



SPONSOR: Sen. Pettyjohn & Rep. Dukes  
Sen. Lawson; Reps. Briggs King, Outten

DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL NO. 67

AN ACT TO AMEND TITLE 11 AND TITLE 30 OF THE DELAWARE CODE RELATING TO TOBACCO PRODUCTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter V, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1120. Distribution of tobacco products.

(a) ~~No person shall~~ A person may not distribute a tobacco product for commercial purposes unless the product is in a sealed package provided by the manufacturer with the required health warning and tax stamp.

(b) ~~No person shall~~ A person may not distribute any pack of cigarettes containing fewer than 20 cigarettes.

§ 1121. Penalties.

(a) Notwithstanding any other provision of Delaware law, a person who violates § 1116, § 1118, ~~§ 1119 or § 1120~~ § 1119, or § 1120(b) of this title ~~shall be~~ is guilty of a violation and ~~shall~~ must be fined \$250 for the first offense, \$500 for the second ~~offense~~ offense, and \$1,000 for the third and all subsequent offenses.

(b)(1) A first violation of § 1120(a) of this title is a class G felony punishable by a fine not less than \$250 per package but not more than \$10,000 total, or imprisonment not exceeding 2 years, or both.

(2) Each subsequent violation of § 1120(a) of this title is a class G felony punishable by a fine not less than \$500 per package but not more than \$30,000 total, or imprisonment not exceeding 2 years, or both.

(3) A vehicle used in the transporting of tobacco products in a first or subsequent violation of § 1120(a) of this title must be seized and the provisions of Subchapter II of Chapter 23 of Title 11 apply.

(c) Additionally, and notwithstanding any other provision of Delaware law, in imposing a penalty for a second, ~~third~~ third, or other subsequent offense under this subpart, the court may order the Department of Finance to suspend the defendant's license for sale of tobacco products, issued pursuant to § 5307 of Title 30, for a period not to exceed 6 months. Upon the suspension of such license, the court shall advise the Department of Finance of the suspension in writing. The holder of the license shall surrender the license to the Department of Finance and no refund of fees shall be paid. For purposes of this subpart, a subsequent offense is one that occurs within 12 months of a prior like offense.

Section 2. Amend § 2322, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2322. Grounds for seizure.

Whenever any vehicle, as defined in this subchapter, has been used in, or in connection with, the commission of any felony or in connection with the flight or escape of any person who has committed any ~~felony~~ felony, or in the transporting of cigarettes in violation of § 1120(a) of Title 11 or Chapter 53 of Title 30, or in a violation of § 1343 of this title, it shall forthwith be seized and taken into custody by the peace officer or officers having knowledge of the facts of such use.

Section 3. Amend § 2326, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2326. Application of subchapter.

This subchapter with respect to condemnation and forfeiture shall not apply to or against the owner of a vehicle who has not knowingly used or permitted the vehicle to be used in, or in connection with, the commission of a felony, or who has not knowingly and voluntarily used or permitted the vehicle to be used in, or in connection with, the flight or escape of any person who has committed any such ~~felony~~ felony, or in the transporting of cigarettes in violation of § 1120(a) of Title II or Chapter 53 of Title 30, or in a violation of § 1343 of this title. Nothing in this subchapter shall be construed as authorizing the condemnation and forfeiture of the interest of any bona fide mortgagee or lienholder with respect to the vehicle but the burden in all such cases shall be upon such mortgagee or lienholder to show that it did not know or have cause to know, at the time its interest accrued, of a contemplated unlawful use of such vehicle.

Section 4. Amend § 5328, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5328. Invoices or delivery tickets and purchase orders required in certain cases.

~~Every person who shall possess or transport 10 or more packs or packages (or an equivalent amount unpackaged)~~  
(a) A person who possesses or transports 21 or more packs or packages, or an equivalent amount unpackaged, of unstamped tobacco products upon the public highways, ~~roads~~ roads, or streets of this State for the purpose of delivery, ~~sale~~ sale, or disposition ~~shall be~~ is required to have in ~~such~~ the person's possession invoices or delivery tickets and purchase orders for ~~such~~ the tobacco ~~products~~ products, which ~~shall~~ must show all of the following:

~~the true~~ (1) The true name and complete and exact address of the consignor or ~~seller,~~ seller.

