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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

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A N A C T

RELATING TO CRIMINAL OFFENSES - TAXATION AND TOBACCO - DELIVERY AND
SALE OF TOBACCO PRODUCTS

Introduced By: Representatives Ginaitt, Anguilla, Lewiss, and Naughton

Date Introduced: February 17, 2005

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 11-9-13.11 and 11-9-13.15 of the General Laws in Chapter 11-9
2 entitled "Children" are hereby amended to read as follows:

3 **11-9-13.11. Prohibition on the sale or distribution of tobacco products through the**
4 **mail conveyance of tobacco products through the mail to children under eighteen (18) --**
5 **Proof of age of purchaser required -- General rule. --** (a) The distribution, or sale or
6 conveyance of tobacco products to children under the age of eighteen (18) via the United States
7 Postal Service, or by any other public or private postal or package delivery service, shall be
8 prohibited.

9 (b) Any person selling or distributing tobacco products in the form of ~~cigarettes~~, cigars,
10 pipe tobacco, chewing tobacco, or snuff directly to a consumer via the United States Postal
11 Service, or by any other public or private postal or package delivery service, including orders
12 placed by mail, telephone, facsimile, or internet, shall: (1) before distributing or selling the
13 tobacco product through any of these means, receive both a copy of a valid form of government
14 identification showing date of birth to verify the purchaser is age eighteen (18) years or over and
15 an attestation from the purchaser certifying that the information on the government identification
16 truly and correctly identifies the purchaser and the purchaser's current address, and (2) deliver the
17 tobacco product to the address of the purchaser given on the valid form of government
18 identification and by a postal or package delivery service method that either limits delivery to that

1 purchaser and requires the purchaser to sign personally to receive the delivery or requires a
2 signature of an adult at the purchaser's address to deliver the package.

3 (c) The attorney general shall bring an action for any violation of this chapter. Any
4 distribution, or sale or conveyance of a tobacco product to a child under eighteen (18) years of
5 age via the United States Postal Service, or by any other public or private postal or package
6 delivery service, shall be subject to an action against the distributor, or seller or conveyor by the
7 attorney general of the state of Rhode Island. A minimum fine of one thousand dollars (\$1,000)
8 shall be assessed against any distributor, or seller or conveyor convicted of distributing, or selling
9 or conveying tobacco products via the United States postal service, or by any other public or
10 private postal or package delivery service, for each delivery, or sale or conveyance of a tobacco
11 product to a child under eighteen (18) years of age.

12 (d) For the purpose of this section, "distribution," "distributing," "selling" and "sale" do not
13 include the acts of the United States Postal Service or other common carrier when engaged in the
14 business of transporting and delivering packages for others or the acts of a person, whether
15 compensated or not, who transports or delivers a package for another person without any reason
16 to know of the package's contents.

17 (e) Any delivery sale of cigarettes shall be made pursuant to the provisions of chapter
18 20.1 of title 44. The provisions of this section (11-9-13.11) shall apply to each tobacco product
19 listed in subsection (b) herein, but shall not apply to any delivery sale of cigarettes.

20 **11-9-13.15. Penalty for operating without a dealer license.** -- (a) Any individual or
21 business who violates this chapter by selling or conveying a tobacco product without a retail
22 tobacco products dealer license shall be cited for that violation and shall be required to appear in
23 court for a hearing on the citation.

24 (b) Any individual or business cited for a violation under this section of this chapter
25 shall:

26 (1) Either post a ~~five hundred dollar (\$500)~~ bond , in an amount equal to the fine
27 provided for in subsection (c) of this section, with the court within ten (10) days of the citation; or

28 (2) Sign and accept the citation indicating a promise to appear in court.

29 (c) An individual or business who has accepted the citation may:

30 (1) Pay ~~the five hundred dollar (\$500)~~ a fine, in the amount of one thousand dollars
31 (\$1,000) or five (5) times the retail value of the cigarettes involved, whichever is greater, either
32 by mail or in person, within ten (10) days after receiving the citation; or

33 (2) If that individual or business has posted a bond, forfeit the bond by not appearing at
34 the scheduled hearing. If the individual or business cited pays the ~~five hundred dollar (\$500)~~ fine

1 or forfeits the bond, that individual or business is deemed to have admitted the cited violation and
2 to have waived the right to a hearing on the issue of commission on the violation.

3 (d) The court after a hearing on a citation shall make a determination as to whether a
4 violation has been committed. If it is established that the violation did occur, the court shall
5 impose a ~~five hundred dollar (\$500)~~ fine, in an amount equal to the fine provided for in
6 subsection (c) of this section, in addition to any court costs or other court fees.

7 SECTION 2. Title 44 of the General Laws entitled "Taxation" is hereby amended by
8 adding thereto the following chapter:

9 CHAPTER 20.1

10 DELIVERY SALES OF CIGARETTES

11 **44-20.1-1. Definitions. - - For purposes of this chapter:**

12 (1) "Adult" means a person who is at least the legal minimum purchase age.

13 (2) "Consumer" means an individual who is not licensed as a wholesaler or retailer
14 pursuant to the provisions of section 44-20-2.

15 (3) "Delivery sale" means any sale of cigarettes to a consumer in the state where either:

16 (i) the purchaser submits the order for such sale by means of a telephonic or other method
17 of voice transmission, the mails or any other delivery service, or the Internet or other online
18 service; or

19 (ii) the cigarettes are delivered by use of the mails or other delivery service. A sale of
20 cigarettes shall be a delivery sale regardless of whether the seller is located within or without the
21 state. A sale of cigarettes not for personal consumption to a person who is a wholesale dealer or a
22 retail dealer shall not be a delivery sale.

23 (4) "Delivery service" means any person who is engaged in the commercial delivery of
24 letters, packages, or other containers.

25 (5) "Administrator" means the tax administrator.

26 (6) "Legal minimum purchase age" is the minimum age at which an individual may
27 legally purchase cigarettes in the state.

28 (7) "Mails" or "mailing" means the shipment of cigarettes through the United States
29 Postal Service.

30 (8) "Person" means the same as that term is defined in section 44-20-1.

31 (9) "Shipping container" means bills of lading, airbills, or any other documents used to
32 evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

33 **44-20.1-2. Requirements for delivery sales. - - (a) No person shall make a delivery sale**
34 **of cigarettes to any individual who is under the legal minimum purchase age in the state.**

1 (b) Each person accepting a purchase order for a delivery sale shall comply with:
2 (1) The age verification requirements set forth in section 44-20.1-3;
3 (2) The disclosure requirements set forth in section 44-20.1-4;
4 (3) The shipping requirements set forth in section 44-20.1-5;
5 (4) The registration and reporting requirements set forth in section 44-20.1-6;
6 (5) The tax collection requirements set forth in section 44-20.1-7; and
7 (6) All other laws of the state generally applicable to sales of cigarettes that occur entirely
8 within the state, including, but not limited to, those laws imposing: (i) excise taxes; (ii) sales
9 taxes; (iii) license and revenue-stamping requirements; and (iv) escrow payment obligations as set
10 forth in section 23-71-3.

