

By Senator Dyer

14-999A-00

1 A bill to be entitled

2 An act relating to cigarettes; creating s.

3 210.185, F.S.; prohibiting the sale and

4 distribution of certain cigarettes not intended

5 for sale or distribution in this country;

6 providing for criminal penalties,

7 administrative sanctions, and unfair trade

8 practices; providing for enforcement by the

9 Division of Alcoholic Beverages and Tobacco;

10 providing an effective date.

11

12 Be It Enacted by the Legislature of the State of Florida:

13

14 Section 1. Section 210.185, Florida Statutes, is

15 created to read:

16 210.185 Prohibition on sale or distribution of

17 cigarettes; criminal penalties; administrative sanctions;

18 applicability.--

19 (1) PROHIBITIONS.--It is unlawful for any person:

20 (a) To sell or distribute in this state; to acquire,

21 hold, own, possess, or transport, for sale or distribution in

22 this state; or to import or cause to be imported into this

23 state for sale or distribution in this state:

24 1. Any cigarettes the package of which:

25 a. Bears any statement, label, stamp, sticker, or

26 notice indicating that the manufacturer did not intend the

27 cigarettes to be sold, distributed, or used in the United

28 States, including but not limited to labels stating "For

29 Export Only," "U.S. Tax-Exempt," "For Use Outside U.S.," or

30 similar wording; or

31 b. Does not comply with:

1 (I) All requirements imposed by or under federal law
2 regarding warnings and other information on packages of
3 cigarettes manufactured, packaged, or imported for sale,
4 distribution, or use in the United States, including but not
5 limited to the precise warning labels specified in the Federal
6 Cigarette Labeling and Advertising Act, 15 U.S.C. 1333; and

7 (II) All federal trademark and copyright laws;

8 2. Any cigarettes imported into the United States on
9 or after January 1, 2000, in violation of 26 U.S.C. 5754 or
10 any other federal law, or implementing federal regulations;

11 3. Any cigarettes that a person otherwise knows or has
12 reason to know the manufacturer did not intend to be sold,
13 distributed, or used in the United States; or

14 4. Any cigarettes for which there has not been
15 submitted to the Secretary of the U.S. Department of Health
16 and Human Services the list or lists of the ingredients added
17 to tobacco in the manufacture of those cigarettes required by
18 the Federal Cigarette Labeling and Advertising Act, 15 U.S.C.
19 1335a;

20 (b) To alter the package of any cigarettes, before
21 sale or distribution to the ultimate consumer, so as to
22 remove, conceal, or obscure any statement, label, stamp,
23 sticker, or notice described in sub-subparagraph (a)1.a. or
24 any health warning that is not specified in or does not
25 conform with the requirements of the Federal Cigarette
26 Labeling and Advertising Act, 15 U.S.C. 1333;

27 (c) To affix any stamp required under this part to the
28 package of any cigarettes described in paragraph (a) or
29 altered in violation of paragraph (b).

30 (2) DOCUMENTATION.--On the first business day of each
31 month, each person permitted to affix the tax stamp to

1 cigarettes shall file with the division, for all cigarettes
2 imported into the United States to which the person has
3 affixed the tax stamp in the preceding month, a copy of the
4 permit issued under the Internal Revenue Code, 26 U.S.C. 5713,
5 to the person importing the cigarettes into the United States
6 which allows that person to import cigarettes; a copy of the
7 customs form containing, with respect to the cigarettes, the
8 internal revenue tax information required by the U.S. Bureau
9 of Alcohol, Tobacco and Firearms; and a statement, signed by
10 an officer of the manufacturer or importer under penalty of
11 perjury, certifying that the manufacturer or importer has
12 complied with the package health warning and ingredient
13 reporting requirements of the Federal Cigarette Labeling and
14 Advertising Act, 15 U.S.C. 1333 and 1335a, with respect to
15 those cigarettes.

