

SENATE No. 1614

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Rodrigues

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act combatting illegal tobacco and preventing further loss of revenue to the commonwealth.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Michael J. Rodrigues

First Bristol and Plymouth

Jay R. Kaufman

15th Middlesex

SENATE No. 1614

By Mr. Rodrigues, a petition (accompanied by bill, Senate, No. 1614) of Michael J. Rodrigues and Jay R. Kaufman for legislation to combat illegal tobacco and prevent further loss of revenue to the commonwealth. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act combatting illegal tobacco and preventing further loss of revenue to the commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 10 of the General Laws is hereby amended by striking out section
2 30B, as inserted by section 29 of chapter 46 of the acts of 2015, and inserting in place thereof the
3 following section:-

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

6 Section 30B. Upon receiving notice from the commissioner of revenue that a retailer or a
7 cigar retailer, as defined in section 1 of chapter 64C, has had a cigar or tobacco license
8 suspended or revoked for a knowing violation of subsections (a), (b) or (c) of section 10 of said
9 chapter 64C, or of sections 34, 35, 37, 37A, or 38 of said chapter 64C, the director of the state
10 lottery shall suspend any license to sell lottery tickets or shares issued to that retailer or cigar
11 retailer pursuant to sections 26 and 27, for up to 60 days.

12 SECTION 2. Section 6 of chapter 14 of the General Laws, as appearing in the 2014
13 Official Edition, is hereby amended by striking out subsection 10 and inserting in place thereof
14 the following subsection:-

15 10. Shall maintain on the department's website an easily searchable and regularly updated
16 list of all taxpayers licensed under section 67 of chapter 62C as a: manufacturer, wholesaler,
17 vending machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer as
18 defined in section 1 of chapter 64C and of all taxpayers appointed as stampers, as defined in
19 section 1 of chapter 64C. In addition, such list shall include all taxpayers who the commissioner
20 has authorized in writing to possess or deliver or transport unstamped cigarettes or untaxed other
21 tobacco products.

22 SECTION 3. Section 5 of chapter 62C of the General Laws, as so appearing, is hereby
23 amended by adding, in line 10, the following language after the last sentence:-

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

33 handwritten signature on a return or other document that contained or was verified by a written
34 declaration that it was made under the penalties of perjury.

35 SECTION 4. Section 16 of said chapter 62C, as so appearing, is hereby amended by
36 striking out the final sentence of subsection (c) and inserting in place thereof the following
37 sentence:-

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

42 SECTION 5. Said section 16 of said chapter 62C is hereby further amended by striking
43 out paragraph (c1/2).

44 SECTION 6. Paragraph (19) of subsection (b) of section 21 of said chapter 62C, as
45 appearing in the 2014 Official Edition, is hereby amended by striking out, in lines 135 and 136,
46 the words “sections 33A, 34 and 35 of chapter 64C” and inserting in place thereof the following
47 words:- sections 10, 33A, 34, 35, 37, 37A, and 38 of chapter 64C

48 SECTION 7. Paragraph (28) of said section 21 of said chapter 62C, as inserted by section
49 68 of chapter 46 of the acts of 2015, is hereby amended by inserting after the words “federal law
50 enforcement” the following words:- or to revenue or law enforcement officials from another state

51 SECTION 8. Said chapter 62C is hereby amended by striking out section 67 and inserting
52 in place thereof the following section:-

53 Licenses and registration certificates of taxpayers under chapters 64A, 64C, 64E to 64J or
54 64M

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

70 (b) In the instance of an application for a license as a manufacturer, wholesaler, vending
71 machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer, as defined in
72 chapter 64C the commissioner shall investigate the prior activities of the applicant. If the
73 commissioner determines that (i) said applicant has been convicted of or has admitted to
74 sufficient facts to support a finding of guilt of any violation of this chapter, any violation of the
75 provisions of chapter 64C, any violation of federal law where the conduct underlying the

76 conviction or admission relates to tobacco products, or any violation of law involving dishonesty
77 or fraud, within the five-year period preceding the date of the application in the case of a
78 misdemeanor or within the ten-year period preceding the date of the application in the case of a
79 felony, or (ii) the commissioner has assessed against said applicant a civil penalty, which has
80 been finally determined to be due, for the violation of any provision of chapter 64C providing for
81 a civil penalty on three or more occasions during the five-year period preceding the date of the
82 application, or (iii) unstamped cigarettes or untaxed other tobacco products have been seized
83 from the applicant's business premises on three or more occasions during the five-year period
84 preceding the date of the application, or (iv) an aggregate total of one hundred packs of
85 unstamped cigarettes or two thousand units of untaxed tobacco products, as those terms are
86 defined in section 1 of chapter 64C, have been seized from the applicant's business premises
87 during the five-year period preceding the date of the application, or (v) the applicant has during
88 the five-year period preceding the date of the application refused to permit, hindered or
89 obstructed an examination, investigation, or search authorized by section 5 or 11 of chapter 64C,
90 or (vi) the commissioner has received notice from another state or municipal agency, board or
91 law enforcement official that the applicant has been fined, cited or otherwise penalized by a state
92 or municipal agency board or law enforcement official (a) for the sale of tobacco products to a
93 person under the minimum legal sales age, or (b) for any other violation of the laws or
94 regulations of the commonwealth regarding tobacco, on three or more occasions during the five-
95 year period preceding the date of the application and that any administrative remedies available
96 to the applicant have been exhausted or have expired, he may deny the application; provided,
97 however, that the commissioner shall grant or deny a license to said applicant within ninety days

98 from the date of application; and provided further, that if the commissioner fails to act within
99 such time period, the application shall be deemed denied.

100 (c) All licenses, except as otherwise prescribed by the commissioner, shall expire
101 annually on a date prescribed by the commissioner. The commissioner may provide for
102 combined forms of licenses and license applications.

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

109 (e) Registration certificates shall be issued for each place of business. Licenses for said
110 manufacturers, wholesalers, vending machine operators, unclassified acquirers, retailers, cigar
111 distributors and cigar retailers shall be issued for each place of business. Licenses for users of
112 special fuels shall be issued for each vehicle propelled by special fuels. In addition to the license
113 issued to a motor carrier, licenses shall be issued for each motor vehicle which the motor carrier
114 desires to operate or cause to be operated upon the highways of the commonwealth which is
115 propelled by fuel or special fuels purchased or acquired outside the commonwealth.

116 (f) The fee for each registration shall be determined annually by the commissioner of
117 administration under the provision of section 3B of chapter 7.