11 **44-20.1-3. Age verification requirements.** - - (a) No person shall mail, ship, or
12 otherwise deliver cigarettes in connection with a delivery sale unless such person prior to the first
13 delivery sale to such consumer:

14 (1) Obtains from the prospective consumer a certification that includes: (i) a reliable
15 confirmation that the consumer is at least the legal minimum purchase age; and (ii) a statement
16 signed by the prospective consumer in writing that certifies the prospective consumer's address
17 and that the consumer is at least eighteen (18) years of age. Such statement shall also confirm:
18 (A) that he prospective consumer understands that signing another person's name to such
19 certification is illegal; (B) that the sale of cigarettes to individuals under the legal minimum
20 purchase age is illegal; (C) that the purchase of cigarettes by individuals under the legal minimum
21 purchase age is illegal under the laws of the state; and (D) that the prospective consumer wants to
22 receive mailings from a tobacco company;

23 (2) Makes a good faith effort to verify the information contained in the certification
24 provided by the prospective consumer pursuant to subsection (1) against a commercially available
25 database, or obtains a photocopy or other image of the valid, government-issued identification
26 stating the date of birth or age of the individual placing the order;

27 (3) Provides to the prospective consumer, via e-mail or other means, a notice that meets
28 the requirements of section 44-20.1-4; and

29 (4) In the case of an order for cigarettes pursuant to an advertisement on the Internet,
30 receives payment for the delivery sale from the prospective consumer by a credit or debit card
31 that has been issued in such consumer's name, or by check.

32 (b) Persons accepting purchase orders for delivery sales may request that prospective
33 consumers provide their e-mail addresses.

34 **44-20.1-4. Disclosure requirements.** - - The notice required under subdivision 44-20.1-

1 3(a)(3) shall include:

2 (a) A prominent and clearly legible statement that cigarette sales to consumers below the
3 legal minimum purchase age are illegal;

4 (b) A prominent and clearly legible statement that sales of cigarettes are restricted to
5 those consumers who provide verifiable proof of age in accordance with section 44-20.1-3; and

6 (c) A prominent and clearly legible statement that cigarette sales are subject to tax under
7 the provisions of section 44-20-12, and an explanation of how such tax has been, or is to be, paid
8 with respect to such delivery sale.

9 **44-20.1-5. Shipping requirements. - - (a) Each person who mails, ships, or otherwise**
10 **delivers cigarettes in connection with a delivery sale:**

11 (1) Shall include as part of the bill of lading or other shipping documents a clear and
12 conspicuous statement providing as follows: "Cigarettes: Rhode Island law prohibits shipping to
13 individuals under 18, and requires the payment of all applicable taxes";

14 (2) Shall use a method of mailing, shipping or delivery that obligates the delivery service
15 to require: (i) the consumer placing the purchase order for the delivery sale or another adult of
16 legal minimum purchase age residing at the consumer's address, to sign to accept delivery of the
17 shipping container; and (ii) proof, in the form of a valid, government-issued identification bearing
18 a photograph of the individual who signs to accept delivery of the shipping container,
19 demonstrating that h/she either the addressee or another adult of legal minimum purchase age
20 residing at the consumer's address. However, proof of the legal minimum purchase age shall be
21 required only if such individual appears to be under twenty-seven (27) years of age; and

22 (3) Shall provide to the delivery service retained for such delivery sale evidence of full
23 compliance with section 44-20.1-7.

24 (b) If the person accepting a purchase order for a delivery sale delivers the cigarettes
25 without using a delivery service, such person shall comply with all requirements of this chapter
26 applicable to a delivery service and shall be in violation of the provisions of this chapter if he/she
27 fails to comply with any such requirement.

28 **44-20.1-6. Registration and reporting requirements. - - (a) Prior to making delivery**
29 **sales or mailing, shipping or otherwise delivering cigarettes in connection with any such sales,**
30 **every person shall file with the administrator a statement setting forth such person's name, trade**
31 **name, and the address of such person's principal place of business and any other place of**
32 **business.**

33 (b) Not later than the tenth (10th) day of each calendar month, each person that has made
34 a delivery sale or mailed, shipped, or otherwise delivered cigarettes in connection with any such

1 sale during the previous calendar month shall file with the administrator a memorandum or a
2 copy of the invoice that provides for and every such delivery sale:

3 (1) The name and address of the consumer to whom such delivery sale was made;

4 (2) The brand or brands of the cigarettes that were sold in such delivery sale; and

5 (3) The quantity of cigarettes that were sold in such delivery sale.

6 (c) Any person that satisfies the requirements of section 376 of title 15 of the United
7 States Code shall be deemed to satisfy the requirements of this section.

8 **44-20.1-7. Collection of taxes.** - - Each person accepting a purchase order for a delivery
9 sale shall collect and remit to the administrator all cigarette taxes imposed by the state with
10 respect to such delivery sale, except that such collection and remission shall not be required to the
11 extent such person has obtained proof (in the form of the presence of applicable tax stamps or
12 otherwise) that such taxes already have been paid to the state.

13 **44-20.1-8. Penalties.** - - (a) Except as otherwise provided in this section, a first violation
14 of any provision of this chapter shall be punishable by a fine of one thousand dollars (\$1,000) or
15 five (5) times the retail value of the cigarettes involved, whichever is greater. A second or
16 subsequent violation of any provision of this chapter shall be punishable by a fine of five
17 thousand dollars (\$5,000) or five (5) times the retail value of the cigarettes involved, whichever is
18 greater.

19 (b) Any person who knowingly violates any provision of this chapter, or who knowingly
20 and falsely submits a certification under subsection 44-20.1-3(a)(1) in another person's name,
21 shall, for each such offense, be fined ten thousand dollars (\$10,000) or five (5) times the retail
22 value of the cigarettes involved, whichever is greater, or imprisoned not more than five (5) years,
23 or both.

24 (c) Any person failing to collect or remit to the administrator any tax required in
25 connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of
26 five (5) times the retail value of the cigarettes involved.

27 (d)(1) Any cigarettes sold or attempted to be sold in a delivery sale that does not meet the
28 requirements of this chapter shall be forfeited to the state and destroyed.

29 (2) All fixtures, equipment, and all other materials and personal property on the premises
30 of any person who, with the intent to defraud the state, violates any of the requirements of this
31 chapter, shall be forfeited to the state.

32 **44-20.1-9. Enforcement.** - - The attorney general, or his or her designee, or any person
33 who holds a valid permit under section 26 U.S.C. section 5712, may bring an action in the
34 appropriate court in the state to prevent or restrain violation of this chapter by any person, or any

1 [person controlling such person.](#)

2 SECTION 3. Sections 44-20-9, 44-20-10, 44-20-11, 44-20-27 and 44-20-29 of the
3 General Laws in Chapter 44-20 entitled "Cigarette Tax" are hereby repealed.

4 ~~**44-20-9. Solicitor's permit.** --- No person shall offer for sale, or solicit any order in this
5 state for the sale of any cigarettes for his or her own account, or for the account of any person or
6 firm, unless that person has first obtained from the administrator a solicitor's permit, the fee for
7 which is twenty five dollars (\$25.00), which is to be paid to the administrator. Each permit
8 expires at midnight on May 31 next succeeding the date of issuance. The permit shall state the
9 name and address of the vendor whom the solicitor represents, and the solicitor shall not represent
10 any vendor whose name does not appear upon the permit.~~

11 ~~**44-20-10. Reports by solicitors --- Exemption of licensed distributors and dealers.** ---
12 The permittee shall furnish the administrator, on proper forms approved by the administrator,
13 copies of all orders solicited by the permittee in this state, the copies to show the quantity and
14 kind of goods ordered, by whom ordered, from what person, firm, or corporation ordered, the
15 correct address of the purchaser, and any other information which may be required by the
16 administrator. Failure to comply with the provisions of this section subjects the solicitor to
17 forfeiture of his or her permit. Provided, that sections 44-20-9 --- 44-20-11 does not apply to any
18 solicitor who is a licensed dealer or distributor, or who sells or solicits orders only for a licensed
19 dealer or distributor.~~

20 ~~**44-20-11. Penalty for violations by solicitors.** --- Any person who violates any provision
21 of sections 44-20-9 and 44-20-10 is subject to a fine of not more than one hundred dollars (\$100)
22 for each offense.~~

