

# MAINE STATE LEGISLATURE

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

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**Legislative Document**

**No. 66**

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H. P. 117

House of Representatives, January 15, 1941.

Referred to Committee on Taxation and 1,000 copies ordered printed.  
Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Good of Monticello.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
FORTY-ONE

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**AN ACT Creating a Tax on Cigarettes.**

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**Emergency preamble.** Whereas, there is an immediate necessity for raising more revenue to pay old age pensions to those now eligible under the law; and

Whereas, any delay in the effective date of this act will prevent the needy aged people from receiving necessary support; 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. Definitions.** Whenever used in this act, unless the context shall otherwise require, the word "assessor" shall mean the state tax assessor; the word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust or association, however formed, trustee, agency or receiver; the word "distributor" shall mean any person who imports or causes to be imported cigarettes for use, distribution or sale in the state or

who manufactures or produces cigarettes in the state; the words "licensed distributor" shall mean a distributor licensed under the provisions of this act; the word "dealer" shall mean any person other than a distributor, as defined herein, who is engaged in the state in the business of selling cigarettes and a distributor who is engaged therein in the business of selling cigarettes at retail; the words "licensed dealer" shall mean a dealer licensed under the provisions of this act; and the words "sale" or "sell" in addition to their ordinary meaning shall include or apply to gifts, exchanges and barter; "place of business" shall mean and include any place where cigarettes are sold or where cigarettes are stored or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train or cigarette vending machine.

**Sec. 2. Licenses, how issued.** No person shall carry on the business of selling cigarettes in the state unless licensed so to do as herein provided. The assessor shall upon proper application and the payment to him of the fee herein provided issue a license for each place of business maintained by a distributor or a dealer. If a distributor at any one place of business acts both as distributor and as dealer he shall procure a license for such place of business both as a distributor and as a dealer. Every machine operated or maintained for the purpose of vending cigarettes shall for the purposes of this act be deemed to constitute a place of business, and no person shall maintain or cause to be operated such a machine without procuring a dealer's license. Each license so issued shall be prominently displayed by the licensed distributor or the licensed dealer on the premises covered by the license, and in the case of a vending machine there shall be attached to the same a disc or marker to be furnished by the assessor showing it to have been licensed. No person shall have in his possession a vending machine containing cigarettes for a period in excess of 48 hours unless there shall be attached to the same a disc or marker as herein provided, and any person who shall violate this provision shall be subject to the same fine as a person selling, offering for sale, or possessing with intent to sell any cigarettes without a license. The assessor shall prescribe the forms of application for distributor's or dealer's licenses and may require therein such information as he deems necessary in connection with the proper administration of this act. The fee for a distributor's license shall be \$25 and for a dealer's license shall be \$1. No fee nor any portion of any fee shall be refunded by reason of relinquishment or revocation of the license or for any other reason. Any person who shall sell, offer for sale, or possess with intent to sell any cigarettes without a license as provided in this section shall be punished by a fine of not more than \$50 for

the first offense and not less than \$50 nor more than \$200 for each subsequent offense. Any person who shall knowingly purchase or possess any cigarettes not manufactured, produced or imported by a licensed distributor shall be punished by a fine of not less than \$25 nor more than \$1000. No person, either as principal or agent, shall sell or solicit orders for cigarettes to be shipped, mailed or otherwise sent or brought into the state to any person not a licensed distributor.

**Sec. 3. Expiration of licenses.** Each license issued under the provisions of section 2 shall expire on the 30th day of June next succeeding the date of issuance unless sooner revoked by the assessor as provided in section 4 or unless the business with respect to which such license was issued shall change ownership, or unless the holder of the license shall remove his business from the premises covered by the license, in any of which cases the holder of the license shall immediately return it to the assessor. The holder of each such license on application to the assessor accompanied by the fee prescribed in section 2 may annually before the expiration date of the license then held by him renew his license for a further period of 1 year.

**Sec. 4. Revocation of licenses.** The assessor may revoke the license of any distributor or dealer for failure to comply with any provision of sections 1 to 18, inclusive, of this act or if the person licensed ceases to be a distributor or dealer. Any person aggrieved by such revocation may apply to the assessor for a hearing as provided in section 13 and may further appeal to the superior court as provided in section 14.