118 (g) The secretary of administration and finance shall annually determine the fees for
119 licenses and renewals thereof under section 3B of chapter 7 in the following categories:

120 distributors; unclassified importers; unclassified exporters; manufacturers; wholesalers; vending
121 machine operators; unclassified acquirers; retailers; cigar distributors; cigar retailers; user-
122 sellers; suppliers; users of special fuels; and motor carriers or their vehicles; provided, however,
123 that in case of a manufacturer, wholesaler, cigar distributor or vending machine operator who
124 maintains more than 1 place of business, the fee for each additional place of business shall be
125 one-half of the above determined fee. No fee or part thereof, shall be refunded by reason of
126 relinquishment, suspension or revocation of a license.

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

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

133 (j) As a condition precedent to granting a license to a distributor, unclassified importer, or
134 unclassified exporter the commissioner shall require the applicant to furnish a bond pursuant to
135 section 66.

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

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

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

149 (3) The applicant fails to pay the prescribed fee or to file such bond as the commissioner
150 requires pursuant to section 66;

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

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

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

160 (6 1/2) The applicant has otherwise willfully failed to comply with any provision of the
161 tax laws of the commonwealth or regulations thereunder;

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

168 (8) A person who owns, directly or indirectly, a controlling interest in the applicant, has
169 any tax payable under this chapter, which has been finally determined to be due and has not been
170 paid in full; or another legal entity, in which applicant owns a controlling interest, directly or
171 indirectly, has any tax payable under this chapter, which has been finally determined to be due
172 and has not been paid in full; or a person, who owns, directly or indirectly, a controlling interest
173 in the applicant, has been convicted of, or has admitted to sufficient facts to support a finding of
174 guilt of a crime provided for in this chapter within one year from the date on which such
175 application is filed.

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

179 SECTION 9. Section 68 of said chapter 62C, as amended by section 69 of chapter 46 of
180 the acts of 2015, is hereby amended by striking out paragraph (4) and inserting in place thereof
181 the following paragraph:-

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

184 SECTION 10. Said section 68 of said chapter 62C, as so appearing, is hereby further
185 amended by inserting after paragraph (4) the following paragraph:-

186 (4 1/2) In the instance of a licensee licensed as a manufacturer, wholesaler, vending
187 machine operator, unclassified acquirer, retailer, cigar distributor or cigar retailer, as defined in
188 chapter 64C, (i) the licensee has been convicted of or has admitted to sufficient facts to support
189 a finding of guilt of any violation of the provisions of chapter 64C, any violation of federal law
190 where the conduct underlying the conviction or admission relates to tobacco products, or any
191 violation of law involving dishonesty or fraud, within a five-year period in the case of a
192 misdemeanor or within a ten-year period in the case of a felony, or (ii) the commissioner has
193 assessed against said licensee a civil penalty, which has been finally determined to be due, for
194 the violation of any provision of chapter 64C providing for a civil penalty on three or more
195 occasions during a five-year period, or (iii) unstamped cigarettes have been seized from the
196 licensee's business premises on three or more occasions during a five-year period, or (iv) an
197 aggregate total of fifty packs of unstamped cigarettes or one thousand units of untaxed tobacco
198 products, as those terms are defined in section 1 of chapter 64C, have been seized from the
199 licensee's business premises during a five-year period, or (v) the licensee has refused to permit,
200 hindered or obstructed an examination, investigation, or search authorized by section 5 or section
201 11 of chapter 64C, or (vi) the commissioner has received notice from another state or municipal
202 agency, board or law enforcement official that the licensee has been fined, cited or otherwise
203 penalized by a state or municipal agency board or law enforcement official (a) for the sale of
204 tobacco products to a person under the minimum legal sales age, or (b) for any other violation of
205 the laws or regulations of the commonwealth regarding tobacco, on three or more occasions

206 during a five-year period and that any administrative remedies available to the licensee have
207 been exhausted or have expired.

208 SECTION 11. Said section 68 of said chapter 62C, as so appearing, is hereby further
209 amended by inserting after paragraph (6) the following paragraph:-

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

215 SECTION 12. Said section 68 of said chapter 62C, as so appearing, is hereby further
216 amended by striking out the final paragraph, as inserted by section 69 of chapter 46 of the acts of
217 2015, and inserting in place thereof the following paragraph:-

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

223 SECTION 13. Section 76 of said chapter 62C, as so appearing, is hereby amended by
224 inserting after the word “dollars”, in line 6, the following words:- , provided that the punishment
225 for a person who acts as a manufacturer, wholesaler, vending machine operator, unclassified
226 acquirer, retailer, cigar distributor or cigar retailer, as defined in section one of chapter sixty-four
227 C, shall be the punishment set forth in subsection (a) of section ten of said chapter sixty-four C

228 SECTION 14. Chapter 64C of the General Laws is hereby amended by striking out
229 section 1, as so appearing, and inserting in place thereof the following section:-

230 Definitions

231 Section 1. Whenever used in this chapter unless the context shall otherwise require, the
232 following words or terms shall have the following meanings:—

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

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

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

244 "cigarette" shall mean any of the following: (1) any roll of tobacco wrapped in paper or
245 in any substance not containing tobacco, (2) little cigars, which shall mean rolls of tobacco
246 wrapped in leaf tobacco or any substance containing tobacco and as to which 1,000 units weigh
247 not more than 3 pounds, and (3) any roll of tobacco wrapped in any substance containing tobacco
248 which, because of its appearance, the type of tobacco used in the filler, or its packaging and

249 labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause
250 (1);

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

254 “licensee”, a person licensed as a manufacturer, wholesaler, cigar distributor, vending
255 machine operator, unclassified acquirer, cigar retailer or retailer pursuant to section sixty-seven
256 of chapter sixty-two C;

257 “manufacturer”, any person who manufactures or produces cigarettes or smokeless
258 tobacco, whether within or without the commonwealth;

259 “other tobacco products”, any product containing tobacco, other than cigarettes, and
260 including without limitation cigars, smoking tobacco, and smokeless tobacco;

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

263 “place of business” shall mean and include any place where tobacco products are sold or
264 offered for sale or where tobacco products are brought or kept for the purpose of sale or
265 consumption, including so far as applicable any vessel, vehicle, airplane, train or cigarette
266 vending machine;

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

269 “retailer”, any person who operates a store or concession for the purpose of making sales
270 of tobacco products at retail, including any cigar retailer and any person selling tobacco products
271 through vending machines;

272 “sales” or “sale” in addition to their ordinary meaning shall include or apply to use, gifts,
273 exchanges and barter;

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

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

284 “stamp”, an adhesive stamp, or any other indicia of tax paid under this chapter, as may
285 from time to time be determined and approved by the commissioner;

286 “stamper” shall mean any person authorized by the commissioner to purchase and affix
287 adhesive stamps under this chapter;

288 "taxed cigars and smoking tobacco", cigars and smoking tobacco purchased or otherwise
289 acquired from (i) a licensed cigar distributor or licensed unclassified acquirer authorized under

290 the terms of such license to sell or distribute cigars and smoking tobacco, or (ii) a person
291 otherwise authorized in writing by the commissioner both to sell or distribute and to file returns
292 and pay tax on cigars and smoking tobacco;