23 ~~**44-20-27. Nonresident as licensed distributor.** --- Any person complying with the
24 provisions of sections 44-20-23 --- 44-20-26 becomes a licensed distributor, within the meaning of
25 this chapter, and is subject to all provisions of this chapter applicable to licensed distributors,
26 except as otherwise determined by the administrator.~~

27 ~~**44-20-29. Stamping by dealers.** --- Each dealer shall, within twenty four (24) hours after
28 coming into possession of any cigarettes not bearing proper stamps evidencing payment of the tax
29 imposed by this chapter and before selling the cigarettes, affix or cause to be affixed, at the
30 location for which his or her license is issued except as provided in this chapter, in the manner the
31 administrator may specify in regulations issued pursuant to this chapter, to each package of
32 cigarettes, stamps of the proper denominations.~~

33 SECTION 4. Chapter 44-20 of the General Laws entitled "Cigarette Tax" is hereby
34 amended by adding thereto the following sections:

1 **44-20-4.1. License availability. - -** No license under this chapter may be granted,
2 maintained or renewed if the applicant, or any combination of persons owning directly or
3 indirectly, in the aggregate, more than ten percent (10%) of the ownership interests in the
4 applicant:

5 (a) Owes five hundred dollars (\$500) or more in delinquent cigarette taxes;

6 (b) Had a license under this chapter revoked by the administrator within the past two (2)
7 years;

8 (c) Has been convicted of a crime relating to cigarettes stolen or counterfeit cigarettes;

9 (d) Is a cigarette manufacturer or importer that is neither: (i) a participating manufacturer
10 as defined in subsection II (jj) of the “Master Settlement Agreement” as defined in section 23-71-
11 2; nor (ii) in full compliance with chapter 20.2 of this title and section 23-71-3;

12 (e) Has imported, or caused to be imported, into the United States any cigarette in
13 violation of 19 U.S.C. 1681 a; or

14 (f) Has imported, or caused to be imported into the United States, or manufactured for
15 sale or distribution in the United States any cigarette that does not fully comply with the Federal
16 Cigarette Labeling and Advertising Act (15 U.S.C. 1331, et. seq).

17 **44-20-8.1. Maintenance and publication of list of licenses. - -**

18 The administrator shall create and maintain a website setting forth the identity of all
19 licensed persons under this chapter, itemized by type of license possessed, and shall update the
20 site no less frequently than once per month.

21 **44-20-8.2. Transactions only with licensed manufacturers, importers, distributors,**

22 **and dealers. - -** A manufacturer or importer may sell or distribute cigarettes to a person located
23 or doing business within this state, including on any tribal lands located within this state, only if
24 such person is a licensed importer or distributor. An importer may obtain cigarettes only from a
25 licensed manufacturer. A distributor may sell or distribute cigarettes to a person located or doing
26 business within this state, including on any tribal lands located within this state, only if such
27 person is a licensed distributor or dealer. A distributor may obtain cigarettes only from a licensed
28 manufacturer, importer, or distributor. A dealer may obtain cigarettes only from a licensed
29 distributor.

30 **44-20-33.1. Transportation of unstamped cigarettes. - -** (a) Any person who ships

31 unstamped cigarette packages in or into this state other than to a licensed manufacturer, importer
32 or distributor shall first file with the administrator notice of such shipment. This paragraph shall
33 not apply to any common or contract carrier that is transporting cigarettes through this state to
34 another location under a proper bill of lading or freight bill, which states the quantity, source, and

1 destination of such cigarettes.

2 (b) Any person transporting unstamped cigarette packages into or within this state shall
3 carry, in the vehicle used to convey the shipment, invoices or equivalent documentation of the
4 shipment for all cigarettes in the shipment. The invoices or documentation shall show the true
5 name and address of the consignor or seller, the true name and address of the consignee or
6 purchaser, and the quantity by brand of the cigarettes so transported.

7 **44-20-43.1. Inspections.** - - (a) The administrator or his or her duly authorized agent
8 shall have authority to enter and inspect, without a warrant during normal business hours, and
9 with a warrant during nonbusiness hours, the facilities and records of any manufacturer, importer,
10 distributor or dealer.

11 (b) In any case where the administrator or his or her duly authorized agent, or any police
12 officer of this state, has knowledge or reasonable grounds to believe that any vehicle is
13 transporting cigarettes in violation of this chapter, the administrator, such agent, or such police
14 officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

15 **44-20-51.1. Civil penalties.** - - (a) Whoever omits, neglects, or refuses to comply with
16 any duty imposed upon him/her by this chapter, or to do, or cause to be done, any of the things
17 required by this chapter, or does anything prohibited by this chapter, shall, in addition to any
18 other penalty provided in this chapter, be liable to a penalty of one thousand dollars (\$1,000), or
19 five (5) times the retail value of the cigarettes involved, whichever is greater, to be recovered,
20 with costs of suit, in a civil action.

21 (b) Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or
22 regulations, shall, in addition to any other penalty provided in this chapter, be liable to a penalty
23 of five (5) times the tax due but unpaid.

24 **44-20-51.2. Criminal penalty for fraudulent offenses.** - - Whoever, with intent to
25 defraud the state fails to comply with any requirement of this chapter or regulations prescribed
26 thereunder shall in addition to any other penalty provided in this chapter, for each such offense,
27 be fined ten thousand dollars (\$10,000), or imposed not more than five (5) years, or both.

28 **44-20-51.3. Counterfeit cigarettes.** - - Notwithstanding any other provision of law, the
29 sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, or
30 dealer shall result in the seizure of the product and related machinery by the administrator or any
31 law enforcement agency and shall be punishable as follows:

32 (a) A violation involving a total quantity of less than two (2) cartons of cigarettes shall be
33 punishable by a fine of one thousand dollars (\$1,000) or five (5) times the retail value of the
34 cigarettes involved, whichever is greater, or imprisonment not to exceed five (5) years, or both.

1 (b) A subsequent violation involving a total quantity of less than two (2) cartons of
2 cigarettes shall be punishable by a fine of five thousand dollars (\$5,000) or five (5) times the
3 retail value of the cigarettes involved, whichever is greater, or imprisonment not to exceed five
4 (5) years, or both, and shall also result in the revocation by the administrator of the manufacturer,
5 importer, distributor, or dealer license.

6 (c) A first violation involving a total quantity of two (2) cartons of cigarettes or more
7 shall be punishable by a fine of two thousand dollars (\$2,000) or five (5) times the retail value of
8 the cigarettes involved, whichever is greater, or imprisonment not to exceed five (5) years, or
9 both.

10 (d) A subsequent violation involving a quantity of two (2) cartons of cigarettes or more
11 shall be punishable by a fine of fifty thousand dollars (\$50,000) or five (5) times the retail value
12 of the cigarettes involved, whichever is greater, or imprisonment not to exceed five (5) years, or
13 both, and shall also result in the revocation by the administrator of the manufacturer, importer,
14 distributor, or dealer license.

15 For purposes of this section, counterfeit cigarettes includes cigarettes that have false
16 manufacturing labels or packages of cigarettes bearing counterfeit tax stamps. Any counterfeit
17 cigarettes seized by the board shall be destroyed.

