

10, §30B - Suspension of license to sell lottery tickets due to suspension or revocation of cigar or tobacco license

[XX] Chapter 10 of the General Laws is hereby amended by striking out section 30B, as inserted by section 29 of chapter 46 of the acts of 2015, and inserting in place thereof the following section:

Section 30B. Upon receiving notice from the commissioner of revenue that a retailer, ~~as defined in section 1 of chapter 64C,~~ or a cigar retailer, as defined in section ~~7B1~~ of ~~said~~ chapter 64C, has had a cigar or tobacco license suspended or revoked for a knowing violation of ~~paragraph (1) subsections (a), (b) or (c) of subsection (1) of said~~ section ~~7B10~~ of said chapter 64C, or ~~section of sections 34 or, 35, 37, 37A, or 38~~ of said chapter 64C, the director of the state lottery shall suspend any license to sell lottery tickets or shares issued to that retailer or cigar retailer pursuant to sections 26 and 27, for up to 60 days.

14, §6 - Commissioner; additional powers and duties

[XX] Section 6 of chapter 14, as appearing in the 2014 Official Edition, is hereby amended by striking out subsection 10 and inserting in place thereof the following subsection:

_10. Shall maintain on the department's website an easily searchable and regularly updated list of all taxpayers licensed under section 67 of chapter 62C as a: manufacturer, wholesaler, vending machine operator, unclassified acquirer, ~~transportation company,~~ retailer ~~as defined in section 1 of chapter 64C,~~ or, cigar distributor or cigar retailer as defined in section ~~7B1~~ 1 of chapter 64C and of said all taxpayers appointed as stampers, as defined in section 1 of chapter 64C. In addition, such list shall include all taxpayers who do not hold such a license or appointment, but who the commissioner has authorized in writing to possess or deliver or transport unstamped cigarettes or untaxed other tobacco products.

62C, §5 - Returns; filing; declaration covering perjury; improper filings

[XX} Section 5 of chapter 62C, as appearing in the 2014 Official Edition, is hereby amended by adding the following language after the last sentence:

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

So that the section as amended shall read:

Section 5. Any return, document or tax payment required or permitted to be filed under this chapter shall be filed with or transmitted to the commissioner in such manner, format and medium as the commissioner shall from time to time prescribe; shall contain such information as the commissioner deems pertinent; and shall contain or be accompanied by a declaration, in such form as prescribed by the commissioner, that such return or document is made under the penalties of perjury. Any return, document or payment submitted in a manner or medium other than that prescribed by the

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

62C, §16 – Filing of returns by taxpayers subject to chapters 64A and 64C, 64E to 64J, 64L to 64M and 138

[XX] Section 16 of chapter 62C, as appearing in the 2014 Official Edition, is hereby amended by striking out the final sentence of subsection (c) and inserting in place thereof the following sentence:

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

[XX] Section 16 of chapter 62C, as so amended, is hereby further amended by striking out paragraph (c 1/2).

So that paragraphs (c) and (c1/2) of section 16 as amended shall read:

...

(c) Every licensee under section two of chapter sixty-four C, other than an unclassified acquirer or a retailer, shall, on or before the twentieth day of each calendar month file with the commissioner a return for each place of business maintained, stating the quantity of tobacco products sold by such licensee in the commonwealth during the preceding calendar month and such return shall contain or be accompanied by such further information as the commissioner shall require; provided, that if a licensee ceases to sell tobacco products within the commonwealth he shall forthwith file with the commissioner such a return for the period ending with such cessation. Each licensed unclassified acquirer shall, ~~upon importation on~~ or ~~acquisition of tobacco products into~~

~~or within~~before the ~~commonwealth~~twentieth day of each calendar month, file with the commissioner a return stating the quantity of tobacco products imported or acquired during the previous calendar month and such other information as the commissioner may deem necessary.

~~(c1/2) Every licensee under section 7B of chapter 64C shall, on or before the twentieth day of each calendar month or on or before the twentieth day of the month following each calendar quarter, as the commissioner shall require, file with the commissioner a return for each place of business maintained, stating the quantity of cigars and smoking tobacco sold by such licensee in the commonwealth during the preceding calendar month or quarter, as the case may be, and such return shall contain or be accompanied by such further information as the commissioner shall require. If a licensee ceases to sell cigars and smoking tobacco within the commonwealth, he shall immediately file with the commissioner a return for the period ending with such cessation.~~

~~...~~ (c1/2) [deleted]

~~...~~

62C, §21 – Disclosure of Tax Information

Paragraph 19 of section 21 of chapter 62C, as appearing in the 2014 Official Edition, is hereby amended by striking out the phrase

“sections 33A, 34 and 35 of chapter 64C”

inserting in place thereof the following phrase:

“sections 10, 33A, 34, 35, 37, 37A, and 38 of chapter 64C”

So that the section as amended shall read:

Section 21. (a) The disclosure by the commissioner, or by any deputy, assistant, clerk or assessor, or other employee of the commonwealth or of any city or town therein, to any person but the taxpayer or his representative, of any information contained in or set forth by any return or document filed with the commissioner, except in proceedings or other activities to determine or collect the tax or for the purpose of criminal prosecution under this chapter, chapters sixty A, sixty-two to sixty-five C, inclusive, section ten of chapter one hundred and twenty-one A and section twenty-one of chapter one hundred and thirty-eight, is prohibited.

(b) Nothing herein shall be construed to prevent

...

(19) the disclosure of such information as is reasonable and appropriate to the implementation and enforcement of sections 10, 33A, 34, 35, 37, 37A, and 3538 of chapter 64C.

...

62C, §67 - Licenses and registration certificates of taxpayers under chapters 64A, 64C, 64E to 64J or 64M

[XX] Chapter 62C of the General Laws is hereby amended by striking out section 67, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

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

(b) In the instance of an application for a license as a manufacturer, wholesaler, vending machine operator, unclassified acquirer, ~~transportation company,~~ retailer, cigar distributor or cigar retailer, as defined in chapter ~~sixty-four C64C,~~ the commissioner shall investigate the prior activities of the applicant. If the commissioner determines that ~~said applicant has been convicted of any violation of the provisions of chapter sixty-four C or any other pertinent violation of law~~(i) said applicant has been convicted of or has admitted to sufficient facts to support a finding of guilt of any violation of this chapter, any violation of the provisions of chapter 64C, any violation of federal law where the conduct underlying the conviction or admission relates to tobacco products, any violation of law involving dishonesty or fraud or moral turpitude, or any other pertinent violation of law within the five-year period preceding the date of the application in the case of a misdemeanor or within the ten-year period preceding the date of the application in the case of a felony, or (ii) the commissioner has assessed against said applicant a civil penalty, which has been finally determined to be due, for the violation of any provision of chapter 64C providing for a civil penalty on three or more occasions during the five-year period preceding the date of the application, or (iii) unstamped cigarettes or untaxed other tobacco products have been seized from the applicant's business premises on three or more occasions during the five-year period preceding the date of the application, or (iv) an aggregate total of 500 packs of unstamped cigarettes or ten thousand units of untaxed tobacco products, as those terms are defined in section 1 of chapter 64C, have been seized from the applicant's business premises during the five-year period preceding the date of the application, or (v) the applicant has during the five-year period preceding the date of the application refused to permit, hindered or obstructed an examination, investigation, or search authorized by section 5 or 11 of chapter 64C, or (vi) the licensee has been fined on ? or

more occasions during a 2-year period for sales of tobacco products to minors. **Note:**
need input from DPH on details of this provision]

he may deny the application; provided, however, that the commissioner shall grant or deny a license to said applicant within ninety days from the date of application; and provided further, that if the commissioner fails to act within such time period, the application shall be deemed denied.

(c) All licenses, other than licenses for retailers and cigar retailers as defined in chapter 64C, shall expire annually on a date prescribed by the commissioner. Licenses for retailers and cigar retailers shall expire every other year on a date prescribed by the commissioner. The commissioner may provide for combined forms of licenses and license applications.

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

(e) Registration certificates shall be issued for each place of business. Licenses for said manufacturers, wholesalers, vending machine operators, unclassified acquirers, retailers, cigar distributors and cigar retailers shall be issued for each place of business. Licenses for users of special fuels shall be issued for each vehicle propelled by special fuels. In addition to the license issued to a motor carrier, licenses shall be issued for

each motor vehicle which the motor carrier desires to operate or cause to be operated upon the highways of the commonwealth which is propelled by fuel or special fuels purchased or acquired outside the commonwealth.

(f) The fee for each registration shall be determined annually by the commissioner of administration under the provision of section ~~three-B3B~~ of chapter ~~seven-7~~.

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

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

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

(j) As a condition precedent to granting a license to a distributor, unclassified importer, or unclassified exporter the commissioner shall require the applicant to furnish a bond pursuant to section ~~sixty-six.66.~~

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

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

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

(3) The applicant fails to pay the prescribed fee or to file such bond as the commissioner requires pursuant to section ~~sixty-six.66;~~

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

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

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

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

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

(8) A shareholder owning more than fifty per cent of the voting stock of the applicant where the applicant is a corporation who owned more than fifty per cent of the voting stock of another corporation at the time any tax payable under this chapter has been finally determined to be due and where such tax has not been paid in full, or at the time such other person was convicted of a crime provided for in this chapter within one year from the date on which such application is filed.

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

62C, §68 - Suspension or revocation of license or registration; appeal; reissuance of registration

-[XX] Section 68 of chapter 62C, as appearing in the 2014 Official Edition and as amended by section 69 of chapter 46 of the acts of 2015, is hereby amended by striking out paragraph(4) and inserting in place thereof the following the following paragraph:

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

[XX] Section 68 of chapter 62C, as so appearing, is hereby further amended by inserting after paragraph (4) the following paragraph:

(4 1/2) In the instance of a licensee licensed as a manufacturer, wholesaler, vending machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer, as defined in chapter 64C, (i) the licensee has been convicted of or has admitted to sufficient facts to support a finding of guilt of any violation of the provisions of chapter 64C, any violation of federal law where the conduct underlying the conviction or admission relates to tobacco products, any violation of law involving dishonesty or fraud or moral turpitude, or any other pertinent violation of law within the five-year period preceding the date of the application in the case of a misdemeanor or within the ten-year period preceding the date of the application in the case of a felony, or (ii) the commissioner has assessed against said licensee a civil penalty, which has been finally determined to be due, for the violation of any provision of chapter 64C providing for a civil penalty on three or more occasions during a five-year period, or (iii) unstamped cigarettes have been seized from the licensee's business premises on three or more

occasions during a five-year period, or (iv) an aggregate total of 500-50 packs of unstamped cigarettes or ~~ten~~one thousand units of untaxed tobacco products, as those terms are defined in section 1 of chapter 64C, have been seized from the licensee's business premises during a five-year period, or (v) the licensee has refused to permit, hindered or obstructed an examination, investigation, or search authorized by section 5 or section 11 of chapter 64C, or (vi) the licensee has been fined on ? or more occasions during a ?-year period for sales of tobacco products to minors. **Note: Need input from DPH on details of this provision]**

[XX] Section 68 of chapter 62C, as so appearing, is hereby further amended by inserting after paragraph (6) the following paragraph:

The commissioner may suspend or revoke the appointment of a stamper, as defined in section 1 of chapter 64C, for any of the reasons set forth in paragraphs (1) through (6) above.