**Sec. 5. Distributors' duties.** Every distributor shall keep a complete and accurate record of all sales of cigarettes, including the name and address of the purchaser, the place and date of delivery, and the quantity of cigarettes and the trade name or brand thereof, and a complete and accurate record of the quantity of cigarettes imported, purchased or manufactured, and the date of importation, purchase or manufacture. Every distributor shall also deliver with every consignment of cigarettes to a purchaser within the state a written statement containing the date of purchase, the names of the purchaser and seller, the quantity of cigarettes and the trade name or brand thereof, and shall retain a duplicate of each such statement. Said records and said statements shall be in such form as the assessor shall prescribe and shall be preserved by said distributors and said purchasers, respectively, and shall be offered for inspection at any time upon oral or written demand by the assessor or his duly authorized agents.

**Sec. 6. Returns of distributors.** Every distributor shall, on or before

the 15th day of each month, file with the assessor a return under oath, on a form to be furnished by the assessor, stating the number of cigarettes sold by him in the state during the preceding calendar month and such return shall contain or be accompanied by such further information as the assessor shall require. At the time of filing such return, every distributor shall pay to the assessor an excise of 1 mill for each cigarette sold by him in the state during the calendar month covered by the return. Such abatements of the excise provided by this act may be made by the assessor by reason of bad debts, loss of cigarettes and such other causes as the assessor may deem expedient.

**Sec. 7. Failure to file returns, penalty.** If a distributor, having failed to file a return, or having filed an incorrect or insufficient return without reasonable excuse, fails to file an original or corrected return, as the case may require, within 20 days after the giving of notice to him by the assessor of his delinquency, the assessor shall determine the amount due, at any time within 2 years after the making of the earliest sale included in such determination. The distributor may appeal from his decision within 10 days thereof to the superior court, whose decision shall be final. The assessor, or, in the case of appeal, the superior court, having made such determination, shall give notice to the delinquent distributor of the amount determined to be due and the distributor shall forthwith, after the giving of such notice, pay to the assessor the amount so determined with interest at 6% from the 15th day of the month in which the return is required to be made pursuant to section 6.

**Sec. 8. Further penalty.** A distributor who fails to file a return to the assessor as required by section 6, or an original or corrected return as required by section 7, shall forfeit to the state, and shall pay to the assessor on demand the sum of \$5 for each day of delay after written notice by the assessor of such failure. The assessor may remit a part of said penalty.

**Sec. 9. Collection of tax.** Sums due to the state under the provisions of sections 1 to 18, inclusive, of this act may be recovered by the attorney-general in an action brought in the name of the assessor. The assessor may suspend the license of a distributor subject to this section for failure to pay such sums when due. The assessor shall have the same powers and remedies with respect to the collection of said sums as he has with respect to the collection of the gasoline tax. The assessor may require a distributor to furnish a bond issued by a surety company licensed to do business in the state, in such amount as he may fix, conditioned upon the payment of the excise provided by said sections.

**Sec. 10. Penalties.** Any distributor or dealer who files any false return, affidavit or statement, or any person who violates any provision of this act for which no other penalty has been provided, shall be punished by a fine of not more than \$1000 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. Any person other than a licensed distributor who shall knowingly sell or offer for sale any cigarettes upon which the excise herein imposed has not been paid shall be liable to the state in double the amount of the excise in an action of contract, provided this provision shall not apply in the case of cigarettes included or required to be included in a return of a licensed distributor. Any distributor who shall knowingly sell cigarettes and not make return of the same shall be liable to the state in double the amount of the excise in an action of contract.

**Sec. 11. Records.** Each dealer shall keep within the state complete and accurate records of all cigarettes purchased or otherwise acquired and sold. Such records shall be of such kind and in such form as the assessor may prescribe and shall be safely preserved in such manner as to insure permanency and accessibility for inspection by the assessor or any representative authorized by him. The assessor may require by rule or regulation any dealer to make reports as often as he deems necessary to enable him to determine whether the tax required by sections 1 to 18, inclusive, of this act has been full paid. The assessor and his authorized representative may examine the books, papers and records of any dealer in the state, for the purpose of determining whether the excise imposed by sections 1 to 18, inclusive, of this act has been fully paid, and may investigate and examine the stock of cigarettes in or upon any premises where such cigarettes are possessed, stored or sold, for the purpose of determining whether the provisions of said sections are being obeyed.

