

preserve and maintain the Pechin House in a good state of repair and to maintain it as an historic monument open to visitation by the public.

Section 4. The sum of five thousand dollars (\$5000), or as much thereof as is necessary, is appropriated to the Pennsylvania Historical and Museum Commission for the payment of all expenses incurred in the acquisition and repair of the Pechin House.

Appropriation.

Section 5. This act shall take effect immediately.

Act effective immediately.

APPROVED—The 16th day of December, A. D. 1959.

DAVID L. LAWRENCE

No. 682

AN ACT

Amending the act of July 8, 1957 (P. L. 594), entitled "An act to provide revenue by imposing a State tax upon sales or gifts of cigarettes; requiring persons engaged in the sale of cigarettes to secure licenses; prescribing the method and manner of collecting such tax; making it unlawful to sell or possess cigarettes upon which the tax has not been paid; conferring powers and imposing duties on the Department of Revenue and other persons; making an appropriation and providing penalties," by redefining certain terms, including retail dealer and wholesale dealer; authorizing the department to issue regulations pertaining to the payment of tax by use of stamps; eliminating the right of dealer to retain unstamped packs of cigarettes; eliminating the right of other persons to purchase cigarette tax stamps; permitting the department to prescribe the form and content of dealer and cigarette stamp; affixing agency license applications; providing for hearings under the Administrative Agency Law; imposing additional fines and penalties for false and fraudulent violation of the act; providing forfeiture proceedings and making other technical changes therein.

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

Pennsylvania  
Cigarette Tax  
Act of 1957.

Section 1. Section 101 of the act of July 8, 1957 (P. L. 594), known as the "Pennsylvania Cigarette Tax Act of 1957," is amended to read:

Section 101. act  
of July 8, 1957.  
P. L. 594,  
amended.

Section 101. Short Title.—This act shall be known and may be cited as the "Pennsylvania Cigarette Tax Act [of 1957]."

Section 2. Section 102 of the act is amended to read:

Section 102 of  
the act,  
amended.

Section 102. Definitions.—The following words, terms and phrases shall be construed in this act to have the following meanings, except where the context clearly indicates otherwise:

(a) "Act," shall mean and include the Pennsylvania Cigarette Tax Act and the regulations promulgated thereunder.

[(a)] (b) "Association," shall mean and include any partnership, limited partnership, joint venture or other form of unincorporated enterprise owned by two or more persons.

[(b)] (c) "Cigarette," shall mean and include any roll for smoking made wholly or in part of tobacco, the wrapper or cover of which is made of paper or any other substance or material other than tobacco regardless of the size or shape of the roll and regardless of whether or not the tobacco is flavored, adulterated or mixed with any other ingredient.

[(c)] (d) "Cigarette Tax Stamps," shall mean and include any adhesive stamps, tax meter impressions or other stamps, labels or prints [authorized by the department] which the department by regulation shall authorize to evidence the payment of the tax imposed by this act.

[(d)] (e) "Cigarette Vending Machine," shall mean and include any mechanical device from which cigarettes are dispensed for a consideration.

[(e)] (f) "Dealer," shall mean and include any person not acting as an employe of another person who sells cigarettes within this Commonwealth.

[(f)] (g) "Department," shall mean and include the Department of Revenue of [this] the Commonwealth of Pennsylvania.

[(g)] (h) "Licensed Dealer," shall mean and include any person to whom a license has been issued pursuant to this act. A person to whom a license has been issued shall not be considered a licensed dealer, if his license has expired or has been revoked or during a period when such license is under suspension.

[(h)] (i) "Pack of Cigarettes," shall mean and include the smallest individual package, box or other immediate container in or from which retail sales of cigarettes are normally made.

[(i)] (j) "Person," [every corporation, partnership, association, joint venture and governmental subdivision, as well as a natural person.] shall mean and include any individual, association, company, corporation, joint-stock company, club, agency, syndicate, trust, receiver, trustee, fiduciary, conservator and political subdivision or similar type of organization. Whenever used in any clause, sentence or section prescribing and imposing a fine or imprisonment, or both, the word "person" as applied to a partnership, association or joint venture, shall mean the partners or members thereof, and as applied to a corporation, the officers and directors thereof.

[(j) "Retail Dealer," any person other than a wholesale dealer, who receives cigarettes from any source whatsoever for the purpose of sale to the ultimate consumer. Any person other than a wholesale dealer, who receives any pack of cigarettes which, when received by such person, does not have affixed thereto Pennsylvania cigarette tax stamps shall also be considered a retail dealer.]

