

1 AN ACT

2 RELATING TO TAXATION; AMENDING THE CIGARETTE TAX ACT TO
3 EXPAND THE DEFINITION OF CIGARETTE, DECLARE AS CONTRABAND
4 CIGARETTES NOT IN THE DIRECTORY, ALLOW DISTRIBUTORS TO SELL
5 UNSTAMPED CIGARETTES TO OTHER DISTRIBUTORS, LIMIT THE WAIVER
6 OF STAMPING REQUIREMENTS AND ALLOW THE DEPARTMENT TO DENY
7 STAMPS TO VIOLATORS OR TO RENEW LICENSES; AMENDING AND
8 IMPOSING PENALTIES; AMENDING THE TOBACCO PRODUCTS TAX ACT TO
9 EXEMPT SALES TO CERTAIN TRIBAL GOVERNMENTS AND TO TAX FREE
10 SAMPLES; AMENDING THE CIGARETTE ENFORCEMENT ACT; AMENDING THE
11 TOBACCO ESCROW FUND ACT; REQUIRING ADDITIONAL DOCUMENTATION
12 PRIOR TO DELIVERY SALES OF CIGARETTES; REQUIRING CERTAIN
13 TOBACCO PRODUCTS MANUFACTURERS AND IMPORTERS TO POST BONDS;
14 GRANTING ADDITIONAL POWERS TO THE ATTORNEY GENERAL; IMPOSING
15 JOINT AND SEVERAL LIABILITY ON CERTAIN TOBACCO PRODUCTS
16 MANUFACTURERS AND IMPORTERS.

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 Section 1. Section 6-4-12 NMSA 1978 (being Laws 1999,
20 Chapter 208, Section 1) is amended to read:

21 "6-4-12. DEFINITIONS.--As used in Sections 6-4-12 and
22 6-4-13 NMSA 1978:

23 A. "adjusted for inflation" means increased in
24 accordence with the formula for inflation adjustment set
25 forth in Exhibit C to the master settlement agreement;

1 B. "affiliate" means a person who directly or
2 indirectly owns or controls, is owned or controlled by, or is
3 under common ownership or control with, another person.

4 Solely for purposes of this definition, the terms "owns", "is
5 owned" and "ownership" mean ownership of an equity interest,
6 or the equivalent thereof, of ten percent or more, and the
7 term "person" means an individual, partnership, committee,
8 association, corporation or any other organization or group
9 of persons;

10 C. "allocable share" means Allocable Share as that
11 term is defined in the master settlement agreement;

12 D. "cigarette" means any product that contains
13 nicotine, is intended to be burned or heated under ordinary
14 conditions of use, and consists of or contains:

15 (1) any roll of tobacco wrapped in paper or
16 in any substance not containing tobacco;

17 (2) tobacco, in any form, that is functional
18 in the product, which, because of its appearance, the type of
19 tobacco used in the filler, or its packaging and labeling, is
20 likely to be offered to, or purchased by, consumers as a
21 cigarette; or

22 (3) any roll of tobacco wrapped in any
23 substance containing tobacco which, because of its
24 appearance, the type of tobacco used in the filler, or its
25 packaging and labeling, is likely to be offered to, or

1 purchased by, consumers as a cigarette described in Paragraph
2 (1) of this subsection. The term "cigarette" includes
3 "roll-your-own" (i.e., any tobacco which, because of its
4 appearance, type, packaging, or labeling is suitable for use
5 and likely to be offered to, or purchased by, consumers as
6 tobacco for making cigarettes). For purposes of this
7 definition of "cigarette", 0.09 ounces of "roll-your-own"
8 tobacco shall constitute one individual "cigarette";

9 E. "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 F. "qualified escrow fund" means an escrow
14 arrangement with a federally or state chartered financial
15 institution having no affiliation with any tobacco product
16 manufacturer and having assets of at least one billion
17 dollars (\$1,000,000,000) where such arrangement requires that
18 such financial institution hold the escrowed funds' principal
19 for the benefit of releasing parties and prohibits the
20 tobacco product manufacturer placing the funds into escrow
21 from using, accessing or directing the use of the funds'
22 principal except as consistent with Subsection B of Section
23 6-4-13 NMSA 1978;

24 G. "released claims" means Released Claims as that
25 term is defined in the master settlement agreement;

1 H. "releasing parties" means Releasing Parties as
2 that term is defined in the master settlement agreement;

3 I. "tobacco product manufacturer" means an entity
4 that after the date of enactment of this act directly (and
5 not exclusively through any affiliate):

6 (1) manufactures cigarettes anywhere that
7 such manufacturer intends to be sold in the United States,
8 including cigarettes intended to be sold in the United States
9 through an importer (except where such importer is an
10 original participating manufacturer (as that term is defined
11 in the master settlement agreement) that will be responsible
12 for the payments under the master settlement agreement with
13 respect to such cigarettes as a result of the provisions of
14 subsection II(mm) of the master settlement agreement and that
15 pays the taxes specified in subsection II(z) of the master
16 settlement agreement, and provided that the manufacturer of
17 such cigarettes does not market or advertise such cigarettes
18 in the United States);

19 (2) is the first purchaser anywhere for
20 resale in the United States of cigarettes manufactured
21 anywhere that the manufacturer does not intend to be sold in
22 the United States; or

23 (3) becomes a successor of an entity
24 described in Paragraph (1) or (2) of this subsection.

25 The term "tobacco product manufacturer" shall not

1 include an affiliate of a tobacco product manufacturer unless
2 such affiliate itself falls within Paragraph (1), (2) or (3)
3 of this subsection; and

4 J. "units sold" means the number of individual
5 cigarettes sold in the state by the applicable tobacco
6 product manufacturer (whether directly or through a
7 distributor, retailer or similar intermediary or
8 intermediaries) during the year in question, as measured by
9 excise taxes collected, ounces of "roll-your-own" tobacco
10 sold and sales of products bearing tax-exempt stamps on packs
11 or "roll-your-own" tobacco containers. The secretary of
12 taxation and revenue shall promulgate such rules as are
13 necessary to ascertain the amount of state excise tax paid on
14 the cigarettes of such tobacco product manufacturer for each
15 year."

16 Section 2. Section 6-4-14 NMSA 1978 (being Laws 2003,
17 Chapter 114, Section 1) is amended to read:

18 "6-4-14. SHORT TITLE.--Sections 6-4-14 through 6-4-24
19 NMSA 1978 may be cited as the "Tobacco Escrow Fund Act"."

20 Section 3. Section 6-4-17 NMSA 1978 (being Laws 2003,
21 Chapter 114, Section 4) is amended to read:

22 "6-4-17. CERTIFICATION BY TOBACCO PRODUCT
23 MANUFACTURER.--

24 A. No later than April 30 of each year, a tobacco
25 product manufacturer whose cigarettes are sold in this state,

1 whether directly or through a distributor, retailer or
2 similar intermediary, shall execute and deliver to the
3 attorney general, in the manner and on the form prescribed by
4 the attorney general requesting such information as the
5 attorney general deems reasonably necessary to make the
6 determination required by Section 6-4-18 NMSA 1978, a
7 certification pursuant to this section. The certification
8 shall:

9 (1) be made under penalty of perjury;

10 (2) state that as of the date of the
11 certification, the tobacco product manufacturer is either a
12 participating or a nonparticipating manufacturer; and

13 (3) include the information required
14 pursuant to Subsection B or C of this section.

