
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1292 Session of
2014

INTRODUCED BY HUGHES, FERLO, SCHWANK, BLAKE, WOZNIAK, STACK,
LEACH, COSTA, WILEY, FARNESE, VANCE AND TARTAGLIONE,
MARCH 25, 2014

REFERRED TO FINANCE, MARCH 25, 2014

AN ACT

1 Amending the act of March 4, 1971 (P.L.6, No.2), entitled "An
2 act relating to tax reform and State taxation by codifying
3 and enumerating certain subjects of taxation and imposing
4 taxes thereon; providing procedures for the payment,
5 collection, administration and enforcement thereof; providing
6 for tax credits in certain cases; conferring powers and
7 imposing duties upon the Department of Revenue, certain
8 employers, fiduciaries, individuals, persons, corporations
9 and other entities; prescribing crimes, offenses and
10 penalties," adding provisions relating to the taxation of
11 tobacco products; and imposing penalties.

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

14 Section 1. The act of March 4, 1971 (P.L.6, No.2), known as
15 the Tax Reform Code of 1971, is amended by adding an article to
16 read:

17 ARTICLE XII-A

18 TOBACCO PRODUCTS TAX

19 Section 1201-A. Definitions.

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

1 "Cigar." Any roll of tobacco wrapped in tobacco.

2 "Cigarette." As defined in section 1201 (relating to
3 definitions).

4 "Consumer." An individual who purchases tobacco products for
5 personal use and not for resale.

6 "Contraband." Any tobacco product for which the tax imposed
7 by this article has not been paid.

8 "Dealer." A tobacco products wholesaler or retailer. Nothing
9 in this article shall preclude any person from being a tobacco
10 products wholesaler or retailer, provided the person meets the
11 requirements for a license in each category of dealer.

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

13 "Manufacturer." A person that produces tobacco products or
14 who first causes tobacco products to be brought into this
15 Commonwealth.

16 "Person." An individual, unincorporated association,
17 company, corporation, joint stock company, group, agency,
18 syndicate, trust or trustee, receiver, fiduciary, partnership,
19 conservator, any political subdivision of the Commonwealth or
20 any other state. Whenever used in any of the provisions of this
21 article prescribing or imposing penalties, the word "person" as
22 applied to a partnership, unincorporated association or other
23 joint venture, means the partners or members thereof, and as
24 applied to a corporation, means all the officers and directors
25 thereof.

26 "Retailer." A person that, in the usual course of business,
27 purchases or receives tobacco products from any source for the
28 purpose of sale to a consumer, or who owns, leases or otherwise
29 operates one or more vending machines for the purpose of sale of
30 tobacco products to the ultimate consumer. The term includes a

1 person that buys, sells, transfers or deals in tobacco products
2 for profit and is not licensed as a tobacco products wholesaler
3 under this article.

4 "Roll-your-own tobacco." Any tobacco which, because of its
5 appearance, type, packaging or labeling, is suitable for use and
6 is likely to be offered to, or purchased, by, consumers as
7 tobacco for making cigarettes. For purposes of reporting sales
8 of this product under the act of June 22, 2000 (P.L.394, No.54),
9 known as the Tobacco Settlement Agreement Act, 0.09 ounces of
10 tobacco shall constitute one individual unit sold.

11 "Sale." Any transfer of ownership, custody or possession of
12 tobacco products for a consideration; any exchange, barter or
13 gift; or any offer to sell or transfer the ownership, custody or
14 possession of tobacco products for consideration.

15 "Tobacco products." Cigars, cheroots, stogies, periques,
16 granulated, plug cut, crimp cut, ready rubbed and other smoking
17 tobacco, roll-your-own tobacco, snuff, dry snuff, snuff flour,
18 cavendish, plug and twist tobacco, fine-cut and other chewing
19 tobaccos, shorts, refuse scraps, clippings, cuttings and
20 sweepings of tobacco and other kinds and forms of tobacco,
21 prepared in such manner as to be suitable for chewing or
22 ingesting or for smoking in a pipe or otherwise, or both for
23 chewing and smoking. The term does not include cigarettes.

24 "Tobacco products wholesaler." A person, including a
25 distributor, engaged in the business of selling tobacco products
26 that receives, stores, sells, exchanges or distributes tobacco
27 products to retailers or other wholesalers in this Commonwealth.

