

# MAINE STATE LEGISLATURE

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SENATE AMENDMENT "A"

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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. 1173

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Senate Amendment "A" to H. P. 1925, L. D. 1164, Bill  
"An Act Creating a Tax on Cigarettes"

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Amend said Bill by striking out all after the enacting clause and inserting in place thereof the following:

**Sec. 1. Definitions.** Whenever used in this act, unless the context shall otherwise require: The words "tax assessor" or 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; the word "distributor" shall mean any person engaged in this state in the business of producing or manufacturing cigarettes or importing into the state cigarettes at least 75% of which are purchased directly from the manufacturers thereof; 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 this state in the business of selling cigarettes; the words "licensed dealer" shall mean a dealer licensed under the provisions of this act; the word "sale" or "sell" shall include or apply to gifts, exchanges and barter.

**Sec. 2. Dealers and distributors to be licensed.** Each person engaging in the business of selling cigarettes in this state, including any distributor or dealer, shall secure a license from the tax assessor before engaging in such business, or continuing to engage therein after the effective date of this act. A separate application and license shall be required for each wholesale outlet and for each retail outlet when a person shall own or control more than one place of business dealing in cigarettes. Each vending machine shall be considered a retail outlet. Such license shall be issued on forms prescribed by the assessor, the name and address of the applicant, the address of the place of business and such other information as the assessor may require for the proper administration of this act. Each application for a wholesale outlet license shall be accompanied by a fee of

\$25 and each such application for a retail outlet license shall be accompanied by a fee of \$1. Each license so issued shall be prominently displayed on the premises covered by the license and in the case of vending machines there shall be attached to the same a disc or marker to be furnished by the assessor showing it to have been licensed. 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 \$25 for the 1st offense and not less than \$25 nor more than \$200 for each subsequent offense.

**Sec. 3. License to be valid for 1 year.** Each license issued under the provisions of section 2 of this act shall expire on the 31st day of July 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 be transferred, in either of which cases the holder of the license shall immediately return it to the assessor. In the event that the holder of a license shall remove his business to another location within the state, the license with respect to the former place of business shall be reissued for the new location without the payment of an additional fee for the unexpired term. The holder of each 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 license.** The assessor may revoke or suspend the license of any dealer or distributor for failure to comply with any provisions of this act or if the person licensed has ceased to act in the capacity for which the license was issued. Any person aggrieved by such revocation or suspension may apply to the assessor for a hearing as provided in section 16 of this act and may further appeal to the courts as provided in section 17 of this act.

**Sec. 5. One mill tax imposed.** A tax is imposed on all cigarettes held in this state by any person for sale, said tax to be at the rate of 1 mill for each cigarette, and the payment thereof to be evidenced by the affixing of stamps to the packages containing the cigarettes, as hereinafter provided. Any cigarette on which a tax has been paid, such payment being evidenced by the affixing of such stamp, shall not be subject to a further tax under this act. Nothing contained in this act shall be construed to impose a tax on any transaction the taxation of which by this state is prohibited by the constitution of the United States.

**Sec. 6. Assessor to provide stamps.** The tax assessor shall secure stamps, of such design and denomination as he shall prescribe, suitable to be affixed to packages of cigarettes as evidence of the payment of the tax imposed by this act. He shall sell such stamps to licensed distributors at a discount of 7% of their face value and to licensed dealers at their face value. The face value of the stamps when affixed shall be considered as part of the cost of the merchandise. The assessor may, in his discretion, permit a licensed distributor or licensed dealer to pay for such stamps within 30 days after the date of purchase, provided a bond satisfactory to the assessor in an amount not less than the sale price of such stamps shall have been filed with the assessor conditioned upon payment for such stamps. He shall keep accurate records of all stamps sold to each distributor and dealer and shall pay over all receipts from the sale of stamps to the treasurer of state daily.

**Sec. 7. Dealers and distributors not to resell stamps; redemption.** No distributor or dealer shall sell or transfer any stamps issued under the provisions of this act. The assessor shall redeem any unused, uncanceled stamps presented by any licensed distributor or dealer, at a price equal to the amount paid therefor by such dealer or distributor, and the treasurer of state shall provide, out of money collected hereunder, the funds necessary for such redemption.

**Sec. 8. Distributors to affix stamps.** Each distributor shall affix, or cause to be affixed, in such manner as the assessor may specify in regulations issued pursuant to this act, to each individual package of cigarettes sold or distributed by him, stamps of the proper denominations, as required by section 5 of this act. Such stamps may be affixed by a distributor at any time before the cigarettes are transferred out of his possession.

