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SENATE BILL 58

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Mary Jane M. Garcia

FOR THE TOBACCO SETTLEMENT REVENUE OVERSIGHT COMMITTEE

AN ACT

**RELATING TO TOBACCO; ENACTING THE CIGARETTE DELIVERY SALES ACT;
PROVIDING REPORTING AND SHIPPING REQUIREMENTS; AMENDING AND
ENACTING SECTIONS OF THE CIGARETTE TAX ACT; EXPANDING REPORTING
AND LICENSING REQUIREMENTS; ENHANCING CIGARETTE TAX STAMP
PROCEDURES AND PENALTIES; PROVIDING FOR TAX-EXEMPT STAMPS;
PROVIDING CIVIL AND CRIMINAL PENALTIES.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1
through 10 of this act may be cited as the "Cigarette Delivery
Sales Act".**

**Section 2. [NEW MATERIAL] DEFINITIONS. --As used in the
Cigarette Delivery Sales Act:**

**A. "cigarette" means a roll of tobacco wrapped in
paper or in a substance not containing tobacco, and "cigarette"**

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1 includes bidis and kreteks;

2 B. "delivery sale" means a sale of cigarettes to a
3 consumer in New Mexico when the consumer submits the order for
4 the sale by written, telephonic or electronic means or where
5 the cigarettes are delivered by use of the mail or other
6 delivery service;

7 C. "delivery service" means a person, including the
8 United States postal service, that is engaged in the commercial
9 delivery of letters, packages or other containers; and

10 D. "department" means the taxation and revenue
11 department, the secretary of taxation and revenue or an
12 employee of the department exercising authority lawfully
13 delegated to that employee.

14 Section 3. [NEW MATERIAL] REQUIREMENTS. --

15 A. A person taking a delivery sale order shall
16 comply with all the requirements set forth in the Cigarette
17 Delivery Sales Act, the Cigarette Tax Act and all other laws
18 applicable to sales of cigarettes that occur entirely within
19 New Mexico, including laws imposing excise tax, sales tax,
20 licensing, stamping, escrow payment and other payment
21 obligations.

22 B. A delivery sale of cigarettes to an individual
23 in New Mexico shall be treated as a sale to a consumer unless
24 the individual is licensed as a distributor or a retailer of
25 cigarettes by the department.

1 Section 4. [NEW MATERIAL] AGE VERIFICATION. --

2 A. A person shall not make a delivery sale of
3 cigarettes to an individual who is under eighteen years of age.

4 B. Before mailing or shipping cigarettes in
5 connection with a delivery sale order, a person shall:

6 (1) obtain from the prospective purchaser
7 reliable confirmation that the prospective purchaser is at
8 least eighteen years old;

9 (2) obtain a statement in writing from the
10 prospective purchaser, signed under penalty of perjury, that:

11 (a) states the prospective purchaser's
12 address and date of birth; and

13 (b) confirms that the prospective
14 purchaser understands that signing another person's name is
15 illegal, that a sale of cigarettes to individuals under the age
16 of eighteen is illegal and that a purchase of cigarettes by
17 individuals under the age of eighteen is illegal;

18 (3) make a good-faith effort to verify the
19 information provided pursuant to Paragraphs (1) and (2) of this
20 subsection, including verification against a database, if
21 available;

22 (4) send to the prospective purchaser, by
23 email or other means, a notice that meets the requirements of
24 Section 5 of the Cigarette Delivery Sales Act and that requests
25 confirmation that the delivery sale order was placed by the

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1 prospective purchaser;

2 (5) receive confirmation from the prospective
3 purchaser in response to the notice described in Paragraph (4)
4 of this subsection; and

5 (6) receive payment for the delivery sale from
6 the prospective purchaser by a credit or debit card issued in
7 the purchaser's name.

8 C. A person taking delivery sale orders may request
9 that prospective purchasers provide their email addresses.

10 Section 5. [NEW MATERIAL] DISCLOSURE REQUIREMENTS. -- The
11 notice required under Paragraph (4) of Subsection B of Section
12 4 of the Cigarette Delivery Sales Act shall include a prominent
13 and legible statement that:

14 A. cigarette sales to individuals under the age of
15 eighteen are illegal;

16 B. includes one of the warnings set forth in 15
17 USCA 1333(a)(1), rotated quarterly;

18 C. sales of cigarettes are restricted to
19 individuals who provide verifiable proof of age in accordance
20 with Section 4 of the Cigarette Delivery Sales Act; and

21 D. cigarette sales are taxable under the Cigarette
22 Tax Act with an explanation of how such tax has been or will be
23 paid with respect to the delivery sale.

24 Section 6. [NEW MATERIAL] SHIPPING REQUIREMENTS. --

25 A. A person who mails or ships cigarettes in

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1 connection with a delivery sale order shall:

2 (1) include as part of the shipping documents
3 a clear and conspicuous statement as follows: "CIGARETTES:
4 NEW MEXICO LAW PROHIBITS SHIPPING TO INDIVIDUALS UNDER THE AGE
5 OF 18 AND REQUIRES PAYMENT OF ALL APPLICABLE TAXES";

6 (2) use a method of shipping that obligates
7 the delivery service to require:

8 (a) the purchaser who placed the
9 delivery sale order, or an adult designated by the purchaser,
10 to sign for and accept delivery of the shipping container; and

11 (b) proof, in the form of a valid
12 government-issued identification bearing a photograph of the
13 individual who signs for and accepts delivery, that
14 demonstrates that: 1) the individual is either the addressee
15 or an adult designated by the addressee; and 2) the individual
16 is at least eighteen years old; provided that such proof shall
17 be required only if the individual appears to be under twenty-
18 seven years of age; and

19 (3) provide to the delivery service evidence
20 of full compliance with Section 8 of the Cigarette Delivery
21 Sales Act.