(k) "Retail Dealer," (1) shall mean and include (a) any person who purchases or receives cigarettes from any source whatsoever for the purpose of sale to the ultimate consumer, (b) any person other than a wholesale dealer, who receives any pack of cigarettes which when received by such person does not have affixed thereto Pennsylvania cigarette tax stamps, (c) any person who owns or operates vending machines for each such cigarette vending machine, (2) any person who purchases or receives unstamped packs of cigarettes from any manufacturer or out-of-state source for sale to the ultimate consumer shall be deemed, for the purpose of this act, to be engaged in the sale of cigarettes both as a wholesaler and a retailer, and shall be subject to the provisions of this act pertaining to wholesale and retail dealers.

[(k)] (l) "Sale," shall mean and include [any transfer of the ownership, custody or possession of cigarettes from one person to another, either for a consideration or as a gift.] any transfer of ownership, custody or possession of cigarettes for consideration, any exchange, barter or gift, any offer of sale and any distribution in any manner or by any means whatsoever.

[(l)] (m) "Unstamped Cigarettes," shall mean and include any pack of cigarettes to which the proper amount of genuine Pennsylvania cigarette tax stamps has not been affixed.

[(m)] (n) "Vending Machine Operator," shall mean and include any person who places one or more vending machines, owned, [or] leased or operated by him, at locations, where cigarettes are sold therefrom. The owner or lessee of the premises upon which a vending machine is placed, shall not be considered the operator of the machine, if he does not own or lease the machine and if his sole remuneration therefrom is a flat rental fee or a commission, based upon the number or value of cigarettes sold from the machine, or a combination of both.

[(n) "Wholesale Dealer," any person who regularly sells cigarettes within this Commonwealth to retail dealers who buy for the purpose of resale to the ultimate consumer; any person who purchases unstamped cigarettes directly from any manufacturer or out-of-State source for the purpose of resale; or any person who owns or operates ten or more cigarette vending machines.]

(o) "Wholesale Dealer," (1) shall mean and include (a) any person who regularly sells cigarettes within this Commonwealth to retail dealers who buy for the purpose of resale to the ultimate consumer, (b) any person who purchases or receives unstamped cigarettes from any manufacturer or out-of-state source for the purpose of resale, (c) any person who owns or operates ten or more cigarette vending machines, (2) any person who purchases or receives unstamped cigarettes from any manufacturer or out-of-state source for sale to the ultimate consumer shall be deemed, for the purpose of this act, to be engaged in the sale of cigarettes both as a wholesaler and as a retailer, and shall be subject to the provisions of this act pertaining to wholesale and retail dealers.

First paragraph,  
section 205 of  
the act,  
amended.

Section 3. The first paragraph of section 205 of the act is amended to read :

Section 205. Exemptions from Tax.—No tax imposed by this act shall be levied upon the possession or sale of cigarettes which this Commonwealth is prohibited from taxing under the Constitution or statutes of the United States. In addition, [the following sales are exempt: Provided, That the seller and purchaser have registered with the Department and obtained exemption certificates:] *when the seller and purchaser have registered with the Department and have obtained exemption certificates in accordance with such regulations as the Department shall prescribe, the following sales are exempt:*

\* \* \* \* \*

Article heading,  
article III., and  
section 301 of  
the act,  
amended.

Section 4. The article heading of article III. and section 301 of the act are amended to read :

### ARTICLE III.

#### [CIGARETTE TAX STAMPS]

#### METHOD OF PAYMENT OF TAX

Section 301. [Dealers to Affix Stamps.—Within the time hereinafter prescribed, every dealer shall affix to each pack of cigarettes received by him and shall cancel Pennsylvania cigarette tax stamps to evidence payment of the tax imposed by this act, unless such stamps have been affixed to the packs of cigarettes and cancelled before such dealer received them.] *Stamp to Evidence the Tax.—* (a) *The department may, by regulation, require every dealer to use stamps to evidence the payment of tax imposed by this act, unless such stamps have been affixed to the packs of cigarettes and cancelled before such dealer received them,* (b) *the department may, by regulation, authorize the sale of Pennsylvania cigarette tax stamps at such places and at such times as it deems necessary and the department shall prescribe the manner, time and*

*conditions under which the payment of tax shall be made. However, the department may, by regulation, permit only a wholesale dealer or cigarette stamp affixing agent to pay for all purchases on a deferred basis, upon the filing of a bond with the department in an amount at least equal to the sales price of such stamps executed by the purchaser as a principal and by a corporation duly authorized to engage in business as a surety company in Pennsylvania as a surety.*

Section 5. Section 302 of the act is amended to read :

Section 302 of  
the act,  
amended.