293 “tobacco products”, any products containing tobacco including both cigarettes and other
294 tobacco products;

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

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

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

309 "untaxed cigars and smoking tobacco", cigars and smoking tobacco purchased or
310 otherwise acquired (1) from anyone other than (i) a licensed cigar distributor or licensed
311 unclassified acquirer authorized under the terms of such license to sell or distribute cigars and

312 smoking tobacco, or (ii) a person otherwise authorized in writing by the commissioner to sell or
313 distribute and to file returns and pay the excise on cigars and smoking tobacco; or (2) from any
314 licensee whenever the purchaser or acquirer has actual knowledge that such licensee has not paid
315 and does not intend to pay the excise on such cigars and smoking tobacco;

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

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

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

326 “wholesaler”, (1) any person who purchases directly from the manufacturer at least
327 seventy-five per cent of all tobacco products purchased by him and who sells at least seventy-
328 five per cent of all tobacco products purchased by him to others for resale; (2) any other person
329 who purchases from a manufacturer or person so purchasing and selling and licensed as a
330 wholesaler, provided such other person maintains an established place of business where
331 substantially all of the business is the sale of tobacco products and related merchandise at
332 wholesale to licensees and where at all times a substantial stock of tobacco products and related
333 merchandise is available to all retailers for resale; (3) any chain of stores retailing tobacco

334 products to the consumer, provided seventy-five per cent of its purchases are made direct from
335 the manufacturer; and (4) any cigar distributor;

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

341 SECTION 15. Section 2 of said chapter 64C, as so appearing, is hereby amended by
342 striking out the first sentence and inserting in place thereof the following sentence:-

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

347 SECTION 16. Said section 2 of said chapter 64C, as so appearing, is hereby further
348 amended by inserting, in line 5, after the word "manufacturer" the words:- , cigar distributor

349 SECTION 17. Said section 2 of said chapter 64C, as so appearing, is hereby further
350 amended by striking out, in line 15, the phrase "disc or marker" and inserting in place thereof the
351 word:- decal

352 SECTION 18. Said section 2 of said chapter 64C, as so appearing, is hereby further
353 amended by adding at the end the following sentences:-

354 Every licensed wholesaler, cigar distributor, vending machine operator, unclassified
355 acquirer, cigar retailer and retailer shall be required to report to the commissioner, on a form
356 prescribed by the commissioner, the complete addresses, including any unit number, of any and
357 all premises in addition to such licensee's place or places of business at which the licensee holds,
358 places or stores tobacco products. Such reports shall be made at the time of licensing, and if the
359 licensee adds additional such premises during the licensing period or ceases to use any such
360 premises for such purpose, reports as to such changes shall be made within three business days
361 of the date the change is made.

362 SECTION 19. Said chapter 64C is hereby amended by striking out section 5, as so
363 appearing, and inserting in place thereof the following section:-

364 Records and statements required of vendors and purchasers

365 Section 5. (a) Every manufacturer, cigar distributor, wholesaler, vending machine
366 operator and unclassified acquirer shall keep a complete and accurate record of all tobacco
367 products manufactured, purchased or otherwise acquired and a complete and accurate record
368 relating to the sale of those products.

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

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

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

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

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

403 (g) The use of any device or game of chance to aid, promote or induce sales or purchases
404 of tobacco products or the giving of any tobacco products in connection with any device or game
405 of chance is prohibited.

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

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

414 (j) The commissioner is hereby authorized to examine all statements and other records
415 required by this section, as well as the stock of cigarettes or tobacco products, and the equipment
416 pertaining to the stamping of cigarettes, of any manufacturer, wholesaler, cigar distributor,
417 vending machine operator and unclassified acquirer, as applicable. The commissioner or his

418 authorized agent shall conduct such examinations regularly, during normal business hours of the
419 manufacturer, cigar distributor, wholesaler, vending machine operator, or unclassified acquirer.
420 Such records shall be in such form as the commissioner shall prescribe and shall, along with the
421 stock of cigarettes or tobacco products and the equipment pertaining to the stamping of
422 cigarettes, be offered for inspection upon oral or written demand by the commissioner or his
423 authorized agent.

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

432 SECTION 20. Section 5A of said chapter 64C, as appearing in the 2014 Official Edition,
433 is hereby amended by striking out subsection (1) and inserting in place thereof the following:-

434 (1) Residents of the commonwealth shall be liable for any excise due under this chapter
435 with regard to any tobacco products that they purchase upon which such excise has not otherwise
436 been paid to the commonwealth. The department shall aggressively seek to collect all excises
437 imposed by this chapter from residents of the commonwealth who purchase tobacco products in
438 interstate commerce. The department shall, pursuant to 15 U.S.C. section 376, seek statements
439 from persons selling cigarettes and smokeless tobacco, as those terms are defined in 15 U.S.C.

440 375, in interstate commerce to residents of the commonwealth and obtain the monthly invoices
441 covering all such shipments into the commonwealth, as required by said section 376. Those
442 invoices shall, as authorized by said section 376, include the name and address of the person to
443 whom the shipment was made, the brand, the quantity thereof, and the amount paid. Upon
444 receipt of that information, the department shall make all reasonable efforts to collect all excises
445 due under this chapter.

446 SECTION 21. Said section 5A of said chapter 64C, as so appearing, is hereby further
447 amended by striking out, in line 16, the words “every 6 months” and inserting in place thereof
448 the word:- annually

449 SECTION 22. Said chapter 64C, as so appearing, is hereby amended by striking out
450 section 6 and inserting in place thereof the following section:-

451 Payment of excise on cigarettes and smokeless tobacco

452 Section 6. (a) An excise shall be imposed on all cigarettes held for sale or consumption in
453 the commonwealth at the rate of 17.55 cents for each cigarette, provided that this excise shall not
454 be due on any cigarettes that (i) are exported from the commonwealth, or (ii) are not subject to
455 taxation by the commonwealth pursuant to any law of the United States. Stampers shall pay the
456 excise in accordance with the provisions of section 29. Persons, other than stampers, who are
457 authorized by the commissioner to possess unstamped cigarettes, shall pay the excise to the
458 commissioner at the time required for filing a return under paragraph (c) of section 16 of chapter
459 64C. The excise shall be due from persons not authorized to possess unstamped cigarettes
460 immediately upon such person’s importation of unstamped cigarettes into the commonwealth or

461 upon such person's purchase, receipt, or acquisition of unstamped cigarettes in the
462 commonwealth, whichever is earliest.

