

By: Minor

To: Judiciary

SENATE BILL NO. 3050
(As Passed the Senate)

1 AN ACT TO PROHIBIT THE SALE OR DISTRIBUTION IN THIS STATE, OR
2 THE ACQUISITION, OWNING, POSSESSING OR TRANSPORTING FOR SALE OR
3 DISTRIBUTION IN THIS STATE, ANY CIGARETTES IN A PACKAGE THAT
4 INDICATES THEY WERE NOT MANUFACTURED TO BE SOLD IN THE UNITED
5 STATES, DOES NOT COMPLY WITH REQUIREMENTS IMPOSED BY FEDERAL LAW
6 ON THE PACKAGING OF CIGARETTES FOR SALE IN THE UNITED STATES OR
7 DOES NOT COMPLY WITH FEDERAL TRADEMARK AND COPYRIGHT LAW; TO
8 PROHIBIT THE SALE OF CIGARETTES IMPORTED INTO THE UNITED STATES IN
9 VIOLATION OF FEDERAL LAW; TO PROHIBIT THE SALE OF ANY CIGARETTES
10 THAT A PERSON KNOWS OR HAS REASON TO KNOW THE MANUFACTURER DID NOT
11 INTEND TO BE SOLD, DISTRIBUTED OR USED IN THE UNITED STATES OR FOR
12 WHICH THERE HAS NOT BEEN SUBMITTED TO THE U.S. DEPARTMENT OF
13 HEALTH THE LIST OF INGREDIENTS ADDED TO THE TOBACCO IN THE
14 MANUFACTURING PROCESS; TO PROHIBIT CERTAIN ALTERATION OF CIGARETTE
15 PACKAGES; TO PROVIDE CRIMINAL AND CIVIL PENALTIES FOR VIOLATIONS
16 OF THIS ACT; TO PROVIDE THAT ANY CIGARETTES IMPORTED INTO THE
17 UNITED STATES FOR SALE OR DISTRIBUTION UNDER ANY TRADE NAME, TRADE
18 DRESS OR TRADEMARK THAT IS THE SAME AS OR CONFUSINGLY SIMILAR TO
19 ANY TRADE NAME, TRADE DRESS OR TRADEMARK USED FOR CIGARETTES
20 MANUFACTURED IN THE UNITED STATES FOR SALE OR DISTRIBUTION IN THE
21 UNITED STATES SHALL BE PRESUMED TO HAVE BEEN PURCHASED OUTSIDE THE
22 ORDINARY CHANNELS OF TRADE; TO PROVIDE FOR THE ENFORCEMENT OF THIS
23 ACT; TO AMEND SECTION 27-69-3, MISSISSIPPI CODE OF 1972, TO
24 REQUIRE CIGARETTE TAX STAMPS TO IDENTIFY THE PERMITTEE WHO AFFIXED
25 THE STAMP; AND FOR RELATED PURPOSES.

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

27 SECTION 1. As used in this act:

28 (a) "Commission" means the Mississippi State Tax
29 Commission.

30 (b) "Cigarette" means any roll for smoking made wholly
31 or in part of tobacco, irrespective of size or shape and whether
32 such tobacco is flavored, adulterated or mixed with any other
33 ingredient, the wrapper or cover of which is made of paper or any
34 other substance or material except tobacco.

35 (c) "Person" means any individual, firm, association,
36 agency, syndicate, the State of Mississippi, county, municipal
37 corporation or other political subdivision of this state,

38 receiver, trustee, fiduciary or trade association.

