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LC01877/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

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A N A C T

RELATING TO CRIMINAL OFFENSES - TAXATION AND TOBACCO - DELIVERY AND
SALE OF TOBACCO PRODUCTS

Introduced By: Senators Doyle, Tassoni, and Polisena

Date Introduced: February 14, 2006

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1 Sections 44-20-9, 44-20-10, 44-20-11, 44-20-27 and 44-20-29 of the
2 General Laws in Chapter 44-20 entitled "Cigarette Tax" are hereby repealed.

3 ~~**44-20-9. Solicitor's permit.** --- No person shall offer for sale, or solicit any order in this
4 state for the sale of any cigarettes for his or her own account, or for the account of any person or
5 firm, unless that person has first obtained from the administrator a solicitor's permit, the fee for
6 which is twenty five dollars (\$25.00), which is to be paid to the administrator. Each permit
7 expires at midnight on May 31 next succeeding the date of issuance. The permit shall state the
8 name and address of the vendor whom the solicitor represents, and the solicitor shall not represent
9 any vendor whose name does not appear upon the permit.~~

10 ~~**44-20-10. Reports by solicitors -- Exemption of licensed distributors and dealers.** ---
11 The permittee shall furnish the administrator, on proper forms approved by the administrator,
12 copies of all orders solicited by the permittee in this state, the copies to show the quantity and
13 kind of goods ordered, by whom ordered, from what person, firm, or corporation ordered, the
14 correct address of the purchaser, and any other information which may be required by the
15 administrator. Failure to comply with the provisions of this section subjects the solicitor to
16 forfeiture of his or her permit. Provided, that sections 44-20-9 --- 44-20-11 does not apply to any
17 solicitor who is a licensed dealer or distributor, or who sells or solicits orders only for a licensed
18 dealer or distributor.~~

1 ~~**44-20-11. Penalty for violations by solicitors.** -- Any person who violates any provision~~
2 ~~of sections 44-20-9 and 44-20-10 is subject to a fine of not more than one hundred dollars (\$100)~~
3 ~~for each offense.~~

4 ~~**44-20-27. Nonresident as licensed distributor.** -- Any person complying with the~~
5 ~~provisions of sections 44-20-23 -- 44-20-26 becomes a licensed distributor, within the meaning of~~
6 ~~this chapter, and is subject to all provisions of this chapter applicable to licensed distributors,~~
7 ~~except as otherwise determined by the administrator.~~

8 ~~**44-20-29. Stamping by dealers.** -- Each dealer shall, within twenty four (24) hours after~~
9 ~~coming into possession of any cigarettes not bearing proper stamps evidencing payment of the tax~~
10 ~~imposed by this chapter and before selling the cigarettes, affix or cause to be affixed, at the~~
11 ~~location for which his or her license is issued except as provided in this chapter, in the manner the~~
12 ~~administrator may specify in regulations issued pursuant to this chapter, to each package of~~
13 ~~cigarettes, stamps of the proper denominations.~~

14 SECTION 2. Chapter 44-20 of the General Laws entitled "Cigarette Tax" is hereby
15 amended by adding thereto the following sections:

16 **44-20-4.1. License availability.** - - No license under this chapter may be granted,
17 maintained or renewed if the applicant, or any combination of persons owning directly or
18 indirectly, in the aggregate, more than ten percent (10%) of the ownership interests in the
19 applicant:

20 (a) Owes five hundred dollars (\$500) or more in delinquent cigarette taxes;

21 (b) Had a license under this chapter revoked by the administrator within the past two (2)
22 years;

23 (c) Has been convicted of a crime relating to cigarettes stolen or counterfeit cigarettes;

24 (d) Is a cigarette manufacturer or importer that is neither: (i) a participating manufacturer
25 as defined in subsection II (jj) of the "Master Settlement Agreement" as defined in section 23-71-
26 2; nor (ii) in full compliance with chapter 20.2 of this title and section 23-71-3;

27 (e) Has imported, or caused to be imported, into the United States any cigarette in
28 violation of 19 U.S.C. 1681 a; or

29 (f) Has imported, or caused to be imported into the United States, or manufactured for
30 sale or distribution in the United States any cigarette that does not fully comply with the Federal
31 Cigarette Labeling and Advertising Act (15 U.S.C. 1331, et. seq).

32 **44-20-8.1. Maintenance and publication of list of licenses.** - -

33 The administrator shall create and maintain a website setting forth the identity of all
34 licensed persons under this chapter, itemized by type of license possessed, and shall update the

1 site no less frequently than once per month.

2 **44-20-8.2. Transactions only with licensed manufacturers, importers, distributors,**
3 **and dealers.** - - A manufacturer or importer may sell or distribute cigarettes to a person located
4 or doing business within this state, including on any tribal lands located within this state, only if
5 such person is a licensed importer or distributor. An importer may obtain cigarettes only from a
6 licensed manufacturer. A distributor may sell or distribute cigarettes to a person located or doing
7 business within this state, including on any tribal lands located within this state, only if such
8 person is a licensed dealer. A distributor may obtain cigarettes only from a licensed manufacturer,
9 importer, or distributor. A dealer may obtain cigarettes only from a licensed distributor.

10 **44-20-33.1. Transportation of unstamped cigarettes.** - - (a) Any person who ships
11 unstamped cigarette packages in or into this state other than to a licensed manufacturer, importer
12 or distributor shall first file with the administrator notice of such shipment. This paragraph shall
13 not apply to any common or contract carrier that is transporting cigarettes through this state to
14 another location under a proper bill of lading or freight bill, which states the quantity, source, and
15 destination of such cigarettes.

16 (b) Any person transporting unstamped cigarette packages into or within this state shall
17 carry, in the vehicle used to convey the shipment, invoices or equivalent documentation of the
18 shipment for all cigarettes in the shipment. The invoices or documentation shall show the true
19 name and address of the consignor or seller, the true name and address of the consignee or
20 purchaser, and the quantity by brand of the cigarettes so transported.

21 **44-20-43.1. Inspections.** - - (a) The administrator or his or her duly authorized agent
22 shall have authority to enter and inspect, without a warrant during normal business hours, and
23 with a warrant during nonbusiness hours, the facilities and records of any manufacturer, importer,
24 distributor or dealer.