Section 302. [Amount of Stamps; Cancellation.—Pennsylvania cigarette tax stamps in an amount not less than the tax thereon, shall be affixed to each pack of cigarettes in such manner that they will be visible to the purchaser. The person affixing such stamps shall cancel them immediately in such manner as may be prescribed by the department.] *Time for Affixing Stamps.—Every dealer other than a cigarette stamp affixing agent shall, immediately upon receipt at his place of business of any cigarettes not having affixed thereto genuine Pennsylvania cigarette tax stamps, affix the proper amount of stamps to each pack of cigarettes and cancel them in such manner as the department may, by regulation, prescribe.*

Section 6. Section 303 of the act is amended to read :

Section 303 of  
the act,  
amended.

Section 303. [Design of Stamps.—Pennsylvania cigarette tax stamps shall be adhesive stamps, tax meter impressions or other stamps, labels or prints of such designs and denominations as may be prescribed by the department.] *Appointment of Stamp Affixing Agents.—(a) The department may appoint as its agent for a period of one (1) year and may reappoint each subsequent year for a one-year period any manufacturer of any cigarettes or any licensed cigarette wholesale dealer to affix Pennsylvania cigarette tax stamps at a specific location; (b) the department shall, by regulation, prescribe the form, content and manner of application by which an appointment or reappointment as a stamp affixing agency shall be made. Such application may be rejected and the appointment or reappointment denied if the department, after notice and an opportunity to be heard at a hearing conducted in accordance with the provisions of the Administrative Agency Law, finds that (i) the premises on which it is proposed to conduct the business are not adequate to protect the revenue, (ii) such applicant is, by reason of his business experience, financial standing or trade connections, not likely to maintain operations in compliance with this act, (iii) such applicant has failed to disclose any material information required or has made any material false statement in the application, or (iv) such applicant for reappointment has violated any pro-*

vision of this act; (c) a cigarette tax stamp affixing agent shall be exempt from the provision of section 302 of this act so long as he shall, prior to the delivery of any pack of cigarettes to any person, affix cigarette tax stamps to each pack of cigarettes unless such stamps have been previously affixed thereto, and shall cancel them in such manner as the department may by regulation prescribe; (d) no sales of unstamped packs of cigarettes may be made by any cigarette stamp affixing agent; (e) within thirty (30) days after the service of an adjudication of the department made pursuant to this section of the act, any applicant or agent aggrieved thereby shall have the right to appeal therefrom in accordance with the provisions of the Administrative Agency Law.

Sections 304 and 305 of the act, amended.

Section 7. Sections 304 and 305 of the act are amended to read:

Section 304. [Sale of Stamps.—The department shall make provisions for the sale of Pennsylvania cigarette tax stamps in such places and at such times as it deems necessary, but all stamps shall be paid for at the time of purchase, except that the department may permit a stamp affixing agent or wholesale dealer to pay for stamps within forty-five (45) days after the date of purchase, provided a bond satisfactory to the department in an amount not less than the sales price of such stamps is filed with the department. The bond conditioned to secure payment for the stamps shall be executed by the stamp affixing agent as principal and by a corporation duly authorized to engage in business as a surety company in the Commonwealth of Pennsylvania as surety.] *Commission On Sales.—Whenever the department or other authorized person shall sell, consign or deliver to any stamp affixing agency any stamps of the face amount of one hundred dollars (\$100.00) or more at any one time, such agent shall be entitled to receive, as compensation for his services and expenses as agent in affixing such stamps and to retain out of the moneys to be paid by him for such stamps, a commission of four per centum (4%) on the par value thereof if and when such agent has purchased the stamps affixed by him directly from the department or other authorized person.*

Section 305. [Time for Affixing Stamps.—Every dealer shall immediately upon the receipt at his place of business of any cigarettes not containing Pennsylvania cigarette tax stamps either affix the proper amount of stamps to each pack of unstamped cigarettes and cancel them, or he shall immediately mark in ink on each unopened box, carton or other container of such cigarettes the word "received," and the month, day and year of receipt, and he shall affix his signature thereto.

