

*****Adopted*****

AMENDMENT No. 1 PROPOSED TO

House Bill NO. 390

By Senator(s) Committee

27 Amend by striking all after the enacting clause and inserting
28 in lieu thereof the following:

29

30 SECTION 1. As used in this act:

31 (a) "Commission" means the Mississippi State Tax
32 Commission.

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

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

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

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

47 (i) Any cigarettes the package of which:

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

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

53 2. Does not comply with:

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

60 b. All federal trademark and copyright
61 laws;

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

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

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

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

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

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

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

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

91 SECTION 4. (1) Upon finding a violation of this act or a
92 regulation promulgated pursuant to this act, the commission may
93 revoke or suspend the license or licenses of any permittee
94 pursuant to the procedures set forth in Section 27-69-9 and may
95 also impose on the permittee a civil penalty in an amount not to
96 exceed the greater of five hundred percent (500%) of the retail
97 value of the cigarettes involved or Five Thousand Dollars
98 (\$5,000.00).

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

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

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

120 enforcement of this act shall provide the necessary assistance.

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

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

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

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

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

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

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

149 SECTION 8. Section 27-69-3, Mississippi Code of 1972, is
150 amended as follows:

151 27-69-3. When used in this chapter:

152 (a) * * * "State" means the State of Mississippi as
153 geographically defined, and any and all waters under the
154 jurisdiction of the State of Mississippi.

155 (b) * * * "State Auditor" means the Auditor of Public
156 Accounts of the State of Mississippi, or his legally appointed
157 deputy, clerk, or agent.

158 (c) * * * "Commissioner" means the Chairman of the
159 State Tax Commission of the State of Mississippi, and his
160 authorized agents and employees.

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

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

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

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

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

186 (i) * * * "Distributor" includes every person, except
187 retailers as defined herein, in the state who manufactures or
188 produces tobacco or who ships, transports, or imports into this
189 state, or in any manner acquires or possesses tobacco, and makes a

190 first sale of the same in the state.

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

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

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

208 The word "dealer" is further defined to mean any person,
209 firm, corporation or association of persons, except retailers as
210 defined herein, who imports tobacco from any state or foreign
211 country for distribution, sale, use, or consumption in the State
212 of Mississippi.

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

219 (n) * * * "Transient vendor" means and includes every
220 person commonly and generally termed "peddlers" and every person
221 acting for himself, or as an agent, employee, salesman, or in any
222 capacity for another, whether as owner, bailee, or other custodian
223 of tobacco, and going from person to person, dealer to dealer,
224 house to house, or place to place, and selling or offering for

225 sale at retail or wholesale tobacco, and every person who does not
226 keep a regular place of business open at all times in regular
227 hours, and every person who goes from person to person, dealer to
228 dealer, house to house, or place to place, and sells or offers for
229 sale tobacco which he carries with him, and who delivers the same
230 at the time of, or immediately after the sale, or without
231 returning to the place of business operations (a permanent place
232 of business within the state) between the taking of the order and
233 the delivery of the tobacco, or

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

241 All persons who go from person to person, place to place,
242 house to house, or dealer to dealer, carrying samples and selling
243 tobacco from samples, and afterwards making delivery without
244 taking and sending an order therefor to a permanent place of
245 business for the filling of the order, and delivery of the
246 tobacco, or the exchange of tobacco having become damaged or
247 unsalable, or the purchase by tobacco of advertising space, or

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

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

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

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

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

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

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

291 SECTION 10. This act shall take effect and be in force from
292 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
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.