39 SECTION 2. It shall be unlawful for any person:

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

44 (i) Any cigarettes the package of which:

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

50 2. Does not comply with:

51 a. All requirements imposed by or
52 pursuant to federal law regarding warnings and other information
53 on packages of cigarettes manufactured, packaged or imported for
54 sale, distribution or use in the United States, including, but not
55 limited to, the precise warning labels specified in the Federal
56 Cigarette Labeling and Advertising Act, 15 USCS 1333; and

57 b. All federal trademark and copyright
58 laws;

59 (ii) Any cigarettes imported into the United
60 States in violation of 26 USCS 5754 or any other federal law, or
61 implementing federal regulations;

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

65 (iv) Any cigarettes for which there has not been
66 submitted to the Secretary of the United States Department of
67 Health and Human Services the list or lists of the ingredients
68 added to tobacco in the manufacture of such cigarettes required by
69 the Federal Cigarette Labeling and Advertising Act, 15 USCS 1335a;

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

73 (i) Any statement, label, stamp, sticker or notice
74 described in paragraph (a)(i)2 of this section;

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

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

82 SECTION 3. Any person who commits any of the acts prohibited
83 by Section 2 of this act, either knowing or having reason to know
84 he is doing so, shall be guilty of a felony, and upon conviction
85 thereof shall be punished by a fine of not more than Five Thousand
86 Dollars (\$5,000.00) or imprisonment of not more than five (5)
87 years, or both.

88 SECTION 4. (1) Upon finding a violation of this act or a
89 regulation promulgated pursuant to this act, the commission may
90 revoke or suspend the license or licenses of any permittee
91 pursuant to the procedures set forth in Section 27-69-9 and may
92 also impose on the permittee a civil penalty in an amount not to
93 exceed the greater of five hundred percent (500%) of the retail
94 value of the cigarettes involved or Five Thousand Dollars
95 (\$5,000.00).

96 (2) Cigarettes that are acquired, held, owned, possessed,
97 transported in, imported into, or sold or distributed in this
98 state in violation of this act shall be deemed contraband under
99 Sections 27-69-53 through 27-69-57 and shall be subject to seizure
100 and forfeiture as provided therein. Such cigarettes so seized and
101 forfeited shall be destroyed. Such cigarettes shall be deemed
102 contraband whether the violation of this act is knowing or
103 otherwise.

104 SECTION 5. For purposes of Chapter 23, Title 75, Mississippi
105 Code of 1972, cigarettes imported or reimported into the United
106 States for sale or distribution under any trade name, trade dress
107 or trademark that is the same as, or is confusingly similar to,

108 any trade name, trade dress or trademark used for cigarettes
109 manufactured in the United States for sale or distribution in the
110 United States shall be presumed to have been purchased outside of
111 the ordinary channels of trade.

112 SECTION 6. (1) This act shall be enforced by the Attorney
113 General, local district attorneys and local county prosecuting
114 attorneys. The authority enforcing this act may request the
115 assistance of local law enforcement agencies, and local law
116 enforcement agencies receiving a request for assistance in the
117 enforcement of this act shall provide the necessary assistance.

118 (2) The commission may provide assistance to the enforcing
119 authority, including, but not limited to, the providing of
120 information to the enforcing authority. The commission and any
121 enforcing authority may request information from each other and
122 from any other state agency, local or federal agency, or
123 permittee.

124 (3) In addition to any other remedy provided by law, any
125 person may bring an action for appropriate injunctive or other
126 equitable relief, actual damages, if any, sustained by reason of a
127 violation of this act, interest, reasonable attorney's fees and
128 court costs. For purposes of promoting enforcement of this act,
129 information identifying which permittee affixed the tax stamp to a
130 particular package of cigarettes shall be public information.

131 (4) If the trier of fact finds that the violation is
132 egregious, it may increase recovery to an amount not in excess of
133 three (3) times the actual damages sustained by reason of the
134 violation.

135 SECTION 7. (1) This act shall not apply to:

136 (a) Cigarettes allowed to be imported or brought into
137 the United States for personal use; and

138 (b) Cigarettes sold or intended to be sold as duty-free
139 merchandise by a duty-free sales enterprise in accordance with the
140 provisions of 19 USCS 1555(b) and any implementing regulations;

141 provided, however, that this act shall apply to any such
142 cigarettes that are brought back into the customs territory for
143 resale within the customs territory.