25 (b) In any case where the administrator or his or her duly authorized agent, or any police
26 officer of this state, has knowledge or reasonable grounds to believe that any vehicle is
27 transporting cigarettes in violation of this chapter, the administrator, such agent, or such police
28 officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

29 **44-20-51.1. Civil penalties.** - - (a) Whoever omits, neglects, or refuses to comply with
30 any duty imposed upon him/her by this chapter, or to do, or cause to be done, any of the things
31 required by this chapter, or does anything prohibited by this chapter, shall, in addition to any
32 other penalty provided in this chapter, be liable to a penalty of one thousand dollars (\$1,000), or
33 five (5) times the retail value of the cigarettes involved, whichever is greater, to be recovered,
34 with costs of suit, in a civil action.

1 (b) Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or
2 regulations, shall, in addition to any other penalty provided in this chapter, be liable to a penalty
3 of five (5) times the tax due but unpaid.

4 **44-20-51.2. Criminal penalty for fraudulent offenses.** - - Whoever, with intent to
5 defraud the state fails to comply with any requirement of this chapter or regulations prescribed
6 thereunder shall in addition to any other penalty provided in this chapter, for each such offense,
7 be fined ten thousand dollars (\$10,000), or imposed not more than five (5) years, or both.

8 **44-20-51.3. Counterfeit cigarettes.** - - Notwithstanding any other provision of law, the
9 sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, or
10 dealer shall result in the seizure of the product and related machinery by the administrator or any
11 law enforcement agency and shall be punishable as follows:

12 (a) A violation involving a total quantity of less than two (2) cartons of cigarettes shall be
13 punishable by a fine of one thousand dollars (\$1,000) or five (5) times the retail value of the
14 cigarettes involved, whichever is greater, or imprisonment not to exceed five (5) years, or both.

15 (b) A subsequent violation involving a total quantity of less than two (2) cartons of
16 cigarettes shall be punishable by a fine of five thousand dollars (\$5,000) or five (5) times the
17 retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five
18 (5) years, or both, and shall also result in the revocation by the administrator of the manufacturer,
19 importer, distributor, or dealer license.

20 (c) A first violation involving a total quantity of two (2) cartons of cigarettes or more
21 shall be punishable by a fine of two thousand dollars (\$2,000) or five (5) times the retail value of
22 the cigarettes involved, whichever is greater, or imprisonment not to exceed five (5) years, or
23 both.

24 (d) A subsequent violation involving a quantity of two (2) cartons of cigarettes or more
25 shall be punishable by a fine of fifty thousand dollars (\$50,000) or five (5) times the retail value
26 of the cigarettes involved, whichever is greater, or imprisonment not to exceed five (5) years, or
27 both, and shall also result in the revocation by the administrator of the manufacturer, importer,
28 distributor, or dealer license.

29 For purposes of this section, counterfeit cigarettes includes cigarettes that have false
30 manufacturing labels or packages of cigarettes bearing counterfeit tax stamps. Any counterfeit
31 cigarettes seized by the board shall be destroyed.

32 SECTION 3. Sections 44-20-1, 44-20-2, 44-20-4, 44-20-5, 44-20-8, 44-20-12, 44-20-
33 12.2, 44-20-13, 44-20-14, 44-20-15, 44-20-17, 44-20-18, 44-20-19, 44-20-20, 44-20-21, 44-20-
34 23, 44-20-24, 44-20-26, 44-20-28, 44-20-30, 44-20-32, 44-20-33, 44-20-35, 44-20-36, 44-20-37,

1 44-20-38, 44-20-39, 44-20-40, 44-20-41, 44-20-43, 44-20-45 and 44-20-51 of the General Laws
2 in Chapter 44-20 entitled "Cigarette Tax" are hereby amended to read as follows:

3 **44-20-1. Definitions.** -- Whenever used in this chapter, unless the context requires:

4 (1) "Administrator" means the tax administrator;

5 (2) "Cigarettes" means and includes any cigarettes suitable for smoking in cigarette
6 form, and each sheet of cigarette rolling paper;

7 (3) "Dealer" means any person ~~other than a distributor who is engaged in this state in the~~
8 ~~business of selling cigarettes;~~ whether located within or outside of this state, who sells or
9 distributes cigarettes to a consumer in this state;

10 (4) ~~(A)~~ "Distributor" means any person:

11 ~~(A) Engaged in this state in the business of manufacturing cigarettes or any person~~
12 ~~engaged in the business of selling cigarettes to dealers, or to other persons, for the purpose of~~
13 ~~resale only; provided, that seventy five percent (75%) of all cigarettes sold by that person in this~~
14 ~~state are sold to dealers or other persons for resale;~~

15 ~~-(B) Selling cigarettes directly to consumers at retail, and maintaining one or more~~
16 ~~regular places of business in this state for that purpose; provided, that seventy five percent (75%)~~
17 ~~of the sold cigarettes are purchased directly from the manufacturer; or~~

18 ~~-(C) Selling cigarettes directly to consumers in this state by means of at least twenty five~~
19 ~~(25) cigarette vending machines;~~

20 ~~-(ii) Provided, that any person who owns or maintains five (5) or more retail outlets in~~
21 ~~Rhode Island, having one hundred percent (100%) common ownership, through which cigarettes~~
22 ~~are sold at retail may apply for a distributor's license, and upon issuance of the license, that~~
23 ~~person is deemed to be a distributor under this chapter; ,~~ whether located within or outside of this
24 state, other than a dealer, who sells or distributes cigarettes within or into this state. Such term
25 shall not include any cigarette manufacturer, export warehouse proprietor, or importer with a
26 valid permit under 26 U.S.C. section 5712, if such person sells or distributes cigarettes in this
27 state only to licensed distributors, or to an export warehouse proprietor or another manufacturer
28 with a valid permit under 26 U.S.C. section 5712;

29 ~~(5) "Licensed dealer" means a dealer licensed under the provisions of this chapter;~~

30 ~~-(6) "Licensed distributor" means a distributor licensed under the provisions of this~~
31 ~~chapter;~~

