2014 -- S 2380

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

A N  A C T

RELATING TO TAXATION - CIGARETTE TAX

Introduced By: Senators Pearson, Picard, Jabour, Miller, and Nesselbush

Date Introduced: February 12, 2014

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

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

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

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

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

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

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

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

(6) That has not been submitted to the secretary of the U.S. Department of Health and
Human Services the list or lists of the ingredients added to tobacco in the manufacture of those
1335a.

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

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

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

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

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

(2) Tobacco products in excess of the amounts described in subdivision (1) of this
subsection if the excess amounts are voluntarily abandoned to the tax administrator at the time of
entry, but only if the tobacco products were imported or brought into the United States for
personal use and not with intent to defraud the United States or any state.
(f) If any part or provision of this section or the application of any part to any person or circumstance is held invalid, the remainder of the section, including the application of that part or provision to other persons or circumstances, shall not be affected by that invalidity and shall continue in full force and effect. To this end, the provisions of this section are severable.

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

**44-20-35. Penalties for violations as to unstamped cigarettes.** -- Any person who violates any provision of sections 44-20-33 and 44-20-34 shall be fined one thousand dollars ($1,000) ten thousand dollars ($10,000), or five (5) times the retail value of the cigarettes involved, whichever is greater, for the first offense, and for each subsequent offense, shall be fined one thousand dollars ($1,000) twenty thousand dollars ($20,000), or five (5) times the retail value of the cigarettes involved, whichever is greater, or be imprisoned not more than three (3) years five (5) years, or be both fined and imprisoned.

**44-20-39. Forgery and counterfeiting -- Tampering with meters -- Reuse of stamps or containers.** -- Any person who fraudulently makes or utters or forges or counterfeits any stamp, disc, license, or marker, prescribed by the tax administrator under the provisions of this chapter, or who causes or procures this to be done, or who willfully utters, publishes, passes or renders as true, any false, altered, forged, or counterfeited stamp, license, disc, or marker, or who knowingly possesses more than twenty (20) packs of cigarettes containing any false, altered, forged, or counterfeited stamp, license, disc, or marker, or who tampers with or causes to be tampered with any metering machine authorized to be used under the provisions of this chapter, or who removes or prepares any stamp with intent to use, or cause that stamp to be used, after it has already been used, or who buys, sells, offers for sale, or gives away any washed or removed or restored stamp to any person, or who has in his or her possession any washed or restored or removed or altered stamp which was removed from the article to which it was affixed, or who reuses or refills with cigarettes any package, box, or container required to be stamped under this chapter from which cigarettes have been removed, is deemed guilty of a felony, and, upon conviction, shall be fined ten thousand dollars ($10,000) one hundred thousand dollars ($100,000), or be imprisoned for not more than ten (10) years fifteen (15) years, or both.

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

44-20.51. Penalty for violations generally. -- Except as otherwise provided in this
chapter, any person who violates any provision of this chapter is guilty of a _misdemeanor felony_
and shall be fined not more than one thousand dollars ($1,000) _ten thousand dollars ($10,000)_.
Whoever knowingly violates any provision of this chapter, or of regulations prescribed
thereunder, shall, in addition to any other penalty provided in this chapter, for each such offense,
be fined not more than _five thousand dollars ($5,000) twenty thousand dollars ($20,000)_ or
imprisoned not more than _one year five (5) years_, or both.

44-20.51.1. Civil penalties. -- (a) Whoever omits, neglects, or refuses to comply with
any duty imposed upon him/her by this chapter, or to do, or cause to be done, any of the things
required by this chapter, or does anything prohibited by this chapter, shall, in addition to any
other penalty provided in this chapter, be liable to a penalty of _one thousand dollars ($1,000) ten
thousand dollars ($10,000)_ or five (5) times the retail value of the cigarettes involved, whichever
is greater, to be recovered, with costs of suit, in a civil action.

(b) Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or
regulations, shall, in addition to any other penalty provided in this chapter, be liable to a penalty
of five (5) times the tax due but unpaid.

44-20.51.2. Criminal penalty for fraudulent offenses. -- Whoever, with intent to
defraud the state fails to comply with any requirement of this chapter or regulations prescribed
thereunder shall in addition to any other penalty provided in this chapter, for each such offense,
be fined _ten thousand dollars ($10,000) one hundred thousand dollars ($100,000)_ or _imprisoned
imprisoned_ not more than _five (5) years fifteen (15) years_, or both.

44-20.51.3. Counterfeit cigarettes. -- (a) Notwithstanding any other provision of law,
the sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, or
dealer shall result in the seizure of the product and related machinery by the administrator or any
law enforcement agency and shall be punishable as follows:

(1) A knowing violation involving a total quantity of less than two (2) cartons of
cigarettes shall be punishable by a fine of _one thousand dollars ($1,000) ten thousand dollars_
(2) A subsequent knowing violation involving a total quantity of less than two (2) cartons of cigarettes shall be punishable by a fine of $5,000 or five (5) times the retail value of the cigarettes involved, whichever is greater, or imposition not to exceed five (5) years, or both.

(3) A first knowing violation involving a total quantity of two (2) cartons of cigarettes or more shall be punishable by a fine of $2,000 or five (5) times the retail value of the cigarettes involved, whichever is greater, or imposition not to exceed five (5) years, or both.

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

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

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

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

(1) Either post a $500 bond with the court within ten (10) days of the citation; or

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

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

(1) Pay the $500 fine, either by mail or in person, within ten (10) days after receiving the citation; or
(2) If that individual or business has posted a bond, forfeit the bond by not appearing at
the scheduled hearing. If the individual or business cited pays the five hundred dollar ($500) ten
thousand dollars ($10,000) fine or forfeits the bond, that individual or business is deemed to have
admitted the cited violation and to have waived the right to a hearing on the issue of commission
on the violation.

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

SECTION 3. This act shall take effect upon passage.

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

2. This act would take effect upon passage.