

Report and Legislative Proposals of Multi-Agency Illegal Tobacco Task Force

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Legislative proposals made by the Multi-Agency Illegal Tobacco Task Force to combat illegal tobacco distribution and the resulting loss of revenue to the Commonwealth of Massachusetts

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I. Task Force Creation and Legislative Background

As part of the Fiscal Year 2014 General Appropriations Act¹, the Massachusetts Legislature created the Commission on Illegal Tobacco (Commission) to study the magnitude and economic impact of the illegal tobacco market in the Commonwealth. On March 1, 2014, the Commission issued its Report of Commission on Illegal Tobacco, which provided a general overview of the illicit tobacco market in Massachusetts and contained a series of findings and recommendations.² Pertinently, one of the Commission's primary recommendations was the creation of a Multi-Agency Illegal Tobacco Task Force. The Commission recognized that enforcement of the Commonwealth's tobacco laws was spread across multiple agencies and envisioned the Task Force as the vehicle by which information and resources could be shared across agencies in order to maximize the effectiveness of enforcement efforts.³ In addition to the formation of the Task Force, the Commission recommended a number of statutory changes and updates as well as process improvements designed to increase compliance as well as tobacco excise and sales tax collections.

The Multi-Agency Illegal Tobacco Task Force (Task Force) was created pursuant to section 71 of the Fiscal Year 2016 General Appropriations Act.⁴ According to its enabling statute, the Task Force is co-chaired by the Colonel of the State Police and the Commissioner of Revenue or their designees and additionally consists of the Secretary of Public Safety and Security, State Treasurer, Attorney General, and Commissioner of Public Health, or their respective designees. The Task Force has been designated with the following responsibilities:

The task force shall coordinate efforts to combat contraband tobacco distribution, including efforts to foster compliance with the law and conduct targeted investigations and enforcement actions against violators....

The task force shall: (i) facilitate timely information sharing among state agencies in order to advise or refer matters of potential investigative interest; (ii) dedicate not less than an aggregate of 20 personnel from member agencies to carry out enforcement and investigative strategies; (iii) identify where illegal tobacco distribution is most prevalent and target task force members' investigative and enforcement resources against those in violation of [chapter 64C] and chapter 62C, including through the formation of joint investigative and enforcement teams; (iv) assess existing investigative and enforcement methods in the commonwealth and in other jurisdictions and develop and recommend strategies to improve those methods; and (v) solicit the cooperation and participation of other relevant enforcement

¹ St. 2013, c. 38, § 182.

² <https://www.heartland.org/policy-documents/report-commission-illegal-tobacco-massachusetts> (accessed on February 19, 2016) (hereafter "Commission Report")

³ Commission Report at pp. 5-6, 26-27.

⁴ St. 2015, c. 46, § 184; M.G.L. c. 64C, § 40.

agencies and establish procedures for referring cases to prosecuting authorities as appropriate.

For Fiscal Year 2016, the Task Force was appropriated \$1 million for purposes of setting up the Task Force, deciding on an organizational structure, and the commencement of multi-agency enforcement and investigative operations.

The Task Force is required to meet at times and places determined by the Co-Chairs as “deemed necessary to carry out its mandate” and to submit a report and proposed legislation by July 1, 2016, detailing its recommendations. Specifically, the report shall include recommendations on: (i) enhancing and amending cigarette excise forfeiture provisions; (ii) increasing civil and criminal penalties; (iii) updating and clarifying cigarette excise regulatory and administrative provisions; (iv) potential regulatory or statutory changes to strengthen enforcement efforts, including any changes necessary to resolve existing legal ambiguities or inconsistencies and potential legal procedures for facilitating enforcement efforts. The report is to be filed with the clerks of the Senate and House of Representatives, the Chairs of the Joint Committee on Revenue, the Chairs of the Senate and House Committees on Ways and Means, and the Chairs of the Joint Committee on Public Safety and Homeland Security. The Task Force is filing this Report and Legislative Proposals of the Multi-Agency Task Force (Report) in compliance with its July 1, 2016, reporting obligation.⁵ On May 27, 2016, the Task Force filed its first Report to Legislature of Multi-Agency Illegal Tobacco Task Force (First Report) which contained a general overview of the illegal tobacco market in and around Massachusetts and a discussion of the Task Force’s efforts and activities during the year.⁶

II. Executive Summary

Pursuant to its statutory authority, the Task Force has undertaken a comprehensive review of the statutory provisions pertaining to tobacco taxation and enforcement contained in the General Laws. As a result of this review, the Task Force recommends a series of legislative changes to modernize, strengthen and simplify the Commonwealth’s tobacco statutes. Most, but not all, of the proposed changes relate to the licensing provisions of General Laws chapter 62C as well as chapter 64C, which contains the tobacco excise statutes. Broadly speaking, these changes fall into the following four categories: (1) increasing fines and penalties; (2) updating regulatory and administrative procedures; (3) strengthening criminal provisions; and (4) harmonizing tobacco forfeiture provisions with other forfeiture provisions in the General Laws.

Some of the tobacco statutes have not been updated for over fifty years.⁷ In addition to being

⁵ *Id.*

⁶ <http://www.mass.gov/dor/tax-professionals/news-and-reports/illegal-tobacco-task-force/meetings/reports.html> (accessed on June 20, 2016) (hereafter “First Report”).