32 (5) "Importer" means any person who imports into the United States, either directly or
33 indirectly, a finished cigarette for sale or distribution;

34 (6) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or any

1 other person doing business as a distributor or dealer of cigarettes on the Indian country, as
2 defined in 18 U.S.C. section 1151, of such tribe within this state;

3 (7) "Licensed", when used with reference to a manufacturer, importer, distributor or
4 dealer, means only those persons who hold a valid and current license issued under section 44-20-
5 2 for the type of business being engaged in. When the term "licensed" is used before a list of
6 entities, such as "licensed manufacturer, importer, wholesale dealer, or retailer dealer," such term
7 shall be deemed to apply to each entity in such list;

8 (8) "Manufacturer" means any person who manufactures, fabricates, assembles,
9 processes, or labels a finished cigarette;

10 ~~(7)~~(9) "Person" means any individual, firm, fiduciary, partnership, corporation, trust, or
11 association, however formed;

12 ~~(8)~~(10) "Place of business" means and includes any place where cigarettes are sold or
13 where cigarettes are stored or kept for the purpose of sale or consumption, including any vessel,
14 vehicle, airplane, train, or vending machine;

15 ~~(9)~~(11) "Sale" or "sell" includes and applies to gifts, exchanges, and barter;

16 ~~(10)~~(12) "Stamp" means the impression, device, stamp, label, or print manufactured,
17 printed, or made as prescribed by the administrator to be affixed to packages of cigarettes, as
18 evidence of the payment of the tax provided by this chapter; or to indicate that the cigarettes are
19 intended for a sale or distribution in this state that is exempt from state tax under the provisions of
20 subsection 44-20-12.3 (a); and also includes impressions made by metering machines authorized
21 to be used under the provisions of this chapter.

22 ~~44-20-2. Distributors' and dealers' licenses required. -- Licenses required. --~~ Each
23 manufacturer and importer, and each person engaging in the business of selling cigarette products
24 in this state, including any distributor or dealer, shall secure a license from the administrator
25 before engaging in that business, or continuing to engage in it. A separate application and license
26 is required for each place of business, ~~operated by a distributor or dealer;~~ provided, that an
27 operator of vending machines for cigarette products is not required to obtain a distributor's license
28 for each machine. If the applicant for a license does not have a place of business in this state, the
29 license shall be issued for such applicant's principal place of business, wherever located. A
30 licensee shall notify the administrator within thirty (30) days in the event that it changes its
31 principal place of business. A separate license is required for each class of business if the
32 applicant is engaged ~~in business both as distributor and dealer.~~ in more than one of the activities
33 required to be licensed by this section. No person shall maintain or operate or cause to be
34 operated a vending machine for cigarette products without procuring a dealer's license for each

1 machine.

2 **44-20-4. Application for license -- Display.** -- All licenses are issued by the
3 administrator upon approval of application, stating, on forms prescribed by the administrator, ~~the~~
4 information ~~he or she~~ may require for the proper administration of this chapter. ~~Each application~~
5 ~~for a distributor's license shall be accompanied by (1) a fee of one thousand dollars (\$1,000) with~~
6 ~~respect to those distributors who affix state cigarette tax stamps to at least seventy five percent~~
7 ~~(75%) of all cigarettes sold by those distributors ("Class A Distributor"), or (2) a fee of one~~
8 ~~hundred dollars (\$100) with respect to all other distributors ("Class B Distributor"); each~~
9 ~~application for a dealer's license shall be accompanied by a fee of twenty five dollars (\$25.00).~~
10 ~~Each issued license shall be prominently displayed on the premises covered by the license. In the~~
11 ~~instance of an application for a Class A distributor's license, the administrator shall require, in~~
12 ~~addition to other information as may be deemed necessary, the filing of affidavits from three (3)~~
13 ~~cigarette manufacturers with national distribution stating that the manufacturer will supply the~~
14 ~~distributor if the applicant is granted a license. Except as provided in this chapter, only Class A~~
15 ~~Distributors shall affix cigarette tax stamps. If the applicant is a firm, partnership, or association,~~
16 ~~the application shall state the name and address of each of its members. If the applicant is a~~
17 ~~corporation, the application shall state the name and address of each of its officers and the name~~
18 ~~and address of any person who owns, directly or indirectly, more than ten percent (10%) of the~~
19 ~~ownership interests in the corporation. Each application for a manufacturer's, importer's, or~~
20 ~~distributor's license shall be accompanied by a fee of one thousand dollars (\$1,000); provided,~~
21 ~~that for a distributor who operates only vending machines and who does not affix stamps, the fee~~
22 ~~shall be one hundred dollars (\$100); each application for a dealer's license shall be accompanied~~
23 ~~by a fee of twenty-five dollars (\$25.00). Each issued license shall be prominently displayed on~~
24 ~~the premises within this state, if any, covered by the license. If the instance of an application for a~~
25 ~~distributor's license, the administrator shall require, in addition to other information as may be~~
26 ~~deemed necessary, the filing of affidavits from three (3) cigarette manufacturers with national~~
27 ~~distribution stating that the manufacturer will supply the distributor if the applicant is granted a~~
28 ~~license.~~

29 **44-20-5. ~~Duration of dealers' licenses -- Renewal.~~ Duration of manufacturer's,**
30 **importer's, and dealer's licenses -- Renewal.** -- (a) Any manufacturer or importer license and
31 any license issued by the tax administrator authorizing a dealer to sell cigarettes in this state shall
32 expire at midnight on June 30 next succeeding the date of issuance unless (1) suspended or
33 revoked by the tax administrator, (2) the business with respect to which the license was issued
34 changes ownership, ~~or~~ (3) the manufacturer, importer, or dealer ceases to transact the business for

1 which the license was issued, or (4) after a period of time set by the administrator; provided such
2 period of time shall no be longer than three (3) years, in any of which cases the license shall
3 expire and terminate and the holder shall immediately return the license to the tax administrator.

4 (b) Every holder of a dealer's license shall annually, on or before February 1 of each
5 year, renew its license by filing an application for renewal along with a twenty-five dollar
6 (\$25.00) renewal fee. The renewal license is valid for the period July 1 of that calendar year
7 through June 30 of the subsequent calendar year.