[XX] Section 68 of chapter 62C, as so appearing, is hereby further amended by striking out the final paragraph, as inserted by section 69 of chapter 46 of the acts of 2015, and inserting in place thereof the following paragraph:

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

So that the section as amended shall read:

Section 68. The commissioner may suspend or revoke any license or registration issued pursuant to section sixty-seven for any one of the following reasons:--

(1) The licensee or registrant willfully fails to file any return or report required by this chapter;

(2) The licensee or registrant willfully files, causes to be filed, gives or causes to be given a return, report, certificate or affidavit required under this chapter, or under the provisions of the applicable tax, which is false;

(3) The licensee or registrant willfully fails to collect, truthfully account for or pay over any tax under the provisions of this chapter;

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

(4 1/2) In the instance of a licensee licensed as a manufacturer, wholesaler, vending machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer, as defined in chapter 64C, (i) the licensee has been convicted of or has admitted to sufficient facts to support a finding of guilt of any violation of the provisions of chapter 64C, any violation of federal law where the conduct underlying the conviction or admission relates to tobacco products, any violation of law involving dishonesty or fraud or moral turpitude, or any other pertinent violation of law within the five-year period preceding the date of the application in the case of a misdemeanor or within the ten-year period preceding the date of the application in the case of a felony, or (ii) the commissioner has assessed against said licensee a civil penalty, which has been finally determined to be due, for the violation of any provision of chapter 64C providing for a

civil penalty on three or more occasions during a five-year period, or (iii) unstamped cigarettes have been seized from the licensee's business premises on three or more occasions during a five-year period, or (iv) an aggregate total of 500 packs of unstamped cigarettes or ten thousand units of untaxed tobacco products, as those terms are defined in section 1 of chapter 64C, have been seized from the licensee's business premises during a five-year period, or (v) the licensee has refused to permit, hindered or obstructed an examination, investigation, or search authorized by section 5 or section 11 of chapter 64C, or (vi) the licensee has been fined on ? or more occasions during a ?-year period for sales of tobacco products to minors. **Note: Need input from DPH on details of this provision]**

(5) The licensee or registrant has otherwise willfully failed to comply with any provision of the tax laws of the commonwealth or regulations thereunder; or

(6) The licensee or registrant has ceased to act in the capacity for which the license or registration was issued.

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

Any person aggrieved by such suspension or revocation may appeal therefrom to the appellate tax board within ten days after written notice of the decision has been mailed or delivered to him. The appellant shall at the time of taking an appeal file with said board a surety company bond running to the commonwealth, with a surety company authorized to do business in the commonwealth as surety, in such sum as said board

shall fix, conditioned to prosecute the appeal to effect and to comply with the orders and decrees of said board in the premises. Such appeals shall be preferred cases to be heard, unless cause appears to the contrary, in priority to other cases. During the pendency of any such appeal the decision of the commissioner so appealed from shall, unless otherwise ordered by said board, be inoperative. Said board may grant such relief as may be equitable. If the appeal shall have been taken without probable cause, the board may tax double or triple costs, as the case shall demand; and, upon all such appeals which may be denied, costs may be taxed against the appellant at the discretion of the board; provided, that no costs shall be taxed against the commonwealth.

A person whose registration has been suspended or revoked shall pay to the commissioner a fee of twenty dollars for the reissuance of a registration. The commissioner shall not issue a new registration after the suspension or revocation of a registration unless he is satisfied that the former holder of the registration will comply with the provisions of this chapter and with all pertinent rules and regulations made thereunder.

- The commissioner shall provide notice to the director of the state lottery of a retailer, ~~as defined in section 1 of chapter 64C, or~~ a cigar retailer, as defined in ~~subsection (a) of section 7B1 of said chapter 64C,~~ whose license, issued under section 67, has been suspended or revoked by the department for a willful violation of ~~paragraph (1) of subsection (f) of said section 7B of said chapter 64C~~ subsections (a), (b) or (c) of section 10 of said chapter 64C, or of sections 34, 35, 37, 37A, or 38 of said chapter 64C and who is a licensee authorized to sell lottery tickets under sections 26 and 27 of chapter 10.

62C,§76 - Failure to possess license or registration as required by Secs. 67 and 67A; penalty

[XX] Section 76 of chapter 62C, as appearing in the 2014 Official Edition, is hereby amended by inserting after the word "dollars" in line 6 the following phrase:

" , provided that the punishment for a person who acts as a manufacturer, wholesaler, vending machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer, as defined in section one of chapter sixty-four C, shall be the punishment set forth in subsection (a) of section ten of said chapter sixty-four C"

So that the section as amended shall read:

Section 76. Any person who conducts any business in the commonwealth for which a registration or license issued pursuant to section sixty-seven or sixty-seven A is required and who is not in possession of such registration or license shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars~~;~~
provided that the punishment for a person who acts as a manufacturer, wholesaler, vending machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer, as defined in section one of chapter sixty-four C, shall be the punishment set forth in subsection (a) of section ten of said chapter sixty-four C. The superior court may on petition of the commissioner restrain such person from doing business in the commonwealth without such registration or license.

64C, §1 - Definitions

Chapter 64C of the General Laws is hereby amended by striking out section 1, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 1. **Definitions.** Whenever used in this chapter unless the context shall otherwise require, the following words or terms shall have the following

meanings:?"person",:—

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

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

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

"cigarette" shall mean any of the following: (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, (2) little cigars, which shall mean rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco and as to which

1,000 units weigh not more than 3 pounds, and (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1).

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

"licensee", a person licensed as a manufacturer, wholesaler, cigar distributor, vending machine operator, unclassified acquirer, cigar retailer or retailer pursuant to section sixty-seven of chapter sixty-two C.

"manufacturer", any person who manufactures or produces cigarettes or smokeless tobacco, whether within or without the commonwealth;

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

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

"manufacturer",

"place of business" shall mean and include any place where tobacco products are placed, stored, sold or offered for sale, including so far as applicable any vessel, vehicle, airplane, train or cigarette vending machine.

"retailer", any person who ~~manufactures or produces~~operates a store or concession for the purpose of making sales of tobacco products at retail, including any cigar retailer and any person selling tobacco products through vending machines;

"sales" or "sale" in addition to their ordinary meaning shall include or apply to use, gifts, exchanges and barter;

"smoking tobacco", roll-your-own tobacco and pipe tobacco, leaf tobacco, and other kinds and forms of tobacco suitable for smoking, but shall not include tobacco contained in cigarettes, ~~whether within~~ or cigars.

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

"stamp", an adhesive stamp, or any other indicia of tax paid under this chapter, as may from time to time be determined and approved by the commissioner.

"stamper" shall mean any person authorized by the commissioner to purchase and affix adhesive stamps under this chapter;

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

"tobacco products", any products containing tobacco including both cigarettes and smokeless tobacco; "wholesaler", other tobacco products.

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

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

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

"untaxed cigars and smoking tobacco", cigars and smoking tobacco purchased or otherwise acquired (1) from anyone other than (i) a licensed cigar distributor or licensed unclassified acquirer authorized under the terms of such license to sell or distribute cigars and smoking tobacco, or (ii) a person otherwise authorized in writing by the commissioner to sell or distribute and to file returns and pay the excise on cigars and smoking tobacco; or (2) from any licensee whenever the purchaser or acquirer has

actual knowledge that such licensee has not paid and does not intend to pay the excise on such cigars and smoking tobacco.

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

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

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

“wholesaler”,

1. any person who purchases directly from the manufacturer at least seventy-five per cent of all tobacco products purchased by him and who sells at least seventy-five per cent of all tobacco products purchased by him to others for resale, ~~and;~~
2. any other person who purchases from a manufacturer or person so purchasing and selling and licensed as a wholesaler, provided such other person maintains an established place of business where substantially all of

the business is the sale of tobacco products and related merchandise at wholesale to licensees and where at all times a substantial stock of tobacco products and related merchandise is available to all retailers for resale; ~~and~~ 1.3. ~~any chain of stores retailing tobacco products to the consumer, provided seventy-five per cent of its purchases are made direct from the manufacturer; "vending machine operator", any person other than a manufacturer or a wholesaler who operates one or more vending machines for the sale of tobacco products at retail and who purchases his tobacco products from a manufacturer or licensed wholesaler; "unclassified acquirer", any person, other than a transportation company or other than a purchaser at retail from a licensed retailer, who imports or acquires tobacco products from any one other than a licensed manufacturer, a licensed wholesaler or a licensed vending machine operator; "transportation company", any person operating, or supplying to a common carrier, cars, boats or other vehicles for the transportation or accommodation of passengers and engaged in the sale of tobacco products at retail; "retailer", any person, other than a transportation company, who operates a store or concession for the purpose of making sales of tobacco products at retail, and any person selling tobacco products through vending machines; "licensed", licensed as a manufacturer, wholesaler, vending machine operator, unclassified acquirer, transportation company or retailer pursuant to section sixty seven of chapter sixty two C; "licensee", a person licensed as a manufacturer, wholesaler, vending machine operator, unclassified acquirer, transportation company or retailer pursuant to section sixty seven of chapter sixty two C. Whenever used in this chapter, unless the context shall otherwise require, the words "sales" or~~

~~"sale" in addition to their ordinary meaning shall include or apply to use, gifts, exchanges and barter, and the term "place of business" shall mean and include any place where tobacco products are sold or where tobacco products are brought or kept for the purpose of sale or consumption, including so far as applicable any vessel, vehicle, airplane, train or cigarette vending machine. Whenever used in this chapter, unless the context otherwise requires, the word "stamper" shall mean any person authorized by the commissioner to purchase and affix adhesive or meter stamps under this chapter, and the word "cigarette" shall mean (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco, (2) little cigars, which shall mean rolls of tobacco wrapped in leaf tobacco or any substance containing tobacco and as to which 1,000 units weigh not more than 3 pounds, and (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1); and~~

~~Whenever used in this chapter or chapter sixty two C, unless the context otherwise requires, the word "cigarette" shall include within its meaning, without limitation, little cigars and smokeless tobacco; and the words "smokeless tobacco" shall mean snuff, snuff flour and any other tobacco or tobacco product prepared in such manner as to be suitable for chewing, including, but not limited to cavendish, plug, twist and fine-cut tobaccos. The provisions of sections twenty-nine to thirty-nine, inclusive, however, shall not apply to smokeless tobacco.~~

4. any cigar distributor.

