to accept any unauthorized rebate  
19 or concession of any kind or nature whatsoever, other  
20 than a rebate or concession authorized by the department,  
21 in connection with the purchase of cigarettes.

22       (b) Prima facie evidence of violations.--

23           (1) Evidence of any of the following shall be prima  
24 facie evidence of intent to injure competitors and to destroy  
25 or substantially lessen competition, or of intent to avoid  
26 the collection or paying over of the taxes required by law,  
27 as the case may be:

28           (i) sale or advertisement offering to sell  
29 cigarettes at less than cost to the dealer;

30           (ii) giving of or offering to give a rebate in price

1 or concession of any kind in connection with the sale of  
2 cigarettes;

3 (iii) inducing or procuring or attempting to induce  
4 or procure the purchase of cigarettes at a price less  
5 than costs of the cigarette stamping agent, wholesaler or  
6 retail dealer.

7 (2) Evidence of any of the following shall be prima  
8 facie evidence of violations of this chapter:

9 (i) a final selling cost which is not the invoice  
10 cost;

11 (ii) an invoice of a cigarette stamping agent,  
12 wholesaler or retailer which does not include allowable  
13 discounts, rebates, allowances or free or discounted  
14 merchandise relating to or in conjunction with the sale  
15 of cigarettes.

16 § 2718. Combinations sales; inducements.

17 In all advertisements, offers for sale or sales involving two  
18 or more items, at least one of which items is cigarettes, at a  
19 combined price and in all advertisements, offers for sale or  
20 sales involving the giving of any gift or concession of any kind  
21 whatsoever, whether it be coupons or otherwise, the portion of  
22 the dealer's combined selling price relating to cigarettes shall  
23 not be below the cost of the stamper, cost of the retailer or  
24 cost of the wholesaler, as the case may be. Other merchandise  
25 offered for sale as a tie-in with cigarettes shall not be sold  
26 at less than the cost of the other merchandise nor shall the  
27 gift or concession of the other items advertised or offered for  
28 sale be used as an inducement to purchase cigarettes nor shall  
29 any payment, openly or in secret, of a rebate, refund,  
30 commission or unearned discount, whether in the form of money or

1 otherwise, or secret extensions to certain purchasers of special  
2 services or privileges not extended to all purchasers upon like  
3 terms and conditions be made or offered as an inducement to  
4 purchase cigarettes.

5 § 2719. Sales by wholesaler to wholesaler.

6 When a wholesaler sells cigarettes to another wholesaler, the  
7 seller shall not be required to include in the selling price the  
8 cost of the wholesaler as defined in this chapter, but the  
9 purchasing wholesaler, upon the resale of the cigarettes to a  
10 retailer, shall be subject in all respects to the provisions of  
11 this chapter, except that the purchasing wholesaler may, at his  
12 option, use as his basic cost of the cigarettes the basic cost  
13 of the selling wholesaler.

14 § 2720. Sales; exceptions.

15 The provisions of this chapter shall not apply to sales of  
16 cigarettes a dealer made:

17 (1) in an isolated transaction and not in the usual  
18 course of business;

19 (2) where cigarettes are advertised, offered for sale or  
20 sold in good-faith clearance sales for the purpose of  
21 discontinuing trade in the cigarettes and the advertising,  
22 offer to sell or sale shall state the reason thereof and the  
23 quantity of such cigarettes advertised, offered for sale or  
24 to be sold;

25 (3) where cigarettes are advertised, offered for sale or  
26 sold as imperfect or damaged and the advertising, offer to  
27 sell or sale shall state the reason therefor and the quantity  
28 of the cigarettes advertised, offered for sale or to be sold;

29 (4) where cigarettes are sold upon the final liquidation  
30 of a business; or

(5) where cigarettes are advertised, offered for sale or sold by any fiduciary or other officer acting under the order or direction of a court.

§ 2721. Advertising of certain sales; good faith.

(a) General rule.--

(1) A retailer may advertise, offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at cost to him as a retailer.

(2) A wholesaler may advertise, offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor if the competitor is rendering the same type of service, has been approved by the department to sell cigarettes at a price different from the presumptive minimum and is not selling the same article below cost to him as a wholesaler.

(3) The price of cigarettes advertised, offered for sale or sold under the exceptions specified in this chapter shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt sale be considered the price of a competitor under this section.