8 **44-20-8. Suspension or revocation of license.** -- The administrator may suspend or
9 revoke any license under this chapter for failure of the licensee to comply with any provision of
10 this chapter or with any provision of any other law or ordinance relative to the sale of cigarettes;
11 and the administrator may also suspend or revoke any license for failure of the licensee to comply
12 with any provision of chapter 13 of title 6, and, for the purpose of determining whether the
13 licensee is complying with any provision of chapter 13 of title 6, the administrator and his or her
14 authorized agents are empowered, in addition to authority conferred by section 44-20-40, to
15 examine the books, papers, and records of any licensee. The administrator shall revoke the license
16 of any person who would be ineligible to obtain a new or renew a license by reason of any of the
17 conditions for licensure provided in section 44-20-4.1. Any person aggrieved by the suspension
18 or revocation may apply to the administrator for a hearing as provided in section 44-20-47, and
19 may further appeal to the district court as provided in section 44-20-48.

20 **44-20-12. Tax imposed on cigarettes sold.** -- A tax is imposed on all cigarettes sold or
21 held for sale in the state. ~~by any person, the~~ The payment of the tax to be evidenced by stamps
22 ~~affixed~~ , which may be affixed only by licensed distributors to the packages containing ~~the~~ such
23 cigarettes. ~~and as required by the tax administrator.~~ Any cigarettes on which the proper amount of
24 tax provided for in this chapter has been paid, payment being evidenced by the stamp, is not
25 subject to a further tax under this chapter. The tax is at the rate of one hundred twenty-three (123)
26 mills for each cigarette.

27 **44-20-12.2. Prohibited acts -- Penalty.** -- (a) No person or other legal entity shall sell or
28 distribute in the state, acquire, hold, own, possess, or transport for sale or distribution in this state,
29 or import or cause to be imported into the state for sale or distribution in this state nor shall tax
30 stamps be affixed to any cigarette package:

31 (1) That bears any label or notice prescribed by the United States Department of
32 Treasury to identify cigarettes exempt from tax by the United States pursuant to section 5704 of
33 title 26 of the United States Code, 26 U.S.C. section 5704(b)(concerning cigarettes intended for
34 shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United

1 States), or for consumption beyond the jurisdiction of the internal revenue laws of the United
2 States, including any notice or label described in section 44.185 of title 27 of the Code of Federal
3 Regulations, 27 CFR section 44.185;

4 (2) That is not labeled in conformity with the provisions of the Federal Cigarette
5 Labeling and Advertising Act, 15 U.S.C. section 1331 et seq., or any other federal requirement
6 for the placement of labels, warnings and other information, applicable to cigarette packages
7 intended for domestic consumption;

8 (3) The packaging of which has been modified or altered by a person other than the
9 original manufacturer of the cigarettes, including by the placement of a sticker to cover
10 information on the package. For purposes of this subsection, a cigarette package shall not be
11 construed to have been modified or altered by a person other than the manufacturer if the most
12 recent modification to, or alteration of, the package was by the manufacturer or by a person
13 authorized by the manufacturer;

14 (4) Imported into the United States in violation of 26 U.S.C. section 5754 or any other
15 federal law, or implementing federal regulations;

16 (5) That the person otherwise knows or has reason to know the manufacturer did not
17 intend to be sold, distributed, or used in the United States; or

18 (6) That has not been submitted to the secretary of the U.S. Department of Health and
19 Human Services the list or lists of the ingredients added to tobacco in the manufacture of those
20 cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. section
21 1335a.

22 (b) The tax administrator is authorized to obtain and exchange information with the
23 United States Customs Service for the purpose of enforcing this section.

24 (c) Any person who affixes or distributes a tax stamp in violation of this section shall be
25 fined not more than five hundred dollars (\$500) for the first offense, and for each subsequent
26 offense shall be fined not more than one thousand dollars (\$1,000), or be imprisoned not more
27 than one year, or be both fined and imprisoned.

28 (d) Any cigarettes found in violation of this section shall be declared to be contraband
29 goods and may be seized by the tax administrator or his or her agents, or by any sheriff or his or
30 her deputy or any police officer, without a warrant. [In accordance with section 44-20-15, all](#)
31 [cigarettes seized pursuant to this section shall be destroyed.](#) The tax administrator shall
32 promulgate rules and regulations for the destruction of contraband goods pursuant to this section.

33 (e) The prohibitions of this section do not apply to:

34 (1) Tobacco products that are allowed to be imported or brought into the United States

1 free of tax and duty under subsection IV of chapter 98 of the harmonized tariff schedule of the
2 United States (see 19 U.S.C. section 1202); or

3 (2) Tobacco products in excess of the amounts described in subdivision (1) of this
4 subsection if the excess amounts are voluntarily abandoned to the tax administrator at the time of
5 entry, but only if the tobacco products were imported or brought into the United States for
6 personal use and not with intent to defraud the United States or any state.

7 (f) If any part or provision of this section or the application of any part to any person or
8 circumstance is held invalid, the remainder of the section, including the application of that part or
9 provision to other persons or circumstances, shall not be affected by that invalidity and shall
10 continue in full force and effect. To this end, the provisions of this section are severable.

11 **44-20-13. Tax imposed on unstamped cigarettes.** -- A tax is imposed at the rate of one
12 hundred twenty-three (123) mills for each cigarette upon the storage or use within this state of
13 any cigarettes not stamped in accordance with the provisions of this chapter in the possession of
14 any consumer ~~person other than a licensed distributor or dealer, or a carrier for transit from~~
15 ~~outside of this state to a licensed distributor or dealer~~ within this state.

16 **44-20-14. Return and payment of use tax.** -- Any ~~person~~ consumer having in his or her
17 possession any cigarettes with respect to the storage or use of which a tax is imposed in section
18 44-20-13 shall, within twenty-four (24) hours after coming into possession of the cigarettes in this
19 state, file a return with the tax administrator in a form prescribed by the administrator. The return
20 shall be accompanied by a payment of the amount of the tax shown on the form to be due.