22 B. If a person taking a delivery sale order
23 delivers cigarettes without using a third-party delivery
24 service, that person shall comply with all requirements of the
25 Cigarette Delivery Sales Act applicable to a delivery service.

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1 C. A delivery service shall fulfill the
2 requirements described in Paragraph (2) of Subsection A of this
3 section if it is obligated to do so under a method of shipping.

4 D. A delivery service that has reason to know it is
5 delivering a package that contains cigarettes shall not:

6 (1) ship or deliver cigarettes without first
7 receiving evidence of full compliance with Section 8 of the
8 Cigarette Delivery Sales Act; or

9 (2) ship or deliver cigarettes without
10 requiring the cigarettes to be shipped in accordance with the
11 method of shipping described in Paragraph (2) of Subsection A
12 of this section.

13 E. Failure to comply with the provisions of this
14 section is a violation of the Cigarette Delivery Sales Act.

15 Section 7. [NEW MATERIAL] REGISTRATION AND REPORTING
16 REQUIREMENTS. --

17 A. A person who sells or transfers cigarettes for
18 profit by means of a delivery sale shall file with the
19 department a statement setting forth that person's name, trade
20 name and address of the person's principal place of business
21 and any other place of business.

22 B. No later than the tenth day of each calendar
23 month, a person who has sold or transferred cigarettes for
24 profit by means of a delivery sale during the previous calendar
25 month shall file with the department a memorandum or a copy of

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1 an invoice from each delivery sale made, providing:

2 (1) the name and address of the individual to
3 whom the delivery sale was made; and

4 (2) the brands and quantity of cigarettes sold
5 in the delivery sale.

6 C. Satisfaction of the requirements of 15 USCA 376
7 meets the requirements of this section.

8 Section 8. [NEW MATERIAL] COLLECTION OF TAXES. -- A person
9 who sells or transfers cigarettes for profit by means of a
10 delivery sale shall collect and remit to the department all
11 taxes levied by New Mexico with respect to the delivery sale,
12 except that the remission of excise taxes shall not be required
13 to the extent that there are New Mexico tax stamps affixed to
14 the cigarettes as required under the Cigarette Tax Act.

15 Section 9. [NEW MATERIAL] PENALTIES. --

16 A. A civil fine of not more than one thousand
17 dollars (\$1,000) shall be imposed the first time a person
18 violates a provision of the Cigarette Delivery Sales Act. In
19 case of a second or subsequent violation, the person shall be
20 fined not less than one thousand dollars (\$1,000) and not more
21 than five thousand dollars (\$5,000).

22 B. A person who knowingly violates a provision of
23 the Cigarette Delivery Sales Act or who knowingly and falsely
24 submits a certification in another person's name under
25 Paragraph (2) of Subsection B of Section 4 of the Cigarette

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1 Delivery Sales Act is guilty of a fourth degree felony and
2 shall be sentenced in accordance with the provisions of Section
3 31-18-15 NMSA 1978.

4 C. A person who fails to pay a tax required in
5 connection with a delivery sale shall pay, in addition to any
6 other penalty, a penalty of five hundred percent of the tax due
7 but unpaid.

8 D. Cigarettes sold or attempted to be sold in a
9 delivery sale in violation of the Cigarette Delivery Sales Act
10 shall be forfeited to the department pursuant to the Forfeiture
11 Act.

12 E. All fixtures, equipment, materials and personal
13 property on the premises of a person who, with intent to
14 defraud, fails to satisfy a requirement of the Cigarette
15 Delivery Sales Act shall be forfeited to the department
16 pursuant to the Forfeiture Act.

17 Section 10. [NEW MATERIAL] ENFORCEMENT. --The attorney
18 general or a person holding a permit under 26 USCA 5713 may
19 bring an action to prevent or restrain violations of the
20 Cigarette Delivery Sales Act.

21 Section 11. Section 7-12-2 NMSA 1978 (being Laws 1971,
22 Chapter 77, Section 2, as amended) is amended to read:

23 "7-12-2. DEFINITIONS. --As used in the Cigarette Tax Act:

24 A. "cigarette" means [any] a roll of tobacco ~~[or~~
25 ~~any substitute therefor]~~ wrapped in paper or [any] a substance

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1 ~~[other than]~~ not containing tobacco, and "cigarette" includes
2 bidis and kreteks;

3 ~~[B. "person" means any individual, estate, trust,~~
4 ~~receiver, cooperative association, club, corporation, company,~~
5 ~~firm, partnership, joint venture, syndicate or other entity;~~

6 ~~C.]~~ B. "department" means the taxation and revenue
7 department, the secretary of taxation and revenue or any
8 employee of the department exercising authority lawfully
9 delegated to that employee; [by the secretary;

