

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 58

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

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"

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, gross receipts
20 tax, 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 a licensed distributor of cigarettes or a
25 retailer.

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

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 a provision 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

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 under Paragraph (2) of Subsection B of
25 Section 4 of the Cigarette Delivery Sales Act is guilty of a

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1 petty misdemeanor and shall be sentenced in accordance with the
2 provisions of Section 31-19-1 NMSA 1978.

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

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

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

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

17 "7-12-2. DEFINITIONS. --As used in the Cigarette Tax Act:

18 A. "cigarette" means ~~[any]~~ a roll of tobacco ~~[or~~
19 ~~any substitute therefor]~~ wrapped in paper or ~~[any]~~ in a
20 substance ~~[other than]~~ not containing tobacco, and "cigarette"
21 includes bidis and kreteks;

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

25 ~~C.]~~ B. "department" means the taxation and revenue

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1 department, the secretary of taxation and revenue or any
 2 employee of the department exercising authority lawfully
 3 delegated to that employee; ~~[by the secretary;~~

4 ~~D. "secretary" means the secretary of taxation and~~
 5 ~~revenue;]~~

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

8 "Distributor" does not include:

9 (1) a cigarette manufacturer, export warehouse
 10 proprietor or an importer with a valid permit under 26 USCA
 11 5713 if such a person sells cigarettes in New Mexico only to
 12 distributors who hold valid licenses under the laws of a state
 13 or sells to an export warehouse proprietor or to another
 14 manufacturer; or

15 (2) a common or contract carrier transporting
 16 cigarettes under a bill of lading or freight bill, or a person
 17 who ships cigarettes through the state by a common or contract
 18 carrier under a bill of lading or freight bill;

19 D. "license" means a license granted under the
 20 Cigarette Tax Act that authorizes the holder to conduct
 21 business as a manufacturer or distributor of cigarettes;

22 E. "manufacturer" means a person that manufactures,
 23 fabricates, assembles, processes or labels a cigarette or that
 24 imports from outside the United States, directly or indirectly,
 25 a finished cigarette for sale or distribution in the United

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1 States;

2 F. "master settlement agreement" means the
3 settlement agreement and related documents entered into on
4 November 23, 1998 by the state and leading United States
5 tobacco product manufacturers;

6 G. "package" means the individual pack, box or
7 other container that contains cigarettes, but "package" does
8 not include a container that itself contains other containers,
9 such as a carton of cigarettes;

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

13 ~~[E.] I. "stamp" means [any authorized label which~~
14 ~~is issued to cover the tax in multiples of five cigarettes] an~~
15 ~~adhesive label issued and authorized by the department to be~~
16 ~~affixed to cigarette packages for excise tax purposes or to~~
17 ~~indicate that the cigarettes are intended for sale or~~
18 ~~distribution in a transaction that is exempt from the cigarette~~
19 ~~tax and upon which is printed the words "State of New Mexico"~~
20 ~~and "tobacco tax" [and which is coated with an adhesive to~~
21 ~~affix the stamp to a package so that the stamp, once affixed,~~
22 ~~cannot be removed without destroying it;~~

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

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

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

6 "7-12-3.1. CIGARETTE INVENTORY TAX--IMPOSITION OF TAX--
 7 DATE PAYMENT OF TAX DUE. --

8 A. A cigarette inventory tax is imposed, measured
 9 by the quantity of cigarette stamps, ~~[whether or]~~ not affixed
 10 to packages of cigarettes, in the possession of a person who is
 11 required by Subsection [C] A of Section 7-12-5 NMSA 1978 to
 12 affix stamps on the date on which an increase in the excise tax
 13 imposed by Section 7-12-3 NMSA 1978 is effective. The taxable
 14 event is the existence of an inventory of cigarette stamps,
 15 ~~[whether or]~~ not affixed to packages of cigarettes, in the
 16 possession of a person who is required by Subsection [C] A of
 17 Section 7-12-5 NMSA 1978 to affix stamps on the date on which
 18 an increase in the excise tax imposed by Section 7-12-3 NMSA
 19 1978 is effective. The rate of the cigarette inventory tax to
 20 apply to cigarette stamps not affixed and held in inventory
 21 shall be the amount of the increase in the cigarette tax
 22 imposed by Section 7-12-3 NMSA 1978. An increase in the
 23 cigarette tax does not apply to cigarette packages on which a
 24 stamp has already been affixed on the effective date of the
 25 increase.

