

By the Committee on Regulated Industries and Senators Dyer and King

315-1832-00

1                                   A bill to be entitled  
2           An act relating to cigarettes; amending s.  
3           210.05, F.S.; requiring the Division of  
4           Alcoholic Beverages and Tobacco to design  
5           cigarette tax stamps that will permit  
6           identification of the agent or wholesale dealer  
7           that affixes the stamp; creating s. 210.185,  
8           F.S.; prohibiting the sale and distribution of  
9           certain cigarettes not intended for sale or  
10          distribution in this country; providing for  
11          criminal penalties, administrative sanctions,  
12          and unfair trade practices; providing for  
13          enforcement by the Division of Alcoholic  
14          Beverages and Tobacco; amending s. 210.19,  
15          F.S.; requiring the division to maintain  
16          specified records; providing an effective date.

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

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20           Section 1. Subsection (2) of section 210.05, Florida  
21 Statutes, is amended to read:

22           210.05 Preparation and sale of stamps; discount.--

23           (2) The division shall prescribe, prepare, and furnish  
24 stamps of such denominations and quantities as may be  
25 necessary for the payment of the tax imposed by this part, and  
26 may from time to time and as often as it deems advisable  
27 provide for the issuance and exclusive use of stamps of a new  
28 design and forbid the use of stamps of any other design.

29 However, all stamps prescribed by the division must be  
30 designed and furnished in a fashion that permits  
31 identification of the agent or wholesale dealer that affixed

1 the stamp to the particular package of cigarettes by means of  
2 a serial number or other mark on the stamp.The division shall  
3 make provisions for the sale of such stamps at such places and  
4 at such time as it may deem necessary.

5 Section 2. Section 210.185, Florida Statutes, is  
6 created to read:

7 210.185 Prohibition on sale or distribution of  
8 cigarettes; criminal penalties; administrative sanctions;  
9 applicability.--

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

11 (a) To sell or distribute in this state; to acquire,  
12 hold, own, possess, or transport, for sale or distribution in  
13 this state; or to import, or cause to be imported, into this  
14 state for sale or distribution in this state:

15 1. Any cigarettes the package of which:

16 a. Bears any statement, label, stamp, sticker, or  
17 notice indicating that the manufacturer did not intend the  
18 cigarettes to be sold, distributed, or used in the United  
19 States, including but not limited to labels stating "For  
20 Export Only," "U.S. Tax-Exempt," "For Use Outside U.S.," or  
21 similar wording; or

22 b. Does not comply with:

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

29 (II) All federal trademark and copyright laws;  
30  
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1           2. Any cigarettes imported into the United States in  
2 violation of 26 U.S.C. 5754 or any other federal law, or  
3 implementing federal regulations;

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

7           4. Any cigarettes for which there has not been  
8 submitted to the Secretary of the U.S. Department of Health  
9 and Human Services the list or lists of the ingredients added  
10 to tobacco in the manufacture of those cigarettes required by  
11 the Federal Cigarette Labeling and Advertising Act, 15 U.S.C.  
12 1335a;

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

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

23           (2) DOCUMENTATION.--On or before the tenth day of each  
24 month, each person permitted to affix the tax stamp to  
25 cigarettes shall file with the division, for all cigarettes  
26 imported into the United States to which the person has  
27 affixed the tax stamp in the preceding month, a copy of the  
28 permit issued under the Internal Revenue Code, 26 U.S.C. 5713,  
29 to the person importing the cigarettes into the United States  
30 which allows that person to import those cigarettes; a copy of  
31 the customs form containing, with respect to the cigarettes,

1 the internal revenue tax information required by the U.S.  
2 Bureau of Alcohol, Tobacco and Firearms; and a statement,  
3 signed by an officer of the manufacturer or importer under  
4 penalty of perjury, certifying that the manufacturer or  
5 importer has complied with the package health warning and  
6 ingredient reporting requirements of the Federal Cigarette  
7 Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a, with  
8 respect to those cigarettes.

