

**2014 -- H 7762 SUBSTITUTE A**

=====  
LC003630/SUB A  
=====

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2014**

—————  
A N A C T

RELATING TO TAXATION - CIGARETTE TAX

Introduced By: Representatives Mattiello, Silva, Johnston, O'Brien, and Ackerman

Date Introduced: February 27, 2014

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 44-20-12.2, 44-20-17, 44-20-35, 44-20-39, 44-20-45, 44-20-51,  
2   44-20-51.1, 44-20-51.2 and 44-20-51.3 of the General Laws in Chapter 44-20 entitled "Cigarette  
3   Tax" are hereby amended to read as follows:

4           **44-20-12.2. Prohibited acts -- Penalty. --** (a) No person or other legal entity shall sell or  
5   distribute in the state, acquire, hold, own, possess, or transport for sale or distribution in this state,  
6   or import or cause to be imported into the state for sale or distribution in this state nor shall tax  
7   stamps be affixed to any cigarette package:

8           (1) That bears any label or notice prescribed by the United States Department of  
9   Treasury to identify cigarettes exempt from tax by the United States pursuant to section 5704 of  
10   title 26 of the United States Code, 26 U.S.C. section 5704(b) (concerning cigarettes intended for  
11   shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United  
12   States), or for consumption beyond the jurisdiction of the internal revenue laws of the United  
13   States, including any notice or label described in section 44.185 of title 27 of the Code of Federal  
14   Regulations, 27 CFR 44.185;

15           (2) That is not labeled in conformity with the provisions of the Federal Cigarette  
16   Labeling and Advertising Act, 15 U.S.C. section 1331 et seq., or any other federal requirement  
17   for the placement of labels, warnings and other information, applicable to cigarette packages  
18   intended for domestic consumption;

19           (3) The packaging of which has been modified or altered by a person other than the

1 original manufacturer of the cigarettes, including by the placement of a sticker to cover  
2 information on the package. For purposes of this subsection, a cigarette package shall not be  
3 construed to have been modified or altered by a person other than the manufacturer if the most  
4 recent modification to, or alteration of, the package was by the manufacturer or by a person  
5 authorized by the manufacturer;

6 (4) Imported into the United States in violation of 26 U.S.C. section 5754 or any other  
7 federal law, or implementing federal regulations;

8 (5) That the person otherwise knows or has reason to know the manufacturer did not  
9 intend to be sold, distributed, or used in the United States; or

10 (6) That has not been submitted to the secretary of the U.S. Department of Health and  
11 Human Services the list or lists of the ingredients added to tobacco in the manufacture of those  
12 cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. section  
13 1335a.

14 (b) The tax administrator is authorized to obtain and exchange information with the  
15 United States Customs Service for the purpose of enforcing this section.

16 (c) Any person who affixes or distributes a tax stamp in violation of this section shall be  
17 fined not more than ~~five hundred dollars (\$500)~~ ten thousand dollars (\$10,000) for the first  
18 offense, and for each subsequent offense shall be fined not more than ~~one thousand dollars~~  
19 ~~(\$1,000)~~ twenty thousand dollars (\$20,000), or be imprisoned not more than ~~one year~~ five (5)  
20 years, or be both fined and imprisoned.

21 (d) Any cigarettes found in violation of this section shall be declared to be contraband  
22 goods and may be seized by the tax administrator or his or her agents, or by any sheriff or his or  
23 her deputy or any police officer, without a warrant. The tax administrator may promulgate rules  
24 and regulations for the destruction of contraband goods pursuant to this section, including the  
25 administrator's right to allow the true holder of the trademark rights in a cigarette brand to inspect  
26 contraband cigarettes prior to their destruction.

27 (e) The prohibitions of this section do not apply to:

28 (1) Tobacco products that are allowed to be imported or brought into the United States  
29 free of tax and duty under subsection IV of chapter 98 of the harmonized tariff schedule of the  
30 United States (see 19 U.S.C. section 1202); or

31 (2) Tobacco products in excess of the amounts described in subdivision (1) of this  
32 subsection if the excess amounts are voluntarily abandoned to the tax administrator at the time of  
33 entry, but only if the tobacco products were imported or brought into the United States for  
34 personal use and not with intent to defraud the United States or any state.

1 (f) If any part or provision of this section or the application of any part to any person or  
2 circumstance is held invalid, the remainder of the section, including the application of that part or  
3 provision to other persons or circumstances, shall not be affected by that invalidity and shall  
4 continue in full force and effect. To this end, the provisions of this section are severable.

5 **44-20-17. Penalty for use tax violations.** -- Any person who violates the provisions of  
6 sections 44-20-13 -- 44-20-14 is guilty of a ~~misdemeanor~~ felony and shall for each offense be  
7 fined ~~not less than one hundred fifty dollars (\$150) and not more than five hundred dollars (\$500)~~  
8 up to ten thousand dollars (\$10,000), or be imprisoned not more than ~~one year~~ three (3) years, or  
9 be both fined and imprisoned.

