

HOUSE No. 4065

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act combatting illegal tobacco and preventing further loss of revenue to the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 10 of the General Laws, as appearing in the 2016 Official Edition,
2 is hereby amended by striking out section 30B and inserting in place thereof the following
3 section:-

4 Suspension of license to sell lottery tickets due to suspension or revocation of cigar or
5 tobacco license

6 Section 30B. Upon receiving notice from the commissioner of revenue that a retailer or a
7 cigar retailer, as defined in section 1 of chapter 64C, has had a cigar or tobacco license
8 suspended or revoked for a knowing violation of subsections (a), (b) or (c) of section 10 of said
9 chapter 64C, or of sections 34, 35, 37, 37A or 38 of said chapter 64C, the director of the state
10 lottery shall suspend any license to sell lottery tickets or shares issued to that retailer or cigar
11 retailer pursuant to sections 26 and 27, for up to 60 days.

12 SECTION 2. Section 6 of chapter 14, as so appearing, is hereby amended by striking out
13 subsection 10 and inserting in place thereof the following subsection:-

14 10. Shall maintain on the department's website an easily searchable and regularly updated
15 list of all taxpayers licensed under section 67 of chapter 62C as a: manufacturer, wholesaler,
16 vending machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer as
17 defined in section 1 of chapter 64C and of all taxpayers appointed as stampers, as defined in said
18 section 1 of said chapter 64C. In addition, such list shall include all taxpayers who the
19 commissioner has authorized in writing to possess or deliver or transport unstamped cigarettes or
20 untaxed other tobacco products.

21 SECTION 3. Section 5 of chapter 62C, as so appearing, is hereby amended by adding at
22 the end of the section the following:-

23 Notwithstanding any other provision of law, any person who adopts or executes an
24 electronic signature, as defined in section 2 of chapter 110G, on a return or other document in a
25 form prescribed by the commissioner shall be deemed to have made and subscribed such return
26 or document; and such return or document, if it contains or is accompanied by a declaration in
27 electronic form that it is made under the penalties of perjury, in such form as prescribed by the
28 commissioner, shall be deemed to contain or be verified by a written declaration that it is made
29 under the penalties of perjury; and such person shall be treated for all purposes (both civil and
30 criminal, including but not limited to penalties for violations of paragraph (f)(1) of section 73
31 and of section 1A of chapter 268) in the same manner as though he had made and subscribed a
32 handwritten signature on a return or other document that contained or was verified by a written
33 declaration that it was made under the penalties of perjury.

34 SECTION 4. Section 16 of said chapter 62C, as so appearing, is hereby amended by
35 striking out the final sentence of subsection (c) and inserting in place thereof the following
36 sentence:-

37 Each licensed unclassified acquirer shall, on or before the twentieth day of each calendar
38 month, file with the commissioner a return stating the quantity of tobacco products imported or
39 acquired during the previous calendar month and such other information as the commissioner
40 may deem necessary.

41 SECTION 5. Said section 16 of said chapter 62C, as so appearing, is hereby further
42 amended by striking out subsection (c1/2).

43 SECTION 6. Section 21 of said chapter 62C, as so appearing, is hereby amended by
44 striking out, in lines 135-136, the words “sections 33A, 34 and 35 of chapter 64C” and inserting
45 in place thereof the words:-

46 sections 10, 33A, 34, 35, 37, 37A and 38 of chapter 64C.

47 SECTION 7. Said section 21 of said chapter 62C, as inserted by section 68 of chapter 46
48 of the acts of 2015, is hereby amended by striking out paragraph (28) of subsection (b) and
49 inserting in place thereof the following paragraph:-

50 (28) the disclosure of information to members of the multi-agency illegal tobacco task
51 force established in section 40 of chapter 64C, task force member agency personnel described in
52 paragraph (ii) of subsection (b) of said section 40, federal law enforcement or revenue or law
53 enforcement officials from another state for the purpose of investigating or prosecuting criminal

54 offenses relative to contraband tobacco distribution or conducting other enforcement actions
55 relative to contraband tobacco distribution.

56 SECTION 8. Said chapter 62C is hereby amended by striking out section 67 and inserting
57 in place thereof the following section:-

58 Licenses and registration certificates of taxpayers under chapters 64A, 64C, 64E to 64J or
59 64M

60 Section 67. (a) Each vendor as defined in chapter 64H or 64I and each operator as
61 defined in chapter 64G who desires to obtain a certificate of registration as required by said
62 chapters 64G, 64H or 64I and each person who desires to obtain a license as a distributor,
63 unclassified importer or unclassified exporter as defined in chapter 64A, as a manufacturer,
64 wholesaler, vending machine operator, unclassified acquirer, retailer, cigar distributor or cigar
65 retailer as defined in chapter 64C, as a user-seller, supplier or user of special fuels as defined in
66 chapter 64E, as a motor carrier as defined in chapter 64F, as a user-seller or supplier of aircraft
67 fuel as defined in chapter 64J or as a direct broadcast satellite service provider as defined in
68 chapter 64M shall file with the commissioner an application in such form as the commissioner
69 prescribes, giving such information as the commissioner requires; provided, however, if the
70 application is for a wholesaler's license other than a cigar distributor's license, both as defined in
71 said chapter 64C, the commissioner shall require, in addition to such other information as may be
72 deemed necessary, the filing of affidavits from 3 licensed manufacturers as defined in said
73 chapter 64C, stating that the manufacturer will supply the wholesaler if the applicant is granted a
74 license, and provided further that at least 2 of the 3 required affidavits shall be from licensed
75 manufacturers who are participating manufacturers, as defined in section 1 of chapter 94C.

76 (b) In the instance of an application for a license as a manufacturer, wholesaler, vending
77 machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer, as defined in
78 chapter 64C, the commissioner shall investigate the prior activities of the applicant; provided
79 further that the commissioner may also, and shall in the case of applicants for a license as a
80 wholesaler, cigar distributor, or unclassified acquirer (other than unclassified acquirer applicants
81 that are hospitals, educational institutions or non-profit entities seeking to acquire tobacco
82 products solely for medical research or other non-commercial purposes), investigate the prior
83 activities of all controlling persons of applicants for any such license. For purposes of this
84 section and section 68, "controlling person" shall mean any person who is: (1) an officer,
85 director or partner of an applicant or licensee; or, in the case of a limited liability company, a
86 member or a person having with respect to such limited liability company authority comparable
87 or analogous to that of an officer or director with respect to a corporation; (2) a shareholder,
88 directly or indirectly owning more than 10 percent of the number of shares of voting stock of
89 such applicant or licensee, in the case of an applicant or licensee that is a corporation; (3) a
90 person who exercises or will exercise authority within the applicant or licensee's business
91 comparable or analogous to that of a corporate officer or director irrespective of the form of
92 business organization or lack of actual title. The commissioner may, as a condition of licensing,
93 require individual applicants and controlling persons of applicants for such licenses to submit
94 such personal and background information as the commissioner deems necessary to conduct an
95 investigation into their prior activities, and as part of any such investigation, the commissioner is
96 authorized to obtain criminal offender record information relative to such applicants and
97 controlling persons of such applicants from the department of criminal justice information
98 services pursuant to section 172 of chapter 6. If the commissioner determines that (i) said

99 applicant or a controlling person of said applicant has been convicted of or has admitted to
100 sufficient facts to support a finding of guilt of any violation of this chapter, any violation of the
101 provisions of chapter 64C, any violation of federal law where the conduct underlying the
102 conviction or admission relates to tobacco products, or any violation of law involving dishonesty
103 or fraud, within the five-year period preceding the date of the application in the case of a
104 misdemeanor or within the ten-year period preceding the date of the application in the case of a
105 felony, or (ii) the commissioner has assessed against said applicant or a controlling person of
106 said applicant a civil penalty, which has been finally determined to be due, for the violation of
107 any provision of chapter 64C providing for a civil penalty on 3 or more occasions during the
108 five-year period preceding the date of the application, or (iii) unstamped cigarettes or untaxed
109 other tobacco products have been seized from the applicant's business premises or the business
110 premises of a controlling person of said applicant on 3 or more occasions during the five-year
111 period preceding the date of the application; (iv) an aggregate total of 100 packs of unstamped
112 cigarettes or 2,000 units of untaxed tobacco products, as those terms are defined in section 1 of
113 chapter 64C, have been seized from the applicant's business premises or the business premises of
114 a controlling person of said applicant during the five-year period preceding the date of the
115 application; (v) the applicant or a controlling person of said applicant has during the five-year
116 period preceding the date of the application refused to permit, hindered or obstructed an
117 examination, investigation, or search authorized by sections 5 or 11 of chapter 64C; (vi) the
118 commissioner has received notice from another state or municipal agency, board or law
119 enforcement official that the applicant or a controlling person of said applicant has been fined,
120 cited or otherwise penalized by a state or municipal agency board or law enforcement official (a)
121 for the sale of tobacco products to a person under the minimum legal sales age, or (b) for any

122 other violation of the laws or regulations of the commonwealth regarding tobacco, on 3 or more
123 occasions during the five-year period preceding the date of the application and that any
124 administrative remedies available to the applicant or controlling person of said applicant have
125 been exhausted or have expired; or (vii) the applicant or a controlling person of said applicant
126 has failed to submit any required documents or information or has submitted an incomplete
127 application or an application containing false information or has otherwise committed fraud or
128 deceit in connection with the application, he may deny the application, and the commissioner
129 may also deny the application for any of the reasons set forth in subsection (k) below; provided,
130 however, that the commissioner shall grant or deny a license to said applicant within 90 days
131 from the date of application; and provided further, that if the commissioner fails to act within
132 such time period, the application shall be deemed denied.

133 (c) All licenses, except as otherwise prescribed by the commissioner, shall expire
134 annually on a date prescribed by the commissioner. The commissioner may provide for
135 combined forms of licenses and license applications.

136 (d) Registration certificates may be issued for a specified term of not less than 3 years,
137 subject to renewal without the payment of any additional fee and in accordance with regulations
138 issued by the commissioner. Whether or not such certificates are issued for a specified term, they
139 shall be subject to suspension or revocation as provided in this section. Existing registration
140 certificates may be made subject to renewal or reissuance for a specified term in accordance with
141 regulations issued by the commissioner.

142 (e) Registration certificates shall be issued for each place of business. Licenses for said
143 manufacturers, wholesalers, vending machine operators, unclassified acquirers, retailers, cigar

144 distributors and cigar retailers shall be issued for each place of business. Licenses for users of
145 special fuels shall be issued for each vehicle propelled by special fuels. In addition to the license
146 issued to a motor carrier, licenses shall be issued for each motor vehicle which the motor carrier
147 desires to operate or cause to be operated upon the highways of the commonwealth which is
148 propelled by fuel or special fuels purchased or acquired outside the commonwealth.

149 (f) The fee for each registration shall be determined annually by the commissioner of
150 administration under the provision of section 3B of chapter 7.

