

Illegal Tobacco Task Force

Notice of Public Meeting

Meeting Date: Wednesday, June 29th, 2016

Meeting Time: 10:00 AM

Meeting Location: Office of State Treasurer

One Ashburton Place, 12th floor, West Conference Room, Boston, MA

Members will discuss proposed legislative changes to the state's laws relating to tobacco.

- A. Vote to Approve Remote Participation
- B. Opening Remarks/Approval of Last Meeting Minutes
- C. Discussion of/ Vote to Approve Proposed Legislative Changes
- D. Upcoming Meetings
- E. Wrap Up/Closing Comments

Due to security at One Ashburton Place, those interested in attending the meeting should allow for additional time to check-in.

If any member of the public wishing to attend this meeting seeks special accommodations in accordance with the American with Disabilities Act, please contact DOR Human Capital Development at 617-626-2355.

Date of Posting: June 27, 2016 @ 10:00am

Illegal Tobacco Task Force Minutes

Meeting Date: June 15, 2016

Meeting Time: 10:00am

Meeting Location: 100 Cambridge Street, 2nd Floor, Conference Room A

Board Members Present: Kajal Chattopadhyay (Co-Chair), Michael Sweeney, Tom Bocian, Amber Villa, Brian Domoretsky (sitting in for David Solet), Christy Fedor.

Others: Evan Garcia, Brenda McConville, Molly Parks, Jenn Robertson, Paul Caron.

Call to Order:

- Mr. Chattopadhyay called the meeting to order at 10:08am.
- Mr. Chattopadhyay informed the Task Force that the meeting's agenda would be dedicated exclusively to confirming and finalizing the proposed legislative changes.
- Each Task Force member was then called to review the previous meeting minutes.
- Ms. Villa made a motion to approve the minutes. The motion was seconded by Mr. Sweeney. The minutes were approved by unanimous vote.

Discussion of Proposed Legislative Changes:

- The Task Force reviewed the proposed legislative changes document section by section. DOR's Molly Parks was present to answer any questions as it related to the changes, where necessary.
- The document distributed to the Task Force incorporated the changes from the last meeting and several minor updates from DOR.
- The Task Force reviewed all changes made from the previous draft, which were redlined in the draft used by the Task Force at the meeting. In addition, the Task Force used a summary chart of the changes to aid their review and discussion.
- Mr. Chattopadhyay indicated that he will continue to collect feedback and additional comments or proposed changes from Task Force members in preparation for the next meeting.
- Mr. Chattopadhyay stated that he will circulate updated versions of the proposed legislative changes within the next few days so that member agencies can review them before the next meeting at which the Task Force will vote to finalize and accept the proposed legislative changes and to accept the report to the Legislature (due July 1, 2016).

Other Business:

- Next meeting will be held June 29, 2016, at 10am.
- Mr. Sweeney made a motion to adjourn the meeting. There were no objections. Meeting was adjourned at 10:42am.

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

Upon receiving notice from the commissioner of revenue that a retailer or a cigar retailer, as defined in section 1 of chapter 64C, has had a cigar or tobacco license suspended or revoked for a knowing 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, 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, retailer, cigar distributor or cigar retailer as defined in section 1 of chapter 64C and of all taxpayers appointed as stampers, as defined in section 1 of chapter 64C. In addition, such list shall include all taxpayers 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, 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.

(c1/2) [deleted]

. . .

62C, §21 – Disclosure of Tax Information

[XX] 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”

[XX] Paragraph 28 of section 21 of chapter 62C, as inserted by section 68 of chapter 46 of the acts of 2015 is hereby amended by inserting after the phrase

“federal law enforcement”

the phrase:

“or to revenue or law enforcement officials from another state”

So that the relevant portions of 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 38 of chapter 64C.

. . .

(28) the disclosure of information to members of the multi-agency illegal tobacco task force established in section 40 of chapter 64C or to federal law enforcement or to revenue or law enforcement officials from another state for the purpose of investigating or prosecuting criminal offenses relative to contraband tobacco distribution or conducting other enforcement actions relative to contraband tobacco distribution.