**Sec. 9. Dealers to affix stamps.** Each dealer shall, within 72 hours after the effective date of this act, and within 72 hours after coming into possession of any cigarettes not bearing proper stamps evidencing payment of the tax imposed by this act, and before selling such cigarettes, affix or cause to be affixed, in such manner as the assessor may specify in regulations issued pursuant to this act, to each individual package of cigarettes, stamps of the proper denomination, as required by section 5 of this act.

**Sec. 10. Sale of unstamped cigarettes prohibited.** No distributor shall sell, and no other person shall sell, offer for sale, display for sale or possess with intent to sell, any cigarettes which do not bear stamps evidencing the payment of the tax imposed by this act, provided a licensed dealer may

keep on hand unstamped cigarettes for a period not exceeding 72 hours. Any unstamped cigarettes in the possession of a dealer shall be presumed to have been held by him for more than 24 hours unless proof be shown to the contrary. Any person who shall violate any provision of this section shall be punished by a fine of not more than \$100 for the 1st offense and, for each subsequent offense, shall be punished by a fine of not less than \$200 nor more than \$1,000 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

**Sec. 11. Unstamped cigarettes subject to confiscation.** Any cigarettes found at any place in this state without stamps affixed thereto as required by this act, unless such cigarettes shall be in the possession of a licensed distributor, or unless they shall be in course of transit from without this state and consigned to a licensed distributor or licensed dealer, or unless they shall have been received by a licensed dealer from without the state within 24 hours, are declared to be contraband goods and are subject to forfeiture to the state; and sheriffs, deputy sheriffs, police officers and duly authorized agents of the said assessor, shall have the power to seize the same with or without process. In case such cigarettes are seized without a warrant, they shall be kept in some safe place for a reasonable time until a warrant can be procured. When such cigarettes are seized as provided herein, the officer or agent seizing them shall immediately file with the magistrate before whom such warrant is returnable, a libel against such cigarettes setting forth the seizure and describing the cigarettes, their containers and the place of seizure in sufficient manner to reasonably identify them, and that they were kept or intended for unlawful sale or use in violation of law, and pray for a decree of forfeiture thereof and such magistrate shall fix a time for the hearing of such libel and shall issue his monition and notice of the same to all persons interested, citing them to appear at the time and place appointed to show cause why such cigarettes and their containers should not be declared forfeited, by causing true and attested copies of said libel and monition to be posted in 2 public and conspicuous places in the town or place where such cigarettes were seized, 10 days at least before said libel is returnable.

**Sec. 12. Forfeiture proceedings.** If no claimant appears, such magistrate shall, on proof of notice as aforesaid, declare the same to be forfeited to the state. If any person appears and claims such cigarettes, or any part thereof, as having a right to the possession thereof at the time when the same were seized, he shall file with the magistrate such claim in writing, stating specifically the right so claimed, the foundation thereof, the items so claimed, the time and place of the seizure and the name of the officer or

duly authorized agent of the said department by whom the same were seized, and in it declare that they were not so kept or deposited for unlawful sale and use, as alleged in said libel and monition, and also state his business and place of residence, and shall sign and make oath to the same before said magistrate. If any person so makes claim, he shall be admitted as a party to the process; and the magistrate shall proceed to determine the truth of the allegations in said claim and libel, and may hear any pertinent evidence offered by the libelant or claimant. If the magistrate is, upon hearing, satisfied that said cigarettes were not so kept or deposited for unlawful sale or use, and that the claimant is entitled to the custody of any part thereof, he shall give him an order in writing, directed to the officer or duly authorized agent of the said department having the same in custody, commanding him to deliver to said claimant the cigarettes to which he is so found to be entitled, within 48 hours after demand. If the magistrate finds the claimant entitled to no part of said cigarettes he shall render judgment against him for the libelant for costs, to be taxed as in civil cases before such magistrate, and issue execution thereon, and shall declare said cigarettes forfeited to the state. The claimants may appeal and shall recognize with securities as on appeals in civil causes from a magistrate. All cigarettes declared forfeited to the state shall be sold by the treasurer of state at the approximate wholesale price thereof, and the funds derived from such sales shall be paid into the state treasury.

**Sec. 13. Fraudulent stamps.** Any person who shall fraudulently make or utter or shall forge or counterfeit any stamp prescribed by the tax assessor under the provisions of this act, or who shall cause or procure the same to be done, or who shall wilfully utter, publish, pass or render as true, any false, altered, forged or counterfeited stamp, or who shall knowingly possess any such false, altered, forged or counterfeited stamp, or who shall use more than once any stamp provided for and required by this act, for the purpose of evading the tax hereby imposed, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than 1 year nor more than 2 years, or by a fine of not less than \$500 nor more than \$1000, or both.