151 (g) The secretary of administration and finance shall annually determine the fees for
152 licenses and renewals thereof under section 3B of chapter 7 in the following categories:
153 distributors; unclassified importers; unclassified exporters; manufacturers; wholesalers; vending
154 machine operators; unclassified acquirers; retailers; cigar distributors; cigar retailers; user-
155 sellers; suppliers; users of special fuels; and motor carriers or their vehicles; provided, however,
156 that in case of a manufacturer, wholesaler, cigar distributor or vending machine operator who
157 maintains more than 1 place of business, the fee for each additional place of business shall be
158 one-half of the above determined fee. No fee or part thereof, shall be refunded by reason of
159 relinquishment, suspension or revocation of a license.

160 (h) In the event that the holder of a license, or registration certificate removes his
161 business to another location within the commonwealth, the license or registration certificate with
162 respect to the former place of business shall, without the payment of an additional fee, be
163 reissued for the new location for the balance of the unexpired term.

164 (i) Registrations and licenses shall not be assignable and shall be displayed conspicuously
165 by the holder thereof in the manner prescribed by the commissioner.

166 (j) As a condition precedent to granting a license to a distributor, unclassified importer or
167 unclassified exporter the commissioner shall require the applicant to furnish a bond pursuant to
168 section 66.

169 (k) An application for a registration or license may be denied by the commissioner for
170 any one of the following reasons, and in addition, in the case of an application for a license as a
171 manufacturer, wholesaler, vending machine operator, unclassified acquirer, retailer, cigar
172 distributor or cigar retailer, as defined in chapter 64C may also be denied for any of the reasons
173 set forth in subsection (b) above:

174 (1) The registration, license or permit of the applicant has been previously revoked or
175 cancelled for cause by the commissioner;

176 (2) In the opinion of the commissioner, such application is filed by a person as a
177 subterfuge for the real person in interest, including but not limited to situations in which the real
178 person in interest is a person (i) whose registration or license has previously been revoked or
179 cancelled for cause by the commissioner, or

180 (ii) whose application for a registration or license could be denied by the commissioner
181 for any of the reasons set forth in paragraphs (3) through (12) below, or (iii) in the case of an
182 application for a license as a manufacturer, wholesaler, vending machine operator, unclassified
183 acquirer, retailer, cigar distributor or cigar retailer, as defined in chapter 64C, whose application
184 could be denied by the commissioner for any of the reasons set forth in subsection (b), or (iv)
185 who is not identified;

186 (3) The applicant fails to pay the prescribed fee or to file such bond as the commissioner
187 requires pursuant to section 66;

188 (4) Any tax payable under this chapter has been reported by the applicant to be due from
189 the applicant or has been finally determined to be due from the applicant and has not been paid in
190 full;

191 (5) Any tax payable under this chapter has been finally determined to be due from an
192 officer, director, partner or employee of the applicant in his capacity as a person under a duty to
193 collect and pay over a tax on behalf of the applicant or another person and has not been paid in
194 full;

195 (6) The applicant has been convicted of, or has admitted to sufficient facts to support a
196 finding of guilt of, a crime provided for in this chapter within 1 year from the date on which such
197 application is filed;

198 (6 1/2) The applicant has otherwise willfully failed to comply with any provision of the
199 tax laws of the commonwealth or regulations thereunder;

200 (7) An officer, director, partner or employee of the applicant, which officer, director,
201 partner or employee is a person under a duty to collect and pay over a tax on behalf of the
202 applicant has in his capacity as a person under a duty to collect and pay over a tax on behalf of
203 the applicant or another person been convicted of, or has admitted to sufficient facts to support a
204 finding of guilt of, a crime provided for in this chapter within 1 year from the date on which such
205 application is filed;

206 (8) A person who owns, directly or indirectly, a controlling interest in the applicant, has
207 any tax payable under this chapter, which has been reported by the person as due or which has
208 been finally determined to be due and has not been paid in full; or another legal entity, in which
209 applicant owns a controlling interest, directly or indirectly, has any tax payable under this

210 chapter, which has been reported by the entity to be due or which has been finally determined to
211 be due and has not been paid in full; or a person, who owns, directly or indirectly, a controlling
212 interest in the applicant, has been convicted of, or has admitted to sufficient facts to support a
213 finding of guilt of a crime provided for in this chapter within 1 year from the date on which such
214 application is filed;

215 (9) The applicant has willfully failed to file any return or report required by this chapter;

216 (10) The applicant has willfully filed, causes to be filed, given or caused to be given a
217 return, report, certificate or affidavit required under this chapter, or under the provisions of the
218 applicable tax, which is false;

219 (11) The applicant has willfully failed to collect, truthfully account for or pay over any
220 tax under the provisions of this chapter; or

221 (12) The applicant is a business organization that (i) because of dissolution is not legally
222 authorized to conduct business either at all or beyond the winding up of business affairs, or (ii) is
223 a foreign corporation, foreign limited liability company or foreign limited partnership that
224 transacts or proposes to transact business in the Commonwealth or has a usual place of business
225 in the Commonwealth and that has either failed to comply with a legal requirement to register or
226 file a certificate to transact business in the Commonwealth or has had its authority to transact
227 business in the Commonwealth revoked by the secretary of state.

228 (l) Any person aggrieved by the refusal of the commissioner to grant a registration or
229 license may within 60 days of the date of notice of such refusal appeal to the appellate tax board,
230 whose decision shall be final.

231 SECTION 9. Section 68 of said chapter 62C, as so appearing, is hereby amended by
232 striking out paragraph (4) and inserting in place thereof the following the following paragraphs:-

233 (4) The licensee or registrant has been convicted of, or has admitted to sufficient facts to
234 support a finding of guilt of, a crime provided for in this chapter;

235 (4 1/2) In the instance of a licensee licensed as a manufacturer, wholesaler, vending
236 machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer, as defined in
237 chapter 64C, (i) the licensee or a controlling person of the licensee, as defined in section 67
238 above, has been convicted of or has admitted to sufficient facts to support a finding of guilt of
239 any violation of the provisions of chapter 64C, any violation of federal law where the conduct
240 underlying the conviction or admission relates to tobacco products, or any violation of law
241 involving dishonesty or fraud, within a five-year period in the case of a misdemeanor or within a
242 ten-year period in the case of a felony; (ii) the commissioner has assessed against said licensee or
243 a controlling person of said licensee a civil penalty, which has been finally determined to be due,
244 for the violation of any provision of chapter 64C providing for a civil penalty on three or more
245 occasions during a five-year period; (iii) unstamped cigarettes have been seized from the
246 licensee's business premises or the business premises of a controlling person of said licensee on
247 3 or more occasions during a five-year period; (iv) an aggregate total of 50 packs of unstamped
248 cigarettes or 1,000 units of untaxed tobacco products, as those terms are defined in section 1 of
249 chapter 64C, have been seized from the licensee's business premises or the business premises of
250 a controlling person of said licensee during a five-year period; (v) the licensee or a controlling
251 person of said licensee has refused to permit, hindered or obstructed an examination,
252 investigation, or search authorized by section 5 or section 11 of chapter 64C; (vi) the
253 commissioner has received notice from another state or municipal agency, board or law

254 enforcement official that the licensee or a controlling person of said licensee has been fined,
255 cited or otherwise penalized by a state or municipal agency board or law enforcement official (a)
256 for the sale of tobacco products to a person under the minimum legal sales age, or (b) for any
257 other violation of the laws or regulations of the commonwealth regarding tobacco, on three or
258 more occasions during a five-year period and that any administrative remedies available to the
259 licensee or controlling person of said licensee have been exhausted or have expired; or (vii) the
260 licensee or a controlling person of said licensee has committed fraud or deceit in procuring his or
261 its license;

262 SECTION 10. Said section 68 of said chapter 62C, as so appearing, is hereby further
263 amended by striking out the period at the end of paragraph (6) and inserting in place thereof the
264 following:-

265 ; or

266 (7) The licensee or registrant is a business organization that (i) because of dissolution is
267 not legally authorized to conduct business either at all or beyond the winding up of business
268 affairs, or (ii) is a foreign corporation, foreign limited liability company or foreign limited
269 partnership that transacts business in the Commonwealth or has a usual place of business in the
270 Commonwealth and that has had its authority to transact business in the Commonwealth revoked
271 by the secretary of state or is otherwise not authorized to transact business in the
272 Commonwealth.

273 The commissioner may suspend or revoke the appointment of a stamper, as defined in
274 section 1 of chapter 64C, for any of the reasons set forth in paragraphs (1) through (7) above, and
275 for any of the reasons set forth in subsection 5(b) of chapter 94F and for the willful use or

276 operation of stamping equipment in any manner that violates instructions prescribed in writing
277 by the commissioner.

278 SECTION 11. Said section 68 of said chapter 62C, as so appearing, is hereby further
279 amended by striking out the final paragraph and inserting in place thereof the following
280 paragraph:-

281 The commissioner shall provide notice to the director of the state lottery of a retailer or a
282 cigar retailer, as defined in section 1 of chapter 64C, whose license, issued under section 67, has
283 been suspended or revoked by the department for a willful violation of subsections (a), (b) or (c)
284 of section 10 of said chapter 64C, or of sections 34, 35, 37, 37A, or 38 of said chapter 64C and
285 who is a licensee authorized to sell lottery tickets under sections 26 and 27 of chapter 10.

286 SECTION 12. Section 73 of said chapter 62C, as so appearing, is hereby amended by
287 striking out subsection (h) and inserting in place thereof the following subsection:-

288 (h) Whoever corruptly or by force or threats of force, including any threatening letter or
289 communication, endeavors to intimidate or impede an officer or employee of the commonwealth
290 acting in an official capacity under this chapter, or in any other way corruptly or by force or
291 threats of force, including any threatening letter or communication, obstructs or impedes, or
292 endeavors to obstruct or impede, the due administration of this chapter, shall upon conviction
293 thereof, be fined not more than \$5,000, or imprisoned not more than 3 years, or both, except that
294 if the offense is committed only by threats of force, and not corruptly or by actual force, the
295 person convicted thereof shall be fined not more than \$3,000 or imprisoned not more than 1 year,
296 or both. The term “threats of force”, as used in this subsection, means threats of bodily harm to
297 the officer or employee of the commonwealth or to a member of his family. The term

298 “corruptly”, as used in this subsection, means to act with the intent to secure an unlawful
299 advantage or benefit either for oneself or another.

300 SECTION 13. Section 76 of said chapter 62C, as so appearing, is hereby amended by
301 inserting after the word “dollars”, in line 6, the following words:-

302 , provided that the punishment for a person who acts as a manufacturer, wholesaler,
303 vending machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer, as
304 defined in section 1 of chapter 64C, shall be the punishment set forth in subsection (a) of section
305 10 of said chapter 64C.

306 SECTION 14. Chapter 64C is hereby amended by striking out section 1 and inserting in
307 place thereof the following section:-

308 Definitions

309 Section 1. Whenever used in this chapter unless the context shall otherwise require, the
310 following words or terms shall have the following meanings:—

311 "Cigar", any roll of tobacco wrapped in leaf tobacco or in any substance containing
312 tobacco; provided, however, that any roll of tobacco that is a cigarette shall not be classified as a
313 cigar.