15 B. In its certification, a participating
16 manufacturer shall include a complete list of its brand
17 families.

18 C. In its certification, a nonparticipating
19 manufacturer shall:

20 (1) certify that it is registered to do
21 business in the state or has appointed an agent for service
22 of process and has provided written notice to the attorney
23 general in accordance with Section 6-4-20 NMSA 1978;

24 (2) certify that it is in full compliance
25 with Section 6-4-13 NMSA 1978, the Tobacco Escrow Fund Act

1 and any rules promulgated pursuant to that act, including all
2 annual payments as may be required by the attorney general;

3 (3) certify that it has established and
4 maintains a qualified escrow fund governed by a qualified
5 escrow agreement that has been reviewed and approved by the
6 attorney general and provide:

7 (a) the name, address and telephone
8 number of the financial institution where the fund is
9 established;

10 (b) the account number of the fund and
11 the subaccount number for the state;

12 (c) the amounts placed in the fund for
13 cigarettes sold in the state during the preceding calendar
14 year, including the date and amount of each deposit and any
15 other evidence or verification of the amounts as the attorney
16 general deems necessary; and

17 (d) the amount and date of each
18 withdrawal or transfer of funds made at any time from the
19 fund or from any other qualified escrow fund into which the
20 nonparticipating manufacturer has made escrow payments
21 pursuant to Section 6-4-13 NMSA 1978; and

22 (4) include a complete list of its brand
23 families and:

24 (a) separately list the number of units
25 sold in the state for each brand family during the preceding

1 calendar year, indicating any brand family sold in the state
2 during the preceding calendar year that is no longer being
3 sold as of the date of certification; and

4 (b) indicate all of its brand families
5 that have been sold in the state at any time during the
6 current calendar year, identifying by name and address any
7 other manufacturer of the brand families in the preceding or
8 current calendar year.

9 D. In its certification, a nonparticipating
10 manufacturer located outside of the United States shall also:

11 (1) certify that it has provided a
12 declaration, on a form prescribed by the attorney general,
13 from each of its importers into the United States of any of
14 its brand families to be sold in New Mexico that the importer
15 accepts joint and several liability with the nonparticipating
16 manufacturer for all escrow deposits due in accordance with
17 Section 6-4-13 NMSA 1978, for all penalties assessed in
18 accordance with Section 6-4-13 NMSA 1978 and for payment of
19 all costs and attorney fees imposed in accordance with the
20 Tobacco Escrow Fund Act or Section 6-4-13 NMSA 1978; and

21 (2) certify that it has appointed a resident
22 agent for service of process in New Mexico in accordance with
23 Section 6-4-20 NMSA 1978.

24 E. A tobacco product manufacturer may not include
25 a brand family in its certification unless:

1 (1) in the case of a participating
2 manufacturer, the participating manufacturer affirms that the
3 brand family is to be deemed its cigarettes for purposes of
4 calculating its payments under the master settlement
5 agreement for the relevant year in the volume and shares
6 determined pursuant to the master settlement agreement; or

7 (2) in the case of a nonparticipating
8 manufacturer, the nonparticipating manufacturer affirms that
9 the brand family is to be deemed its cigarettes for purposes
10 of Section 6-4-13 NMSA 1978.

11 F. A tobacco product manufacturer shall update the
12 list of its brand families thirty days prior to any addition
13 to or modification of its brand families by executing and
14 delivering a supplemental certification to the attorney
15 general.

16 G. A tobacco product manufacturer shall maintain
17 all invoices and documentation of sales and other information
18 relied upon for its certification to the attorney general for
19 a period of five years, unless otherwise required by law to
20 maintain them for a greater period of time.

21 H. Nothing in this section shall limit or
22 otherwise affect the state's right to maintain that a brand
23 family constitutes cigarettes of a different tobacco product
24 manufacturer for purposes of calculating payments under the
25 master settlement agreement or for purposes of Section 6-4-13

1 NMSA 1978."

2 Section 4. Section 6-4-18 NMSA 1978 (being Laws 2003,
3 Chapter 114, Section 5) is amended to read:

4 "6-4-18. DIRECTORY OF TOBACCO PRODUCT MANUFACTURERS AND
5 CIGARETTE BRANDS.--

6 A. The attorney general shall develop, maintain
7 and publish on its web site a directory listing all tobacco
8 product manufacturers that have provided current, accurate
9 and complete certifications as required by the Tobacco Escrow
10 Fund Act and all brand families that are listed in those
11 certifications. The attorney general shall not include or
12 retain in the directory a name or brand family if:

13 (1) the participating manufacturer fails to
14 provide the required certification or to make a payment
15 calculated by an independent auditor to be due from it under
16 the master settlement agreement except to the extent that it
17 is disputing such payment;

18 (2) the nonparticipating manufacturer fails
19 to provide the required certification or the attorney general
20 determines that its certification is not in compliance with
21 Section 6-4-17 NMSA 1978; or

22 (3) the attorney general concludes that:

23 (a) all escrow payments required by
24 Section 6-4-13 NMSA 1978 for any period for any brand family,
25 whether or not listed by the nonparticipating manufacturer,

1 have not been fully paid into a qualified escrow fund
2 governed by a qualified escrow agreement that has been
3 approved by the attorney general;

4 (b) any outstanding final judgments,
5 including interest thereon, for violations of Section 6-4-13
6 NMSA 1978 have not been fully satisfied for the brand family
7 or the nonparticipating manufacturer;

8 (c) for a nonparticipating manufacturer
9 or a tobacco product manufacturer that became a participating
10 manufacturer after the master settlement agreement in New
11 Mexico or in any other state, or any of its principals, the
12 nonparticipating manufacturer or tobacco product manufacturer
13 fails to provide reasonable assurance that it will comply
14 with the requirements of the Tobacco Escrow Fund Act; or

15 (d) the manufacturer has knowingly
16 failed to disclose any material information required or
17 knowingly made any material false statement in the
18 certification of any supporting information or documentation
19 provided.

20 B. As used in this section, "reasonable
21 assurances" means information and documentation establishing
22 to the satisfaction of the attorney general that a failure to
23 pay in New Mexico or elsewhere was the result of a good faith
24 dispute over the payment obligation.

25 C. The attorney general shall update the directory SB 219
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1 as necessary by adding or removing a tobacco product
2 manufacturer or a brand family to keep the directory in
3 conformity with the requirements of the Tobacco Escrow Fund
4 Act.

5 D. A distributor shall provide a current
6 electronic mail address to the attorney general for the
7 purpose of receiving notifications as may be required
8 pursuant to the Tobacco Escrow Fund Act."