28 "Unclassified importer." A person in this Commonwealth that
29 acquires a tobacco product from any source on which the tax
30 imposed by this article was not paid and that is not a person

1 otherwise required to be licensed under the provisions of this
2 article. The term includes, but is not limited to, consumers who
3 purchase tobacco products using the Internet or mail order
4 catalogs for personal possession, use or resale in this
5 Commonwealth.

6 "Vending machine operator." A person who places or services
7 one or more tobacco product vending machines whether owned,
8 leased or otherwise operated by the person at locations from
9 which tobacco products are sold to the ultimate consumer. The
10 owner or tenant of the premises upon which a vending machine is
11 placed shall not be considered a vending machine operator if the
12 owner's or tenant's sole remuneration therefrom is a flat rental
13 fee or commission based upon the number or value of tobacco
14 products sold from the machine, unless the owner or tenant
15 actually owns the vending machine or leases the vending machine
16 under an agreement whereby the profits from the sale of the
17 tobacco products directly inure to the owner's or tenant's
18 benefit.

19 Section 1202-A. Incidence and rate of tax.

20 (a) Imposition.--The tobacco products tax shall be imposed
21 on the dealer or unclassified importer at the time the tobacco
22 product is first manufactured, purchased, imported, received or
23 acquired in this Commonwealth for resale or use at the rate of:

24 (1) Thirty-six cents per ounce and a proportionate tax
25 at the same rate on all fractional parts of an ounce of any
26 tobacco product other than cigars.

27 (2) Three and six tenths cents per cigar.

28 (b) Exceptions.--The tax shall not be imposed on any tobacco
29 products that:

30 (1) are exported from this Commonwealth; or

1 (2) are not subject to taxation by the Commonwealth
2 pursuant to any laws of the United States.

3 (c) Weight.--Whenever this article refers to any
4 manufactured tobacco product on which the tax is based on
5 weight, the weight as shown by the manufacturer, or if there is
6 no such weight stated, the weight as shown on the Federal
7 internal revenue stamp shall apply.

8 Section 1203-A. Floor tax.

9 (a) Payment.--Any wholesaler or retailer that, as of the
10 effective date of this article, possesses tobacco products
11 subject to the tax imposed by section 1202-A, shall pay the tax
12 on the tobacco products in accordance with the rates specified
13 in section 1202-A. The tax shall be paid and reported on a form
14 prescribed by the department within 90 days of the effective
15 date of this section.

16 (b) Administrative penalty and license.--If a tobacco
17 products dealer fails to file the report required by subsection
18 (a) or fails to pay the tax imposed by subsection (a), the
19 department may, in addition to the interest and penalties
20 provided in section 1215-A, do any of the following:

21 (1) Impose an administrative penalty equal to the amount
22 of tax evaded or not paid. The penalty shall be added to the
23 tax evaded or not paid and assessed and collected at the same
24 time and in the same manner as the tax.

25 (2) Suspend, revoke or refuse to issue a tobacco
26 products dealer's license.

27 (c) Criminal penalty.--In addition to any penalty imposed
28 under subsection (b), a person that willfully omits, neglects or
29 refuses to comply with a duty imposed under subsection (a)
30 commits a misdemeanor and shall, if convicted, be sentenced to

1 pay a fine of not less than \$2,500 nor more than \$5,000, to
2 serve a term of imprisonment not to exceed 30 days or both.
3 Section 1204-A. Remittance of tax to department.

4 Wholesalers and unclassified importers shall file monthly
5 reports by the 20th day of the month following the purchase of
6 tobacco products from the manufacturer or from any other source
7 on which the tax levied by this article has not been paid on a
8 form prescribed by the department. The tax is due at this time.
9 No discounts or reductions in tax shall be allowed for timely
10 filing and paying of the tax.

11 Section 1205-A. Limitation of tax.

12 Only the first sale or possession of tobacco products in this
13 Commonwealth shall be taxable and used in computing the amount
14 of tax due on tobacco products.

15 Section 1206-A. Procedures for claiming refund.

16 A dealer may make a claim for a refund of tax imposed by this
17 article under section 3003.1 and shall be in the form and
18 contain the information prescribed by the department by
19 regulation.