314 "Cigar distributor", (i) any person who imports, or causes to be imported, into the
315 commonwealth cigars or smoking tobacco for sale or who manufactures cigars or smoking
316 tobacco in the commonwealth, and (ii) any person within or without the commonwealth who is
317 authorized by the commissioner to make returns and pay the excise on cigars and smoking
318 tobacco sold, shipped or delivered by him to any person in the commonwealth.

319 "Cigar retailer", any person who sells or furnishes cigars or smoking tobacco in small
320 quantities to consumers for individual use; provided, however, said cigars or smoking tobacco
321 shall not be used for the purpose of resale.

322 "Cigarette" shall mean any of the following: (1) any roll of tobacco wrapped in paper or
323 in any substance not containing tobacco, (2) little cigars, which shall mean rolls of tobacco
324 wrapped in leaf tobacco or any substance containing tobacco and as to which 1,000 units weigh
325 not more than 3 pounds, and (3) any roll of tobacco wrapped in any substance containing tobacco
326 which, because of its appearance, the type of tobacco used in the filler, or its packaging and
327 labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause
328 (1).

329 "Licensed", licensed as a manufacturer, wholesaler, cigar distributor, vending machine
330 operator, unclassified acquirer, cigar retailer or retailer pursuant to section 67 of chapter 62C.

331 "Licensee", a person licensed as a manufacturer, wholesaler, cigar distributor, vending
332 machine operator, unclassified acquirer, cigar retailer or retailer pursuant to section 67 of chapter
333 62C.

334 "Manufacturer", any person who manufactures or produces cigarettes or smokeless
335 tobacco, whether within or without the commonwealth.

336 "Other tobacco products", any product containing tobacco, other than cigarettes, and
337 including without limitation cigars, smoking tobacco, and smokeless tobacco.

338 "Person", any individual, firm, fiduciary, partnership, corporation, trust or association, or
339 other legal entity however formed, club, trustee, agency or receiver.

340 “Place of business” shall mean and include any place where tobacco products are sold or
341 offered for sale or where tobacco products are brought or kept for the purpose of sale or
342 consumption, including so far as applicable any vessel, vehicle, airplane, train or cigarette
343 vending machine.

344 “Premises” or “business premises” shall mean and include any “place of business” and in
345 addition any place where tobacco products are placed or stored.

346 “Retailer”, any person who operates a store or concession for the purpose of making sales
347 of tobacco products at retail, including any cigar retailer and any person selling tobacco products
348 through vending machines.

349 “Sales” or “sale” in addition to their ordinary meaning shall include or apply to use, gifts,
350 exchanges and barter.

351 “Smokeless tobacco” shall mean snuff, snuff flour and any other tobacco or tobacco
352 product prepared in such manner as to be suitable for chewing or being placed in the oral or nasal
353 cavity or otherwise consumed without being combusted, including, but not limited to cavendish,
354 plug, twist and fine-cut tobaccos.

355 "Smoking tobacco", roll-your-own tobacco and pipe tobacco, leaf tobacco including blunt
356 wraps, and other kinds and forms of tobacco suitable for smoking, but shall not include tobacco
357 contained in cigarettes or cigars. For purposes of this definition, “blunt wrap” shall mean any
358 product manufactured or packaged as a wrap or as a hollow tube made wholly or in part from
359 tobacco that is designed or intended to be filled by the consumer with loose tobacco or other
360 fillers.

361 “Stamp”, an adhesive stamp, or any other indicia of tax paid under this chapter, as may
362 from time to time be determined and approved by the commissioner;

363 “Stamper” shall mean any person authorized by the commissioner to purchase and affix
364 adhesive stamps under this chapter;

365 "Taxed cigars and smoking tobacco", cigars and smoking tobacco purchased or otherwise
366 acquired from (i) a licensed cigar distributor or licensed unclassified acquirer authorized under
367 the terms of such license to sell or distribute cigars and smoking tobacco, or (ii) a person
368 otherwise authorized in writing by the commissioner both to sell or distribute and to file returns
369 and pay tax on cigars and smoking tobacco;

370 “Tobacco products”, any products containing tobacco including both cigarettes and other
371 tobacco products.

372 “Unclassified acquirer”, any person, other than a purchaser at retail from a licensed
373 retailer, who imports or acquires tobacco products from anyone other than a licensed
374 manufacturer, a licensed wholesaler or a licensed vending machine operator.

375 “Units” of untaxed tobacco products shall be counted as follows: 1 unstamped cigarette is
376 1 unit; 1 cigar is 1 unit; .09 ounces of smoking tobacco is 1 unit; 1 single-unit consumer-sized
377 can or package of smokeless tobacco is 20 units.

378 “Unstamped cigarettes”, any cigarettes other than those contained in a package which has
379 affixed thereto a genuine Massachusetts stamp showing that the excise imposed by this chapter
380 has been paid, affixed by a stamper or other person authorized by the commissioner as provided
381 in section 30. The term shall include but not be limited to (1) cigarettes in a package bearing the

382 stamp of another state, (2) cigarettes in a package to which a forged, altered, or counterfeit stamp
383 has been affixed, and (3) cigarettes in a package bearing stolen, lost or misplaced genuine
384 Massachusetts cigarette excise stamps which have not been affixed to said package of cigarettes
385 by a stamper or other person authorized by the commissioner;

386 "untaxed cigars and smoking tobacco", cigars and smoking tobacco purchased or
387 otherwise acquired (1) from anyone other than (i) a licensed cigar distributor or licensed
388 unclassified acquirer authorized under the terms of such license to sell or distribute cigars and
389 smoking tobacco, or (ii) a person otherwise authorized in writing by the commissioner to sell or
390 distribute and to file returns and pay the excise on cigars and smoking tobacco; or (2) from any
391 licensee whenever the purchaser or acquirer has actual knowledge that such licensee has not paid
392 and does not intend to pay the excise on such cigars and smoking tobacco.

393 "Untaxed other tobacco products", other tobacco products purchased or otherwise
394 acquired (1) from anyone other than (i) a licensed wholesaler or licensed unclassified acquirer
395 authorized under the terms of such license to sell or distribute such other tobacco products, or (ii)
396 a person otherwise authorized in writing by the commissioner to sell or distribute such other
397 tobacco products and to file returns and pay the excise on such other tobacco products; or (2)
398 from any licensee whenever the purchaser or acquirer has actual knowledge that such licensee
399 has not paid and does not intend to pay the excise on such other tobacco products.

400 "Untaxed tobacco products", untaxed other tobacco products and unstamped cigarettes.

401 "Vending machine operator", any person other than a manufacturer or a wholesaler who
402 operates 1 or more vending machines for the sale of tobacco products at retail.

403 “Wholesaler”, (1) any person who purchases directly from the manufacturer at least 75
404 per cent of all tobacco products purchased by him and who sells at least 75 per cent of all
405 tobacco products purchased by him to others for resale; (2) any other person who purchases from
406 a manufacturer or person so purchasing and selling and licensed as a wholesaler, provided such
407 other person maintains an established place of business where substantially all of the business is
408 the sale of tobacco products and related merchandise at wholesale to licensees and where at all
409 times a substantial stock of tobacco products and related merchandise is available to all retailers
410 for resale; (3) any chain of stores retailing tobacco products to the consumer, provided 75 per
411 cent of its purchases are made direct from the manufacturer; and (4) any cigar distributor.

412 "Wholesale price", (i) in the case of a manufacturer of cigars and smoking tobacco, the
413 price set by that manufacturer for such products or, if no price has been set, the wholesale value
414 of these products; (ii) in the case of a cigar distributor who is not a manufacturer of cigars or
415 smoking tobacco, the price at which the cigar distributor purchased these products; or (iii) in the
416 case of a cigar retailer or a consumer, the price at which he purchased these products.

417 SECTION 15. Section 2 of chapter 64C, as so appearing, is hereby amended by striking
418 out the first sentence and inserting in place thereof the following sentence:-

419 No person shall sell tobacco products or act as a manufacturer, wholesaler, cigar
420 distributor, vending machine operator, unclassified acquirer, cigar retailer or retailer, in the
421 commonwealth unless licensed to do so in accordance with section 67 of chapter 62C.

422 SECTION 16. Said section 2 of said chapter 64C, as so appearing, is hereby further
423 amended in line 5 by inserting after the word “manufacturer” the words:

424 , cigar distributor.

425 SECTION 17. Said section 2 of said chapter 64C, as so appearing, is hereby further
426 amended by striking out, in line 15, the words “disc or marker” and inserting in place thereof the
427 word:-

428 decal.

429 SECTION 18. Said section 2 of said chapter 64C, as so appearing, is hereby further
430 amended by adding at the end the following-:

431 Every licensed wholesaler, cigar distributor, vending machine operator, unclassified
432 acquirer, cigar retailer and retailer shall be required to report to the commissioner, on a form
433 prescribed by the commissioner, the complete addresses, including any unit number, of any and
434 all premises in addition to such licensee’s place or places of business at which the licensee holds,
435 places or stores tobacco products. Such reports shall be made at the time of licensing, and if the
436 licensee adds additional such premises during the licensing period or ceases to use any such
437 premises for such purpose, reports as to such changes shall be made within 3 business days of the
438 date the change is made. Every applicant for a license as a wholesaler, cigar distributor, or
439 unclassified acquirer (other than unclassified acquirer applicants that are hospitals, educational
440 institutions or non-profit entities seeking to acquire tobacco products solely for medical research
441 or other non-commercial purposes) shall submit with its application satisfactory proof that it will
442 provide workers’ compensation insurance for its employees. In addition, every such applicant
443 shall submit with its application satisfactory proof that it will conduct its day-to-day business
444 from a commercial space. Such proof shall consist of either a copy of a deed to, or a copy of an
445 executed lease for a minimum period of 2 years for the commercial space identified on the
446 application as the applicant’s principal place of business.

447 SECTION 19. Said chapter 64C is hereby amended by striking out section 5, as so
448 appearing, and inserting in place thereof the following section:-

449 Records and statements required of vendors and purchasers

450 Section 5. (a) Every manufacturer, cigar distributor, wholesaler, vending machine
451 operator and unclassified acquirer shall keep a complete and accurate record of all tobacco
452 products manufactured, purchased or otherwise acquired and a complete and accurate record
453 relating to the sale of those products.

454 (b) All statements and records required by this section shall be preserved for a period of 3
455 years, and every cigar distributor, wholesaler, vending machine operator, and unclassified
456 acquirer, shall maintain such statements and records at the cigar distributor's, wholesaler's,
457 vending machine operator's or unclassified acquirer's place of business identified in the license
458 for a period of 1 year from the date of manufacture, purchase, acquisition or sale, whichever is
459 later.

460 (c) The records required by this section, in the case of every cigar distributor, wholesaler,
461 vending machine operator and unclassified acquirer shall include: (i) a written statement
462 containing the name and address of both the seller and the purchaser; (ii) the date of delivery;
463 (iii) the quantity of tobacco products; (iv) the trade name or brand thereof; (v) the price paid for
464 each brand of tobacco products purchased; and (vi) such other records as the commissioner shall
465 reasonably prescribe.