9 Section 5. A new section of the Tobacco Escrow Fund
10 Act, Section 6-4-18.1 NMSA 1978, is enacted to read:

11 "6-4-18.1. BOND REQUIREMENTS FOR NEWLY QUALIFIED AND
12 ELEVATED RISK NONPARTICIPATING MANUFACTURERS.--

13 A. The attorney general may require a
14 nonparticipating manufacturer to post a bond for the first
15 three years of the manufacturer's listing in the directory or
16 for a longer period if the manufacturer has been determined
17 to pose an elevated risk for noncompliance with the Tobacco
18 Escrow Fund Act. The attorney general may consult with other
19 states to determine the viability of a potential
20 nonparticipating manufacturer and may impose additional
21 requirements to protect state interests.

22 B. Notwithstanding any other provision of law, if
23 a nonparticipating manufacturer is to be listed in the
24 directory, and if the attorney general reasonably determines
25 that a nonparticipating manufacturer that has filed a

1 certification pursuant to Section 6-4-17 NMSA 1978 poses an
2 elevated risk for noncompliance with the Tobacco Escrow Fund
3 Act, the nonparticipating manufacturer and any of its brand
4 families shall not be included in the directory until the
5 nonparticipating manufacturer, or its United States importer
6 that undertakes joint and several liability for the
7 manufacturer's performance in accordance with Section 6-4-20
8 NMSA 1978, has posted bond in accordance with this section.

9 C. The bond shall be posted by a corporate surety
10 located within the United States in an amount equal to the
11 greater of fifty thousand dollars (\$50,000) or the amount of
12 escrow the manufacturer, in either its current or predecessor
13 form, was required to deposit as a result of its previous
14 calendar year sales in New Mexico. The bond shall be written
15 in favor of the state of New Mexico and shall be conditioned
16 on the performance by the nonparticipating manufacturer or
17 its United States importer that undertakes joint and several
18 liability for the manufacturer's performance in accordance
19 with all of its obligations under the Tobacco Escrow Fund Act
20 or Section 6-4-13 NMSA 1978 during the year in which the
21 certification is filed and the next succeeding calendar year.

22 D. A nonparticipating manufacturer may be deemed
23 to pose an elevated risk for noncompliance with this section
24 or Section 6-4-13 NMSA 1978 if:

25 (1) the nonparticipating manufacturer or any

1 of its affiliates has underpaid an escrow obligation within
2 the past three calendar years, unless:

3 (a) the manufacturer did not make
4 underpayment knowingly or recklessly and the manufacturer
5 promptly cured the underpayment within one hundred eighty
6 days of notice; or

7 (b) the underpayment or lack of payment
8 is the subject of a good faith dispute as documented to the
9 satisfaction of the attorney general and the underpayment is
10 cured within one hundred eighty days of entry of a final
11 order establishing the amount of the required escrow payment;

12 (2) any state has removed the manufacturer
13 or its brands or brand families or an affiliate or any of the
14 affiliate's brands or brand families from the state's tobacco
15 directory for noncompliance with the state law at any time
16 within the past three calendar years; or

17 (3) any state has litigation pending
18 against, or an unsatisfied judgment against, the manufacturer
19 or any of its affiliates for escrow or for penalties, costs
20 or attorney fees related to noncompliance with the state
21 escrow laws.

22 E. As used in this section, "newly qualified
23 nonparticipating manufacturer" means a nonparticipating
24 manufacturer that has not previously been listed in the
25 directory."

1 Section 6. Section 6-4-20 NMSA 1978 (being Laws 2003,
2 Chapter 114, Section 7) is amended to read:

3 "6-4-20. AGENT FOR SERVICE OF PROCESS.--

4 A. A nonparticipating manufacturer not registered
5 to do business in the state shall, as a condition precedent
6 to having its name or its brand families listed and retained
7 in the directory, appoint and continually engage without
8 interruption a registered agent in this state for service of
9 process on whom all process and any action or proceeding
10 arising out of the enforcement of the Tobacco Escrow Fund Act
11 or Section 6-4-13 NMSA 1978 may be served. The
12 nonparticipating manufacturer shall provide to the attorney
13 general the name, address and telephone number of its agent
14 for service of process and shall provide any other
15 information relating to its agent as may be requested by the
16 attorney general.

17 B. A nonparticipating manufacturer located outside
18 of the United States shall, as an additional condition
19 precedent to having its brand families listed or retained in
20 the directory, cause each of its importers of any of its
21 brand families to be sold in New Mexico to appoint, and
22 continually engage without interruption, the services of an
23 agent in the state in accordance with the provisions of this
24 section. All obligations of a nonparticipating manufacturer
25 imposed by this section with respect to appointment of its

1 agent shall also apply to the importers with respect to
2 appointment of their agents.

3 C. A nonparticipating manufacturer shall provide
4 written notice to the attorney general thirty calendar days
5 prior to the termination of the authority of an agent
6 appointed pursuant to Subsections A and B of this section.
7 No less than five calendar days prior to the termination of
8 an existing agent appointment, a nonparticipating
9 manufacturer shall provide to the attorney general the name,
10 address and telephone number of its newly appointed agent for
11 service of process and shall provide any other information
12 relating to the new appointment as may be requested by the
13 attorney general. In the event an agent terminates an agency
14 appointment, the nonparticipating manufacturer shall notify
15 the attorney general of the termination within five calendar
16 days and shall include proof to the satisfaction of the
17 attorney general of the appointment of a new agent.

18 D. A nonparticipating manufacturer whose products
19 are sold in this state without appointing or designating an
20 agent as required by this section shall be deemed to have
21 appointed the secretary of state as agent and may be
22 proceeded against in the courts of this state by service of
23 process upon the secretary of state; provided that the
24 appointment of the secretary of state as agent shall not
25 satisfy any other requirement of the Tobacco Escrow Fund

1 Act."

2 Section 7. A new section of the Tobacco Escrow Fund
3 Act, Section 6-4-20.1 NMSA 1978, is enacted to read:

4 "6-4-20.1. JOINT AND SEVERAL LIABILITY.--For each
5 nonparticipating manufacturer located outside the United
6 States, each importer into the United States of the
7 nonparticipating manufacturer's brand families that are sold
8 in New Mexico shall bear joint and several liability with the
9 nonparticipating manufacturer for deposit of all escrow
10 amounts due under Section 6-4-13 NMSA 1978, payment of all
11 penalties imposed in accordance with Section 6-4-13 NMSA 1978
12 and payment of all costs and attorney fees imposed in
13 accordance with the Tobacco Escrow Fund Act."

14 Section 8. Section 6-4-22 NMSA 1978 (being Laws 2003,
15 Chapter 114, Section 9) is amended to read:

16 "6-4-22. PENALTIES AND OTHER REMEDIES.--

17 A. It is unlawful for a person to:

18 (1) affix a tax stamp or otherwise pay the
19 tax due on a package or other container of cigarettes of a
20 tobacco product manufacturer or a brand family that is not
21 included in the directory; or

22 (2) sell, offer for sale or possess for any
23 purpose other than personal use cigarettes of a tobacco
24 product manufacturer or a brand family that is not included
25 in the directory.

1 B. The secretary may revoke or suspend the
2 registration or license of a person licensed or registered
3 pursuant to Section 7-12-9.1 or 7-12A-7 NMSA 1978 that
4 violates Subsection A of this section.