20 Section 1207-A. Sales or possession of tobacco product when tax
21 not paid.

22 (a) Sales or possession.--Any wholesaler or unclassified
23 importer that sells or possesses any tobacco product for which
24 the proper tax has not been paid commits a summary offense and
25 shall, upon conviction, be sentenced to pay costs of prosecution
26 and a fine of not less than \$100 not more than \$1,000 or to
27 imprisonment for not more than 60 days, or both, at the
28 discretion of the court. Any tobacco products purchased from a
29 wholesaler properly licensed under this article shall be
30 presumed to have the proper taxes paid.

1 (b) Tax evasion.--Any person that shall falsely or
2 fraudulently, maliciously, intentionally or willfully with
3 intent to evade the payment of the Pennsylvania tobacco products
4 tax, sell or possess any tobacco product for which the proper
5 tax has not been paid commits a felony and shall, upon
6 conviction, be sentenced to pay costs of prosecution and a fine
7 of not more than \$15,000 or to imprisonment for not more than
8 five years, or both, at the discretion of the court.

9 Section 1208-A. Assessment.

10 The department is authorized and required to make the
11 inquiries, determinations and assessments of the tax, including
12 interest, additions and penalties, imposed by this article.

13 Section 1209-A. Mode and time of assessment.

14 (a) Underpayment of tax.--Within a reasonable time after any
15 return is filed, the department shall examine it and, if the
16 return shows a greater tax due or collected than the amount of
17 tax remitted with the return, the department shall issue an
18 assessment for the difference, together with an addition of 3%
19 of the difference, which shall be paid to the department within
20 ten days after a notice of the assessment has been mailed to the
21 taxpayer. If the assessment is not paid within ten days, there
22 shall be added thereto and paid to the department an additional
23 3% of such difference for each month thereof during which the
24 assessment remains unpaid, but the total of all additions shall
25 not exceed 18% of the difference shown on the assessment.

26 (b) Understatement of tax.--If the department determines
27 that any return or returns of any taxpayer understates the
28 amount of tax due, it shall determine the proper amount and
29 shall ascertain the difference between the amount of tax shown
30 in the return and the amount determined, such difference being

1 hereafter sometimes referred to as the deficiency. A notice of
2 assessment for the deficiency and the reasons therefore shall
3 then be sent to the taxpayer. The deficiency shall be paid to
4 the department within 30 days after a notice of the assessment
5 thereof has been mailed to the taxpayer.

6 (c) Failure to file return.--In the event that any taxpayer
7 fails to file a return required by this article, the department
8 may make an estimated assessment based on information available
9 of the proper amount of tax owing by the taxpayer. A notice of
10 assessment in the estimated amount shall be sent to the
11 taxpayer. The tax shall be paid within 30 days after a notice of
12 such estimated assessment has been mailed to the taxpayer.

13 Section 1210-A. Limitation on assessment and collection.

14 The amount of the tax imposed by this article shall be
15 assessed within three years after the date when the return
16 provided for by section 1209-A (a) or (c) is filed or the end of
17 the year in which the tax liability arises, whichever shall last
18 occur. The assessment may be made at any time during such period
19 notwithstanding that the department may have made one or more
20 previous assessments against the taxpayer for the year in
21 question, or for any part of such year. In any such case, no
22 credit shall be given for any penalty previously assessed or
23 paid.

24 Section 1211-A. Failure to file return.

25 Where no return is filed, the amount of the tax due may be
26 assessed and collected at any time as to taxable transactions
27 not reported.

28 Section 1212-A. False or fraudulent return.

29 Where the taxpayer willfully files a false or fraudulent
30 return with intent to evade the tax imposed by this article, the

1 amount of tax due may be assessed and collected at any time.

2 Section 1213-A. Extension of limitation period.

3 Notwithstanding any other provision of this article, where,
4 before the expiration of the period prescribed for the
5 assessment of a tax, a taxpayer has consented, in writing, that
6 the period be extended, the amount of tax due may be assessed at
7 any time within the extended period. The period so extended may
8 be extended further by subsequent consents, in writing, made
9 before the expiration of the extended period.