466 (d) Every manufacturer, every cigar distributor and every wholesaler shall deliver with
467 each sale or consignment of tobacco products a written statement, and retain a duplicate,
468 containing: (i) the name or trade name and address of both the seller and the purchaser; (ii) the

469 date of delivery; (iii) the quantity of tobacco products; and (iv) the trade name or brand thereof,
470 correctly itemizing the prices paid for each brand of tobacco products purchased.

471 (e) Every vending machine operator shall keep a detailed record of each vending machine
472 owned for the sale of tobacco products showing: (i) the location of the machine; (ii) the date of
473 placing the machine at the location; (iii) the quantity of each brand of tobacco products placed in
474 the machine; (iv) the date when placed therein; and (v) the amount of the commission paid or
475 earned on sales through such vending machine. He shall, whenever he fills or refills the vending
476 machine, deliver to the owner or tenant occupying the premises where the machine is located a
477 written statement containing his own name and address, the name and address of the owner or
478 the tenant, the date when the machine was filled and the quantity of each brand of tobacco
479 products sold from the machine since the date when tobacco products were last previously placed
480 in the machine.

481 (f) No licensee shall issue or accept any written statement which is known to him to
482 contain any statement which falsely indicates the name of the customer, the type of merchandise,
483 the prices, the discounts, or the terms of sale; nor shall there be inserted in any invoice given or
484 accepted by any licensee any statement which makes the invoice a false record, wholly or in part,
485 of the transaction represented therein; nor shall there be withheld from any invoice given or
486 accepted by any licensee any statements which properly should be included therein, so that in the
487 absence of such statements the invoice does not truly reflect the transaction involved.

488 (g) The use of any device or game of chance to aid, promote or induce sales or purchases
489 of tobacco products or the giving of any tobacco products in connection with any device or game
490 of chance is prohibited.

491 (h) Whenever tobacco products are received or acquired within the commonwealth by a
492 cigar distributor, wholesaler, vending machine operator, unclassified acquirer or retailer, each
493 shipping case or other container of such tobacco products shall bear the name and address of the
494 person making the first purchase or such other markings as the commissioner may prescribe.

495 (i) Whenever tobacco products are shipped outside the commonwealth every licensee so
496 shipping them shall cause to be placed on every shipping case or other container in which the
497 tobacco products are shipped, the name and address of the consignee to whom the shipment is
498 made outside of the commonwealth.

499 (j) The commissioner is hereby authorized to examine all statements and other records
500 required by this section, as well as the stock of cigarettes or tobacco products, and the equipment
501 pertaining to the stamping of cigarettes, of any manufacturer, wholesaler, cigar distributor,
502 vending machine operator and unclassified acquirer, as applicable. The commissioner or his
503 authorized agent shall conduct such examinations regularly, during normal business hours of the
504 manufacturer, cigar distributor, wholesaler, vending machine operator, or unclassified acquirer.
505 Such records shall be in such form as the commissioner shall prescribe and shall, along with the
506 stock of cigarettes or tobacco products and the equipment pertaining to the stamping of
507 cigarettes, be offered for inspection upon oral or written demand by the commissioner or his
508 authorized agent.

509 (k) Each person in possession, control or occupancy of any premises where cigarettes or
510 tobacco products are placed, stored, sold or offered for sale is hereby directed and required to
511 give to the commissioner or his authorized representatives, the means, facilities and opportunity
512 for such examinations as are herein provided for and required. In addition to other remedies

513 provided by law, the commissioner may assess a civil penalty of not more than \$5,000 for the
514 first offense or not more than \$25,000 for each subsequent offense against any person who
515 hinders, obstructs or prevents the commissioner or his authorized representative from making the
516 examinations authorized by this section, or who otherwise violates any provision of this section.

517 SECTION 20. Section 5A of said chapter 64C, so appearing, is hereby amended by
518 striking out subsection (1) and inserting in place thereof the following:-

519 (1) Residents of the commonwealth shall be liable for any excise due under this chapter
520 with regard to any tobacco products that they purchase upon which such excise has not otherwise
521 been paid to the commonwealth. The department shall aggressively seek to collect all excises
522 imposed by this chapter from residents of the commonwealth who purchase tobacco products in
523 interstate commerce. The department shall, pursuant to 15 U.S.C. section 376, seek statements
524 from persons selling cigarettes and smokeless tobacco, as those terms are defined in 15 U.S.C.
525 section 375, in interstate commerce to residents of the commonwealth and obtain the monthly
526 invoices covering all such shipments into the commonwealth, as required by said section 376.
527 Those invoices shall, as authorized by said section 376, include the name and address of the
528 person to whom the shipment was made, the brand, the quantity thereof, and the amount paid.
529 Upon receipt of that information, the department shall make all reasonable efforts to collect all
530 excises due under this chapter.

531 SECTION 21. Said section 5A of said chapter 64C, as so appearing, is hereby further
532 amended by striking out, in line 16, the words "every 6 months" and inserting in place thereof
533 the word:- annually

534 SECTION 22. Said chapter 64C, as so appearing, is hereby amended by striking out
535 section 6 and inserting in place thereof the following section:-

536 Payment of excise on cigarettes and smokeless tobacco

537 Section 6. (a) An excise shall be imposed on all cigarettes held for sale or consumption in
538 the commonwealth at the rate of 17.55 cents for each cigarette, provided that this excise shall not
539 be due on any cigarettes that (i) are exported from the commonwealth, or (ii) are not subject to
540 taxation by the commonwealth pursuant to any law of the United States. Stampers shall pay the
541 excise in accordance with the provisions of section 29. Persons, other than stampers, who are
542 authorized by the commissioner to possess unstamped cigarettes, shall pay the excise to the
543 commissioner at the time required for filing a return under paragraph (c) of section 16 of chapter
544 64C. The excise shall be due from persons not authorized to possess unstamped cigarettes
545 immediately upon such person's importation of unstamped cigarettes into the commonwealth or
546 upon such person's purchase, receipt, or acquisition of unstamped cigarettes in the
547 commonwealth, whichever is earliest.

548 (b) An excise shall be imposed on all smokeless tobacco held for sale or consumption in
549 the commonwealth at the rate of 210 per cent of the price paid to purchase or acquire such
550 smokeless tobacco, provided that this excise shall not be due on any smokeless tobacco that (i) is
551 exported from the commonwealth, or (ii) is not subject to taxation by the commonwealth
552 pursuant to any law of the United States. Licensed wholesalers and licensed unclassified
553 acquirers who are authorized under the terms of their licenses to sell smokeless tobacco shall pay
554 the excise to the commissioner at the time required for filing a return under paragraph (c) of
555 section 16 of chapter 64C. As to any person who:

556 (1) is not a licensed wholesaler or licensed unclassified acquirer authorized under the
557 terms of his license to sell smokeless tobacco, and

558 (2) either (i) purchases, receives or acquires smokeless tobacco from anyone other than a
559 licensed wholesaler or licensed unclassified acquirer authorized under the terms of his license to
560 sell smokeless tobacco; or (ii) purchases, receives or acquires smokeless tobacco from a licensed
561 wholesaler or licensed unclassified acquirer with actual knowledge that the licensed wholesaler
562 or licensed unclassified acquirer has not paid and does not intend to pay the excise on that
563 smokeless tobacco, the excise shall be due immediately upon such person's importation of
564 smokeless tobacco into the commonwealth or upon such person's purchase, receipt, or
565 acquisition of smokeless tobacco in the commonwealth, whichever is earliest.

566 (c) The failure by a retailer to produce or exhibit to the commissioner or his authorized
567 representative, upon demand, an invoice from a licensed wholesaler or licensed unclassified
568 acquirer authorized under the terms of his license to sell smokeless tobacco for any smokeless
569 tobacco in his possession shall be prima facie evidence that the excise on such smokeless
570 tobacco has not been paid and that such retailer is liable for the payment of the excise on such
571 smokeless tobacco.

572 (d) The excises imposed under paragraphs (a) and (b) of this section shall be due to the
573 commissioner only once with respect to the same cigarettes or smokeless tobacco, irrespective of
574 the number of times such cigarettes or smokeless tobacco are sold.

575 (e) The commissioner may, in his discretion, require reports from any common carrier
576 who transports tobacco products to any point or points within the commonwealth and from any
577 other person who, under contract, so transports tobacco products, and from any bonded

578 warehouseman or bailee who has in his possession any tobacco products, such reports to contain
579 such information concerning shipments of tobacco products as the commissioner shall determine.
580 All such carriers, bailees, warehousemen and other persons shall permit the examination by the
581 commissioner or his duly authorized agent of any records relating to the shipment of tobacco
582 products into or from, or the receipt thereof within, the commonwealth.

583 (f) Notwithstanding the provisions of subsection (a), the excise imposed under this
584 section on any cigarette that does not contain nicotine shall be at the rate of 16.3 cents for each
585 such cigarette.

586 SECTION 23. Said chapter 64C is hereby amended by striking out section 7A in its
587 entirety.

588 SECTION 24. Said chapter 64C is hereby amended by striking out section 7B and
589 inserting in place thereof the following section:-

590 (a) An excise shall be imposed on all cigars and smoking tobacco held in the
591 commonwealth at the rate of 40 per cent of the wholesale price of such products. This excise
592 shall be imposed on cigar distributors at the time cigars or smoking tobacco are manufactured,
593 purchased, imported, received or acquired in the commonwealth. This excise shall not be
594 imposed on any cigars or tobacco products that (i) are exported from the commonwealth; or (ii)
595 are not subject to taxation by the commonwealth pursuant to any law of the United States.

596 (b) Every cigar retailer shall be liable for the payment of the excise on all cigars or
597 smoking tobacco in his possession at any time, upon which the excise has not been paid by a
598 cigar distributor, and the failure of any cigar retailer to produce or exhibit to the commissioner or
599 his authorized representative, upon demand, an invoice by a cigar distributor for any cigars or

600 smoking tobacco in his possession, shall be prima facie evidence that the excise thereon has not
601 been paid and that such cigar retailer is liable for the payment of the excise thereon.

602 (c) The amount of the excise advanced and paid by a cigar distributor or cigar retailer, as
603 provided in this section, shall be added to and collected as part of, the sales price of the cigars or
604 smoking tobacco.

605 (d)(1) A cigar distributor shall be liable for the payment of the excise on cigars and
606 smoking tobacco that he imports or causes to be imported into the commonwealth or that he
607 manufactures in the commonwealth, and every cigar distributor authorized by the commissioner
608 to make returns and pay the excise on cigars or smoking tobacco sold, shipped or delivered by
609 him to any person in the commonwealth shall be liable for the collection and payment of the
610 excise on all cigars and smoking tobacco sold, shipped or delivered.

611 (2) Every person who does not acquire untaxed cigars or smoking tobacco, but acquires
612 taxed cigars and smoking tobacco for sale at retail, shall not be licensed as a cigar distributor
613 under this section, but shall be required, during the period that such person is a retailer of taxed
614 cigars or smoking tobacco, to be licensed as a cigar retailer.