16 (3) CRIMINAL PENALTIES.--Any person who violates
17 subsection (1), either knowing or having reason to know he or
18 she is doing so, or who fails to comply with subsection (2),
19 commits a felony of the third degree, punishable as provided
20 in s. 775.082, s. 775.083, or s. 775.084.

21 (4) ADMINISTRATIVE SANCTIONS.--

22 (a) The division may revoke or suspend the permit of
23 any distributing agent, wholesale dealer, or exporter, and
24 impose on the permittee a civil penalty, in an amount not to
25 exceed the greater of 500 percent of the retail value of the
26 cigarettes involved or \$5,000, upon finding a violation of
27 this section or any implementing rule adopted by the division.

28 (b) Cigarettes that are acquired, held, owned,
29 possessed, transported in, imported into, or sold or
30 distributed in this state in violation of this section are
31 considered contraband and are subject to seizure and

1 forfeiture under this part. The cigarettes are considered
2 contraband whether the violation of this section is knowing or
3 otherwise.

4 (5) UNFAIR TRADE PRACTICES.--A violation of subsection
5 (1) or subsection (2) constitutes an unlawful trade practice
6 under part II of chapter 501 and, in addition to any remedies
7 or penalties set forth in this section is subject to any
8 remedies or penalties available for a violation of that part.

9 (6) UNFAIR CIGARETTE SALES.--Cigarettes imported or
10 reimported into the United States for sale or distribution
11 under any trade name, trade dress, or trademark that is the
12 same as, or is confusingly similar to, any trade name, trade
13 dress, or trademark used for cigarettes manufactured in the
14 United States for sale or distribution in the United States
15 are presumed to have been purchased outside the ordinary
16 channels of trade.

17 (7) GENERAL PROVISIONS.--

18 (a) The division shall enforce this section. However,
19 at the request of the division, any law enforcement agency
20 shall enforce this section.

21 (b) For the purpose of enforcing this act, the
22 division and any agency to which the division has delegated
23 enforcement responsibility may request information from any
24 state or local agency, and may share information with, and
25 request information from, any federal agency or any agency of
26 any other state or any local agency thereof.

27 (c) In addition to any other remedy provided by law,
28 including enforcement as provided in paragraph (a), any person
29 may bring an action for appropriate injunctive or other
30 equitable relief for a violation of this section; for actual
31 damages, if any, sustained by reason of the violation; and, as

1 determined by the court, for interest on the damages from the
2 date of the complaint, taxable costs, and reasonable
3 attorney's fees. If the trier of fact finds that the violation
4 is flagrant, it may increase recovery to an amount not in
5 excess of 3 times the actual damages sustained by reason of
6 the violation.

7 (8) DEFINITIONS.--As used in this section, the term:

8 (a) "Importer" means "importer" as that term is
9 defined in 26 U.S.C. 5702(1).

10 (b) "Package" means "package" as that term is defined
11 in 15 U.S.C. 1332(4).

12 (9) APPLICABILITY.--

13 (a) This section does not apply to cigarettes allowed
14 to be imported or brought into the United States for personal
15 use and cigarettes sold or intended to be sold as duty-free
16 merchandise by a duty-free sales enterprise in accordance with
17 19 U.S.C. 1555(b) and any implementing regulations, but this
18 section does apply to any such cigarettes that are brought
19 back into the customs territory for resale within the customs
20 territory.

21 (b) The penalties provided in this section are in
22 addition to any penalties imposed under any other law.

23 Section 2. If any provision of this act or the
24 application thereof to any person or circumstance is held
25 invalid, the invalidity does not affect other provisions or
26 applications of the act which can be given effect without the
27 invalid provision or application, and to this end the
28 provisions of this act are declared severable.

29 Section 3. This act shall take effect August 1, 2000.
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SENATE SUMMARY

Prohibits the sale or distribution of certain cigarettes not intended for sale or distribution in the United States or not in compliance with specific federal laws. Provides for enforcement by the Division of Alcoholic Beverages and Tobacco and for criminal penalties, administrative sanctions, and sanctions for unfair trade practices.