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

(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, 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, retailer, cigar distributor or cigar retailer, as defined in chapter 64C the commissioner shall investigate the prior activities of the applicant. If the commissioner determines that (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, or any violation of law involving dishonesty or fraud, 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

one hundred packs of unstamped cigarettes or two 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 commissioner has received notice from another state or municipal agency, board or law enforcement official that the applicant has been fined, cited or otherwise penalized by a state or municipal agency board or law enforcement official (a) for the sale of tobacco products to a person under the minimum legal sales age, or (b) for any other violation of the laws or regulations of the commonwealth regarding tobacco, on three or more occasions during the five-year period preceding the date of the application and that any administrative remedies available to the applicant have been exhausted or have expired, 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, except as otherwise prescribed by the commissioner, shall expire annually 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 3B of chapter 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; 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 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, including but not limited to situations in which the real person in interest is a person (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 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, 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; or

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

(l) 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, or any violation of law involving dishonesty or fraud, within a five-year period in the case of a misdemeanor or within a ten-year period 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 fifty packs of unstamped cigarettes or 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 commissioner has received notice from another state or municipal agency, board or law enforcement official that the licensee has been fined, cited or otherwise penalized by a state or municipal agency board or law enforcement official (a) for the sale of tobacco products to a person under the minimum legal sales age, or (b) for any other violation of the laws or regulations of the commonwealth regarding tobacco, on three or more occasions during a five-year period and that any administrative remedies available to the licensee have been exhausted or have expired.

[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, 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.

[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. Suspension or revocation of license or registration; appeal; reissuance of registration

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 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, or any violation of law involving dishonesty or fraud, within a five-year period in the case of a misdemeanor or within a ten-year period 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 fifty packs of unstamped cigarettes or 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 commissioner has received notice from another state or municipal agency, board or law enforcement official that the licensee has been fined, cited or otherwise penalized by a state or municipal agency board or law enforcement official (a) for the sale of tobacco products to a person under the minimum legal sales age, or (b) for any other violation of the laws or regulations of the commonwealth regarding tobacco, on three or more occasions during a five-year period and that any administrative remedies available to the licensee have been exhausted or have expired.

(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 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.

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:—

"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;

“place of business” shall mean and include any place where tobacco products are sold or offered for sale 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.

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

“retailer”, any person who 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;

“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 being combusted, including, but not limited to cavendish, plug, twist and fine-cut tobaccos.

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

“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 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;
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;
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; and
4. any cigar distributor.

"wholesale price", (i) in the case of a manufacturer of cigars and smoking tobacco, the price set by that manufacturer 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, 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"

[XX] Section 2 of chapter 64C, as so amended, is hereby further amended by adding at the end the following sentences:

"Every licensed wholesaler, cigar distributor, vending machine operator, unclassified acquirer, cigar retailer and retailer shall be required to report to the commissioner, on a form prescribed by the commissioner, the complete addresses, including any unit number, of any and all premises in addition to such licensee's place or places of

business at which the licensee holds, places or stores tobacco products. Such reports shall be made at the time of licensing, and if the licensee adds additional such premises during the licensing period or ceases to use any such premises for such purpose, reports as to such changes shall be made within three business days of the date the change is made."

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 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. Every licensed wholesaler, cigar distributor, vending machine operator, unclassified acquirer, cigar retailer and retailer shall be required to report to the commissioner, on a form prescribed by the commissioner, the complete addresses, including any unit number, of any and all premises in addition to such licensee's place or places of

business at which the licensee holds, places or stores tobacco products. Such reports shall be made at the time of licensing, and if the licensee adds additional such premises during the licensing period or ceases to use any such premises for such purpose, reports as to such changes shall be made within three business days of the date the change is made.

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. Records and statements required of vendors and purchasers

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

(b) All statements and records 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 at the cigar distributor's, wholesaler's, vending machine operator's or unclassified acquirer's place of business 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 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; and (vi) such other records 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 tobacco products purchased.

(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 at 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.

(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.

(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 and smokeless tobacco, as those terms are defined in 15 U.S.C. 375, 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 tobacco products in interstate commerce. The department shall, pursuant to 15 U.S.C. section 376, seek statements from persons selling cigarettes and smokeless tobacco, as those terms are defined in 15 U.S.C. 375, 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.