18 SECTION 5. Sections 44-20-1, 44-20-2, 44-20-4, 44-20-5, 44-20-8, 44-20-12, 44-20-
19 12.2, 44-20-13, 44-20-14, 44-20-15, 44-20-17, 44-20-18, 44-20-19, 44-20-20, 44-20-21, 44-20-
20 23, 44-20-24, 44-20-26, 44-20-28, 44-20-30, 44-20-32, 44-20-33, 44-20-35, 44-20-36, 44-20-37,
21 44-20-38, 44-20-39, 44-20-40, 44-20-41, 44-20-43, 44-20-45 and 44-20-51 of the General Laws
22 in Chapter 44-20 entitled "Cigarette Tax" are hereby amended to read as follows:

23 **44-20-1. Definitions.** – Whenever used in this chapter, unless the context requires:

24 (1) "Administrator" means the tax administrator;

25 (2) "Cigarettes" means and includes any cigarettes suitable for smoking in cigarette
26 form, and each sheet of cigarette rolling paper;

27 (3) "Dealer" means any person ~~other than a distributor who is engaged in this state in the~~
28 ~~business of selling cigarettes;~~ whether located within or outside of this state, who sells or
29 distributes cigarettes to a consumer in this state;

30 (4) ~~(A)~~ "Distributor" means any person:

31 ~~(A) Engaged in this state in the business of manufacturing cigarettes or any person~~
32 ~~engaged in the business of selling cigarettes to dealers, or to other persons, for the purpose of~~
33 ~~resale only; provided, that seventy five percent (75%) of all cigarettes sold by that person in this~~
34 ~~state are sold to dealers or other persons for resale;~~

1 ~~-(B) Selling cigarettes directly to consumers at retail, and maintaining one or more~~
2 ~~regular places of business in this state for that purpose; provided, that seventy five percent (75%)~~
3 ~~of the sold cigarettes are purchased directly from the manufacturer; or~~

4 ~~-(C) Selling cigarettes directly to consumers in this state by means of at least twenty five~~
5 ~~(25) cigarette vending machines;~~

6 ~~-(ii) Provided, that any person who owns or maintains five (5) or more retail outlets in~~
7 ~~Rhode Island, having one hundred percent (100%) common ownership, through which cigarettes~~
8 ~~are sold at retail may apply for a distributor's license, and upon issuance of the license, that~~
9 ~~person is deemed to be a distributor under this chapter; , whether located within or outside of this~~
10 state, other than a dealer, who sells or distributes cigarettes within or into this state. Such term
11 shall not include any cigarette manufacturer, export warehouse proprietor, or importer with a
12 valid permit under 26 U.S.C. section 5712, if such person sells or distributes cigarettes in this
13 state only to licensed distributors, or to an export warehouse proprietor or another manufacturer
14 with a valid permit under 26 U.S.C. section 5712;

15 ~~(5) "Licensed dealer" means a dealer licensed under the provisions of this chapter;~~

16 ~~-(6) "Licensed distributor" means a distributor licensed under the provisions of this~~
17 ~~chapter;~~

18 (5) "Importer" means any person who imports into the United States, either directly or
19 indirectly, a finished cigarette for sale or distribution;

20 (6) "Indian tribal entity" means a federally recognized Indian tribe, tribal entity, or any
21 other person doing business as a distributor or dealer of cigarettes on the Indian country, as
22 defined in 18 U.S.C. section 1151, of such tribe within this state;

23 (7) "Licensed", when used with reference to a manufacturer, importer, distributor or
24 dealer, means only those persons who hold a valid and current license issued under section 44-20-
25 2 for the type of business being engaged in. When the term "licensed" is used before a list of
26 entities, such as "licensed manufacturer, importer, wholesale dealer, or retailer dealer," such term
27 shall be deemed to apply to each entity in such list;

28 (8) "Manufacturer" means any person who manufactures, fabricates, assembles,
29 processes, or labels a finished cigarette;

30 ~~(7)~~(9) "Person" means any individual, firm, fiduciary, partnership, corporation, trust, or
31 association, however formed;

32 ~~(8)~~(10) "Place of business" means and includes any place where cigarettes are sold or
33 where cigarettes are stored or kept for the purpose of sale or consumption, including any vessel,
34 vehicle, airplane, train, or vending machine;

1 ~~(9)~~(11) "Sale" or "sell" includes and applies to gifts, exchanges, and barter;

2 ~~(10)~~(12) "Stamp" means the impression, device, stamp, label, or print manufactured,
3 printed, or made as prescribed by the administrator to be affixed to packages of cigarettes, as
4 evidence of the payment of the tax provided by this chapter; or to indicate that the cigarettes are
5 intended for a sale or distribution in this state that is exempt from state tax under the provisions of
6 subsection 44-20-12.3 (a); and also includes impressions made by metering machines authorized
7 to be used under the provisions of this chapter.

8 ~~44-20-2. Distributors' and dealers' licenses required.~~ -- **44-20-2. Licenses required.**

9 -- Each manufacturer and importer, and each person engaging in the business of selling cigarette
10 products in this state, including any distributor or dealer, shall secure a license from the
11 administrator before engaging in that business, or continuing to engage in it. A separate
12 application and license is required for each place of business, ~~operated by a distributor or dealer;~~
13 ~~provided, that an operator of vending machines for cigarette products is not required to obtain a~~
14 ~~distributor's license for each machine.~~ If the applicant for a license does not have a place of
15 business in this state, the license shall be issued for such applicant's principal place of business,
16 wherever located. A licensee shall notify the administrator within thirty (30) days in the event that
17 it changes its principal place of business. A separate license is required for each class of business
18 if the applicant is engaged ~~in business both as distributor and dealer.~~ in more than one of the
19 activities required to be licensed by this section. No person shall maintain or operate or cause to
20 be operated a vending machine for cigarette products without procuring a dealer's license for each
21 machine.

22 **44-20-4. Application for license -- Display.** -- All licenses are issued by the

23 administrator upon approval of application, stating, on forms prescribed by the administrator, the
24 name and address of the applicant; the address of the applicant's principal place of business; each
25 place of business where the applicant's business will be conducted within this state; and any ~~the~~
26 information ~~he or she~~ the administrator may require for the proper administration of this chapter.
27 ~~Each application for a distributor's license shall be accompanied by (1) a fee of one thousand~~
28 ~~dollars (\$1,000) with respect to those distributors who affix state cigarette tax stamps to at least~~
29 ~~seventy five percent (75%) of all cigarettes sold by those distributors ("Class A Distributor"), or~~
30 ~~(2) a fee of one hundred dollars (\$100) with respect to all other distributors ("Class B~~
31 ~~Distributor"); each application for a dealer's license shall be accompanied by a fee of twenty five~~
32 ~~dollars (\$25.00). Each issued license shall be prominently displayed on the premises covered by~~
33 ~~the license. In the instance of an application for a Class A distributor's license, the administrator~~
34 ~~shall require, in addition to other information as may be deemed necessary, the filing of affidavits~~

1 ~~from three (3) cigarette manufacturers with national distribution stating that the manufacturer will~~
2 ~~supply the distributor if the applicant is granted a license. Except as provided in this chapter, only~~
3 ~~Class A Distributors shall affix cigarette tax stamps.~~ If the applicant is a firm, partnership, or
4 association, the application shall state the name and address of each of its members. If the
5 applicant is a corporation, the application shall state the name and address of each of its officers
6 and the name and address of any person who owns, directly or indirectly, more than ten percent
7 (10%) of the ownership interests in the corporation. Each application for a manufacturer's,
8 importer's, or distributor's license shall be accompanied by a fee of one thousand dollars
9 (\$1,000), provided that for a distributor who does not affix stamps, the fee shall be one hundred
10 dollars (\$100); each application for a dealer's license shall be accompanied by a fee of twenty-
11 five dollars (\$25.00). Each issued license shall be prominently displayed on the premises within
12 this state, if any, covered by the license. If the instance of an application for a distributor's
13 license, the administrator shall require, in addition to other information as may be deemed
14 necessary, the filing of affidavits from three (3) cigarette manufacturers with national distribution
15 stating that the manufacturer will supply the distributor if the applicant is granted a license.