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

471 (1) is not a licensed wholesaler or licensed unclassified acquirer authorized under the
472 terms of his license to sell smokeless tobacco, and

473 (2) either (i) purchases, receives or acquires smokeless tobacco from anyone other than a
474 licensed wholesaler or licensed unclassified acquirer authorized under the terms of his license to
475 sell smokeless tobacco; or (ii) purchases, receives or acquires smokeless tobacco from a licensed
476 wholesaler or licensed unclassified acquirer with actual knowledge that the licensed wholesaler
477 or licensed unclassified acquirer has not paid and does not intend to pay the excise on that
478 smokeless tobacco, the excise shall be due immediately upon such person's importation of
479 smokeless tobacco into the commonwealth or upon such person's purchase, receipt, or
480 acquisition of smokeless tobacco in the commonwealth, whichever is earliest.

481 (c) The failure by a retailer to produce or exhibit to the commissioner or his authorized
482 representative, upon demand, an invoice from a licensed wholesaler or licensed unclassified

483 acquirer authorized under the terms of his license to sell smokeless tobacco for any smokeless
484 tobacco in his possession shall be prima facie evidence that the excise on such smokeless
485 tobacco has not been paid and that such retailer is liable for the payment of the excise on such
486 smokeless tobacco.

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

490 (e) The commissioner may, in his discretion, require reports from any common carrier
491 who transports tobacco products to any point or points within the commonwealth and from any
492 other person who, under contract, so transports tobacco products, and from any bonded
493 warehouseman or bailee who has in his possession any tobacco products, such reports to contain
494 such information concerning shipments of tobacco products as the commissioner shall determine.
495 All such carriers, bailees, warehousemen and other persons shall permit the examination by the
496 commissioner or his duly authorized agent of any records relating to the shipment of tobacco
497 products into or from, or the receipt thereof within, the commonwealth.

498 (f) Notwithstanding the provisions of subsection (a), the excise imposed under this
499 section on any cigarette that does not contain nicotine shall be at the rate of 16.3 cents for each
500 such cigarette.

501 SECTION 23. Section 7A of said chapter 64C, as so appearing, is repealed.

502 SECTION 24. Said chapter 64C is hereby amended by striking out section 7B, as so
503 appearing, and inserting in place thereof the following section:-

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

510 (b) Every cigar retailer shall be liable for the payment of the excise on all cigars or
511 smoking tobacco in his possession at any time, upon which the excise has not been paid by a
512 cigar distributor, and the failure of any cigar retailer to produce or exhibit to the commissioner or
513 his authorized representative, upon demand, an invoice by a cigar distributor for any cigars or
514 smoking tobacco in his possession, shall be prima facie evidence that the excise thereon has not
515 been paid and that such cigar retailer is liable for the payment of the excise thereon.

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

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

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

529 (e) A person outside the commonwealth who ships or transports cigars or smoking
530 tobacco to cigar retailers in the commonwealth, to be sold by those cigar retailers, may apply for
531 a license as a nonresident cigar distributor and, if the commissioner issues such a license to him,
532 he shall thereafter be subject to all the provisions of this section and be entitled to act as a cigar
533 distributor, provided he files proof with his application that he has appointed the state secretary
534 as his agent for service of process relating to any matter or issue arising under this section. Such
535 a nonresident person shall also agree to submit his books, accounts and records for examination
536 in the commonwealth during reasonable business hours by the commissioner or his authorized
537 representative.

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

545 SECTION 25. Section 7C of said chapter 64C, as so appearing, is repealed.

546 SECTION 26. Section 8 of said chapter 64C, as so appearing, is repealed.

547 SECTION 27. Said chapter 64C is hereby amended by striking out section 10, as so
548 appearing, and inserting in place thereof the following section:-

549 Penalties for particular offenses

550 Section 10. (a) Any person who shall sell, offer for sale or possess with intent to sell any
551 tobacco products, or otherwise act as a manufacturer, wholesaler, unclassified acquirer or
552 retailer, without being licensed so to do, shall, in addition to any other penalty provided by this
553 chapter, be punished by a fine of not more than fifty thousand dollars or by imprisonment in a
554 house of correction for not more than two and one-half years or in state prison for not more than
555 five years, or both such fine and imprisonment.

556 (b) Except as previously authorized in writing by the commissioner, (1) Any retailer who
557 shall knowingly purchase cigarettes for resale from any person other than a duly appointed
558 stamper, and any retailer, who shall knowingly purchase other tobacco products for resale from
559 any person other than a licensed wholesaler or licensed unclassified acquirer; or (2) any person
560 who shall knowingly purchase or possess any cigarettes or other tobacco products not
561 manufactured, purchased or imported by a licensed manufacturer, licensed wholesaler, licensed
562 vending machine operator or licensed unclassified acquirer, shall be punished by a fine of not
563 more than fifty thousand dollars or by imprisonment in a house of correction for not more than
564 two and one-half years or in state prison for not more than five years, or both such fine and
565 imprisonment; provided that a licensed cigar retailer who is also licensed as a cigar distributor
566 shall be authorized to purchase cigars and smoking tobacco from an out-of-state wholesaler or
567 manufacturer not licensed in the Commonwealth, and shall be required to file a return and pay
568 the cigar excise as specified in section 7B of this chapter and in section 16 of chapter 62C. All

569 retailers shall be under an affirmative duty to verify the licensed or appointed status of any
570 person from which they purchase tobacco products, and the absence of such person's name from
571 the lists of licensees and stampers maintained on the department's website, as required by section
572 6 of chapter 14, shall be prima facie evidence of a knowing violation of this paragraph.

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

582 (d) Any person who shall knowingly have in his possession one or more shipping cases
583 or other containers of tobacco products, containing tobacco products and not bearing the name
584 and address of the person receiving the tobacco products from a manufacturer or such other
585 markings as the commissioner may prescribe, and any person knowingly being in possession
586 within the commonwealth of one or more such shipping cases or other containers of tobacco
587 products from which such name and address has been erased or defaced, shall be punished by a
588 fine of not more than five hundred dollars per such shipping case or other container or by
589 imprisonment in a house of correction for not more than two and one-half years, or both such
590 fine and imprisonment.

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

598 (f) No person shall have in his possession a machine for vending cigarettes for a period in
599 excess of seventy-two hours unless there shall be attached to the same a decal as provided by
600 section two; provided, that this provision shall not apply to any such machine while not
601 containing cigarettes and in the possession of a manufacturer of, or dealer in, such machines or a
602 licensed vending machine operator. If any person has in his possession a vending machine,
603 containing cigarettes, not properly licensed, the commissioner may cause such vending machine
604 to be sealed until properly licensed and such person shall be subject to the same penalty as a
605 retailer selling cigarettes without being licensed so to do, as set forth in paragraph (a) above.

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

611 (h) Any person who violates any provision of this chapter for which no other penalty has
612 been provided, shall be punished by a fine of not more than ten thousand dollars or by
613 imprisonment in a house of correction for not more than two and one-half years, or both.