144 (2) The penalties provided in this act are in addition to
145 any other penalties imposed under other law.

146 SECTION 8. Section 27-69-3, Mississippi Code of 1972, is
147 amended as follows:[WAN1]

148 27-69-3. When used in this chapter:

149 (a) * * * "State" means the State of Mississippi as
150 geographically defined, and any and all waters under the
151 jurisdiction of the State of Mississippi.

152 (b) * * * "State Auditor" means the Auditor of Public
153 Accounts of the State of Mississippi, or his legally appointed
154 deputy, clerk, or agent.

155 (c) * * * "Commissioner" means the Chairman of the
156 State Tax Commission of the State of Mississippi, and his
157 authorized agents and employees.

158 (d) * * * "Person" means any individual, company,
159 corporation, partnership, association, joint venture, estate,
160 trust, or any other group, or combination acting as a unit, and
161 the plural as well as the singular, unless the intention to give a
162 more limited meaning is disclosed by the context.

163 (e) * * * "Consumer" means a person who comes into
164 possession of tobacco for the purpose of consuming it, giving it
165 away, or disposing of it in any way by sale, barter or exchange.

166 (f) * * * "Tobacco" means any cigarettes, cigars,
167 cheroots, stogies, smoking tobacco (including granulated, plug
168 cut, crimp cut, ready rubbed, and other kinds and forms of
169 tobacco, or substitutes therefor, prepared in such manner as to be
170 suitable for smoking in a pipe or cigarette) and including plug
171 and twist chewing tobacco and snuff, when such "tobacco" is
172 manufactured and prepared for sale or personal consumption. All
173 words used herein shall be given the meaning as defined in the

174 regulations of the Treasury Department of the United States of
175 America.

176 (g) * * * "First sale" means and includes the first
177 sale, or distribution of such tobacco in intrastate commerce, or
178 the first use or consumption of such tobacco within this state.

179 (h) * * * "Drop shipment" means and includes any
180 delivery of tobacco received by any person within this state, when
181 payment for such tobacco is made to the shipper, or seller by or
182 through a person other than a consignee.

183 (i) * * * "Distributor" includes every person, except
184 retailers as defined herein, in the state who manufactures or
185 produces tobacco or who ships, transports, or imports into this
186 state, or in any manner acquires or possesses tobacco, and makes a
187 first sale of the same in the state.

188 (j) * * * "Wholesaler" includes dealers, whose
189 principal business is that of a wholesale dealer or jobber, who is
190 known to the retail trade as such, and whose place of business is
191 located in Mississippi or in a state which affords reciprocity to
192 wholesalers domiciled in Mississippi, who shall sell any taxable
193 tobacco to retail dealers only for the purpose of resale.

194 (k) * * * "Retailer" includes every person, other than
195 a wholesale dealer, as defined above, whose principal business is
196 that of selling merchandise at retail, who shall sell, or offer
197 for sale tobacco to the consumer. The sale of tobacco in quantity
198 lots by retailers to other retailers, transient vendors, or other
199 persons, shall not be construed as wholesale and shall not qualify
200 such retailer for a permit as a wholesaler.

201 (l) * * * "Dealer" includes every person, firm,
202 corporation or association of persons, except retailers as defined
203 herein, who manufacture tobacco for distribution, for sale, for
204 use or for consumption in the State of Mississippi.

205 The word "dealer" is further defined to mean any person,
206 firm, corporation or association of persons, except retailers as

207 defined herein, who imports tobacco from any state or foreign
208 country for distribution, sale, use, or consumption in the State
209 of Mississippi.

210 (m) * * * "Distributing agent" includes every person in
211 the state who acts as an agent of any person outside the State of
212 Mississippi, by receiving tobacco in interstate commerce, and
213 storing such tobacco in this state subject to distribution, or
214 delivery upon order from said person outside the state to
215 distributors, wholesalers, retailers and dealers.