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

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

6 "7-12-3.2. CIGARETTE INVENTORIES. --

7 A. On any date on which the excise tax imposed by
8 Section 7-12-3 NMSA 1978 is increased, each person who is
9 required by Subsection [E] A of Section 7-12-5 NMSA 1978 to
10 affix stamps shall take inventory of cigarette stamps on hand
11 [~~including stamps~~] that are not affixed to packages of
12 cigarettes.

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

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

20 "7-12-5. AFFIXING STAMPS. --

21 A. Except as provided in Section 7-12-6 NMSA 1978,
22 all cigarettes [~~the sale, gift or consumption of which is~~
23 ~~subject to the cigarette tax~~] shall be placed in packages or
24 containers to which a stamp may be affixed. Only a distributor
25 with a valid license issued pursuant to the Cigarette Tax Act

1 may purchase or obtain cigarette stamps. Stamps shall be
 2 applied by the licensed distributor to each package of
 3 cigarettes to be sold or distributed in New Mexico within
 4 seventy-two hours of receipt of those packages. A distributor
 5 shall not sell or provide cigarette stamps to another
 6 distributor or person.

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

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

15 ~~[C-]~~ D. Unless the requirements of this section are
 16 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp shall
 17 be affixed to each package ~~[or container of cigarettes, the~~
 18 ~~sale, gift or consumption of which is subject to the cigarette~~
 19 ~~tax. The stamp shall be affixed by any person who sells in New~~
 20 ~~Mexico cigarettes manufactured by that person or who receives~~
 21 ~~on consignment or buys unstamped cigarettes for sale, gift or~~
 22 ~~consumption in New Mexico]~~ of cigarettes subject to the
 23 cigarette tax pursuant to Section 7-12-3 NMSA 1978, and a tax-
 24 exempt stamp shall be affixed to each package of cigarettes not
 25 subject to the cigarette tax pursuant to Section 7-12-4 NMSA

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1 1978.

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

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

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

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

18 B. the cigarettes are distributed by a [cigarette]
19 manufacturer to consumers within [the state of] New Mexico as
20 free samples. When unstamped cigarettes are distributed by a
21 [cigarette] manufacturer in New Mexico as free samples, the
22 manufacturer shall remit to the department the tax imposed in
23 Section 7-12-3 NMSA 1978 on or before the twenty-fifth day of
24 the month following the month in which distributions of
25 unstamped cigarettes are made; or

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1 C. the cigarettes are distributed by a manufacturer
 2 pursuant to federal regulations and are exempt from tax under
 3 26 USCA 5704. "

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

6 "7-12-7. SALE OF STAMPS--NUMBERING--PRICES.--

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

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

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

22 (1) four percent less than the face value of
 23 the first thirty thousand dollars (\$30,000) of stamps purchased
 24 in one calendar month;

25 (2) three percent less than the face value of

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

3 (3) two percent less than the face value of
4 all stamps purchased in excess of sixty thousand dollars
5 (\$60,000) in one calendar month.

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

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

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

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

19 "7-12-8. REDEMPTION OF STAMPS. --The department shall
20 redeem unused or destroyed stamps at the price paid by the
21 [~~buyer~~] licensed distributor, provided acceptable proof of
22 [~~such~~] destruction is provided the department. The department
23 shall redeem licensed distributors for stamps affixed to
24 packages of cigarettes that have become unfit for use,
25 unsalable, destroyed, returned for credit or replaced, upon

1 presentation of evidence by the distributor that the cigarettes
 2 will not be sold to consumers in New Mexico. It is presumed
 3 that the stamps presented for redemption were the last stamps
 4 bought in the month in which the sale of the stamps was made.
 5 If the month in which the sale was made is unknown, the amount
 6 to be paid by the department upon redemption shall be computed
 7 as if the stamps presented for redemption were the last stamps
 8 bought in the average monthly number of stamps bought during
 9 the preceding calendar year. "

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

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

14 A. A person shall not engage in business as a
 15 manufacturer or distributor of cigarettes without first
 16 obtaining a license from the department.

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

22 C. The department shall, by rule, specify the
 23 length of time for which a license remains in effect, except
 24 that a license issued under this section shall not remain in
 25 effect for longer than three years.

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

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

7 (2) the address of the applicant's principal
8 place of business and every location where the applicant's
9 business is conducted; and

10 (3) any other information the department may
11 require.

12 E. A person engaging in business as a distributor
13 or manufacturer or a combination of these activities shall
14 obtain a separate license for each activity.