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

64C, §2 - Vendors' licenses; display

[XX] Section 2— of chapter 64C, as appearing in the 2014 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:

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

[XX] Section 2 of chapter 64C, as so amended, is hereby further amended in line 5 by inserting after the word “manufacturer” the phrase:

“, cigar distributor”

[XX] Section 2 of chapter 64C, as so amended, is hereby further amended in line 15 by striking out the phrase “disc or marker” and inserting in place thereof the word

“decal”

So that the section as amended shall read:

Section 2. No person shall sell tobacco products or act as a manufacturer, wholesaler, cigar distributor, vending machine operator, unclassified acquirer, cigar retailer or retailer, in the commonwealth unless licensed to do so in accordance with section sixty-seven of chapter sixty-two C. If a manufacturer, cigar distributor, wholesaler, vending machine operator or unclassified acquirer acts in more than one of said capacities at

any one place of business he shall procure a license for each capacity in which he acts. Every machine operated or maintained for the purpose of vending tobacco products shall for the purposes of this chapter be deemed to constitute a place of retail business, and no person shall maintain or cause to be operated such a machine without procuring a retailer's license. Each license so issued or a duplicate copy thereof shall be prominently displayed on the premises covered by the license and in the case of vending machines there shall be attached to the same a ~~disc or marker~~decal to be furnished by the commissioner showing it to have been licensed. The licensing of the operation of cigarette vending machines is retained exclusively by the commonwealth and no city, town or other political subdivision of the commonwealth may license such operation.

64C, §5 - Records and statements required of vendors and purchasers

[XX] [XX] Chapter 64C of the General Laws is hereby amended by striking out section 5, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 5.

(a) Every manufacturer, cigar distributor, wholesaler, vending machine operator, transportation company and unclassified acquirer shall keep a complete and accurate record of all tobacco products manufactured, purchased or otherwise acquired. Such and a complete and accurate record relating to the sale of those products.

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

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

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

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

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

(g) The use of any device or game of chance to aid, promote or induce sales or purchases of tobacco products or the giving of any tobacco products in connection with any device or game of chance is prohibited. ~~All statements and other records required by this section shall be in such form as the commissioner shall prescribe and shall be preserved for a period of three years and shall be offered for inspection at any time upon oral or written demand by the commissioner or his authorized agent.~~

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

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

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

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

64C, §5A - Collection of excises imposed on residents purchasing cigarettes and tobacco products in interstate commerce; statements of sellers and shipping invoices

[XX] Section 5A of chapter 64C, as appearing in the 2014 Official Edition, is hereby amended by striking out subsection (1) and inserting in place thereof the following:

(1) Residents of the commonwealth shall be liable for any excise due under this chapter with regard to any tobacco products that they purchase upon which such excise has not otherwise been paid to the commonwealth. The department shall aggressively seek to collect all excises imposed by this chapter from residents of the commonwealth who purchase tobacco products in interstate commerce. The department shall, pursuant to 15 U.S.C. section 376, seek statements from persons selling cigarettes, smokeless tobacco, and roll-your-own tobacco, as that term is defined in Chapter 94E section 1, in interstate commerce to residents of the commonwealth and obtain the monthly invoices covering all such shipments into the commonwealth, as required by said section 376. Those invoices shall, as authorized by said section 376, include the name and address of the person to whom the shipment was made, the brand, the quantity thereof, and the amount paid. Upon receipt of that information, the department shall make all reasonable efforts to collect all excises due under this chapter.

[XX] Section 5A of chapter 64C, as so amended, is hereby further amended by striking in line 16 the words:

"every 6 months"

and by inserting in place thereof the word:

"annually"

So that the section as amended shall read:

Section 5A. (1) Residents of the commonwealth shall be liable for any excise due under this chapter with regard to any tobacco products that they purchase upon which such excise has not otherwise been paid to the commonwealth. The department shall

aggressively seek to collect all excises imposed by this chapter from residents of the commonwealth who purchase ~~cigarettes and~~ tobacco products in interstate commerce.

The department shall, pursuant to 15 U.S.C. section 376, seek statements from persons selling cigarettes, ~~smokeless tobacco, and roll-your-own tobacco,~~ as that term is defined in Chapter 94E section 1, in interstate commerce to residents of the commonwealth and obtain the monthly invoices covering all such shipments of ~~cigarettes~~ into the commonwealth, as required by said section 376. Those invoices shall, as authorized by said section 376, include the name and address of the person to whom the ~~cigarette~~-shipment was made, the brand, the quantity thereof, and the amount paid. Upon receipt of that information, the department shall make all reasonable efforts to collect all excises due under this chapter.

(2) The department shall provide information received pursuant to this section to the department of public health. The department shall report ~~every 6 months~~annually to

the house and senate committees on ways and means and the joint committee on health care on the steps taken to enforce this section and the amounts collected pursuant to collection activities mandated by this section.

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64C, §6 - Payment of excise on cigarettes and smokeless tobacco

[XX] Chapter 64C, as so appearing, is hereby amended by striking out Section

6. Every licensee and inserting in place thereof the following section:

Section 6.

(a) An excise shall be imposed on all cigarettes held for sale or consumption in the commonwealth at the rate of 17.55 cents for each cigarette, provided that this excise shall not be due on any cigarettes that (i) are exported from the commonwealth, or (ii) are not subject to taxation by the commonwealth pursuant to any law of the United States. Stampers shall pay the excise in accordance with the provisions of section 29. Persons, other than stampers, who is-are authorized by the commissioner to possess unstamped cigarettes, shall pay the excise to the commissioner at the time required to file for filing a return under paragraph (c) of section 16 of chapter 62C shall, at the time of filing 64C. The excise shall be due from persons not authorized to possess unstamped cigarettes immediately upon such return, pay to the commissioner an excise equal to 1501/2 mills plus any amount by which the federal excise tax on cigarettes person's importation of unstamped cigarettes into the commonwealth or upon such person's purchase, receipt, or acquisition of unstamped cigarettes in the commonwealth, whichever is less than 8 mills for each cigarette so sold during the calendar month covered by the return; provided, however, that cigarettes with respect to which the

~~excise under this section has once been imposed and has not been refunded, if paid, shall not be subject upon a subsequent sale to the excise earliest.~~

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

(1) is not a licensed wholesaler or licensed unclassified acquirer shall, at the time of filing a return required by said section 16 of said chapter 62C, pay to the commissioner an excise equal to 150 $\frac{1}{2}$ mills plus any amount by which the federal excise tax on cigarettes is less than 8 mills for each cigarette so imported or acquired and held for sale or consumption, and cigarettes, with respect to which such excise has been imposed and has not been refunded, if paid, shall not be subject, when subsequently sold, to any further excise under this section. The authorized under the terms of his license to sell smokeless tobacco, and

(2) either

(i) purchases, receives or acquires smokeless tobacco from anyone other than a licensed wholesaler or licensed

unclassified acquirer authorized under the terms of his license to sell smokeless tobacco; or

(ii) purchases, receives or acquires smokeless tobacco from a licensed wholesaler or licensed unclassified acquirer with actual knowledge that the licensed wholesaler or licensed unclassified acquirer has not paid and does not intend to pay the excise on that smokeless tobacco,

the excise shall be due immediately upon such person's importation of smokeless tobacco into the commonwealth or upon such person's purchase, receipt, or acquisition of smokeless tobacco in the commonwealth, whichever is earliest.

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

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

~~(a)~~(e) The commissioner may, in the commissioner'shis discretion, require reports from any common carrier who transports cigarettestobacco products to any point or points within the commonwealth and from any other person who,

under contract, so transports cigarettestobacco products, and from any bonded warehouseman or bailee who has in his possession any cigarettestobacco products, such reports to contain such information concerning shipments of cigarettes-tobacco products as the commissioner shall determine. All such carriers, bailees, warehousemen and other persons shall permit the examination by the commissioner or ~~the commissioner's~~his duly authorized agent of any records relating to the shipment of cigarettestobacco products into or from, or the receipt thereof within, the commonwealth.

Notwithstanding ~~this section, the provisions of subsection (a),~~ the excise imposed by~~under~~ this section on any cigarette that does not contain nicotine shall ~~equal 160 per cent~~be at the rate of the price paid by 16.3 cents for each such ~~licensee or unclassified acquirer to purchase smokeless tobacco so sold, imported or acquired.~~

~~(b)(f)~~ Notwithstanding section 28, a portion of cigarette excise revenues paid under this section shall be credited to the Commonwealth Care Trust Fund, established in section 2000 of chapter 29. The amount credited to the fund in fiscal year 2009 shall be the sum of: (1) all revenues received in fiscal year 2009 attributable to the inventory tax under chapter 168 of the acts of 2008; and (2) the monthly excess, if any, on cigarette excise payments received in August 2008 to June 2009 over the cigarette excise payments received in the same months in the previous fiscal year, less the amount that the commissioner may reasonably determine equals increased revenues in 2009 due to cigarette stamp encryption and due to taxation of little cigars as cigarettes. The amount credited to the Fund in fiscal year 2010 shall be the monthly excess in cigarette excise payments received in fiscal year 2010 over

~~cigarette excise payments received in the same months in fiscal year 2008, less the amounts that the commissioner may reasonably determine are increased revenues in 2009 due to cigarette stamp encryption and due to taxation of little cigars as cigarettes. The amount credited to the fund in fiscal year 2011 and thereafter shall be the monthly cigarette revenue received in each such year multiplied by the percentage of cigarette excise collections in 2010 that were credited to the fund.~~

64C, §7A - Additional cigarette excise tax; credit to Children's and Seniors' Health Care Assistance Fund; exemption

~~Section 7A. (a) In addition to the excise imposed by section six, every licensee who is required to file a return under section sixteen of chapter sixty two C shall, at the time of filing such a return, pay to the commissioner an excise equal to twelve and one half mills for each cigarette so sold during the calendar month covered by the return; provided, however, that cigarettes with respect to which the excise under this section has once been imposed and has not been refunded, if paid, shall not be subject upon a subsequent sale to the excise imposed by this section. In addition to the excise imposed by section six, each unclassified acquirer shall, at the time of filing a return required by said section sixteen of chapter sixty two C, pay to the commissioner an excise equal to twelve and one half mills for each cigarette so imported or acquired and held for sale or consumption, and cigarettes with respect to which such excise has been imposed and has not been refunded, if paid, shall not be subject, when subsequently sold, to any further excise under this section. Notwithstanding the provisions of this section, the excise imposed by this section shall equal twenty five percent of the price paid by such licensee or unclassified acquirer to purchase smokeless tobacco so sold, imported, or acquired.~~

~~(b) Except as the provisions of this section expressly provide to the contrary, all of the provisions of this chapter and of chapter sixty two C relative to the assessment, collection, payment, abatement, verification, and administration of taxes, including penalties, shall, so far as pertinent, be applicable to the excise imposed by this section.~~

~~(c) Notwithstanding the provisions of section twenty eight, all revenues received pursuant to this section, together with any penalties, forfeitures, interest, costs of suits and fines collected in connection therewith, less all amounts refunded or abated in connection therewith, all as determined by the commissioner of revenue according to his best information and belief, shall be credited to the Children's and Seniors' Health Care Assistance Fund, established pursuant to section two FF of chapter twenty nine.~~

~~(d) Any cigarette which does not contain nicotine shall be exempt from the excise herein referred.~~

[XX] Section 7A of chapter 64C, as so appearing, is repealed.

