

**SENATE . . . . . No. 1614**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Michael J. Rodrigues***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Michael J. Rodrigues</i>	<i>First Bristol and Plymouth</i>
<i>Jay R. Kaufman</i>	<i>15th Middlesex</i>

**SENATE . . . . . No. 1614**

By Mr. Rodrigues, a petition (accompanied by bill, Senate, No. 1614) of Michael J. Rodrigues and Jay R. Kaufman for legislation to combat illegal tobacco and prevent further loss of revenue to the commonwealth. Revenue.

**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 is hereby amended by striking out section  
2 30B, as inserted by section 29 of chapter 46 of the acts of 2015, and inserting in place thereof the  
3 following 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 of the General Laws, as appearing in the 2014  
13 Official Edition, is hereby amended by striking out subsection 10 and inserting in place thereof  
14 the following subsection:-

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

22 SECTION 3. Section 5 of chapter 62C of the General Laws, as so appearing, is hereby  
23 amended by adding, in line 10, the following language after the last sentence:-

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

33 handwritten signature on a return or other document that contained or was verified by a written  
34 declaration that it was made under the penalties of perjury.

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

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

42 SECTION 5. Said section 16 of said chapter 62C is hereby further amended by striking  
43 out paragraph (c1/2).

44 SECTION 6. Paragraph (19) of subsection (b) of section 21 of said chapter 62C, as  
45 appearing in the 2014 Official Edition, is hereby amended by striking out, in lines 135 and 136,  
46 the words “sections 33A, 34 and 35 of chapter 64C” and inserting in place thereof the following  
47 words:- sections 10, 33A, 34, 35, 37, 37A, and 38 of chapter 64C

48 SECTION 7. Paragraph (28) of said section 21 of said chapter 62C, as inserted by section  
49 68 of chapter 46 of the acts of 2015, is hereby amended by inserting after the words “federal law  
50 enforcement” the following words:- or to revenue or law enforcement officials from another state

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

53 Licenses and registration certificates of taxpayers under chapters 64A, 64C, 64E to 64J or  
54 64M

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

70 (b) In the instance of an application for a license as a manufacturer, wholesaler, vending  
71 machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer, as defined in  
72 chapter 64C the commissioner shall investigate the prior activities of the applicant. If the  
73 commissioner determines that (i) said applicant has been convicted of or has admitted to  
74 sufficient facts to support a finding of guilt of any violation of this chapter, any violation of the  
75 provisions of chapter 64C, any violation of federal law where the conduct underlying the

76 conviction or admission relates to tobacco products, or any violation of law involving dishonesty  
77 or fraud, within the five-year period preceding the date of the application in the case of a  
78 misdemeanor or within the ten-year period preceding the date of the application in the case of a  
79 felony, or (ii) the commissioner has assessed against said applicant a civil penalty, which has  
80 been finally determined to be due, for the violation of any provision of chapter 64C providing for  
81 a civil penalty on three or more occasions during the five-year period preceding the date of the  
82 application, or (iii) unstamped cigarettes or untaxed other tobacco products have been seized  
83 from the applicant's business premises on three or more occasions during the five-year period  
84 preceding the date of the application, or (iv) an aggregate total of one hundred packs of  
85 unstamped cigarettes or two thousand units of untaxed tobacco products, as those terms are  
86 defined in section 1 of chapter 64C, have been seized from the applicant's business premises  
87 during the five-year period preceding the date of the application, or (v) the applicant has during  
88 the five-year period preceding the date of the application refused to permit, hindered or  
89 obstructed an examination, investigation, or search authorized by section 5 or 11 of chapter 64C,  
90 or (vi) the commissioner has received notice from another state or municipal agency, board or  
91 law enforcement official that the applicant has been fined, cited or otherwise penalized by a state  
92 or municipal agency board or law enforcement official (a) for the sale of tobacco products to a  
93 person under the minimum legal sales age, or (b) for any other violation of the laws or  
94 regulations of the commonwealth regarding tobacco, on three or more occasions during the five-  
95 year period preceding the date of the application and that any administrative remedies available  
96 to the applicant have been exhausted or have expired, he may deny the application; provided,  
97 however, that the commissioner shall grant or deny a license to said applicant within ninety days

98 from the date of application; and provided further, that if the commissioner fails to act within  
99 such time period, the application shall be deemed denied.

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

103 (d) Registration certificates may be issued for a specified term of not less than three  
104 years, subject to renewal without the payment of any additional fee and in accordance with  
105 regulations issued by the commissioner. Whether or not such certificates are issued for a  
106 specified term, they shall be subject to suspension or revocation as provided in this section.  
107 Existing registration certificates may be made subject to renewal or reissuance for a specified  
108 term in accordance with regulations issued by the commissioner.

109 (e) Registration certificates shall be issued for each place of business. Licenses for said  
110 manufacturers, wholesalers, vending machine operators, unclassified acquirers, retailers, cigar  
111 distributors and cigar retailers shall be issued for each place of business. Licenses for users of  
112 special fuels shall be issued for each vehicle propelled by special fuels. In addition to the license  
113 issued to a motor carrier, licenses shall be issued for each motor vehicle which the motor carrier  
114 desires to operate or cause to be operated upon the highways of the commonwealth which is  
115 propelled by fuel or special fuels purchased or acquired outside the commonwealth.

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

118 (g) The secretary of administration and finance shall annually determine the fees for  
119 licenses and renewals thereof under section 3B of chapter 7 in the following categories:

120 distributors; unclassified importers; unclassified exporters; manufacturers; wholesalers; vending  
121 machine operators; unclassified acquirers; retailers; cigar distributors; cigar retailers; user-  
122 sellers; suppliers; users of special fuels; and motor carriers or their vehicles; provided, however,  
123 that in case of a manufacturer, wholesaler, cigar distributor or vending machine operator who  
124 maintains more than 1 place of business, the fee for each additional place of business shall be  
125 one-half of the above determined fee. No fee or part thereof, shall be refunded by reason of  
126 relinquishment, suspension or revocation of a license.

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

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

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

136 (k) An application for a registration or license may be denied by the commissioner for  
137 any one of the following reasons:

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

140 (2) In the opinion of the commissioner, such application is filed by a person as a  
141 subterfuge for the real person in interest, including but not limited to situations in which the real  
142 person in interest is a person (i) whose registration or license has previously been revoked or  
143 cancelled for cause by the commissioner, or (ii) whose application for a registration or license  
144 could be denied by the commissioner for any of the reasons set forth in paragraphs (3) through  
145 (8) below, or (iii) in the case of an application for a license as a manufacturer, wholesaler,  
146 vending machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer, as  
147 defined in chapter 64C, whose application could be denied by the commissioner for any of the  
148 reasons set forth in subsection (b), or (iv) who is not identified;

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

151 (4) Any tax payable under this chapter has been finally determined to be due from the  
152 applicant and has not been paid in full;

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

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

160 (6 1/2) The applicant has otherwise willfully failed to comply with any provision of the  
161 tax laws of the commonwealth or regulations thereunder;

162 (7) An officer, director, partner or employee of the applicant, which officer, director,  
163 partner or employee is a person under a duty to collect and pay over a tax on behalf of the  
164 applicant has in his capacity as a person under a duty to collect and pay over a tax on behalf of  
165 the applicant or another person been convicted of, or has admitted to sufficient facts to support a  
166 finding of guilt of, a crime provided for in this chapter within one year from the date on which  
167 such application is filed; or

168 (8) A person who owns, directly or indirectly, a controlling interest in the applicant, has  
169 any tax payable under this chapter, which has been finally determined to be due and has not been  
170 paid in full; or another legal entity, in which applicant owns a controlling interest, directly or  
171 indirectly, has any tax payable under this chapter, which has been finally determined to be due  
172 and has not been paid in full; or a person, who owns, directly or indirectly, a controlling interest  
173 in the applicant, has been convicted of, or has admitted to sufficient facts to support a finding of  
174 guilt of a crime provided for in this chapter within one year from the date on which such  
175 application is filed.