Upon opening such box, carton or other container and prior to the sale of such cigarettes, and in no event later than twenty-four (24) hours in the case of a retail dealer, and seventy-two (72) hours in the case of a wholesale dealer, after the time of receipt, the dealer shall affix to each pack of cigarettes and cancel the proper amount of tax stamps.] *Sample Packs of Cigarettes.*—*The department shall, by regulation, govern the receipt, distribution of and payment of tax on sample packs of cigarettes issued for free distribution. Such regulations may provide that any licensed dealer may receive and make free distribution of sample packs of cigarettes without affixing Pennsylvania cigarette tax stamps thereto so long as the proper tax thereon has been paid.*

Section 8. Sections 306, 307, 308, 309 and 310 of the act are repealed.

Sections 306, 307, 308, 309 and 310 of the act, repealed.

Section 9. The article heading of article IV. and section 401 of the act are amended to read:

Heading of article IV. and section 401, amended.

#### ARTICLE IV.

##### [CIGARETTE VENDING MACHINES]

##### LICENSE REQUIRED

Section 401. [Names of Owner and Operator To Be On Machine.—There shall be conspicuously and visibly placed, on every cigarette vending machine, the name and address of the owner and the name and address of the operator.] *License Required.*—*No person, unless all of his sales of cigarettes are exempt from tax, shall sell any cigarettes within this Commonwealth without first securing the proper license pursuant to the provisions of this act.*

Section 10. Sections 402, 403, 404 and 405 of the act are amended to read:

Sections 402, 403, 404 and 405 of the act, amended.

Section 402. [License for Machine.—The license required for each cigarette vending machine shall be conspicuously and visibly placed on the machine.] *Application for a License.*—*(a) Every person, unless all of his sales of cigarettes are exempt from tax who sells cigarettes within this Commonwealth, shall apply to the department for a retail or wholesale cigarette dealer's license at such time as the department, by regulation, shall prescribe.*

*(b) The application shall be in such form and contain such information as the department shall prescribe, and shall set forth truthfully and accurately the information called for on the form. Such application may be rejected and the license refused if the department, after notice and an opportunity to be heard at a hearing conducted*

*in accordance with the provisions of the Administrative Agency Law, finds (i) the premises on which it is proposed to conduct the business is not adequate to protect the revenue, (ii) such applicant by reason of his business experience, financial standing or trade connections is not likely to maintain operations in compliance with this act, (iii) such applicant has failed to disclose any material information required or made any material false statement in the application.*

*(c) Within thirty (30) days after the service of an adjudication of the department made pursuant to this section of the act, any applicant aggrieved thereby shall have the right to appeal therefrom in accordance with the provisions of the Administrative Agency Law.*

Section 403. [Sale of Single Cigarettes from Vending Machine.—Single cigarettes may be sold from vending machines, pursuant to regulations promulgated by the department, so long as tax is paid on such cigarettes.]

*Dealer License and Agency License Fees.—At the time of making any application, the applicant for a wholesale cigarette dealer's license shall pay to the department a license fee of fifty dollars (\$50.00), and the applicant for a retail cigarette dealer's license or vending machine license shall pay to the department a license fee of one dollar (\$1.00). Any person appointed as an agent to affix cigarette tax stamps, pursuant to the provisions of section 304 (a), shall be issued a special agency license for which he shall pay to the department a fee of two hundred dollars (\$200.00).*

Section 404. [Machine Containing Unstamped Cigarettes.—No property rights shall exist in any cigarette vending machine in which unstamped cigarettes are found, and the same shall be deemed contraband and shall be forfeited to the Commonwealth. No such property when in the custody of the law shall be seized or taken therefrom on any writ of replevin or like judicial process. The Department of Property and Supplies shall dispose of any forfeited machine in the same manner in which it disposes of surplus Commonwealth property.] *Issuance and Posting of License.—Upon approval of the application and payment of the fees, the department shall issue the proper licenses to be conspicuously displayed at the place for which issued.*

Section 405. [Duties.—Whenever it is provided in this act that a duty or liability is imposed on the owner or operator of cigarette vending machines, such duty or liability shall only be imposed once in regard to any cigarette vending machine and the owner and operator shall be, jointly and severally, liable for the performance of such duty or satisfaction of such liability.] *Expiration*

*of Licenses.—(a) Every license shall expire on the thirty-first day of December next succeeding the date upon which it was issued unless sooner suspended, surrendered or revoked.*

*(b) Any purchase or sale of cigarettes or cigarette tax stamps for stamping of cigarettes after the expiration date of the license shall be illegal and in violation of the act.*

Section 11. The act is amended by adding, after section 405, five new sections to read :

Act of July 8,  
1957, P. L. 594,  
amended by  
adding five new  
sections 406,  
407, 408, 409  
and 410.