5 C. Each stamp affixed, payment of tobacco tax,
6 offer to sell, possession for any purpose other than personal
7 use or sale of cigarettes in violation of Subsection A of
8 this section constitutes a separate violation. For each
9 violation, the secretary may impose a civil penalty in an
10 amount not to exceed the greater of five thousand dollars
11 (\$5,000) or five hundred percent of the retail value of the
12 cigarettes sold, offered for sale or possessed for any
13 purpose other than personal use.

14 D. Cigarettes that have been sold, offered for
15 sale or possessed for any purpose other than personal use in
16 this state in violation of Subsection A of this section are
17 contraband, are subject to seizure and forfeiture and shall
18 be destroyed.

19 E. It is unlawful for a person to sell,
20 distribute, acquire, hold, own, possess, transport, import or
21 cause to be imported cigarettes that the person knows or
22 should know are intended for distribution or sale in
23 violation of Subsection A of this section. A person who
24 violates this subsection is guilty of a misdemeanor and shall
25 be sentenced in accordance with Section 31-19-1 NMSA 1978.

1 F. A tobacco product manufacturer, stamping agent
2 or importer of cigarettes, or any officer, employee or agent
3 of any such entity, who knowingly makes any materially false
4 statement in any record required by the Tobacco Escrow Fund
5 Act or Section 6-4-13 NMSA 1978 to be filed with the attorney
6 general is guilty of a fourth degree felony and upon
7 conviction shall be sentenced pursuant to the provisions of
8 Section 31-18-15 NMSA 1978.

9 G. The attorney general or the department may seek
10 an injunction to compel compliance with or to restrain a
11 threatened or actual violation of Subsection A of this
12 section. In any action brought pursuant to this subsection,
13 the state shall be entitled to recover the costs of
14 investigation, costs of the action and reasonable attorney
15 fees, if the state prevails.

16 H. The attorney general may issue a civil
17 investigative demand based on reasonable belief that any
18 person may be in possession, custody or control of an
19 original or copy of any book, record, report, memorandum,
20 paper, communication, tabulation, map, chart, photograph,
21 mechanical transcription or other document or recording
22 relevant to the subject matter of an investigation of a
23 probable violation of the Tobacco Escrow Fund Act. The
24 attorney general may, prior to the institution of a civil
25 proceeding, execute in writing and cause to be served upon

1 the person a civil investigative demand requiring the person
2 to produce documentary material and permit the inspection and
3 copying of the material.

4 I. For the purposes of this section, fewer than
5 one thousand cigarettes shall be presumed to be for personal
6 use."

7 Section 9. A new Section 6-4-24.1 NMSA 1978 is enacted
8 to read:

9 "6-4-24.1. ATTORNEY GENERAL AUTHORITY--AUDIT AND
10 INVESTIGATION.--The attorney general or the attorney
11 general's authorized representative may conduct audits and
12 investigations of:

13 A. a nonparticipating tobacco product manufacturer
14 and its importers;

15 B. a tobacco product manufacturer as defined in
16 Section 6-4-12 NMSA 1978 that became a participating
17 manufacturer after the master settlement agreement execution
18 date, as defined at section II(aa) of the master settlement
19 agreement, and its importers;

20 C. exclusive distributors, retail dealers,
21 stamping agents and wholesale dealers; and

22 D. persons or entities engaged in delivery sales."

23 Section 10. A new Section 6-4-24.2 NMSA 1978 is enacted
24 to read:

25 "6-4-24.2. PRESUMPTION.--In any action under Section

1 6-4-13 NMSA 1978, reports of numbers of cigarettes stamped
2 submitted pursuant to Subsection A of Section 6-4-21 NMSA
3 1978 shall be admissible evidence and shall be presumed to
4 state accurately the number of cigarettes stamped during the
5 time period by the stamping agent that submitted the report,
6 absent a contrary showing by the nonparticipating
7 manufacturer or importer. Nothing in this section shall be
8 construed as limiting or otherwise affecting the state's
9 right to maintain that such reports are incorrect or do not
10 accurately reflect a nonparticipating manufacturer's sales in
11 the state during the time period in question, and the
12 presumption shall not apply in the event that the state does
13 so maintain."

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

16 "7-12-2. DEFINITIONS.--As used in the Cigarette Tax
17 Act:

18 A. "cigarette" means:

19 (1) any roll of tobacco or any substitute
20 for tobacco wrapped in paper or in any substance not
21 containing tobacco;

22 (2) any roll of tobacco that is wrapped in
23 any substance containing tobacco, other than one hundred
24 percent natural leaf tobacco, which, because of its
25 appearance, the type of tobacco used in the filler, its

1 packaging and labeling, or its marketing and advertising, is
2 likely to be offered to, or purchased by, consumers as a
3 cigarette, as described in Paragraph (1) of this subsection;

4 (3) bidis and kreteks; or

5 (4) any other roll of tobacco that is
6 defined as a "cigarette" in Subsection D of Section 6-4-12
7 NMSA 1978;

8 B. "contraband cigarettes" means cigarette
9 packages with counterfeit stamps, counterfeit cigarettes,
10 cigarettes that have false or fraudulent manufacturing
11 labels, cigarettes not sold in packages of five, ten, twenty
12 or twenty-five, cigarette packages without the tax or
13 tax-exempt stamps required by the Cigarette Tax Act and
14 cigarettes produced by a manufacturer or in a brand family
15 not included in the directory;

16 C. "department" means the taxation and revenue
17 department, the secretary of taxation and revenue or any
18 employee of the department exercising authority lawfully
19 delegated to that employee;

20 D. "directory" means a listing of tobacco product
21 manufacturers and brand families that is developed,
22 maintained and published by the attorney general under the
23 Tobacco Escrow Fund Act;

24 E. "distributor" means a person licensed pursuant
25 to the Cigarette Tax Act to sell or distribute cigarettes in

1 New Mexico. "Distributor" does not include:

2 (1) a retailer;

3 (2) a cigarette manufacturer, export
4 warehouse proprietor or importer with a valid permit pursuant
5 to 26 U.S.C. 5713, if that person sells cigarettes in New
6 Mexico only to distributors that hold valid licenses under
7 the laws of a state or sells to an export warehouse
8 proprietor or to another manufacturer; or

9 (3) a common or contract carrier
10 transporting cigarettes pursuant to a bill of lading or
11 freight bill, or a person who ships cigarettes through the
12 state by a common or contract carrier pursuant to a bill of
13 lading or freight bill;

14 F. "license" means a license granted pursuant to
15 the Cigarette Tax Act that authorizes the holder to conduct
16 business as a manufacturer or distributor of cigarettes;

17 G. "manufacturer" means a person that
18 manufactures, fabricates, assembles, processes or labels a
19 cigarette or that imports from outside the United States,
20 directly or indirectly, a finished cigarette for sale or
21 distribution in the United States;

22 H. "master settlement agreement" means the
23 settlement agreement and related documents entered into on
24 November 23, 1998 by the state and leading United States
25 tobacco product manufacturers;

1 I. "package" means an individual pack, box or
2 other container; "package" does not include a container that
3 itself contains other containers, such as a carton of
4 cigarettes;

5 J. "retailer" means a person, whether located
6 within or outside of New Mexico, that sells cigarettes at
7 retail to a consumer in New Mexico and the sale is not for
8 resale;

9 K. "stamp" means an adhesive label issued and
10 authorized by the department to be affixed to cigarette
11 packages for excise tax purposes and upon which is printed a
12 serial number and the words "State of New Mexico" and
13 "tobacco tax";

14 L. "tax stamp" means a stamp that has a specific
15 cigarette tax value pursuant to the Cigarette Tax Act; and

16 M. "tax-exempt stamp" means a stamp that indicates
17 a tax-exempt status pursuant to the Cigarette Tax Act."

18 Section 12. 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 shall be placed in packages or containers to
23 which a stamp shall be affixed. Only a distributor with a
24 valid license issued pursuant to the Cigarette Tax Act may
25 purchase or obtain unaffixed tax-exempt stamps or tax stamps.