(b) Presumption.--In the absence of proof of the cost of a competitor, the lowest cost of the stamping agent or wholesaler, as the case may be, determined by a cost survey made in the same trading area pursuant to the provisions of this chapter, may be deemed the cost of the competitor within the meaning of this section.

§ 2722. Sales contracts void.

A contract, expressed or implied, made by any person in

1 violation of any provision of this chapter shall be illegal and  
2 void and no recovery thereon shall be had.

3 § 2723. Admissible evidence.

4 (a) General rule.--In determining the cost of the stamper,  
5 cost of the retailer and cost of the wholesaler, the fact-finder  
6 shall receive and consider, as bearing on the good faith of the  
7 cost, evidence tending to show that the person complained  
8 against under any provision of this chapter purchased cigarettes  
9 with respect to the sale of which complaint is made at a  
10 fictitious price or upon terms or in such a manner or under such  
11 invoices as to conceal the true cost, discounts or terms of  
12 purchase. The fact-finder shall also receive and consider, as  
13 bearing on the good faith of the cost, evidence of the normal,  
14 customary and prevailing terms and discounts in connection with  
15 other sales of a similar nature in the trade area or in this  
16 Commonwealth.

17 (b) Exception.--Merchandise given gratis or payment made to  
18 a stamping agent, retailer or wholesaler by a cigarette  
19 manufacturer for display or advertising or promotion purposes,  
20 or otherwise, shall not be considered in determining the cost of  
21 cigarettes to the cigarette dealer if the practice is customary  
22 in the trade and offered to all dealers on an equal or  
23 proportional basis.

24 § 2724. Sales outside ordinary channels of business; effect.

25 In establishing the cost of cigarettes to the stamper,  
26 retailer or wholesaler, the invoice cost of the cigarettes  
27 purchased at a forced bankrupt or closeout sale or other sale  
28 outside of the ordinary channels of trade may not be used as a  
29 basis for justifying a price lower than one based upon the  
30 replacement cost of the cigarettes to the stamper, retailer or

1 wholesaler within 30 days prior to the date of sale in the  
2 quantity last purchased through ordinary channels of trade.  
3 § 2725. Cost survey; admissibility.

4 Where a cost survey pursuant to recognized statistical and  
5 cost-accounting practices has been made for the trading area in  
6 which a violation of this chapter is committed or charged to  
7 determine and establish on the basis of actual existing  
8 conditions the lowest cost to stampers, wholesalers or retailers  
9 within the area, the cost survey shall be deemed competent  
10 evidence in any action or proceeding under this chapter as  
11 tending to prove actual cost to the stamper, wholesaler or  
12 retailer. A party against whom such a cost survey may be  
13 introduced in evidence shall have the right to offer evidence  
14 tending to prove any inaccuracy in the cost survey or any state  
15 of facts which would impair its probative value.

16 § 2726. Remedies.

17 (a) Injunctive relief.--In the case of a violation or  
18 threatened violation of this chapter, the department or any  
19 person injured by the violation or who may be injured by the  
20 threatened violation may maintain an action in a court of  
21 competent jurisdiction to prevent, restrain or enjoin the  
22 violation or threatened violation. If in the action a violation  
23 or threatened violation of this chapter is established, the  
24 court shall enjoin and restrain or otherwise prohibit the  
25 violation or threatened violation, and in addition thereto the  
26 court shall assess in favor of the plaintiff and against the  
27 defendant the costs of suit, including reasonable attorney fees.  
28 In any such action it shall not be necessary that actual damages  
29 to the plaintiff be alleged or proved, but, where alleged and  
30 proved by a plaintiff other than the department, the plaintiff

1 shall be entitled to recover from the defendant the actual  
2 damages sustained by him in addition to injunctive relief, costs  
3 of suit and reasonable attorney fees.

4 (b) Damages.--If injunctive relief is not sought or  
5 required, a person injured by a violation of this chapter may  
6 maintain an action for damages and cost of suit in a court of  
7 competent jurisdiction.

8 § 2727. Administration powers and duties.

9 (a) General rule.--

10 (1) The administration of this chapter is vested in the  
11 department.