*Section 406. Renewal.—(a) Any outstanding license may be renewed for the next succeeding year at any time prior to the date on which it expires upon application made to the department and upon payment of a renewal fee equal to the initial license fee.*

*(b) The renewal application shall be in such form and contain such information as the department shall prescribe and shall set forth truthfully and accurately the information called for on the form. Such application may be rejected and the license refused if the department, after notice and an opportunity to be heard at a hearing conducted in accordance with the provisions of the Administrative Agency Law, finds (i) the premises on which it is proposed to conduct the business is not adequate to protect the revenue, (ii) such applicant by reason of his business experience, financial standing or trade connections is not likely to maintain operations in compliance with this act, (iii) such applicant has failed to disclose any material information required or made any material false statement in the application, or (iv) such applicant for renewal has violated any provisions of this act.*

*(c) Within thirty (30) days after the service of an adjudication of the department made pursuant to this section of the act, any \*applicant aggrieved thereby shall have the right to appeal therefrom in accordance with the provisions of the Administrative Agency Law.*

*Section 407. Duplicate License.—(a) Whenever any license is defaced, destroyed or lost, the department may issue a duplicate to the holder of the defaced, destroyed or lost license upon submission of a duplicate license application. Except as provided in subsection (b) of this section, at the time of making any application for a duplicate license, the applicant shall pay to the department a fee of one dollar (\$1.00). The duplicate license application shall be in such form and contain such information as the department shall prescribe and shall set forth truthfully and accurately the information called for on the form.*

\* "agent" in original.

(b) *In the event a license is defaced or destroyed in the performance of any duty imposed by this act, the department may, by regulation, waive the fee imposed by subsection (a) of this section.*

*Section 408. Suspension or Revocation of License.—*  
 (a) *If the department has reason to believe that any person holding a license or appointment has not in good faith complied with this act, has violated the conditions of such license or appointment, failed to disclose any material information required, or made any material false statement in the application for such an appointment or license, or has failed to maintain his premises in such manner as to protect the revenue, the department shall issue an order stating the facts charged, citing such person to show cause why his license or appointment should not be suspended or revoked. If after a hearing conducted under the provisions of the Administrative Agency Law, the department finds that such person has not in good faith complied with this act, violated the conditions of such license or appointment, failed to disclose any material information required, or made any material false statement in the application therefor, or has failed to maintain his premises in such manner as to protect the revenue, such license or appointment shall be revoked or suspended for such period as the department may deem proper.*

(b) *No license shall be issued to any person within one (1) year after revocation of an existing license or appointment or after rejection of an application.*

(c) *Within thirty (30) days after the service of an adjudication of the department made pursuant to this section of the act, any agent or licensee aggrieved thereby shall have the right to appeal therefrom in accordance with the provisions of the Administrative Agency Law.*

*Section 409. Transfer of Licenses.—The department may, by regulation, permit a dealer under such conditions as the department may impose and upon the filing of an application to transfer a license from one location to another or from one cigarette vending machine to another.*

*Section 410. Disposition of License Fees.—All license fees imposed and collected under the provisions of this act shall be payable to this Commonwealth and are hereby appropriated to the department to be used for enforcing this act.*

**Section 12.** The article heading of article V. and section 501 of the act are amended to read:

\* "many" in original.

## ARTICLE V.

## [LICENSES]

## CIGARETTE VENDING MACHINES

Section 501. [Licenses Required.—No person shall sell any cigarettes within this Commonwealth without first securing the proper license pursuant to the provisions of this act, except that no license shall be required for any person whose cigarette sales are all exempt from tax.] *Names of Owner and Operator To Be On Machine.—There shall be conspicuously and visibly placed on every cigarette vending machine the name and address of the owner and the name and address of the operator.*

Section 13. Sections 502, 503 and 504 of the act are amended to read:

Sections 502,  
503 and 504  
of the act,  
amended.