10 **44-20-35. Penalties for violations as to unstamped cigarettes.** -- (a) Any person who  
11 violates any provision of sections 44-20-33 and 44-20-34 shall be fined or imprisoned, or both  
12 fined and imprisoned, as follows:

13 (1) For a first offense in a twenty-four (24) month period, fined not more than one  
14 thousand dollars (\$1,000), or not more than five (5) times the retail value of the cigarettes  
15 involved, whichever is greater, ~~for the first offense, and for each subsequent offense,;~~

16 (2) For a second or subsequent offense in a twenty-four (24) month period, shall be fined  
17 ~~one thousand dollars (\$1,000), or five (5)~~ fined not more than five thousand dollars (\$5,000) or  
18 not more than twenty-five (25) times the retail value of the cigarettes involved, whichever is  
19 greater, or be imprisoned not more than three (3) years, or be both fined and imprisoned.

20 (b) When determining the amount of a fine sought or imposed under this section,  
21 evidence of mitigating factors, including history, severity, and intent, shall be considered.

22 **44-20-39. Forgery and counterfeiting -- Tampering with meters -- Reuse of stamps**  
23 **or containers.** -- Any person who fraudulently makes or utters or forges or counterfeits any  
24 stamp, disc, license, or marker, prescribed by the tax administrator under the provisions of this  
25 chapter, or who causes or procures this to be done, or who willfully utters, publishes, passes or  
26 renders as true, any false, altered, forged, or counterfeited stamp, license, disc, or marker, or who  
27 knowingly possesses more than twenty (20) packs of cigarettes containing any false, altered,  
28 forged, or counterfeited stamp, license, disc, or marker, or who tampers with or causes to be  
29 tampered with any metering machine authorized to be used under the provisions of this chapter,  
30 or who removes or prepares any stamp with intent to use, or cause that stamp to be used, after it  
31 has already been used, or who buys, sells, offers for sale, or gives away any washed or removed  
32 or restored stamp to any person, or who has in his or her possession any washed or restored or  
33 removed or altered stamp which was removed from the article to which it was affixed, or who  
34 reuses or refills with cigarettes any package, box, or container required to be stamped under this

1 chapter from which cigarettes have been removed, is deemed guilty of a felony, and, upon  
2 conviction, shall be fined ~~ten thousand dollars (\$10,000)~~ one hundred thousand dollars  
3 (\$100,000), or be imprisoned for not more than ~~ten (10) years~~ fifteen (15) years, or both.

4 **44-20-45. Importation of cigarettes with intent to evade tax. --** Any person, firm,  
5 corporation, club, or association of persons who orders any cigarettes for another or pools orders  
6 for cigarettes from any persons or connives with others for pooling orders, or receives in this state  
7 any shipment of unstamped cigarettes on which the tax imposed by this chapter has not been paid,  
8 for the purpose and intention of violating the provisions of this chapter or to avoid payment of the  
9 tax imposed in this chapter, is guilty of a felony and shall be fined ~~ten thousand dollars (\$10,000)~~  
10 one hundred thousand dollars (\$100,000) or five (5) times the retail value of the cigarettes  
11 involved, whichever is greater, or imprisoned not more than ~~five (5) years~~ fifteen (15) years, or  
12 both.

13 **44-20-51. Penalty for violations generally. --** (a) Except as otherwise provided in this  
14 chapter, any person who violates any provision of this chapter ~~is guilty of a misdemeanor and~~  
15 shall be fined or imprisoned, or both fined and imprisoned, as follows:

16 (1) For a first offense in a twenty-four (24) month period, fined not more than one  
17 thousand dollars (\$1,000);

18 (2) For a second or subsequent offense in a twenty-four (24) month period, fined not  
19 more than five thousand dollars (\$5,000) or imprisoned for not more than three (3) years, or both  
20 fined and imprisoned.

21 (b) Whoever knowingly violates any provision of this chapter, or of regulations  
22 prescribed thereunder, shall, in addition to any other penalty provided in this chapter, for each  
23 such offense, be fined not more than five thousand dollars (\$5,000) or imprisoned not more than  
24 one year, or both.

25 (c) When determining the amount of a fine sought or imposed under this section,  
26 evidence of mitigating factors, including history, severity, and intent, shall be considered.

27 **44-20-51.1. Civil penalties. --** (a) Whoever omits, neglects, or refuses to comply with  
28 any duty imposed upon him/her by this chapter, or to do, or cause to be done, any of the things  
29 required by this chapter, or does anything prohibited by this chapter, shall, in addition to any  
30 other penalty provided in this chapter, be liable ~~to~~ as follows:

31 (1) For a first offense in a twenty-four (24) month period a penalty of not more than one  
32 thousand dollars (\$1,000), or not more than five (5) times the retail value of the cigarettes  
33 involved, whichever is greater, to be recovered, with costs of suit, in a civil action.

34 (2) For a second or subsequent offense in a twenty-four (24) month period, a penalty of

1 not more than five thousand dollars (\$5,000), or not more than twenty-five (25) times the retail  
2 value of the cigarettes involved, whichever is greater, to be recovered, with costs of suit, in a civil  
3 action.