1 A distributor shall not sell or provide unaffixed stamps to
2 another distributor, manufacturer, export warehouse
3 proprietor or importer with a valid permit pursuant to 26
4 U.S.C. 5713 or any other person.

5 B. Stamps shall be affixed by the distributor to
6 each package of cigarettes to be sold or distributed in New
7 Mexico within thirty days of receipt of those packages.

8 C. A distributor shall apply stamps only to
9 packages of cigarettes that the distributor has received
10 directly from another distributor or from a manufacturer or
11 importer of cigarettes that possesses a valid and current
12 permit pursuant to 26 U.S.C. 5713.

13 D. A distributor shall not affix a stamp to a
14 package of cigarettes of a manufacturer or a brand family
15 that is not included in the directory or sell, offer or
16 possess for sale cigarettes of a manufacturer or brand family
17 that is not included in the directory.

18 E. Packages shall contain cigarettes in lots of
19 five, ten, twenty or twenty-five.

20 F. Unless the requirements of this section are
21 waived pursuant to Section 7-12-6 NMSA 1978, a tax stamp
22 shall be affixed to each package of cigarettes subject to the
23 cigarette tax and a tax-exempt stamp shall be affixed to each
24 package of cigarettes not subject to the cigarette tax
25 pursuant to Section 7-12-4 NMSA 1978.

1 G. A tax-exempt stamp is not an excise tax stamp
2 for purposes of determining units sold pursuant to Section
3 6-4-12 NMSA 1978.

4 H. Stamps shall be affixed inside the boundaries
5 of New Mexico, unless the department has granted a license
6 allowing a person to affix stamps outside New Mexico."

7 Section 13. Section 7-12-6 NMSA 1978 (being Laws 1971,
8 Chapter 77, Section 6, as amended) is amended to read:

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

13 A. distributed by a manufacturer pursuant to
14 federal regulations and are exempt from tax pursuant to 26
15 U.S.C. 5704; and

16 B. not subsequently imported into New Mexico."

17 Section 14. Section 7-12-9.1 NMSA 1978 (being Laws
18 2006, Chapter 91, Section 7) is amended to read:

19 "7-12-9.1. LICENSING--GENERAL LICENSING PROVISIONS.--

20 A. A person shall not engage in the manufacture or
21 distribution of cigarettes in New Mexico without a license
22 issued by the department.

23 B. The department shall issue or renew a license
24 for a term not to exceed one year.

25 C. The department may charge a license fee of up

1 to one hundred dollars (\$100) for each manufacturer's or
2 distributor's license issued or renewed.

3 D. An application for a license or renewal of a
4 license shall be submitted on a form determined by the
5 department and shall include:

6 (1) the name and address of the applicant
7 and:

8 (a) if the applicant is a firm,
9 partnership or association, the name and address of each of
10 its members; or

11 (b) if the applicant is a corporation,
12 the name and address of each of its officers;

13 (2) the address of the applicant's principal
14 place of business and every location where the applicant's
15 business is conducted; and

16 (3) any other information the department may
17 require.

18 E. The department may issue a distributor's
19 license and a manufacturer's license to the same person.

20 F. Persons licensed as manufacturers or
21 distributors may sell stamped cigarettes at retail.

22 G. A license may not be granted, maintained or
23 renewed if one or more of the following conditions applies to
24 an applicant:

25 (1) the applicant owes five hundred dollars

1 (\$500) or more in delinquent cigarette taxes;

2 (2) the applicant has had a manufacturer's
3 or distributor's license revoked by the department or any
4 other state within the past two years;

5 (3) the applicant is convicted of a crime
6 related to contraband cigarettes, stolen cigarettes or
7 counterfeit stamps;

8 (4) the applicant is a manufacturer but not
9 a participating manufacturer as defined in Section II(jj) of
10 the master settlement agreement and the applicant is not in
11 compliance with the provisions of Section 6-4-13 NMSA 1978 or
12 the Tobacco Escrow Fund Act; or

13 (5) the applicant is a manufacturer and
14 imports cigarettes into the United States that are in
15 violation of 19 U.S.C. 1681a or manufactures cigarettes that
16 do not comply with the Federal Cigarette Labeling and
17 Advertising Act.

18 H. In addition to a civil or criminal penalty
19 provided by law, upon a finding that a licensee has violated
20 a provision of the Cigarette Tax Act or the Tobacco Escrow
21 Fund Act or a rule adopted pursuant to either act, the
22 department may revoke or suspend the license or licenses of
23 the licensee.

24 I. As used in this section, "applicant" includes a
25 person or persons owning, directly or indirectly, in the

1 aggregate, more than ten percent of the ownership interest in
2 the business holding or applying for a license pursuant to
3 the Cigarette Tax Act."

4 Section 15. Section 7-12-9.2 NMSA 1978 (being Laws
5 2006, Chapter 91, Section 8) is amended to read:

6 "7-12-9.2. DISTRIBUTOR'S LICENSE.--

7 A. A person shall not distribute stamped packages
8 of cigarettes for resale or sell stamped packages of
9 cigarettes at wholesale without first obtaining a
10 distributor's license from the department.

11 B. A person licensed to distribute cigarettes is
12 authorized to:

13 (1) receive unstamped packages of cigarettes
14 from a manufacturer or a distributor;

15 (2) purchase tax stamps and receive
16 tax-exempt stamps from the department;

17 (3) affix tax stamps or tax-exempt stamps to
18 unstamped packages of cigarettes;

19 (4) sell stamped packages of cigarettes to a
20 retailer for resale or to a distributor; and

21 (5) sell unstamped packages of cigarettes to
22 a person licensed to distribute cigarettes outside of New
23 Mexico or to a distributor."

24 Section 16. Section 7-12-10.1 NMSA 1978 (being Laws
25 2006, Chapter 91, Section 11) is amended to read:

1 "7-12-10.1. RETENTION OF INVOICES AND RECORDS--
2 INSPECTION BY DEPARTMENT.--

3 A. A manufacturer, distributor or retailer shall
4 maintain copies of invoices for each of its facilities for
5 every transaction involving a cigarette sale, purchase,
6 transfer, receipt or consignment, except that a retailer need
7 not retain copies of invoices for sales of cigarettes to
8 consumers. An invoice shall show:

9 (1) the names and addresses of all persons
10 involved in the transaction, including the seller, purchaser,
11 consignor and consignee. If a transaction involves an
12 additional facility of the same manufacturer, distributor or
13 retailer, the invoice shall also show the address of the
14 additional facility;

15 (2) the date;

16 (3) the price; and

17 (4) the quantity of each brand of cigarettes
18 involved in each transaction.