21 **44-20-15. ~~Confiscation of contraband cigarettes.~~ Confiscation of contraband**
22 **cigarettes and other property.** - - (a) All cigarettes which are held for sale or distribution within
23 the borders of this state in violation of the requirements of this chapter ~~with respect to the storage~~
24 ~~or use of which the tax imposed in section 44 20 13 is not paid, as provided in this chapter,~~ are
25 declared to be contraband goods and may be seized by the tax administrator or his or her agents,
26 or employees, or by any sheriff or his or her deputy or any police officer when directed by the tax
27 administrator to do so, without a warrant, ~~provided, that nothing in this chapter shall be~~
28 ~~construed to require the tax administrator to confiscate unstamped cigarettes when the~~
29 ~~administrator has reason to believe that the owner of the cigarettes is not willfully or intentionally~~
30 ~~evading the tax imposed by section 44 20 13.~~ All cigarettes seized by the state under this chapter
31 shall be destroyed.

32 (b) All fixtures, equipment, and all other materials and personal property on the premises
33 of any distributor or dealer who, with intent to defraud the state, fails to keep or make any record,
34 return, report, or inventory; keeps or makes any false or fraudulent record, return, report, or

1 inventory required by this chapter; refuses to pay any tax imposed by this chapter; or attempts in
2 any manner to evade or defeat the requirements of this chapter shall be forfeited to the state.

3 **44-20-17. Penalty for use tax violations. -- Penalty for violations.** -- Any person who
4 violates the provisions of sections 44-20-13 -- 44-20-16 is guilty of a misdemeanor and shall for
5 each offense be fined not less than one hundred fifty dollars (\$150) and not more than five
6 hundred dollars (\$500) or be imprisoned not more than one year or be both fined and imprisoned.

7 **44-20-18. Securing stamps.** -- The administrator shall secure stamps, of those designs,
8 types, and denominations as the administrator prescribes, suitable to be affixed to packages of
9 cigarettes as evidence of the payment of the tax imposed by section 44-20-12. Each roll of
10 stamps, or group of sheets, shall have a separate serial number, which shall be legible at the point
11 of sale. The administrator shall keep records of which distributor purchases each roll or group of
12 sheets identified by serial number. If the administrator permits distributors to purchase partial
13 rolls or sheets, in no case may stamps bearing the same serial number be sold to more than one
14 distributor. The remainder of the roll or sheet, if any, shall either be retained for later purchases
15 by the same distributor or destroyed. The administrator is the custodian of the stamps and of the
16 dies, plates, and other materials and things used in the manufacture of the stamps.

17 **44-20-19. Sale of stamps to distributors and dealers.** -- The administrator ~~sells~~ shall
18 sell stamps only to licensed distributors at a discount, ~~and to licensed dealers at their face value.~~
19 The distributor remits to the division of taxation ninety-eight and three-fourths percent (98.75%)
20 of the face value of the stamps thereby receiving a discount of one and one-quarter percent
21 (1.25%) of the face value of the stamps. The ninety-eight and three-fourths percent (98.75%)
22 remitted to the tax administrator is paid over to the general revenue. The administrator may, in his
23 or her discretion, permit a licensed distributor ~~or licensed dealer~~ to pay for the stamps within
24 thirty (30) days after the date of purchase; provided, that a bond satisfactory to the administrator
25 in an amount not less than the sale price of the stamps has been filed with the administrator
26 conditioned upon payment for the stamps. The administrator shall keep accurate records of all
27 stamps sold to each distributor, ~~and dealer.~~

28 **44-20-20. Use of metering machine in lieu of stamps.** -- The administrator, if he or she
29 determines that it is practicable to stamp by impression packages of cigarettes by means of a
30 metering machine, may, in lieu of selling stamps under the provisions of section 44-20-19,
31 authorize any licensed distributor ~~or licensed dealer~~ to use any metering machine approved by the
32 administrator, ~~the machine to be sealed by the administrator before being used and to be used in~~
33 ~~accordance with regulations prescribed by the administrator;~~ provided, that such meter
34 impressions shall contain a number or mark, legible at the point of sale, that is unique to the

1 particular distributor; and provided, further, that the metering machine shall be sealed by the
2 administrator before being used and shall be used in accordance with regulations prescribed by
3 the administrator. The administrator shall keep records of which distributor is assigned which
4 meter impression number. Any licensed distributor ~~or licensed dealer~~ authorized by the
5 administrator to affix stamps to packages by means of a metering machine shall make a
6 prepayment, allowing for the discount, if any, provided for in section 44-20-19, covering the
7 amount of tax for which his or her meter register is set, or in the discretion of the administrator
8 file with the administrator a bond in an amount and with a surety as the administrator may
9 determine, conditioned upon the payment of the tax upon stamped cigarettes. The bond is in full
10 force and effect for a period of one year and a day after the expiration of the bond, unless a
11 certificate is issued by the administrator to the effect that all taxes due to the state have been paid.
12 The administrator causes each metering machine approved by the administrator to be read and
13 inspected at least once a month and, unless being used on a prepayment basis, determines at the
14 time of each inspection the amount of tax due from the distributor or dealer using the machine
15 after allowing for the discount, if any, provided for in section 44-20-19, which tax is due and
16 payable upon demand of the administrator or his or her authorized agent.

17 **44-20-21. Transfer of stamps prohibited -- Redemption of unused stamps.** -- No
18 person shall sell or transfer any stamps under the provisions of this chapter. The administrator
19 shall redeem any unused, uncanceled stamps presented in unbroken sheets or packages, under
20 rules and regulations of the administrator, by any licensed distributor ~~or licensed dealer~~ within six
21 (6) months of the date of purchase, at a price equal to ninety-eight percent (98%) of their face
22 value.

23 **44-20-23. Payment of tax by manufacturer or shipper outside state.** -- When the
24 administrator finds that the collection of the tax imposed by this chapter would be facilitated, the
25 administrator may, in his or her discretion, authorize any person resident or located outside this
26 state ~~who manufactures cigarettes,~~ or who ships cigarettes into this state for sale in this state, and
27 ~~who qualifies as a distributor as defined in section 44-20-1,~~ obtains a distributor's license
28 pursuant to this chapter, whether or not the person has a place of business in this state, upon
29 complying with the requirements of the administrator, to affix, or cause to be affixed, the stamps
30 required by this chapter on behalf of the purchasers of those cigarettes who would be taxable, and
31 the administrator may sell the stamps to persons as provided in section 44-20-19 or authorize the
32 use of a machine by ~~persons~~ such distributors as provided in section 44-20-20.