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

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

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

621 SECTION 28. Said chapter 64C is hereby amended by striking out section 11, as so
622 appearing, and inserting in place thereof the following section:-

623 Records and reports of purchases and sales; investigation, examination and search

624 Section 11. (a) Each retailer and cigar retailer shall keep within the commonwealth
625 complete and accurate records of all cigarettes purchased or otherwise acquired. Such records
626 shall consist of written statements to be delivered by each wholesaler and cigar distributor as
627 provided by section five. Every owner of, or tenant occupying, premises where a vending
628 machine is located shall keep a record of all cigarettes sold through the vending machine so
629 located on his premises and the amount of commission paid by the person operating the cigarette
630 vending machine. Such records shall consist of written statements to be given by each person
631 operating vending machines for the sale of cigarettes as provided by section five.

632 (b) All above-referenced records shall be safely preserved for a period of three years in
633 such a manner as to insure permanency and accessibility for inspection by the commissioner or
634 his authorized representative, and shall be maintained for one year from the date of purchase or
635 acquisition on the retailer's, cigar retailer's, owner's, or tenant's premises, as identified in the
636 license.

637 (c) The commissioner may require any retailer or cigar retailer or any owner or tenant
638 occupying premises where a vending machine for the sale of cigarettes has been installed to
639 make reports as often as the commissioner deems necessary to enable him to determine whether
640 the excise imposed by this chapter has been fully paid.

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

649 (e) Each person in possession, control or occupancy of any premises where cigarettes or
650 tobacco products are placed, stored, sold or offered for sale is hereby directed and required to
651 give to the commissioner or his authorized representatives, the means, facilities and opportunity
652 for such examinations as are herein provided for and required. In addition to other remedies
653 provided by law, the commissioner may assess a civil penalty of not more than \$5,000 for the

654 first offense or not more than \$25,000 for each subsequent offense against any person who
655 hinders, obstructs or prevents the commissioner or his authorized representative from making the
656 examinations authorized by this section, or who otherwise violates any provision of this section.

657 SECTION 29. Section 13 of said chapter 64C, as so appearing, is hereby amended by
658 striking out, in lines 78-79, of paragraph (g) the words:- , transportation company

659 SECTION 30. Said section 13 of said chapter 64C, as so appearing, is hereby further
660 amended by striking out, in lines 5, 19, 26, 46, 61 and 86, the word “cash” and inserting in its
661 place the words:- prompt payment

662 SECTION 31. Said chapter 64C is hereby amended by striking out section 28, as so
663 appearing, and inserting in place thereof the following section:-

664 Disposition of sums received

665 Section 28. The total sums received pursuant to the excise imposed on cigarettes by this
666 chapter, together with any penalties, forfeitures other than forfeitures pursuant to section 38B,
667 interest, costs of suits and fines collected in connection therewith, less all amounts refunded or
668 abated in connection therewith, shall be credited as follows: 22.16 percent of such total sum shall
669 be credited to the Commonwealth Care Trust Fund, established in section 2000 of chapter 29,
670 and the balance shall be credited to the General Fund. The total sums received pursuant to the
671 excise imposed on cigars, smoking tobacco, and smokeless tobacco, together with any penalties,
672 forfeitures other than forfeitures pursuant to section 38B, interest, costs of suits and fines
673 collected in connection therewith, less all amounts refunded or abated in connection therewith,
674 shall be credited to the General Fund.

675 SECTION 32. Said chapter 64C is hereby amended by striking out section 29, as so
676 appearing, and inserting in place thereof the following section:-

677 Payment of tax through use of stamps

678 Section 29. Except as otherwise authorized in writing by the commissioner, the excise
679 imposed by this chapter on cigarettes shall be paid to the commissioner through the use of
680 stamps evidencing the payment of said excise, which stamps shall be of such design and in such
681 denominations as the commissioner may prescribe. Except as otherwise provided, all stampers
682 shall be liable for the payment of the excise imposed by this chapter on cigarettes and shall pay
683 said excise to the commissioner by purchasing such stamps in accordance with such regulations
684 as the commissioner may prescribe.

685 SECTION 33. Section 30 of said chapter 64C, as so appearing, is hereby amended by
686 inserting after the last paragraph the following paragraph:-

687 No stamper shall use or operate stamping equipment in any manner that violates
688 instructions prescribed in writing by the commissioner. In addition to other remedies provided by
689 law, the commissioner may assess against any stamper who willfully uses or operates stamping
690 equipment in any manner that violates such written instructions a civil penalty of not more than
691 \$5,000 for a first offense or not more than \$25,000 for each subsequent offense.

692 SECTION 34. Said chapter 64C is hereby amended by striking out section 33, as so
693 appearing, and inserting in place thereof the following section:-

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

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

710 SECTION 35. Said chapter 64C is hereby amended by striking out section 34, as so
711 appearing, and inserting in place thereof the following section:-

712 Possession, sale, etc., of unstamped cigarettes; penalty; prima facie evidence

713 Section 34. Whoever, not being a person specifically authorized in writing by the
714 commissioner to do so, knowingly holds for sale, offers for sale, sells, possesses with intent to
715 sell, or otherwise disposes of unstamped cigarettes within the commonwealth, shall be punished
716 as follows: (1) a violation involving four hundred or fewer cigarettes shall be punished by a fine
717 of not more than two thousand five hundred dollars or by imprisonment in a house of correction

718 for not more than one year, or both such fine and imprisonment; (2) a violation involving more
719 than four hundred but fewer than thirty thousand cigarettes shall be punished by a fine of not
720 more than fifty thousand dollars or by imprisonment in a house of correction for not more than
721 two and one-half years or in state prison for not more than five years, or both such fine and
722 imprisonment; (3) a violation involving thirty thousand or more cigarettes shall be punished by a
723 fine of not more than one hundred thousand dollars or by imprisonment in a house of correction
724 for not more than two and one-half years or in state prison for not more than ten years, or both
725 such fine and imprisonment.

726 The absence of such stamp on any package containing said cigarettes which is held for
727 sale, possessed with intent to sell, offered for sale, sold or otherwise disposed of within the
728 commonwealth shall be prima facie evidence that said excise has not been paid thereon. If such a
729 stamp on a package of cigarettes is stained or smudged and its characteristics are so blurred,
730 obscured or indistinct that it cannot be distinguished as a Massachusetts excise stamp, it shall be
731 prima facie evidence that the said excise has not been paid with respect to said package of
732 cigarettes. If any unstamped cigarettes are found within the commonwealth in the place of
733 business of any licensee, other than a stamper or such other licensee as the commissioner may
734 authorize in writing, it shall be prima facie evidence that such licensee in whose place of
735 business said cigarettes were found possessed said unstamped cigarettes with the intent to sell the
736 same.