10 Section 1214-A. Failure to furnish information, returning false
11 information or failure to permit inspection.

12 (a) Penalty.--Any dealer who fails to keep or make any
13 record, return, report, inventory or statement, or keeps or
14 makes any false or fraudulent record, return, report, inventory
15 or statement required by this article commits a misdemeanor and
16 shall, upon conviction, be sentenced to pay costs of prosecution
17 and a fine of \$500 and to imprisonment for not more than one
18 year, or both, at the discretion of the court.

19 (b) Examination.--The department is authorized to examine
20 the books and records, the stock of tobacco products and the
21 premises and equipment of any dealer in order to verify the
22 accuracy of the payment of the tax imposed by this article. The
23 person subject to an examination shall give to the department or
24 its duly authorized representative, the means, facilities and
25 opportunity for the examination. Willful refusal to cooperate
26 with or permit an examination to the satisfaction of the
27 department shall be sufficient grounds for the suspension or
28 revocation of a tobacco products dealer's license. In addition,
29 a person who willfully refuses to cooperate with or permit an
30 examination to the satisfaction of the department commits a

1 misdemeanor and shall, upon conviction, be sentenced to pay
2 costs of prosecution and a fine of \$500 or to imprisonment for
3 not more than one year, or both, at the discretion of the court.

4 (c) Records and licensed dealer.--A licensed dealer shall
5 keep and maintain for a period of four years records in the form
6 prescribed by the department by regulation. The records shall be
7 maintained at the location for which the license is issued.

8 (d) Reports.--A licensed dealer shall file reports at times
9 and in the form prescribed by the department by regulation.

10 (e) Records and licensed manufacturer.--A licensed
11 manufacturer located or doing business in this Commonwealth who
12 sells tobacco products to a wholesale license holder in this
13 Commonwealth shall keep records showing:

14 (1) The number and kind of tobacco products sold.

15 (2) The date the tobacco products were sold.

16 (3) The name and license number of the distributor the
17 tobacco products were sold to.

18 (4) The total weight of each of the tobacco products
19 sold to the license holder.

20 (5) The place where the tobacco products were shipped.

21 (6) The name of the common carrier.

22 (f) Manufacturer.--A manufacturer who sells tobacco products
23 to a license holder in this Commonwealth shall file with the
24 department, on or before the 20th of each month, a report
25 showing the information listed in subsection (e) for the
26 previous month.

27 Section 1215-A. Other violations.

28 (a) Criminal penalty.--Any person who willfully omits,
29 neglects or refuses to comply with any duty imposed on the
30 person by this article or does anything prohibited by this

1 article for which no specific penalty is otherwise provided,
2 commits a summary offense and shall, upon conviction, be
3 sentenced to pay costs of prosecution and a fine of not more
4 than \$500, and, in default of payment, to imprisonment for not
5 more than 30 days.

6 (b) Additional liability.--Any person who willfully omits or
7 neglects to pay any tax imposed by this article, or attempts in
8 any manner to evade or defeat the tax or payment shall, in
9 addition to any other penalty provided in this article, be
10 liable to a penalty equal to the amount of tax evaded or not
11 paid, which penalty shall be added to the tax and assessed and
12 collected at the same time in the same manner as a part of the
13 tax.

14 (c) Interest.--Any person who fails to pay tax at the time
15 prescribed shall, in addition to any other penalty provided in
16 this article, be liable to a penalty of 5% of the tax due but
17 unpaid for each month or fraction thereof the tax remains unpaid
18 together with the interest at the rate established pursuant to
19 section 806 of the act of April 9, 1929 (P.L.343, No.176), known
20 as The Fiscal Code, on the tax from the time the tax became due.
21 The interest and penalties provided in this subsection shall be
22 added to the tax and assessed and collected at the same time in
23 the same manner and as a part of the tax.

24 Section 1216-A. Peace officers.

25 Employees of the department are officially designated by the
26 Secretary of Revenue as field investigators, and who carry
27 identification of such capacity, are hereby declared to be peace
28 officers and they, as well as other peace officers of the
29 Commonwealth are hereby given police powers and authority
30 throughout this Commonwealth to arrest on view, except in

1 private homes, without warrant, any person actually engaged in
2 the unlawful sale of any tobacco product for which the proper
3 tax has not been paid, or any person unlawfully having in the
4 person's possession any tobacco product for which the proper tax
5 has not been paid contrary to the provisions of this article. A
6 peace officer has authority upon reasonable and probable cause
7 to search for and seize without warrant or process, except in
8 private homes, any tobacco product for which the proper tax has
9 not been paid which is unlawfully possessed.

