

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

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Representative(s) Albright offered the following:

**Amendment (with title amendment)**

On page 1, line 21,  
remove from the bill: everything after the enacting clause  
and insert in lieu thereof:

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

210.05 Preparation and sale of stamps; discount.--

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

However, all stamps prescribed by the division must be designed and furnished in a fashion that permits identification of the agent or wholesale dealer that affixed the stamp to the particular package of cigarettes by means of a serial number or other mark on the stamp.The division shall

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1 make provisions for the sale of such stamps at such places and  
2 at such time as it may deem necessary.

3 Section 2. Section 210.185, Florida Statutes, is  
4 created to read:

5 210.185 Prohibition on sale or distribution of  
6 cigarettes; criminal penalties; administrative sanctions;  
7 applicability.--

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

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

13 1. Any cigarettes the package of which:

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

20 b. Does not comply with:

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

27 (II) All federal trademark and copyright laws;

28 2. Any cigarettes imported into the United States in  
29 violation of 26 U.S.C. 5754 or any other federal law, or  
30 implementing federal regulations;

31 3. Any cigarettes that a person otherwise knows or has

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1 reason to know the manufacturer did not intend to be sold,  
2 distributed, or used in the United States; or

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

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

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

19 (2) DOCUMENTATION.--On or before the tenth day of each  
20 month, each person permitted to affix the tax stamp to  
21 cigarettes shall file with the division, for all cigarettes  
22 imported into the United States to which the person has  
23 affixed the tax stamp in the preceding month, a copy of the  
24 permit issued under the Internal Revenue Code, 26 U.S.C. 5713,  
25 to the person importing the cigarettes into the United States  
26 which allows that person to import those cigarettes; a copy of  
27 the customs form containing, with respect to the cigarettes,  
28 the internal revenue tax information required by the U.S.  
29 Bureau of Alcohol, Tobacco and Firearms; and a statement,  
30 signed by an officer of the manufacturer or importer under  
31 penalty of perjury, certifying that the manufacturer or

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1 importer has complied with the package health warning and  
2 ingredient reporting requirements of the Federal Cigarette  
3 Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a, with  
4 respect to those cigarettes.

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

10 (4) ADMINISTRATIVE SANCTIONS.--

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

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

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

31 (6) GENERAL PROVISIONS.--

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1           (a) The division shall enforce this section. However,  
2 at the request of the division, any law enforcement agency  
3 shall enforce this section.

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

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

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

22           (a) "Cigarette" means:

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

26           2. Any roll of tobacco wrapped in any substance  
27 containing tobacco, including a bidi, kretek, or other similar  
28 product, which, because of its appearance, the type of  
29 tobacco used in the filler, or its packaging or labeling is  
30 likely to be offered to or purchased by consumers as a  
31 cigarette described in subparagraph 1.; or

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1           3. Loose rolling tobacco that, because of its  
2 appearance, type, packaging, or labeling, is likely to be  
3 offered to or purchased by consumers as tobacco for making  
4 cigarettes.

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

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

9           (8) APPLICABILITY.--

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

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

20          Section 3. Section 210.19, Florida Statutes, is  
21 amended to read:

22          210.19 Records to be kept by division.--The division  
23 shall keep records showing the total amount of taxes  
24 collected, which records shall be open to the public during  
25 the regular office hours of the division. The division shall  
26 maintain records that identify which agent or wholesale dealer  
27 affixed the tax stamp to each package of cigarettes. The  
28 identifying records must be made available for public  
29 inspection and retained for at least 3 years.

30          Section 4. If any provision of this act or the  
31 application thereof to any person or circumstance is held

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1 invalid, the invalidity does not affect other provisions or  
2 applications of the act which can be given effect without the  
3 invalid provision or application, and to this end the  
4 provisions of this act are declared severable.

5 Section 5. This act shall take effect October 1, 2000.

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8 ===== T I T L E A M E N D M E N T =====

9 And the title is amended as follows:

10 On page 1, lines 2-18,  
11 remove from the title of the bill: all of said lines

12

13 and insert in lieu thereof:

14 An act relating to cigarettes; amending s.  
15 210.05, F.S.; requiring the Division of  
16 Alcoholic Beverages and Tobacco to design  
17 cigarette tax stamps that will permit  
18 identification of the agent or wholesale dealer  
19 that affixes the stamp; creating s. 210.185,  
20 F.S.; prohibiting the sale and distribution of  
21 certain cigarettes not intended for sale or  
22 distribution in this country; providing for  
23 criminal penalties, administrative sanctions,  
24 and unfair trade practices; providing for  
25 enforcement by the Division of Alcoholic  
26 Beverages and Tobacco; amending s. 210.19,  
27 F.S.; requiring the division to maintain  
28 specified records; providing an effective date.

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