

**SENATE. . . . . No. 2061**

---

---

*The Commonwealth of Massachusetts*

---

SENATE, January 18, 2000.

The committee on Commerce and Labor, to whom was referred the petition (accompanied by bill, Senate, No. 1843) of Edward J. Clancy, Jr., for legislation relative to the importation of tobacco products, reports the accompanying bill (Senate, No. 2061).

For the committee,

STEPHEN F. LYNCH.

## The Commonwealth of Massachusetts

---

In the Year Two Thousand.

---

### AN ACT RELATIVE TO THE IMPORTATION OF TOBACCO PRODUCTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Section 33 of chapter 64C of the General Laws is hereby  
2 amended by inserting the following new section at the end  
3 thereof:—

4 Section 33A. Importation of Tobacco Products.

5 (a) PROHIBITED ACTS.

6 No stamp shall be affixed to any cigarette package:—

7 (1) that bears any label or notice prescribed by the United  
8 States Department of Treasury to identify cigarette exempt from  
9 tax by the United States pursuant to section 5704(b) of Title 26 of  
10 the United States Code (concerning cigarettes intended for ship-  
11 ment to a foreign country, Puerto Rico, the Virgin Islands, or a  
12 possession of the United States, or for consumption beyond the  
13 jurisdiction of the internal revenue laws of the United States),  
14 including any notice or label described in section 290.185 of  
15 Title 27 of the United States Code of Federal Regulations;

16 (2) that is not labeled in conformity with the provisions of  
17 the Federal Cigarette Labeling and Advertising Section, or any  
18 other federal requirement for the placement of labels, warnings  
19 and other information, applicable to cigarette packages intended  
20 for domestic consumption, or

21 (3) the packaging of which has been modified or altered  
22 by a person other than the manufacturer, including by the place-  
23 ment of a sticker to cover information on the package. For pur-  
24 poses of this section, a cigarette package shall not be construed to  
25 have been modified or altered by a person other than the manufac-  
26 turer if the most recent modification to, or alteration of, the  
27 package was by the manufacturer or by a person authorized by the  
28 manufacturer.

29 (i) Under no circumstances shall any person be per-  
30 mitted to sell, transfer or deliver to any person any unused stamps  
31 unless specifically permitted by the laws of the Commonwealth.

32 (ii) The commissioner is authorized to obtain and  
33 exchange information with the United States Customs Service for  
34 the purpose of enforcing this section.

35 (b) DISTRIBUTION AND CONTROL.

36 Except for the manufacturers of cigarettes, after the effec-  
37 tive date of this section, no person shall be authorized to affix  
38 stamps pursuant to section 30 of this chapter, unless such person  
39 certifies to the commissioner that such person will purchase ciga-  
40 rettes for distribution in this Commonwealth only directly from  
41 the manufacturer or, in the case of a cigarette manufacturer not  
42 located in the United States, from the manufacturer or the autho-  
43 rized agent of the manufacturer. Such person shall provide the  
44 commissioner with satisfactory proof in writing that such person  
45 will be able to buy cigarettes directly from each manufacturer or,  
46 in the case of a cigarette manufacturer not located in the United  
47 States, each manufacturer or authorized agent from which such  
48 person intends to purchase cigarettes. Satisfactory proof in writing  
49 shall include, at a minimum, a letter of the manufacturer's or  
50 authorized agent's letterhead evidencing the manufacturer's or  
51 authorized agent's intent to sell directly to the person.

52 (c) CIVIL PENALTIES.

53 (1) Any person who affixes or distributes a stamp in viola-  
54 tion of this section, shall be punished by a fine of not more than  
55 five thousand dollars or by imprisonment in a state prison for not  
56 more than five years, or both; provided however, that a violation  
57 involving fewer than twelve thousand cigarettes, shall be punished  
58 by a fine of not more than one thousand dollars or by imprison-  
59 ment for not more than one year, or both.

60 (2) After the effective date of this section, any person who  
61 is authorized to affix stamps pursuant to section 30 of this chapter  
62 and who purchases cigarettes for distribution in the Common-  
63 wealth directly from a person other than the manufacturer or, in  
64 the case of a cigarette manufacturer not located in the United  
65 States, from a person other than the manufacturer or the autho-  
66 rized agent of the manufacturer shall be punished by a fine of not  
67 more than five thousand dollars or by imprisonment in a state

68 prison for not more than five years, or both; provided however,  
69 that a violation involving fewer than twelve thousand cigarettes,  
70 shall be punished by a fine of not more than one thousand dollars  
71 or by imprisonment for not more than one year, or both.

72 (3) The authorization to affix stamps of any person found  
73 liable for fine under this section shall not be authorized by the  
74 Commonwealth to affix stamps pursuant to section 30 of this  
75 chapter for a period of five years.

76 (d) SEIZURE AND FORFEITURE.

77 (1) The commissioner or a police officer may seize from a  
78 person without warrant any cigarettes whose packaging has been  
79 stamped, labeled or altered in violation of this section or which  
80 have been purchased in violation of this section, and such ciga-  
81 rettes shall be forfeited to the commonwealth. Before any forfei-  
82 ture under this sub-section, such person shall be notified and  
83 given an opportunity to be heard before a hearing officer of the  
84 department of revenue. Such person shall have a right of appeal  
85 from any finding of the hearing officer to the commissioner if  
86 such appeal is filed with the commissioner in writing within five  
87 days from the initial finding. When an appeal is pending, no for-  
88 feiture shall occur. So long as the seized products are not needed  
89 as evidence in any hearing or court proceeding, the common-  
90 wealth may sell such forfeited products to the manufacturer, or in  
91 the case of a cigarette manufacturer not located in the United  
92 States, to the manufacturer or the authorized agent of the manu-  
93 facturer. All net proceeds from a sale described in this subsec-  
94 tion shall be provided to the commissioner for use in enforcing  
95 this section.

96 (2) For purposes of this section, cigarette packaging shall  
97 not be construed to have been modified or altered by a person  
98 other than the manufacturer if the cigarettes have been sold to the  
99 manufacturer or authorized agent of the manufacturer pursuant to  
100 this section, or if the most recent modification to, or alteration of,  
101 the packaging was by the manufacturer or by a person authorized  
102 by the manufacturer.

103 (3) The seizure, forfeiture or sale of any cigarettes pur-  
104 suant to this section shall not relieve the person from any other  
105 penalty for violation of any provisions of this section.