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

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

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

747 SECTION 36. Said chapter 64C is hereby amended by striking out section 35, as so
748 appearing, and inserting in place thereof the following section:-

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

751 Section 35. Whoever, not being a stamper or such other person as the commissioner may
752 authorize in writing to possess or deliver or transport unstamped cigarettes, and not being a
753 common carrier engaged in interstate commerce or a person in actual possession of invoices or
754 delivery tickets meeting the requirements of section thirty-six, knowingly possesses or delivers
755 or transports unstamped cigarettes in the commonwealth shall be punished as follows: (1) a
756 violation involving four hundred or fewer cigarettes shall be punished by a fine of not more than
757 two thousand five hundred dollars or by imprisonment in a house of correction for not more than
758 one year, or both such fine and imprisonment; (2) a violation involving more than four hundred
759 but fewer than thirty thousand cigarettes shall be punished by a fine of not more than fifty
760 thousand dollars or by imprisonment in a house of correction for not more than two and one-half
761 years or in state prison for not more than five years, or both such fine and imprisonment; (3) a

762 violation involving thirty thousand or more cigarettes shall be punished by a fine of not more
763 than one hundred thousand dollars or by imprisonment in a house of correction for not more than
764 two and one-half years or in state prison for not more than ten years, or both such fine and
765 imprisonment.

766 A police officer, including a special police officer appointed under section twenty-six,
767 may without a warrant arrest any person whom he finds in the act of illegally possessing,
768 delivering or transporting unstamped cigarettes, and seize the said cigarettes, the vending
769 machines, receptacles, boxes or cartons in which the same are contained, hereinafter called the
770 container or containers, in the possession of such person, any vehicle used in the illegal
771 transportation of cigarettes and any records relating to the purchase and sale of cigarettes.

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

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

776 SECTION 37. Said chapter 64C is hereby amended by striking out section 36, as so
777 appearing, and inserting in place thereof the following section:-

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

780 Section 36. Whoever, not being a stamper, a common carrier transporting cigarettes
781 under a proper bill of lading or freight bill which states the quantity, source and designation or
782 destination of such cigarettes, or such other person as the commissioner may authorize in writing

783 to do so, possesses, delivers or transports any unstamped cigarettes, shall have in his actual
784 possession invoices or delivery tickets for such cigarettes showing: (1) the true name and address
785 of the consignor or seller; (2) the true name and address of the consignee or purchaser, which
786 consignee or purchaser is: (i) a stamper or other person authorized by the commissioner in
787 writing to possess unstamped cigarettes; or (ii) person in another jurisdiction licensed or
788 authorized by such other jurisdiction to possess unstamped cigarettes, or, in the case of cigarettes
789 bearing the stamp of another jurisdiction, a person licensed by such other jurisdiction to sell
790 cigarettes; (3) the quantity and brands of the cigarettes possessed or transported; and (4) the
791 name and address of the person who has assumed or shall assume the payment of the excise
792 provided by this chapter at the ultimate point of destination.

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

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

802 SECTION 38. Said chapter 64C is hereby amended by striking out section 37, as so
803 appearing, and inserting in place thereof the following section:-

804 Forgery, alteration, etc., of excise stamps; unauthorized use of stamping machine;
805 penalties; forfeitures

806 Section 37. (a) Whoever: (1) falsely or fraudulently makes, forges, alters or counterfeits,
807 or causes or procures to be falsely or fraudulently made, forged, altered or counterfeited, any
808 cigarette excise stamps prepared or prescribed by the commissioner under the authority of this
809 chapter; or (2) knowingly and wilfully utters, publishes, passes or tenders as true, any such false,
810 altered, forged or counterfeited stamp or makes a false affixation of or uses any stamp provided
811 for by this chapter which has already once been used, for the purpose of evading the excise
812 imposed by this chapter; or (3) wilfully removes or alters or knowingly permits to be removed or
813 altered the cancelling or defacing mark of any stamp provided for by this chapter with intent to
814 use such stamp; or (4) knowingly or wilfully buys, prepares for use, uses, has in possession, or
815 suffers or permits to be used, any machine or device for affixing stamps without authority, or any
816 washed, restored or counterfeit stamps; or (5) intentionally removes or causes to be removed, or
817 knowingly permits to be removed, any stamp affixed pursuant to this chapter; or (6) tampers with
818 or causes to be tampered with any machine or device for affixing stamps authorized to be used
819 under the provisions of this chapter shall be punished by a fine of not more than fifty thousand
820 dollars or by imprisonment in a house of correction for not more than two and one-half years or
821 in state prison for not more than five years, or both such fine and imprisonment.

822 (b) If any person secures, manufactures or causes to be secured or manufactured, or has
823 in his possession, any cigarette excise stamp not prescribed or authorized by the commissioner,
824 or any counterfeit impression or any copy or image of such a cigarette excise stamp not
825 prescribed or authorized by the commissioner, whether in physical or electronic format, such fact
826 shall be prima facie evidence that such person has counterfeited stamps.

827 SECTION 39. Said chapter 64C is hereby amended by inserting after section 37, as so
828 appearing, the following new sections:-

829 Selling, etc. untaxed other tobacco products; evasion

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

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

843 (3) Whoever, whether or not licensed, willfully attempts to evade any of the excises on
844 other tobacco products imposed by this chapter, or the payment thereof,

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

849 fewer than thirty thousand units of other tobacco products in any combination shall be punished
850 by a fine of not more than fifty thousand dollars or by imprisonment in a house of correction for
851 not more than two and one-half years or in state prison for not more than five years, or both such
852 fine and imprisonment; (c) a violation involving thirty thousand or more units of other tobacco
853 products in any combination shall be punished by a fine of not more than one hundred thousand
854 dollars or by imprisonment in a house of correction for not more than two and one-half years or
855 in state prison for not more than ten years, or both such fine and imprisonment.

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

859 Transportation of untaxed other tobacco products; necessity of invoices or delivery
860 tickets; prima facie evidence

861 Section 37B. Whoever, not being a licensed wholesaler or licensed cigar distributor or
862 licensed unclassified acquirer authorized by the terms of his license to possess such other
863 tobacco products, or a person otherwise authorized in writing by the commissioner to sell or
864 distribute such other tobacco products or a common carrier transporting other tobacco products
865 under a proper bill of lading or freight bill which states the quantity, source and designation or
866 destination of such other tobacco products, possesses for delivery or transport, or delivers or
867 transports any untaxed other tobacco products, shall have in his actual possession invoices or
868 delivery tickets for such other tobacco products showing: (1) the true name and address of the
869 consignor or seller; (2) the true name and address of the consignee or purchaser, which consignee
870 or purchaser is: (a) a licensed wholesaler, licensed cigar distributor, or licensed unclassified

871 acquirer authorized by the terms of his license to possess such other tobacco products; or (b)
872 a person in another jurisdiction licensed or authorized by such other jurisdiction to
873 possess untaxed other tobacco products; (3) the quantity and brands of the other tobacco products
874 possessed or transported; and (4) the name and address of the person who has assumed or shall
875 assume the payment of the excise provided by this chapter at the ultimate point of destination.

