

## Committee Substitute for House Bill No. 1941

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

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

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

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

210.185 Prohibition on sale or distribution of cigarettes; criminal penalties; administrative sanctions; applicability.—

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

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

1. Any cigarettes the package of which:

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

b. Does not comply with:

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

(II) All federal trademark and copyright laws;

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

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

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

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

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

(2) DOCUMENTATION.—On or before the tenth day of each month, each person permitted to affix the tax stamp to cigarettes shall file with the division, for all cigarettes imported into the United States to which the person has affixed the tax stamp in the preceding month, a copy of the permit issued under the Internal Revenue Code, 26 U.S.C. 5713, to the person importing the cigarettes into the United States which allows that person to import those cigarettes; a copy of the customs form containing, with respect to the cigarettes, the internal revenue tax information required by the U.S. Bureau of Alcohol, Tobacco and Firearms; and a statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with the package health warning and ingredient reporting requirements of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333 and 1335a, with respect to those cigarettes.

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

(4) ADMINISTRATIVE SANCTIONS.—

(a) The division may revoke or suspend the permit of any distributing agent or wholesale dealer, or the retail tobacco dealer permit of any retailer,

and impose on the permittee a civil penalty, in an amount not to exceed the greater of 500 percent of the retail value of the cigarettes involved or \$5,000, upon finding a violation of this section or any implementing rule adopted by the division.

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

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

(6) GENERAL PROVISIONS.—

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

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

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

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

(a) "Cigarette" means:

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

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

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

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

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

(8) APPLICABILITY.—

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

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

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

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

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

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

Approved by the Governor June 7, 2000.

Filed in Office Secretary of State June 7, 2000.