16 **44-20-5. Duration of dealers' licenses --- Renewal. Duration of manufacturer's,**
17 **importer's, and dealer's licenses -- Renewal. --** (a) Any manufacturer or importer license and
18 any license issued by the tax administrator authorizing a dealer to sell cigarettes in this state shall
19 expire at midnight on June 30 next succeeding the date of issuance unless (1) suspended or
20 revoked by the tax administrator, (2) the business with respect to which the license was issued
21 changes ownership, ~~or~~ (3) the manufacturer, importer, or dealer ceases to transact the business for
22 which the license was issued, or (4) after a period of time set by the administrator; provided such
23 period of time shall no be longer than three (3) years, in any of which cases the license shall
24 expire and terminate and the holder shall immediately return the license to the tax administrator.

25 (b) Every holder of a dealer's license shall annually, on or before February 1 of each
26 year, renew its license by filing an application for renewal along with a twenty-five dollar
27 (\$25.00) renewal fee. The renewal license is valid for the period July 1 of that calendar year
28 through June 30 of the subsequent calendar year.

29 **44-20-8. Suspension or revocation of license. --** The administrator may suspend or
30 revoke any license under this chapter for failure of the licensee to comply with any provision of
31 this chapter or with any provision of any other law or ordinance relative to the sale of cigarettes;
32 and the administrator may also suspend or revoke any license for failure of the licensee to comply
33 with any provision of chapter 13 of title 6, and, for the purpose of determining whether the
34 licensee is complying with any provision of chapter 13 of title 6, the administrator and his or her

1 authorized agents are empowered, in addition to authority conferred by section 44-20-40, to
2 examine the books, papers, and records of any licensee. The administrator shall revoke the license
3 of any person who would be ineligible to obtain a new or renew a license by reason of any of the
4 conditions for licensure provided in section 44-20-4.1. Any person aggrieved by the suspension
5 or revocation may apply to the administrator for a hearing as provided in section 44-20-47, and
6 may further appeal to the district court as provided in section 44-20-48.

7 **44-20-12. Tax imposed on cigarettes sold.** -- A tax is imposed on all cigarettes sold or
8 held for sale in the state. ~~by any person, the~~ The payment of the tax ~~to~~ shall be evidenced by
9 stamps ~~affixed~~ , which may be affixed only by licensed distributors. to the packages containing
10 ~~the such~~ cigarettes. ~~and as required by the tax administrator.~~ Any cigarettes on which the proper
11 amount of tax provided for in this chapter has been paid, payment being evidenced by the stamp,
12 is not subject to a further tax under this chapter. The tax is at the rate of one hundred twenty-three
13 (123) mills for each cigarette.

14 **44-20-12.2. Prohibited acts -- Penalty.** -- (a) No person or other legal entity shall sell or
15 distribute in the state, acquire, hold, own, possess, or transport for sale or distribution in this state,
16 or import or cause to be imported into the state for sale or distribution in this state nor shall tax
17 stamps be affixed to any cigarette package:

18 (1) That bears any label or notice prescribed by the United States Department of
19 Treasury to identify cigarettes exempt from tax by the United States pursuant to section 5704 of
20 title 26 of the United States Code, 26 U.S.C. section 5704(b)(concerning cigarettes intended for
21 shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United
22 States), or for consumption beyond the jurisdiction of the internal revenue laws of the United
23 States, including any notice or label described in section 44.185 of title 27 of the Code of Federal
24 Regulations, 27 CFR section 44.185;

25 (2) That is not labeled in conformity with the provisions of the Federal Cigarette
26 Labeling and Advertising Act, 15 U.S.C. section 1331 et seq., or any other federal requirement
27 for the placement of labels, warnings and other information, applicable to cigarette packages
28 intended for domestic consumption;

29 (3) The packaging of which has been modified or altered by a person other than the
30 original manufacturer of the cigarettes, including by the placement of a sticker to cover
31 information on the package. For purposes of this subsection, a cigarette package shall not be
32 construed to have been modified or altered by a person other than the manufacturer if the most
33 recent modification to, or alteration of, the package was by the manufacturer or by a person
34 authorized by the manufacturer;

1 (4) Imported into the United States in violation of 26 U.S.C. section 5754 or any other
2 federal law, or implementing federal regulations;

3 (5) That the person otherwise knows or has reason to know the manufacturer did not
4 intend to be sold, distributed, or used in the United States; or

5 (6) That has not been submitted to the secretary of the U.S. Department of Health and
6 Human Services the list or lists of the ingredients added to tobacco in the manufacture of those
7 cigarettes required by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. section
8 1335a.

9 (b) The tax administrator is authorized to obtain and exchange information with the
10 United States Customs Service for the purpose of enforcing this section.

11 (c) Any person who affixes or distributes a tax stamp in violation of this section shall be
12 fined not more than five hundred dollars (\$500) for the first offense, and for each subsequent
13 offense shall be fined not more than one thousand dollars (\$1,000), or be imprisoned not more
14 than one year, or be both fined and imprisoned.

15 (d) Any cigarettes found in violation of this section shall be declared to be contraband
16 goods and may be seized by the tax administrator or his or her agents, or by any sheriff or his or
17 her deputy or any police officer, without a warrant. [In accordance with section 44-20-15, all](#)
18 [cigarettes seized pursuant to this section shall be destroyed.](#) The tax administrator shall
19 promulgate rules and regulations for the destruction of contraband goods pursuant to this section.

20 (e) The prohibitions of this section do not apply to:

21 (1) Tobacco products that are allowed to be imported or brought into the United States
22 free of tax and duty under subsection IV of chapter 98 of the harmonized tariff schedule of the
23 United States (see 19 U.S.C. section 1202); or

24 (2) Tobacco products in excess of the amounts described in subdivision (1) of this
25 subsection if the excess amounts are voluntarily abandoned to the tax administrator at the time of
26 entry, but only if the tobacco products were imported or brought into the United States for
27 personal use and not with intent to defraud the United States or any state.

28 (f) If any part or provision of this section or the application of any part to any person or
29 circumstance is held invalid, the remainder of the section, including the application of that part or
30 provision to other persons or circumstances, shall not be affected by that invalidity and shall
31 continue in full force and effect. To this end, the provisions of this section are severable.

32 **44-20-13. Tax imposed on unstamped cigarettes.** -- A tax is imposed at the rate of one
33 hundred twenty-three (123) mills for each cigarette upon the storage or use within this state of
34 any cigarettes not stamped in accordance with the provisions of this chapter in the possession of

1 any consumer ~~person other than a licensed distributor or dealer, or a carrier for transit from~~
2 ~~outside of this state to a licensed distributor or dealer~~ within this state.

3 **44-20-14. Return and payment of use tax.** -- Any ~~person~~ consumer having in his or her
4 possession any cigarettes with respect to the storage or use of which a tax is imposed in section
5 44-20-13 shall, within twenty-four (24) hours after coming into possession of the cigarettes in this
6 state, file a return with the tax administrator in a form prescribed by the administrator. The return
7 shall be accompanied by a payment of the amount of the tax shown on the form to be due.

8 ~~**44-20-15. Confiscation of contraband cigarettes.**~~ **44-20-15. Confiscation of**
9 **contraband cigarettes and other property.** - - (a) All cigarettes which are held for sale or
10 distribution within the borders of this state in violation of the requirements of this chapter ~~with~~
11 ~~respect to the storage or use of which the tax imposed in section 44 20 13 is not paid, as provided~~
12 ~~in this chapter,~~ are declared to be contraband goods and may be seized by the tax administrator or
13 his or her agents, or employees, or by any sheriff or his or her deputy or any police officer when
14 directed by the tax administrator to do so, without a warrant. ~~; provided, that nothing in this~~
15 ~~chapter shall be construed to require the tax administrator to confiscate unstamped cigarettes~~
16 ~~when the administrator has reason to believe that the owner of the cigarettes is not willfully or~~
17 ~~intentionally evading the tax imposed by section 44 20 13.~~ All cigarettes seized by the state under
18 this chapter shall be destroyed.