**Sec. 12. Hearings; subpoenas.** The assessor and any representative of the assessor duly authorized to conduct any inquiry, investigation or hearing hereunder shall have power to administer oaths and take testimony under oath relative to the matter of inquiry or investigation. At any hearing ordered by the assessor, the assessor or his representative authorized to conduct such hearing and having authority by law to issue such process may subpoena witnesses and require the production of books, papers and documents pertinent to such inquiry. No witness under subpoena authorized to be issued by the provisions of sections 1 to 18, inclusive, of this act shall be excused from testifying or from producing books or papers on the ground that such testimony or the production of such books or other documentary evidence would tend to incriminate him, but the testimony or evi-

dence so produced shall not be used in any criminal proceeding against him. If any person shall disobey such process or, having appeared in obedience thereto, shall refuse to answer any pertinent question put to him by the assessor or his authorized agent or to produce any books and papers pursuant thereto, the assessor or such representative may apply to the superior court for the county wherein the taxpayer resides or wherein the business has been conducted, or to any justice of said court if the same shall not be in session, setting forth such disobedience to process or refusal to answer, and said court or such justice shall cite such person to appear before said court or such justice to answer such question or to produce such books and papers, and, upon his refusal so to do, shall commit him to jail until he shall testify, but not for a longer period than 60 days. Notwithstanding the serving of the term of such commitment by any person, the assessor may proceed in all respects with such inquiry and examination as if the witness had not previously been called upon to testify. Officers who serve subpoenas issued by the assessor or under his authority and witnesses attending a hearing conducted by him hereunder shall receive fees and compensation at the same rates as officers and witnesses in the courts of the state, to be paid on vouchers of the assessor or on order of the controller and the treasurer of state shall pay said amount without any appropriation therefor by the legislature.

**Sec. 13. Special hearings.** Any person aggrieved by any action under sections 1 to 18, inclusive, of this act of the assessor or his authorized representative for which hearing is not elsewhere provided may apply to the assessor, in writing, within 10 days after the notice of such action is delivered or mailed to him, for a hearing, setting forth the reasons why such hearing should be granted and the manner of relief sought. The assessor shall consider each such application and may grant or deny the hearing requested. If the hearing be denied, the applicant shall be notified thereof; if it be granted, the assessor shall notify the applicant of the time and place fixed for such hearing. After such hearing, the assessor may make such order in the premises as may appear to him just and lawful and shall furnish a copy of such order to the applicant. The assessor may, by notice in writing, at any time, order a hearing on his own initiative and require the taxpayer or any other individual whom he believes to be in possession of information concerning any manufacture, importation or sale of cigarettes which have escaped taxation to appear before him or his duly authorized representative with any specified books of account, papers or other documents, for examination relative thereto.

**Sec. 14. Appeals.** Any person aggrieved because of any action or de-

cision of the assessor under the provisions of sections 1 to 18, inclusive, of this act may appeal therefrom within 10 days after notice thereof to the superior court. The appellant shall at the time of taking an appeal file with the superior court a bond of recognizance to the state, with surety to prosecute the appeal to effect and to comply with the orders and decrees of the court in the premises. Such appeals shall be preferred cases, to be heard, unless cause appears to the contrary, in priority to other cases. Said court may grant such relief as may be equitable and may order the treasurer of state to pay the amount of such relief, with interest at the rate of 4% per year, to the aggrieved taxpayer. If the appeal shall have been taken without probable cause, the court may tax double or triple costs, as the case shall demand; and, upon all such appeals which may be denied, costs may be taxed against the appellant at the discretion of the court, but no costs shall be taxed against the state.

**Sec. 15. Administration.** The administration of this act is vested in the assessor. All forms necessary and proper for the enforcement of this act shall be prescribed and furnished by the assessor. The assessor may prescribe regulations and rulings, not inconsistent with law, to carry into effect the provisions of this act, which regulations and rulings, when reasonably designed to carry out the intent and purpose of this act, shall be prima facie evidence of its proper interpretation. The records of any board, department, bureau or commission of the state having information with respect to dealers in cigarettes shall, notwithstanding any other provision of law, be open to the inspection of the assessor for the purpose of determining the names of those subject to the tax imposed by sections 1 to 18, inclusive.

**Sec. 16. Constitutionality.** If any provision or provisions of this act are declared unconstitutional or inoperative by a final judgment, order or decree of the supreme court of the United States or of the supreme judicial court of the state, the remaining parts of said act shall not be affected thereby.

**Sec. 17. Inventory.** Every dealer who at the commencement of business on the effective date of this act has on hand for sale any cigarettes shall make and file a complete inventory thereof within 20 days thereafter, and shall pay to the assessor at the time of filing such inventory a tax with respect thereto computed at the rate of 1 mill per cigarette. All provisions of this act relative to the collection, verification and administration of taxes applicable to distributors shall, in so far as pertinent, be applicable to the tax therein imposed.



**Emergency clause.** In view of the emergency cited in the preamble, this act shall take effect when approved.