19 B. Records required to be maintained pursuant to
20 Subsection A of this section shall be preserved on the
21 premises described in the license in a manner that ensures
22 permanency and accessibility for inspection at reasonable
23 hours by the department.

24 C. The records required to be maintained pursuant
25 to Subsection A of this section shall be retained for a

1 period of three years from the end of the year in which the
2 transaction occurred, unless otherwise required by law to be
3 retained for a longer period of time.

4 D. The department and the secretary of the United
5 States department of the treasury, or a designee, may inspect
6 the reports and records required pursuant to the Cigarette
7 Tax Act along with any stock of cigarettes in the possession
8 of the manufacturer, distributor or retailer. The
9 department, at its sole discretion, may share those records
10 and reports with law enforcement officials of the federal
11 government, other states and international authorities."

12 Section 17. Section 7-12-13.2 NMSA 1978 (being Laws
13 2006, Chapter 91, Section 17) is amended to read:

14 "7-12-13.2. CRIMINAL OFFENSES--CRIMINAL PENALTIES--
15 SEIZURE AND DESTRUCTION OF EVIDENCE.--

16 A. Whoever violates a provision of the Cigarette
17 Tax Act or a rule adopted pursuant to that act is guilty of a
18 misdemeanor and shall be sentenced in accordance with the
19 provisions of Section 31-19-1 NMSA 1978.

20 B. Whoever, with intent to defraud, fails to
21 comply with a licensing, reporting or stamping requirement of
22 the Cigarette Tax Act or with a licensing, reporting or
23 stamping rule adopted pursuant to that act is guilty of a
24 fourth degree felony and upon conviction shall be sentenced
25 pursuant to the provisions of Section 31-18-15 NMSA 1978.

1 C. Whoever packages cigarettes for sale in New
2 Mexico or whoever sells cigarettes in New Mexico, in packages
3 of other than five, ten, twenty or twenty-five cigarettes is:

4 (1) for the first offense, guilty of a
5 misdemeanor and when convicted shall be sentenced pursuant to
6 Section 31-19-1 NMSA 1978; and

7 (2) for the second or subsequent offense,
8 guilty of a fourth degree felony and when convicted shall be
9 sentenced pursuant to Section 31-18-15 NMSA 1978.

10 D. Whoever purchases or otherwise knowingly
11 obtains counterfeit stamps or whoever produces, uses or
12 causes counterfeit stamps to be used is guilty of a fourth
13 degree felony and upon conviction shall be sentenced pursuant
14 to the provisions of Section 31-18-15 NMSA 1978.

15 E. Whoever sells or possesses for the purpose of
16 sale contraband cigarettes is in violation of the Cigarette
17 Tax Act and shall have the product and related equipment
18 seized. If convicted of selling or possessing for sale
19 contraband cigarettes, the person shall be sentenced as
20 follows:

21 (1) a violation with a quantity of fewer
22 than two cartons of contraband cigarettes, or the equivalent,
23 is a petty misdemeanor and is punishable in accordance with
24 the provisions of Section 31-19-1 NMSA 1978;

25 (2) a first violation with a quantity of two

1 cartons or more of contraband cigarettes, or the equivalent,
2 is a misdemeanor and is punishable in accordance with the
3 provisions of Section 31-19-1 NMSA 1978; and

4 (3) a second or subsequent violation with a
5 quantity of two cartons or more of contraband cigarettes, or
6 the equivalent, is a fourth degree felony and is punishable
7 by a fine not to exceed fifty thousand dollars (\$50,000) or
8 imprisonment for a definite term not to exceed eighteen
9 months, or both, and shall also result in the revocation by
10 the department of the manufacturer's or distributor's
11 license, if any.

12 F. Contraband cigarettes or counterfeit stamps
13 seized by the department or by a law enforcement agency shall
14 be retained as evidence to the extent necessary. Contraband
15 cigarettes or counterfeit stamps no longer needed as evidence
16 shall be destroyed.

17 G. Prosecution for a violation of a provision of
18 this section does not preclude prosecution under other
19 applicable laws."

20 Section 18. Section 7-12-17 NMSA 1978 (being Laws 1971,
21 Chapter 77, Section 14, as amended) is amended to read:

22 "7-12-17. REPORTING REQUIREMENTS--PENALTY.--

23 A. Each person who sells in New Mexico cigarettes
24 manufactured by that person or who receives on consignment or
25 buys cigarettes either directly from the manufacturer or from

1 any out-of-state person for resale in New Mexico shall report
2 to the department by the twenty-fifth day of each month that
3 person's sales of cigarettes during the preceding month in
4 each municipality and within that portion of each county
5 outside of the municipalities located in that county. The
6 department shall then advise the state treasurer of the
7 proportion of the total sales of cigarettes for the month
8 within each municipality and within that portion of each
9 county outside of municipalities. The reports of such
10 persons shall, upon receipt by the department, become public
11 records.

12 B. Any person who sells in New Mexico cigarettes
13 manufactured by that person or who receives on consignment or
14 buys cigarettes for resale in New Mexico who willfully fails
15 to render accurately the reports required by this section and
16 any municipal or county officer who approves any expenditure
17 or expends funds distributed from the county and municipality
18 recreational fund for any purposes other than permitted by
19 Section 7-12-15 NMSA 1978 is guilty of a petty misdemeanor.

20 C. Any tobacco product manufacturer, stamping
21 agent or importer of cigarettes, or any officer, employee or
22 agent of any such entity, who knowingly makes a materially
23 false statement in any record required to be kept by the
24 Cigarette Tax Act, or in any report or return required to be
25 filed with the department by the Cigarette Tax Act is guilty

1 of a fourth degree felony."

2 Section 19. Section 7-12-18 NMSA 1978 (being Laws 2006,
3 Chapter 91, Section 14) is amended to read:

4 "7-12-18. REPORTS.--

5 A. A distributor shall submit periodic reports to
6 the department, in the manner and on the form prescribed by
7 the department. A distributor shall submit a separate report
8 for each of its facilities. The information in the report
9 shall be itemized and shall clearly disclose cigarette
10 brands, quantities and the type of stamp applied to the
11 packages of cigarettes. A report shall include:

12 (1) an inventory of stamped and unstamped
13 packages of cigarettes held for sale or distribution within
14 New Mexico at the beginning of the reporting period;

15 (2) the quantity of stamped packages of
16 cigarettes held for sale or distribution within New Mexico
17 that were received from another person during the reporting
18 period and the name and address of each person from whom each
19 quantity was received;

20 (3) the quantity of New Mexico stamped
21 packages of cigarettes that were distributed or shipped to
22 another distributor or retailer within New Mexico during the
23 reporting period and the name and address of each person to
24 whom each quantity was distributed or shipped;

25 (4) the quantity of unstamped packages of

1 cigarettes that were distributed or shipped to another
2 distributor within New Mexico during the reporting period and
3 the name and address of each person to whom each quantity was
4 distributed or shipped;