19 (b) All fixtures, equipment, and all other materials and personal property on the premises
20 of any distributor or dealer who, with intent to defraud the state, fails to keep or make any record,
21 return, report, or inventory; keeps or makes any false or fraudulent record, return, report, or
22 inventory required by this chapter; refuses to pay any tax imposed by this chapter; or attempts in
23 any manner to evade or defeat the requirements of this chapter shall be forfeited to the state.

24 ~~**44-20-17. Penalty for use tax violations.**~~ **44-20-17. Penalty for violations.** -- Any
25 person who violates the provisions of sections 44-20-13 -- 44-20-16 is guilty of a misdemeanor
26 and shall for each offense be fined not less than one hundred fifty dollars (\$150) and not more
27 than five hundred dollars (\$500) or be imprisoned not more than one year or be both fined and
28 imprisoned.

29 **44-20-18. Securing stamps.** -- The administrator shall secure stamps, of those designs,
30 types, and denominations as the administrator prescribes, suitable to be affixed to packages of
31 cigarettes as evidence of the payment of the tax imposed by section 44-20-12. Each roll of
32 stamps, or group of sheets, shall have a separate serial number, which shall be legible at the point
33 of sale. The administrator shall keep records of which distributor purchases each roll or group of
34 sheets identified by serial number. If the administrator permits distributors to purchase partial

1 rolls or sheets, in no case may stamps bearing the same serial number be sold to more than one
2 distributor. The remainder of the roll or sheet, if any, shall either be retained for later purchases
3 by the same distributor or destroyed. The administrator is the custodian of the stamps and of the
4 dies, plates, and other materials and things used in the manufacture of the stamps.

5 **44-20-19. Sale of stamps to distributors and dealers.** -- The administrator ~~sells~~ shall
6 sell stamps only to licensed distributors , who shall be entitled to purchase stamps at a discount,
7 ~~and to licensed dealers at their face value.~~ The distributor remits to the division of taxation
8 ninety-eight and three-fourths percent (98.75%) of the face value of the stamps thereby receiving
9 a discount of one and one-quarter percent (1.25%) of the face value of the stamps. The ninety-
10 eight and three-fourths percent (98.75%) remitted to the tax administrator is paid over to the
11 general revenue. The administrator may, in his or her discretion, permit a licensed distributor ~~or~~
12 ~~licensed dealer~~ to pay for the stamps within thirty (30) days after the date of purchase; provided,
13 that a bond satisfactory to the administrator in an amount not less than the sale price of the stamps
14 has been filed with the administrator conditioned upon payment for the stamps. The administrator
15 shall keep accurate records of all stamps sold to each distributor. ~~and dealer.~~

16 **44-20-20. Use of metering machine in lieu of stamps.** -- The administrator, if he or she
17 determines that it is practicable to stamp by impression packages of cigarettes by means of a
18 metering machine, may, in lieu of selling stamps under the provisions of section 44-20-19,
19 authorize any licensed distributor ~~or licensed dealer~~ to use any metering machine approved by the
20 administrator; ; provided, that such meter impressions shall contain a number or mark, legible at
21 the point of sale, that is unique to the particular distributor; and provided further, that the
22 metering machine shall be sealed by the administrator before being used and shall be used in
23 accordance with regulations prescribed by the administrator. The administrator shall keep records
24 of which distributor is assigned which meter impression number. ~~the machine to be sealed by the~~
25 ~~administrator before being used and to be used in accordance with regulations prescribed by the~~
26 ~~administrator.~~ Any licensed distributor ~~or licensed dealer~~ authorized by the administrator to affix
27 stamps to packages by means of a metering machine shall make a prepayment, allowing for the
28 discount, if any, provided for in section 44-20-19, covering the amount of tax for which his or her
29 meter register is set, or in the discretion of the administrator file with the administrator a bond in
30 an amount and with a surety as the administrator may determine, conditioned upon the payment
31 of the tax upon stamped cigarettes. The bond is in full force and effect for a period of one year
32 and a day after the expiration of the bond, unless a certificate is issued by the administrator to the
33 effect that all taxes due to the state have been paid. The administrator causes each metering
34 machine approved by the administrator to be read and inspected at least once a month and, unless

1 being used on a prepayment basis, determines at the time of each inspection the amount of tax
2 due from the distributor or dealer using the machine after allowing for the discount, if any,
3 provided for in section 44-20-19, which tax is due and payable upon demand of the administrator
4 or his or her authorized agent.

5 **44-20-21. Transfer of stamps prohibited -- Redemption of unused stamps.** -- No
6 person shall sell or transfer any stamps under the provisions of this chapter. The administrator
7 shall redeem any unused, uncanceled stamps presented in unbroken sheets or packages, under
8 rules and regulations of the administrator, by any licensed distributor ~~or licensed dealer~~ within six
9 (6) months of the date of purchase, at a price equal to ninety-eight percent (98%) of their face
10 value.

11 **44-20-23. Payment of tax by manufacturer or shipper outside state.** -- When the
12 administrator finds that the collection of the tax imposed by this chapter would be facilitated, the
13 administrator may, in his or her discretion, authorize any person resident or located outside this
14 state ~~who manufactures cigarettes~~, or who ships cigarettes into this state for sale in this state, and
15 ~~who qualifies as a distributor as defined in section 44-20-1,~~ obtains a distributor's license
16 pursuant to this chapter, whether or not the person has a place of business in this state, upon
17 complying with the requirements of the administrator, to affix, or cause to be affixed, the stamps
18 required by this chapter on behalf of the purchasers of those cigarettes who would be taxable, and
19 the administrator may sell the stamps to persons as provided in section 44-20-19 or authorize the
20 use of a machine by ~~persons~~ such distributors as provided in section 44-20-20.

21 **44-20-24. Affixing of stamps outside state by vending machine operator.** -- Any
22 person who operates a vending machine or vending machines for cigarettes in this state, but who
23 maintains his or her regular business establishment or headquarters outside of this state may, in
24 ~~the discretion of the tax administrator~~, accordance with the provisions of section 44-20-23, be
25 permitted to affix, or cause to be affixed, the stamps required by this chapter at that establishment
26 or headquarters outside of this state.

27 **44-20-26. Agreement by nonresident to submit records -- Attorney to receive**
28 **process.** -- ~~The~~ Any nonresident ~~person~~ distributor who receives authorization and permission to
29 affix stamps under sections 44-20-23 and 44-20-24 shall, upon the request of the administrator,
30 ~~agrees to~~ submit his or her books, accounts, and records to examination during reasonable
31 business hours by the administrator or his or her authorized agent. Each nonresident person, other
32 than a foreign corporation complying with the provisions of chapter 1.1 of title 7 shall, in writing,
33 appoint the secretary of state, or his or her successors in office, to be his or her attorney, that
34 appointment to be made, acknowledged, and filed in the manner prescribed for foreign

1 corporations engaging in business in this state. Service upon the attorney is sufficient service
2 upon any nonresident person, whether a foreign corporation complying with the provisions of
3 chapter 1.1 of title 7 or not, and may be made by leaving a attested copy of the process with the
4 secretary of state or at his or her office. When legal process against any nonresident person is
5 served upon the secretary of state, the secretary shall notify the nonresident person in the manner
6 provided for notification of service of process in the case of foreign corporations under chapter
7 1.1 of title 7 and collect the fee specified in that chapter.