4 (b) Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or  
5 regulations, shall, in addition to any other penalty provided in this chapter, be liable ~~to~~ for a  
6 penalty of not more than five (5) times the tax due but unpaid.

7 (c) When determining the amount of a penalty sought or imposed under this section,  
8 evidence of mitigating or aggravating factors, including history, severity, and intent, shall be  
9 considered.

10 **44-20-51.2. Criminal penalty for fraudulent offenses.** -- Whoever, with intent to  
11 defraud the state fails to comply with any requirement of this chapter or regulations prescribed  
12 thereunder shall in addition to any other penalty provided in this chapter, for each such offense,  
13 be fined ~~ten thousand dollars (\$10,000)~~ one hundred thousand dollars (\$100,000), or ~~imposed~~  
14 imprisoned not more than ~~five (5) years~~ fifteen (15) years, or both.

15 **44-20-51.3. Counterfeit cigarettes.** -- (a) Notwithstanding any other provision of law,  
16 the sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, or  
17 dealer shall result in the seizure of the product and related machinery by the administrator or any  
18 law enforcement agency and shall be punishable as follows:

19 (1) A knowing violation involving a total quantity of less than two (2) cartons of  
20 cigarettes shall be punishable by a fine of ~~one thousand dollars (\$1,000)~~ ten thousand dollars  
21 (\$10,000) or five (5) times the retail value of the cigarettes involved, whichever is greater, or  
22 imprisonment not to exceed five (5) years, or both.

23 (2) A subsequent knowing violation involving a total quantity of less than two (2)  
24 cartons of cigarettes shall be punishable by a fine of ~~five thousand dollars (\$5,000)~~ fifty thousand  
25 dollars (\$50,000) or five (5) times the retail value of the cigarettes involved, whichever is greater,  
26 or imprisonment not to exceed ~~five (5) years~~ ten (10) years, or both, and shall also result in the  
27 revocation by the administrator of the manufacturer, importer, distributor, or dealer license.

28 (3) A first knowing violation involving a total quantity of two (2) cartons of cigarettes or  
29 more shall be punishable by a fine of ~~two thousand dollars (\$2,000)~~ twenty thousand dollars  
30 (\$20,000) or five (5) times the retail value of the cigarettes involved, whichever is greater, or  
31 imprisonment not to exceed five (5) years, or both.

32 (4) A subsequent knowing violation involving a quantity of two (2) cartons of cigarettes  
33 or more shall be punishable by a fine of ~~fifty thousand dollars (\$50,000)~~ one hundred thousand  
34 dollars (\$100,000) or five (5) times the retail value of the cigarettes involved, whichever is

1 greater, or imprisonment not to exceed ~~five (5) years~~ fifteen (15) years, or both, and shall also  
2 result in the revocation by the administrator of the manufacturer, importer, distributor, or dealer  
3 license.

4 (b) For purposes of this section, counterfeit cigarettes includes cigarettes that have false  
5 manufacturing labels or packages of cigarettes bearing counterfeit tax stamps. Any counterfeit  
6 cigarettes seized by the administrator shall be destroyed.

7 SECTION 2. Section 11-9-13.15 of the General Laws in Chapter 11-9 entitled "Children"  
8 is hereby amended to read as follows:

9 **11-9-13.15. Penalty for operating without a dealer license.** -- (a) Any individual or  
10 business who violates this chapter by selling or conveying a tobacco product without a retail  
11 tobacco products dealer license shall be cited for that violation and shall be required to appear in  
12 court for a hearing on the citation.

13 (b) Any individual or business cited for a violation under this section of this chapter  
14 shall:

15 (1) Either post a ~~five hundred dollar (\$500)~~ two thousand five hundred dollar (\$2,500)  
16 bond with the court within ten (10) days of the citation; or

17 (2) Sign and accept the citation indicating a promise to appear in court.

18 (c) An individual or business who has accepted the citation may:

19 (1) Pay ~~the five hundred dollar (\$500)~~ a ten thousand dollar (\$10,000) fine, either by  
20 mail or in person, within ten (10) days after receiving the citation; or

21 (2) If that individual or business has posted a bond, forfeit the bond by not appearing at  
22 the scheduled hearing. If the individual or business cited pays the ~~five hundred dollar (\$500)~~ ten  
23 thousand dollar (\$10,000) fine or forfeits the bond, that individual or business is deemed to have  
24 admitted the cited violation and to have waived the right to a hearing on the issue of commission  
25 on the violation.

26 (d) The court after a hearing on a citation shall make a determination as to whether a  
27 violation has been committed. If it is established that the violation did occur, the court shall  
28 impose a ~~five hundred dollar (\$500)~~ ten thousand dollar (\$10,000) fine, in addition to any court  
29 costs or other court fees.

30 SECTION 3. This act shall take effect upon passage.

=====  
LC003630/SUB A  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO TAXATION - CIGARETTE TAX

\*\*\*

1           This act would increase the penalty for violating state laws regulating the illicit sale of  
2 cigarettes.

3           This act would take effect upon passage.

=====  
LC003630/SUB A  
=====