33 **44-20-24. Affixing of stamps outside state by vending machine operator.** -- Any
34 person who operates a vending machine or vending machines for cigarettes in this state, but who

1 maintains his or her regular business establishment or headquarters outside of this state may, in
2 ~~the discretion of the tax administrator,~~ accordance with the provisions of section 44-20-23, be
3 permitted to affix, or cause to be affixed, the stamps required by this chapter at that establishment
4 or headquarters outside of this state.

5 **44-20-26. Agreement by nonresident to submit records -- Attorney to receive**
6 **process.** -- ~~The~~ Any nonresident ~~person~~ distributor who receives authorization and permission to
7 affix stamps under sections 44-20-23 and 44-20-24 shall, upon the request of the tax
8 administrator, ~~agrees to~~ submit his or her books, accounts, and records to examination during
9 reasonable business hours by the administrator or his or her authorized agent. Each nonresident
10 person, other than a foreign corporation complying with the provisions of chapter 1.1 of title 7
11 shall, in writing, appoint the secretary of state, or his or her successors in office, to be his or her
12 attorney, that appointment to be made, acknowledged, and filed in the manner prescribed for
13 foreign corporations engaging in business in this state. Service upon the attorney is sufficient
14 service upon any nonresident person, whether a foreign corporation complying with the
15 provisions of chapter 1.1 of title 7 or not, and may be made by leaving a attested copy of the
16 process with the secretary of state or at his or her office. When legal process against any
17 nonresident person is served upon the secretary of state, the secretary shall notify the nonresident
18 person in the manner provided for notification of service of process in the case of foreign
19 corporations under chapter 1.1 of title 7 and collect the fee specified in that chapter.

20 **44-20-28. Stamping by distributors required.** -- (a) Each distributor shall affix, or
21 cause to be affixed, at the location for which his or her license is issued, except as provided in this
22 chapter, in the manner the administrator may specify in regulations issued pursuant to this
23 chapter, to each package of cigarettes sold or distributed by the distributor, stamps of the proper
24 denominations. Those stamps may be affixed by a distributor at any time before the cigarettes are
25 transferred out of his or her possession. Distributors located outside of this state shall apply
26 stamps to all applicable cigarette packages before sending such packages into this state.
27 Distributors shall be permitted to set aside, without application of stamps, only such part of the
28 distributor's stock that is identified for sale or distribution outside of this state; provided, that any
29 such unstamped cigarettes shall be stored separately from stamped cigarette packages. No
30 unstamped cigarette packages shall be transferred by a distributor to another facility of the
31 distributor within this state or to another person within this state.

32 (b) Any person who is doing business as both a distributor and a dealer shall maintain
33 separate areas for stamped and unstamped cigarettes.

34 **44-20-30. Manner of affixing stamps.** -- ~~Whether stamps are~~ Stamps shall be affixed by

1 a licensed distributor, ~~or by a dealer, they are~~ and shall be affixed to the box or other container
2 from which or in which cigarettes taxed by this chapter are normally sold at retail. The stamps are
3 affixed in a manner that their removal will require continued application of water or steam. The
4 required amount of stamps is affixed to each individual package or container. The administrator
5 has power to determine how any particular brand, type, or kind of cigarettes is stamped, if any
6 question arises under this chapter concerning that stamping- ; provided, that:

7 (a) A tax stamp shall be applied by a licensed distributor to all cigarette packages
8 containing cigarettes subject to state tax under section 44-20-12, including cigarettes subject to
9 reduced state tax under subsection 44-20-12.3(b);

10 (b) A tax-exempt stamp shall be applied by a licensed distributor to all cigarette packages
11 containing cigarettes not subject to state tax under subdivision 44-20-12.3(a)(1) of this chapter;
12 and

13 (c) No stamp shall be applied to any cigarette package containing cigarettes that are
14 exempt from tax under subdivision 44-20-12.3(a)(2).

15 **44-20-32. Cancellation of used stamps.** -- The administrator may require the
16 cancellation, by a method or methods that he or she prescribes, of stamps ~~used on~~ affixed by a
17 distributor to any or all packages of cigarettes. ~~, whether the stamps are affixed by a distributor or~~
18 ~~by a dealer.~~

19 ~~**44-20-33. Sale of unstamped cigarettes prohibited -- Maximum period of holding by**~~
20 ~~**dealer.**~~ **Sale of unstamped cigarettes prohibited.** -- No distributor shall sell, and no other
21 person shall sell, offer for sale, display for sale, or possess with intent to sell any cigarettes, the
22 packages or boxes containing which do not bear stamps evidencing the payment of the tax
23 imposed by this chapter. ~~; provided, that a licensed dealer may keep on hand, at the location for~~
24 ~~which his or her license is issued, unstamped cigarettes for a period not exceeding twenty four~~
25 ~~(24) hours. Any unstamped cigarettes in the possession of a dealer are presumed to have been~~
26 ~~held by the dealer for more than twenty four (24) hours unless proof is shown to the contrary.~~

27 **44-20-35. Penalties for violations as to unstamped cigarettes.** -- Any person who
28 violates any provision of sections 44-20-33 and 44-20-34 shall be fined one thousand dollars
29 (\$1,000), or five (5) times the retail value of the cigarettes involved, whichever is greater, ~~not less~~
30 ~~than one hundred fifty dollars (\$150) and not more than five hundred dollars (\$500)~~ for the first
31 offense, and for each subsequent offense, shall be fined one thousand dollars (\$1,000), or five (5)
32 times the retail value of the cigarettes involved, whichever is greater, ~~not less than two hundred~~
33 ~~dollars (\$200) plus twenty five dollars (\$25.00) for each carton in excess of eight (8) cartons, nor~~
34 ~~more than ten thousand dollars (\$10,000),~~ or be imprisoned not more than three (3) years, or be

1 both fined and imprisoned.