615 (e) A person outside the commonwealth who ships or transports cigars or smoking
616 tobacco to cigar retailers in the commonwealth, to be sold by those cigar retailers, may apply for
617 a license as a nonresident cigar distributor and, if the commissioner issues such a license to him,
618 he shall thereafter be subject to all the provisions of this section and be entitled to act as a cigar
619 distributor, provided he files proof with his application that he has appointed the state secretary
620 as his agent for service of process relating to any matter or issue arising under this section. Such
621 a nonresident person shall also agree to submit his books, accounts and records for examination

622 in the commonwealth during reasonable business hours by the commissioner or his authorized
623 representative.

624 (f) Every resident of the commonwealth shall be liable for the collection of the excise on
625 all cigars or smoking tobacco in his possession at any time, upon which the excise has not been
626 paid by a cigar distributor or cigar retailer, and the failure of any such consumer to produce or
627 exhibit to the commissioner or his authorized representative, upon demand, an invoice or sales
628 receipt by a cigar distributor or cigar retailer for any cigars or smoking tobacco in his possession,
629 shall be presumptive evidence that the excise thereon has not been paid and that such consumer
630 is liable for the collection of the excise thereon.

631 SECTION 25. Said chapter 64C is hereby further amended by striking out sections 7C
632 and 8 in their entirety.

633 SECTION 26. Said chapter 64C is hereby further amended by striking out section 10, as
634 so appearing, and inserting in place thereof the following section:-

635 Penalties for particular offenses

636 Section 10. (a) Any person who shall sell, offer for sale or possess with intent to sell any
637 tobacco products, or otherwise act as a manufacturer, wholesaler, unclassified acquirer or
638 retailer, without being licensed so to do, shall, in addition to any other penalty provided by this
639 chapter, be punished by a fine of not more than \$50,000 or by imprisonment in a house of
640 correction for not more than 2 and one-half years or in state prison for not more than 5 years, or
641 both such fine and imprisonment.

642 (b) Except as previously authorized in writing by the commissioner, (1) Any retailer who
643 shall knowingly purchase cigarettes for resale from any person other than a duly appointed
644 stamper, and any retailer, who shall knowingly purchase other tobacco products for resale from
645 any person other than a licensed wholesaler or licensed unclassified acquirer; or (2) any person
646 who shall knowingly purchase or possess any cigarettes or other tobacco products not
647 manufactured, purchased or imported by a licensed manufacturer, licensed wholesaler, licensed
648 vending machine operator or licensed unclassified acquirer, shall be punished by a fine of not
649 more than \$50,000 or by imprisonment in a house of correction for not more than 2 and one-half
650 years or in state prison for not more than 5 years, or both such fine and imprisonment; provided
651 that a licensed cigar retailer who is also licensed as a cigar distributor shall be authorized to
652 purchase cigars and smoking tobacco from an out-of-state wholesaler or manufacturer not
653 licensed in the Commonwealth, and shall be required to file a return and pay the cigar excise as
654 specified in section 7B of this chapter and in section 16 of chapter 62C. All retailers shall be
655 under an affirmative duty to verify the licensed or appointed status of any person from which
656 they purchase tobacco products, and the absence of such person's name from the lists of
657 licensees and stampers maintained on the department's website, as required by section 6 of
658 chapter 14, shall be prima facie evidence of a knowing violation of this paragraph.

659 (c) Payment for all tobacco products, purchased for resale, shall only be made in the form
660 of a check from the purchaser's operating account made payable to the seller of the tobacco
661 products, an electronic funds transfer from the purchaser's operating account directed to an
662 account in the name of the seller of the tobacco products, a debit card linked to the purchaser's
663 operating account, or the purchaser's business or corporate credit card; payments in cash for
664 tobacco products purchased for resale are prohibited. Any person who willfully violates the

665 provisions of this paragraph shall be punished by a fine of not more than \$50,000 or by
666 imprisonment in a house of correction for not more than 2 and one-half years or in state prison
667 for not more than 5 years, or both such fine and imprisonment.

668 (d) Any person who shall knowingly have in his possession 1 or more shipping cases or
669 other containers of tobacco products, containing tobacco products and not bearing the name and
670 address of the person receiving the tobacco products from a manufacturer or such other markings
671 as the commissioner may prescribe, and any person knowingly being in possession within the
672 commonwealth of 1 or more such shipping cases or other containers of tobacco products from
673 which such name and address has been erased or defaced, shall be punished by a fine of not more
674 than \$500 per such shipping case or other container or by imprisonment in a house of correction
675 for not more than 2 and one-half years, or both such fine and imprisonment.

676 (e) Any person who, either as principal or agent, shall sell or solicit orders for, or
677 otherwise cause, cigarettes to be shipped, mailed or otherwise sent or brought into the
678 commonwealth to any person not a licensed manufacturer, licensed wholesaler, licensed vending
679 machine operator, or licensed unclassified acquirer, unless the same is to be sold to or through a
680 licensed wholesaler, shall be punished by a fine of not more than \$50,000 or by imprisonment in
681 a house of correction for not more than 2 and one-half years or in state prison for not more than 5
682 years, or both such fine and imprisonment.

683 (f) No person shall have in his possession a machine for vending cigarettes for a period in
684 excess of 72 hours unless there shall be attached to the same a decal as provided by section 2;
685 provided, that this provision shall not apply to any such machine while not containing cigarettes
686 and in the possession of a manufacturer of, or dealer in, such machines or a licensed vending

687 machine operator. If any person has in his possession a vending machine, containing cigarettes,
688 not properly licensed, the commissioner may cause such vending machine to be sealed until
689 properly licensed and such person shall be subject to the same penalty as a retailer selling
690 cigarettes without being licensed so to do, as set forth in paragraph (a) above.

691 (g) Any person who shall sell cigarettes through a vending machine which machine is not
692 so constructed as to permit the commissioner or his agents readily to determine whether the
693 packages of cigarettes being sold through said machine have affixed to them the proper stamps
694 evidencing payment of the excise imposed by this chapter shall be punished by a fine of not
695 more than \$10,000.

696 (h) Any person who violates any provision of this chapter for which no other penalty has
697 been provided, shall be punished by a fine of not more than \$10,000 or by imprisonment in a
698 house of correction for not more than 2 and one-half years, or both.

699 (i) Each violation of this chapter shall be deemed to constitute a separate offense.

700 (j) The state police and all local police authorities shall have the authority to enforce the
701 provisions of this section.

702 (k) In addition to any other penalty provided by this chapter or chapter 62C, the
703 commissioner may impose a civil penalty for a knowing violation of any provision of this section
704 of not more than \$5,000 for the first offense and not more than \$25,000 for each subsequent
705 offense.

706 SECTION 27. Said chapter 64C is hereby further amended by striking out section 11 and
707 inserting in place thereof the following section:-

708 Records and reports of purchases and sales; investigation, examination and search

709 Section 11. (a) Each retailer and cigar retailer shall keep within the commonwealth
710 complete and accurate records of all cigarettes purchased or otherwise acquired. Such records
711 shall consist of written statements to be delivered by each wholesaler and cigar distributor as
712 provided by section 5. Every owner of, or tenant occupying, premises where a vending machine
713 is located shall keep a record of all cigarettes sold through the vending machine so located on his
714 premises and the amount of commission paid by the person operating the cigarette vending
715 machine. Such records shall consist of written statements to be given by each person operating
716 vending machines for the sale of cigarettes as provided by said section 5.

717 (b) All above-referenced records shall be safely preserved for a period of 3 years in such
718 a manner as to insure permanency and accessibility for inspection by the commissioner or his
719 authorized representative, and shall be maintained for 1 year from the date of purchase or
720 acquisition on the retailer's, cigar retailer's, owner's, or tenant's premises, as identified in the
721 license.

722 (c) The commissioner may require any retailer or cigar retailer or any owner or tenant
723 occupying premises where a vending machine for the sale of cigarettes has been installed to
724 make reports as often as the commissioner deems necessary to enable him to determine whether
725 the excise imposed by this chapter has been fully paid.

726 (d) The commissioner and his authorized representatives may examine the books, papers
727 and records and the stock of cigarettes and tobacco products of any retailer or cigar retailer in the
728 commonwealth, for the purpose of determining whether the excise imposed by this chapter has
729 been fully paid, and may, at any time during the retailer's or cigar retailer's normal business

730 hours, investigate, examine and search any premises or vehicle where cigarettes or tobacco
731 products are possessed, stored or sold for the purpose of determining whether the provisions of
732 this chapter are being obeyed. The commissioner and his authorized representatives shall
733 conduct such investigations, examinations and searches regularly.

734 (e) Each person in possession, control or occupancy of any premises where cigarettes or
735 tobacco products are placed, stored, sold or offered for sale is hereby directed and required to
736 give to the commissioner or his authorized representatives, the means, facilities and opportunity
737 for such examinations as are herein provided for and required. In addition to other remedies
738 provided by law, the commissioner may assess a civil penalty of not more than \$5,000 for the
739 first offense or not more than \$25,000 for each subsequent offense against any person who
740 hinders, obstructs or prevents the commissioner or his authorized representative from making the
741 examinations authorized by this section, or who otherwise violates any provision of this section.

742 SECTION 28. Section 13 of said chapter 64C, as so appearing, is hereby amended by
743 striking out, in lines 78-79, of paragraph (g) the words “ , transportation company”.

744 SECTION 29. Said section 13 of said chapter 64C, as so appearing, is hereby further
745 amended by striking out, in lines 5, 19, 26, 46, 61 and 86, the word “cash” and inserting in its
746 place the words:-

747 prompt payment.

748 SECTION 30. Said chapter 64C is hereby amended by striking out section 28 and
749 inserting in place thereof the following section:-

750 Disposition of sums received

751 Section 28. The total sums received pursuant to the excise imposed on cigarettes by this
752 chapter, together with any penalties, forfeitures other than forfeitures pursuant to section 38B,
753 interest, costs of suits and fines collected in connection therewith, less all amounts refunded or
754 abated in connection therewith, shall be credited as follows: 22.16 percent of such total sum shall
755 be credited to the Commonwealth Care Trust Fund, established in section 2000 of chapter 29,
756 and the balance shall be credited to the General Fund. The total sums received pursuant to the
757 excise imposed on cigars, smoking tobacco, and smokeless tobacco, together with any penalties,
758 forfeitures other than forfeitures pursuant to section 38B, interest, costs of suits and fines
759 collected in connection therewith, less all amounts refunded or abated in connection therewith,
760 shall be credited to the General Fund.

761 SECTION 31. Said chapter 64C is hereby amended by striking out section 29 and
762 inserting in place thereof the following section:-

763 Payment of tax through use of stamps

764 Section 29. Except as otherwise authorized in writing by the commissioner, the excise
765 imposed by this chapter on cigarettes shall be paid to the commissioner through the use of
766 stamps evidencing the payment of said excise, which stamps shall be of such design and in such
767 denominations as the commissioner may prescribe. Except as otherwise provided, all stampers
768 shall be liable for the payment of the excise imposed by this chapter on cigarettes and shall pay
769 said excise to the commissioner by purchasing such stamps in accordance with such regulations
770 as the commissioner may prescribe.

