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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;
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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 October 1, 2000.

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