15 F. A license may not be granted, maintained or
16 renewed if any of the following conditions applies to the
17 applicant:

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

20 (2) the applicant had a manufacturer or
21 distributor license revoked by the department within the past
22 two years;

23 (3) the applicant was convicted of a crime
24 relating to cigarettes;

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

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

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

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

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

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

22 J. [Each] A person engaged in the business of
 23 selling cigarettes in New Mexico shall register and comply with
 24 the provisions of Section 7-1-12 NMSA 1978.

25 K. Every person selling cigarettes in New Mexico

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1 shall furnish [~~such~~] information [~~as may be~~] requested by the
2 department concerning that person's vending machines or other
3 places of business where cigarettes are sold."

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

6 "7-12-10. RETENTION OF INVOICES AND RECORDS--INSPECTION
7 BY DEPARTMENT.--

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

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

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

24 A. A distributor, retailer or manufacturer shall
25 maintain copies of invoices for each of its facilities for

1 every transaction involving a cigarette sale, purchase,
2 transfer, receipt or consignment; provided that a retailer need
3 not retain copies of invoices for sales of cigarettes to
4 consumers. The invoices shall show the name and address of the
5 seller, purchaser, consignor or consignee, or the address of
6 another facility of the same distributor, retailer or
7 manufacturer, the date, the price and the quantity of each
8 brand of cigarettes involved in each transaction.

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

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

23 D. The department and the secretary of the United
24 States department of treasury, or a designee, may inspect the
25 reports and records required under the Cigarette Tax Act along

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

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

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

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

17 "7-12-11. EXPORT SELLERS--PHYSICAL SEGREGATION OF
18 CIGARETTES TO BE EXPORTED. -- [~~Any person~~]

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

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

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

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

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

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

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

24 C. Subsections A and B of this section shall not
 25 apply to a common or contract carrier transporting cigarettes

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1 through New Mexico to another location under a proper bill of
2 loading or freight bill that states the quantity, source and
3 destination of the cigarettes.

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

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

10 "7-12-13. CIVIL PENALTIES. --

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

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

1 ~~magistrate courts.~~

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

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

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

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

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

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

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

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

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

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

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

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

18 "[NEW MATERIAL] REPORTS. --

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

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

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

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

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

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

24 (6) inventory of stamped and unstamped
25 cigarette packages held for sale or distribution within New

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1 Mexico at the end of the reporting period;

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

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

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

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

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

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

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

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

23 B. A manufacturer shall submit periodic reports, in
24 the manner and on the form prescribed by the department. The
25 information in the report shall be itemized to clearly disclose

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1 cigarette brands and quantities. The reports shall be provided
 2 separately with respect to each of the facilities operated by
 3 the manufacturer. A report shall contain the:

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

9 (2) quantity of cigarette packages that were
 10 distributed or shipped to another facility within New Mexico of
 11 the same manufacturer during the reporting period and the
 12 address of the facility; and

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

18 C. The department may require additional
 19 information to be submitted. The department shall establish
 20 the reporting period, which shall be no longer than three
 21 calendar months and no shorter than one calendar month."

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

24 "[NEW MATERIAL] CRIMINAL PENALTIES. --

25 A. Whoever, with the intent to defraud, fails to

1 keep or make a record, return, report or inventory required by
2 the Cigarette Tax Act or by rule promulgated pursuant to that
3 act is guilty of a fourth degree felony and shall be sentenced
4 in accordance with the provisions of Section 31-18-15 NMSA
5 1978.

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

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

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

21 E. Notwithstanding any other provision of law, the
22 sale or possession for sale of counterfeit cigarettes shall
23 result in the seizure of the product and related machinery by
24 the department or a law enforcement agency and shall be
25 punishable as follows:

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

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

13 (3) a first violation with a quantity of two
14 cartons or more of counterfeit cigarettes, or the equivalent,
15 shall be punished by a fine not to exceed two thousand dollars
16 (\$2,000) or imprisonment for a definite term not to exceed
17 eighteen months, or both; or

18 (4) a second and subsequent violation with a
19 quantity of two cartons or more of counterfeit cigarettes, or
20 the equivalent, shall be punished by a fine not to exceed fifty
21 thousand dollars (\$50,000) or imprisonment for a definite term
22 not to exceed eighteen months, or both, and shall also result
23 in the revocation by the department of the manufacturer's or
24 distributor's license.

25 F. As used this section, "counterfeit cigarettes"

1 include cigarette packs with counterfeit stamps, cigarettes
2 that have false manufacturing labels or cigarette packs without
3 tax or tax-exempt stamps.

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

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