

By: Holland

To: Ways and Means

HOUSE BILL NO. 1507

1 AN ACT TO PROHIBIT UNFAIR AND DECEPTIVE PACKAGING OF
2 CIGARETTES; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT; TO
3 PROVIDE FOR THE ENFORCEMENT OF THIS ACT; TO PROVIDE EXCEPTIONS; TO
4 AMEND SECTIONS 27-69-27, 27-69-35 AND 27-69-37, MISSISSIPPI CODE
5 OF 1972, IN CONFORMITY; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 SECTION 1. It shall be unlawful for any person:

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

12 (i) Any cigarettes the package of which:

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

18 2. Does not comply with:

19 a. All requirements imposed by or
20 pursuant to federal law regarding warnings and other information
21 on packages of cigarettes manufactured, packaged, or imported for
22 resale, distribution, or use in the United States, including but
23 not limited to the precise warning labels specified in the Federal
24 Cigarette Labeling and Advertising Act, 15 USCS 1333; and

25 b. All federal trademark and copyright
26 laws;

27 (ii) Any cigarettes imported into the United

28 States on or after January 1, 2000, in violation of 26 USCS 5754
29 or any other federal law, or implementing federal regulations;

30 (iii) Any cigarettes that such person otherwise
31 knows or has reason to know the manufacturer did not intend to be
32 sold, distributed, or used in the United States; or

33 (iv) Any cigarettes for which there has not been
34 submitted to the Secretary of the United States Department of
35 Health and Human Services the list or lists of the ingredients
36 added to tobacco in the manufacture of such cigarettes as required
37 by the Federal Cigarette Labeling and Advertising Act, 15 USCS
38 1335a;

39 (b) To alter the package of any cigarettes, prior to
40 sale or distribution to the ultimate consumer, so as to remove,
41 conceal or obscure:

42 (i) Any statement, label, stamp, sticker, or
43 notice described in paragraph (a)(i) 1. of this section;

44 (ii) Any health warning that is not specified in,
45 or does not conform with the requirements of, the Federal
46 Cigarette Labeling and Advertising Act, 15 USCS 1333; or

47 (c) To affix any stamp required pursuant to Chapter 69,
48 Title 27, Mississippi Code of 1972, to the package of any
49 cigarettes described in paragraph (a) of this section or altered
50 in violation of paragraph (b) of this section.

51 SECTION 2. Any person that commits any of the acts
52 prohibited by Section 1 of this act, either knowing or having
53 reason to know that he is doing so, or that fails to comply with
54 any of the requirements of Sections 27-69-27, 27-69-35 or 27-69-37
55 is guilty of a felony, punishable by a fine of not more than Five
56 Thousand Dollars (\$5,000.00) or imprisonment of not more than five
57 (5) years, or both such fine and imprisonment.

58 SECTION 3. (1) Upon finding a violation by a permittee of
59 this act or a regulation promulgated hereunder, the State Tax
60 Commissioner may revoke or suspend the license or licenses of any

61 permittee pursuant to the procedures set forth in Section 27-69-9
62 and may also impose on the permittee a civil penalty in an amount
63 not to exceed the greater of five hundred percent (500%) of the
64 retail value of the cigarettes involved or Five Thousand Dollars
65 (\$5,000.00).

66 (2) Cigarettes that are acquired, held, owned, possessed,
67 transported in, imported into, or sold or distributed in this
68 state in violation of this act shall be deemed contraband under
69 Sections 27-69-53 through 27-69-57 and are subject to seizure and
70 forfeiture as provided therein. Such cigarettes shall be deemed
71 contraband whether the violation of this act is knowing or
72 otherwise. The proceeds of any sale of tobacco deemed contraband
73 shall be distributed the same as provided by law for the
74 distribution of sales of beer which is confiscated that was sold
75 to minors.

76 SECTION 4. For purposes of Chapter 23, Title 75, cigarettes
77 imported or reimported into the United States for sale or
78 distribution under any trade name, trade dress, or trademark that
79 is the same as, or is confusingly similar to, any trade name,
80 trade dress, or trademark used for cigarettes manufactured in the
81 United States for sale or distribution in the United States shall
82 be presumed to have been purchased outside of the ordinary
83 channels of trade.

84 SECTION 5. (1) This act shall be enforced by the Office of
85 the Attorney General, district attorneys and county prosecuting
86 attorneys. The authority enforcing this act may request the
87 assistance of local law enforcement agencies, and local law
88 enforcement agencies receiving a request for assistance in the
89 enforcement of this act shall provide the necessary assistance.

90 (2) The State Tax Commissioner may provide assistance to the
91 enforcing authority, including but not limited to, the providing
92 of information to the enforcing authority. The commissioner and
93 any enforcing authority may request information from each other

94 and from any other state agency, local or federal agency or
95 permittee.