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

14 (4) ADMINISTRATIVE SANCTIONS.--

15 (a) The division may revoke or suspend the permit of  
16 any distributing agent or wholesale dealer, or the retail  
17 tobacco dealer permit of any retailer, and impose on the  
18 permittee a civil penalty, in an amount not to exceed the  
19 greater of 500 percent of the retail value of the cigarettes  
20 involved or \$5,000, upon finding a violation of this section  
21 or any implementing rule adopted by the division.

22 (b) Cigarettes that are acquired, held, owned,  
23 possessed, transported in, imported into, or sold or  
24 distributed in this state in violation of this section are  
25 considered contraband and are subject to seizure and  
26 forfeiture under this part. Any cigarettes so seized and  
27 forfeited shall be destroyed. The cigarettes are considered  
28 contraband whether the violation of this section is knowing or  
29 otherwise.

30 (5) UNFAIR TRADE PRACTICES.--A violation of subsection  
31 (1) or subsection (2) constitutes an unlawful trade practice

1 under part II of chapter 501 and, in addition to any remedies  
2 or penalties set forth in this section is subject to any  
3 remedies or penalties available for a violation of that part.

4 (6) GENERAL PROVISIONS.--

5 (a) The division shall enforce this section. However,  
6 at the request of the division, any law enforcement agency  
7 shall enforce this section.

8 (b) For the purpose of enforcing this act, the  
9 division and any agency to which the division has delegated  
10 enforcement responsibility may request information from any  
11 state or local agency, and may share information with, and  
12 request information from, any federal agency or any agency of  
13 any other state or any local agency thereof.

14 (c) In addition to any other remedy provided by law,  
15 including enforcement as provided in paragraph (a), any person  
16 may bring an action for appropriate injunctive or other  
17 equitable relief for a violation of this section; for actual  
18 damages, if any, sustained by reason of the violation; and, as  
19 determined by the court, for interest on the damages from the  
20 date of the complaint, taxable costs, and reasonable  
21 attorney's fees. If the trier of fact finds that the violation  
22 is flagrant, it may increase recovery to an amount not in  
23 excess of 3 times the actual damages sustained by reason of  
24 the violation.

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

26 (a) "Cigarette" means:

27 1. Any roll of tobacco wrapped in paper or tobacco  
28 leaf or in any substance not containing tobacco, including a  
29 bidi, kretek, or other similar product, which is to be burned;

30 2. Any roll of tobacco wrapped in any substance  
31 containing tobacco, including a bidi, kretek, or other similar

1 product, which , because of its appearance, the type of  
2 tobacco used in the filler, or its packaging or labeling is  
3 likely to be offered to or purchased by consumers as a  
4 cigarette described in subparagraph 1.; or

5 3. Loose rolling tobacco that, because of its  
6 appearance, type, packaging, or labeling, is likely to be  
7 offered to or purchased by consumers as tobacco for making  
8 cigarettes.

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

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

13 (8) APPLICABILITY.--

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

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

24 Section 3. Section 210.19, Florida Statutes, is  
25 amended to read:

26 210.19 Records to be kept by division.--The division  
27 shall keep records showing the total amount of taxes  
28 collected, which records shall be open to the public during  
29 the regular office hours of the division. The division shall  
30 maintain records that identify which agent or wholesale dealer  
31 affixed the tax stamp to each package of cigarettes. The

1 identifying records must be made available for public  
2 inspection and retained for at least 3 years.

3 Section 4. If any provision of this act or the  
4 application thereof to any person or circumstance is held  
5 invalid, the invalidity does not affect other provisions or  
6 applications of the act which can be given effect without the  
7 invalid provision or application, and to this end the  
8 provisions of this act are declared severable.

9 Section 5. This act shall take effect August 1, 2000.

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11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
12 COMMITTEE SUBSTITUTE FOR  
13 Senate Bill 1526

14 The Committee Substitute for Senate Bill 1526 contains the  
15 following substantial changes:

- 16 - Defines "cigarette" for purposes of newly created s.  
17 210.185, F.S., to include "bidis" and similar products;  
18 and  
19 - Requires the Division to design cigarette tax stamps and  
20 maintain records in a way that permits identification of  
21 the agent or wholesale dealer who affixed the stamp to a  
22 particular pack of cigarettes.  
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