

2014 -- S 2380 SUBSTITUTE A

=====
LC004124/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: Senators Pearson, Picard, Jabour, Miller, and Nesselbush

Date Introduced: February 12, 2014

Referred To: Senate 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 financed 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)~~ financed 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.

=====
LC004124/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.

=====
LC004124/SUB A
=====