8 **44-20-28. Stamping by distributors required.** -- (a) Each distributor shall affix, or
9 cause to be affixed, at the location for which his or her license is issued, except as provided in this
10 chapter, in the manner the administrator may specify in regulations issued pursuant to this
11 chapter, to each package of cigarettes sold or distributed by the distributor, stamps of the proper
12 denominations. ~~Those stamps may be affixed by a distributor at any time before the cigarettes are~~
13 ~~transferred out of his or her possession.~~ Distributors located within this state shall apply stamps to
14 all applicable cigarette packages within ten (10) calendar days of receipt of those products.
15 Distributors located outside of this state shall apply stamps to all applicable cigarette packages
16 before sending such packages into this state. Distributors shall be permitted to set aside, without
17 application of stamps, only such part of the distributor's stock that is identified for sale or
18 distribution outside of this state; provided, that any such unstamped cigarettes shall be stored
19 separately from stamped cigarette packages. No unstamped cigarette packages shall be transferred
20 by a distributor to another facility of the distributor within this state or to another person within
21 this state.

22 (b) Any person who is doing business as both a distributor and a dealer shall maintain
23 separate areas for stamped and unstamped cigarettes.

24 **44-20-30. Manner of affixing stamps.** -- ~~Whether stamps are~~ Stamps shall be affixed by
25 a licensed distributor, ~~or by a dealer, they are~~ and shall be affixed to the box or other container
26 from which or in which cigarettes taxed by this chapter are normally sold at retail. The stamps are
27 affixed in a manner that their removal will require continued application of water or steam. The
28 required amount of stamps is affixed to each individual package or container. The administrator
29 has power to determine how any particular brand, type, or kind of cigarettes is stamped, if any
30 question arises under this chapter concerning that stamping- , provided that:

31 (a) A tax stamp shall be applied by a licensed distributor to all cigarette packages
32 containing cigarettes subject to state tax under section 44-20-12, including to cigarettes subject to
33 reduced state tax under subsection 44-20-12.3(b);

34 (b) A tax-exempt stamp shall be applied by a licensed distributor to all cigarette packages

1 containing cigarettes not subject to state tax under subsection 44-20-12.3(a)(1) of this chapter;
2 and

3 (c) No stamp shall be applied to any cigarette package containing cigarettes that are
4 exempt from tax under subsection 44-20-12.3(a)(2).

5 **44-20-32. Cancellation of used stamps.** -- The administrator may require the
6 cancellation, by a method or methods that he or she prescribes, of stamps ~~used on~~ affixed by a
7 distributor to any or all packages of cigarettes. ~~; whether the stamps are affixed by a distributor or~~
8 ~~by a dealer.~~

9 ~~**44-20-33. Sale of unstamped cigarettes prohibited -- Maximum period of holding by**~~
10 ~~**dealer.**~~ **44-20-33. Sale of unstamped cigarettes prohibited.** -- No distributor shall sell, and
11 no other person shall sell, offer for sale, display for sale, or possess with intent to sell any
12 cigarettes, the packages or boxes containing which do not bear stamps evidencing the payment of
13 the tax imposed by this chapter. ~~; provided, that a licensed dealer may keep on hand, at the~~
14 ~~location for which his or her license is issued, unstamped cigarettes for a period not exceeding~~
15 ~~twenty four (24) hours. Any unstamped cigarettes in the possession of a dealer are presumed to~~
16 ~~have been held by the dealer for more than twenty four (24) hours unless proof is shown to the~~
17 ~~contrary.~~

18 **44-20-35. Penalties for violations as to unstamped cigarettes.** -- Any person who
19 violates any provision of sections 44-20-33 and 44-20-34 shall be fined one thousand dollars
20 (\$1,000), or five (5) times the retail value of the cigarettes involved, whichever is greater, ~~not less~~
21 ~~than one hundred fifty dollars (\$150) and not more than five hundred dollars (\$500)~~ for the first
22 offense, and for each subsequent offense, shall be fined one thousand dollars (\$1,000), or five (5)
23 times the retail value of the cigarettes involved, whichever is greater, ~~not less than two hundred~~
24 ~~dollars (\$200) plus twenty five dollars (\$25.00) for each carton in excess of eight (8) cartons, nor~~
25 ~~more than ten thousand dollars (\$10,000),~~ or be imprisoned not more than three (3) years, or be
26 both fined and imprisoned.

27 ~~**44-20-36. Purchase of unstamped cigarettes.**~~ **44-20-36. Possession of unstamped**
28 **cigarettes.** -- ~~(a) No person other than a licensed distributor or licensed dealer shall knowingly~~
29 ~~purchase any cigarettes within this state unless the packages, boxes, or containers in which or~~
30 ~~from which the cigarettes are sold or offered for sale bear stamps evidencing the payment of the~~
31 ~~tax provided in this chapter. Any person violating the provisions of this section is subject to a fine~~
32 ~~of not more than one hundred dollars (\$100) for each offense.~~

33 ~~-(b) Nothing in this chapter shall be construed to require the administrator to proceed~~
34 ~~against any person when the administrator has good reason to believe that the person is not~~

1 ~~willfully attempting to evade the tax.~~

2 Except as provided in sections 44-20-16 and 44-20-33.1, no person, other than a licensed
3 manufacturer or importer, or a licensed distributor that receives unstamped cigarette packages
4 directly from a licensed cigarette manufacturer or importer and holds such cigarettes in
5 accordance with subsection 44-20-28(a), shall purchase and hold an unstamped cigarette package.

6 **44-20-37. Seizure and sale of unstamped cigarettes.** -- Any cigarettes found at any
7 place in this state without stamps affixed as required by this chapter are declared to be contraband
8 goods and may be seized by the administrator, his or her agents, or employees, or by any sheriff,
9 deputy sheriff, or police officer when directed by the administrator to do so, without a warrant. ~~;~~
10 ~~provided, that nothing in this section shall be construed to require the administrator to confiscate~~
11 ~~unstamped cigarettes when the administrator has reason to believe that the owner of the cigarettes~~
12 ~~is not willfully or intentionally evading the tax imposed by this chapter. Any cigarettes seized~~
13 ~~under the provisions of this chapter may, in his or her discretion, be offered by the administrator~~
14 ~~for sale at public auction to the highest bidder after advertisement, as provided in section 44-20-~~
15 ~~38. Before delivering any cigarettes so sold to the purchaser, the administrator shall require the~~
16 ~~purchaser to affix to the packages the amount of stamps required by this chapter. Any cigarettes~~
17 seized under the provisions of this chapter shall be destroyed.

18 The seizure and ~~sale~~ /or destruction of any cigarettes under the provisions of this section
19 does not relieve any person from a fine or other penalty for violation of this chapter.

20 **44-20-38. Advertisement and hearing on cigarettes seized.** -- When any cigarettes are
21 seized under the provisions of section 44-20-37, ~~the administrator may, at his or her discretion,~~
22 ~~after a hearing as provided in section 44-20-47, advertise them for sale, in a newspaper published~~
23 ~~or having a circulation in the city or town in which the seizure took place, at least five (5) days~~
24 ~~before the sale. Any any~~ any person claiming an interest in the cigarettes may make written
25 application to the administrator for a hearing, stating his or her interest in the cigarettes and his or
26 her reasons why they should not be forfeited. Further proceedings on the application for a hearing
27 are taken as provided in sections 44-20-47 and 44-20-48. No ~~sale~~ destruction of any cigarettes
28 under the provisions of section 44-20-37 shall be ~~made~~ carried out while an application for a
29 hearing is pending before the administrator, but the pendency of an appeal under the provisions of
30 section 44-20-48 shall not prevent the ~~sale~~ destruction unless the appellant posts a satisfactory
31 bond, with surety, in an amount double the estimated value of the cigarettes, conditioned upon the
32 successful termination of the appeal.