96 (3) In addition to any other remedy provided by law, any
97 person may bring an action for appropriate injunctive or equitable
98 relief, actual damages, if any, sustained by reason of a violation
99 of this act, interest, reasonable attorney's fees and court costs.

100 (4) If the trier of fact determines that a violation of this
101 act is flagrant, it may award additional damages in an amount not
102 to exceed twice the amount of the award of actual damages.

103 SECTION 6. (1) This act does not apply to:

104 (a) Cigarettes allowed to be imported or brought into
105 the United States for personal use free of federal tax or duty or
106 voluntarily abandoned to the United States Secretary of the
107 Treasury at the time of entry; and

108 (b) Cigarettes sold or intended to be sold as duty-free
109 merchandise by a duty-free sales enterprise in accordance with the
110 provisions of 19 USCS 1555(b) and any regulations promulgated
111 thereunder, provided, however, that this act shall apply to any
112 such cigarettes that are brought back into the customs territory
113 for resale with the customs territory.

114 (2) The penalties imposed under this act are in addition to
115 any other penalties provided for by law.

116 SECTION 7. The State Tax Commissioner is authorized to
117 promulgate any regulations necessary for the implementation of
118 this act.

119 SECTION 8. Section 27-69-27, Mississippi Code of 1972, is
120 amended as follows:[BD1]

121 27-69-27. The payment of the tax imposed by this chapter
122 shall be evidenced by affixing stamps to each individual package
123 of cigarettes usually sold to consumers, as distinguished from
124 cartons or larger units which are composed of a number of
125 individual packages.

126 The stamp shall be affixed within seventy-two (72) hours

127 after the receipt of the cigarettes by the wholesaler, and within
128 forty-eight (48) hours after receipt of the cigarettes by the
129 retailer; provided, that in the case a dealer conducts a wholesale
130 and retail business at one (1) place of business, stamps shall be
131 affixed within forty-eight (48) hours after receipt of the
132 cigarettes. The stamp must be so securely affixed as to require
133 the continued application of water or of steam to remove it, or so
134 that it cannot be otherwise removed without destruction or
135 mutilation.

136 The excise tax imposed on cigars, smoking tobacco, chewing
137 tobacco, snuff and all other tobacco products except cigarettes
138 shall be computed by the application of the excise tax rate to the
139 manufacturer's list price on all purchases of such tobacco. The
140 excise tax shall be due and payable on or before the fifteenth day
141 of the month next succeeding the month in which the tax accrues.
142 The tax shall be filed with the commissioner on forms prescribed
143 by the commissioner.

144 Provided, however, manufacturers or other wholesale
145 distributors of tobacco, which are subject to the excise taxes
146 imposed by Section 27-69-13 of this chapter for the privilege of
147 selling or using such tobaccos within this state, who maintain
148 "terminals" or warehouses in which such tobaccos are stored, and
149 who sell only to licensed wholesale dealers within the state who
150 are qualified to purchase and affix the stamps required, may
151 maintain such "spot stocks," intended only for such sales, without
152 affixing the stamps or filing returns and paying the tax.

153 Any person desiring to maintain such "terminal" or warehouse,
154 shall make application to the commissioner and obtain a permit to
155 maintain such stocks without affixing stamps thereto, for sale
156 exclusively to out-of-state purchasers, or licensed wholesale
157 dealers within this state, and the commissioner is hereby
158 authorized to grant such permit upon the execution and filing with
159 the commissioner, by the applicant, a bond with surety companies,

160 authorized to do business in Mississippi, as surety thereon, and
161 conditioned for the strict compliance by the applicant, with the
162 following conditions under which said privilege may be granted.

163 The person maintaining such stock of untaxed tobacco shall
164 supply to the commissioner monthly, or at such times as the
165 commissioner may require, complete invoices of all tobaccos
166 received, and shall also supply correct invoices of all tobaccos
167 removed from such "terminal" or warehouse, said invoices to
168 contain the correct name and address of all persons to whom such
169 tobacco shall be delivered or consigned, whether within or without
170 the State of Mississippi.

171 The penalty of such bond shall be determined by the
172 commissioner, in an amount sufficient to protect the State of
173 Mississippi from any loss of revenue which might occur by reason
174 of the failure of principal to strictly adhere to the requirement
175 that no tobacco would be sold from such stock within the State of
176 Mississippi, except to licensed wholesale dealers.

177 The provisions of Sections 1 through 7 of House Bill No. ,
178 2000 Regular Session shall apply to the unfair sales of
179 cigarettes.