64C, §7B - Payment of excise on cigars and smoking tobacco

Section 7B. (a) ~~As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:—~~

~~"Cigar", any roll of tobacco wrapped in leaf tobacco or in any substance containing tobacco; provided, however, that cigar shall not include any roll of tobacco that is a cigarette as defined in section 1.~~

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

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

~~"Person", a natural person, corporation, association, partnership or other legal entity.~~

~~"Smoking tobacco", roll your own tobacco and pipe tobacco and other kinds and forms of tobacco suitable for smoking.~~

~~"Taxed cigars and smoking tobacco", cigars and smoking tobacco upon which the excise has been paid in full by the date on which payment is due, and with respect to which the return has been completed, signed and filed with the commissioner by the date on which the return is due, in accordance with this section and with section 16 of chapter 62C.~~

~~"Untaxed cigars and smoking tobacco", cigars and smoking tobacco upon which the excise has not been paid in full by the date on which payment is due, or with respect to which the return has not been completed, signed and filed with the commissioner by the date on which the return is due, in accordance with this section and with section 16 of chapter 62C.~~

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

~~**(b)[XX] Chapter 64C of the General Laws is hereby amended by striking out section 7B, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:**~~

Section 7B. (a) An excise shall be imposed on all cigars and smoking tobacco held in the commonwealth at the rate of 40 per cent of the wholesale price of such products. This excise shall be imposed on cigar distributors at the time cigars or smoking tobacco are manufactured, purchased, imported, received or acquired in the commonwealth. This excise shall not be imposed on any cigars or tobacco products that (i) are exported from the commonwealth; or (ii) are not subject to taxation by the commonwealth pursuant to any law of the United States.

~~(e_~~(b) Every cigar retailer shall be liable for the collectionpayment of the excise on all cigars or smoking tobacco in his possession at any time, upon which the excise has not been paid by a cigar distributor, and the failure of any cigar retailer to produce or exhibit to the commissioner or his authorized representative, upon

demand, an invoice by a cigar distributor for any cigars or smoking tobacco in his possession, shall be presumptive prima facie evidence that the excise thereon has not been paid and that such cigar retailer is liable for the collection payment of the excise thereon.

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

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

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

~~f~~ (e) A person outside the commonwealth who ships or transports cigars or smoking tobacco to cigar retailers in the commonwealth, to be sold by those cigar retailers, may apply for a license as a nonresident cigar distributor and, if the commissioner issues such a license to him, he shall thereafter be subject to all the

provisions of this section and be entitled to act as a cigar distributor, provided he files proof with his application that he has appointed the state secretary as his agent for service of process relating to any matter or issue arising under this section. Such a nonresident person shall also agree to submit his books, accounts and records for examination in the commonwealth during reasonable business hours by the commissioner or his authorized representative.

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

~~(h) No person shall act as a cigar distributor or cigar retailer in the commonwealth unless licensed to do so in accordance with section 67 of chapter 62C. If a cigar distributor or cigar retailer acts in more than 1 of said capacities at any 1 place of business, he shall procure a license for every capacity in which he acts, unless, upon application to the commissioner, the commissioner determines otherwise. Each license so issued or a duplicate copy thereof shall be prominently displayed on the premises covered by the license.~~

~~(i) Except as this section expressly provides to the contrary, the provisions of this chapter and of chapter 62C relative to the assessment, collection, payment, abatement, verification and administration of taxes, including penalties, shall so far as pertinent, apply to the excise tax imposed by this section.~~

~~(j) For the purposes of section 5, cigars and smoking tobacco shall be tobacco products, cigar distributors shall be wholesalers and cigar retailers shall be retailers.~~

~~(k) For the purposes of section 8, untaxed cigars and smoking tobacco found in the commonwealth shall be cigarettes, which have not been returned and are not returnable under section 16 of chapter 62C or section 6 as the context requires.~~

~~(l)(1) Any person who sells, offers for sale or possesses with intent to sell any cigars or smoking tobacco or otherwise acts as a cigar distributor or cigar retailer without being licensed so to do, shall, in addition to any other penalty provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for each subsequent offense. Any person who knowingly purchases or possesses any cigars or smoking tobacco not manufactured, purchased or imported by a licensed cigar distributor or licensed cigar retailer shall, in addition to any other penalty provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for each subsequent offense.~~

~~No person, either as principal or agent, shall sell or solicit orders for cigars or smoking tobacco to be shipped, mailed or otherwise sent or brought into the commonwealth to any person not a licensed cigar distributor or licensed cigar retailer, unless the same is to be sold to or through a licensed cigar distributor or licensed cigar retailer. Any person who knowingly violates this provision shall, in addition to any other penalty provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for each subsequent offense.~~

~~It shall be presumed that the cigars and smoking tobacco are subject to the excise until the contrary is established and the burden of proof that they are not shall be upon the person on whose premises the cigars or smoking tobacco were found.~~

~~(2) Any person who knowingly has in his possession a shipping case or other container of cigars or smoking tobacco not bearing the name and address of the person receiving~~

~~the cigars or smoking tobacco from a manufacturer or such other markings as the commissioner may prescribe and any person knowingly in possession of such a shipping case or other container of cigars or smoking tobacco from which this name and address has been erased or defaced shall, in addition to any other penalty provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense or not more than \$25,000 for each subsequent offense.~~

~~(3) Any person who files any false return, affidavit, or statement, or who violates any provision of this section for which no other penalty has been provided shall, in addition to any other penalty provided by this chapter or chapter 62C, be subject to a civil penalty of not more than \$5,000 for the first offense and not more than \$25,000 for each subsequent offense.~~

~~(4) Whenever the commissioner or a police officer discovers, in the possession of any person not being a licensed cigar distributor or one authorized by the commissioner, any untaxed cigars or smoking tobacco, he may seize and take possession of those cigars and smoking tobacco, together with any vending machine or other receptacle, which shall include, without limitation, a motor vehicle, boat or airplane, in which they are contained or in which they are transported. Such cigars, smoking tobacco, vending machine or other receptacle seized by a police officer shall be turned over to the commissioner and shall be forfeited to the commonwealth. The commissioner shall destroy such cigars or smoking tobacco and shall destroy or otherwise dispose of such vending machine or other receptacle. The commissioner may, within a reasonable time after the seizure, by a public notice at least 5 days before the day of sale, sell the vending machine or other receptacle at public sale and deposit the proceeds in the General Fund.~~

~~(5) The state police and all local police authorities may, and at the request of the commissioner or his duly authorized agent shall, enforce this section. Each violation of this section shall be a separate offense.~~

64C, §7C - Additional payment of excise; credit to Health Protection Fund

~~Section 7C. (a) In addition to the excise imposed by section six, every licensee who is required to file a return under section sixteen of chapter sixty-two C shall, at the time of filing such return, pay to the commissioner an excise equal to twelve and one-half mills for each cigarette so sold during the calendar month covered by the return; provided, however, that cigarettes with respect to which the excise under this section has once been imposed and has not been refunded, if paid, shall not be subject upon a subsequent sale to the excise imposed by this section. In addition to the excise imposed by section six, each unclassified acquirer shall, at the time of filing a return required by said section sixteen of chapter sixty-two C, pay to the commissioner an excise equal to twelve and one-half mills for each cigarette so imported or acquired and held for sale or consumption, and cigarettes with respect to which such excise has been imposed and has not been refunded, if paid, shall not be subject, when subsequently sold, to any further excise under this section. Notwithstanding the provisions of this section, the excise imposed by this section shall equal twenty-five percent of the price paid by such licensee or unclassified acquirer to purchase smokeless tobacco so sold, imported or acquired.~~

~~(b) Except as the provisions of this section expressly provide to the contrary, all of the provisions of this chapter and of chapter sixty-two C relative to the assessment, collection, payment, abatement, verification and administration of taxes, including penalties, shall, so far as pertinent, be applicable to the excise imposed by this section.~~

~~(c) Notwithstanding the provisions of section twenty-eight, all revenues received pursuant to this section, together with any penalties, forfeitures, interest, costs of suits and fines collected in connection therewith, less all amounts refunded or abated in connection therewith, all as determined by the commissioner of revenue according to his best information and belief, shall be credited to the Health Protection Fund established pursuant to section two GG of chapter twenty-nine.~~

[XX] Section 7C of chapter 64C, as so appearing, is repealed.

64C, §8 - Prosecution for illegal possession, etc.

