

MAINE STATE LEGISLATURE

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E I G H T Y - N I N T H L E G I S L A T U R E

Legislative Document

No. 696

H. P. 1728

House of Representatives, February 14, 1939.

Referred to Committee on Taxation: Sent up for concurrence and 750 copies ordered printed.

HARVEY R. PEASE, Clerk.

Presented by Mr. Good of Monticello.

S T A T E O F M A I N E

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
THIRTY-NINE

AN ACT Providing for an Excise Tax on Cigarettes and Tobacco.

Emergency preamble. Whereas, it is vitally necessary to provide funds for the expenses of the state government, and

Whereas, a tax on luxuries seems more advisable, and

Whereas, the collection of moneys under any new tax must be delayed while proper facilities for the collection thereof are prepared, and

Whereas, in the judgment of the legislature these facts create an emergency within the meaning of section 16 of Article XXXI of the constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety, now therefore

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. Tax on cigarettes and tobacco products. There is hereby levied and imposed an excise tax of 1 mill on every cigarette sold within the state of Maine; 5 mills on every cigar so sold having a retail price not in excess of 5 cents exclusive of said tax; 7 mills on every cigar so sold having a retail price of more than 5 cents but not in excess of 9 cents; 10 mills on every cigar sold having a retail price in excess of 9 cents; and $\frac{1}{4}$ of a

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cent for each eighth of an ounce of tobacco or tobacco products prepared for smoking, chewing or snuffing, in whatever form so prepared.

Sec. 2. Distributors' certificates. Every distributor of cigarettes, cigars, tobacco or tobacco products as above enumerated shall file a duly acknowledged application for a certificate with the state tax assessor on forms prescribed and furnished by him, which shall contain the name under which such distributor is transacting business within the state, the place or places of business, the names and addresses of the several persons constituting the firm or partnership, and if a corporation its corporate name and the names and addresses of its principal officers and agents within the state. No such distributor shall sell or distribute any cigarettes, cigars, tobacco or tobacco products as above enumerated in section 1 until such certificate is furnished by the state tax assessor and displayed as required by this section. One copy of each such certificate, certified by the state tax assessor shall be displayed in each place of business of such distributor. The state tax assessor having reasonable cause to believe that the distributor has ceased to do business, or that he has violated any of the provisions of this chapter or of the rules and regulations made thereunder, may on reasonable notice to the distributor suspend the distributor's certificate until satisfied to the contrary. In such case the distributor shall not act as a distributor until his certificate is restored by the state tax assessor either of his own initiative or at the request of the distributor and upon the state tax assessor's being satisfied that cause for suspension no longer exists, or upon order of court as hereinafter provided. In case of such suspension all certificates shall at once be surrendered to the state tax assessor upon his request. Notices shall be sufficient if sent by mail addressed to the distributor at the address designated in the certificate, and appeals may be taken in the same manner as provided in section 173 of chapter 57 of the revised statutes for appeals from decisions of the bank commissioner.

Sec. 3. Distributor entitled to add the tax to his sale price. Every distributor paying or becoming liable to pay the tax imposed by section 1 above shall be entitled to add said tax as a part of the selling price to the price of the cigarettes, cigars, tobacco or tobacco products.

Sec. 4. Reports; assessment of tax. Every distributor shall on or before the 15th day of each month render a report to the state tax assessor stating the number of cigarettes and/or cigars, and/or the quantity of tobacco and tobacco products sold by him during the preceding calendar month, on forms to be furnished by the state tax assessor. Such report shall contain such further information pertinent thereto as the state tax

assessor shall prescribe, and the state tax assessor may make such other reasonable rules and regulations regarding the administration and enforcement of the provisions of this act as he may deem necessary or expedient, copies of which shall be sent to distributors, and shall have access during reasonable business hours to the books, invoices and vouchers of the distributor, which may show the number of cigarettes, and/or cigars, and the amount of tobacco and tobacco products handled by the distributor. On or before the 1st day of the calendar month succeeding the filing of said report each distributor shall pay to the treasurer of state the proper tax upon the cigarettes, cigars, tobacco and tobacco products sold figured to the nearest cent on (1) the number of packets of cigarettes (2) the number of packets of cigars (3) the quantity of tobacco or tobacco products sold; and if said report is not filed by the 15th day of the month such distributor shall be liable to a penalty of \$5 a day for each day in arrears due on demand by the state tax assessor and recoverable in an action of debt. Each distributor shall within 15 days after demand made on him by the state tax assessor, pay such tax which upon audit the state tax assessor may find should have been paid during the preceding year by the distributor and not properly accounted for in a distributor's report or in accordance with law.

Sec. 5. State to have priority. The claims of the state for sums due from the distributor under the provisions of this act shall be preferred and priority claims in the event of the assignment, receivership or bankruptcy of the distributor and any distributor who has paid said tax to the state shall be subrogated to the state's priority in the event of the assignment, receivership or bankruptcy of anyone who is liable to such distributor for such tax.

Sec. 6. Application of taxes collected to old age assistance. All moneys received through the provisions of this act by the treasurer of state shall be appropriated and used for the administration and collection of the tax provided for by section 1 above and the remainder of said moneys shall be appropriated and used solely for the purpose of paying old age pensions, as provided for in chapter 267 of the public laws of 1933.

Sec. 7. Unconstitutionality of any section or provision not to affect other provisions. In case any section or provision of any portion of this act shall be held unconstitutional or invalid, the same shall not be held to affect any other section or provision of this act.

Sec. 8. Penalty for false returns or violations of provisions; tax may be collected by civil action. Any distributor of cigarettes, cigars, tobacco,

or tobacco products as above enumerated who shall make any false or fraudulent report or return required by this act, or who shall evade or violate any other provisions of this act, shall be punished by a fine of not more than \$2,000. Whenever any distributor shall fail to pay any tax due under the provisions of said act within the time limited herein, the attorney-general shall enforce payment of such tax by civil action against such distributor for the amount of such tax in a court of appropriate jurisdiction.

Emergency clause. In view of the emergency cited in the preamble this act shall take effect upon approval.