**Sec. 14. Taxpayers to keep records; assessors may examine.** Each distributor and each dealer shall keep complete and accurate records of all cigarettes manufactured, produced, purchased and sold. Such records shall be of such kind and in such form as the tax assessor may prescribe and shall be safely preserved for 2 years in such manner as to insure permanency and accessibility for inspection by the assessor and his authorized agents. The assessor and his authorized agents may examine the

books, papers and records of any distributor or dealer in this state, for the purpose of determining whether the tax imposed by 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 this act are being obeyed.

**Sec. 15. Oaths and subpoenas.** The assessor and any agent 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 agent 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. 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 agent may apply to the superior court of the county wherein the taxpayer resides or wherein the business has been conducted, or to any judge 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 said judge shall cite such person to appear before said court or such judge to answer such question or to produce such books and papers, and, upon his refusal so to do, may 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 hearing conducted by him hereunder shall receive fees and compensation at the same rates as officers and witnesses in the courts of this state, to be paid on vouchers of the assessor on order of the controller from the proper appropriation for the administration of this act.

**Sec. 16. Hearings by assessor.** Any person aggrieved by any action under this act of the assessor or his authorized agent 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 promptly consider each such application and may grant or deny the hearing requested. If the hearing be denied, the applicant shall be notified thereof forthwith; 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 agent with any specific books of account, papers or other documents for examination relative thereto.

**Sec. 17. Appeals from decisions of assessor.** Any person aggrieved because of any action or decision of the assessor under the provisions of this act may appeal therefrom to the superior court in the county where the aforesaid person resides. Any person desiring to appeal from any such action or decision shall furnish a bond or recognizance to the state of Maine with sureties to prosecute the appeal to effect and comply with the orders and decrees of the court in the premises. Notice of such appeal and the necessary papers affecting the case shall be forwarded to the said superior court within 5 days after the notice of appeal. The said superior court shall issue a citation to the tax assessor or his duly authorized representative to appear before said court at the return day of the case. The appeal shall be returnable at the same time, and service and return shall be made in the same manner as is provided for civil actions in the superior court.

**Sec. 18. Administration by assessor; rulings and regulations.** The administration of this act is vested in the tax assessor. All forms necessary and proper for the enforcement of this act shall be prescribed and furnished by the assessor. The assessor shall appoint such agents, clerks, stenographers and other assistants as he may deem necessary for effecting the purpose of this act, but their salaries shall be fixed by the personnel board. The assessor may require any such agent, clerk, stenographer or other assistant to execute a bond in such sum as said assessor shall determine for the faithful discharge of his duties. Any such agent, clerk, stenographer or other assistant may be removed by the assessor. The tax 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 assessor shall, at least annually, and oftener in his discretion, publish for



distribution all regulations prescribed hereunder and such rulings as appear to him to be of general interest.

**Sec. 19. Further provisions.** The tax assessor, if he shall determine that it is practicable to stamp by impression packages of cigarettes by means of a metering machine, may, in lieu of selling stamps under the provisions of section 6 authorize any licensed distributor or licensed dealer to use any metering machine approved by him, such machine to be sealed by the assessor before being used in accordance with regulations prescribed by him. Any licensed distributor or licensed dealer authorized by the tax assessor to affix stamps to packages by means of a metering machine shall file with the assessor a bond issued by a surety company licensed to do business in this state, in such amount as the tax assessor may fix, conditioned upon the payment of the tax upon cigarettes so stamped. The bond shall be in full force and effect for a period of 1 year and a day after the expiration of the bond, unless a certificate be issued by the tax assessor to the effect that all taxes due to the state have been paid. In the discretion of the tax assessor, cash may be accepted in lieu of a surety bond, such cash to be paid over by the tax assessor to the treasurer of state, who may deposit or hold the same subject to further order of the tax assessor. The tax assessor shall cause each metering machine approved by him to be read and inspected at least once a month and shall determine as of the time of each inspection the amount of tax due from the distributor or dealer using such machine after allowing for the discount, if any, provided for in section 6 which tax shall be due and payable upon demand of the tax assessor or his duly authorized agent.

**Sec. 20. Appropriation.** The revenue derived from the tax imposed by this act is hereby appropriated for the payment of old age assistance; provided, however, that all the expenses incurred by the state in carrying out the provisions of this act shall be paid out of the aforesaid revenue; provided, further, that at such time as federal legislation, and enforcement of such legislation, makes it unnecessary for the state of Maine to provide for the payment of old age assistance, the revenue derived from the tax herein imposed shall be segregated and held for the purpose of providing for the reduction of the tax on real estate at the discretion of the next ensuing legislature.