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

179 SECTION 9. Section 68 of said chapter 62C, as amended by section 69 of chapter 46 of  
180 the acts of 2015, is hereby amended by striking out paragraph (4) and inserting in place thereof  
181 the following paragraph:-

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

184 SECTION 10. Said section 68 of said chapter 62C, as so appearing, is hereby further  
185 amended by inserting after paragraph (4) the following paragraph:-

186 (4 1/2) In the instance of a licensee licensed as a manufacturer, wholesaler, vending  
187 machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer, as defined in  
188 chapter 64C, (i) the licensee has been convicted of or has admitted to sufficient facts to support  
189 a finding of guilt of any violation of the provisions of chapter 64C, any violation of federal law  
190 where the conduct underlying the conviction or admission relates to tobacco products, or any  
191 violation of law involving dishonesty or fraud, within a five-year period in the case of a  
192 misdemeanor or within a ten-year period in the case of a felony, or (ii) the commissioner has  
193 assessed against said licensee a civil penalty, which has been finally determined to be due, for  
194 the violation of any provision of chapter 64C providing for a civil penalty on three or more  
195 occasions during a five-year period, or (iii) unstamped cigarettes have been seized from the  
196 licensee's business premises on three or more occasions during a five-year period, or (iv) an  
197 aggregate total of fifty packs of unstamped cigarettes or one thousand units of untaxed tobacco  
198 products, as those terms are defined in section 1 of chapter 64C, have been seized from the  
199 licensee's business premises during a five-year period, or (v) the licensee has refused to permit,  
200 hindered or obstructed an examination, investigation, or search authorized by section 5 or section  
201 11 of chapter 64C, or (vi) the commissioner has received notice from another state or municipal  
202 agency, board or law enforcement official that the licensee has been fined, cited or otherwise  
203 penalized by a state or municipal agency board or law enforcement official (a) for the sale of  
204 tobacco products to a person under the minimum legal sales age, or (b) for any other violation of  
205 the laws or regulations of the commonwealth regarding tobacco, on three or more occasions

206 during a five-year period and that any administrative remedies available to the licensee have  
207 been exhausted or have expired.

208 SECTION 11. Said section 68 of said chapter 62C, as so appearing, is hereby further  
209 amended by inserting after paragraph (6) the following paragraph:-

210 The commissioner may suspend or revoke the appointment of a stamper, as defined in  
211 section 1 of chapter 64C, for any of the reasons set forth in paragraphs (1) through (6) above, and  
212 for any of the reasons set forth in chapter 94F, §5(b), and for the willful use or operation of  
213 stamping equipment in any manner that violates instructions prescribed in writing by the  
214 commissioner.

215 SECTION 12. Said section 68 of said chapter 62C, as so appearing, is hereby further  
216 amended by striking out the final paragraph, as inserted by section 69 of chapter 46 of the acts of  
217 2015, and inserting in place thereof the following paragraph:-

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

223 SECTION 13. Section 76 of said chapter 62C, as so appearing, is hereby amended by  
224 inserting after the word “dollars”, in line 6, the following words:- , provided that the punishment  
225 for a person who acts as a manufacturer, wholesaler, vending machine operator, unclassified  
226 acquirer, retailer, cigar distributor or cigar retailer, as defined in section one of chapter sixty-four  
227 C, shall be the punishment set forth in subsection (a) of section ten of said chapter sixty-four C

228 SECTION 14. Chapter 64C of the General Laws is hereby amended by striking out  
229 section 1, as so appearing, and inserting in place thereof the following section:-

230 Definitions

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

233 "cigar", any roll of tobacco wrapped in leaf tobacco or in any substance containing  
234 tobacco; provided, however, that any roll of tobacco that is a cigarette shall not be classified as a  
235 cigar;

236 "cigar distributor", (i) any person who imports, or causes to be imported, into the  
237 commonwealth cigars or smoking tobacco for sale or who manufactures cigars or smoking  
238 tobacco in the commonwealth, and (ii) any person within or without the commonwealth who is  
239 authorized by the commissioner to make returns and pay the excise on cigars and smoking  
240 tobacco sold, shipped or delivered by him to any person in the commonwealth;

241 "cigar retailer", any person who sells or furnishes cigars or smoking tobacco in small  
242 quantities to consumers for individual use; provided, however, said cigars or smoking tobacco  
243 shall not be used for the purpose of resale;

244 "cigarette" shall mean any of the following: (1) any roll of tobacco wrapped in paper or  
245 in any substance not containing tobacco, (2) little cigars, which shall mean rolls of tobacco  
246 wrapped in leaf tobacco or any substance containing tobacco and as to which 1,000 units weigh  
247 not more than 3 pounds, and (3) any roll of tobacco wrapped in any substance containing tobacco  
248 which, because of its appearance, the type of tobacco used in the filler, or its packaging and

249 labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause  
250 (1);

251 “licensed”, licensed as a manufacturer, wholesaler, cigar distributor, vending machine  
252 operator, unclassified acquirer, cigar retailer or retailer pursuant to section sixty-seven of chapter  
253 sixty-two C;

254 “licensee”, a person licensed as a manufacturer, wholesaler, cigar distributor, vending  
255 machine operator, unclassified acquirer, cigar retailer or retailer pursuant to section sixty-seven  
256 of chapter sixty-two C;

257 “manufacturer”, any person who manufactures or produces cigarettes or smokeless  
258 tobacco, whether within or without the commonwealth;

259 “other tobacco products”, any product containing tobacco, other than cigarettes, and  
260 including without limitation cigars, smoking tobacco, and smokeless tobacco;

261 “person”, any individual, firm, fiduciary, partnership, corporation, trust or association, or  
262 other legal entity however formed, club, trustee, agency or receiver;

263 “place of business” shall mean and include any place where tobacco products are sold or  
264 offered for sale or where tobacco products are brought or kept for the purpose of sale or  
265 consumption, including so far as applicable any vessel, vehicle, airplane, train or cigarette  
266 vending machine;

267 “premises” or “business premises” shall mean and include any “place of business” and in  
268 addition any place where tobacco products are placed or stored;

269           “retailer”, any person who operates a store or concession for the purpose of making sales  
270 of tobacco products at retail, including any cigar retailer and any person selling tobacco products  
271 through vending machines;

272           “sales” or “sale” in addition to their ordinary meaning shall include or apply to use, gifts,  
273 exchanges and barter;

274           “smokeless tobacco” shall mean snuff, snuff flour and any other tobacco or tobacco  
275 product prepared in such manner as to be suitable for chewing or being placed in the oral or nasal  
276 cavity or otherwise consumed without being combusted, including, but not limited to cavendish,  
277 plug, twist and fine-cut tobaccos;

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

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

286           “stamper” shall mean any person authorized by the commissioner to purchase and affix  
287 adhesive stamps under this chapter;

288           "taxed cigars and smoking tobacco", cigars and smoking tobacco purchased or otherwise  
289 acquired from (i) a licensed cigar distributor or licensed unclassified acquirer authorized under

290 the terms of such license to sell or distribute cigars and smoking tobacco, or (ii) a person  
291 otherwise authorized in writing by the commissioner both to sell or distribute and to file returns  
292 and pay tax on cigars and smoking tobacco;