5 (5) the quantity of New Mexico stamped
6 packages of cigarettes that were distributed or shipped to
7 another facility of the same distributor within New Mexico
8 during the reporting period and the address of that facility;

9 (6) the quantity of stamped cigarette
10 packages that were distributed or shipped within New Mexico
11 to an Indian nation, tribe or pueblo or to a person located
12 on the land of an Indian nation, tribe or pueblo or to
13 instrumentalities of the federal government during the
14 reporting period and the name and address of each person,
15 entity or instrumentality to whom each quantity was
16 distributed or shipped;

17 (7) an inventory of stamped and unstamped
18 packages of cigarettes held for sale or distribution within
19 New Mexico at the end of the reporting period;

20 (8) an inventory of stamped and unstamped
21 packages of cigarettes for sale or distribution outside of
22 New Mexico at the beginning of the reporting period;

23 (9) the quantity of packages of cigarettes
24 held for sale or distribution outside of New Mexico that were
25 received from another person during the reporting period and

1 the name and address of each person from whom each quantity
2 was received;

3 (10) the quantity of packages of cigarettes
4 that were distributed or shipped outside New Mexico during
5 the reporting period;

6 (11) an inventory of packages of cigarettes
7 held for sale or distribution outside of New Mexico at the
8 end of the reporting period;

9 (12) the number of each type of stamp on
10 hand at the beginning of the reporting period;

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

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

15 (15) the number of each type of stamp on
16 hand at the end of the reporting period.

17 B. A manufacturer shall submit periodic reports in
18 the manner and on the form prescribed by the department. The
19 information in the report shall be itemized to clearly
20 disclose cigarette brands and quantities. The reports shall
21 be provided separately with respect to each of the facilities
22 operated by the manufacturer. A report shall contain the
23 quantity of packages of cigarettes that were distributed or
24 shipped:

25 (1) to a manufacturer, distributor or

1 retailer within New Mexico during the reporting period and
2 the name and address of each person to whom each quantity was
3 distributed or shipped;

4 (2) to another facility within New Mexico of
5 the same manufacturer during the reporting period and the
6 address of the facility; and

7 (3) within New Mexico to an Indian nation,
8 tribe or pueblo or to a person located on the land of an
9 Indian nation, tribe or pueblo or to instrumentalities of the
10 federal government during the reporting period and the name
11 and address of each person, entity or instrumentality to whom
12 each quantity was distributed or shipped.

13 C. The department may require additional
14 information to be submitted. The department shall establish
15 the reporting period, which shall be no longer than three
16 calendar months and no shorter than one calendar month."

17 Section 20. Section 7-12A-2 NMSA 1978 (being Laws 1986,
18 Chapter 112, Section 3, as amended) is amended to read:

19 "7-12A-2. DEFINITIONS.--As used in the Tobacco Products
20 Tax Act:

21 A. "department" means the taxation and revenue
22 department, the secretary or any employee of the department
23 exercising authority lawfully delegated to that employee by
24 the secretary;

25 B. "distribute" means to sell or to give;

1 C. "engaging in business" means carrying on or
2 causing to be carried on any activity with the purpose of
3 direct or indirect benefit;

4 D. "first purchaser" means a person engaging in
5 business in New Mexico who manufactures tobacco products or
6 who purchases or receives on consignment tobacco products
7 from any person outside of New Mexico, which tobacco products
8 are to be distributed in New Mexico in the ordinary course of
9 business;

10 E. "person" means any individual, estate, trust,
11 receiver, cooperative association, club, corporation,
12 company, firm, partnership, joint venture, syndicate, limited
13 liability company, limited liability partnership, other
14 association or gas, water or electric utility owned or
15 operated by a county or municipality or other entity of the
16 state; "person" also means, to the extent permitted by law, a
17 federal, state or other governmental unit or subdivision or
18 an agency, department or instrumentality;

19 F. "product value" means the amount paid, net of
20 any discounts taken and allowed, for tobacco products or, in
21 the case of tobacco products received on consignment, the
22 value of the tobacco products received or, in the case of
23 tobacco products manufactured and sold in New Mexico, the
24 proceeds from the sale by the manufacturer of the tobacco
25 products; and

1 G. "tobacco product" means any product, other than
2 cigarettes, made from or containing tobacco."

3 Section 21. Section 7-12A-3 NMSA 1978 (being Laws 1986,
4 Chapter 112, Section 4, as amended) is amended to read:

5 "7-12A-3. IMPOSITION AND RATE OF TAX--DENOMINATION AS
6 "TOBACCO PRODUCTS TAX"--DATE PAYMENT OF TAX DUE.--

7 A. For the manufacture or acquisition of tobacco
8 products in New Mexico to be distributed in the ordinary
9 course of business and for the consumption of tobacco
10 products in New Mexico, there is imposed an excise tax at the
11 rate of twenty-five percent of the product value of the
12 tobacco products.

13 B. The tax imposed by Subsection A of this section
14 may be referred to as the "tobacco products tax".

15 C. The tobacco products tax shall be paid by the
16 first purchaser on or before the twenty-fifth day of the
17 month following the month in which the taxable event occurs."

18 Section 22. Section 7-12A-4 NMSA 1978 (being Laws 1986,
19 Chapter 112, Section 5) is amended to read:

20 "7-12A-4. EXEMPTION--TOBACCO PRODUCTS TAX.--

21 A. Exempted from the tobacco products tax is the
22 product value of tobacco products sold:

23 (1) to or by the United States or any agency
24 or instrumentality thereof;

25 (2) to the governing body or any enrolled

1 tribal member licensed by the governing body of an Indian
2 nation, tribe or pueblo to be distributed on the reservation
3 or pueblo grant of that Indian nation, tribe or pueblo; or

4 (3) the state of New Mexico or any political
5 subdivision thereof.

6 B. As used in this section, the term "agency or
7 instrumentality" does not include persons who are agents or
8 instrumentalities of the United States for a particular
9 purpose or only when acting in a particular capacity or
10 corporate agencies or instrumentalities."

11 Section 23. Section 57-2A-4 NMSA 1978 (being Laws 2000,
12 Chapter 77, Section 4) is amended to read:

13 "57-2A-4. DOCUMENTATION.--

14 A. On the first business day of each month, each
15 person licensed or registered to affix a state tax stamp to
16 cigarettes pursuant to Section 7-12-9.1 NMSA 1978 shall file
17 with the department for all cigarettes imported into the
18 United States to which the person has affixed a tax stamp in
19 the preceding month:

20 (1) copies of:

21 (a) the permit issued pursuant to 26
22 USCA 5713 to the person importing the cigarettes into the
23 United States allowing the person to import the cigarettes;
24 and

1 (b) the customs form containing, with
2 respect to the cigarettes, the internal revenue tax
3 information required by the federal bureau of alcohol,
4 tobacco, firearms and explosives;

5 (2) a statement signed under penalty of
6 perjury by the person affixing the state tax stamp
7 identifying the brand and brand styles of all the cigarettes,
8 the quantity of each brand style, the supplier of the
9 cigarettes and the person to whom the cigarettes were
10 conveyed for resale and a separate statement by that person
11 under penalty of perjury, which is not confidential or exempt
12 from public disclosure, identifying only the brands and the
13 brand styles of the cigarettes; and

14 (3) a statement signed under penalty of
15 perjury by an officer of the manufacturer or importer of the
16 cigarettes certifying that the manufacturer or importer has
17 complied with the package health warning and ingredient
18 reporting requirements of 15 USCA Sections 1333 and 1335a
19 with respect to the cigarettes, including a statement
20 indicating whether the manufacturer is or is not a
21 participating manufacturer within the meaning of that federal
22 law.