(2) The department shall provide information received pursuant to this section to the department of public health. The department shall report 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.

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

[XX] Chapter 64C, as so appearing, is hereby amended by striking out Section 6 and inserting in place thereof the following section:

Section 6. Payment of excise on cigarettes and smokeless tobacco

- (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 are authorized by the commissioner to possess unstamped cigarettes, shall pay the excise to the commissioner at the time required for filing a return under paragraph (c) of section 16 of chapter 64C. The excise shall be due from persons not authorized to possess unstamped cigarettes immediately upon such 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 earliest.
- (b) An excise shall be imposed 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 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.
- (e) The commissioner may, in his discretion, require reports from any common carrier who transports tobacco products to any point or points within the commonwealth and from any other person who, under contract, so transports tobacco products, and from any bonded warehouseman or bailee who has in his possession any tobacco products, such reports to contain such information concerning shipments of tobacco products as the commissioner shall determine. All such carriers, bailees, warehousemen and other persons shall permit the examination by the commissioner or his duly authorized agent of any records relating to the shipment of tobacco products into or from, or the receipt thereof within, the commonwealth.
- (f) Notwithstanding the provisions of subsection (a), the excise imposed under this section on any cigarette that does not contain nicotine shall be at the rate of 16.3 cents for each such cigarette.

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

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

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

[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:

(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.

(b) Every cigar retailer shall be liable for the payment 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 prima facie evidence that the excise thereon has not been paid and that such cigar retailer is liable for the payment of the excise thereon.

(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.

(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.

(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.

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

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

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

[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. Penalties for particular offenses

- (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 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, 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 shall be punished by a fine of not more than ten thousand dollars.
- (h) Any person 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 ten thousand dollars or by imprisonment in a house of correction for not more than two and one-half years, or both.
- (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. Records and reports of purchases and sales; investigation, examination and search

- (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.
- (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.

- (d) The commissioner and his authorized representatives may examine the books, papers and records 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"

[XX] Section 13 of Chapter 64C, as so appearing, is hereby further amended by striking out in lines 5, 19, 26, 46, 61, and 86 the word "cash" and inserting in its place the words "prompt payment".

So that the section as amended shall read:

Section 13. (a) The term "cost to the retailer" shall mean the invoice cost of the cigarettes to the retailer, or the replacement cost of the cigarettes to the 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 prompt payment; to which shall be added the cost of doing business by said retailer as evidenced by the standards and the methods of accounting regularly employed by him in his allocation of overhead costs and expenses, paid or incurred, and must include, without limitation, labor (including salaries of executives and officers), rent, depreciation, selling costs, maintenance of equipment, delivery costs, all types of licenses, taxes, insurance and advertising.

(b) In the absence of proof of a lessor or higher cost of doing business by the retailer making the sale, the cost of doing business by the retailer shall be presumed to be twenty-five per centum of the invoice cost of the cigarettes to the retailer, or of the replacement cost of the cigarettes to the 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 prompt payment.

(c) The term "cost to the wholesaler" shall mean the basic cost, which is defined as the invoice cost to the wholesaler, plus the face amount of the state cigarette excise or the replacement cost of the cigarettes to the wholesaler, plus the face amount of the cigarette excise 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 prompt payment; to which shall be added a wholesaler's mark-up to cover in part the cost of doing business, which wholesaler's mark-up, in the absence of proof of a lesser or higher cost of doing business by the said wholesaler shall include all direct costs attributable to the receiving, bonding, stamping, handling, storing, sales and delivery of cigarettes, and, shall additionally include as evidenced by the standards and methods of accounting regularly employed by him in his allocation of overhead cost and expenses, paid or incurred, including without limitation, labor, salaries of executives and officers, rent, depreciation, selling costs, maintenance of equipment, delivery, delivery costs, all types of licenses, taxes, insurance and advertising, shall be two per centum of said basic cost of the cigarettes to the wholesaler, except for sales to chain stores which shall be one-half per centum, plus cartage to the retail outlet if performed or paid for by the wholesaler, which cartage cost shall be deemed to be three-fourths of one percent of the basic cost of the cigarettes to the wholesaler, unless said wholesaler claims and proves a lower cartage cost, or of the replacement cost of the cigarettes to the wholesaler 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 prompt payment.