12 (2) The department shall adopt rules and regulations for  
13 the enforcement of this chapter and may from time to time  
14 make or cause to be made one or more cost surveys to  
15 establish the lowest cost of the cigarette stamping agent,  
16 retailer and wholesaler for this Commonwealth or such trading  
17 area or areas herein as it shall define. Any survey made or  
18 caused to be made by the department may be used for the  
19 purposes specified in this chapter. If the survey is  
20 conducted in connection with a cigarette dealer's request to  
21 sell at a price different from the presumptive minimum, the  
22 cigarette dealer shall pay for the survey.

23 (3) Regulations shall provide a procedure for dealers to  
24 prove a cost different from the State presumptive costs,  
25 including proof of lower costs, filing of petitions, cost  
26 allocation, data to be submitted and guidelines necessary to  
27 implement this chapter.

28 (4) Authorization to sell below the presumptive minimum  
29 prices shall be in writing published in the Pennsylvania  
30 Bulletin and otherwise in conformance with the requirements

1 of this chapter and shall contain a statement that the  
2 authorization is effective 45 days after the issuance of the  
3 writing and is valid for 12 months. Authorization by the  
4 department for a dealer to sell cigarettes below the  
5 established presumptive minimum prices shall be stated as a  
6 percentage and be applied to all levels of cigarette prices  
7 in the percentage allowed. The percentage shall also be  
8 applied to any new presumptive minimum prices established by  
9 the department during the effective period of the dealer's  
10 authorization.

11 (5) The department may impose such fees as may be  
12 necessary to cover the costs incurred in administering this  
13 section, including review and audit of a petitioning dealer's  
14 audited financial statement.

15 (b) Joint administration.--The department is authorized to  
16 jointly administer this chapter with the act of March 4, 1971  
17 (P.L.6, No.2), known as the Tax Reform Code of 1971, including  
18 joint reporting of information, forms, returns, statements,  
19 documents or other information submitted to the department.

20 § 2728. Sales without license.

21 (a) Penalty.--A dealer or other person who shall, without  
22 having an unexpired dealer's license or vending machine license  
23 properly affixed as required by this chapter, engage in the  
24 business of purchasing, selling, stamping, distributing or in  
25 any other manner directly or indirectly engaging in the business  
26 of dealing with cigarettes for profit shall be in violation of  
27 this chapter and, upon conviction in a summary proceeding, shall  
28 be sentenced to pay a fine of not less than \$250 nor more than  
29 \$1,000, or to suffer imprisonment for a term of not more than 30  
30 days, or both, at the discretion of the court, plus costs of

1 prosecution.

2 (b) Prima facie evidence.--Open display of cigarettes in any  
3 manner shall be prima facie evidence that the person displaying  
4 the cigarettes is directly or indirectly engaging in the  
5 business of dealing in cigarettes for profit.

6 § 2729. Violations.

7 (a) Suspension or revocation.--The license of a cigarette  
8 dealer, wholesaler or retailer who violates any of the  
9 provisions of this chapter may be suspended, after due notice  
10 and opportunity for a hearing, for a period of not less than  
11 five days nor more than 30 days for a first violation, and shall  
12 be suspended or revoked for any subsequent violation.

13 (b) Fine.--In addition to the provisions of subsection (a),  
14 for a first violation, a cigarette dealer shall be fined not  
15 less than \$2,500 nor more than \$5,000. For subsequent  
16 violations, the agent, wholesaler or retailer shall be fined not  
17 less than \$5,000 nor more than \$15,000.

18 (c) Civil penalty.--A person who violates section 2708(b)  
19 (relating to license fees; issuance and posting of license),  
20 2714 (relating to retention of records), 2715 (relating to  
21 reports) or 2716 (relating to examination of records, equipment  
22 and premises) shall be subject to a civil penalty not to exceed  
23 \$300, but shall not be subject to subsections (a) and (b).

24 (d) Contraband and counterfeit stamps.--Notwithstanding any  
25 provision of this chapter to the contrary, the department shall  
26 suspend or revoke any license for violation of any provision of  
27 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform  
28 Code of 1971, concerning contraband cigarettes or counterfeit  
29 cigarette stamps.

30 § 2730. Sales to minors.

1 A person who holds a license issued under section 2706  
2 (relating to licensing of retailers and cigarette vending  
3 machines) may not:

4 (1) Sell, offer to sell or permit to be sold,  
5 distribute, offer to distribute or permit to be distributed  
6 cigarettes or other tobacco products to an individual under  
7 21 years of age.