293 “tobacco products”, any products containing tobacco including both cigarettes and other  
294 tobacco products;

295 “unclassified acquirer”, any person, other than a purchaser at retail from a licensed  
296 retailer, who imports or acquires tobacco products from anyone other than a licensed  
297 manufacturer, a licensed wholesaler or a licensed vending machine operator;

298 “units” of untaxed tobacco products shall be counted as follows: one unstamped cigarette  
299 is one unit; one cigar is one unit; .09 ounces of smoking tobacco is one unit; one single-unit  
300 consumer-sized can or package of smokeless tobacco is twenty units;

301 “unstamped cigarettes”, any cigarettes other than those contained in a package which has  
302 affixed thereto a genuine Massachusetts stamp showing that the excise imposed by this chapter  
303 has been paid, affixed by a stamper or other person authorized by the commissioner as provided  
304 in section 30. The term shall include but not be limited to (1) cigarettes in a package bearing the  
305 stamp of another state, (2) cigarettes in a package to which a forged, altered, or counterfeit stamp  
306 has been affixed, and (3) cigarettes in a package bearing stolen, lost or misplaced genuine  
307 Massachusetts cigarette excise stamps which have not been affixed to said package of cigarettes  
308 by a stamper or other person authorized by the commissioner;

309 "untaxed cigars and smoking tobacco", cigars and smoking tobacco purchased or  
310 otherwise acquired (1) from anyone other than (i) a licensed cigar distributor or licensed  
311 unclassified acquirer authorized under the terms of such license to sell or distribute cigars and

312 smoking tobacco, or (ii) a person otherwise authorized in writing by the commissioner to sell or  
313 distribute and to file returns and pay the excise on cigars and smoking tobacco; or (2) from any  
314 licensee whenever the purchaser or acquirer has actual knowledge that such licensee has not paid  
315 and does not intend to pay the excise on such cigars and smoking tobacco;

316 “untaxed other tobacco products”, other tobacco products purchased or otherwise  
317 acquired (1) from anyone other than (i) a licensed wholesaler or licensed unclassified acquirer  
318 authorized under the terms of such license to sell or distribute such other tobacco products, or (ii)  
319 a person otherwise authorized in writing by the commissioner to sell or distribute such other  
320 tobacco products and to file returns and pay the excise on such other tobacco products; or (2)  
321 from any licensee whenever the purchaser or acquirer has actual knowledge that such licensee  
322 has not paid and does not intend to pay the excise on such other tobacco products;

323 “untaxed tobacco products”, untaxed other tobacco products and unstamped cigarettes;

324 “vending machine operator”, any person other than a manufacturer or a wholesaler who  
325 operates one or more vending machines for the sale of tobacco products at retail;

326 “wholesaler”, (1) any person who purchases directly from the manufacturer at least  
327 seventy-five per cent of all tobacco products purchased by him and who sells at least seventy-  
328 five per cent of all tobacco products purchased by him to others for resale; (2) any other person  
329 who purchases from a manufacturer or person so purchasing and selling and licensed as a  
330 wholesaler, provided such other person maintains an established place of business where  
331 substantially all of the business is the sale of tobacco products and related merchandise at  
332 wholesale to licensees and where at all times a substantial stock of tobacco products and related  
333 merchandise is available to all retailers for resale; (3) any chain of stores retailing tobacco

334 products to the consumer, provided seventy-five per cent of its purchases are made direct from  
335 the manufacturer; and (4) any cigar distributor;

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

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

343 No person shall sell tobacco products or act as a manufacturer, wholesaler, cigar  
344 distributor, vending machine operator, unclassified acquirer, cigar retailer or retailer, in the  
345 commonwealth unless licensed to do so in accordance with section sixty-seven of chapter sixty-  
346 two C.

347 SECTION 16. Said section 2 of said chapter 64C, as so appearing, is hereby further  
348 amended by inserting, in line 5, after the word "manufacturer" the words:- , cigar distributor

349 SECTION 17. Said section 2 of said chapter 64C, as so appearing, is hereby further  
350 amended by striking out, in line 15, the phrase "disc or marker" and inserting in place thereof the  
351 word:- decal

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

354 Every licensed wholesaler, cigar distributor, vending machine operator, unclassified  
355 acquirer, cigar retailer and retailer shall be required to report to the commissioner, on a form  
356 prescribed by the commissioner, the complete addresses, including any unit number, of any and  
357 all premises in addition to such licensee's place or places of business at which the licensee holds,  
358 places or stores tobacco products. Such reports shall be made at the time of licensing, and if the  
359 licensee adds additional such premises during the licensing period or ceases to use any such  
360 premises for such purpose, reports as to such changes shall be made within three business days  
361 of the date the change is made.

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

364 Records and statements required of vendors and purchasers

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

369 (b) All statements and records required by this section shall be preserved for a period of  
370 three years, and every cigar distributor, wholesaler, vending machine operator, and unclassified  
371 acquirer, shall maintain such statements and records at the cigar distributor's, wholesaler's,  
372 vending machine operator's or unclassified acquirer's place of business identified in the license  
373 for a period of one year from the date of manufacture, purchase, acquisition or sale, whichever is  
374 later.

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

381 (d) Every manufacturer, every cigar distributor and every wholesaler shall deliver with  
382 each sale or consignment of tobacco products a written statement, and retain a duplicate,  
383 containing: (i) the name or trade name and address of both the seller and the purchaser; (ii) the  
384 date of delivery; (iii) the quantity of tobacco products; and (iv) the trade name or brand thereof,  
385 correctly itemizing the prices paid for each brand of tobacco products purchased.

386 (e) Every vending machine operator shall keep a detailed record of each vending machine  
387 owned for the sale of tobacco products showing: (i) the location of the machine; (ii) the date of  
388 placing the machine at the location; (iii) the quantity of each brand of tobacco products placed in  
389 the machine; (iv) the date when placed therein; and (v) the amount of the commission paid or  
390 earned on sales through such vending machine. He shall, whenever he fills or refills the vending  
391 machine, deliver to the owner or tenant occupying the premises where the machine is located a  
392 written statement containing his own name and address, the name and address of the owner or  
393 the tenant, the date when the machine was filled and the quantity of each brand of tobacco  
394 products sold from the machine since the date when tobacco products were last previously placed  
395 in the machine.

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

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

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

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

414 (j) The commissioner is hereby authorized to examine all statements and other records  
415 required by this section, as well as the stock of cigarettes or tobacco products, and the equipment  
416 pertaining to the stamping of cigarettes, of any manufacturer, wholesaler, cigar distributor,  
417 vending machine operator and unclassified acquirer, as applicable. The commissioner or his

418 authorized agent shall conduct such examinations regularly, during normal business hours of the  
419 manufacturer, cigar distributor, wholesaler, vending machine operator, or unclassified acquirer.  
420 Such records shall be in such form as the commissioner shall prescribe and shall, along with the  
421 stock of cigarettes or tobacco products and the equipment pertaining to the stamping of  
422 cigarettes, be offered for inspection upon oral or written demand by the commissioner or his  
423 authorized agent.

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

432 SECTION 20. Section 5A of said chapter 64C, as appearing in the 2014 Official Edition,  
433 is hereby amended by striking out subsection (1) and inserting in place thereof the following:-

434 (1) Residents of the commonwealth shall be liable for any excise due under this chapter  
435 with regard to any tobacco products that they purchase upon which such excise has not otherwise  
436 been paid to the commonwealth. The department shall aggressively seek to collect all excises  
437 imposed by this chapter from residents of the commonwealth who purchase tobacco products in  
438 interstate commerce. The department shall, pursuant to 15 U.S.C. section 376, seek statements  
439 from persons selling cigarettes and smokeless tobacco, as those terms are defined in 15 U.S.C.