10 Section 1217-A. Fines and penalties payable to Commonwealth.

11 All fines and penalties imposed and collected under this
12 article shall be payable to the Commonwealth and are
13 appropriated to the department to be used in enforcing this
14 article.

15 Section 1218-A. Enforcement and regulations.

16 The department is hereby charged with the enforcement of the
17 provisions of this article, and it is authorized to promulgate
18 regulations relating to the administration and enforcement of
19 the provisions of this article. The violation of a regulation
20 promulgated under the authority of this article shall be
21 considered to be a violation of this article.

22 Section 1219-A. Records of shipments and receipts of tobacco
23 products required.

24 The department may, in its discretion, require reports from
25 any common or contract carrier who transports tobacco products
26 to any point or points within this Commonwealth, and from any
27 bonded warehouseman or bailee who has in the possession of the
28 warehouseman or bailee any tobacco products. The reports shall
29 contain the information concerning shipments of tobacco products
30 that the department determines to be necessary for the

1 administration of this article. All common and contract
2 carriers, bailees and warehousemen shall permit the examination
3 by the department or its authorized agents of any records
4 relating to the shipment or receipt of tobacco products.

5 Section 1220-A. Licensing of tobacco products dealers.

6 (a) Prohibition.--No person, unless all sales of tobacco
7 products are exempt from Pennsylvania tobacco products tax,
8 shall sell, transfer or deliver any tobacco products in this
9 Commonwealth without first obtaining the proper license provided
10 for in this article.

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

19 Section 1221-A. Licensing of tobacco products manufacturers.

20 Any manufacturer doing business within this Commonwealth
21 shall first obtain a license to sell tobacco products by
22 submitting an application to the department containing the
23 information requested by the department and designating a
24 process agent. If a manufacturer designates no process agent,
25 the manufacturer shall be deemed to have made the Secretary of
26 State its agent for the service of process in this Commonwealth.

27 Section 1222-A. Licensing of wholesalers.

28 (a) Requirements.--Applicants for a wholesale license or
29 renewal of that license shall meet the following requirements:

30 (1) The premises on which the applicant proposes to

1 conduct business are adequate to protect the revenue.

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

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

9 (4) The applicant shall not have failed to disclose any
10 material information required by the department, including
11 information that the applicant has complied with this article
12 by providing a signed statement under penalty of perjury.

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

15 (6) The applicant shall not have violated any provision
16 of this article.

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

21 (b) Multiple locations.--The wholesale dealer's license
22 shall be valid for one specific location only. Wholesale dealers
23 with more than one location shall obtain a license for each
24 location.

25 Section 1223-A. Licensing of retailers.

26 Applicants for retail license or renewal of that license
27 shall meet the following requirements:

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

30 (2) The applicant shall not have failed to disclose any

1 material information required by the department.

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

4 (4) The applicant shall not have violated any provision
5 of this article.

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

10 Section 1224-A. License for tobacco products vending machines.

11 Each tobacco products vending machine shall have a current
12 license which shall be conspicuously and visibly placed on the
13 machine. There shall be conspicuously and visibly placed on
14 every tobacco products vending machine the name and address of
15 the owner and the name and address of the operator.

16 Section 1225-A. License fees and issuance and display of
17 license.

18 (a) At the time of making any application or license renewal
19 application:

20 (1) An applicant for a tobacco products manufacturers
21 license shall pay the department a license fee of \$1,500.

22 (2) An applicant for a wholesale tobacco products
23 dealer's license shall pay to the department a license fee of
24 \$1,500.

25 (3) An applicant for a retail tobacco products dealer's
26 license shall pay to the department a license fee of \$25.

27 (4) An applicant for a vending machine tobacco products
28 dealer's license shall pay to the department a license fee of
29 \$25.

30 (b) Proration.--Fees shall not be prorated.

1 (c) Issuance and display.--On approval of the application
2 and payment of the fees, the department shall issue the proper
3 license which must be conspicuously displayed at the location
4 for which issued.