For the purpose of this subdivision, the term "chain store" shall mean any person or persons who own or maintain ten or more retail outlets in the commonwealth, having one hundred percent common ownership or any vending machine operator who operates vending machines in twenty-five or more locations.

(d) In the absence of proof of a lesser or higher cost of doing business, the cost of doing business to the retailer, who received in connection with the retailer's purchase not only the discounts ordinarily allowed upon purchases by a retailer but also in whole or in part the discounts ordinarily allowed upon purchases by a wholesaler, shall be presumed to be twenty-five per centum of both the invoice cost of the cigarettes to such retailer or the replacement cost of the cigarettes to such 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 prompt payment and "wholesaler mark-up."

(e) In all advertisements, offers for sale or sales involving two or more items at a combined price, and in all advertisements, offers for sale or sales involving the giving of any concession of any kind whatsoever (whether it be coupons or otherwise), the retailer's or wholesaler's selling price shall not be below the "cost to the retailer" or the "cost to the wholesaler", respectively, of all articles, products, commodities and concessions included in such transactions.

(f) The terms "sell at retail", "sales at retail" and "retail sales" shall mean and include any transfer of title to tangible personal property for a valuable consideration made, in the ordinary course of trade or usual prosecution of the seller's business, to the purchaser for consumption or use. The terms "sell at wholesale", "sales at wholesale"

and "wholesale sales" shall mean and include any such transfer of title to tangible personal property for the purpose of resale.

(g) The wholesaler, vending machine operator 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 prompt payment, 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. Disposition of sums received

The total sums received pursuant to the excise imposed on cigarettes by this chapter, together with any penalties, forfeitures other than forfeitures pursuant to section 38B, interest, costs of suits and fines collected in connection therewith, less all amounts refunded or abated in connection therewith, shall be credited as follows: 22.16 percent of 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 other than forfeitures pursuant to section 38B, 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. Payment of tax through use of stamps

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

Licensees and stampers shall not sell, borrow, loan or exchange unstamped cigarettes or stamps to, from or with other such licensees or stampers unless previously authorized in writing by the commissioner, and licensees and stampers proposing to engage in 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. Possession, sale, etc., of unstamped cigarettes; penalty; prima facie evidence

Whoever, not being 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, shall be punished as follows:

- (1) A violation involving four hundred or fewer cigarettes shall be punished by a fine of not more than two thousand five hundred dollars or by imprisonment in a house of correction for not more than one year, or both such fine and imprisonment;
- (2) A violation involving more than four hundred but fewer than thirty thousand cigarettes 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;
- (3) A violation involving 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-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 prima facie evidence that the said excise has not been paid with respect to said package of cigarettes. If any unstamped 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 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 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. Possession or transportation of unstamped cigarettes; penalty; arrest, search and seizure; forfeitures

Whoever, not being a stamper 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 four hundred or fewer cigarettes shall be punished by a fine of not more than two thousand five hundred dollars or by imprisonment in a house of correction for not more than one year, or both such fine and imprisonment;
- (2) A violation involving more than four hundred but fewer than thirty thousand cigarettes 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;
- (3) A violation involving 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-half years or in state prison for not more than ten years, or both such fine and imprisonment.

A police officer, including a special police officer appointed under section twenty-six, may without a warrant arrest 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 cigarettes.

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

Whoever, not being a stamper, a common carrier transporting cigarettes under a proper bill of lading or 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, 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
- (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 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. Forgery, alteration, etc., of excise stamps; unauthorized use of stamping machine; penalties; forfeitures

(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
- (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; or
- (3) 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
- (4) 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 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, 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 prima facie evidence that such person has counterfeited stamps.

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

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

Section 37A. Selling, etc. Untaxed Other Tobacco Products; Evasion

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

Section 37B. Transportation of untaxed other tobacco products; necessity of invoices or delivery tickets; prima facie evidence

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. Unauthorized use of excise stamps; penalty

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 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.