~~the true~~ (2) The true name and complete and exact address of the person transporting the tobacco ~~products,~~  
products.

~~the quantity~~ (3) The quantity and brand of the tobacco products ~~transported~~ transported.

~~and the true~~ (4) The true name and complete and exact address of the person who has been licensed to assume the payment of the Delaware tax or the tax, if any, of the state or foreign country at the point of ultimate ~~destination;~~ destination.

~~provided, that any~~ (b) Notwithstanding subsection (a) of this section, any common carrier which has issued a bill of lading for shipment of tobacco products and is without notice to itself or to any of its agents or employees that the tobacco products are not stamped as required by this chapter ~~shall be~~ is deemed to have complied with this chapter.

(c) The absence of ~~such~~ proper invoices or delivery tickets and purchase orders ~~shall be~~ required under this section is prima facie evidence that ~~such~~ the person is in violation of this ~~chapter~~ section and subject to the ~~penalties of this chapter.~~ following penalties:

(1) A first violation is a class G felony punishable by a fine not less than \$250 per package but not more than \$10,000 total, or imprisonment not exceeding 2 years, or both.

(2) Each subsequent violation is a class G felony punishable by a fine not less than \$500 per package but not more than \$30,000 total, or imprisonment not exceeding 2 years, or both.

(3) A vehicle used in the transporting of tobacco products in a first or subsequent violation must be seized and the provisions of Subchapter II of Chapter 23 of Title 11 apply.

Section 5. Amend § 5341, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5341. Sale of unstamped tobacco products; refusal to permit inspection; counterfeited or reused stamps; penalty.

(a) ~~Whoever sells~~ A person may not sell any pack of tobacco products which does not have affixed ~~thereto~~ to it the proper amount of Delaware tobacco product tax ~~stamps;~~ or stamps.

(b) ~~Whoever being a dealer refuses~~ A dealer may not refuse to permit the Department to examine such dealer's books and records, stock of tobacco ~~products~~ products, or premises and equipment in order to verify the accuracy of the tax payments imposed by this ~~chapter;~~ or chapter.

(c) ~~Whoever~~ A person may not falsely or fraudulently ~~makes, forges, alters or counterfeits~~ make, forge, alter, or counterfeit any stamp prescribed by the Department under this chapter or ~~causes or procures~~ cause or procure a stamp to be falsely or fraudulently made, forged, ~~altered or counterfeited~~ altered, or counterfeited, or knowingly and wilfully ~~utters, publishes, passes or tenders~~ utter, publish, pass, or tender as true ~~any such a~~ a false, altered, ~~forged~~ forged, or counterfeited stamp, or ~~uses~~ use more than once ~~any a~~ a stamp provided for and required by this chapter for the purpose of evading the tax hereby imposed and ~~assessed;~~ assessed.

83 ~~shall be fined not more than \$1,000, or imprisoned for not more than 1 year, or both.~~

84 (d)(1) A first violation of this section is a class G felony punishable by a fine not less than \$250 per package but  
85 not more than \$10,000 total, or imprisonment not exceeding 2 years, or both.

86 (2) Each subsequent violation of this section is a class G felony punishable by a fine not less than \$500 per  
87 package but not more than \$30,000 total, or imprisonment not exceeding 2 years, or both.

88 (3) A vehicle used in the transporting of tobacco products in a first or subsequent violation of this section  
89 must be seized and the provisions of Subchapter II of Chapter 23 of Title 11 apply.

90 Section 6. Amend § 5342, Title 30 of the Delaware Code by making deletions as shown by strike through and  
91 insertions as shown by underline as follows:

92 § 5342. Possession of untaxed tobacco products.

93 (a) Except as authorized by this chapter, ~~no person, not being an affixing agent or not holding an unexpired~~  
94 ~~exemption certificate, shall have in such person's possession~~ a person who is not an affixing agent or holds a valid,  
95 unexpired exemption certificate may not possess within this State ~~40~~ 21 or more packs or ~~packages (or packages, or an~~  
96 ~~equivalent amount unpackaged)~~ unpackaged, of tobacco products upon which the Delaware tobacco product tax has not  
97 been paid, or to which Delaware tobacco product tax stamps are not affixed in the amount required.