23 B. Prior to making a delivery sale or mailing,
24 shipping or otherwise delivering cigarettes in connection
25 with a delivery sale, each person shall file with the

1 department and with the attorney general a statement setting
2 forth the person's name and trade name and the address of the
3 person's principal place of business and any other place of
4 business.

5 C. Not later than the tenth day of each month,
6 each person who has made a delivery sale or mailed, shipped
7 or otherwise delivered cigarettes in connection with a
8 delivery sale during the previous calendar month shall file
9 with the department and with the attorney general a report in
10 the format prescribed by the attorney general, which may
11 include an electronic format, that provides for each delivery
12 sale:

13 (1) the name and address of the customer to
14 whom the delivery sale was made;

15 (2) the brand or brands of cigarettes that
16 were sold in the delivery sale; and

17 (3) the quantity of cigarettes that were
18 sold in the delivery sale.

19 D. Any person who satisfies the requirements of
20 Section 376 of Title 15 of the United States Code shall be
21 deemed to satisfy the requirements of this section.

22 E. For purposes of any penalty that may be imposed
23 for a violation of Subsection B or C of this section, a
24 failure to file a particular statement or report with both
25 the department and the attorney general shall constitute a

1 single violation."

2 Section 24. Section 57-2A-10 NMSA 1978 (being Laws
3 2000, Chapter 77, Section 10) is amended to read:

4 "57-2A-10. GENERAL PROVISIONS.--

5 A. The Cigarette Enforcement Act shall be enforced
6 by the department and the attorney general; provided that, at
7 the request of the department, the state police and all local
8 police authorities shall enforce the provisions of the
9 Cigarette Enforcement Act.

10 B. For the purpose of enforcing the Cigarette
11 Enforcement Act, the department or the attorney general may
12 request information from any state or local agency, and may
13 share information with, and request information from, any
14 federal agency and any agency of any other state or any local
15 agency thereof.

16 C. In addition to any other remedy provided by
17 law, including enforcement as provided in Subsection A of
18 this section, any person may bring an action for appropriate
19 injunctive or other equitable relief for a violation of the
20 Cigarette Enforcement Act; actual damages, if any, sustained
21 by reason of the violation; and, as determined by the court,
22 interest on the damages from the date of the complaint,
23 taxable costs and reasonable attorney fees. If the trier of
24 fact finds that the violation is flagrant, it may increase
25 recovery to an amount not in excess of three times the actual

1 damages sustained by reason of the violation."

2 Section 25. Section 57-12-2 NMSA 1978 (being Laws 1967,
3 Chapter 268, Section 2, as amended) is amended to read:

4 "57-12-2. DEFINITIONS.--As used in the Unfair Practices
5 Act:

6 A. "person" means, where applicable, natural
7 persons, corporations, trusts, partnerships, associations,
8 cooperative associations, clubs, companies, firms, joint
9 ventures or syndicates;

10 B. "seller-initiated telephone sale" means a sale,
11 lease or rental of goods or services in which the seller or
12 the seller's representative solicits the sale by telephoning
13 the prospective purchaser and in which the sale is
14 consummated entirely by telephone or mail, but does not
15 include a transaction:

16 (1) in which a person solicits a sale from a
17 prospective purchaser who has previously made an authorized
18 purchase from the seller's business; or

19 (2) in which the purchaser is accorded the
20 right of rescission by the provisions of the federal Consumer
21 Credit Protection Act, 15 U.S.C. 1635 or regulations issued
22 pursuant thereto;

23 C. "trade" or "commerce" includes the advertising,
24 offering for sale or distribution of any services and any
25 property and any other article, commodity or thing of value,

1 including any trade or commerce directly or indirectly
2 affecting the people of this state;

3 D. "unfair or deceptive trade practice" means an
4 act specifically declared unlawful pursuant to the Unfair
5 Practices Act, a false or misleading oral or written
6 statement, visual description or other representation of any
7 kind knowingly made in connection with the sale, lease,
8 rental or loan of goods or services or in the extension of
9 credit or in the collection of debts by a person in the
10 regular course of the person's trade or commerce, that may,
11 tends to or does deceive or mislead any person and includes:

12 (1) representing goods or services as those
13 of another when the goods or services are not the goods or
14 services of another;

15 (2) causing confusion or misunderstanding as
16 to the source, sponsorship, approval or certification of
17 goods or services;

18 (3) causing confusion or misunderstanding as
19 to affiliation, connection or association with or
20 certification by another;

21 (4) using deceptive representations or
22 designations of geographic origin in connection with goods or
23 services;

24 (5) representing that goods or services have
25 sponsorship, approval, characteristics, ingredients, uses,

1 benefits or quantities that they do not have or that a person
2 has a sponsorship, approval, status, affiliation or
3 connection that the person does not have;

4 (6) representing that goods are original or
5 new if they are deteriorated, altered, reconditioned,
6 reclaimed, used or secondhand;

7 (7) representing that goods or services are
8 of a particular standard, quality or grade or that goods are
9 of a particular style or model if they are of another;

10 (8) disparaging the goods, services or
11 business of another by false or misleading representations;

12 (9) offering goods or services with intent
13 not to supply them in the quantity requested by the
14 prospective buyer to the extent of the stock available,
15 unless the purchaser is purchasing for resale;

16 (10) offering goods or services with intent
17 not to supply reasonable expectable public demand;

18 (11) making false or misleading statements
19 of fact concerning the price of goods or services, the prices
20 of competitors or one's own price at a past or future time or
21 the reasons for, existence of or amounts of price reduction;

22 (12) making false or misleading statements
23 of fact for the purpose of obtaining appointments for the
24 demonstration, exhibition or other sales presentation of
25 goods or services;

1 (13) packaging goods for sale in a container
2 that bears a trademark or trade name identified with goods
3 formerly packaged in the container, without authorization,
4 unless the container is labeled or marked to disclaim a
5 connection between the contents and the trademark or trade
6 name;

7 (14) using exaggeration, innuendo or
8 ambiguity as to a material fact or failing to state a
9 material fact if doing so deceives or tends to deceive;

10 (15) stating that a transaction involves
11 rights, remedies or obligations that it does not involve;

12 (16) stating that services, replacements or
13 repairs are needed if they are not needed;

14 (17) failing to deliver the quality or
15 quantity of goods or services contracted for; or

16 (18) violating the Tobacco Escrow Fund Act;
17 and

18 E. "unconscionable trade practice" means an act or
19 practice in connection with the sale, lease, rental or loan,
20 or in connection with the offering for sale, lease, rental or
21 loan, of any goods or services, including services provided
22 by licensed professionals, or in the extension of credit or
23 in the collection of debts that to a person's detriment:

24 (1) takes advantage of the lack of
25 knowledge, ability, experience or capacity of a person to a