5 Section 1226-A. Electronic filing.

6 The department may at its discretion require that any or all
7 returns, reports or registrations that are required to be filed
8 under this article be filed electronically. Failure to
9 electronically file any return or information the department may
10 direct to be filed electronically shall subject the taxpayer to
11 a penalty of 5% of the tax due on the return, up to a maximum of
12 \$1,000, but not less than \$10. This penalty shall be assessed at
13 any time and collected in the manner provided in this article.
14 This penalty shall be in addition to any civil penalty imposed
15 in this article for failure to furnish information or file a
16 return. The criminal penalty for failure to file a return
17 electronically shall be the same as the criminal penalty for
18 failure to furnish information or file a return under this
19 article.

20 Section 1227-A. Expiration of license.

21 (a) Expiration.--A license shall expire on the last day of
22 June next succeeding the date upon which it was issued unless
23 the department at an earlier date suspends, surrenders or
24 revokes the license.

25 (b) Violation.--After the expiration date of the license or
26 sooner if the license is suspended, surrendered or revoked, it
27 shall be illegal for any dealer to engage directly or indirectly
28 in the business heretofore conducted by the dealer for which the
29 license was issued. Any licensee who shall, after the expiration
30 date of the license, engage in the business theretofore

1 conducted by the licensee either by way of purchase, sale,
2 distribution or in any other manner directly or indirectly
3 engaged in the business of dealing with tobacco products for
4 profit shall be in violation of this article and be subject to
5 the penalties provided in this article.

6 Section 1228-A. Administration powers and duties.

7 (a) Department.--The administration of this article is
8 hereby vested in the department. The department shall adopt
9 rules and regulations for the enforcement of this article. The
10 department may impose fees as may be necessary to cover the
11 costs incurred in administering this section.

12 (b) Joint administration.--The department is authorized to
13 jointly administer this article with other provisions of this
14 act, including joint reporting of information, forms, returns,
15 statements, documents or other information submitted to the
16 department.

17 Section 1229-A. Sales without license.

18 (a) Penalty.--Any dealer or other person who shall, without
19 being the holder of a proper unexpired dealer's license, engage
20 in the business of purchasing, selling, distributing or in any
21 other manner directly or indirectly engaging in the business of
22 dealing with tobacco products for profit commits a summary
23 offense and shall, upon conviction, be sentenced to pay costs of
24 prosecution and a fine of not less than \$250 nor more than
25 \$1,000, or to imprisonment for not more than 30 days, or both,
26 at the discretion of the court.

27 (b) Prima facie evidence.--Open display of tobacco products
28 in any manner shall be prima facie evidence that the person
29 displaying such tobacco products is directly or indirectly
30 engaging in the business of dealing with tobacco products for

1 profit.

2 Section 1230-A. Violations and penalties.

3 (a) Suspension.--The license of any tobacco products dealer
4 or wholesaler or retailer who violates this article may be
5 suspended after due notice and opportunity of hearing for a
6 period of not less than five days or more than 30 days for a
7 first violation and shall be revoked or suspended for any
8 subsequent violation.

9 (b) Fine.--In addition to the provisions of subsection (a),
10 upon adjudication of a first violation, the tobacco products
11 dealer shall be fined not less than \$2,500 nor more than \$5,000.
12 For subsequent violations, the agent, wholesaler or retailer
13 shall, upon adjudication thereof, be fined not less than \$5,000
14 nor more than \$15,000.

15 (c) Civil penalty.--A person who violates section 1214-A
16 (b), (c), or (d), or 1225-A(c), shall be subject to a civil
17 penalty not to exceed \$300 per violation but shall not be
18 subject to subsections (a) and (b).

19 Section 1231-A. Property rights.

20 (a) Vending machines.--No property rights shall exist in any
21 vending machine in which untaxed tobacco products are found, nor
22 shall any property rights exist in any vehicle containing \$2,500
23 worth or more of untaxed tobacco products or containing more
24 than \$250 worth of untaxed tobacco products if the owner has
25 been previously convicted of the illegal sale, possession or
26 transportation of untaxed tobacco products in this or any other
27 jurisdiction. The vending machine, all tobacco products
28 contained in the vending machine, and the vehicle which
29 contained the untaxed tobacco products shall be deemed
30 contraband and shall be confiscated at the discretion of the

1 Secretary of Revenue, forfeited to the Commonwealth as provided
2 in subsections (e) and (f). No such property, when in the
3 custody of the department, the police or other proper peace
4 officers shall be seized or taken therefrom by any writ of
5 replevin or other judicial process unless a petition for
6 forfeiture is not timely filed.