440 375, in interstate commerce to residents of the commonwealth and obtain the monthly invoices  
441 covering all such shipments into the commonwealth, as required by said section 376. Those  
442 invoices shall, as authorized by said section 376, include the name and address of the person to  
443 whom the shipment was made, the brand, the quantity thereof, and the amount paid. Upon  
444 receipt of that information, the department shall make all reasonable efforts to collect all excises  
445 due under this chapter.

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

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

451 Payment of excise on cigarettes and smokeless tobacco

452 Section 6. (a) An excise shall be imposed on all cigarettes held for sale or consumption in  
453 the commonwealth at the rate of 17.55 cents for each cigarette, provided that this excise shall not  
454 be due on any cigarettes that (i) are exported from the commonwealth, or (ii) are not subject to  
455 taxation by the commonwealth pursuant to any law of the United States. Stampers shall pay the  
456 excise in accordance with the provisions of section 29. Persons, other than stampers, who are  
457 authorized by the commissioner to possess unstamped cigarettes, shall pay the excise to the  
458 commissioner at the time required for filing a return under paragraph (c) of section 16 of chapter  
459 64C. The excise shall be due from persons not authorized to possess unstamped cigarettes  
460 immediately upon such person’s importation of unstamped cigarettes into the commonwealth or

461 upon such person's purchase, receipt, or acquisition of unstamped cigarettes in the  
462 commonwealth, whichever is earliest.

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

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

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

481 (c) The failure by a retailer to produce or exhibit to the commissioner or his authorized  
482 representative, upon demand, an invoice from a licensed wholesaler or licensed unclassified

483 acquirer authorized under the terms of his license to sell smokeless tobacco for any smokeless  
484 tobacco in his possession shall be prima facie evidence that the excise on such smokeless  
485 tobacco has not been paid and that such retailer is liable for the payment of the excise on such  
486 smokeless tobacco.

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

490 (e) The commissioner may, in his discretion, require reports from any common carrier  
491 who transports tobacco products to any point or points within the commonwealth and from any  
492 other person who, under contract, so transports tobacco products, and from any bonded  
493 warehouseman or bailee who has in his possession any tobacco products, such reports to contain  
494 such information concerning shipments of tobacco products as the commissioner shall determine.  
495 All such carriers, bailees, warehousemen and other persons shall permit the examination by the  
496 commissioner or his duly authorized agent of any records relating to the shipment of tobacco  
497 products into or from, or the receipt thereof within, the commonwealth.

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

501 SECTION 23. Section 7A of said chapter 64C, as so appearing, is repealed.

502 SECTION 24. Said chapter 64C is hereby amended by striking out section 7B, as so  
503 appearing, and inserting in place thereof the following section:-

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

510 (b) Every cigar retailer shall be liable for the payment of the excise on all cigars or  
511 smoking tobacco in his possession at any time, upon which the excise has not been paid by a  
512 cigar distributor, and the failure of any cigar retailer to produce or exhibit to the commissioner or  
513 his authorized representative, upon demand, an invoice by a cigar distributor for any cigars or  
514 smoking tobacco in his possession, shall be prima facie evidence that the excise thereon has not  
515 been paid and that such cigar retailer is liable for the payment of the excise thereon.

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

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

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

529 (e) A person outside the commonwealth who ships or transports cigars or smoking  
530 tobacco to cigar retailers in the commonwealth, to be sold by those cigar retailers, may apply for  
531 a license as a nonresident cigar distributor and, if the commissioner issues such a license to him,  
532 he shall thereafter be subject to all the provisions of this section and be entitled to act as a cigar  
533 distributor, provided he files proof with his application that he has appointed the state secretary  
534 as his agent for service of process relating to any matter or issue arising under this section. Such  
535 a nonresident person shall also agree to submit his books, accounts and records for examination  
536 in the commonwealth during reasonable business hours by the commissioner or his authorized  
537 representative.

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

545 SECTION 25. Section 7C of said chapter 64C, as so appearing, is repealed.

546 SECTION 26. Section 8 of said chapter 64C, as so appearing, is repealed.

547 SECTION 27. Said chapter 64C is hereby amended by striking out section 10, as so  
548 appearing, and inserting in place thereof the following section:-

549 Penalties for particular offenses

550 Section 10. (a) Any person who shall sell, offer for sale or possess with intent to sell any  
551 tobacco products, or otherwise act as a manufacturer, wholesaler, unclassified acquirer or  
552 retailer, without being licensed so to do, shall, in addition to any other penalty provided by this  
553 chapter, be punished by a fine of not more than fifty thousand dollars or by imprisonment in a  
554 house of correction for not more than two and one-half years or in state prison for not more than  
555 five years, or both such fine and imprisonment.

556 (b) Except as previously authorized in writing by the commissioner, (1) Any retailer who  
557 shall knowingly purchase cigarettes for resale from any person other than a duly appointed  
558 stamper, and any retailer, who shall knowingly purchase other tobacco products for resale from  
559 any person other than a licensed wholesaler or licensed unclassified acquirer; or (2) any person  
560 who shall knowingly purchase or possess any cigarettes or other tobacco products not  
561 manufactured, purchased or imported by a licensed manufacturer, licensed wholesaler, licensed  
562 vending machine operator or licensed unclassified acquirer, shall be punished by a fine of not  
563 more than fifty thousand dollars or by imprisonment in a house of correction for not more than  
564 two and one-half years or in state prison for not more than five years, or both such fine and  
565 imprisonment; provided that a licensed cigar retailer who is also licensed as a cigar distributor  
566 shall be authorized to purchase cigars and smoking tobacco from an out-of-state wholesaler or  
567 manufacturer not licensed in the Commonwealth, and shall be required to file a return and pay  
568 the cigar excise as specified in section 7B of this chapter and in section 16 of chapter 62C. All

569 retailers shall be under an affirmative duty to verify the licensed or appointed status of any  
570 person from which they purchase tobacco products, and the absence of such person's name from  
571 the lists of licensees and stampers maintained on the department's website, as required by section  
572 6 of chapter 14, shall be prima facie evidence of a knowing violation of this paragraph.

573 (c) Payment for all tobacco products, purchased for resale, shall only be made in the form  
574 of a check from the purchaser's operating account made payable to the seller of the tobacco  
575 products, an electronic funds transfer from the purchaser's operating account directed to an  
576 account in the name of the seller of the tobacco products, a debit card linked to the purchaser's  
577 operating account, or the purchaser's business or corporate credit card; payments in cash for  
578 tobacco products purchased for resale are prohibited. Any person who willfully violates the  
579 provisions of this paragraph shall be punished by a fine of not more than fifty thousand dollars or  
580 by imprisonment in a house of correction for not more than two and one-half years or in state  
581 prison for not more than five years, or both such fine and imprisonment.

582 (d) Any person who shall knowingly have in his possession one or more shipping cases  
583 or other containers of tobacco products, containing tobacco products and not bearing the name  
584 and address of the person receiving the tobacco products from a manufacturer or such other  
585 markings as the commissioner may prescribe, and any person knowingly being in possession  
586 within the commonwealth of one or more such shipping cases or other containers of tobacco  
587 products from which such name and address has been erased or defaced, shall be punished by a  
588 fine of not more than five hundred dollars per such shipping case or other container or by  
589 imprisonment in a house of correction for not more than two and one-half years, or both such  
590 fine and imprisonment.