216 (n) * * * "Transient vendor" means and includes every
217 person commonly and generally termed "peddlers" and every person
218 acting for himself, or as an agent, employee, salesman, or in any
219 capacity for another, whether as owner, bailee, or other custodian
220 of tobacco, and going from person to person, dealer to dealer,
221 house to house, or place to place, and selling or offering for
222 sale at retail or wholesale tobacco, and every person who does not
223 keep a regular place of business open at all times in regular
224 hours, and every person who goes from person to person, dealer to
225 dealer, house to house, or place to place, and sells or offers for
226 sale tobacco which he carries with him, and who delivers the same
227 at the time of, or immediately after the sale, or without
228 returning to the place of business operations (a permanent place
229 of business within the state) between the taking of the order and
230 the delivery of the tobacco, or

231 All persons who go from person to person, house to house,
232 place to place, or dealer to dealer, soliciting orders by
233 exhibiting samples, or taking orders, and thereafter making
234 delivery of tobacco, or filling the order without carrying or
235 sending the order to the permanent place of business, and
236 thereafter making delivery of the tobacco pursuant to the terms of
237 the order, or

238 All persons who go from person to person, place to place,
239 house to house, or dealer to dealer, carrying samples and selling

240 tobacco from samples, and afterwards making delivery without
241 taking and sending an order therefor to a permanent place of
242 business for the filling of the order, and delivery of the
243 tobacco, or the exchange of tobacco having become damaged or
244 unsalable, or the purchase by tobacco of advertising space, or

245 All persons who have in their possession, or under their
246 control, any tobacco offered, or to be offered for sale or to be
247 delivered, unless the sale or delivery thereof is to be made in
248 pursuance of a bona fide order for the tobacco, to be sold or
249 delivered, said order to be evidenced by an invoice or memorandum.

250 (o) * * * "Contraband tobacco" means all tobacco found
251 in the possession of any person whose permit to engage in dealing
252 in tobacco has been revoked by the commissioner; and any
253 cigarettes found in the possession of any person to which the
254 proper tax stamps have not been affixed; and any cigarettes
255 improperly stamped when found in the possession of any person; and
256 all other tobacco upon which the excise tax has not been paid.

257 (p) * * * "Sale" means an exchange for money or goods,
258 giving away, or distributing any tobacco as defined in this
259 chapter.

260 (q) * * * "Forty-eight (48) hours" and "seventy-two
261 (72) hours" means two (2) calendar days and three (3) calendar
262 days, respectively, excluding Sundays and legal holidays.

263 (r) * * * "Stamp" or "stamping," or the import of such
264 word, when used in this chapter, means any manner of stamp or
265 impression permitted by the commissioner that carries out the
266 purposes of the chapter in clearly indicating upon the packages of
267 cigarettes taxed the due payment of the tax and clearly
268 identifying, by serial number or otherwise, the permittee who
269 affixed the stamp to the particular package.

270 (s) "Manufacturer's list price" means the full sales
271 price at which tobacco is sold or offered for sale by a
272 manufacturer to the wholesaler or distributor in this state

273 without any deduction for freight, trade discount, cash discounts,
274 special discounts or deals, cash rebates, or any other reduction
275 from the regular selling price. In the event freight charges on
276 shipments to wholesalers or distributors are not paid by the
277 manufacturer, then such freight charges required to be paid by the
278 wholesalers and distributors shall be added to the amount paid to
279 the manufacturer in order to determine "manufacturer's list
280 price." In the case of a wholesaler or distributor whose place of
281 business is located outside this state, the "manufacturer's list
282 price" for tobacco sold in this state by such wholesaler or
283 distributor shall in all cases be considered to be the same as
284 that of a wholesaler or distributor located within this state.

285 SECTION 9. The provisions of Sections 1 through 7 this act
286 shall be codified as a new article in Chapter 23, Title 75,
287 Mississippi Code of 1972.

288 SECTION 10. This act shall take effect and be in force from
289 and after its passage.