771 SECTION 32. Section 30 of said chapter 64C, as so appearing, is hereby amended by
772 inserting after the last paragraph the following paragraph:-

773 No stamper shall use or operate stamping equipment in any manner that violates
774 instructions prescribed in writing by the commissioner. In addition to other remedies provided by
775 law, the commissioner may assess against any stamper who willfully uses or operates stamping
776 equipment in any manner that violates such written instructions a civil penalty of not more than
777 \$5,000 for a first offense or not more than \$25,000 for each subsequent offense.

778 SECTION 33. Said chapter 64C is hereby amended by striking out section 33 and
779 inserting in place thereof the following section:-

780 Unstamped cigarettes or stamps; prohibition of sale, etc.; examination and replacement of
781 unstamped or improperly stamped packages

782 Section 33. Licensees and stampers shall not sell, borrow, loan or exchange unstamped
783 cigarettes or stamps to, from or with other such licensees or stampers unless previously
784 authorized in writing by the commissioner, and licensees and stampers proposing to engage in
785 such a transaction involving the sale, borrowing, loan or exchange of unstamped cigarettes shall
786 submit a written request for the commissioner's authorization not less than 30 days before the
787 date of the proposed transaction; provided however that, notwithstanding the thirty-day
788 requirement set forth above, in an emergency situation caused by the failure or malfunction of
789 stamping equipment where that requirement would cause undue hardship, licensees and stampers
790 may submit a written request for expedited authorization for a sale, borrowing, loan or exchange
791 of unstamped cigarettes or stamps between stampers, and the commissioner may grant such
792 authorization. Licensees, unless they are also appointed as stampers, shall not accept deliveries
793 of unstamped or improperly stamped packages of cigarettes except as previously authorized in
794 writing by the commissioner. Every licensed retailer and licensed vending machine operator

795 shall immediately examine all packages of cigarettes received by them and shall immediately
796 return to their supplier any and all packages of cigarettes that are unstamped or improperly
797 stamped. Such supplier shall replace them with packages of cigarettes upon which stamps have
798 been properly affixed. In addition to other remedies provided by law, the commissioner may
799 assess a civil penalty of not more than \$5,000 for a first violation of this section or not more than
800 \$25,000 for each subsequent violation.

801 SECTION 34. Said chapter 64C is hereby amended by striking out section 34, as so
802 appearing, and inserting in place thereof the following section:-

803 Possession, sale, etc., of unstamped cigarettes; penalty; prima facie evidence

804 Section 34. Whoever, not being a person specifically authorized in writing by the
805 commissioner to do so, knowingly holds for sale, offers for sale, sells, possesses with intent to
806 sell, or otherwise disposes of unstamped cigarettes within the commonwealth, shall be punished
807 as follows: (1) a violation involving 400 or fewer cigarettes shall be punished by a fine of not
808 more than \$2,500 or by imprisonment in a house of correction for not more than 1 year, or both
809 such fine and imprisonment; (2) a violation involving more than 400 but fewer than 30,000
810 cigarettes shall be punished by a fine of not more than \$50,000 or by imprisonment in a house of
811 correction for not more than 2 and one-half years or in state prison for not more than 5 years, or
812 both such fine and imprisonment; (3) a violation involving 30,000 or more cigarettes shall be
813 punished by a fine of not more than \$100,000 or by imprisonment in a house of correction for
814 not more than 2 and one-half years or in state prison for not more than 10 years, or both such fine
815 and imprisonment.

816 The absence of such stamp on any package containing said cigarettes which is held for
817 sale, possessed with intent to sell, offered for sale, sold or otherwise disposed of within the
818 commonwealth shall be prima facie evidence that said excise has not been paid thereon. If such a
819 stamp on a package of cigarettes is stained or smudged and its characteristics are so blurred,
820 obscured or indistinct that it cannot be distinguished as a Massachusetts excise stamp, it shall be
821 prima facie evidence that the said excise has not been paid with respect to said package of
822 cigarettes. If any unstamped cigarettes are found within the commonwealth in the place of
823 business of any licensee, other than a stamper or such other licensee as the commissioner may
824 authorize in writing, it shall be prima facie evidence that such licensee in whose place of
825 business said cigarettes were found possessed said unstamped cigarettes with the intent to sell the
826 same.

827 Except as otherwise provided, the possession of cigarettes in unstamped packages by any
828 person, other than a stamper or a licensee, shall be prima facie evidence that such person
829 possessed said unstamped cigarettes with the intent to sell the same.

830 In addition to other remedies provided by law, the commissioner may assess a civil
831 penalty of not more than \$5,000, at the rate of \$10 per pack, for a first violation of this section or
832 not more than \$25,000 for each subsequent violation of this section. In civil or administrative
833 proceedings, it shall be presumed that all sales of cigarettes are subject to the said excise until the
834 contrary is established, and the burden of proof that a sale is not taxable shall be upon the
835 vendor.

836 The commissioner shall promulgate regulations to implement and enforce this section.

837 SECTION 35. Said chapter 64C is hereby amended by striking out section 35, as so
838 appearing, and inserting in place thereof the following section:-

839 Possession or transportation of unstamped cigarettes; penalty; arrest, search and seizure;
840 forfeitures

841 Section 35. Whoever, not being a stamper or such other person as the commissioner may
842 authorize in writing to possess or deliver or transport unstamped cigarettes, and not being a
843 common carrier engaged in interstate commerce or a person in actual possession of invoices or
844 delivery tickets meeting the requirements of section 36, knowingly possesses or delivers or
845 transports unstamped cigarettes in the commonwealth shall be punished as follows: (1) a
846 violation involving 400 or fewer cigarettes shall be punished by a fine of not more than \$2,500
847 dollars or by imprisonment in a house of correction for not more than 1 year, or both such fine
848 and imprisonment; (2) a violation involving more than 400 but fewer than 30,000 cigarettes shall
849 be punished by a fine of not more than \$50,000 or by imprisonment in a house of correction for
850 not more than 2 and one-half years or in state prison for not more than 5 years, or both such fine
851 and imprisonment; (3) a violation involving 30,000 or more cigarettes shall be punished by a fine
852 of not more than \$100,000 or by imprisonment in a house of correction for not more than 2 and
853 one-half years or in state prison for not more than 10 years, or both such fine and imprisonment.

854 A police officer, including a special police officer appointed under section 26, may
855 without a warrant arrest any person whom he finds in the act of illegally possessing, delivering
856 or transporting unstamped cigarettes, and seize the said cigarettes, the vending machines,
857 receptacles, boxes or cartons in which the same are contained, hereinafter called the container or

858 containers, in the possession of such person, any vehicle used in the illegal transportation of
859 cigarettes and any records relating to the purchase and sale of cigarettes.

860 In addition to other remedies provided by law, the commissioner may assess a civil
861 penalty of not more than \$5,000, at the rate of \$10 per pack, for a first violation of this section or
862 not more than \$25,000 for each subsequent violation of this section.

863 The commissioner shall promulgate regulations to implement and enforce this section.

864 SECTION 36. Said chapter 64C is hereby amended by striking out section 36, as so
865 appearing, and inserting in place thereof the following section:-

866 Possession or transportation of unstamped cigarettes; necessity of invoices or delivery
867 tickets; prima facie evidence

868 Section 36. Whoever, not being a stamper, a common carrier transporting cigarettes
869 under a proper bill of lading or freight bill which states the quantity, source and designation or
870 destination of such cigarettes, or such other person as the commissioner may authorize in writing
871 to do so, possesses, delivers or transports any unstamped cigarettes, shall have in his actual
872 possession invoices or delivery tickets for such cigarettes showing: (1) the true name and address
873 of the consignor or seller; (2) the true name and address of the consignee or purchaser, which
874 consignee or purchaser is: (i) a stamper or other person authorized by the commissioner in
875 writing to possess unstamped cigarettes; or (ii) person in another jurisdiction licensed or
876 authorized by such other jurisdiction to possess unstamped cigarettes, or, in the case of cigarettes
877 bearing the stamp of another jurisdiction, a person licensed by such other jurisdiction to sell
878 cigarettes; (3) the quantity and brands of the cigarettes possessed or transported; and (4) the

879 name and address of the person who has assumed or shall assume the payment of the excise
880 provided by this chapter at the ultimate point of destination.

881 Failure to have such invoices or delivery tickets shall be prima facie evidence that such
882 person knowingly possessed, delivered or transported unstamped cigarettes in violation of
883 section 35.

884 In the absence of such invoices or delivery tickets, or, if the name or address of the
885 consignee or purchaser is falsified, or if the purchaser or consignee is not a person authorized to
886 possess unstamped cigarettes or in the case of cigarettes bearing the stamp of another
887 jurisdiction, a person licensed by such other jurisdiction to sell cigarettes, the cigarettes so
888 transported shall be deemed contraband subject to seizure and forfeiture under the provisions of
889 sections 38A and 38B.

890 SECTION 37. Said chapter 64C is hereby amended by striking out section 37, as so
891 appearing, and inserting in place thereof the following section:-

892 Forgery, alteration, etc., of excise stamps; unauthorized use of stamping machine;
893 penalties; forfeitures

894 Section 37. (a) Whoever: (1) falsely or fraudulently makes, forges, alters or counterfeits,
895 or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited, any
896 cigarette excise stamps prepared or prescribed by the commissioner under the authority of this
897 chapter; or (2) knowingly and wilfully utters, publishes, passes or tenders as true, any such false,
898 altered, forged or counterfeited stamp or makes a false affixation of or uses any stamp provided
899 for by this chapter which has already once been used, for the purpose of evading the excise
900 imposed by this chapter; or (3) wilfully removes or alters or knowingly permits to be removed or

901 altered the cancelling or defacing mark of any stamp provided for by this chapter with intent to
902 use such stamp; or (4) knowingly or wilfully buys, prepares for use, uses, has in possession, or
903 suffers or permits to be used, any machine or device for affixing stamps without authority, or any
904 washed, restored or counterfeit stamps; or (5) intentionally removes or causes to be removed, or
905 knowingly permits to be removed, any stamp affixed pursuant to this chapter; or (6) tampers with
906 or causes to be tampered with any machine or device for affixing stamps authorized to be used
907 under the provisions of this chapter shall be punished by a fine of not more than \$50,000 or by
908 imprisonment in a house of correction for not more than 2 and one-half years or in state prison
909 for not more than 5 years, or both such fine and imprisonment.

910 (b) If any person secures, manufactures or causes to be secured or manufactured, or has
911 in his possession, any cigarette excise stamp not prescribed or authorized by the commissioner,
912 or any counterfeit impression or any copy or image of such a cigarette excise stamp not
913 prescribed or authorized by the commissioner, whether in physical or electronic format, such fact
914 shall be prima facie evidence that such person has counterfeited stamps.