98 (b) Whenever any tobacco products are found at the place of business of a dealer, whether a stamp affixing agent  
99 or not, and ~~such~~ the tobacco products do not have the proper amount of stamps affixed and cancelled, or it is determined  
100 that the Delaware tobacco product tax has not been paid on such tobacco products, and the boxes, ~~cartons~~ cartons, or other  
101 containers have not been marked as having been received within 72 hours, ~~such dealer shall be fined not less than \$100 nor~~  
102 ~~more than \$1,000, or imprisoned not more than 90 days, or both~~ the dealer is subject to the penalties of subsection (d) of  
103 this section.

104 (c) Notwithstanding the provisions of subsection (b) of this section, any violation of § 5317(b) of this title ~~shall be~~  
105 is punishable as a violation of subsection (b) of this section, except that the Superior Court in and for the county in which  
106 any element of the offense occurred ~~shall have~~ has exclusive original jurisdiction over offenses under this subsection.

107 (d)(1) A first violation of this section is a class G felony punishable by a fine not less than \$250 per package but  
108 not more than \$10,000 total, or imprisonment not exceeding 2 years, or both.

109 (2) Each subsequent violation of this section is a class G felony punishable by a fine not less than \$500 per  
110 package but not more than \$30,000 total, or imprisonment not exceeding 2 years, or both.

111 (3) A vehicle used in the transporting of tobacco products in a first or subsequent violation of this section  
112 must be seized and the provisions of Subchapter II of Chapter 23 of Title 11 apply.

Section 7. Amend § 5346, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline and redesignating accordingly as follows:

§ 5346. Prohibitions.

(a) No tobacco product tax stamp may be affixed to or made upon any package of cigarettes if any of the following apply:

(1) The package differs in any respect ~~with~~ from the requirements of the Federal Cigarette Labeling and Advertising Act for the placement of labels, warnings or any other information upon a package of cigarettes that is to be sold within the United ~~States~~; States.

(2) The package is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or similar wording indicating that the manufacturer did not intend that the product be sold in the United ~~States~~; States.

(3) The package, or a package containing individually stamped packages, has been altered by adding or deleting the wording, ~~labels~~ labels, or warnings described in paragraph (a)(1) or (2) of this section, including by the placement of a sticker on such ~~package~~; package.

(4) Any person with respect to the cigarettes in such package is not in compliance with 15 U.S.C. § 1335a (relating to the submission of ingredient information to federal ~~authorities~~); authorities).

(5) The package has been imported into the United States after January 1, 2000, in violation of 26 U.S.C. § 5754 or 19 U.S.C. §§ 1681 through ~~1681b~~; or 1681b.

(6) The package in any way violates federal trademark or copyright laws or any law of this State.

~~(b)(1) Any person who sells, acquires, holds, owns or possesses~~ A person may not sell, acquire, hold, own, or possess for sale or distribution in this State a cigarette package to which is affixed a tax stamp in violation of subsection (a) of this section ~~shall be fined not more than \$1,000 or imprisoned for not more than 1 year, or both~~. Each cigarette package sold or held for sale ~~shall be~~ is a separate violation.

(2)a. A first violation of paragraph (b)(1) of this section is a class G felony punishable by a fine not less than \$250 per package but not more than \$10,000 total, or imprisonment not exceeding 2 years, or both.

b. Each subsequent violation of paragraph (b)(1) of this section is a class G felony punishable by a fine not less than \$500 per package but not more than \$30,000 total, or imprisonment not exceeding 2 years, or both.

c. A vehicle used in the transporting of tobacco products in a first or subsequent violation of paragraph (b)(1) of this section must be seized and the provisions of Subchapter II of Chapter 23 of Title 11 apply.

(c) Notwithstanding any other provision of law, the Secretary may revoke any license issued under this chapter to any person who sell or holds for sale a cigarette package to which is affixed a tobacco product tax stamp in violation of subsection (a) of this section.

(d) Notwithstanding any other provision of law, the Secretary shall seize and destroy packages that do not comply with subsection (a) of this section.