⁷ M.G.L. c. 64C was originally enacted in 1945. *See* St. 1945, c. 547, § 1. Some sections of chapter 64C have not been amended since the date of enactment.

outdated, some statutory provisions can be confusing and, as a result, can make enforcement challenging. The changes proposed by the Task Force are intended to update the tobacco statutes so they reflect current practice and technology and to provide government officials with effective tools for enforcement. Significantly, the changes increase certain fines and penalties so that they can act as an effective deterrent to unlawful conduct, which the existing penalty structure fails to accomplish. In addition, certain changes serve to clarify definitions and terms used in chapters 62C and 64C.

Attached herewith are the Task Force's proposed legislative changes to modernize, strengthen and simplify the Commonwealth's tobacco statutes. This package of legislative proposals constitutes the focal point of this Report. The remainder of this brief Report will highlight some of the recommended changes in the four categories outlined above. Of course, this brief Report cannot contain or identify all of the proposed changes and should not be viewed as a substitute to reviewing all of the proposed changes in their entirety.

A. Increased Civil Penalties

- Expands number of categories of prohibited conduct that may result in civil penalties under chapters 62C and 64C of the General Laws.
- Stiffens penalties for civil violations of tobacco provisions in chapter 64C so that they can serve as an effective deterrent to unlawful conduct.

B. Updated Regulatory and Administrative Procedures

- Tightens requirements for tobacco license applicants and licensees to obtain and/or maintain licenses to sell tobacco products in the Commonwealth.
- Changes license period to one year for all tobacco licensees, including retailers, to allow for better monitoring of licensees at all levels of the supply chain.
- Expands and clarifies authority of Department of Revenue (DOR) to regularly search the premises of tobacco licensees and any areas where tobacco products are placed, stored or sold.
- Enhances record-keeping requirements for licensees to maintain and preserve complete and accurate records relating to the purchase and sale of tobacco products.
- Clarifies certain statutory definitions pertaining to tobacco in chapter 64C and eliminates antiquated or obsolete terms that are no longer in use.

C. Strengthening Criminal Provisions

- Requires retailers to purchase all tobacco products exclusively from licensed Massachusetts suppliers.
- Prohibits cash transactions for tobacco products between retailers and their licensed suppliers to allow for better tracking and oversight of tobacco products throughout the supply chain.

- Adds new separate offense for possession with intent to sell or sale of untaxed tobacco products to complement similar provision prohibiting possession with intent to sell or sale of untaxed cigarettes.
- Creates new penalty structure with most tobacco offenses classified as felonies, which permit longer periods of incarceration and substantially stiffer fines for offenders.

D. Updated Forfeiture Provisions

- Adopts procedures from chapter 94C pertaining to forfeiture of items seized in connection with narcotics offenses so as to create uniform, standardized procedures for forfeitures involving controlled substances and tobacco products.
- Directs deposits of seized items to newly created Illegal Tobacco Task Force Trust Fund to help defray costs of protracted investigations, provide additional technical equipment or expertise and for other law enforcement purposes.

III. Conclusion and Next Steps

The Task Force has spent considerable time and effort to engage in a comprehensive review of the chapters of the General Laws pertaining to tobacco and tobacco enforcement. The proposed legislative changes are intended to modernize, strengthen and simplify the Commonwealth's tobacco statutes while giving law enforcement officials effective tools to combat the illegal tobacco trade in the Commonwealth. As outlined in the Task Force's First Report, tobacco smuggling costs the Commonwealth millions of dollars of lost revenue every year.⁸ The Task Force looks forward to working with the Legislature to enact legislative changes that will make it more difficult to evade payment of tobacco excises through the illegal trade and to implement reforms that will serve to deter unlawful conduct and, where appropriate, punish offenders who continue to violate the law.

In its First Report, the Task Force identified the lack of a stable source of appropriations as a significant impediment to successful achievement of its mission to confront and combat the illegal tobacco trade. As the Task Force envisions increasing the scale and scope of its investigative and enforcement activities in Fiscal Year 2017, the Task Force's need for continued funding is critical to its success. In light of the Task Force's focus on organizational and structural matters during Fiscal Year 2016 (FY16), the Task Force only spent a small fraction of its FY16 appropriation. However, without continued funding, the significant progress of the Task Force to date will be put in jeopardy. For example, certain Task Force member agencies have delayed hiring (and have indicated that they cannot hire) additional staff to work on Task Force matters unless the Task Force can provide the funding to support any such hiring. The key to the success of our counterpart illegal tobacco prevention agencies in New York, Connecticut and Rhode Island has been a sufficient and stable appropriation.⁹

⁸ See First Report at pp. 8 – 13.

⁹ *Id.* at pp. 12 – 14.

Finally, the Task Force has begun the process of exploring the technical and financial feasibility of expanding the Commonwealth's current encrypted cigarette tax stamping program to smokeless tobacco products, which are the source of significant revenue loss to the Commonwealth.¹⁰ Smokeless tobacco products are currently not stamped, which present certain challenges for law enforcement. Although it is very early in the process and significant issues remain unresolved, the Task Force will continue to study the issue. Over the course of the upcoming months, the Task Force intends to engage interested stakeholders in a dialogue about issues related to the potential expansion of the stamping program to smokeless tobacco products.

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¹⁰ *Id.* at pp. 11 – 12.