10 ~~D. "secretary" means the secretary of taxation and~~
11 ~~revenue;]~~

12 C. "distributor" means a person, other than a
13 retailer, who sells or distributes cigarettes in New Mexico.

14 "Distributor" does not include:

15 (1) a cigarette manufacturer, export warehouse
16 proprietor or an importer with a valid permit under 26 USCA
17 5713 if such a person sells cigarettes in New Mexico only to
18 distributors who hold valid licenses under the laws of a state
19 or sells to an export warehouse proprietor or to another
20 manufacturer; or

21 (2) a common or contract carrier transporting
22 cigarettes under a bill of lading or freight bill, or a person
23 who ships cigarettes through the state by a common or contract
24 carrier under a bill of lading or freight bill;

25 D. "license" means a license granted under the

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1 Cigarette Tax Act that authorizes the holder to conduct
2 business as a manufacturer, distributor or retailer of
3 cigarettes;

4 E. "manufacturer" means a person that manufactures,
5 fabricates, assembles, processes or labels a cigarette or that
6 imports from outside the United States, directly or indirectly,
7 a finished cigarette for sale or distribution in the United
8 States;

9 F. "master settlement agreement" means the
10 settlement agreement and related documents entered into on
11 November 23, 1998 by the state and leading United States
12 tobacco product manufacturers;

13 G. "package" means the individual pack, box or
14 other container that contains cigarettes, but "package" does
15 not include a container that itself contains other containers,
16 such as a carton of cigarettes;

17 H. "retailer" means a person, whether located
18 within or outside New Mexico, that sells or distributes
19 cigarettes to a consumer in New Mexico; and

20 ~~[E.]~~ I. "stamp" means [any authorized label which
21 ~~is issued to cover the tax in multiples of five cigarettes] an~~
22 adhesive label issued and authorized by the department to be
23 affixed to cigarette packages for excise tax purposes or to
24 indicate that the cigarettes are intended for sale or
25 distribution in a transaction that is exempt from the cigarette

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1 tax and upon which is printed the words "State of New Mexico"
2 and "tobacco tax" [~~and which is coated with an adhesive to~~
3 ~~affix the stamp to a package so that the stamp, once affixed,~~
4 ~~cannot be removed without destroying it;~~

5 F. ~~"stamped" means a package or container of~~
6 ~~cigarettes to which a cigarette tax stamp has been affixed as~~
7 ~~provided in the Cigarette Tax Act; and~~

8 G. ~~"unstamped" means a package or container of~~
9 ~~cigarettes to which the cigarette tax stamp provided for in the~~
10 ~~Cigarette Tax Act has not been affixed]. "~~

11 Section 12. Section 7-12-3.1 NMSA 1978 (being Laws 1986,
12 Chapter 13, Section 3, as amended) is amended to read:

13 "7-12-3.1. CIGARETTE INVENTORY TAX--IMPOSITION OF TAX--
14 DATE PAYMENT OF TAX DUE. --

15 A. A cigarette inventory tax is imposed, measured
16 by the quantity of cigarette stamps, whether or not affixed to
17 packages of cigarettes, in the possession of a person who is
18 required by Subsection [€] A of Section 7-12-5 NMSA 1978 to
19 affix stamps on the date on which an increase in the excise tax
20 imposed by Section 7-12-3 NMSA 1978 is effective. The taxable
21 event is the existence of an inventory of cigarette stamps,
22 whether or not affixed to packages of cigarettes, in the
23 possession of a person who is required by Subsection [€] A of
24 Section 7-12-5 NMSA 1978 to affix stamps on the date on which
25 an increase in the excise tax imposed by Section 7-12-3 NMSA

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1 1978 is effective. The rate of the cigarette inventory tax to
2 apply to cigarette stamps held in inventory shall be the amount
3 of the increase in the cigarette tax imposed by Section 7-12-3
4 NMSA 1978.

5 B. The cigarette inventory tax is to be paid to the
6 department on or before the twenty-fifth day of the month
7 following the month in which the taxable event occurs."

8 Section 13. Section 7-12-3.2 NMSA 1978 (being Laws 1986,
9 Chapter 13, Section 4) is amended to read:

10 "7-12-3.2. CIGARETTE INVENTORIES. --

11 A. On any date on which the excise tax imposed by
12 Section 7-12-3 NMSA 1978 is increased, each person who is
13 required by Subsection [C] A of Section 7-12-5 NMSA 1978 to
14 affix stamps shall take inventory of cigarette stamps on hand,
15 including stamps affixed to packages of cigarettes.

16 B. Each person required to take an inventory by
17 Subsection A of this section shall report the total number of
18 cigarette stamps in inventory on the date on which the tax
19 imposed by Section 7-12-3 NMSA 1978 changes and pay any tax due
20 imposed by Section 7-12-3.1 NMSA 1978. "

21 Section 14. Section 7-12-5 NMSA 1978 (being Laws 1971,
22 Chapter 77, Section 5, as amended) is amended to read:

23 "7-12-5. AFFIXING STAMPS. --

24 A. Except as provided in Section 7-12-6 NMSA 1978,
25 all cigarettes [~~the sale, gift or consumption of which is~~

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1 ~~subject to the cigarette tax~~] shall be placed in packages or
2 containers to which a stamp may be affixed. Only a distributor
3 with a valid license issued pursuant to the Cigarette Tax Act
4 may purchase or obtain cigarette stamps. Stamps shall be
5 applied by the licensed distributor to each package of
6 cigarettes to be sold or distributed in New Mexico within
7 seventy-two hours of receipt of those packages. A distributor
8 shall not sell or provide cigarette stamps to another
9 distributor or person.