(e) Notwithstanding any other provision of law, a violation of subsection (a) of this section is a deceptive practice under the Uniform Deceptive Trade Practices Act (subchapter III of Chapter 25 of Title 6).

Section 8. This Act takes effect 60 days after the date of enactment.

#### SYNOPSIS

Tobacco traffickers move black market contraband cigarettes or other tobacco products purchased from low tax states to be sold in higher tax states, facilitated by individuals or through organized groups. The potential financial gain of tobacco smuggling is immediately apparent. Legal entities pay significant taxes on their product, including \$1.01 per pack in federal excise tax; \$1.60 per pack of 20 cigarettes and a 15% tax rate of the wholesale purchase price of other tobacco products in Delaware state tax; and typically \$0.60 per pack to a settlement fund for health care costs incurred by the states because of tobacco use by their citizens. Manufacturers and distributors of contraband tobacco products reap substantial profits by avoiding federal and state excise taxes. Because of the tremendous profits often associated with cigarette trafficking, organized criminal groups use the proceeds to launder or conceal the proceeds of other criminal offenses.

Delaware law currently allows up to 9 packs of cigarettes to be brought into the state without requiring them to be taxed by Delaware; all cigarettes over 9 packs must be taxed. For example, when 2 full cartons, which equate 20 packs, are brought into Delaware, a tax on all 20 packs must be paid to the Division of Revenue. The current penalty for selling, acquiring, holding, owning, or possessing cigarettes is a fine of up to \$1,000, imprisonment of up to 90 days in jail, or both. The existing penalty is not in proportion to the profits made through trafficking, and does not serve as a deterrent.

This Act establishes that offenses related to cigarette trafficking are class G felonies, and increases the penalties for cigarette trafficking as follows (“the updated penalties”):

- (1) For the first offense, by a fine of not less than \$250 per package but not more than \$10,000 total, imprisonment of up to 2 years, or both.
- (2) For a subsequent offense, by a fine of not less than \$350 per package but not more than \$30,000 total, imprisonment of up to 2 years, or both.
- (3) Mandatory seizure of a vehicle used in the first or subsequent offenses.

This Act also increases from 10 to 20 the number of packs of cigarettes a person may possess on which the Delaware tax has not been paid or tax stamp has not been affixed.

Cigarette trafficking is addressed in both Title 11 and Title 30 of the Delaware Code. To implement the updated penalties, this Act amends the following statutes:

- (1) Title 11, § 1121, by providing that violation of § 1120(a), which prohibits the sale of a tobacco product unless it has the required tax stamp, is subject to the updated penalties. See Section 1 of this Act.
- (2) Title 11, §§ 2322 and 2326, by adding § 1120(a) to the list of offenses for which a vehicle may be seized. See Sections 2 and 3 of this Act.
- (3) Title 30, § 5328, by providing that a person who possesses or transports 21 or more packs of unstamped tobacco products in this State to delivery, sell, or dispose of tobacco products and does not have in their possession invoices or delivery tickets and purchase orders is subject to the updated penalties. See Section 4 of this Act.
- (4) Title 30, § 5341, by providing that the following offenses are subject to the updated penalties:
  - a. Sale or any pack of tobacco product to which the proper amount of Delaware tax stamps is not affixed.

- b. A dealer's refusal to allow the Department of Finance to examine the dealer's books and records, stock, premises, or equipment.
- c. Making, forging, altering, or counterfeited a tax stamp to evade the tobacco product tax. See Section 5 of this Act.

(5) Title 30, § 5342, by providing that a person who possesses 21 or more packs of unstamped tobacco products, or a dealer who has at the dealer's place of business any tobacco product that does not have the proper amount stamps or a product for which the tax has not been paid within 72 hours of receiving the product is subject to the updated penalties. See Section 6 of this Act.

(6) Title 30, § 5346(b), by providing that a person who sells, acquires, holds, owns, or possesses a cigarette package to which a tax stamp is affixed in violation of a specified list of conditions listed in § 5346(a) is subject to the updated penalties. See Section 7 of this Act.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

This Act takes effect 60 days after the date of enactment.

Author: Senator Brian Pettyjohn