591 (e) Any person who, either as principal or agent, shall sell or solicit orders for, or  
592 otherwise cause, cigarettes to be shipped, mailed or otherwise sent or brought into the  
593 commonwealth to any person not a licensed manufacturer, licensed wholesaler, licensed vending  
594 machine operator, or licensed unclassified acquirer, unless the same is to be sold to or through a  
595 licensed wholesaler, shall be punished by a fine of not more than fifty thousand dollars or by  
596 imprisonment in a house of correction for not more than two and one-half years or in state prison  
597 for not more than five years, or both such fine and imprisonment.

598 (f) No person shall have in his possession a machine for vending cigarettes for a period in  
599 excess of seventy-two hours unless there shall be attached to the same a decal as provided by  
600 section two; provided, that this provision shall not apply to any such machine while not  
601 containing cigarettes and in the possession of a manufacturer of, or dealer in, such machines or a  
602 licensed vending machine operator. If any person has in his possession a vending machine,  
603 containing cigarettes, not properly licensed, the commissioner may cause such vending machine  
604 to be sealed until properly licensed and such person shall be subject to the same penalty as a  
605 retailer selling cigarettes without being licensed so to do, as set forth in paragraph (a) above.

606 (g) Any person who shall sell cigarettes through a vending machine which machine is not  
607 so constructed as to permit the commissioner or his agents readily to determine whether the  
608 packages of cigarettes being sold through said machine have affixed to them the proper stamps  
609 evidencing payment of the excise imposed by this chapter shall be punished by a fine of not  
610 more than ten thousand dollars.

611 (h) Any person who violates any provision of this chapter for which no other penalty has  
612 been provided, shall be punished by a fine of not more than ten thousand dollars or by  
613 imprisonment in a house of correction for not more than two and one-half years, or both.

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

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

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

621 SECTION 28. Said chapter 64C is hereby amended by striking out section 11, as so  
622 appearing, and inserting in place thereof the following section:-

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

624 Section 11. (a) Each retailer and cigar retailer shall keep within the commonwealth  
625 complete and accurate records of all cigarettes purchased or otherwise acquired. Such records  
626 shall consist of written statements to be delivered by each wholesaler and cigar distributor as  
627 provided by section five. Every owner of, or tenant occupying, premises where a vending  
628 machine is located shall keep a record of all cigarettes sold through the vending machine so  
629 located on his premises and the amount of commission paid by the person operating the cigarette  
630 vending machine. Such records shall consist of written statements to be given by each person  
631 operating vending machines for the sale of cigarettes as provided by section five.

632 (b) All above-referenced records shall be safely preserved for a period of three years in  
633 such a manner as to insure permanency and accessibility for inspection by the commissioner or  
634 his authorized representative, and shall be maintained for one year from the date of purchase or  
635 acquisition on the retailer's, cigar retailer's, owner's, or tenant's premises, as identified in the  
636 license.

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

641 (d) The commissioner and his authorized representatives may examine the books, papers  
642 and records and the stock of cigarettes and tobacco products of any retailer or cigar retailer in the  
643 commonwealth, for the purpose of determining whether the excise imposed by this chapter has  
644 been fully paid, and may, at any time during the retailer's or cigar retailer's normal business  
645 hours, investigate, examine and search any premises or vehicle where cigarettes or tobacco  
646 products are possessed, stored or sold for the purpose of determining whether the provisions of  
647 this chapter are being obeyed. The commissioner and his authorized representatives shall  
648 conduct such investigations, examinations and searches regularly.

649 (e) Each person in possession, control or occupancy of any premises where cigarettes or  
650 tobacco products are placed, stored, sold or offered for sale is hereby directed and required to  
651 give to the commissioner or his authorized representatives, the means, facilities and opportunity  
652 for such examinations as are herein provided for and required. In addition to other remedies  
653 provided by law, the commissioner may assess a civil penalty of not more than \$5,000 for the

654 first offense or not more than \$25,000 for each subsequent offense against any person who  
655 hinders, obstructs or prevents the commissioner or his authorized representative from making the  
656 examinations authorized by this section, or who otherwise violates any provision of this section.

657 SECTION 29. Section 13 of said chapter 64C, as so appearing, is hereby amended by  
658 striking out, in lines 78-79, of paragraph (g) the words:- , transportation company

659 SECTION 30. Said section 13 of said chapter 64C, as so appearing, is hereby further  
660 amended by striking out, in lines 5, 19, 26, 46, 61 and 86, the word “cash” and inserting in its  
661 place the words:- prompt payment

662 SECTION 31. Said chapter 64C is hereby amended by striking out section 28, as so  
663 appearing, and inserting in place thereof the following section:-

664 Disposition of sums received

665 Section 28. The total sums received pursuant to the excise imposed on cigarettes by this  
666 chapter, together with any penalties, forfeitures other than forfeitures pursuant to section 38B,  
667 interest, costs of suits and fines collected in connection therewith, less all amounts refunded or  
668 abated in connection therewith, shall be credited as follows: 22.16 percent of such total sum shall  
669 be credited to the Commonwealth Care Trust Fund, established in section 2000 of chapter 29,  
670 and the balance shall be credited to the General Fund. The total sums received pursuant to the  
671 excise imposed on cigars, smoking tobacco, and smokeless tobacco, together with any penalties,  
672 forfeitures other than forfeitures pursuant to section 38B, interest, costs of suits and fines  
673 collected in connection therewith, less all amounts refunded or abated in connection therewith,  
674 shall be credited to the General Fund.

675 SECTION 32. Said chapter 64C is hereby amended by striking out section 29, as so  
676 appearing, and inserting in place thereof the following section:-

677 Payment of tax through use of stamps

678 Section 29. Except as otherwise authorized in writing by the commissioner, the excise  
679 imposed by this chapter on cigarettes shall be paid to the commissioner through the use of  
680 stamps evidencing the payment of said excise, which stamps shall be of such design and in such  
681 denominations as the commissioner may prescribe. Except as otherwise provided, all stampers  
682 shall be liable for the payment of the excise imposed by this chapter on cigarettes and shall pay  
683 said excise to the commissioner by purchasing such stamps in accordance with such regulations  
684 as the commissioner may prescribe.

685 SECTION 33. Section 30 of said chapter 64C, as so appearing, is hereby amended by  
686 inserting after the last paragraph the following paragraph:-

687 No stamper shall use or operate stamping equipment in any manner that violates  
688 instructions prescribed in writing by the commissioner. In addition to other remedies provided by  
689 law, the commissioner may assess against any stamper who willfully uses or operates stamping  
690 equipment in any manner that violates such written instructions a civil penalty of not more than  
691 \$5,000 for a first offense or not more than \$25,000 for each subsequent offense.

692 SECTION 34. Said chapter 64C is hereby amended by striking out section 33, as so  
693 appearing, and inserting in place thereof the following section:-

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

696 Section 33. Licensees and stampers shall not sell, borrow, loan or exchange unstamped  
697 cigarettes or stamps to, from or with other such licensees or stampers unless previously  
698 authorized in writing by the commissioner, and licensees and stampers proposing to engage in  
699 such a transaction involving the sale, borrowing, loan or exchange of unstamped cigarettes shall  
700 submit a written request for the commissioner's authorization not less than thirty days before the  
701 date of the proposed transaction. Licensees, unless they are also appointed as stampers, shall not  
702 accept deliveries of unstamped or improperly stamped packages of cigarettes except as  
703 previously authorized in writing by the commissioner. Every licensed retailer and licensed  
704 vending machine operator shall immediately examine all packages of cigarettes received by them  
705 and shall immediately return to their supplier any and all packages of cigarettes that are  
706 unstamped or improperly stamped. Such supplier shall replace them with packages of cigarettes  
707 upon which stamps have been properly affixed. In addition to other remedies provided by law,  
708 the commissioner may assess a civil penalty of not more than \$5,000 for a first violation of this  
709 section or not more than \$25,000 for each subsequent violation.