10 B. Distributors shall apply stamps only to
11 cigarette packages that they have received directly from a
12 manufacturer or importer of cigarettes who possesses a valid
13 and current permit under 26 USCA 5713.

14 ~~[B.]~~ C. Packages or containers ~~[to which a stamp is~~
15 ~~required to be affixed and which]~~ that contain cigarettes that
16 are not in multiples of five cigarettes shall have affixed a
17 stamp of the next higher multiple of five cigarettes.

18 ~~[C.]~~ D. Unless the requirements of this section are
19 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall
20 be affixed to each package ~~[or container of cigarettes, the~~
21 ~~sale, gift or consumption of which is subject to the cigarette~~
22 ~~tax. The stamp shall be affixed by any person who sells in New~~
23 ~~Mexico cigarettes manufactured by that person or who receives~~
24 ~~on consignment or buys unstamped cigarettes for sale, gift or~~
25 ~~consumption in New Mexico]~~ of cigarettes subject to the

1 cigarette tax pursuant to Section 7-12-3 NMSA 1978, and a tax-
2 exempt stamp shall be affixed to each package of cigarettes not
3 subject to the cigarette tax pursuant to Section 7-12-4 NMSA
4 1978.

5 [D-] E. Stamps shall be affixed inside the
6 boundaries of New Mexico, unless the department has granted a
7 license allowing a person to affix stamps outside New Mexico."

8 Section 15. Section 7-12-6 NMSA 1978 (being Laws 1971,
9 Chapter 77, Section 6, as amended) is amended to read:

10 "7-12-6. WAIVER OF REQUIREMENT THAT STAMPS BE
11 AFFIXED. --The requirement imposed in Section 7-12-5 NMSA 1978
12 that stamps be affixed to packages or containers of cigarettes
13 is waived if:

14 A. the cigarettes are sold on railroad passenger
15 trains in New Mexico. When unstamped cigarettes are sold on
16 railroad passenger trains in New Mexico, the seller shall remit
17 to the department the tax imposed in Section 7-12-3 NMSA 1978
18 on or before the twenty-fifth day of the month following the
19 month in which sales of unstamped cigarettes are made on
20 railroad passenger trains in New Mexico; [or]

21 B. the cigarettes are distributed by a [cigarette]
22 manufacturer to consumers within [the state of] New Mexico as
23 free samples. When unstamped cigarettes are distributed by a
24 [cigarette] manufacturer in New Mexico as free samples, the
25 manufacturer shall remit to the department the tax imposed in

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1 Section 7-12-3 NMSA 1978 on or before the twenty-fifth day of
2 the month following the month in which distributions of
3 unstamped cigarettes are made; or

4 C. the cigarettes are distributed by a manufacturer
5 pursuant to federal regulations and are exempt from tax under
6 26 USCA 5704. "

7 Section 16. Section 7-12-7 NMSA 1978 (being Laws 1971,
8 Chapter 77, Section 7, as amended) is amended to read:

9 "7-12-7. SALE OF STAMPS--NUMBERING--PRICES.--

10 A. The department shall sell stamps [~~to any person~~
11 ~~who sells in New Mexico cigarettes manufactured by that person~~
12 ~~and to any person who receives on consignment or buys unstamped~~
13 ~~cigarettes for sale, gift or consumption in New Mexico,~~
14 ~~provided such persons are registered with the department under~~
15 ~~the provisions of Section 7-1-12 NMSA 1978] only to
16 distributors licensed pursuant to the Cigarette Tax Act.~~

17 B. Each roll or group of sheets of stamps shall
18 have a separate serial number that shall be legible at the
19 point of sale. The department shall keep records of which
20 distributor purchases each roll or group of sheets. Stamps
21 bearing the same serial number shall not be sold to more than
22 one distributor.

23 C. Tax stamps shall be sold at their face value
24 with the following discounts:

25 (1) four percent less than the face value of

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1 the first thirty thousand dollars (\$30,000) of stamps purchased
2 in one calendar month;

3 (2) three percent less than the face value of
4 the second thirty thousand dollars (\$30,000) of stamps
5 purchased in one calendar month; and

6 (3) two percent less than the face value of
7 all stamps purchased in excess of sixty thousand dollars
8 (\$60,000) in one calendar month.

9 ~~[B.]~~ D. If the face value of stamps sold in a
10 single sale is less than one thousand dollars (\$1,000), the
11 discount provided for in this section shall not be allowed.

12 ~~[C.]~~ E. Payment for stamps shall be made on or
13 before the twenty-fifth day of the month following the month in
14 which the sale of stamps by the department is made.

15 F. Tax-exempt stamps shall be provided only to
16 licensed distributors and shall be free of charge; provided
17 that the distributor is in full compliance with the reporting
18 requirements of the Cigarette Tax Act and rules promulgated
19 pursuant to that act."