~~Section 8. A deputy sheriff, chief of police, deputy chief of police, city marshal, deputy or assistant marshal, police officer, including a state police officer or a special police officer appointed under section twenty-six, or constable, or, in the county of Dukes or Nantucket, the sheriff anywhere within his county, may without a warrant arrest any person whom he finds in the act of illegally transporting, delivering or possessing cigarettes, which have not been returned and are not returnable under section sixteen of chapter sixty-two C, by a licensee, and seize the said cigarettes, the vending machines, receptacles, boxes or cartons in which the same are contained, hereinafter called the container or containers, in the possession of such person, any vehicle used in the illegal transportation of cigarettes and any records relating to the purchase and sale of cigarettes, and detain them until a warrant for the arrest of such person, and a warrant for the seizure of said cigarettes, vehicle, the container or containers and the records, can be procured. Such cigarettes, vehicle, the container or containers and the records shall be forfeited to the commonwealth and proceedings shall be had as provided hereinafter and in sections fifty to fifty-five, inclusive, of chapter one hundred and thirty-eight in the case of alcoholic beverages. Such officers shall enforce or cause to be enforced the penalties provided by law against every person who is guilty of a violation of any law relative to the possession of such cigarettes, vehicle and container or containers of which they can obtain reasonable proof.~~

~~If the commissioner, his authorized agents, or other police officers shall make complaint to a district court or trial justice, or to a justice of the peace authorized to issue warrants in criminal cases, that he has reason to believe and does believe that cigarettes, which have not been returned and are not returnable under section six, by a licensee, and which are described in the complaint, are kept or deposited by a person named therein in a store, shop, warehouse, building, vehicle, steamboat, vessel or place, such court or justice, if it appears that there is probable cause to believe said complaint to be true, shall issue a search warrant to an officer qualified to serve criminal process, commanding him to search the premises in which it is alleged that~~

~~such cigarettes are kept or deposited, and to seize such cigarettes and vehicle, and the container or containers, and securely keep such cigarettes, vehicle, container or containers and the records until final action thereon, and to return the warrant with his doings thereon, as soon as may be, to a district court or trial justice having jurisdiction in the place in which such cigarettes, vehicle, container or containers and the records are alleged to be kept or deposited.~~

~~The complaint shall particularly designate the building, structure or other place to be searched, the cigarettes, vehicle, container or containers and the records to be seized, the person by whom they are owned, kept or possessed and shall allege that such cigarettes are illegally kept or possessed. The warrant shall allege that probable cause has been shown for the issuing thereof; and the place to be searched, the cigarettes, vehicle, container or containers and the records to be seized, and the person believed to be the owner, possessor or keeper of such cigarettes, vehicle, container or containers and the records, shall be designated therein with the same particularity as in the complaint and the complainant shall be summoned to appear as a witness.~~

~~The officer to whom the warrant is committed shall search the premises and seize the cigarettes, vehicle, container or containers and the records described in the warrant, if they are found in or upon said premises, and shall convey the same to some other place of security, where he shall keep the cigarettes, vehicle, container or containers and the records until final action is had thereon.~~

~~The court or trial justice before whom the warrant is returned shall, within forty-eight hours after the seizure thereunder of the cigarettes, vehicle, container or containers, and the records, issue a notice, under seal, and signed by the justice or the clerk of said court, or by the trial justice, commanding the person complained against as the keeper of the cigarettes, vehicle, container or containers and the records seized and all other persons who claim any interest therein to appear before said court or trial justice, at a time and place therein named, to answer to said complaint and show cause why such cigarettes, vehicle, container or containers and the records should not be forfeited.~~

~~The notice shall contain a description of the number and kind of container or containers, the quantity and kind of cigarettes, the vehicle and the records seized, as nearly as may be, and shall state when and where they were seized. It shall, not less than fourteen days before the time appointed for the trial, be served by a sheriff, deputy sheriff, constable or police officer upon the person charged with being the keeper thereof by leaving an attested copy thereof with him personally or at his usual place of abode, if he is an inhabitant of the commonwealth, and by posting an attested copy on the building in which the cigarettes, vehicle, container or containers and the records were seized, if they were found in a building; otherwise in a public place in the city or town in which they were seized.~~

~~At the time and place designated in the notice, the person complained against, or any person claiming an interest in the cigarettes, vehicle, container or containers and the records seized, or any part thereof, may appear and make his claim orally or in writing, and a record of his appearance and claim shall be made, and he shall be admitted as a party to the trial. Whether or not a claim as aforesaid is made, the court or trial justice shall proceed to try, hear and determine the allegations of such complaint, and whether said cigarettes, vehicle and container or containers, records or any part thereof, are forfeited. If it appears that the cigarettes, vehicle, container or containers and the records or any part thereof, were at the time of making the complaint owned or kept by the person alleged therein in violation of law, the court or trial justice shall render judgment that such and so much of the cigarettes so seized as were so unlawfully kept, and the vehicle, container or containers and the records, shall, except as hereinafter provided, be forfeited to the commonwealth.~~

~~If it is not proved on the trial that all or part of the cigarettes seized were kept contrary to law, the court or trial justice shall issue a written order to the officer having the same in custody to return so many thereof as were not proved to be so kept or deposited, the container or containers in which such cigarettes were contained, and the vehicle and the records seized, to the place as nearly as may be from which they were taken, or to deliver them to the person entitled to receive them. After executing such~~

~~order, the officer shall return it to the court or trial justice with his doings endorsed thereon.~~

~~If no person appears and is admitted as a party as aforesaid, or if judgment is rendered in favor of all the claimants who appear, the cost of the proceedings shall be paid as in other criminal cases. If only one party appearing fails to sustain his claim, he shall pay all the costs except the expense of seizing and keeping the cigarettes, the container or containers, vehicle, and the records, and an execution shall be issued against him therefor. If judgment is rendered against two or more claimants of distinct interests in the cigarettes, container or containers, vehicle, or records, the costs shall, according to the discretion of the court or trial justice, be apportioned among such parties, and executions shall be issued against them severally. If any such execution is not forthwith paid, the defendant therein named shall be committed to jail, and shall not be discharged therefrom until he has paid the same and the costs of commitment, or until he has been imprisoned thirty days.~~

~~A claimant whose claim is not allowed as aforesaid, and the person complained against, shall each have the same right of appeal to the superior court as if he had been convicted of crime; but before his appeal is allowed he shall recognize to the commonwealth in the sum of two hundred dollars, with sufficient surety or sureties, to prosecute his appeal to the superior court and to abide the sentence of the court thereon. Upon such appeal, any question of fact shall be tried by a jury. On the judgment of the court after verdict, whether a forfeiture of the whole or any part of the cigarettes, container or containers, vehicle, and the records seized, or otherwise, similar proceedings shall be had as are directed in sections fifty to fifty five, inclusive, of chapter one hundred and thirty eight, except that the sale of any such property shall be conducted by the commissioner.~~

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[XX] Section 8 of chapter 64C, as so appearing, is repealed.

64C, §10 - Regulation of vending machines; penalties for particular offenses; sales to children

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 10, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 10.

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

(b) Except as previously authorized in writing by the commissioner, (1) Any retailer who shall knowingly purchase cigarettes for resale from any person other than a duly appointed stamper, and any retailer, who shall knowingly purchase other tobacco products for resale from any person other than a licensed wholesaler or licensed unclassified acquirer; or (2) any person who shall knowingly purchase or possess any cigarettes or other tobacco products not manufactured, purchased or imported by a licensed manufacturer, licensed wholesaler, licensed vending machine operator or licensed unclassified acquirer, shall be punished by a fine of not more than fifty thousand dollars or by imprisonment in a house of correction for not more than two and one-half years or in state prison for not more than five years, or both such fine and imprisonment; provided that a licensed cigar retailer who is also licensed as a cigar distributor shall be authorized to

purchase cigars and smoking tobacco from an out-of-state wholesaler or manufacturer not licensed in the Commonwealth, and shall be required to file a return and pay the cigar excise as specified in section 7B of this chapter and in section 16 of chapter 62C. All retailers shall be under an affirmative duty to verify the licensed or appointed status of any person from which they purchase tobacco products, and the absence of such person's name from the lists of licensees and stampers maintained on the department's website, as required by section 6 of chapter 14, shall be prima facie evidence of a knowing violation of this paragraph.

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

(d) Any person who shall knowingly have in his possession one or more shipping cases or other containers of tobacco products, containing tobacco products and not bearing the name and address of the person receiving the tobacco products from a manufacturer or such other markings as the commissioner may prescribe, and any person knowingly being in possession within the commonwealth of one

or more such shipping cases or other containers of tobacco products from which such name and address has been erased or defaced, shall be punished by a fine of not more than five hundred dollars per such shipping case or other container or by imprisonment in a house of correction for not more than two and one-half years, or both such fine and imprisonment.

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

(f) No person shall have in his possession a machine for vending cigarettes for a period in excess of seventy-two hours unless there shall be attached to the same a ~~disc or marker~~ decal as provided by section two; provided, that this provision shall not apply to any such machine while not containing cigarettes and in the possession of a manufacturer of, or dealer in, such machines or a licensed vending machine operator. If any person has in his possession a vending machine, containing cigarettes, not properly licensed, the commissioner may cause such vending machine to be sealed until properly licensed and such person shall be subject to the same penalty as a retailer selling cigarettes without being licensed so to do. Any person who shall sell, offer for sale or possess with intent to sell any cigarettes, or otherwise act as a manufacturer, wholesaler, vending

~~machine operator, transportation company or retailer, without being licensed so to do, shall, in addition to any other penalty provided by this chapter, be punished by a fine of not more than fifty dollars. Any person who shall act as an unclassified acquirer without being licensed as provided by section two shall be punished by a fine of not less than five hundred nor more than one thousand dollars or by imprisonment for not more than one year, or both. Any person who shall knowingly purchase or possess any cigarettes not manufactured, purchased or imported by a licensed manufacturer, licensed wholesaler, licensed vending machine operator, licensed unclassified acquirer or licensed transportation company, shall be punished by a fine of not less than fifty nor more than one thousand dollars. Any person who shall knowingly have in his possession a shipping case or other container of cigarettes, containing cigarettes and not bearing the name and address of the person receiving the cigarettes from a manufacturer or such other markings as the commissioner may prescribe, and any person knowingly being in possession within the commonwealth of such a shipping case or other container of cigarettes from which such name and address has been erased or defaced, shall be punished by a fine of not less than twenty-five nor more than one hundred dollars. No person, either as principal or agent, shall sell or solicit orders for cigarettes to be shipped, mailed or otherwise sent or brought into the commonwealth to any person not a licensed manufacturer, licensed wholesaler, licensed vending machine operator, licensed unclassified acquirer or licensed transportation company, unless the same is to be sold to or through a licensed wholesaler. Any person who shall sell a cigarette to a person under eighteen or, not being his parent or guardian, give a cigarette or snuff or tobacco in any form to any person under eighteen, shall be punished by a fine of~~

~~not more than fifty dollars. Any operator of a vending machine for the sale of cigarettes or tobacco and any owner or tenant of a location where a vending machine is located who shall permit any person under eighteen to use such machines, shall be punished by a fine of not more than fifty dollars. Each vending machine containing cigarettes or tobacco shall have attached on the front of it a notice to be furnished by the commissioner reading "Persons under eighteen are prohibited from using this machine", and any person owning or operating a vending machine who fails to display such a notice shall be punished by a fine of not more than fifty dollars. No person shall sell cigarettes through a vending machine unless said machine is so constructed as to permit the commissioner or his agents readily to determine whether the package, as set forth in paragraph (a) above.~~

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

~~(a)(h) Any person who files any false return, affidavit, or statement, or who violates any provision of this chapter for which no other penalty has been provided, shall be punished by a fine of not more than ~~one~~ten thousand dollars or by imprisonment in a house of correction for not more than two and one-year-half years, or both. ~~The state police and all local police authorities shall have the~~~~

~~authority to enforce, and shall, at the request of the commissioner or his duly
authorized agent, enforce, the provisions of this section.~~

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

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

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

64C, §11 - Records and reports of purchases and sales; investigation, examination and search

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 11, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 11.