2 **44-20-36. Purchase of unstamped cigarettes. -- Possession of unstamped cigarettes. --**

3 ~~(a) No person other than a licensed distributor or licensed dealer shall knowingly purchase any~~
4 ~~cigarettes within this state unless the packages, boxes, or containers in which or from which the~~
5 ~~cigarettes are sold or offered for sale bear stamps evidencing the payment of the tax provided in~~
6 ~~this chapter. Any person violating the provisions of this section is subject to a fine of not more~~
7 ~~than one hundred dollars (\$100) for each offense.~~

8 ~~-(b) Nothing in this chapter shall be construed to require the administrator to proceed~~
9 ~~against any person when the administrator has good reason to believe that the person is not~~
10 ~~willfully attempting to evade the tax.~~

11 Except as provided in sections 44-20-16 and 44-20-33.1, no person, other than a licensed
12 manufacturer or importer, or a licensed distributor that receives unstamped cigarette packages
13 directly from a licensed cigarette manufacturer or importer and holds such cigarettes in
14 accordance with subsection 44-20-28(a), shall purchase and hold an unstamped cigarette package.

15 **44-20-37. Seizure and sale of unstamped cigarettes. --** Any cigarettes found at any

16 place in this state without stamps affixed as required by this chapter are declared to be contraband
17 goods and may be seized by the administrator, his or her agents, or employees, or by any sheriff,
18 deputy sheriff, or police officer when directed by the administrator to do so, without a warrant. ~~;~~
19 ~~provided, that nothing in this section shall be construed to require the administrator to confiscate~~
20 ~~unstamped cigarettes when the administrator has reason to believe that the owner of the cigarettes~~
21 ~~is not willfully or intentionally evading the tax imposed by this chapter. Any cigarettes seized~~
22 ~~under the provisions of this chapter may, in his or her discretion, be offered by the administrator~~
23 ~~for sale at public auction to the highest bidder after advertisement, as provided in section 44-20-~~
24 ~~38. Before delivering any cigarettes so sold to the purchaser, the administrator shall require the~~
25 ~~purchaser to affix to the packages the amount of stamps required by this chapter. Any cigarettes~~
26 ~~seized under the provisions of this chapter shall be destroyed. The seizure and ~~sale~~ /or destruction~~
27 of any cigarettes under the provisions of this section does not relieve any person from a fine or
28 other penalty for violation of this chapter.

29 **44-20-38. Advertisement and hearing on cigarettes seized. --** When any cigarettes are

30 seized under the provisions of section 44-20-37, ~~the administrator may, at his or her discretion,~~
31 ~~after a hearing as provided in section 44-20-47, advertise them for sale, in a newspaper published~~
32 ~~or having a circulation in the city or town in which the seizure took place, at least five (5) days~~
33 ~~before he sale. Any any person claiming an interest in the cigarettes may make written~~
34 application to the administrator for a hearing, stating his or her interest in the cigarettes and his or

1 her reasons why they should not be forfeited. Further proceedings on the application for a hearing
2 are taken as provided in sections 44-20-47 and 44-20-48. No ~~sale~~ destruction of any cigarettes
3 under the provisions of section 44-20-37 shall be ~~made~~ carried out while an application for a
4 hearing is pending before the administrator, but the pendency of an appeal under the provisions of
5 section 44-20-48 shall not prevent the ~~sale~~ destruction unless the appellant posts a satisfactory
6 bond, with surety, in an amount double the estimated value of the cigarettes, conditioned upon the
7 successful termination of the appeal.

8 **44-20-39. Forgery and counterfeiting -- Tampering with meters -- Reuse of stamps**
9 **or containers.** -- Any person who fraudulently makes or utters or forges or counterfeits any
10 stamp, disc, license, or marker, prescribed by the administrator under the provisions of this
11 chapter, or who causes or procures this to be done, or who willfully utters, publishes, passes or
12 renders as true, any false, altered, forged, or counterfeited stamp, license, disc, or marker, or who
13 knowingly possesses any false, altered, forged, or counterfeited stamp, license, disc, or marker, or
14 who tampers with or causes to be tampered with any metering machine authorized to be used
15 under the provisions of this chapter, or who removes or prepares any stamp with intent to use, or
16 cause that stamp to be used, after it has already been used, or who buys, sells, offers for sale, or
17 gives away any washed or removed or restored stamp to any person, or who has in his or her
18 possession any washed or restored or removed or altered stamp which was removed from the
19 article to which it was affixed, or who reuses or refills with cigarettes any package, box, or
20 container required to be stamped under this chapter from which cigarettes have been removed, is
21 deemed guilty of a felony, and, upon conviction, shall be fined ten thousand dollars (\$10,000), or
22 be imprisoned for not more than ten (10) years , or both.

23 **44-20-40. ~~Records of distributors and dealers -- Investigation and inspection of~~**
24 **~~books, premises and stock.~~ -- Records - Investigation and inspection of books, premises and**
25 **stock.** - - (a) Each manufacturer, importer, distributor and dealer shall maintain copies of invoices
26 or equivalent documentation for, or itemized for, each of its facilities for each transaction (other
27 than a retail transaction with a consumer) involving the sale, purchase, transfer, consignment, or
28 receipt of cigarettes. The invoices or documentation shall show the name and address of the other
29 party and the quantity by brand style of the cigarettes involved in the transaction. ~~Each distributor~~
30 ~~and each dealer must keep complete and accurate records of all cigarettes manufactured,~~
31 ~~produced, purchased, or sold, in a kind and form as the administrator may prescribe.~~ All records
32 and invoices required under this section, ~~or as may be required by the administrator in support of~~
33 ~~the provisions of this section~~ must be safely preserved for three (3) years in a manner to insure
34 permanency and accessibility for inspection by the administrator or his or her authorized agents.

