

SECOND REGULAR SESSION

[PERFECTED]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1266

91ST GENERAL ASSEMBLY

Reported from the Committee on Commerce and Environment, April 22, 2002, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 1266, adopted May 1, 2002.

Taken up for Perfection May 1, 2002. Bill declared Perfected and Ordered Printed.

TERRY L. SPIELER, Secretary.

4854S.02P

AN ACT

To repeal sections 149.200, 149.203, 149.206, 149.212 and 149.215, RSMo, relating to sale of cigarettes, and to enact in lieu thereof five new sections relating to the same subject, with penalty provisions and an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 149.200, 149.203, 149.206, 149.212 and 149.215, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 149.200, 149.203, 149.206, 149.212 and 149.215, to read as follows:

149.200. 1. It is unlawful for any person to:

(1) 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, any cigarettes that do not comply with all requirements imposed by or pursuant to federal law and implementing regulations, including but not limited to the filing of ingredients lists pursuant to Section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a); the permanent imprinting on the primary packaging of the precise package warning labels in the precise format specified in Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333); the rotation of label statements pursuant to Section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335(c)); restrictions on the importation, transfer and sale of previously exported tobacco products pursuant to Section 9302 of Public Law 105-33, the Balanced Budget Act of 1997, as amended;

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

requirements of Title IV of Public Law 106-476, the Imported Cigarette Compliance Act of 2000; or

(2) Alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

(a) 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) Any health warning that is not the precise warning statement in the precise format specified in Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333).

2. It shall be unlawful for any person to affix any tax stamp or meter impression required pursuant to this chapter to the package of any cigarettes that does not comply with the requirements of subdivision (1) of subsection 1 of this section or that is altered in violation of subdivision (2) of subsection 1 of this section.

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

4. Any person who violates this section, whether acting knowingly or recklessly, is guilty of a class D felony.

5. As used in this section, "package" means a pack, box, carton or container of any kind in which cigarettes are offered for sale, sold or otherwise distributed to consumers.

149.203. 1. The director may revoke or suspend the license or licenses of any wholesaler pursuant to the procedures set forth in section 149.035 upon finding a violation of section 149.200, or any implementing rule promulgated by the director pursuant to this chapter. In addition, the director may impose on any person a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes involved or five thousand dollars, upon finding a violation by such person of sections 149.200 to 149.215, or any implementing rule promulgated by the director pursuant to this chapter.

2. Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this state in violation of sections 149.200 to 149.215 or sections 196.1000 to 196.1003, RSMo, shall be deemed contraband pursuant to section

149.055 and are subject to seizure and forfeiture as provided therein. Any cigarettes shall be deemed contraband whether the violation of sections 149.200 to 149.215 is knowing or otherwise.

149.206. A violation of sections 149.200 to 149.215 shall constitute an unlawful trade practice as provided in section 407.020, RSMo, and in addition to any remedies or penalties set forth in sections 149.200 to 149.215, shall be subject to any remedies or penalties available for a violation of that section.

149.212. Sections 149.200 to 149.215 shall be enforced by the director provided, that at the request of the director or the director's duly authorized agent, the state highway patrol and all local police authorities shall enforce the provisions of sections 149.200 to 149.215. The attorney general has concurrent power with the prosecuting attorneys of the states to enforce the provisions of sections 149.200 to 149.215. Any person who sells, distributes, or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation of sections 149.200 to 149.215 may bring an action in good faith for appropriate injunctive relief.

149.215. If any provision of sections 149.200 to 149.212 is held invalid, the remainder of such sections shall not be affected.

[149.200. 1. It is unlawful for any person to:

(1) 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, any cigarettes that do not comply with all requirements imposed by or pursuant to federal law and implementing regulations, including but not limited to the filing of ingredients lists pursuant to Section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a); the permanent imprinting on the primary packaging of the precise package warning labels in the precise format specified in Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333); the rotation of label statements pursuant to Section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335(c)); restrictions on the importation, transfer and sale of previously exported tobacco products pursuant to Section 9302 of Public Law 105-33, the Balanced Budget Act of 1997, as amended; requirements of Title IV of Public Law 106-476, the Imported Cigarette Compliance Act of 2000; or

(2) Alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

(a) 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) Any health warning that is not the precise warning statement in the precise format specified in Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333).

2. It shall be unlawful for any person to affix any tax stamp or meter impression required pursuant to this chapter to the package of any cigarettes that does not comply with the requirements of subdivision (1) of subsection 1 of this section or that is altered in violation of subdivision (2) of subsection 1 of this section.

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

4. Any person who violates this section, whether acting knowingly or recklessly, is guilty of a class D felony.

5. As used in this section, "package" means a pack, box, carton or container of any kind in which cigarettes are offered for sale, sold or otherwise distributed to consumers.]

[149.203. 1. The director may revoke or suspend the license or licenses of any wholesaler pursuant to the procedures set forth in section 149.035 upon finding a violation of section 149.200, or any implementing rule promulgated by the director pursuant to this chapter. In addition, the director may impose on any person a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes involved or five thousand dollars, upon finding a violation by such person of sections 149.200 to 149.215, or any implementing rule promulgated by the director pursuant to this chapter.

2. Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this state in violation of sections 149.200 to 149.215 or sections 196.1000 to 196.1003, RSMo, shall be deemed contraband pursuant to section 149.055 and are subject to seizure and forfeiture as provided therein. Any cigarettes shall be deemed contraband whether the violation of sections 149.200 to 149.215 is knowing or otherwise.]

[149.206. A violation of sections 149.200 to 149.215 shall constitute an unlawful trade practice as provided in section 407.020, RSMo, and in addition to any remedies or penalties set forth in sections 149.200 to 149.215, shall be subject to any remedies or penalties available for a violation of that section.]

[149.212. Sections 149.200 to 149.215 shall be enforced by the director provided, that at the request of the director or the director's duly authorized agent, the state

highway patrol and all local police authorities shall enforce the provisions of sections 149.200 to 149.215. The attorney general has concurrent power with the prosecuting attorneys of the states to enforce the provisions of sections 149.200 to 149.215. Any person who sells, distributes, or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation of sections 149.200 to 149.215 may bring an action in good faith for appropriate injunctive relief.]

[149.215. If any provision of sections 149.200 to 149.212 is held invalid, the remainder of such sections shall not be affected.]

Section B. Because of the need to protect consumers, Section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and Section A of this act shall be in full force and effect upon its passage and approval.

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Bill

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