- (a) Each retailer and cigar retailer shall keep within the commonwealth complete and accurate records of all cigarettes purchased or otherwise acquired. Such records shall consist of written statements to be delivered by each wholesaler and cigar distributor as provided by section five. Every owner of, or tenant occupying, premises where a vending machine is located shall keep a record of all cigarettes sold through the vending machine so located on his premises and the amount of commission paid by the person operating the cigarette vending machine. Such records shall consist of written statements to be given by each person operating vending machines for the sale of cigarettes as provided by section five. ~~Such~~
- (b) All above-referenced records shall be safely preserved for a period of three years in such a manner as to insure permanency and accessibility for inspection by the commissioner or his authorized representative, and shall be maintained for one year from the date of purchase or acquisition on the retailer's, cigar retailer's, owner's, or tenant's premises, as identified in the license.
- (c) The commissioner may require any retailer or cigar retailer or any owner or tenant occupying premises where a vending machine for the sale of cigarettes has been installed to make reports as often as the commissioner

deems necessary to enable him to determine whether the excise imposed by this chapter has been fully paid.

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

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

64C, §13 - Definitions of cost and sale terms

[XX] Section 13 of Chapter 64C, as appearing in the 2014 Official Edition, is hereby amended by striking out in lines 78-79 of paragraph (g) the phrase:

“, transportation company”

So that the paragraph as amended shall read:

Section 13.

. . .

(g) The wholesaler, vending machine operator, ~~transportation company~~ or unclassified acquirer who purchases cigarettes directly from a manufacturer or from a wholesaler or unlicensed person, for sale at retail in determining "cost to the retailer" pursuant to subdivision (a) of this section shall add the "wholesaler's mark-up" to the invoice cost of the cigarettes to said retailer, or the replacement cost of the cigarettes to said retailer within thirty days prior to the date of sale, in the quantity last purchased, whichever is lower, less all trade discounts except customary discounts for cash, before adding the "retailer's cost of doing business".

64C, §28 - Disposition of sums received

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 28, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 28. ~~Except as provided in sections 6 and 7A all~~ The total sums received pursuant to the excise imposed on cigarettes by this chapter on cigarettes, together with any penalties, forfeitures, interest, costs of suits and fines collected in connection therewith, less all amounts refunded or abated in connection therewith, shall be credited as follows:

~~(a) Forty per cent of the amount in excess 22.16 percent of \$169,800,000 received during a fiscal year shall be credited to the Local Aid Fund;~~

~~(b) The balance remaining after crediting the amounts required under clause (a) such~~ total sum shall be credited to the Commonwealth Care Trust Fund, established in section 2000 of chapter 29, and the balance shall be credited to the General Fund.

~~The total sums received pursuant to the excise imposed on cigars, smoking tobacco, and smokeless tobacco, together with any penalties, forfeitures, interest, costs of suits and fines collected in connection therewith, less all amounts refunded or abated in connection therewith, shall be credited to the General Fund.~~

64C, §29 - Payment of tax through use of adhesive stamps

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 29, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 29. ~~The~~ Except as otherwise authorized in writing by the commissioner, the excise imposed by this chapter on cigarettes shall be paid to the commissioner through the use of ~~adhesive~~ stamps evidencing the payment of said excise, which stamps shall be of such design and in such denominations as the commissioner may prescribe.

Except as otherwise provided, all stampers shall be liable for the payment of the excise imposed by this chapter on cigarettes and shall pay ~~thesaid~~ excise to the commissioner by purchasing such stamps in accordance with such regulations as the commissioner may prescribe.

64C, §30 – Stamper; purchase and use of stamps; appointment; compensation; payment for stamps

[XX} Section 30 of chapter 64C, as appearing in the 2014 Official Edition, is hereby amended by adding the following language after the last paragraph:

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

64C, §33 - Unstamped cigarettes or stamps; prohibition of sale, etc.;
examination and replacement of unstamped or improperly stamped packages

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 33, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

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

64C, §34 - Possession, sale, etc., of unstamped cigarettes; penalty; prima facie evidence; presumptions

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 34, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 34. ~~Whoever, not being a licensed transportation company or a person specifically authorized in writing by the commissioner, to do so, knowingly holds for sale, offers for sale, sells, possesses with intent to sell, or otherwise disposes of unstamped cigarettes within the commonwealth, unless each individual package containing said shall be punished as follows:~~

(1) ~~A violation involving fewer than thirty thousand cigarettes has affixed thereto a Massachusetts stamp showing that said excise has been paid, shall be punished by a fine of not more than fivefifty thousand dollars or by imprisonment in a house of correction for not more than two and one-half years or in state prison for not more than five years, or both; provided, however, that a such fine and imprisonment;~~

~~(1)(2) A violation involving fewer than twelvethirty thousand or more cigarettes, shall be punished by a fine of not more than one hundred thousand dollars or by imprisonment in a house of correction for not more than two and one year-half years or in state prison for not more than ten years, or both such fine and imprisonment.~~

The absence of such stamp on any package containing said cigarettes which is held for sale, possessed with intent to sell, offered for sale, sold or otherwise disposed of within the commonwealth shall be prima facie evidence that said excise has not been paid

thereon. If such a stamp on a package of cigarettes is stained or smudged and its characteristics are so blurred, obscured or indistinct that it cannot be distinguished as a Massachusetts excise stamp, it shall be presumed prima facie evidence that the said excise has not been paid with respect to said package of cigarettes. ~~It shall be presumed that all sales of~~ If any unstamped cigarettes are ~~subject to~~ found within the ~~said excise until~~ commonwealth in the ~~contrary is established, and the burden~~ place of business of ~~proof that~~ any licensee, other than a ~~sale is not taxable shall be upon~~ stamper or such other licensee as the commissioner may authorize in writing, it shall be prima facie evidence that such licensee in whose place of business said cigarettes were found possessed said unstamped cigarettes with the ~~vendor's intent to sell the same.~~

~~If any cigarettes are found within the commonwealth in the place of business of any licensee, other than a stamper or such other licensee as the commissioner may authorize, without the stamp affixed thereto, it shall be prima facie evidence that such licensee in whose place of business said cigarettes were found possessed said unstamped cigarettes with the intent to sell the same.~~

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

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

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

64C, §35 - Possession or transportation of unstamped cigarettes; penalty; arrest, search and seizure; forfeitures

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 35, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 35. Whoever, not being a stamper or ~~licensed transportation company or~~ such other person as the commissioner may authorize in writing to possess or deliver or transport unstamped cigarettes, and not being a common carrier engaged in interstate commerce or a person in actual possession of invoices or delivery tickets meeting the requirements of section thirty-six, knowingly possesses or delivers or transports unstamped cigarettes in the commonwealth shall be punished as follows:

(1) A violation involving fewer than thirty thousand cigarettes shall be punished by a fine of not more than ~~five~~ fifty thousand dollars or by imprisonment in a house of correction for not more than two and one-half years or in state prison for not more than five years, or both; ~~provided, however, that a such~~ fine and imprisonment; p

~~(1)~~(2) A violation involving ~~fewer than twelve~~ thirty thousand ~~or more~~ cigarettes shall be punished by a fine of not more than one hundred thousand dollars or by imprisonment in a house of correction for not more than two and one year-half years or in state prison for not more than ten years, or both such fine and imprisonment.

~~Any such person shall be subject to all the provisions as to~~ A police officer, including a special police officer appointed under section twenty-six, may without a warrant arrest, search and seizure, as set forth in section eight, insofar as applicable, and the any

person whom he finds in the act of illegally possessing, delivering or transporting unstamped cigarettes, and seize the said cigarettes, the vending machines, receptacles, boxes or cartons in which the same are contained, hereinafter called the container or containers, in the possession of such person, any vehicle used in the illegal transportation of cigarettes and any records relating to the purchase and sale of such cigarettes shall be subject to seizure in the manner provided in said section eight and shall be turned over to the commissioner and shall be forfeited to the commonwealth. Proceedings shall be had as provided in section eight, and on the judgment of the court after verdict, whether a forfeiture of the whole or any part of the cigarettes, machines, receptacles, vehicles, and the records seized, or otherwise, similar proceedings shall be had as are directed in sections fifty to fifty five, inclusive, of chapter one hundred and thirty-eight, except that the sale of such property shall be conducted by the commissioner.

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

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

64C, §36 - Possession or transportation of unstamped cigarettes; necessity of invoices or delivery tickets; prima facie evidence

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 36, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 36. Whoever, not being a stamper, a common carrier transporting cigarettes under a proper bill of lading or licensed transportation company freight bill which states the quantity, source and designation or destination of such cigarettes, or such other person as the commissioner may authorize in writing to do so, possesses, delivers or transports any unstamped cigarettes, except cigarettes acquired prior to the date when stamps were required to be affixed thereto and on which the excise imposed by this chapter has been paid, shall have in his actual possession invoices or delivery tickets for such cigarettes showing-:

- (1) _____ the true name and address of the consignor or seller-;
- (2) _____ the true name and address of the consignee or purchaser, which _____ consignee or purchaser is:
 - (a) _____ a stamper or other person authorized by the _____ commissioner in writing to possess unstamped _____ cigarettes; or
 - (b) _____ a person in another jurisdiction licensed or authorized _____ by such other jurisdiction to possess unstamped _____ cigarettes, or, in the case of cigarettes bearing the _____ stamp of another jurisdiction, a person licensed by _____ such other jurisdiction to sell cigarettes;

(3) the quantity and brands of the cigarettes possessed or _____
_____ transported, ~~and~~ and

 (4) the name and address of the person who has assumed or shall _____
_____ assume the payment of the excise provided by this chapter at the _____
_____ ultimate point of destination, ~~and failure,~~

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

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

64C, §37 - Forgery, alteration, etc., of excise stamps; unauthorized use of metering machine; penalties; forfeitures

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 37, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 37. (a) Whoever-:

(1) falsely or fraudulently makes, forges, alters or counterfeits, or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited, any cigarette excise stamps prepared or prescribed by the commissioner under the authority of this chapter, ~~;~~ ~~or whoever~~

~~(1)~~(2) knowingly and wilfully utters, publishes, passes or tenders as true, any such false, altered, forged or counterfeited stamp or makes a false affixation of or uses any stamp provided for by this chapter which has already once been used, for the purpose of evading the excise imposed by this chapter, ~~shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than five years, or both.; or~~

~~(2)~~(3) ~~If any person secures, manufactures or causes to be secured or manufactured, or has in his possession, any cigarette excise stamp or die or device not prescribed or authorized by the commissioner, or any counterfeit impression, such fact shall be prima facie evidence that such person has counterfeited stamps. Whoever~~ wilfully removes or alters or knowingly permits to be removed or altered the cancelling or defacing mark of any stamp provided for by this chapter with intent to use such stamp, ~~or knowingly or wilfully buys, prepares for use, uses, has in possession, or~~

~~suffers to be used, any metering machine without authority, or any washed, restored or counterfeit stamps, or whoever intentionally removes or causes to be removed, or knowingly permits to be removed, any stamp or meter impression affixed pursuant to this chapter, or whoever tampers with or causes to be tampered with any metering machine authorized to be used under the provisions thereof, shall be punished by a fine of not more than two thousand dollars or by imprisonment for not more than five years, or both.; or~~

~~(4) Any~~knowingly or wilfully buys, prepares for use, uses, has in possession, or suffers or permits to be used, any machine or device for affixing stamps, metering machines or devices without authority, or any washed, restored or counterfeit stamps; or

~~(5) intentionally removes or causes to be removed, or knowingly permits to be removed, any stamp affixed pursuant to this chapter; or~~

~~(6) tampers with or causes to be tampered with any machine or device for affixing stamps authorized to be used under the provisions of this chapter~~

~~shall be punished by a fine of not more than fifty thousand dollars or by imprisonment in a house of correction for not more than two and one-half years or in state prison for not more than five years, or both such fine and imprisonment.~~

~~(b) If any person secures, manufactures or causes to be secured or manufactured, or has in his possession, any cigarette excise stamp not prescribed or authorized by the commissioner shall be subject to seizure in the manner provided in section eight and, or any counterfeit impression or any copy or image of such a cigarette excise stamp not prescribed or authorized by the commissioner, whether in physical or electronic format, such fact shall be forfeited to the commonwealth and proceedings shall be had as~~

~~provided in said section eight and in sections fifty to fifty-five, inclusive, of chapter one hundred and thirty-eight,~~prima facie evidence that such person has counterfeited stamps.

64C, §37A [new section] - Selling, etc. Untaxed Other Tobacco Products; Evasion

[New section—no existing statutory text]

[XX] Chapter 64C, as appearing in the 2014 Official Edition, is hereby amended by inserting after section 37 the following sections:

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

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

(3) Whoever, whether or not licensed, willfully attempts to evade any of the excises on other tobacco products imposed by this chapter, or the payment thereof, shall be punished as follows:

(a) A violation involving fewer than thirty thousand units of other tobacco products in any combination shall be punished by a fine of not more than fifty thousand dollars or by imprisonment in a house of correction for not more than two and one-half years or in state prison for not more than five years, or both such fine and imprisonment;

(b) A violation involving thirty thousand or more units of other tobacco products in any combination shall be punished by a fine of not more than one hundred thousand dollars or by imprisonment in a house of correction for not more than two and one-half years or in state prison for not more than ten years, or both such fine and imprisonment.

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

64C, §37B [new section] - Transportation of untaxed other tobacco products; necessity of invoices or delivery tickets; prima facie evidence

[New section — no existing statutory text]

Section 37B. Whoever, not being a licensed wholesaler or licensed cigar distributor or licensed unclassified acquirer authorized by the terms of his license to possess such other tobacco products, or a person otherwise authorized in writing by the commissioner to sell or distribute such other tobacco products or a common carrier transporting other tobacco products under a proper bill of lading or freight bill which states the quantity, source and designation or destination of such other tobacco products, possesses for delivery or transport, or delivers or transports any untaxed other tobacco products, shall have in his actual possession invoices or delivery tickets for such other tobacco products showing:

- (1) the true name and address of the consignor or seller;
- (2) the true name and address of the consignee or purchaser, which consignee or purchaser is:
 - (a) a licensed wholesaler, licensed cigar distributor, or licensed unclassified acquirer authorized by the terms of his license to possess such other tobacco products; or
 - (b) a person in another jurisdiction licensed or authorized by such other jurisdiction to possess untaxed other tobacco products;
- (3) the quantity and brands of the other tobacco products possessed or transported; and
- (4) the name and address of the person who has assumed or shall

assume the payment of the excise provided by this chapter at the
ultimate point of destination.

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

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

64C, §38 - Unauthorized use of excise stamps; penalty

[XX] Section 38 of Chapter 64C of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out in line 1 the phrase:

“not being an authorized agent”

and inserting in place thereof the phrase:

“not being the commissioner or an authorized agent of the commissioner”.

[XX] Section 38 of Chapter 64C of the General Laws, as so amended, is hereby further amended by striking out in lines 4-5 the phrase:

“a fine of not more than two thousand dollars or by imprisonment for five years, or both”

and inserting in place thereof the phrase:

“a fine of not more than fifty thousand dollars or by imprisonment in a house of correction for not more than two and one-half years or in state prison for not more than five years, or both such fine and imprisonment”

So that the section as amended shall read:

Section 38. Whoever, not being the commissioner or an authorized agent of the commissioner, sells or offers for sale any stamp or stamps issued under the provisions of this chapter in order to provide evidence of the payment of the excise imposed by this chapter shall be punished by a fine of not more than twofifty thousand dollars or by

imprisonment in a house of correction for not more than two and one-half years or in state prison for not more than five years, or both such fine and imprisonment.

64C, §38A - Seizure, forfeiture and sale of unstamped cigarettes and smokeless tobacco on which tax has not been paid

[XX] Chapter 64C of the General Laws is hereby amended by striking out section 38A, as appearing in the 2014 Official Edition, and inserting in place thereof the following section:

Section 38A. Whenever the commissioner ~~or a police officer~~ discovers;

- (a) any unstamped cigarettes subject to tax under this chapter which are found in the possession of any person ~~not being a stamper, licensed transportation company other than a stamper, a common carrier transporting such cigarettes under a proper bill of lading or freight bill which states the quantity, source and designation or ~~one~~ destination of such cigarettes, or other person transporting unstamped cigarettes in actual possession of the documents required by section 36, or a person~~ authorized in writing by the commissioner, ~~any~~ to possess such unstamped cigarettes subject to tax; or
- (b) any such unstamped cigarettes or other tobacco products which are otherwise held, purchased, possessed, imported or acquired in violation of paragraphs (a), (b), (c), (d), (f), or (g) of section 10 or of sections 34, 35, 37, or 37A; or
- (c) more than ten thousand units of other tobacco products in the possession of a licensed wholesaler or licensed cigar distributor under circumstances that provide reason to believe that such licensee possesses such other tobacco products with the intent to evade any of the excises imposed by this chapter ~~that do on such other tobacco products or payment thereof; provided that such circumstances shall include but not be limited to such licensee's history in two or more recent periods of failure to file returns and pay excise relative to other tobacco products~~

of the type such licensee is found to be in possession of or of reporting sales and paying excise on sales of other tobacco products corresponding to quantities substantially below the quantities such licensee is found to be in possession of or is known to have affixed to them the required Massachusetts purchased or otherwise acquired during those periods; or

(d) any falsely made, fraudulently made, forged, altered or counterfeited cigarette excise stamps showing the payment of excise, or any smokeless tobacco on which tax has not been paid, and any cigarette excise stamps otherwise not prescribed or authorized by the commissioner; or

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

(f) any machines or devices for affixing stamps not prescribed or authorized by the commissioner;

he may seize and take possession of ~~these~~ such unstamped cigarettes ~~or smokeless,~~ other tobacco products, stamps, and machines or devices, together with any vending machine or other receptacle, ~~which shall include, without limitation, a motor vehicle, boat or airplane,~~ in which the unstamped cigarettes or ~~smokeless~~ other tobacco products are contained ~~or in which they are transported.~~ The cigarettes, smokeless tobacco, vending machine or other receptacle seized by a police officer, and forfeiture proceedings shall be turned over to the commissioner and shall be forfeited to the commonwealth. The commissioner shall destroy such cigarettes and smokeless tobacco and shall destroy or otherwise dispose of such vending machine or other receptacle. The commissioner may, within a reasonable time after the seizure, by a public notice at least 5 days before the day of sale, sell the vending machine or other receptacle at

~~public sale and deposit the proceeds in the General Fund, pursued in accordance with~~
~~the provisions of section 38B.~~

64C, §38B [new section] - Forfeiture of Property

~~[New section — no existing statutory text; text of 94C, §47 (drug forfeiture statute), on which it is based, included for comparison]~~

~~94C, **[XX] Chapter 64C, as appearing in the 2014 Official Edition, is hereby amended by inserting after section 38A the following section:**~~

Section ~~47~~38B. (a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

~~(1) All controlled substances which have been manufactured, delivered, distributed, dispensed or acquired in violation of this chapter.~~

~~(1) Any unstamped cigarettes subject to tax under this chapter which are found in the possession of any person other than a stamper, a common carrier transporting such unstamped cigarettes under a proper bill of lading or freight bill which states the quantity, source and designation or destination of such cigarettes or other person transporting such unstamped cigarettes in actual possession of the documents required by section 36, or a person authorized in writing by the commissioner to possess such unstamped cigarettes; any such unstamped cigarettes and other tobacco products which are otherwise held, purchased, possessed, imported or acquired in violation of paragraphs (a), (b), (c), (d), (f), or (g) of section 10 or of sections 34, 35, 37, or 37A; any falsely made, fraudulently made, forged, altered or counterfeited cigarette excise stamps and any cigarette excise stamps otherwise not prescribed or authorized by the commissioner; any un-affixed genuine cigarette excise stamps found in the possession of anyone not being a stamper or a person otherwise authorized by the commissioner to possess such stamps.~~

(2) All materials, products, and equipment of any kind which are used, or intended ~~for use, in manufacturing, compounding, processing, delivering, dispensing, distributing, importing, or exporting any controlled substance in~~ to be used to commit or facilitate any violation of this chapter, any provision of section 10, 34, 35, 37, 37A, or 38.

