

**§4372-A. Seizure and forfeiture of contraband cigarettes**

**1. Generally.** Except as provided in subsection 2, any unstamped cigarettes or cigarettes described in section 4366-C, subsection 1 that are found in this State are hereby declared to be contraband goods subject to seizure by and forfeiture to the State. All law enforcement officers, including contract officers pursuant to Title 22, section 1556-A, and duly authorized agents of the State Tax Assessor may seize contraband cigarettes under the process described in subsection 3.

[PL 1999, c. 616, §4 (AMD).]

**2. Exceptions.** The following cigarettes are not subject to seizure:

A. Unstamped cigarettes in the possession of a licensed distributor; [PL 1997, c. 458, §17 (NEW).]

B. Unstamped cigarettes in the course of transit from outside the State that are consigned to a licensed distributor; and [PL 2007, c. 438, §98 (AMD).]

C. Unstamped cigarettes in a quantity of 2 cartons or less in the possession of an individual who is not a licensed distributor. [PL 1997, c. 668, §28 (AMD).]

Notwithstanding paragraphs A, B and C, cigarettes described in section 4366-C, subsection 1 are subject to seizure under the process described in subsection 3, unless the distributor can prove the cigarettes are to be exported out of the country.

[PL 2007, c. 438, §98 (AMD).]

**3. Procedure for seizure.** Contraband cigarettes may be seized by law enforcement officers and by duly authorized agents of the State Tax Assessor who have probable cause to believe that the cigarettes are unstamped cigarettes or cigarettes described in section 4366-C, subsection 1 under the following circumstances:

A. When the cigarettes are discovered in a place where the law enforcement officer or agent has the lawful right to be in the performance of official duties; or [PL 1997, c. 458, §17 (NEW).]

B. When the seizure is incident to a search under a valid search warrant or an inspection under a valid administrative inspection warrant. [PL 1997, c. 458, §17 (NEW).]

[PL 1999, c. 616, §6 (AMD).]

**4. Procedure for forfeiture.** A petition for forfeiture must be filed as provided in this subsection.

A. A district attorney or assistant district attorney, or the Attorney General or an Assistant Attorney General, may petition the District Court in the name of the State in the nature of a proceeding in rem to order the forfeiture of contraband cigarettes. [PL 1997, c. 458, §17 (NEW).]

B. There may be no discovery other than under the Maine Rules of Civil Procedure, Rule 36, except by order of the court upon a showing of substantial need. An order permitting discovery must set forth in detail the areas in which substantial need has been shown and the extent to which discovery may take place. [PL 1997, c. 458, §17 (NEW).]

C. A petition for forfeiture filed pursuant to this section must be accepted by the District Court without the assessment or payment of civil entry or filing fees otherwise provided for by rule of court. [PL 1997, c. 458, §17 (NEW).]

[PL 1997, c. 458, §17 (NEW).]

**5. Jurisdiction and venue.** Cigarettes subject to forfeiture under this section must be declared forfeited by the District Court having jurisdiction over the cigarettes. Venue is in the location where the contraband cigarettes are seized or in Kennebec County.

[PL 1997, c. 458, §17 (NEW).]

**6. Type of action; burden of proof.** A proceeding instituted pursuant to this section is an in rem civil action. The State has the burden of proving all material facts by a preponderance of the evidence and the owner of the cigarettes or other person claiming the cigarettes has the burden of proving by a preponderance of the evidence one of the exceptions set forth in subsection 2.

[PL 1997, c. 458, §17 (NEW).]

**7. Hearings; disposition; deposit of funds.** At a hearing, other than a default proceeding, the court shall hear evidence, make findings of fact, enter conclusions of law and file a final order from which the parties have the right of appeal. When cigarettes are ordered forfeited, the final order must provide for the disposition of the cigarettes by the State Tax Assessor by public auction or by the State Purchasing Agent. Proceeds must be deposited in the General Fund. Cigarettes described in section 4366-C, subsection 1 must be destroyed by the State Tax Assessor in a manner that prevents their reintroduction into the marketplace.

[PL 1999, c. 616, §6 (AMD).]

**8. Default proceedings.** Default proceedings must be held in the same manner as default proceedings in other civil actions, except that service of motions and affidavits related to the default proceedings need not be served upon any person who has not answered or otherwise defended in the action.

[PL 1997, c. 458, §17 (NEW).]

#### SECTION HISTORY

PL 1997, c. 458, §17 (NEW). PL 1997, c. 668, §28 (AMD). PL 1999, c. 616, §§4-6 (AMD). PL 2007, c. 438, §98 (AMD).

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