

AN ACT

To amend sections 5743.11, 5743.111, 5743.17, 5743.18, and 5743.99 and to enact section 5743.21 of the Revised Code to prohibit the affixing of tax stamps to certain packages of cigarettes and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 5743.11, 5743.111, 5743.17, 5743.18, and 5743.99 be amended and section 5743.21 of the Revised Code be enacted to read as follows:

Sec. 5743.11. No person shall sell cigarettes without there having been first affixed to each individual package the stamp required by section 5743.03 of the Revised Code or with the stamp having been affixed to the package in violation of section 5743.21 of the Revised Code.

Sec. 5743.111. No person shall ~~have in his possession~~ possess packages of cigarettes not bearing the stamps required by Chapter 5743. of the Revised Code, or bearing stamps that have been affixed in violation of section 5743.21 of the Revised Code, when the wholesale value of the cigarettes exceeds sixty dollars.

Sec. 5743.17. The court of common pleas may enter an order to revoke a wholesale or retail cigarette license held by any person convicted of a misdemeanor for any violation of sections 5743.01 to ~~5743.20~~ 5743.21 of the Revised Code. The court of common pleas shall enter an order to revoke a wholesale or retail cigarette license held by any person convicted of a felony for violation of sections 5743.01 to ~~5743.20~~ 5743.21 of the Revised Code. The clerk of the court of common pleas shall certify a copy of either of such orders in duplicate to the county auditor and to the tax commissioner, and thereafter such person shall be considered not to have obtained any license; provided that after the expiration of one year from the date of such revocation, such person may apply for such license.

Sec. 5743.18. Upon notice and hearing in accordance with sections 119.01 to 119.13, ~~inclusive,~~ of the Revised Code, the tax commissioner may revoke any wholesale or retail cigarette license for violation of sections 5743.01 to ~~5743.20, inclusive,~~ 5743.21 of the Revised Code. A certified

copy of the order revoking such license shall be transmitted to the county auditor of the county in which the license was issued.

Sec. 5743.21. (A) No person shall affix a stamp required by section 5743.03 of the Revised Code to any package that:

(1) Bears any label or notice prescribed by the United States to identify cigarettes exempt from taxation by the United States pursuant to section 5704(b) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 5704(b), including any notice or label described in 27 C.F.R. 290.185;

(2) Is not labeled in conformity with the "Federal Cigarette Labeling and Advertising Act," 79 Stat. 282, 15 U.S.C.A. 1331 (1965), or any other federal requirement for the placement of labels, warnings, or other information applicable to packages of cigarettes intended for domestic consumption;

(3) Has been altered by anyone other than the manufacturer or a person authorized by the manufacturer, including by the placement of a sticker to cover information on or add information to the package;

(4) Has been imported or brought into the United States after January 1, 2000, in violation of section 5754 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 5754, or regulations adopted under that section.

(B) Whenever the tax commissioner discovers any packages to which stamps have been affixed in violation of this section, the commissioner may seize the packages, which shall thereupon be forfeited to the state, and shall order their destruction, provided that the seizure and destruction shall not exempt any person from prosecution or from the fine or imprisonment provided for violation of this section.

Sec. 5743.99. (A) Whoever violates section 5743.10, 5743.11, or 5743.12; or division (C) of section 5743.54 of the Revised Code is guilty of a misdemeanor of the first degree. If the offender has been previously convicted of an offense under this division, violation is a felony of the fourth degree.

(B) Whoever violates section 5743.111, 5743.112, 5743.13, 5743.59, or 5743.60 of the Revised Code is guilty of a felony of the fourth degree. If the offender has been previously convicted of an offense under this division, violation is a felony of the second degree.

(C) Whoever violates section 5743.41 or 5743.42 of the Revised Code is guilty of a misdemeanor of the fourth degree. If the offender has been previously convicted of an offense under this division, violation is a misdemeanor of the third degree.

(D) Whoever violates section 5743.21 of the Revised Code is guilty of a

misdemeanor of the first degree. If the offender has been previously convicted of an offense under this division, violation is a felony of the fifth degree.

(E) Whoever violates any provision of this chapter, or any rule promulgated by the tax commissioner under authority of this chapter, for the violation of which no penalty is provided elsewhere, is guilty of a misdemeanor of the fourth degree.

~~(E)~~(F) In addition to any other penalty imposed upon a person convicted of a violation of section 5743.112 or 5743.60 of the Revised Code who was the operator of a motor vehicle used in the violation, the registrar of motor vehicles shall suspend any driver's or commercial driver's license issued to the offender pursuant to the order and determination of the trial judge of any court of record as provided in section 4507.16 of the Revised Code.

SECTION 2. That existing sections 5743.11, 5743.111, 5743.17, 5743.18, and 5743.99 of the Revised Code are hereby repealed.

SECTION 3. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that Ohio's legitimate and taxpaying cigarette wholesalers and retailers are being threatened by unfair competition from gray-market dealers and Ohio's tax collections and payments under the tobacco industry settlement are being threatened with losses to the gray market. Therefore, this act shall go into immediate effect.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 98

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____