7 (b) Disposal.--Upon forfeiture or confiscation, the
8 department shall dispose of any forfeited machine or forfeited
9 tobacco products in accordance with subsections (e) and (f).

10 (c) Tobacco products and nonlicensed sale.--No property
11 rights shall exist in any tobacco products which have been
12 possessed, sold or offered for sale by any person without a
13 proper license or any tobacco products possessed, sold or
14 offered for sale by any person not possessing proper
15 documentation showing legal purchase of the tobacco products,
16 and all such tobacco products shall be deemed contraband, shall
17 be confiscated and forfeited to the Commonwealth without further
18 proceedings and delivered to the agents of the department at the
19 time of conviction.

20 (d) Tobacco products and tax evasion.--No property rights
21 shall exist in any tobacco products confiscated in connection
22 with the operation of any scheme designed to evade the payment
23 of proper Pennsylvania tobacco products tax. The tobacco
24 products shall be confiscated and at the discretion of the
25 Secretary of Revenue shall be forfeited to the Commonwealth in
26 accordance with the provisions of this article.

27 (e) Sale or destruction.--The department shall dispose of
28 tobacco products forfeited under this article by the sale or
29 destruction of the tobacco products pursuant to regulations
30 promulgated by the department.

1 (f) In rem action.--The proceedings for the forfeiture of
2 any tobacco products vending machine, motor vehicle or other
3 means of transportation, in which are found untaxed tobacco
4 products shall be in rem. The Commonwealth shall be the
5 plaintiff and the property shall be the defendant. A petition
6 shall be filed within ten days after confiscation in the court
7 of common pleas of the county in which the property or vehicle
8 was taken by agents of the department, the police or other
9 authorized peace officer, verified by oath or affirmation of any
10 tobacco products tax enforcement officer, police officer or
11 other person. In the event that the petition is not filed within
12 the time prescribed, the confiscated vending machine or motor
13 vehicle shall be immediately returned to the person from whom
14 confiscated or the owner thereof.

15 (g) Contents of petition.--The petition shall contain the
16 following:

17 (1) The description of the property or vehicle seized.

18 (2) A statement of the time when and place where seized.

19 (3) The name and address of the owner, if known.

20 (4) The name and address of the person in possession, if
21 known.

22 (5) The statement of the circumstances under which the
23 property was found and the number and description of all
24 untaxed tobacco products found therein.

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

27 (h) Service.--A copy of the petition shall be served in any
28 manner provided by law for service of process or complaint in an
29 action in assumpsit on the owner if the owner can be found
30 within this Commonwealth. If the owner cannot be found within

1 this Commonwealth, a copy of the petition shall be served on the
2 owner by registered mail or certified mail, return receipt
3 requested, addressed to the last known address of the owner. The
4 person in possession and all encumbrance holders having a
5 perfected security interest in the property confiscated shall be
6 notified in like manner. The copies shall have endorsed thereon
7 a notice substantially similar to the following:

8 "To the claimant of the within property: You are required
9 to file an answer to this petition setting forth your
10 title in and right to possession of said property, within
11 20 days from the service hereof, and you are also
12 notified that if you fail to file said answer, a decree
13 of forfeiture will be entered against the property."

14 (i) Signature.--The notice shall be signed by the petitioner
15 or the petitioner's attorney or the district attorney or
16 Attorney General.

17 (j) Owner unknown.--If the owner of the property is unknown,
18 notice of the petition shall also be given by an advertisement
19 in only one newspaper of general circulation published in the
20 county where the property was seized, once a week for two
21 successive weeks. No other advertisement of any sort shall be
22 necessary, any other law to the contrary notwithstanding. The
23 notice shall contain a statement of the seizure of the property,
24 with the description thereof, the place and date of seizure, and
25 shall direct any claimants thereof to file a claim therefor, on
26 or before a date given in the notice, which shall not be less
27 than ten days from the date of the last publication.