20 Section 17. Section 7-12-8 NMSA 1978 (being Laws 1971,
21 Chapter 77, Section 8, as amended) is amended to read:

22 "7-12-8. REDEMPTION OF STAMPS. --The department shall
23 redeem unused or destroyed stamps at the price paid by the
24 ~~[buyer]~~ licensed distributor, provided acceptable proof of
25 ~~[such]~~ destruction is provided the department. The department

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1 shall redeem licensed distributors for stamps affixed to
2 packages of cigarettes that have become unfit for use,
3 unsalable, destroyed, returned for credit or replaced, upon
4 presentation of evidence by the distributor that the cigarettes
5 will not be sold to consumers in New Mexico. It is presumed
6 that the stamps presented for redemption were the last stamps
7 bought in the month in which the sale of the stamps was made.
8 If the month in which the sale was made is unknown, the amount
9 to be paid by the department upon redemption shall be computed
10 as if the stamps presented for redemption were the last stamps
11 bought in the average monthly number of stamps bought during
12 the preceding calendar year. "

13 Section 18. Section 7-12-9 NMSA 1978 (being Laws 1971,
14 Chapter 77, Section 9, as amended) is amended to read:

15 "7-12-9. LICENSE NECESSARY TO ENGAGE IN BUSINESS OF
16 SELLING CIGARETTES IN NEW MEXICO. --

17 A. A person shall not engage in business as a
18 manufacturer, distributor or retailer of cigarettes without
19 first obtaining a license from the department.

20 B. A manufacturer or distributor shall sell or
21 distribute cigarettes within New Mexico only to a distributor
22 or a retailer with a valid current license. A distributor or
23 retailer shall obtain cigarettes within New Mexico only from a
24 manufacturer or distributor with a valid current license.

25 C. The department shall, by rule, specify the

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1 length of time for which a license remains in effect, except
2 that a license issued under this section shall not remain in
3 effect for longer than three years.

4 D. An application for a license shall be submitted
5 on a form established by the department and shall provide:

6 (1) the name and address of the applicant and,
7 if the applicant is a firm, partnership or association, the
8 name and address of each of its members and, if the applicant
9 is a corporation, the name and address of each of its officers;

10 (2) the address of the applicant's principal
11 place of business and every location where the applicant's
12 business is conducted; and

13 (3) any other information the department may
14 require.

15 E. A person engaging in business as a retailer,
16 distributor or manufacturer or a combination of these
17 activities shall obtain a separate license for each activity.

18 F. A license may not be granted, maintained or
19 renewed if any of the following conditions applies to the
20 applicant:

21 (1) the applicant owes five hundred dollars
22 (\$500) or more in delinquent cigarette taxes;

23 (2) the applicant had a manufacturer,
24 distributor or retailer license revoked by the department
25 within the past two years;

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1 (3) the applicant was convicted of a crime
2 relating to cigarettes;

3 (4) the applicant was convicted of a felony;

4 (5) the applicant is a manufacturer but not a
5 participating manufacturer as defined in Section II(jj) of the
6 master settlement agreement and the applicant is not in
7 compliance with Section 6-4-13 NMSA 1978; or

8 (6) the applicant is a manufacturer and
9 imports cigarettes into the United States that are in violation
10 of 19 USCA 1681a, or manufactures cigarettes that do not comply
11 with the federal Cigarette Labeling and Advertising Act.

12 G. As used in Subsection F of this section,
13 "applicant" includes a person or persons owning, directly or
14 indirectly, in the aggregate, more than ten percent of the
15 ownership interest in the business holding or applying for a
16 license.

17 H. In addition to any civil or criminal penalty
18 provided by law, upon a finding that a licensee has violated a
19 provision of the Cigarette Tax Act, the department may revoke
20 or suspend the license or licenses of the licensee.

21 I. The department shall create and maintain a web
22 site listing all current licensees and the licenses they hold
23 pursuant to the Cigarette Tax Act.

24 J. [Each] A person engaged in the business of
25 selling cigarettes in New Mexico shall register and comply with

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1 the provisions of Section 7-1-12 NMSA 1978.

2 K. Every person selling cigarettes in New Mexico
3 shall furnish [~~such~~] information [~~as may be~~] requested by the
4 department concerning that person's vending machines or other
5 places of business where cigarettes are sold."

6 Section 19. Section 7-12-10 NMSA 1978 (being Laws 1971,
7 Chapter 77, Section 10, as amended) is amended to read:

8 "7-12-10. RETENTION OF INVOICES AND RECORDS--INSPECTION
9 BY DEPARTMENT.--

10 [~~A. Each person who sells cigarettes in New Mexico
11 for resale in New Mexico shall maintain a file of copies of the
12 invoices of sale for three years from the end of the year in
13 which the sale was made. The invoices shall indicate the date
14 of sale, quantity of cigarettes sold, the price received and
15 the name and address of the buyer.~~

16 [~~B. Each person who sells cigarettes in New Mexico
17 shall maintain a file of copies of the invoices under which the
18 cigarettes were purchased for three years from the end of the
19 year during which cigarettes were purchased. The invoices
20 shall indicate the date of purchase, the quantity of cigarettes
21 purchased, the price paid and the name and address of the
22 seller.~~

23 [~~C. All invoices required to be kept under this
24 section may be inspected by the department along with any stock
25 of cigarettes in the possession of the seller.]~~

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1 A. A distributor, retailer or manufacturer shall
2 maintain copies of invoices for each of its facilities for
3 every transaction involving a cigarette sale, purchase,
4 transfer, receipt or consignment. The invoices shall show the
5 name and address of the seller, purchaser, consignor or
6 consignee, or the address of another facility of the same
7 distributor, retailer or manufacturer, the date, the price and
8 the quantity by each brand of cigarettes involved in each
9 transaction.