710 SECTION 35. Said chapter 64C is hereby amended by striking out section 34, as so  
711 appearing, and inserting in place thereof the following section:-

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

713 Section 34. Whoever, not being a person specifically authorized in writing by the  
714 commissioner to do so, knowingly holds for sale, offers for sale, sells, possesses with intent to  
715 sell, or otherwise disposes of unstamped cigarettes within the commonwealth, shall be punished  
716 as follows: (1) a violation involving four hundred or fewer cigarettes shall be punished by a fine  
717 of not more than two thousand five hundred dollars or by imprisonment in a house of correction

718 for not more than one year, or both such fine and imprisonment; (2) a violation involving more  
719 than four hundred but fewer than thirty thousand cigarettes shall be punished by a fine of not  
720 more than fifty thousand dollars or by imprisonment in a house of correction for not more than  
721 two and one-half years or in state prison for not more than five years, or both such fine and  
722 imprisonment; (3) a violation involving thirty thousand or more cigarettes shall be punished by a  
723 fine of not more than one hundred thousand dollars or by imprisonment in a house of correction  
724 for not more than two and one-half years or in state prison for not more than ten years, or both  
725 such fine and imprisonment.

726           The absence of such stamp on any package containing said cigarettes which is held for  
727 sale, possessed with intent to sell, offered for sale, sold or otherwise disposed of within the  
728 commonwealth shall be prima facie evidence that said excise has not been paid thereon. If such a  
729 stamp on a package of cigarettes is stained or smudged and its characteristics are so blurred,  
730 obscured or indistinct that it cannot be distinguished as a Massachusetts excise stamp, it shall be  
731 prima facie evidence that the said excise has not been paid with respect to said package of  
732 cigarettes. If any unstamped cigarettes are found within the commonwealth in the place of  
733 business of any licensee, other than a stamper or such other licensee as the commissioner may  
734 authorize in writing, it shall be prima facie evidence that such licensee in whose place of  
735 business said cigarettes were found possessed said unstamped cigarettes with the intent to sell the  
736 same.

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

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

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

747 SECTION 36. Said chapter 64C is hereby amended by striking out section 35, as so  
748 appearing, and inserting in place thereof the following section:-

749 Possession or transportation of unstamped cigarettes; penalty; arrest, search and seizure;  
750 forfeitures

751 Section 35. Whoever, not being a stamper or such other person as the commissioner may  
752 authorize in writing to possess or deliver or transport unstamped cigarettes, and not being a  
753 common carrier engaged in interstate commerce or a person in actual possession of invoices or  
754 delivery tickets meeting the requirements of section thirty-six, knowingly possesses or delivers  
755 or transports unstamped cigarettes in the commonwealth shall be punished as follows: (1) a  
756 violation involving four hundred or fewer cigarettes shall be punished by a fine of not more than  
757 two thousand five hundred dollars or by imprisonment in a house of correction for not more than  
758 one year, or both such fine and imprisonment; (2) a violation involving more than four hundred  
759 but fewer than thirty thousand cigarettes shall be punished by a fine of not more than fifty  
760 thousand dollars or by imprisonment in a house of correction for not more than two and one-half  
761 years or in state prison for not more than five years, or both such fine and imprisonment; (3) a

762 violation involving thirty thousand or more cigarettes shall be punished by a fine of not more  
763 than one hundred thousand dollars or by imprisonment in a house of correction for not more than  
764 two and one-half years or in state prison for not more than ten years, or both such fine and  
765 imprisonment.

766 A police officer, including a special police officer appointed under section twenty-six,  
767 may without a warrant arrest any person whom he finds in the act of illegally possessing,  
768 delivering or transporting unstamped cigarettes, and seize the said cigarettes, the vending  
769 machines, receptacles, boxes or cartons in which the same are contained, hereinafter called the  
770 container or containers, in the possession of such person, any vehicle used in the illegal  
771 transportation of cigarettes and any records relating to the purchase and sale of cigarettes.

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

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

776 SECTION 37. Said chapter 64C is hereby amended by striking out section 36, as so  
777 appearing, and inserting in place thereof the following section:-

778 Possession or transportation of unstamped cigarettes; necessity of invoices or delivery  
779 tickets; prima facie evidence

780 Section 36. Whoever, not being a stamper, a common carrier transporting cigarettes  
781 under a proper bill of lading or freight bill which states the quantity, source and designation or  
782 destination of such cigarettes, or such other person as the commissioner may authorize in writing

783 to do so, possesses, delivers or transports any unstamped cigarettes, shall have in his actual  
784 possession invoices or delivery tickets for such cigarettes showing: (1) the true name and address  
785 of the consignor or seller; (2) the true name and address of the consignee or purchaser, which  
786 consignee or purchaser is: (i) a stamper or other person authorized by the commissioner in  
787 writing to possess unstamped cigarettes; or (ii) person in another jurisdiction licensed or  
788 authorized by such other jurisdiction to possess unstamped cigarettes, or, in the case of cigarettes  
789 bearing the stamp of another jurisdiction, a person licensed by such other jurisdiction to sell  
790 cigarettes; (3) the quantity and brands of the cigarettes possessed or transported; and (4) the  
791 name and address of the person who has assumed or shall assume the payment of the excise  
792 provided by this chapter at the ultimate point of destination.

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

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

802 SECTION 38. Said chapter 64C is hereby amended by striking out section 37, as so  
803 appearing, and inserting in place thereof the following section:-

804           Forgery, alteration, etc., of excise stamps; unauthorized use of stamping machine;  
805 penalties; forfeitures

806           Section 37. (a) Whoever: (1) falsely or fraudulently makes, forges, alters or counterfeits,  
807 or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited, any  
808 cigarette excise stamps prepared or prescribed by the commissioner under the authority of this  
809 chapter; or (2) knowingly and wilfully utters, publishes, passes or tenders as true, any such false,  
810 altered, forged or counterfeited stamp or makes a false affixation of or uses any stamp provided  
811 for by this chapter which has already once been used, for the purpose of evading the excise  
812 imposed by this chapter; or (3) wilfully removes or alters or knowingly permits to be removed or  
813 altered the cancelling or defacing mark of any stamp provided for by this chapter with intent to  
814 use such stamp; or (4) knowingly or wilfully buys, prepares for use, uses, has in possession, or  
815 suffers or permits to be used, any machine or device for affixing stamps without authority, or any  
816 washed, restored or counterfeit stamps; or (5) intentionally removes or causes to be removed, or  
817 knowingly permits to be removed, any stamp affixed pursuant to this chapter; or (6) tampers with  
818 or causes to be tampered with any machine or device for affixing stamps authorized to be used  
819 under the provisions of this chapter shall be punished by a fine of not more than fifty thousand  
820 dollars or by imprisonment in a house of correction for not more than two and one-half years or  
821 in state prison for not more than five years, or both such fine and imprisonment.