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

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

883 SECTION 40. Section 38 of said chapter 64C, as so appearing, is hereby amended by
884 striking out, in line 1, the words “not being an authorized agent” and inserting in place thereof
885 the words:- not being the commissioner or an authorized agent of the commissioner

886 SECTION 41. Said section 38 of said chapter 64C, as so amended, is hereby further
887 amended by striking out, in lines 4-5, the words “a fine of not more than two thousand dollars or
888 by imprisonment for five years, or both” and inserting in place thereof the words:- a fine of not
889 more than fifty thousand dollars or by imprisonment in a house of correction for not more than
890 two and one-half years or in state prison for not more than five years, or both such fine and
891 imprisonment

892 SECTION 42. Said chapter 64C is hereby amended by striking out section 38A, as so
893 appearing, and inserting in place thereof the following section:-

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

896 Section 38A. Whenever the commissioner discovers: (a) any unstamped cigarettes
897 subject to tax under this chapter which are found in the possession of any person other than a
898 stamper, a common carrier transporting such cigarettes under a proper bill of lading or freight
899 bill which states the quantity, source and designation or destination of such cigarettes, or other
900 person transporting unstamped cigarettes in actual possession of the documents required by
901 section 36, or a person authorized in writing by the commissioner to possess such unstamped
902 cigarettes; or (b) any unstamped cigarettes or other tobacco products that are being stored or
903 appear to be stored at a location that has not been reported by any licensee, as required by section
904 2, as premises at which tobacco products are currently held, placed, or stored; or (c) any such
905 unstamped cigarettes or other tobacco products that are otherwise held, purchased, possessed,
906 imported or acquired in violation of paragraphs (a), (b), (c), (d), (f), or (g) of section 10 or of
907 sections 34, 35, 37, or 37A; or (d) more than ten thousand units of other tobacco products in the
908 possession of a licensed wholesaler or licensed cigar distributor under circumstances that provide
909 reason to believe that such licensee possesses such other tobacco products with the intent to
910 evade any of the excises imposed by this chapter on such other tobacco products or payment
911 thereof; provided that such circumstances shall include but not be limited to such licensee's
912 history in two or more recent periods of failure to file returns and pay excise relative to other
913 tobacco products of the type such licensee is found to be in possession of or of reporting sales
914 and paying excise on sales of other tobacco products corresponding to quantities substantially

915 below the quantities such licensee is found to be in possession of or is known to have purchased
916 or otherwise acquired during those periods; or (e) any falsely made, fraudulently made, forged,
917 altered or counterfeited cigarette excise stamps and any cigarette excise stamps otherwise not
918 prescribed or authorized by the commissioner; or (f) any un-affixed genuine cigarette excise
919 stamps found in the possession of anyone not being a stamper or a person otherwise authorized
920 by the commissioner to possess such stamps; or (g) any machines or devices for affixing stamps
921 not prescribed or authorized by the commissioner; he may seize and take possession of such
922 unstamped cigarettes, other tobacco products, stamps, and machines or devices, together with
923 any vending machine or other receptacle in which the unstamped cigarettes or other tobacco
924 products are contained, and forfeiture proceedings shall be pursued in accordance with the
925 provisions of section 38B.

926 SECTION 43. Said chapter 64C is hereby amended by inserting after section 38A, as so
927 appearing, the following new section:-

928 Forfeiture of property

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

931 (1) Any unstamped cigarettes subject to tax under this chapter which are found in the
932 possession of any person other than a stamper, a common carrier transporting such unstamped
933 cigarettes under a proper bill of lading or freight bill which states the quantity, source and
934 designation or destination of such cigarettes or other person transporting such unstamped
935 cigarettes in actual possession of the documents required by section 36, or a person authorized in
936 writing by the commissioner to possess such unstamped cigarettes; any such unstamped

937 cigarettes and other tobacco products which are otherwise held, purchased, possessed, imported
938 or acquired in violation of paragraphs (a), (b), (c), (d), (f), or (g) of section 10 or of sections 34,
939 35, 37, or 37A; any falsely made, fraudulently made, forged, altered or counterfeited cigarette
940 excise stamps and any cigarette excise stamps otherwise not prescribed or authorized by the
941 commissioner; any un-affixed genuine cigarette excise stamps found in the possession of anyone
942 not being a stamper or a person otherwise authorized by the commissioner to possess such
943 stamps.

944 (2) All materials, products, and equipment of any kind which are used, or intended to be
945 used to commit or facilitate any violation of any provision of section 10, 34, 35, 37, 37A, or 38.

946 (3) All conveyances, including aircraft, vehicles or vessels used, or intended for use, to
947 transport, conceal, or otherwise facilitate the manufacture, purchase, sale possession with intent
948 to manufacture or sell tobacco products in violation of any provision of section 10, 34, 35, 37,
949 37A, or 38.

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

954 (5) All moneys, negotiable instruments, securities or other things of value furnished or
955 intended to be furnished by any person in exchange for tobacco products in violation of this
956 chapter, all proceeds traceable to such an exchange, including real estate and any other thing of
957 value, and all moneys, negotiable instruments, and securities used or intended to be used to
958 facilitate any violation of any provision of section 10, 34, 35, 37, 37A, or 38.

959 (6) All real property, including any right, title, and interest in the whole of any lot or tract
960 of land and any appurtenances or improvements thereto, which is used in any manner or part, to
961 commit or to facilitate the commission of a violation of any provision of section 10, 34, 35, 37,
962 37A, or 38.

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

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

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

974 (c) The court shall order forfeiture of all conveyances subject to the provisions of
975 subparagraph (3) and of all real property subject to the provisions of subparagraph (6) of
976 subsection (a) of this section, except as follows:

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

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

984 (3) No conveyance or real property shall be subject to forfeiture unless the owner thereof
985 knew or should have known that such conveyance or real property was used in and for the
986 business of unlawfully manufacturing or selling of tobacco products. Proof that the conveyance
987 or real property was used to facilitate the unlawful manufacturing, or sale of, or possession with
988 intent unlawfully to manufacture or sell, tobacco products on three or more different dates shall
989 be prima facie evidence that the conveyance or real property was used in and for the business of
990 unlawfully manufacturing or selling tobacco products.

991 (4) No conveyance or real property used to facilitate the unlawful manufacturing, or sale
992 of, or possession with intent unlawfully to manufacture or sell, tobacco products, shall be
993 forfeited if the number of units of tobacco products, as defined in section 1, so manufactured,
994 sold or possessed with intent to manufacture or sell, is less than ten thousand units in the
995 aggregate.