Section 502. [Application for License.—Every person, unless all his sales of cigarettes are exempt from tax, who sells cigarettes within this Commonwealth shall apply to the department for a retail or wholesale dealer's cigarette license for each place of business at which, or vending machine from which, he sells cigarettes. Every application shall be made upon a form furnished by the department and shall set forth the name under which the applicant transacts or intends to transact business, the location of his place of business within this Commonwealth, and such other information as the department may require. If the applicant has or intends to have more than one place of business within the Commonwealth, the application shall state the location of each place of business. If the applicant is an owner or operator of cigarette vending machines, the applicant shall state the number of machines owned or operated by the applicant, and the applicant shall forthwith notify the department of all subsequent acquisitions and dispositions. If the applicant is a partnership, association or joint venture, the application shall set forth the names and addresses of the members of the association, and if a corporation, the names and addresses of the principal officers thereof. If the application is made by a natural person, it shall be signed by him. If it is made by a partnership, association or joint venture, it shall be signed by a principal member. If it is made by a corporation, it shall be signed by an officer or other person specifically authorized to sign the application (to which shall be attached written evidence of his authority).] *License for Machine.—(a) The owner or operator of cigarette vending machines shall obtain for each such cigarette vending machine a retail cigarette dealer's license, (b) the license required for each cigarette vend-*

*ing machine shall be conspicuously and visibly placed on the machine.*

Section 503. [License Fee.—At the time of making any application the applicant for a wholesale dealer's license shall pay to the department a license fee of fifty dollars (\$50.00), and the applicant for a retail dealer's license or vending machine license shall pay to the department a license fee of one dollar (\$1.00). Any person appointed as an agent to affix stamps, pursuant to the provisions of section 308<sup>1</sup>, shall be issued a special license for which he shall pay to the department a fee of two hundred dollars (\$200.00).] *Machine Containing Unstamped Cigarettes.—No property rights shall exist in any cigarette vending machine in which unstamped cigarettes are found and the same shall be deemed contraband and shall be forfeited to the Commonwealth. No such property when in the custody of the law shall be seized or taken therefrom on any writ of replevin or like judicial process. The Department of Property and Supplies shall dispose of any forfeited machine in the same manner in which it disposes of surplus Commonwealth property.*

Section 504. [Issuance of Licenses.—Upon approval of the application and payment of the fees, the department shall issue the proper licenses for each place of business set forth in the application. Every license shall be conspicuously displayed at the place for which issued.] *Duties.—Whenever it is provided in this act that a duty or liability is imposed on the owner or operator of cigarette vending machines, such duty or liability shall only be imposed once in regard to any cigarette vending machine and the owner and operator shall be, jointly and severally, liable for the performance of such duty or satisfaction for such liability.*

Sections 505,  
506, 507, 508,  
509 and 510  
of the act,  
repealed.

Section 14. Sections 505, 506, 507, 508, 509 and 510 of the act are repealed.

Sections 601,  
602, 603, 604,  
702, 703, 704,  
706, 707, 709 and  
subsections (a)  
and (e), section  
710 of the act,  
amended.

Section 15. Sections 601, 602, 603, 604, 702, 703, 704, 706, 707, 709 and subsections (a) and (e) of section 710 of the act are amended to read:

Section 601. Retention of Records.—[Every dealer shall maintain and keep for a period of four years a complete record of all cigarettes received, sold and delivered by him within this Commonwealth, together with invoices, bills of lading and other pertinent papers as may be required by the department.] *Every dealer shall keep and maintain for a period of four (4) years such records in such form as the department shall, by regulation, prescribe.*

Section 602. Department Authorized to Examine Records.—The department is hereby authorized to examine the books and records, the stock of cigarettes and the premises and equipment of any dealer in order to verify the accuracy of the payment of the tax imposed by this act. Every such person is hereby directed and required to give to the [Secretary of Revenue,] *department* or [his] *its* duly authorized representative, the means, facilities and opportunity for such examinations. [Refusal to cooperate with or permit such examination to the satisfaction of the department shall be sufficient grounds for the suspension or revocation of any license issued hereunder.]

Section 603. Enforcement and Regulations.—The department is hereby charged with the enforcement of the provisions of this act, and it is hereby authorized to promulgate regulations relating to the administration and enforcement of the provisions of this act. *The violation of a regulation promulgated under the authority of this act shall be considered to be a violation of the act.*

Section 604. [Refunds.—Whenever any packs of cigarettes upon which stamps have been placed have been sold and shipped into another state for sale or use therein or have been sold to persons exempt under section 205 hereof for resale to authorized purchasers, or have become unfit for use and consumption or unsalable by reason of fire, flood or other causes beyond the control of the dealer, the dealer who sold the cigarettes and shipped them into another state for sale or use therein or who sold the cigarettes to persons exempt under section 205 for resale to authorized purchases or who owned the cigarettes at the time they became unfit for use and consumption or unsalable by reason of fire, flood or other cause beyond the control of the dealer, shall be entitled to a refund of the actual amount of Pennsylvania cigarette tax paid with respect to such cigarettes. If the department is satisfied that a dealer is entitled to a refund, it shall certify the proposed amount of such refund to the Board of Finance and Revenue for approval, and thereafter shall issue to the dealer stamps of sufficient value to cover the refund approved by the Board.] *Refund or Allowance of Tax.—(a) A refund of any tax imposed by this act shall be made to a dealer on proof satisfactory to the department that the claimant dealer has paid the tax on cigarettes withdrawn by him from the market, shipped into another state for sale or use therein, sold to persons exempt under section 205 hereof for resale to authorized purchasers, or on cigarettes which are lost (otherwise than by theft) or destroyed by fire, casualty or act of God, while in the possession or*

