

By the Committee on Governmental Operations and
Representatives Albright and Brown

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
13 definitions; providing for enforcement by the
14 Division of Alcoholic Beverages and Tobacco;
15 amending s. 210.19, F.S.; requiring the
16 division to maintain specified records;
17 providing severability; providing an effective
18 date.

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

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

24 210.05 Preparation and sale of stamps; discount.--

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

31 However, all stamps prescribed by the division must be

1 designed and furnished in a fashion that permits
2 identification of the agent or wholesale dealer that affixed
3 the stamp to the particular package of cigarettes by means of
4 a serial number or other mark on the stamp.The division shall
5 make provisions for the sale of such stamps at such places and
6 at such time as it may deem necessary.

7 Section 2. Section 210.185, Florida Statutes, is
8 created to read:

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

12 (1) PROHIBITIONS.--It is unlawful for any person to:
13 (a) Sell or distribute in this state; acquire, hold,
14 own, possess, or transport, for sale or distribution in this
15 state; or import, or cause to be imported, into this state for
16 sale or distribution in this state:

17 1. Any cigarettes the package of which:

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

24 b. Does not comply with:

25 (I) All requirements imposed by or under federal law
26 regarding warnings and other information on packages of
27 cigarettes manufactured, packaged, or imported for sale,
28 distribution, or use in the United States, including, but not
29 limited to, the precise warning labels specified in the
30 Federal Cigarette Labeling and Advertising Act, 15 U.S.C. s.
31 1333; and

1 (II) All federal trademark and copyright laws;
2 2. Any cigarettes imported into the United States in
3 violation of 26 U.S.C. s. 5754 or any other federal law, or
4 implementing federal regulations;
5 3. Any cigarettes that a person otherwise knows or has
6 reason to know the manufacturer did not intend to be sold,
7 distributed, or used in the United States; or
8 4. Any cigarettes for which there has not been
9 submitted to the Secretary of the U.S. Department of Health
10 and Human Services the list or lists of the ingredients added
11 to tobacco in the manufacture of those cigarettes required by
12 the Federal Cigarette Labeling and Advertising Act, 15 U.S.C.
13 s. 1335(a);
14 (b) Alter the package of any cigarettes, before sale
15 or distribution to the ultimate consumer, so as to remove,
16 conceal, or obscure any statement, label, stamp, sticker, or
17 notice described in sub-subparagraph (a)1.a. or any health
18 warning that is not specified in or does not conform with the
19 requirements of the Federal Cigarette Labeling and Advertising
20 Act, 15 U.S.C. s. 1333;
21 (c) Affix any stamp required under this part to the
22 package of any cigarettes described in paragraph (a) or
23 altered in violation of paragraph (b).
24 (2) DOCUMENTATION.--On or before the tenth day of each
25 month, each person permitted to affix the tax stamp to
26 cigarettes shall file with the division, for all cigarettes
27 imported into the United States to which the person has
28 affixed the tax stamp in the preceding month, a copy of the
29 permit issued under the Internal Revenue Code, 26 U.S.C. s.
30 5713, to the person importing the cigarettes into the United
31 States which allows that person to import those cigarettes; a

1 copy of the customs form containing, with respect to the
2 cigarettes, the internal revenue tax information required by
3 the U.S. Bureau of Alcohol, Tobacco and Firearms; and a
4 statement, signed by an officer of the manufacturer or
5 importer under penalty of perjury, certifying that the
6 manufacturer or importer has complied with the package health
7 warning and ingredient reporting requirements of the Federal
8 Cigarette Labeling and Advertising Act, 15 U.S.C. ss. 1333 and
9 1335(a), with respect to those cigarettes.

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

15 (4) ADMINISTRATIVE SANCTIONS.--

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

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

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

6 (6) GENERAL PROVISIONS.--

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

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

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

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

28 (a) "Cigarette" means:

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

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

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

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

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

15 (8) APPLICABILITY.--

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

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

26 Section 3. Section 210.19, Florida Statutes, is
27 amended to read:

28 210.19 Records to be kept by division.--The division
29 shall keep records showing the total amount of taxes
30 collected, which records shall be open to the public during
31 the regular office hours of the division. The division shall

1 maintain records that identify which agent or wholesale dealer
2 affixed the tax stamp to each package of cigarettes. The
3 identifying records must be made available for public
4 inspection and retained for at least 3 years.

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

11 Section 5. This act shall take effect July 1, 2000.

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