180 SECTION 9. Section 27-69-35, Mississippi Code of 1972, is
181 amended as follows:[BD2]

182 27-69-35. It shall be the duty of every person subject to
183 the provisions of this chapter, to keep an accurate set of
184 records, showing all transactions had with reference to the
185 purchase, sale or gift of cigars, cigarettes, or smoking tobacco,
186 and such person shall keep separately all invoices of cigars,
187 cigarettes or smoking tobacco, and shall keep a record of all
188 stamps purchased, and such records, and all stocks of cigars,
189 cigarettes or smoking tobacco on hand, shall be open to inspection
190 at all reasonable times to the commissioner; provided, however,
191 that all retail dealers, transient vendors, distributing agents,
192 or other dealers purchasing, or receiving cigars, cigarettes, or

193 smoking tobacco from without the state, whether the same shall
194 have been ordered through a wholesaler, or jobber in this state,
195 or by drop shipment, or otherwise, shall within five (5) days
196 after receipt of the same, mail a duplicate invoice of all such
197 purchases, or receipts, to the commissioner, and failure to
198 furnish such duplicate invoices shall be deemed a misdemeanor.

199 It is further provided that all manufacturers, distributors
200 and wholesalers of cigars, cigarettes or smoking tobacco, who have
201 a permit required by this chapter shall furnish the commissioner
202 with a statement monthly, showing the amount of taxable tobacco
203 received, and must also furnish the commissioner with duplicate
204 invoices covering stamps affixed to drop shipments purchased by
205 retailers.

206 In the examination of such books, records, etc., the
207 commissioner shall have the power to administer oaths to any
208 person, and any person answering falsely, under oath, any of such
209 questions, shall be guilty of perjury.

210 If any person being so examined, fails to answer questions
211 propounded to him by the commissioner, or if any person, being
212 summoned to appear and answer such questions, shall fail or refuse
213 to do so, or if any person shall fail or refuse to permit the
214 inspection of his stock of merchandise, or invoices, or books, or
215 papers pertaining to any dealers in cigars, cigarettes or smoking
216 tobacco, the commissioner may make such fact known to the circuit
217 court of the county in which such failure or refusal occurs, or
218 judge thereof in termtime or in vacation, by petition, and such
219 circuit court, or judge thereof, shall issue a summons for such
220 person so refusing, returnable on a date to be fixed by said
221 court, or said judge, and on said date, the said circuit court, or
222 the circuit judge, shall proceed to examine into the truth of the
223 matter set out in said petition, and if the same be found to be
224 true, the said circuit court, or circuit judge, shall issue a writ
225 of subpoena duces tecum ordering and directing the person so

226 summoned to bring into court, and exhibit for the inspection of
227 the commissioner, all such books, records, invoices, etc., as the
228 court may deem proper from all the facts and circumstances in the
229 case. Any person failing or refusing to present such books,
230 records, invoices, etc., or failing or refusing to testify, shall
231 be punished for contempt as provided by Section 9-1-17 of the
232 Mississippi Code of 1972.

233 The provisions of Sections 1 through 7 of House Bill No. _____,
234 2000 Regular Session, shall apply to the unfair sales of
235 cigarettes and the records required by this section shall be
236 available in the enforcement thereof.

237 SECTION 10. Section 27-69-37, Mississippi Code of 1972, is
238 amended as follows:[BD3]

239 27-69-37. Each person engaged as a wholesaler or retailer in
240 the sale, use or consumption of tobacco, shall keep and preserve
241 separately from all other invoices, for a period of three (3)
242 years, all invoices of tobacco and of stamps bought by him, and
243 shall permit the commissioner to inspect and examine all
244 merchandise, invoices, books, papers and memoranda as may be
245 necessary in ascertaining whether or not the tax levied herein has
246 been paid, or to determine the amount of such tax that may be due,
247 or due and unpaid. The failure of any person required to pay the
248 tax herein levied, to preserve said invoices as above provided, or
249 to permit the inspection and examination of merchandise, invoices,
250 books, papers and memoranda, at the request of the commissioner,
251 or his authorized agent, shall be deemed a violation of this
252 chapter, and the commissioner may revoke the permit issued to such
253 person as provided under Section 27-69-5 of this chapter, and also
254 punishable as hereinafter set out. And the record of said
255 invoices shall be open for inspection by the commissioner for the
256 purpose of enforcing the provisions of this chapter and Sections 1
257 through 7 of House Bill No. _____, 2000 Regular Session, regarding
258 unfair sales of cigarettes.

259 SECTION 11. Sections 1 through 7 of this act shall be
260 codified in Chapter 23, Title 75, Mississippi Code of 1972.

261 SECTION 12. This act shall take effect and be in force from
262 and after its passage.