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

827 SECTION 39. Said chapter 64C is hereby amended by inserting after section 37, as so  
828 appearing, the following new sections:-

829 Selling, etc. untaxed other tobacco products; evasion

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

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

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

845 shall be punished as follows: (a) a violation involving four hundred or fewer units of  
846 other tobacco products in any combination shall be punished by a fine of not more than two  
847 thousand five hundred dollars or by imprisonment in a house of correction for not more than one  
848 year, or both such fine and imprisonment; (b) a violation involving more than four hundred but

849 fewer than thirty thousand units of other tobacco products in any combination shall be punished  
850 by a fine of not more than fifty thousand dollars or by imprisonment in a house of correction for  
851 not more than two and one-half years or in state prison for not more than five years, or both such  
852 fine and imprisonment; (c) a violation involving thirty thousand or more units of other tobacco  
853 products in any combination shall be punished by a fine of not more than one hundred thousand  
854 dollars or by imprisonment in a house of correction for not more than two and one-half years or  
855 in state prison for not more than ten years, or both such fine and imprisonment.

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

859 Transportation of untaxed other tobacco products; necessity of invoices or delivery  
860 tickets; prima facie evidence

861 Section 37B. Whoever, not being a licensed wholesaler or licensed cigar distributor or  
862 licensed unclassified acquirer authorized by the terms of his license to possess such other  
863 tobacco products, or a person otherwise authorized in writing by the commissioner to sell or  
864 distribute such other tobacco products or a common carrier transporting other tobacco products  
865 under a proper bill of lading or freight bill which states the quantity, source and designation or  
866 destination of such other tobacco products, possesses for delivery or transport, or delivers or  
867 transports any untaxed other tobacco products, shall have in his actual possession invoices or  
868 delivery tickets for such other tobacco products showing: (1) the true name and address of the  
869 consignor or seller; (2) the true name and address of the consignee or purchaser, which consignee  
870 or purchaser is: (a) a licensed wholesaler, licensed cigar distributor, or licensed unclassified

871 acquirer authorized by the terms of his license to possess such other tobacco products; or (b)  
872 a person in another jurisdiction licensed or authorized by such other jurisdiction to  
873 possess untaxed other tobacco products; (3) the quantity and brands of the other tobacco products  
874 possessed or transported; and (4) the name and address of the person who has assumed or shall  
875 assume the payment of the excise provided by this chapter at the ultimate point of destination.

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

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

883 SECTION 40. Section 38 of said chapter 64C, as so appearing, is hereby amended by  
884 striking out, in line 1, the words “not being an authorized agent” and inserting in place thereof  
885 the words:- not being the commissioner or an authorized agent of the commissioner

886 SECTION 41. Said section 38 of said chapter 64C, as so amended, is hereby further  
887 amended by striking out, in lines 4-5, the words “a fine of not more than two thousand dollars or  
888 by imprisonment for five years, or both” and inserting in place thereof the words:- a fine of not  
889 more than fifty thousand dollars or by imprisonment in a house of correction for not more than  
890 two and one-half years or in state prison for not more than five years, or both such fine and  
891 imprisonment

892 SECTION 42. Said chapter 64C is hereby amended by striking out section 38A, as so  
893 appearing, and inserting in place thereof the following section:-

894 Seizure, forfeiture and sale of unstamped cigarettes and smokeless tobacco on which tax  
895 has not been paid

896 Section 38A. Whenever the commissioner discovers: (a) any unstamped cigarettes  
897 subject to tax under this chapter which are found in the possession of any person other than a  
898 stamper, a common carrier transporting such cigarettes under a proper bill of lading or freight  
899 bill which states the quantity, source and designation or destination of such cigarettes, or other  
900 person transporting unstamped cigarettes in actual possession of the documents required by  
901 section 36, or a person authorized in writing by the commissioner to possess such unstamped  
902 cigarettes; or (b) any unstamped cigarettes or other tobacco products that are being stored or  
903 appear to be stored at a location that has not been reported by any licensee, as required by section  
904 2, as premises at which tobacco products are currently held, placed, or stored; or (c) any such  
905 unstamped cigarettes or other tobacco products that are otherwise held, purchased, possessed,  
906 imported or acquired in violation of paragraphs (a), (b), (c), (d), (f), or (g) of section 10 or of  
907 sections 34, 35, 37, or 37A; or (d) more than ten thousand units of other tobacco products in the  
908 possession of a licensed wholesaler or licensed cigar distributor under circumstances that provide  
909 reason to believe that such licensee possesses such other tobacco products with the intent to  
910 evade any of the excises imposed by this chapter on such other tobacco products or payment  
911 thereof; provided that such circumstances shall include but not be limited to such licensee's  
912 history in two or more recent periods of failure to file returns and pay excise relative to other  
913 tobacco products of the type such licensee is found to be in possession of or of reporting sales  
914 and paying excise on sales of other tobacco products corresponding to quantities substantially

915 below the quantities such licensee is found to be in possession of or is known to have purchased  
916 or otherwise acquired during those periods; or (e) any falsely made, fraudulently made, forged,  
917 altered or counterfeited cigarette excise stamps and any cigarette excise stamps otherwise not  
918 prescribed or authorized by the commissioner; or (f) any un-affixed genuine cigarette excise  
919 stamps found in the possession of anyone not being a stamper or a person otherwise authorized  
920 by the commissioner to possess such stamps; or (g) any machines or devices for affixing stamps  
921 not prescribed or authorized by the commissioner; he may seize and take possession of such  
922 unstamped cigarettes, other tobacco products, stamps, and machines or devices, together with  
923 any vending machine or other receptacle in which the unstamped cigarettes or other tobacco  
924 products are contained, and forfeiture proceedings shall be pursued in accordance with the  
925 provisions of section 38B.

926 SECTION 43. Said chapter 64C is hereby amended by inserting after section 38A, as so  
927 appearing, the following new section:-

928 Forfeiture of property

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

931 (1) Any unstamped cigarettes subject to tax under this chapter which are found in the  
932 possession of any person other than a stamper, a common carrier transporting such unstamped  
933 cigarettes under a proper bill of lading or freight bill which states the quantity, source and  
934 designation or destination of such cigarettes or other person transporting such unstamped  
935 cigarettes in actual possession of the documents required by section 36, or a person authorized in  
936 writing by the commissioner to possess such unstamped cigarettes; any such unstamped

937 cigarettes and other tobacco products which are otherwise held, purchased, possessed, imported  
938 or acquired in violation of paragraphs (a), (b), (c), (d), (f), or (g) of section 10 or of sections 34,  
939 35, 37, or 37A; any falsely made, fraudulently made, forged, altered or counterfeited cigarette  
940 excise stamps and any cigarette excise stamps otherwise not prescribed or authorized by the  
941 commissioner; any un-affixed genuine cigarette excise stamps found in the possession of anyone  
942 not being a stamper or a person otherwise authorized by the commissioner to possess such  
943 stamps.

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

946 (3) All conveyances, including aircraft, vehicles or vessels used, or intended for use, to  
947 transport, conceal, or otherwise facilitate the manufacture, purchase, sale possession with intent  
948 to manufacture or sell tobacco products in violation of any provision of section 10, 34, 35, 37,  
949 37A, or 38.

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

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

959 (6) All real property, including any right, title, and interest in the whole of any lot or tract  
960 of land and any appurtenances or improvements thereto, which is used in any manner or part, to  
961 commit or to facilitate the commission of a violation of any provision of section 10, 34, 35, 37,  
962 37A, or 38.

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

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

967 (b) Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), and (7) of  
968 subsection (a) shall, upon motion of the attorney general or district attorney or the commissioner,  
969 be declared forfeit by any court having jurisdiction over said property or having final jurisdiction  
970 over any related criminal proceeding brought under any provision of this chapter. Property  
971 subject to forfeiture under subparagraph (1) of subsection (a) shall be turned over to the  
972 commissioner and destroyed, regardless of the final disposition of such related criminal  
973 proceeding, if any, unless the court for good cause shown orders otherwise.

