

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 691 Session of 2015

INTRODUCED BY MENSCH, COSTA, WILEY, BLAKE, TEPLITZ, YUDICHAK, RAFFERTY, ARGALL, SCARNATI, SMUCKER AND BROWNE, MARCH 31, 2015

SENATOR BROWNE, APPROPRIATIONS, RE-REPORTED AS AMENDED, MAY 9, 2016

AN ACT

1 Amending the act of April 9, 1929 (P.L.343, No.176), entitled,
2 as amended, "An act relating to the finances of the State
3 government; providing for the settlement, assessment,
4 collection, and lien of taxes, bonus, and all other accounts
5 due the Commonwealth, the collection and recovery of fees and
6 other money or property due or belonging to the Commonwealth,
7 or any agency thereof, including escheated property and the
8 proceeds of its sale, the custody and disbursement or other
9 disposition of funds and securities belonging to or in the
10 possession of the Commonwealth, and the settlement of claims
11 against the Commonwealth, the resettlement of accounts and
12 appeals to the courts, refunds of moneys erroneously paid to
13 the Commonwealth, auditing the accounts of the Commonwealth
14 and all agencies thereof, of all public officers collecting
15 moneys payable to the Commonwealth, or any agency thereof,
16 and all receipts of appropriations from the Commonwealth,
17 authorizing the Commonwealth to issue tax anticipation notes
18 to defray current expenses, implementing the provisions of
19 section 7(a) of Article VIII of the Constitution of
20 Pennsylvania authorizing and restricting the incurring of
21 certain debt and imposing penalties; affecting every
22 department, board, commission, and officer of the State
23 government, every political subdivision of the State, and
24 certain officers of such subdivisions, every person,
25 association, and corporation required to pay, assess, or
26 collect taxes, or to make returns or reports under the laws
27 imposing taxes for State purposes, or to pay license fees or
28 other moneys to the Commonwealth, or any agency thereof,
29 every State depository and every debtor or creditor of the
30 Commonwealth," in cigarette sales and licensing, further
31 providing for definitions, for retention of records and for
32 violations and penalties and providing for preemption.

1 The General Assembly of the Commonwealth of Pennsylvania  
2 hereby enacts as follows:

3 Section 1. The definition of "cost of the retailer" in  
4 section 202-A of the act of April 9, 1929 (P.L.343, No.176),  
5 known as The Fiscal Code, added July 2, 1993 (P.L.250, No.46),  
6 is amended to read:

7 Section 202-A. Definitions.--As used in this article--

8 \* \* \*

9 "Cost of the Retailer" shall mean the basic cost of  
10 cigarettes to the retailer plus the cost of doing business by  
11 the retailer in excess of the basic cost of cigarettes,  
12 expressed as a percentage and applied to the basic cost of  
13 cigarettes. In the absence of filing of satisfactory proof of a  
14 lesser or higher cost of doing business by the retailer making  
15 the sale, the cost of doing business by the retailer shall be  
16 presumed to be [~~six~~] seven per centum of the basic cost of  
17 cigarettes to the retailer. When a retailer establishes a lesser  
18 cost of doing business than the presumptive [~~six~~] seven per  
19 centum cost of doing business, such lesser cost of doing  
20 business may be used to compute the cost of the retailer for a  
21 period of time no greater than twelve months, at the end of  
22 which time the cost to the retailer shall be computed using the  
23 presumptive [~~six~~] seven per centum cost of doing business,  
24 unless the retailer again establishes a lesser cost of doing  
25 business. Any fractional part of a cent in such cost per carton  
26 shall be rounded off to the next higher cent. In the case of any  
27 person who purchases cigarettes for sale at retail from any  
28 manufacturer of cigarettes without resort to a wholesaler as  
29 such, such person shall be deemed, for the purposes of this  
30 article, to be engaged in the sale of cigarettes as a stamping

1 agent, wholesaler and retailer and as such shall be subject to  
2 all mark-up provisions of this article in the order named.

3 \* \* \*

4 Section 2. Section 214-A of the act, added July 2, 1993  
5 (P.L.250, No.46), is amended to read:

6 Section 214-A. [Retention of] Required Records.--(a) Every  
7 licensed dealer shall keep and maintain for a period of four  
8 years such records in such form as the department shall by  
9 regulation prescribe. The records shall be maintained at the  
10 location for which the license is issued.

11 (b) A contract of sale complying with the provisions of this  
12 article shall be signed by the parties to a sale of cigarettes  
13 and shall be kept on file by each party at the location for  
14 which the license is issued. In the case of a dealer having more  
15 than one location under common ownership, the contract of sale  
16 shall be kept at the business or corporate headquarters. A  
17 contract of sale shall include, but not be limited to, an actual  
18 document or Internet or electronic evidence indicating that a  
19 transaction for the sale of cigarettes has taken place.

20 Section 3. Section 229-A of the act is amended by adding a  
21 subsection to read:

22 Section 229-A. Violations and Penalties.--\* \* \*

23 (g) A licensee who fails to pay for cigarettes in full upon  
24 delivery by cash, check or electronic fund transfer or according  
25 to the contract of sale, requiring full payment no later than  
26 fourteen days after delivery, in addition to any other  
27 violations provided by law, shall be in violation of this  
28 article.

29 Section 4. The act is amended by adding a section to read:

30 Section 232-A. Preemption.--(a) All powers and jurisdiction

1 over dealers licensed under this article, and regarding or  
2 affecting the sale of tobacco products by dealers licensed under  
3 this article, shall reside in the Commonwealth unless any such  
4 power or jurisdiction is specifically granted to a political  
5 subdivision.

6 (B) THIS SECTION SHALL NOT APPLY TO A CITY OF THE FIRST <--  
7 CLASS.

8 ~~(b)~~ (C) As used in this section, the term "tobacco product" <--  
9 shall have the same meaning as defined in 18 Pa.C.S. § 6305(k)  
10 (relating to sale of tobacco).

11 Section 5. This act shall take effect immediately.