*ownership of the claimant, or where the tax has been paid in error.*

*(b) If the tax has not yet been paid on cigarettes proven to be lost or destroyed as aforesaid, relief from the tax on such cigarettes may be extended upon the filing with the return of a claim for allowance by loss in the same manner as a claim for refund.*

*(c) Claims for refund of tax imposed by this act shall be filed within one (1) year from the date of payment of the tax and shall be in such form and contain such information as the department shall by regulation prescribe.*

*(d) If the department is satisfied that the dealer is entitled to the refund, it shall certify the proposed amount of such refund to the Board of Finance and Revenue for approval, and thereafter shall issue to the dealer stamps of sufficient value to cover the refund approved by the Board.*

**Section 702. Sale of Unstamped Cigarettes.**—Any person who shall sell any pack of cigarettes, which does not have affixed thereto the proper amount of *genuine* Pennsylvania cigarette tax stamps, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced for the first offense to pay a fine of not more than one thousand dollars (\$1000.00) or to suffer imprisonment for a term not exceeding six (6) months, or both, in the discretion of the court, and in the case of a conviction of a second or subsequent offense hereunder shall be sentenced to pay a fine of not more than one thousand dollars (\$1000.00) and to suffer imprisonment for a term not more than three (3) years.

**Section 703. [Refusal to Permit Inspection.—Any dealer] Failure to Furnish Information, Returning False Information or Failure to Permit an Inspection.**—*Any dealer who fails to keep or make any record, return, report, inventory or statement, or keeps or makes any false or fraudulent record, return, report, inventory or statement required by this act, or who shall refuse to permit the department to examine its books and records and its stock of cigarettes and its premises and equipment in order to verify the accuracy of its payment of the tax imposed by this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500.00) or to suffer imprisonment of not more than six (6) months, or both, in the discretion of the court.*

**Section 704. Counterfeited and Reused Stamps.**—Any person who falsely or fraudulently makes, forges, alters, or counterfeits any stamp prescribed by the department under the provisions of this act, or causes or

procures to be falsely or fraudulently made, forged, altered or counterfeited any stamp, or knowingly and wilfully \*possesses, utters, publishes, passes, or tenders as true any such false, altered, forged, or counterfeited stamp, or uses more than once any stamp provided for and required by this act, for the purpose of evading the tax hereby imposed and assessed, shall be guilty of a [misdemeanor] felony, and, upon conviction thereof, shall be sentenced to pay a fine of not more than five thousand dollars (\$5000.00) and to suffer imprisonment by separate and solitary confinement at labor for a term of not more than five (5) years.

Section 706. Dealer's Possession of Unstamped Cigarettes.—Whenever any cigarettes are found at the place of business of a dealer who is not a licensed stamp affixing agent and such cigarettes do not have the proper amount of genuine stamps affixed and cancelled [and the boxes, cartons or other containers have not been marked as having been received within the preceding twenty-four (24) hours in the case of a retail dealer, or seventy-two (72) hours in the case of a wholesale dealer], such dealer shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than twenty-five dollars (\$25.00) and costs of prosecution for each two hundred (200) unstamped, [and] unmarked or improperly stamped cigarettes found in his possession and the cigarettes shall be forfeited to the Commonwealth without further proceedings, and, in default of the payment of the said fine and costs, he shall be imprisoned in the county jail one (1) day for each dollar of fine and costs unpaid.

Section 707. Other Violations.—[Any person who violates any other provisions of this act or the regulations promulgated hereunder shall, upon conviction in a summary proceeding, be sentenced to pay a fine of twenty-five dollars (\$25.00) and costs of prosecution, and in default of payment thereof, to undergo imprisonment for not more than ten (10) days.] (a) Any person who wilfully omits or neglects or refuses to comply with any other duty imposed upon him by this act or who wilfully omits or neglects or refuses to do or cause to be done any of the other things required by this act, or does any other thing prohibited by this act, shall, upon conviction in a summary proceeding, be sentenced to pay a fine not to exceed five hundred dollars (\$500.00) and costs of prosecution, and, in default of payment thereof, to undergo imprisonment for not more than ten (10) days.