10 B. The records required under Subsection A of this
11 section shall be preserved on the premises described in the
12 license in such a manner as to ensure permanency and
13 accessibility for inspection at reasonable hours by the
14 department. With the department's permission, manufacturers,
15 distributors and retailers with multiple places of business may
16 retain centralized records, but shall transmit duplicates of
17 the records to each place of business within twenty-four hours
18 upon the request of the department.

19 C. The records required by Subsection A of this
20 section shall be retained for a period of three years from the
21 end of the year in which the transaction occurred unless
22 otherwise required by law to be retained for a longer period of
23 time.

24 D. The department and the secretary of the United
25 States department of treasury, or a designee, may inspect the

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1 reports and records required under the Cigarette Tax Act along
2 with any stock of cigarettes in the possession of the
3 manufacturer, distributor or retailer. The department at its
4 sole discretion may share those records and reports with law
5 enforcement officials of the federal government, other states
6 and international authorities.

7 E. The department shall have the authority to enter
8 and inspect, without a warrant during normal business hours and
9 with a warrant during non-business hours, the facilities and
10 records of a manufacturer, distributor or retailer.

11 F. If the department or a law enforcement officer
12 has reasonable grounds to believe that a vehicle is
13 transporting cigarettes in violation of the Cigarette Tax Act,
14 the department or the law enforcement officer is authorized to
15 stop the vehicle and to inspect it for contraband cigarettes."

16 Section 20. Section 7-12-11 NMSA 1978 (being Laws 1971,
17 Chapter 77, Section 11) is amended to read:

18 "7-12-11. EXPORT SELLERS--PHYSICAL SEGREGATION OF
19 CIGARETTES TO BE EXPORTED. -- [~~Any person~~]

20 A. A distributor selling and shipping cigarettes
21 outside New Mexico may maintain unstamped cigarettes on [~~his~~]
22 the distributor's premises if the unstamped cigarettes to be
23 shipped outside the state are kept in a separate part of [~~his~~]
24 the distributor's place of business, physically segregated from
25 cigarettes to be sold inside New Mexico and clearly identified

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1 as cigarettes for shipment outside the state. Unstamped
2 cigarette packages shall not be transferred by a distributor to
3 another facility of the distributor or to another person within
4 New Mexico. If cigarettes to be sold outside New Mexico are
5 intermingled with cigarettes to be sold inside New Mexico, they
6 shall be stamped and treated for purposes of the Cigarette Tax
7 Act as cigarettes to be sold inside New Mexico.

8 B. A person doing business as both a distributor
9 and a retailer shall maintain separate areas for stamped and
10 unstamped cigarette packages."

11 Section 21. Section 7-12-12 NMSA 1978 (being Laws 1971,
12 Chapter 77, Section 12, as amended) is amended to read:

13 "7-12-12. SHIPMENT OF UNSTAMPED CIGARETTES IN NEW
14 MEXICO. --

15 A. A person who ships unstamped cigarette packages
16 into New Mexico other than to a licensed distributor shall
17 first file a notice of the shipment with the department.

18 B. A person who transports unstamped cigarette
19 packages into or within New Mexico shall carry, in the
20 transporting vehicle, invoices or equivalent documents
21 applicable to all cigarettes in the shipment. The invoices or
22 documents shall show the name and address of the consignor or
23 seller, the name and address of the consignee or purchaser and
24 the quantity of each brand of cigarettes transported.

25 C. Subsections A and B of this section shall not

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1 apply to a common or contract carrier transporting cigarettes
2 through New Mexico to another location under a proper bill of
3 lading or freight bill that states the quantity, source and
4 destination of the cigarettes.

5 D. The [secretary] department may, by [regulation]
6 rule, require and prescribe the contents of reports to be filed
7 with the department by persons transporting unstamped
8 cigarettes in New Mexico. "

9 Section 22. Section 7-12-13 NMSA 1978 (being Laws 1971,
10 Chapter 77, Section 13, as amended) is amended to read:

11 "7-12-13. CIVIL PENALTIES. - -

12 [~~A. Any person selling cigarettes in New Mexico and~~
13 ~~required by the provisions of Section 7-12-10 NMSA 1978 to~~
14 ~~retain invoices who willfully fails to retain such invoices~~
15 ~~shall, upon conviction, be fined not less than twenty-five~~
16 ~~dollars (\$25.00) or more than two hundred dollars (\$200).~~
17 ~~Jurisdiction over such actions is granted to the magistrate~~
18 ~~courts.~~

19 B. ~~Any person not a manufacturer of cigarettes who~~
20 ~~sells cigarettes in New Mexico without the stamps required by~~
21 ~~Section 7-12-5 NMSA 1978 affixed thereto and without that~~
22 ~~requirement having been waived under Section 7-12-6 NMSA 1978~~
23 ~~shall, upon conviction, be fined not less than one hundred~~
24 ~~dollars (\$100) or more than five hundred dollars (\$500) or~~
25 ~~imprisoned not more than ninety days in the county jail, or~~