996 (d) A district attorney or the attorney general or the commissioner may petition the
997 superior court in the name of the commonwealth in the nature of a proceeding in rem to order
998 forfeiture of a conveyance, real property, moneys or other things of value subject to forfeiture
999 under the provisions of subparagraphs (3), (5), and (6) of subsection (a). Such petition shall be
1000 filed in the court having jurisdiction over said conveyance, real property, monies or other things
1001 of value or having final jurisdiction over any related criminal proceeding brought under any

1002 provision of this chapter. In all such suits where the property is claimed by any person, other
1003 than the commonwealth, the commonwealth shall have the burden of proving to the court the
1004 existence of probable cause to institute the action, and any such claimant shall then have the
1005 burden of proving that the property is not forfeitable pursuant to subparagraph (3), (5), or (6) of
1006 said subsection (a). The owner of said conveyance or real property, or other person claiming
1007 thereunder shall have the burden of proof as to all exceptions set forth in subsections (c) and (g).
1008 The court shall order the commonwealth to give notice by certified or registered mail to the
1009 owner of said conveyance, real property, moneys or other things of value and to such other
1010 persons as appear to have an interest therein, and the court shall promptly, but not less than two
1011 weeks after notice, hold a hearing on the petition. Upon the motion of the owner of said
1012 conveyance, real property, moneys or other things of value, the court may continue the hearing
1013 on the petition pending the outcome of any criminal trial related to the violation of this chapter.
1014 At such hearing the court shall hear evidence and make conclusions of law, and shall thereupon
1015 issue a final order, from which the parties shall have a right of appeal. In all such suits where a
1016 final order results in a forfeiture, said final order shall provide for disposition of said
1017 conveyance, real property, moneys or any other thing of value by the commonwealth or any
1018 subdivision thereof in any manner not prohibited by law, including official use by an authorized
1019 law enforcement or other public agency, or sale at public auction or by competitive bidding. The
1020 proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture
1021 proceedings, seizure, storage, maintenance of custody, advertising, and notice, and the balance
1022 thereof shall be distributed as further provided in this section.

1023 The final order of the court shall provide that said moneys and the proceeds of any such
1024 sale shall be deposited to the Illegal Tobacco Task Force Trust Fund. This shall be a separate

1025 fund, established on the books of the Commonwealth within the office of the state treasurer, to
1026 be administered by the co-chairs of the illegal tobacco task force established under section 40.
1027 All such moneys and proceeds received shall be deposited into said trust fund and shall then be
1028 expended without further appropriation to defray the costs of protracted investigations, to
1029 provide additional technical equipment or expertise, to provide matching funds to obtain federal
1030 grants, or such other law enforcement purposes as the colonel of the state police and
1031 commissioner of revenue deems appropriate, which shall include but not be limited to equitable
1032 distributions to the prosecuting district attorney or attorney general and any police department
1033 involved in the seizure. Any such distributions made shall be deposited in the special law
1034 enforcement trust funds provided for in subsection (d) of section 47 of chapter 94C, and
1035 expended as provided in said subsection.

1036 (e) Any officer, department, or agency having custody of any property subject to
1037 forfeiture under this chapter or having disposed of said property shall keep and maintain full and
1038 complete records showing from whom it received said property, under what authority it held or
1039 received or disposed of said property, to whom it delivered said property, the date and manner of
1040 destruction or disposition of said property, and the exact kinds, quantities and forms of said
1041 property. Said records shall be open to inspection by all federal and state officers charged with
1042 enforcement of federal and state tobacco laws. Persons making final disposition or destruction of
1043 said property under court order shall report, under oath, to the court the exact circumstances of
1044 said disposition or destruction.

1045 (f)(1) During the pendency of the proceedings the court may issue at the request of the
1046 commonwealth ex parte any preliminary order or process as is necessary to seize or secure the
1047 property for which forfeiture is sought and to provide for its custody, including but not limited to

1048 an order that the commonwealth remove the property if possible, and safeguard it in a secure
1049 location in a reasonable fashion; that monies be deposited in an interest-bearing escrow account;
1050 and, that a substitute custodian be appointed to manage such property or a business enterprise.
1051 Property taken or detained under this section shall not be repleviable, but once seized shall be
1052 deemed to be lawfully in the custody of the commonwealth pending forfeiture, subject only to
1053 the orders and decrees of the court having jurisdiction thereof. Process for seizure of said
1054 property shall issue only upon a showing of probable cause, and the application therefor and the
1055 issuance, execution, and return thereof shall be subject to the provisions of chapter two hundred
1056 and seventy-six, so far as applicable.

1057 (2) A district attorney or the attorney general or the commissioner may refer any real
1058 property, and any furnishings, equipment and related personal property located therein, for which
1059 seizure is sought to the division of capital asset management and maintenance office of seized
1060 property management, established under section 47 of chapter 94C. The office of seized property
1061 management shall preserve and manage such property in a reasonable fashion and dispose of
1062 such property upon a judgment ordering forfeiture issued pursuant to the provisions of
1063 subsection (d), and may enter into contracts to preserve, manage and dispose of such property.
1064 The office of seized property management may receive initial funding from the special law
1065 enforcement trust funds of the attorney general and each district attorney referenced in
1066 subsection (d) and shall subsequently be funded by a portion of the proceeds of each sale of such
1067 managed property to the extent provided as payment of reasonable expenses in subsection (d).

1068 (g) The owner of any real property which is the principal domicile of the immediate
1069 family of the owner and which is subject to forfeiture under this section may file a petition for
1070 homestead exemption with the court having jurisdiction over such forfeiture. The court may, in

1071 its discretion, allow the petition exempting from forfeiture an amount allowed under section one
1072 of chapter one hundred and eighty-eight. The value of the balance of said principal domicile, if
1073 any, shall be forfeited as provided in this section. Such homestead exemption may be acquired
1074 on only one principal domicile for the benefit of the immediate family of the owner.

1075 (h) A forfeiture proceeding affecting the title to real property or the use and occupation
1076 thereof or the buildings thereon shall not have any effect except against the parties thereto and
1077 persons having actual notice thereof, until a memorandum containing the names of the parties to
1078 such proceeding, the name of the town where the affected real property lies, and a description of
1079 such real property sufficiently accurate for identification is recorded in the registry of deeds for
1080 the county or district where the real property lies. At any time after a judgment on the merits, or
1081 after the discontinuance, dismissal or other final disposition is recorded by the court having
1082 jurisdiction over such matter, the clerk of such court shall issue a certificate of the fact of such
1083 judgment, discontinuance, dismissal or other final disposition, and such certificate shall be
1084 recorded in the registry in which the original memorandum recorded pursuant to this section was
1085 filed.

1086 SECTION 44. Section 26 of chapter 218 of the General Laws, as so appearing, is hereby
1087 amended by inserting, in line 12, after the words “the crimes listed in” the following words:-
1088 paragraph (2) of section 34 and paragraph (2) of section 35 and paragraph (b) of section 37A of
1089 chapter 64C, and