974 (c) The court shall order forfeiture of all conveyances subject to the provisions of  
975 subparagraph (3) and of all real property subject to the provisions of subparagraph (6) of  
976 subsection (a) of this section, except as follows:

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

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

984 (3) No conveyance or real property shall be subject to forfeiture unless the owner thereof  
985 knew or should have known that such conveyance or real property was used in and for the  
986 business of unlawfully manufacturing or selling of tobacco products. Proof that the conveyance  
987 or real property was used to facilitate the unlawful manufacturing, or sale of, or possession with  
988 intent unlawfully to manufacture or sell, tobacco products on three or more different dates shall  
989 be prima facie evidence that the conveyance or real property was used in and for the business of  
990 unlawfully manufacturing or selling tobacco products.

991 (4) No conveyance or real property used to facilitate the unlawful manufacturing, or sale  
992 of, or possession with intent unlawfully to manufacture or sell, tobacco products, shall be  
993 forfeited if the number of units of tobacco products, as defined in section 1, so manufactured,  
994 sold or possessed with intent to manufacture or sell, is less than ten thousand units in the  
995 aggregate.

996 (d) A district attorney or the attorney general or the commissioner may petition the  
997 superior court in the name of the commonwealth in the nature of a proceeding in rem to order  
998 forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture  
999 under the provisions of subparagraphs (3), (5), and (6) of subsection (a). Such petition shall be  
1000 filed in the court having jurisdiction over said conveyance, real property, monies or other things  
1001 of value or having final jurisdiction over any related criminal proceeding brought under any

1002 provision of this chapter. In all such suits where the property is claimed by any person, other  
1003 than the commonwealth, the commonwealth shall have the burden of proving to the court the  
1004 existence of probable cause to institute the action, and any such claimant shall then have the  
1005 burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5), or (6) of  
1006 said subsection (a). The owner of said conveyance or real property, or other person claiming  
1007 thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (g).  
1008 The court shall order the commonwealth to give notice by certified or registered mail to the  
1009 owner of said conveyance, real property, moneys or other things of value and to such other  
1010 persons as appear to have an interest therein, and the court shall promptly, but not less than two  
1011 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said  
1012 conveyance, real property, moneys or other things of value, the court may continue the hearing  
1013 on the petition pending the outcome of any criminal trial related to the violation of this chapter.  
1014 At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon  
1015 issue a final order, from which the parties shall have a right of appeal. In all such suits where a  
1016 final order results in a forfeiture, said final order shall provide for disposition of said  
1017 conveyance, real property, moneys or any other thing of value by the commonwealth or any  
1018 subdivision thereof in any manner not prohibited by law, including official use by an authorized  
1019 law enforcement or other public agency, or sale at public auction or by competitive bidding. The  
1020 proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture  
1021 proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance  
1022 thereof shall be distributed as further provided in this section.

1023           The final order of the court shall provide that said moneys and the proceeds of any such  
1024 sale shall be deposited to the Illegal Tobacco Task Force Trust Fund. This shall be a separate

1025 fund, established on the books of the Commonwealth within the office of the state treasurer, to  
1026 be administered by the co-chairs of the illegal tobacco task force established under section 40.  
1027 All such moneys and proceeds received shall be deposited into said trust fund and shall then be  
1028 expended without further appropriation to defray the costs of protracted investigations, to  
1029 provide additional technical equipment or expertise, to provide matching funds to obtain federal  
1030 grants, or such other law enforcement purposes as the colonel of the state police and  
1031 commissioner of revenue deems appropriate, which shall include but not be limited to equitable  
1032 distributions to the prosecuting district attorney or attorney general and any police department  
1033 involved in the seizure. Any such distributions made shall be deposited in the special law  
1034 enforcement trust funds provided for in subsection (d) of section 47 of chapter 94C, and  
1035 expended as provided in said subsection.

1036 (e) Any officer, department, or agency having custody of any property subject to  
1037 forfeiture under this chapter or having disposed of said property shall keep and maintain full and  
1038 complete records showing from whom it received said property, under what authority it held or  
1039 received or disposed of said property, to whom it delivered said property, the date and manner of  
1040 destruction or disposition of said property, and the exact kinds, quantities and forms of said  
1041 property. Said records shall be open to inspection by all federal and state officers charged with  
1042 enforcement of federal and state tobacco laws. Persons making final disposition or destruction of  
1043 said property under court order shall report, under oath, to the court the exact circumstances of  
1044 said disposition or destruction.

1045 (f)(1) During the pendency of the proceedings the court may issue at the request of the  
1046 commonwealth ex parte any preliminary order or process as is necessary to seize or secure the  
1047 property for which forfeiture is sought and to provide for its custody, including but not limited to

1048 an order that the commonwealth remove the property if possible, and safeguard it in a secure  
1049 location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account;  
1050 and, that a substitute custodian be appointed to manage such property or a business enterprise.  
1051 Property taken or detained under this section shall not be repleviable, but once seized shall be  
1052 deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to  
1053 the orders and decrees of the court having jurisdiction thereof. Process for seizure of said  
1054 property shall issue only upon a showing of probable cause, and the application therefor and the  
1055 issuance, execution, and return thereof shall be subject to the provisions of chapter two hundred  
1056 and seventy-six, so far as applicable.

1057 (2) A district attorney or the attorney general or the commissioner may refer any real  
1058 property, and any furnishings, equipment and related personal property located therein, for which  
1059 seizure is sought to the division of capital asset management and maintenance office of seized  
1060 property management, established under section 47 of chapter 94C. The office of seized property  
1061 management shall preserve and manage such property in a reasonable fashion and dispose of  
1062 such property upon a judgment ordering forfeiture issued pursuant to the provisions of  
1063 subsection (d), and may enter into contracts to preserve, manage and dispose of such property.  
1064 The office of seized property management may receive initial funding from the special law  
1065 enforcement trust funds of the attorney general and each district attorney referenced in  
1066 subsection (d) and shall subsequently be funded by a portion of the proceeds of each sale of such  
1067 managed property to the extent provided as payment of reasonable expenses in subsection (d).

1068 (g) The owner of any real property which is the principal domicile of the immediate  
1069 family of the owner and which is subject to forfeiture under this section may file a petition for  
1070 homestead exemption with the court having jurisdiction over such forfeiture. The court may, in

1071 its discretion, allow the petition exempting from forfeiture an amount allowed under section one  
1072 of chapter one hundred and eighty-eight. The value of the balance of said principal domicile, if  
1073 any, shall be forfeited as provided in this section. Such homestead exemption may be acquired  
1074 on only one principal domicile for the benefit of the immediate family of the owner.

1075 (h) A forfeiture proceeding affecting the title to real property or the use and occupation  
1076 thereof or the buildings thereon shall not have any effect except against the parties thereto and  
1077 persons having actual notice thereof, until a memorandum containing the names of the parties to  
1078 such proceeding, the name of the town where the affected real property lies, and a description of  
1079 such real property sufficiently accurate for identification is recorded in the registry of deeds for  
1080 the county or district where the real property lies. At any time after a judgment on the merits, or  
1081 after the discontinuance, dismissal or other final disposition is recorded by the court having  
1082 jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such  
1083 judgment, discontinuance, dismissal or other final disposition, and such certificate shall be  
1084 recorded in the registry in which the original memorandum recorded pursuant to this section was  
1085 filed.

1086 SECTION 44. Section 26 of chapter 218 of the General Laws, as so appearing, is hereby  
1087 amended by inserting, in line 12, after the words “the crimes listed in” the following words:-  
1088 paragraph (2) of section 34 and paragraph (2) of section 35 and paragraph (b) of section 37A of  
1089 chapter 64C, and