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1 ~~both. Jurisdiction over such actions is granted to the~~
2 ~~magistrate courts.~~

3 ~~C. The department shall seize and sell cigarettes~~
4 ~~which are not stamped as required by the Cigarette Tax Act.~~
5 ~~The sale shall be made pursuant to the provisions of Sections~~
6 ~~7-1-41 through 7-1-49 and 7-1-51 NMSA 1978. The department~~
7 ~~shall collect the amount of cigarette tax due on such unstamped~~
8 ~~cigarettes, plus fifty percent thereof as penalty, from the~~
9 ~~proceeds of sale.]~~

10 A. Whoever knowingly omits, neglects or refuses to
11 comply with the Cigarette Tax Act shall, in addition to any
12 other penalty provided in that act, be liable for a penalty up
13 to one thousand dollars (\$1,000) to be recovered, with costs of
14 suit, in a civil action.

15 B. Whoever fails to pay a tax imposed by the
16 Cigarette Tax Act at the time due shall, in addition to any
17 other penalty provided in that act, be liable for a penalty of
18 five hundred percent of the tax due but unpaid.

19 C. Cigarettes held for sale or distribution within
20 New Mexico that are in violation of the Cigarette Tax Act, and
21 the machinery used to manufacture the cigarettes, shall be
22 subject to seizure, forfeiture and destruction.

23 D. Fixtures, equipment and all other materials and
24 personal property on the premises of a distributor or retailer
25 shall be forfeited to the state if, with intent to defraud the

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1 state, the distributor or retailer:

2 (1) fails to keep or make a record, return,
3 report or inventory required by the Cigarette Tax Act;

4 (2) keeps or makes a false or fraudulent
5 record, return, report or inventory required by the Cigarette
6 Tax Act;

7 (3) refuses to pay a tax imposed by the
8 Cigarette Tax Act; or

9 (4) attempts to evade or defeat the
10 requirements of the Cigarette Tax Act. "

11 Section 23. A new section of the Cigarette Tax Act is
12 enacted to read:

13 "[NEW MATERIAL] POSSESSION OF UNSTAMPED CIGARETTE
14 PACKAGE. -- Except as otherwise provided in the Cigarette Tax
15 Act, it is unlawful to own, possess, sell or offer for sale an
16 unstamped cigarette package. "

17 Section 24. A new section of the Cigarette Tax Act is
18 enacted to read:

19 "[NEW MATERIAL] REPORTS. --

20 A. A distributor shall submit periodic reports to
21 the department, in the manner and on the form prescribed by the
22 department. A distributor shall submit a separate report for
23 each of its facilities. The information in the report shall be
24 itemized and shall clearly disclose cigarette brands,
25 quantities and the type of stamp applied to cigarette packages.

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1 A report shall include the:

2 (1) inventory of stamped and unstamped
3 cigarette packages held for sale or distribution within New
4 Mexico at the beginning of the reporting period;

5 (2) quantity of stamped cigarette packages
6 held for sale or distribution within New Mexico that were
7 received from another person during the reporting period and
8 the name and address of each person from whom each quantity was
9 received;

10 (3) quantity of New Mexico stamped cigarette
11 packages that were distributed or shipped to another
12 distributor or retailer within New Mexico during the reporting
13 period and the name and address of each person to whom each
14 quantity was distributed or shipped;

15 (4) quantity of New Mexico stamped cigarette
16 packages that were distributed or shipped to another facility
17 of the same distributor within New Mexico during the reporting
18 period and the address of the facility;

19 (5) quantity of stamped cigarette packages
20 that were distributed or shipped within New Mexico to Indian
21 tribal entities or to instrumentalities of the federal
22 government during the reporting period and the name and address
23 of each person, entity or instrumentality to whom each quantity
24 was distributed or shipped;

25 (6) inventory of stamped and unstamped

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1 cigarette packages held for sale or distribution within New
2 Mexico at the end of the reporting period;

3 (7) inventory of cigarette packages held for
4 sale or distribution outside New Mexico at the beginning of the
5 reporting period;

6 (8) quantity of cigarette packages held for
7 sale or distribution outside New Mexico that were received from
8 another person during the reporting period and the name and
9 address of each person from whom each quantity was received;

10 (9) quantity of cigarette packages that were
11 distributed or shipped outside New Mexico during the reporting
12 period;

13 (10) inventory of cigarette packages held for
14 sale or distribution outside New Mexico at the end of the
15 reporting period;

16 (11) number of each type of stamp on hand at
17 the beginning of the reporting period;

18 (12) number of each type of stamp purchased or
19 received during the reporting period;

20 (13) number of each type of stamp applied
21 during the reporting period; and

22 (14) number of each type of stamp on hand at
23 the end of the reporting period.