(b) Any person who wilfully omits or neglects to pay any tax imposed by this act, or attempts in any manner

\* "possesses" in original.

*to evade or defeat the tax or payment thereof, shall, in addition to any other penalty provided in this act, be liable to a penalty equal to the amount of tax evaded or not paid, which penalty shall be added to the tax and assessed and collected at the same time in the same manner as a part of the tax.*

*(c) Any person who fails to pay tax at the time prescribed shall, in addition to any other penalty provided in this act, be liable to a penalty of five per centum (5%) of the tax due but unpaid, together with the interest at the rate of six per centum (6%) per annum on such tax from the time the tax became due, but no interest for a fraction of a month shall be demanded. The penalties provided in this subsection shall be added to the tax and assessed and collected at the same time in the same manner and as a part of the tax.*

Section 709. Forfeited Cigarettes.—[The court shall order the sheriff to deliver to any non-profit hospital for the use of its patients any cigarettes forfeited to the Commonwealth under the provisions of this act and to make return to the court of compliance with the order.] *The department may deliver to any nonprofit hospital for the use of its patients any cigarettes forfeited to the Commonwealth under the provisions of this act.*

Section 710. Cigarette Vending Machine Forfeiture Proceedings.—(a) The proceedings for the forfeiture of any cigarette vending machine in which are found untaxed cigarettes or packs of cigarettes not bearing genuine Pennsylvania Tax Stamps shall be in rem [in which the]. *The Commonwealth shall be the plaintiff and the property the defendant. A petition shall be filed in the court of quarter sessions of the county in which the machine was found, verified by the oath of affirmation of any cigarette tax enforcement officer or other person. The petition shall contain the following: (1) a description of the machine seized, (2) a statement of the time when and place where seized, (3) the name and address of the owner, if known, (4) the name and address of the person in possession, if known, (5) a statement of the circumstances under which the machine was found and the number and a description of the unstamped or improperly stamped cigarettes found therein, and (6) a prayer for an order forfeiting the machine to the Commonwealth, unless cause be shown to the contrary.*

\* \* \* \* \*

(e) At the time of the hearing, if the Commonwealth shall produce evidence that the machine in question was found to contain unstamped or improperly stamped cigarettes, the burden shall be upon the claimant to show (1) that he is the owner of the machine, and (2)

that all cigarettes found in the machine at the time of seizure did contain the proper amounts of *genuine* Pennsylvania cigarette tax stamps.

In the event the claimant shall prove, \*by competent evidence, to the satisfaction of the court that the machine did not contain unstamped or *improperly stamped* cigarettes, the Court shall order the machine returned to the claimant; otherwise, the Court shall order it forfeited to the Commonwealth.

Section 16. This act shall take effect immediately.

Act effective immediately.

APPROVED—The 16th day of December, A. D. 1959.

DAVID L. LAWRENCE

No. 683

AN ACT

Amending the act of June 3, 1937 (P. L. 1225), entitled "An act concerning game and other wild birds and wild animals; and amending, revising, consolidating, and changing the law relating thereto," changing certain penalties relating to deer, and authorizing the game commission to authorize hunting or trapping by certain persons upon good cause shown.

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

The Game Law.

Section 1. Clause (q) of section 731, act of June 3, 1937 (P. L. 1225), known as "The Game Law," amended May 24, 1956 (P. L. 1736), is amended to read:

Clause (q), section 731, act of June 3, 1937, P. L. 1225, amended May 24, 1956, P. L. 1736, further amended.

Section 731. Penalties.—Any person violating any of the provisions of the sections of this article shall, upon conviction, be sentenced to pay the following fines and costs of prosecution for each offense:

\* \* \* \* \*

(q) Except as otherwise herein provided, for hunting, or chasing, or catching, or taking, or killing, or wounding, or receiving, or delivering, or transporting, or shipping or using or concealing or assisting to conceal, or having in possession, or attempting to hunt for, catch, take, kill, wound, or transport contrary to this article, or regulations adopted thereunder by the commission, or for violating any of the provisions of this article relating to the shipping or transportation or removal out of this Commonwealth, or relating to the buying or selling or bartering of the whole, or any substantial part or parts of;

Miscellaneous penalties.

I. Each elk, two hundred dollars, and in the discretion of the court six months' imprisonment.

\* "the" in original.