1 **(b) Records required under this section shall be preserved on the premises described in**
2 **the relevant license in such a manner as to ensure permanency and accessibility for inspection at**
3 **reasonable hours by authorized personnel of the administrator. With the administrator's**
4 **permission, persons with multiple places of business may retain centralized records, but shall**
5 **transmit duplicates of the invoices or the equivalent documentation to each place of business**
6 **within twenty-four (24) hours upon the request of the administrator or his or her designee.**

7 **(c) The administrator or his or her authorized agents may examine the books, papers,**
8 **reports and records of any manufacturer, importer, distributor or dealer in this state for the**
9 **purpose of determining whether taxes imposed by this chapter have been fully paid, and may**
10 **investigate the stock of cigarettes in or upon any premises for the purpose of determining whether**
11 **the provisions of this chapter are being obeyed. The administrator in his or her sole discretion**
12 **may share the records and reports required by such sections with law enforcement officials of the**
13 **federal government or other states.**

14 **44-20-41. Monthly reports of distributors and dealers. -- (a) Every distributor and**
15 **every dealer ~~who comes into possession of unstamped cigarettes,~~ must file with the administrator**
16 **on the tenth day of each month a report for the preceding calendar month sworn to and executed**
17 **by the distributor or dealer or his or her authorized agent or representative in which the distributor**
18 **or dealer furnishes any information that the administrator requires concerning cigarettes, as**
19 **applicable, and tax stamps. These reports shall, ~~when required by the administrator,~~ contain any**
20 **~~or all of~~ the following information:**

21 (1) the amount of unstamped and the amount of stamped cigarettes on hand at the
22 beginning of the month;

23 (2) the amount of unstamped and the amount of stamped cigarettes purchased or received
24 during the month; **and the name and address of each person from whom those products were**
25 **received;**

26 (3) the amount of unstamped and stamped cigarettes returned from customers or received
27 from any other sources during the month;

28 (4) the amount of unstamped and the amount of stamped cigarettes sold, used, lost,
29 stolen, returned to the factory, or otherwise disposed of during the month; and

30 (5) the amount of unstamped and the amount of stamped cigarettes on hand at the end of
31 the month.

32 This information ~~may~~ **shall** be required separately by brands, types, sizes, and kinds of
33 cigarettes **, and shall.** ~~If required by the administrator, this report must~~ show separately the
34 amount of cigarettes sold or distributed in intrastate commerce and the amount sold or distributed

1 in interstate commerce. ~~If required by the administrator, this~~ A distributor's report must also show
2 the quantity of reported cigarettes bearing tax stamps of this state, tax-exempt stamps of this state,
3 stamps of another state, and unstamped cigarettes; the number, types, denominations, and face
4 value of unused stamps on hand at the beginning of the month covered by the report; the number,
5 types, denominations, and face value of stamps purchased and received; the number, types,
6 denominations, and face value of stamps used, lost, stolen, exchanged, returned to the
7 administrator, and disposed of; and the number, types, denominations, and face value of stamps
8 on hand at the end of the month covered by the report. This report must also contain any other
9 information which the administrator prescribes. The administrator shall furnish forms to
10 manufacturers, importers, distributors and dealers required to report under this chapter, but failure
11 to obtain those forms is no excuse for the failure to file a report containing all the information
12 required to be reported.

13 (b) Manufacturers and importers shall file a monthly report with the tax administrator
14 containing the information set forth in subdivision (a)(3) of this section with respect to cigarettes
15 that such manufacturer or importer shipped into this state.

16 **44-20-43. Violations as to reports and records.** -- Any person who fails to submit the
17 reports required in this chapter or by the administrator under this chapter, or who makes any
18 incomplete, false, or fraudulent report, or who refuses to permit the administrator or his or her
19 authorized agent to examine any books, records, papers, or stocks of cigarettes as provided in this
20 chapter, or who refuses to supply the administrator with any other information which the
21 administrator requests for the reasonable and proper enforcement of the provisions of this chapter,
22 shall be fined not more than five thousand dollars (\$5,000) for the first offense, and for each
23 subsequent offense, shall be fined not more than ten thousand dollars (\$10,000), or be imprisoned
24 not more than ~~one year,~~ five (5) years, or be both fined and imprisoned.

25 **44-20-45. Importation of cigarettes with intent to evade tax.** -- Any person, firm,
26 corporation, club, or association of persons, not having a license when required as provided in
27 this chapter, who orders any cigarettes for another or pools orders for cigarettes from any persons
28 or connives with others for pooling orders, or receives in this state any shipment of unstamped
29 cigarettes on which the tax imposed by this chapter has not been paid, for the purpose and
30 intention of violating the provisions of this chapter or to avoid payment of the tax imposed in this
31 chapter, is guilty of a ~~misdemeanor, and is subject to the penalties provided in section 44-20-35~~
32 ~~for selling unstamped cigarettes.~~ felony and shall be fined ten thousand dollars (\$10,000) or five
33 (5) times the retail value of the cigarettes involved, whichever is greater, or imprisoned not more
34 than five (5) years, or both.

1 **44-20-51. Penalty for violations generally.** -- Except as provided in this chapter, any
2 person who violates any provision of this chapter is guilty of a misdemeanor and shall be fined
3 ~~not more than one hundred dollars (\$100) for each offense.~~ one thousand dollars (\$1,000) or five
4 (5) times the retail value of the cigarettes involved, whichever is greater. Whoever knowingly
5 violates any provision of this chapter, or of regulations prescribed thereunder, shall, in addition to
6 any other penalty provided in this chapter, for each such offense, be fined not more than five
7 thousand dollars (\$5,000) or imprisoned not more than one year, or both.

8 SECTION 4. This act shall take effect ninety (90) days after passage.

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LC01877/SUB A
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL OFFENSES - TAXATION AND TOBACCO - DELIVERY AND
SALE OF TOBACCO PRODUCTS

1 This act would make extensive amendments to the process of the delivery and sale of
2 cigarettes in this state. This act would also amend the requirements for obtaining a license to
3 manufacturer, deliver, or sell cigarettes within the state.

4 This act would take effect ninety (90) days after passage.

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SUBSTITUTE A

H.

A N A C T

RELATING TO CRIMINAL OFFENSES - TAXATION AND TOBACCO - DELIVERY AND SALE OF
TOBACCO PRODUCTS

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LC01877/SUB A
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Presented by