

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

Senate Bill NO. 3050

By Representative(s) Committee

25 Amend by striking all after the enacting clause and inserting
26 in lieu thereof the following:

27

28 SECTION 1. As used in this act:

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

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

36 (c) "Person" means any individual, firm, association,
37 agency, syndicate, the State of Mississippi, county, municipal
38 corporation or other political subdivision of this state,
39 receiver, trustee, fiduciary or trade association.

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

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

45 (i) Any cigarettes the package of which:

46 1. Bears any statement, label, stamp, sticker
47 or notice indicating that the manufacturer did not intend the

48 cigarettes to be sold, distributed or used in the United States,
49 including, but not limited to, labels stating "For Export Only,"
50 "U.S. Tax-Exempt," "For Use Outside U.S." or similar wording; or

51 2. Does not comply with:

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

58 b. All federal trademark and copyright
59 laws;

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

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

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

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

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

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

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

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

89 SECTION 4. (1) Upon finding a violation of this act or a
90 regulation promulgated pursuant to this act, the commission may
91 revoke or suspend the license or licenses of any permittee
92 pursuant to the procedures set forth in Section 27-69-9 and may
93 also impose on the permittee a civil penalty in an amount not to
94 exceed the greater of five hundred percent (500%) of the retail
95 value of the cigarettes involved or Five Thousand Dollars
96 (\$5,000.00).

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

105 SECTION 5. For purposes of Chapter 23, Title 75, Mississippi
106 Code of 1972, cigarettes imported or reimported into the United
107 States for sale or distribution under any trade name, trade dress
108 or trademark that is the same as, or is confusingly similar to,
109 any trade name, trade dress or trademark used for cigarettes
110 manufactured in the United States for sale or distribution in the
111 United States shall be presumed to have been purchased outside of
112 the ordinary channels of trade.

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

118 prosecution of this act shall provide the necessary assistance.

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

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

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

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

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

139 (b) Cigarettes sold or intended to be sold as duty-free
140 merchandise by a duty-free sales enterprise in accordance with the
141 provisions of 19 USCS 1555(b) and any implementing regulations;
142 provided, however, that this act shall apply to any such
143 cigarettes that are brought back into the customs territory for
144 resale within the customs territory.

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

147 SECTION 8. The provisions of Sections 1 through 7 this act
148 shall be codified as a new article in Chapter 23, Title 75,
149 Mississippi Code of 1972.

150 SECTION 9. This act shall take effect and be in force from
151 and after its passage.

Further, amend by striking the title in its entirety and

inserting in lieu thereof the following:

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