915 SECTION 38. Said chapter 64C is hereby amended by inserting after section 37 the
916 following new sections:-

917 Selling, etc. untaxed other tobacco products; evasion

918 Section 37A. (1) Whoever, not being (i) a licensed wholesaler or licensed cigar
919 distributor, or licensed unclassified acquirer authorized under the terms of such license to sell or
920 distribute such other tobacco products, or (ii) a person otherwise authorized in writing by the
921 commissioner to sell or distribute such other tobacco products, shall knowingly sell, offer for
922 sale, display for sale or possess with intent to sell, any untaxed other tobacco products;

923 (2) Whoever, not being (i) a licensed wholesaler or licensed cigar distributor, or licensed
924 unclassified acquirer authorized under the terms of such license to sell or distribute such other
925 tobacco products, or (ii) a person otherwise authorized in writing by the commissioner to sell or
926 distribute such other tobacco products, or (iii) a common carrier transporting other tobacco
927 products under a proper bill of lading or freight bill which states the quantity, source and
928 designation or destination of such other tobacco products, or (iv) a person in actual possession of
929 invoices or delivery tickets meeting the requirements of section 37B, shall knowingly deliver or
930 transport or possess with intent to deliver or transport any untaxed other tobacco products; or

931 (3) Whoever, whether or not licensed, willfully attempts to evade any of the excises on
932 other tobacco products imposed by this chapter, or the payment thereof,

933 shall be punished as follows: (a) a violation involving 400 or fewer units of other tobacco
934 products in any combination shall be punished by a fine of not more than \$2,500 or by
935 imprisonment in a house of correction for not more than 1 year, or both such fine and
936 imprisonment; (b) a violation involving more than 400 but fewer than 30,000 units of other
937 tobacco products in any combination shall be punished by a fine of not more than \$50,000 or by
938 imprisonment in a house of correction for not more than 2 and one-half years or in state prison
939 for not more than 5 years, or both such fine and imprisonment; (c) a violation involving 30,000
940 or more units of other tobacco products in any combination shall be punished by a fine of not
941 more than \$100,000 or by imprisonment in a house of correction for not more than 2 and one-
942 half years or in state prison for not more than 10 years, or both such fine and imprisonment.

943 In addition to any other penalty provided by this chapter or chapter 62C, the
944 commissioner may impose a civil penalty for a knowing violation of this section of not more
945 than \$5,000 for the first offense and not more than \$25,000 for each subsequent offense.

946 Transportation of untaxed other tobacco products; necessity of invoices or delivery
947 tickets; prima facie evidence

948 Section 37B. Whoever, not being a licensed wholesaler or licensed cigar distributor or
949 licensed unclassified acquirer authorized by the terms of his license to possess such other
950 tobacco products, or a person otherwise authorized in writing by the commissioner to sell or
951 distribute such other tobacco products or a common carrier transporting other tobacco products
952 under a proper bill of lading or freight bill which states the quantity, source and designation or
953 destination of such other tobacco products, possesses for delivery or transport, or delivers or
954 transports any untaxed other tobacco products, shall have in his actual possession invoices or
955 delivery tickets for such other tobacco products showing: (1) the true name and address of the
956 consignor or seller; (2) the true name and address of the consignee or purchaser, which consignee
957 or purchaser is: (a) a licensed wholesaler, licensed cigar distributor, or licensed unclassified
958 acquirer authorized by the terms of his license to possess such other tobacco products; or (b) a
959 person in another jurisdiction licensed or authorized by such other jurisdiction to possess untaxed
960 other tobacco products; (3) the quantity and brands of the other tobacco products possessed or
961 transported; and (4) the name and address of the person who has assumed or shall assume the
962 payment of the excise provided by this chapter at the ultimate point of destination.

963 Failure to have such invoices or delivery tickets shall be prima facie evidence that such
964 person knowingly possessed, delivered or transported untaxed other tobacco products in
965 violation of section 37A.

966 In the absence of such invoices or delivery tickets, or, if the name or address of the
967 consignee or purchaser is falsified, or if the purchaser or consignee is not a person authorized to
968 possess untaxed tobacco products, the untaxed tobacco products so transported shall be deemed
969 contraband subject to seizure and forfeiture under the provisions of sections 38A and 38B.

970 SECTION 39. Section 38 of said chapter 64C, as so appearing, is hereby amended by
971 striking out, in line 1, the words “not being an authorized agent” and inserting in place thereof
972 the words:-

973 not being the commissioner or an authorized agent of the commissioner.

974 SECTION 40. Said section 38 of said chapter 64C, as so appearing, is hereby further
975 amended by striking out, in lines 4-5, the words “a fine of not more than two thousand dollars or
976 by imprisonment for five years, or both” and inserting in place thereof the words:-

977 a fine of not more than \$50,000 or by imprisonment in a house of correction for not more
978 than 2 and one-half years or in state prison for not more than 5 years, or both such fine and
979 imprisonment.

980 SECTION 41. Said chapter 64C is hereby further amended by striking out section 38A
981 and inserting in place thereof the following section:-

982 Seizure and forfeiture of unstamped cigarettes and other tobacco products on which tax
983 has not been paid; warrants

984 Section 38A. (a) Whenever the commissioner discovers:

985 (1) any unstamped cigarettes subject to tax under this chapter which are found in the
986 possession of any person other than a stamper, a common carrier transporting such cigarettes
987 under a proper bill of lading or freight bill which states the quantity, source and designation or
988 destination of such cigarettes, or other person transporting unstamped cigarettes in actual
989 possession of the documents required by section 36, or a person authorized in writing by the
990 commissioner to possess such unstamped cigarettes;

991 (2) any unstamped cigarettes or other tobacco products that are being stored or appear to
992 be stored at a location that has not been reported by any licensee, as required by section 2, as
993 premises at which tobacco products are currently held, placed, or stored;

994 (3) any such unstamped cigarettes or other tobacco products that are otherwise held,
995 purchased, possessed, imported or acquired in violation of paragraphs (a), (b), (c), (d), (f) or (g)
996 of section 10 or of sections 34, 35, 37 or 37A;

997 (4) more than 10,000 units of other tobacco products in the possession of a licensed
998 wholesaler or licensed cigar distributor under circumstances that provide reason to believe that
999 such licensee possesses such other tobacco products with the intent to evade any of the excises
1000 imposed by this chapter on such other tobacco products or payment thereof; provided that such
1001 circumstances shall include but not be limited to such licensees history in 2 or more recent
1002 periods of failure to file returns and pay excise relative to other tobacco products of the type such
1003 licensee is found to be in possession of or of reporting sales and paying excise on sales of other
1004 tobacco products corresponding to quantities substantially below the quantities such licensee is

1005 found to be in possession of or is known to have purchased or otherwise acquired during those
1006 periods;

1007 (5) any falsely made, fraudulently made, forged, altered or counterfeited cigarette excise
1008 stamps and any cigarette excise stamps otherwise not prescribed or authorized by the
1009 commissioner;

1010 (6) any un-affixed genuine cigarette excise stamps found in the possession of anyone not
1011 being a stamper or a person otherwise authorized by the commissioner to possess such stamps; or

1012 (7) any machines or devices for affixing stamps not prescribed or authorized by the
1013 commissioner,

1014 he may seize and take possession of such unstamped cigarettes, other tobacco products,
1015 stamps, and machines or devices, together with any vending machine or other receptacle in
1016 which the unstamped cigarettes or other tobacco products are contained, and forfeiture
1017 proceedings shall be pursued in accordance with the provisions of section 38B.

1018 (b) If the commissioner believes that any items subject to seizure under subsection (a) are
1019 being kept, stored, sold or concealed in a store, warehouse, building, vehicle, vessel or other
1020 place anywhere in the commonwealth or territorial waters thereof, the commissioner or his
1021 authorized agent or designee may make a complaint on oath to a district court justice or district
1022 court clerk or district court assistant clerk or superior court justice authorized to issue search
1023 warrants in criminal cases setting forth the basis for his belief and describing the place he seeks
1024 to search and the items and property he seeks to search for and seize. The justice or clerk, if
1025 satisfied that there is probable cause for such belief, may issue a warrant describing the place to
1026 be searched, identifying the property to be searched for, and authorizing the search for and

1027 seizure of such property. In addition to authorizing the search for and seizure of the items
1028 described in said subsection (a), a warrant may authorize search for and seizure of documents,
1029 records or other items relevant to the origin of tobacco products seized or to be seized, the
1030 payment or non-payment of tax on such tobacco products, and the possession or control of the
1031 place to be searched. Search warrants issued pursuant to this section shall be directed to the
1032 sheriff or his deputy or to a constable or police officer, and shall otherwise be issued and
1033 executed in the manner provided in sections 2, 2A and 2B of chapter 276, insofar as they are
1034 applicable, and return of such warrants shall be in the manner provided in section 3A of chapter
1035 276. Nothing in this paragraph shall be construed to prevent warrantless entries and
1036 administrative inspections pursuant to sections 5 and 11, nor shall it be construed to prevent
1037 warrantless seizures of property authorized by said subsection (a) above in connection with such
1038 inspections, nor shall it be construed to prevent warrantless entries and seizures in any other
1039 situations in which a warrant is not required by the laws or constitution of the commonwealth.

1040 SECTION 42. Said chapter 64C, as so appearing, is hereby further amended by inserting
1041 after section 38A the following new section:-

1042 Forfeiture of property

1043 Section 38B. (a) The following property shall be subject to forfeiture to the
1044 commonwealth and all property rights therein shall be in the commonwealth:

1045 (1) Any unstamped cigarettes subject to tax under this chapter which are found in the
1046 possession of any person other than a stamper, a common carrier transporting such unstamped
1047 cigarettes under a proper bill of lading or freight bill which states the quantity, source and
1048 designation or destination of such cigarettes or other person transporting such unstamped

1049 cigarettes in actual possession of the documents required by section 36, or a person authorized in
1050 writing by the commissioner to possess such unstamped cigarettes; any such unstamped
1051 cigarettes or other tobacco products that are being stored or appear to be stored at a location that
1052 has not been reported by any licensee, as required by section 2, as premises at which tobacco
1053 products are currently held, placed, or stored; any such unstamped cigarettes and other tobacco
1054 products which are otherwise held, purchased, possessed, imported or acquired in violation of
1055 paragraphs (a), (b), (c), (d), (f) or (g) of section 10 or of sections 34, 35, 37 or 37A; any falsely
1056 made, fraudulently made, forged, altered or counterfeited cigarette excise stamps and any
1057 cigarette excise stamps otherwise not prescribed or authorized by the commissioner; and any un-
1058 affixed genuine cigarette excise stamps found in the possession of anyone not being a stamper or
1059 a person otherwise authorized by the commissioner to possess such stamps.

1060 (2) All materials, products, and equipment of any kind which are used, or intended to be
1061 used to commit or facilitate any violation of any provision of sections 10, 34, 35, 37, 37A or 38.

1062 (3) All conveyances, including aircraft, vehicles or vessels used, or intended for use, to
1063 transport, conceal, or otherwise facilitate the manufacture, purchase, sale possession with intent
1064 to manufacture or sell tobacco products in violation of any provision of sections 10, 34, 35, 37,
1065 37A or 38.

1066 (4) All books, records, research, including formulas and data, whether in paper or
1067 electronic or other medium, which are used, or intended for use, to commit or facilitate a
1068 violation of any provision of this chapter, or which evidence a violation of any provision of this
1069 chapter.