28 (k) Date of hearing.--Upon the filing of any claim for the
29 property setting forth a right of possession thereof, the case
30 shall be deemed at issue and a hearing shall be held within ten

1 days thereof.

2 (l) Conduct of hearing.--At the time of the hearing, if the
3 Commonwealth shall prove by competent evidence to the
4 satisfaction of the court that the machine or motor vehicle in
5 question was found to contain untaxed tobacco products, then and
6 in that event the claimant shall show that the claimant is the
7 owner of the tobacco products vending machine or other
8 equipment, motor vehicle or tobacco products, and that all
9 tobacco products found in the machine, or any other place from
10 which the tobacco products were seized, were properly taxed, or
11 that the claimant is otherwise not subject to the provisions of
12 this section as the result of any exemption or allowance
13 provided for in other sections of this article.

14 (m) Burden of proof.--The claimant shall have the burden of
15 proving that the claimant is not subject to the provisions of
16 this section, but the burden of proof shall be upon the
17 Commonwealth to prove all other facts necessary for the
18 forfeiture of a tobacco products vending machine or motor
19 vehicle. In the event that the Commonwealth has not met its
20 burden by a preponderance of the evidence, or the claimant has
21 proved that the claimant is not subject to the provisions of
22 this section, the court shall order the machine, motor vehicle
23 or other equipment returned to the claimant; otherwise, the
24 court shall order the same forfeited to the Commonwealth.
25 However, in the case of a motor vehicle, if the claimant proves
26 to the satisfaction of the court that the claimant is the
27 registered owner of the motor vehicle and that the claimant did
28 not know, nor have reason to know, that it was being used to
29 carry untaxed tobacco products, the court in its discretion may
30 order the same returned to the claimant.

1 (n) Motor vehicles.--In the case of a motor vehicle, should
2 the claimant prove that the claimant holds a valid encumbrance
3 upon the motor vehicle, notice of which encumbrance has been
4 duly noted on the certificate of title to the motor vehicle in
5 accordance with the provisions of 75 Pa.C.S. (relating to
6 vehicles), the forfeiture shall be subject to the encumbrance as
7 of the date of the seizure less prepaid or unearned interest and
8 before the motor vehicle may be sold, exchanged or otherwise
9 transferred or retained for use by the Commonwealth, the
10 outstanding amount of the encumbrance shall be paid to the
11 claimant; or possession of the motor vehicle shall be turned
12 over to the claimant who shall expose the same to public sale
13 and shall pay over to the Commonwealth any amount realized in
14 excess of the outstanding amount of the encumbrance less the
15 reasonable costs incurred by the claimant in conducting the
16 sale.

17 Section 1232-A. Sample of tobacco products.

18 (a) Samples.--The department shall, by regulation, govern
19 the receipt, distribution of and payment of tax on sample
20 tobacco products issued for free distribution.

21 (b) Construction.--Nothing in this article or the
22 regulations promulgated under this article shall prohibit the
23 bringing into this Commonwealth by a manufacturer samples of
24 tobacco products to be delivered and distributed only through
25 licensed dealers or the manufacturers or their sales
26 representatives. The tax shall be paid by the manufacturer
27 provided all such packs bear the legend "all applicable State
28 taxes have been paid." Under no circumstances shall any untaxed
29 tobacco products be sold within this Commonwealth.

30 Section 1233-A. Labeling and packaging.

1 It shall be unlawful to knowingly possess, sell, give,
2 transfer or deliver to any person, any tobacco product where the
3 packaging of which has been modified or altered by a person
4 other than the original manufacturer. Modification or alteration
5 shall include the placement of a sticker, writing or mark to
6 cover information on the packages. For purposes of this section,
7 a tobacco product package shall not be construed to have been
8 modified or altered by a person other than the manufacturer if
9 the most recent modification or alteration was made by the
10 manufacturer or person authorized by the manufacturer and
11 approved by the department.

12 Section 1234-A. Information exchange.

13 The department is authorized to exchange information with any
14 other Federal, State or local enforcement agency for purposes of
15 enforcing this article.

16 Section 2. This act shall take effect July 1, 2014, or
17 immediately, whichever is later.