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

Whenever the commissioner discovers:

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

- (d) 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 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 purchased or otherwise acquired during those periods; or
- (e) 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; or
- (f) 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
- (g) any machines or devices for affixing stamps not prescribed or authorized by the commissioner;

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

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

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

Section 38B. Forfeiture of Property

(a) The following property shall be subject to forfeiture to the commonwealth and all property rights therein shall be in the commonwealth:

(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 to be used to commit or facilitate any violation of 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, purchase, sale possession with intent to manufacture or sell tobacco products in violation of any provision of section 10, 34, 35, 37, 37A, or 38.

(4) All books, records, research, including formulas and data, whether in paper or electronic or other medium, which are used, or intended for use, 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 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 10, 34, 35, 37, 37A, or 38.

(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 10, 34, 35, 37, 37A, or 38.

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

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), and (7) 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 (6) 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 or selling of tobacco products. Proof that the conveyance or real property was used to facilitate the unlawful manufacturing, or sale of, or possession with intent unlawfully to manufacture or 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 or selling tobacco products.

(4) No conveyance or real property used to facilitate the unlawful manufacturing, or sale of, or possession with intent unlawfully to manufacture or sell, tobacco products, shall be forfeited if the number of units of tobacco products, as defined in section 1, so manufactured, sold or possessed with intent to manufacture or sell, is less than ten 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 (6) 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 (6) 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 (g). 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 deposited to the 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, to be administered by the co-chairs of the illegal tobacco task force established under section 40. All such moneys and proceeds received shall be deposited 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 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.

(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 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) A district attorney or the attorney general or the commissioner 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 preserve and manage such property in a reasonable fashion and dispose of such property upon a judgment ordering forfeiture issued pursuant to the provisions of subsection (d), and 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 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) 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.

(h) 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. General provisions

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.

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

07/01/2016

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

Members of the Multi-Agency Illegal Tobacco Task Force

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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.

¹⁰ *Id.* at pp. 11 – 12.

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 commissioner has received notice from another state or municipal agency, board or law enforcement official that the licensee has been fined, cited or otherwise penalized by a state or municipal agency board or law enforcement official (a) for the sale of tobacco products to a person under the minimum legal sales age, or (b) for any other violation of the laws or regulations of the commonwealth regarding tobacco, on three or more occasions during ~~the a~~ five-year period and that any administrative remedies available to the licensee have been exhausted or have expired.

[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, 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.

[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

admission relates to tobacco products, or any violation of law involving dishonesty or fraud, within a five-year period in the case of a misdemeanor or within a ten-year period 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 fifty packs of unstamped cigarettes or 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 commissioner has received notice from another state or municipal agency, board or law enforcement official that the licensee has been fined, cited or otherwise penalized by a state or municipal agency board or law enforcement official (a) for the sale of tobacco products to a person under the minimum legal sales age, or (b) for any other violation of the laws or regulations of the commonwealth regarding tobacco, on three or more occasions during ~~the~~ a five-year period and that any administrative remedies available to the licensee have been exhausted or have expired.

(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.

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;

"place of business" shall mean and include any place where tobacco products are sold or offered for sale or where tobacco products are brought or kept for the purpose of sale or consumption⁷, including so far as applicable any vessel, vehicle, airplane, train or cigarette vending machine.

"premises" or "business premises" shall mean and include any "place of business" and in addition any place where tobacco products are placed or stored.

"retailer", any person who 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;

"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 being combusted, including, but not limited to cavendish, plug, twist and fine-cut tobaccos.

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

~~**"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 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.

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 and smokeless tobacco, as those terms are defined in 15 U.S.C. ~~376~~375, 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 tobacco products in interstate commerce. The department shall, pursuant to 15 U.S.C. section 376, seek statements from persons selling cigarettes and smokeless tobacco, as those terms are defined in 15 U.S.C. ~~376~~³⁷⁵, 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.

(2) The department shall provide information received pursuant to this section to the department of public health. The department shall report 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.

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

Formatted: None

Whoever, not being a stamper 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 four hundred or fewer cigarettes shall be punished by a fine of not more than two thousand five hundred dollars or by imprisonment in a house of correction for not more than one year, or both such fine and imprisonment;
- (2) A violation involving more than four hundred but fewer than thirty thousand cigarettes 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; ~~P=~~
- (3) A violation involving thirty thousand or more cigarettes shall be punished by a fine of not more than one hundred thousand dollars or by imprisonment in