1070 (5) All moneys, negotiable instruments, securities or other things of value furnished or
1071 intended to be furnished by any person in exchange for tobacco products in violation of this
1072 chapter, all proceeds traceable to such an exchange, including real estate and any other thing of
1073 value, and all moneys, negotiable instruments, and securities used or intended to be used to
1074 facilitate any violation of any provision of section 10, 34, 35, 37, 37A or 38.

1075 (6) All real property, including any right, title, and interest in the whole of any lot or tract
1076 of land and any appurtenances or improvements thereto, which is used in any manner or part, to
1077 commit or to facilitate the commission of a violation of any provision of sections 10, 34, 35, 37,
1078 37A or 38.

1079 (7) All property, including any vending machine, which is used, or intended for use, as a
1080 container for property described in subparagraphs (1) or (2).

1081 No forfeiture under this section shall extinguish a perfected security interest held by a
1082 creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.

1083 (b) Property subject to forfeiture under paragraphs (1), (2), (4), (5), (6) and (7) of
1084 subsection (a) shall, upon motion of the attorney general or district attorney or the commissioner,
1085 be declared forfeit by any court having jurisdiction over said property or having final jurisdiction
1086 over any related criminal proceeding brought under any provision of this chapter. Unless the
1087 court for good cause shown orders otherwise, regardless of the final disposition of such related
1088 criminal proceeding, if any, property subject to forfeiture under paragraph (1) of said subsection
1089 (a) shall be turned over to the commissioner if not already in his possession and destroyed,
1090 provided that the commissioner may authorize the use of such property for law enforcement

1091 purposes, but under no circumstances may a court order or the commissioner allow the resale of
1092 property forfeited under said paragraph (1) of said subsection (a) of this chapter.

1093 (c) The court shall order forfeiture of all conveyances subject to the provisions of
1094 subparagraph (3) and of all real property subject to the provisions of subparagraph (6) of
1095 subsection (a), except as follows:

1096 (1) No conveyance used by any person as a common carrier in the transaction of business
1097 as a common carrier shall be forfeited unless it shall appear that the owner or other person in
1098 charge of such conveyance was a consenting party or privy to a violation of this chapter.

1099 (2) No conveyance shall be forfeited by reason of any act or omission established by the
1100 owner thereof to have been committed or omitted by any person other than such owner while
1101 such conveyance was unlawfully in the possession of a person other than the owner in violation
1102 of the criminal laws of the United States, or of the commonwealth, or of any state.

1103 (3) No conveyance or real property shall be subject to forfeiture unless the owner thereof
1104 knew or should have known that such conveyance or real property was used in and for the
1105 business of unlawfully manufacturing or selling of tobacco products. Proof that the conveyance
1106 or real property was used to facilitate the unlawful manufacturing, or sale of, or possession with
1107 intent unlawfully to manufacture or sell, tobacco products on 3 or more different dates shall be
1108 prima facie evidence that the conveyance or real property was used in and for the business of
1109 unlawfully manufacturing or selling tobacco products.

1110 (4) No conveyance or real property used to facilitate the unlawful manufacturing, or sale
1111 of, or possession with intent unlawfully to manufacture or sell, tobacco products, shall be

1112 forfeited if the number of units of tobacco products, as defined in section 1, so manufactured,
1113 sold or possessed with intent to manufacture or sell, is less than 10,000 units in the aggregate.

1114 (d) A district attorney or the attorney general or the commissioner may petition the
1115 superior court in the name of the commonwealth in the nature of a proceeding in rem to order
1116 forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture
1117 under the provisions of subparagraphs (3), (5) and (6) of subsection (a). Such petition shall be
1118 filed in the court having jurisdiction over said conveyance, real property, monies or other things
1119 of value or having final jurisdiction over any related criminal proceeding brought under any
1120 provision of this chapter. In all such suits where the property is claimed by any person, other
1121 than the commonwealth, the commonwealth shall have the burden of proving to the court the
1122 existence of probable cause to institute the action, and any such claimant shall then have the
1123 burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5) or (6) of
1124 said subsection (a). The owner of said conveyance or real property, or other person claiming
1125 thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (g).
1126 The court shall order the commonwealth to give notice by certified or registered mail to the
1127 owner of said conveyance, real property, moneys or other things of value and to such other
1128 persons as appear to have an interest therein, and the court shall promptly, but not less than 2
1129 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said
1130 conveyance, real property, moneys or other things of value, the court may continue the hearing
1131 on the petition pending the outcome of any criminal trial related to the violation of this chapter.
1132 At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon
1133 issue a final order, from which the parties shall have a right of appeal. In all such suits where a
1134 final order results in a forfeiture, said final order shall provide for disposition of said

1135 conveyance, real property, moneys or any other thing of value by the commonwealth or any
1136 subdivision thereof in any manner not prohibited by law, including official use by an authorized
1137 law enforcement or other public agency, or sale at public auction or by competitive bidding. The
1138 proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture
1139 proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance
1140 thereof shall be distributed as further provided in this section.

1141 The final order of the court shall provide that said moneys and the proceeds of any such
1142 sale shall be deposited to the Illegal Tobacco Task Force Trust Fund. This shall be a separate
1143 fund, established on the books of the Commonwealth within the office of the state treasurer, to
1144 be administered by the co-chairs of the illegal tobacco task force established under section 40.
1145 All such moneys and proceeds received shall be deposited into said trust fund and shall then be
1146 expended without further appropriation to defray the costs of protracted investigations, to
1147 provide additional technical equipment or expertise, to provide matching funds to obtain federal
1148 grants, or such other law enforcement purposes as the colonel of the state police and
1149 commissioner of revenue deems appropriate, which shall include but not be limited to equitable
1150 distributions to the prosecuting district attorney or attorney general and any police department
1151 involved in the seizure. Any such distributions made shall be deposited in the special law
1152 enforcement trust funds provided for in subsection (d) of section 47 of chapter 94C, and
1153 expended as provided in said subsection.

1154 (e) Any officer, department, or agency having custody of any property subject to
1155 forfeiture under this chapter or having disposed of said property shall keep and maintain full and
1156 complete records showing from whom it received said property, under what authority it held or
1157 received or disposed of said property, to whom it delivered said property, the date and manner of

1158 destruction or disposition of said property, and the exact kinds, quantities and forms of said
1159 property. Said records shall be open to inspection by all federal and state officers charged with
1160 enforcement of federal and state tobacco laws. Persons making final disposition or destruction of
1161 said property under court order shall report, under oath, to the court the exact circumstances of
1162 said disposition or destruction.

1163 (f)(1) During the pendency of the proceedings the court may issue at the request of the
1164 commonwealth ex parte any preliminary order or process as is necessary to seize or secure the
1165 property for which forfeiture is sought and to provide for its custody, including but not limited to
1166 an order that the commonwealth remove the property if possible, and safeguard it in a secure
1167 location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account;
1168 and, that a substitute custodian be appointed to manage such property or a business enterprise.
1169 Property taken or detained under this section shall not be repleviable, but once seized shall be
1170 deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to
1171 the orders and decrees of the court having jurisdiction thereof. Process for seizure of said
1172 property shall issue only upon a showing of probable cause, and the application therefor and the
1173 issuance, execution, and return thereof shall be subject to the provisions of chapter 276, so far as
1174 applicable.

1175 (2) A district attorney or the attorney general or the commissioner may refer any real
1176 property, and any furnishings, equipment and related personal property located therein, for which
1177 seizure is sought to the division of capital asset management and maintenance office of seized
1178 property management, established under section 47 of chapter 94C. The office of seized property
1179 management shall preserve and manage such property in a reasonable fashion and dispose of
1180 such property upon a judgment ordering forfeiture issued pursuant to the provisions of

1181 subsection (d), and may enter into contracts to preserve, manage and dispose of such property.
1182 The office of seized property management may receive initial funding from the special law
1183 enforcement trust funds of the attorney general and each district attorney referenced in
1184 subsection (d) and shall subsequently be funded by a portion of the proceeds of each sale of such
1185 managed property to the extent provided as payment of reasonable expenses in said subsection
1186 (d).

1187 (g) The owner of any real property which is the principal domicile of the immediate
1188 family of the owner and which is subject to forfeiture under this section may file a petition for
1189 homestead exemption with the court having jurisdiction over such forfeiture. The court may, in
1190 its discretion, allow the petition exempting from forfeiture an amount allowed under section 1 of
1191 chapter 188. The value of the balance of said principal domicile, if any, shall be forfeited as
1192 provided in this section. Such homestead exemption may be acquired on only 1 principal
1193 domicile for the benefit of the immediate family of the owner.

1194 (h) A forfeiture proceeding affecting the title to real property or the use and occupation
1195 thereof or the buildings thereon shall not have any effect except against the parties thereto and
1196 persons having actual notice thereof, until a memorandum containing the names of the parties to
1197 such proceeding, the name of the town where the affected real property lies, and a description of
1198 such real property sufficiently accurate for identification is recorded in the registry of deeds for
1199 the county or district where the real property lies. At any time after a judgment on the merits, or
1200 after the discontinuance, dismissal or other final disposition is recorded by the court having
1201 jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such
1202 judgment, discontinuance, dismissal or other final disposition, and such certificate shall be

1203 recorded in the registry in which the original memorandum recorded pursuant to this section was
1204 filed.

1205 SECTION 43. Chapter 218 is hereby amended by striking out section 26 in its entirety
1206 and inserting in place thereof the following section:-

1207 Section 26. The district courts and divisions of the Boston municipal court department
1208 shall have original jurisdiction, concurrent with the superior court, of the following offenses,
1209 complaint of which shall be brought in the court of the district court department, or in the Boston
1210 municipal court department, as the case may be, within which judicial district the offense was
1211 allegedly committed or is otherwise made punishable:— all violations of by-laws, orders,
1212 ordinances, rules and regulations, made by cities, towns and public officers, all misdemeanors,
1213 except libels, all felonies punishable by imprisonment in the state prison for not more than 5
1214 years, the crimes listed in clause (2) of section 34, clause (2) of section 35 and clause (b) of
1215 section 37A of chapter 64C, paragraph (1) of subsection (a) of section 8 of chapter 90B,
1216 subparagraph (1) of paragraph (a) of subdivision (1) of section 24, paragraph (a) of section 24G
1217 and paragraph (1) of section 24L of chapter 90, paragraph (a) of section 32 and paragraph (a) of
1218 section 32A of chapter 94C, and section 32 J of chapter 94C, section 38B of chapter 127, section
1219 131E of chapter 140, sections 13K, 15A, 15D, 21A and 26 of chapter 265 and sections 16, 17,
1220 18, 19, 28, 30, 49 and 127 of chapter 266, and sections 1, 15 and 15A of chapter 273, and the
1221 crimes of malicious destruction of personal property under section 127 of chapter 266, indecent
1222 assault and battery on a child under 14 years of age, intimidation of a witness or juror under
1223 section 13B of chapter 268, escape or attempt to escape from any penal institution, forgery of a
1224 promissory note, or of an order for money or other property, and of uttering as true such a forged

1225 note or order, knowing the same to be forged. They shall have jurisdiction of proceedings
1226 referred to them under the provisions of section 4A of chapter 211.