24 B. A retailer shall submit periodic reports to the
25 department, in the manner and on the form prescribed by the

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1 department. A retailer shall submit a separate report for each
2 facility operated by the retailer. The information in the
3 report shall be itemized and clearly disclose cigarette brands,
4 quantities and the type of stamp applied to the cigarette
5 packages. A report shall contain:

6 (1) the inventory of stamped cigarette
7 packages on hand at the beginning of the reporting period;

8 (2) the quantity of stamped cigarette packages
9 received by the retailer from another person during the
10 reporting period and the name and address of each person from
11 whom each quantity was received;

12 (3) the quantity of stamped cigarette packages
13 distributed or shipped to another retailer during the reporting
14 period and the name and address of each person to whom each
15 quantity was distributed or shipped;

16 (4) the quantity of stamped cigarette packages
17 distributed or shipped to another facility of the same retailer
18 during the reporting period and the address of the facility to
19 which each quantity was distributed or shipped;

20 (5) the quantity of stamped cigarette packages
21 sold to consumers during the reporting period;

22 (6) the inventory of stamped cigarette
23 packages on hand at the end of the reporting period; and

24 (7) each sale of more than four hundred
25 cigarettes, or two cartons, to a person in a single

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1 transaction.

2 C. A manufacturer shall submit periodic reports, in
3 the manner and on the form prescribed by the department. The
4 information in the report shall be itemized to clearly disclose
5 cigarette brands and quantities. The reports shall be provided
6 separately with respect to each of the facilities operated by
7 the manufacturer. A report shall contain the:

8 (1) quantity of cigarette packages that were
9 distributed or shipped to a manufacturer, distributor or
10 retailer within New Mexico during the reporting period and the
11 name and address of each person to whom each quantity was
12 distributed or shipped;

13 (2) quantity of cigarette packages that were
14 distributed or shipped to another facility within New Mexico of
15 the same manufacturer during the reporting period and the
16 address of the facility; and

17 (3) quantity of cigarette packages that were
18 distributed or shipped within New Mexico to Indian tribal
19 entities or instrumentalities of the federal government during
20 the reporting period and the name and address of each person to
21 whom each quantity was distributed or shipped.

22 D. The department may require additional
23 information to be submitted. The department shall establish
24 the reporting period, which shall be no longer than three
25 calendar months and no shorter than one calendar month. "

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1 Section 25. A new section of the Cigarette Tax Act is
2 enacted to read:

3 "[NEW MATERIAL] CRIMINAL PENALTIES. --

4 A. Whoever, with the intent to defraud, fails to
5 keep or make a record, return, report or inventory required by
6 the Cigarette Tax Act or by rule promulgated pursuant to that
7 act is guilty of a fourth degree felony and shall be sentenced
8 in accordance with the provisions of Section 31-18-15 NMSA
9 1978.

10 B. Whoever, with the intent to defraud, keeps or
11 makes a fraudulent record, return, report or inventory required
12 by the Cigarette Tax Act or by rule promulgated pursuant to
13 that act is guilty of a fourth degree felony and shall be
14 sentenced in accordance with the provisions of Section 31-18-15
15 NMSA 1978.

16 C. Whoever, with the intent to defraud, refuses to
17 pay or attempts to evade or defeat payment of the tax imposed
18 by the Cigarette Tax Act is guilty of a fourth degree felony
19 and shall be sentenced in accordance with the provisions of
20 Section 31-18-15 NMSA 1978.

21 D. Whoever, with the intent to defraud, fails to
22 comply with a requirement of the Cigarette Tax Act is guilty of
23 a fourth degree felony and shall be sentenced in accordance
24 with the provisions of Section 31-18-15 NMSA 1978.

25 E. Notwithstanding any other provision of law, the

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1 sale or possession for sale of counterfeit cigarettes shall
2 result in the seizure of the product and related machinery by
3 the department or a law enforcement agency and shall be
4 punishable as follows:

5 (1) a first violation with a quantity of less
6 than two cartons of counterfeit cigarettes, or the equivalent,
7 shall be punished by a fine of not more than one thousand
8 dollars (\$1,000) or imprisonment for a definite term not to
9 exceed eighteen months, or both;

10 (2) a second and subsequent violation with a
11 quantity of less than two cartons of counterfeit cigarettes, or
12 the equivalent, shall be punished by a fine not to exceed five
13 thousand dollars (\$5,000) or imprisonment for a definite term
14 not to exceed eighteen months, or both, and shall also result
15 in the revocation by the department of the manufacturer's,
16 distributor's or retailer's license;

17 (3) a first violation with a quantity of two
18 cartons or more of counterfeit cigarettes, or the equivalent,
19 shall be punished by a fine not to exceed two thousand dollars
20 (\$2,000) or imprisonment for a definite term not to exceed
21 eighteen months, or both; or

22 (4) a second and subsequent violation with a
23 quantity of two cartons or more of counterfeit cigarettes, or
24 the equivalent, shall be punished by a fine not to exceed fifty
25 thousand dollars (\$50,000) or imprisonment for a definite term

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1 not to exceed eighteen months, or both, and shall also result
2 in the revocation by the department of the manufacturer's,
3 distributor's or retailer's license.

4 F. As used this section, "counterfeit cigarettes"
5 include cigarette packs with counterfeit stamps, cigarettes
6 that have false manufacturing labels or cigarette packs without
7 tax or tax-exempt stamps.

8 G. A counterfeit cigarette seized by the department
9 or by a law enforcement agency shall be destroyed.

10 H. Except for those violations described in
11 Subsections A through E of this section, whoever violates a
12 provision of the Cigarette Tax Act or a rule promulgated
13 pursuant to that act is guilty of a misdemeanor and shall be
14 sentenced in accordance with Section 31-19-1 NMSA 1978. "