

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 691 Session of 2015

INTRODUCED BY MENSCH, COSTA, WILEY, BLAKE, TEPLITZ, YUDICHAK,
RAFFERTY, ARGALL AND SCARNATI, MARCH 31, 2015

REFERRED TO FINANCE, MARCH 31, 2015

AN ACT

1 Amending the act of April 9, 1929 (P.L.343, No.176), entitled,
2 as amended, "An act relating to the finances of the State
3 government; providing for the settlement, assessment,
4 collection, and lien of taxes, bonus, and all other accounts
5 due the Commonwealth, the collection and recovery of fees and
6 other money or property due or belonging to the Commonwealth,
7 or any agency thereof, including escheated property and the
8 proceeds of its sale, the custody and disbursement or other
9 disposition of funds and securities belonging to or in the
10 possession of the Commonwealth, and the settlement of claims
11 against the Commonwealth, the resettlement of accounts and
12 appeals to the courts, refunds of moneys erroneously paid to
13 the Commonwealth, auditing the accounts of the Commonwealth
14 and all agencies thereof, of all public officers collecting
15 moneys payable to the Commonwealth, or any agency thereof,
16 and all receipts of appropriations from the Commonwealth,
17 authorizing the Commonwealth to issue tax anticipation notes
18 to defray current expenses, implementing the provisions of
19 section 7(a) of Article VIII of the Constitution of
20 Pennsylvania authorizing and restricting the incurring of
21 certain debt and imposing penalties; affecting every
22 department, board, commission, and officer of the State
23 government, every political subdivision of the State, and
24 certain officers of such subdivisions, every person,
25 association, and corporation required to pay, assess, or
26 collect taxes, or to make returns or reports under the laws
27 imposing taxes for State purposes, or to pay license fees or
28 other moneys to the Commonwealth, or any agency thereof,
29 every State depository and every debtor or creditor of the
30 Commonwealth," in cigarette sales and licensing, further
31 providing for definitions, for retention of records and for
32 violations and penalties and providing for preemption.

33 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. The definition of "cost of the retailer" in
3 section 202-A of the act of April 9, 1929 (P.L.343, No.176),
4 known as The Fiscal Code, added July 2, 1993 (P.L.250, No.46),
5 is amended to read:

6 Section 202-A. Definitions.--As used in this article--

7 * * *

8 "Cost of the Retailer" shall mean the basic cost of
9 cigarettes to the retailer plus the cost of doing business by
10 the retailer in excess of the basic cost of cigarettes,
11 expressed as a percentage and applied to the basic cost of
12 cigarettes. In the absence of filing of satisfactory proof of a
13 lesser or higher cost of doing business by the retailer making
14 the sale, the cost of doing business by the retailer shall be
15 presumed to be [six] seven per centum of the basic cost of
16 cigarettes to the retailer. When a retailer establishes a lesser
17 cost of doing business than the presumptive [six] seven per
18 centum cost of doing business, such lesser cost of doing
19 business may be used to compute the cost of the retailer for a
20 period of time no greater than twelve months, at the end of
21 which time the cost to the retailer shall be computed using the
22 presumptive [six] seven per centum cost of doing business,
23 unless the retailer again establishes a lesser cost of doing
24 business. Any fractional part of a cent in such cost per carton
25 shall be rounded off to the next higher cent. In the case of any
26 person who purchases cigarettes for sale at retail from any
27 manufacturer of cigarettes without resort to a wholesaler as
28 such, such person shall be deemed, for the purposes of this
29 article, to be engaged in the sale of cigarettes as a stamping
30 agent, wholesaler and retailer and as such shall be subject to

1 all mark-up provisions of this article in the order named.

2 * * *

3 Section 2. Section 214-A of the act, added July 2, 1993
4 (P.L.250, No.46), is amended to read:

5 Section 214-A. [Retention of] Required Records.--(a) Every
6 licensed dealer shall keep and maintain for a period of four
7 years such records in such form as the department shall by
8 regulation prescribe. The records shall be maintained at the
9 location for which the license is issued.

10 (b) A contract of sale complying with the provisions of this
11 article shall be signed by the parties to a sale of cigarettes
12 and shall be kept on file by each party at the location for
13 which the license is issued. In the case of a dealer having more
14 than one location under common ownership, the contract of sale
15 shall be kept at the business or corporate headquarters. A
16 contract of sale shall include, but not be limited to, an actual
17 document or Internet or electronic evidence indicating that a
18 transaction for the sale of cigarettes has taken place.

19 Section 3. Section 229-A of the act is amended by adding a
20 subsection to read:

21 Section 229-A. Violations and Penalties.--* * *

22 (g) A licensee who fails to pay for cigarettes in full upon
23 delivery by cash, check or electronic fund transfer or according
24 to the contract of sale, requiring full payment no later than
25 fourteen days after delivery, in addition to any other
26 violations provided by law, shall be in violation of this
27 article.

28 Section 4. The act is amended by adding a section to read:

29 Section 232-A. Preemption.--(a) All powers and jurisdiction
30 over dealers licensed under this article, and regarding or

1 affecting the sale of tobacco products by dealers licensed under
2 this article, shall reside in the Commonwealth unless any such
3 power or jurisdiction is specifically granted to a political
4 subdivision.

5 (b) As used in this section, the term "tobacco product"
6 shall have the same meaning as defined in 18 Pa.C.S. § 6305(k)
7 (relating to sale of tobacco).

8 Section 5. This act shall take effect immediately.