8 (2) Fail to post in a conspicuous place on the cigarette  
9 vending machine or on or near the retail sales counter, a  
10 sign that conforms with the requirements of 18 Pa.C.S. § 6306  
11 (relating to furnishing tobacco or cigarette papers). In  
12 addition, a sign shall be posted that states the Surgeon  
13 General's warning on the use of cigarettes which is required  
14 to be printed on all packages of cigarettes.

15 (3) Fail to locate all cigarettes and tobacco products  
16 in a cigarette vending machine or in such a place that:

17 (i) only a store employee has access to the  
18 cigarettes and tobacco products;

19 (ii) the store employee assists the customer by  
20 supplying the product; and

21 (iii) the customer does not take possession of the  
22 product until the sales transaction is completed.

23 (4) Sell, offer to sell or permit to be sold,  
24 distribute, offer to distribute or permit to be distributed  
25 any cigarettes or other tobacco products in any form other  
26 than an original factory-wrapped package.

27 § 2731. Civil penalties and license suspension.

28 (a) Civil penalties.--In addition to any other penalties  
29 provided by law, a person who holds a license issued under  
30 section 2706 (relating to licensing of retailers and cigarette

vending machines) and violates a requirement of section 2730 (relating to sales to minors) shall be subject to:

(1) a civil penalty of \$150 for the first violation within a two-year period;

(2) a civil penalty of \$300 for the second violation within a two-year period; or

(3) a civil penalty of \$450 for the third violation within a two-year period.

(4) a civil penalty of \$600 for the fourth and all subsequent violations within a two-year period.

(b) License suspensions.--A person who holds a license under section 2706 shall have the license suspended for a period of:

(1) seven days if a civil penalty has been imposed under subsection (a)(3);

(2) one month if a civil penalty has been imposed under subsection (a)(4) for a fourth violation within a two-year period; or

(3) six to twelve months if a civil penalty has been imposed under subsection (a)(4) for a fifth or subsequent violation within a two-year period.

§ 2732. Enforcement by qualified local agencies.

(a) General rule.--The department shall contract with qualified local agencies to assure compliance with section 2730 (relating to sales to minors). The department shall enter into a sufficient number of contracts so that no less than 60% of retailers fall under the jurisdiction of a qualified local agency in the first year after the effective date of this section, 80% of retailers fall under the jurisdiction of a qualified local agency in the second year after the effective date of this section, and 100% of retailers fall under the

jurisdiction of a qualified local agency in the third year and all subsequent years after the effective date of this section. The Department of Health shall assist the department in identifying qualified local agencies and in securing contracts with qualified local agencies.

(b) Inspections.--Qualified local agencies shall:

(1) Conduct unannounced random inspections and unannounced targeted inspections directed toward retailers who have a history of prior violations or are located where they are more likely to be frequented by individuals under 21 years of age, such that no less than 75% of all retailers in the qualified local agency's jurisdiction are inspected annually.

(2) In at least 50% of the unannounced inspections, use decoy operations wherein individuals 16 years of age or older and under 21 years of age, under the supervision of adults employed by the qualified local agency, attempt to purchase tobacco products.

(3) Report monthly to the department on the results of the inspections.

(c) Citations.--Employees of a qualified local agency shall have authority to issue citations for violations of section 2730. However, in no event shall individuals 16 years of age or older and under 21 years of age who participate in decoy operations under subsection (b)(2) be permitted to issue citations. Any licensee upon whom a civil penalty is imposed under this section shall have the right of appeal to the department in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

(d) Allocation of citations.--One-half of the amount of

1 money collected for civil penalties issued under subsection (c)  
2 shall be provided in a timely manner to the qualified local  
3 agency issuing the citation and shall be used to fund additional  
4 enforcement activities as provided for under subsection (b).

5 (e) Definition.--For purposes of this section, the term  
6 "qualified local agency" means any county or municipal health  
7 department or private nonprofit corporation with experience in  
8 youth health education and promotion or tobacco use prevention  
9 and education.

10 § 2733. Unfair Sales Act inapplicable.

11 The provisions of the act of August 11, 1941 (P.L.900,  
12 No.344), known as the Unfair Sales Act, shall not apply to sales  
13 of cigarettes covered by the provisions of this chapter.

14 Section 4. Article II-A of the act of April 9, 1929  
15 (P.L.343, No.176), known as The Fiscal Code, is repealed.

16 Section 5. This act shall take effect in 60 days.