(3) All conveyances, including aircraft, vehicles or vessels used, or intended for use, to transport, conceal, or otherwise facilitate the manufacture, ~~dispensing, distribution of or purchase, sale~~ possession with intent to manufacture, ~~dispense or distribute, a controlled substance or sell tobacco products~~ in violation of any provision of section ~~thirty two, thirty two A, thirty two B, thirty two C, thirty two D, thirty two E, thirty two F, thirty two G, thirty two I, thirty two J, or forty.~~ 10, 34, 35, 37, 37A, or 38.

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

(5) All moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for ~~a controlled substance~~ tobacco products in violation of this chapter, all proceeds traceable to such an exchange, including real estate and any other thing of value, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of any provision of section ~~thirty two, thirty two A, thirty two B, thirty two C, thirty two D, thirty two E, thirty two F, thirty two G, thirty two I, thirty two J, or forty.~~ 10, 34, 35, 37, 37A, or 38.

~~(6)~~ All drug paraphernalia.

~~(7)~~ (6) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements thereto, which is used in any manner or part, to commit or to facilitate the commission of a violation of any provision of section ~~thirty two, thirty two A, thirty two B, thirty two C, thirty two D, thirty two E, thirty two F, thirty two G, thirty two I, thirty two J~~ or forty.10, 34, 35, 37, 37A, or 38.

~~(8)~~ All property, including any vending machine, which is used, or intended for use, as a container for property described in subparagraph (1) or (2).

~~(9)~~ No forfeiture under this section shall extinguish a perfected security interest held by a creditor in a conveyance or in any real property at the time of the filing of the forfeiture action.

(b) Property subject to forfeiture under subparagraphs (1), (2), (4), (5), (6), ~~(7)~~ and ~~(8)~~ of subsection (a) shall, upon motion of the attorney general or district attorney or the commissioner, be declared forfeit by any court having jurisdiction over said property or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. Property subject to forfeiture under subparagraph (1) of subsection (a) shall be turned over to the commissioner and destroyed, regardless of the final disposition of such related criminal proceeding, if any, unless the court for good cause shown orders otherwise.

(c) The court shall order forfeiture of all conveyances subject to the provisions of subparagraph (3) and of all real property subject to the provisions of subparagraph ~~(7)~~ of subsection (a) of this section, except as follows:

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

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

(3) No conveyance or real property shall be subject to forfeiture unless the owner thereof knew or should have known that such conveyance or real property was used in and for the business of unlawfully manufacturing, ~~dispensing,~~ or ~~distributing controlled substances.~~ selling of tobacco products. Proof that the conveyance or real property was used to facilitate the unlawful ~~dispensing,~~ manufacturing, or ~~distribution~~ sale of, or possession with intent unlawfully to manufacture, ~~dispense~~ or ~~distribute,~~ controlled substances sell, tobacco products on three or more different dates shall be prima facie evidence that the conveyance or real property was used in and for the business of unlawfully manufacturing, ~~dispensing, or distributing controlled substances.~~ or selling tobacco products.

(4) No conveyance or real property used to facilitate the unlawful manufacturing, ~~dispensing, or distribution~~ or sale of, or ~~the~~ possession with intent unlawfully to manufacture, ~~dispense,~~ or ~~distribute marihuana or a substance, not itself a controlled substance, containing any marihuana~~ sell, tobacco products, shall be forfeited if the ~~net weight~~ number of ~~the substance~~ units of tobacco products, as defined in section 1, so

manufactured, ~~dispensed, or distributed~~ sold or possessed with intent to manufacture, ~~dispense or distribute~~ sell, is less than ten ~~pounds~~ thousand units in the aggregate.

(d) A district attorney or the attorney general or the commissioner may petition the superior court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture under the provisions of subparagraphs (3), (5), and ~~(76)~~ of subsection (a). Such petition shall be filed in the court having jurisdiction over said conveyance, real property, monies or other things of value or having final jurisdiction over any related criminal proceeding brought under any provision of this chapter. In all such suits where the property is claimed by any person, other than the commonwealth, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action, and any such claimant shall then have the burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5), or ~~(76)~~ of said subsection (a). The owner of said conveyance or real property, or other person claiming thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and ~~(ig)~~. The court shall order the commonwealth to give notice by certified or registered mail to the owner of said conveyance, real property, moneys or other things of value and to such other persons as appear to have an interest therein, and the court shall promptly, but not less than two weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said conveyance, real property, moneys or other things of value, the court may continue the hearing on the petition pending the outcome of any criminal trial related to the violation of this chapter. At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon issue a final order, from which the parties shall have a right of appeal. In all such suits where a final order results in a forfeiture, said final order shall provide for

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

The final order of the court shall provide that said moneys and the proceeds of any such sale shall be ~~distributed equally between~~deposited to the ~~prosecuting district attorney or attorney general and the city, town or state police department involved in the seizure. If more than one department was substantially involved in the seizure, the court having jurisdiction over the forfeiture proceeding shall distribute the fifty percent equitably among these departments.~~

~~There~~Illegal Tobacco Task Force Trust Fund. This shall be a separate fund, established on the books of the Commonwealth within the office of the state treasurer ~~separate~~

~~special law enforcement trust funds for each district attorney and for the attorney general., to be administered by the co-chairs of the illegal tobacco task force~~

established under section 40. All such ~~monies~~moneys and proceeds received ~~by any prosecuting district attorney or attorney general~~ shall be deposited in such a~~into said~~

trust fund and shall then be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or such other law enforcement

purposes as the ~~district attorney or attorney general deems appropriate.~~~~The district~~

~~attorney or attorney general may expend up to ten percent of the monies and proceeds for drug rehabilitation, drug education and other anti-drug or neighborhood crime watch~~

~~programs which further law enforcement purposes. Any program seeking to be an eligible recipient of said funds shall file an annual audit report with the local district attorney and attorney general. Such report shall include, but not be limited to, a listing of the assets, liabilities, itemized expenditures, and board of directors of such program. Within ninety days of the close of the fiscal year, each district attorney and the attorney general shall file an annual report with the house and senate committees on ways and means on the use of the monies in the trust fund for the purposes of drug rehabilitation, drug education, and other anti drug or neighborhood crime watch programs.~~colonel of the state police and commissioner of revenue deems appropriate, which shall include but not be limited to equitable distributions to the prosecuting district attorney or attorney general and any police department involved in the seizure. Any such distributions made shall be deposited in the special law enforcement trust funds provided for in subsection (d) of section 47 of chapter 94C, and expended as provided in said subsection.

~~All such moneys and proceeds received by any police department shall be deposited in a special law enforcement trust fund and shall be expended without further appropriation to defray the costs of protracted investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants, or to accomplish such other law enforcement purposes as the chief of police of such city or town, or the colonel of state police deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such department.~~

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

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

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

~~(2) There shall be created within the division of capital asset management and maintenance an office of seized property management to which a~~(2) A district attorney or the attorney general may refer any real property, and any furnishings, equipment and related personal property located therein, for which seizure is sought: to the division of capital asset management and maintenance office of seized property

management, established under section 47 of chapter 94C. The office of seized property management shall ~~be authorized to~~ preserve and manage such property in a reasonable fashion and ~~to~~ dispose of such property upon a judgment ordering forfeiture issued pursuant to the provisions of subsection (d), and ~~to~~may enter into contracts to preserve, manage and dispose of such property. The office of seized property management may receive initial funding from the special law enforcement trust funds of the attorney general and each district attorney ~~established pursuant to~~referenced in subsection (d) and shall subsequently be funded by a portion of the proceeds of each sale of such managed property to the extent provided as payment of reasonable expenses in subsection (d).

~~(g) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths may be seized by any police officer and summarily forfeited to the commonwealth.~~

~~(h) The failure, upon demand by a police officer of the person in occupancy or in control of land or premises upon which the species of plants are growing to produce an appropriate registration, or proof that he is a holder thereof, constitutes authority for the seizure and forfeiture of the plants.~~

~~(i)~~(g) The owner of any real property which is the principal domicile of the immediate family of the owner and which is subject to forfeiture under this section may file a petition for homestead exemption with the court having jurisdiction over such forfeiture. The court may, in its discretion, allow the petition exempting from forfeiture an amount allowed under section one of chapter one hundred and eighty-eight. The value of the balance of said principal domicile, if any, shall be forfeited as provided in

this section. Such homestead exemption may be acquired on only one principal domicile for the benefit of the immediate family of the owner.

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

218, §26 - General provisions

[XX] Section 26 of chapter 218, as appearing in the 2014 Official Edition, is hereby amended in line 12 by inserting after the phrase “the crimes listed in” the following:

“paragraph (2) of section 34 and paragraph (2) of section 35 and paragraph (b) of section 37A of chapter 64C, and”

So that the section as amended shall read:

Section 26. The district courts and divisions of the Boston municipal court department shall have original jurisdiction, concurrent with the superior court, of the following offenses, complaint of which shall be brought in the court of the district court department, or in the Boston municipal court department, as the case may be, within which judicial district the offense was allegedly committed or is otherwise made punishable:— all violations of by-laws, orders, ordinances, rules and regulations, made by cities, towns and public officers, all misdemeanors, except libels, all felonies punishable by imprisonment in the state prison for not more than five-years, the crimes listed in paragraph (2) of section 34 and paragraph (2) of section 35 and paragraph (b) of section 37A of chapter 64C, and paragraph (1) of subsection (a) of section eight of chapter ninety B, subparagraph (1) of paragraph (a) of subdivision (1) of section twenty-four, paragraph (a) of section twenty-four G and paragraph (1) of section twenty-four L of chapter ninety, paragraph (a) of section thirty-two and paragraph (a) of section thirty-two A of chapter ninety-four C, and section thirty-two J of chapter ninety-four C, section 38B of chapter 127, section one hundred and thirty-one E of chapter one hundred and forty, sections thirteen K, 15A, 15D, 21A and 26 of chapter two hundred and sixty-five and sections sixteen, seventeen, eighteen, nineteen, twenty-eight, thirty, forty-nine and one hundred and twenty-seven of chapter two hundred and sixty-six, and sections one, fifteen and fifteen A of chapter two hundred and seventy-three, and the crimes of malicious destruction of personal property under section one hundred and twenty-seven of chapter two hundred and sixty-six, indecent assault and battery on a child under fourteen years of age, intimidation of a witness or

juror under section thirteen B of chapter two hundred and sixty-eight, escape or attempt to escape from any penal institution, forgery of a promissory note, or of an order for money or other property, and of uttering as true such a forged note or order, knowing the same to be forged. They shall have jurisdiction of proceedings referred to them under the provisions of section four A of chapter two hundred and eleven.