33 **44-20-39. Forgery and counterfeiting -- Tampering with meters -- Reuse of stamps**
34 **or containers.** -- Any person who fraudulently makes or utters or forges or counterfeits any

1 stamp, disc, license, or marker, prescribed by the administrator under the provisions of this
2 chapter, or who causes or procures this to be done, or who willfully utters, publishes, passes or
3 renders as true, any false, altered, forged, or counterfeited stamp, license, disc, or marker, or who
4 knowingly possesses any false, altered, forged, or counterfeited stamp, license, disc, or marker, or
5 who tampers with or causes to be tampered with any metering machine authorized to be used
6 under the provisions of this chapter, or who removes or prepares any stamp with intent to use, or
7 cause that stamp to be used, after it has already been used, or who buys, sells, offers for sale, or
8 gives away any washed or removed or restored stamp to any person, or who has in his or her
9 possession any washed or restored or removed or altered stamp which was removed from the
10 article to which it was affixed, or who reuses or refills with cigarettes any package, box, or
11 container required to be stamped under this chapter from which cigarettes have been removed, is
12 deemed guilty of a felony, and, upon conviction, shall be fined ten thousand dollars (\$10,000), or
13 be imprisoned for not more than ten (10) years , or both.

14 ~~44-20-40. Records of distributors and dealers -- Investigation and inspection of~~
15 ~~books, premises and stock. --~~ **44-20-40. Records - Investigation and inspection of books,**
16 **premises and stock. - -** (a) Each manufacturer, importer, distributor and dealer shall maintain
17 copies of invoices or equivalent documentation for, or itemized for, each of its facilities for each
18 transaction (other than a retail transaction with a consumer) involving the sale, purchase, transfer,
19 consignment, or receipt of cigarettes. The invoices or documentation shall show the name and
20 address of the other party and the quantity by brand style of the cigarettes involved in the
21 transaction. ~~Each distributor and each dealer must keep complete and accurate records of all~~
22 ~~cigarettes manufactured, produced, purchased, or sold, in a kind and form as the administrator~~
23 ~~may prescribe.~~ All records and invoices required under this section, ~~or as may be required by the~~
24 ~~administrator in support of the provisions of this section~~ must be safely preserved for three (3)
25 years in a manner to insure permanency and accessibility for inspection by the administrator or
26 his or her authorized agents.

27 (b) Records required under this section shall be preserved on the premises described in
28 the relevant license in such a manner as to ensure permanency and accessibility for inspection at
29 reasonable hours by authorized personnel of the administrator. With the administrator's
30 permission, persons with multiple places of business may retain centralized records, but shall
31 transmit duplicates of the invoices or the equivalent documentation to each place of business
32 within twenty-four (24) hours upon the request of the administrator or his or her designee.

33 (c) The administrator or his or her authorized agents may examine the books, papers,
34 reports and records of any manufacturer, importer, distributor or dealer in this state for the

1 purpose of determining whether taxes imposed by this chapter have been fully paid, and may
2 investigate the stock of cigarettes in or upon any premises for the purpose of determining whether
3 the provisions of this chapter are being obeyed. The administrator in his or her sole discretion
4 may share the records and reports required by such sections with law enforcement officials of the
5 federal government or other states.

6 ~~44-20-41. Monthly reports of distributors and dealers.~~ **44-20-41. Reports.** - - (a)

7 Every distributor and every dealer ~~who comes into possession of unstamped cigarettes,~~ must file
8 with the administrator on the tenth day of each month a report for the preceding calendar month
9 sworn to and executed by the distributor or dealer or his or her authorized agent or representative
10 in which the distributor or dealer furnishes any information that the administrator requires
11 concerning cigarettes and , as applicable, tax stamps. These reports shall ~~, when required by the~~
12 ~~administrator,~~ contain ~~any or all of~~ the following information:

13 (1) the amount of unstamped and the amount of stamped cigarettes on hand at the
14 beginning of the month;

15 (2) the amount of unstamped and the amount of stamped cigarettes purchased or received
16 during the month; and the name and address of each person from whom those products were
17 received;

18 (3) the quantities of cigarettes, by transaction, distributed or shipped into this state or
19 between locations in this state during the reporting period (other than sales directly to consumers)
20 and the name and address of each person to whom those products were distributed or shipped;

21 (4) the quantities of cigarettes, by brand style and transaction, distributed or shipped to
22 any destination wherever located, including the quantities reported under paragraph (3), during
23 the reporting period (other than sales directly to consumers) and the name and address of each
24 person to whom those products were distributed or shipped;

25 (5) the amount of unstamped and the amount of stamped cigarettes returned from
26 customers or received from any other sources during the month;

27 (6) the amount of unstamped and the amount of stamped cigarettes sold, used, lost,
28 stolen, returned to the factory, or otherwise disposed of during the month; and

29 (7) the amount of unstamped and the amount of stamped cigarettes on hand at the end of
30 the month.

31 This information ~~may shall~~ be required separately by brands, types, sizes, and kinds of
32 cigarettes , and shall. ~~If required by the administrator, this report must~~ show separately the
33 amount of cigarettes sold or distributed in intrastate commerce and the amount sold or distributed
34 in interstate commerce. ~~If required by the administrator, this~~ A distributor's report must also show

1 the quantity of reported cigarettes bearing tax stamps of this state, tax-exempt stamps of this state,
2 stamps of another state, and unstamped cigarettes; the number, types, denominations, and face
3 value of unused stamps on hand at the beginning of the month covered by the report; the number,
4 types, denominations, and face value of stamps purchased and received; the number, types,
5 denominations, and face value of stamps used, lost, stolen, exchanged, returned to the
6 administrator, and disposed of; and the number, types, denominations, and face value of stamps
7 on hand at the end of the month covered by the report. This report must also contain any other
8 information which the administrator prescribes. The administrator shall furnish forms to
9 manufacturers, importers, distributors and dealers required to report under this chapter, but failure
10 to obtain those forms is no excuse for the failure to file a report containing all the information
11 required to be reported.

12 (b) Manufacturers and importers shall file a monthly report with the tax administrator
13 containing the information set forth in subsection (a)(3) of this section with respect to cigarettes
14 that such manufacturer or importer shipped into this state.

15 **44-20-43. Violations as to reports and records.** -- Any person who fails to submit the
16 reports required in this chapter or by the administrator under this chapter, or who makes any
17 incomplete, false, or fraudulent report, or who refuses to permit the administrator or his or her
18 authorized agent to examine any books, records, papers, or stocks of cigarettes as provided in this
19 chapter, or who refuses to supply the administrator with any other information which the
20 administrator requests for the reasonable and proper enforcement of the provisions of this chapter,
21 shall be fined not more than five thousand dollars (\$5,000) for the first offense, and for each
22 subsequent offense, shall be fined not more than ten thousand dollars (\$10,000), or be imprisoned
23 not more than ~~one year,~~ five (5) years, or be both fined and imprisoned.

24 **44-20-45. Importation of cigarettes with intent to evade tax.** -- Any person, firm,
25 corporation, club, or association of persons, not having a license as provided in this chapter, who
26 orders any cigarettes for another or pools orders for cigarettes from any persons or connives with
27 others for pooling orders, or receives in this state any shipment of unstamped cigarettes on which
28 the tax imposed by this chapter has not been paid, for the purpose and intention of violating the
29 provisions of this chapter or to avoid payment of the tax imposed in this chapter, is guilty of a
30 ~~misdemeanor, and is subject to the penalties provided in section 44-20-35 for selling unstamped~~
31 ~~cigarettes.~~ felony and shall be fined ten thousand dollars (\$10,000) or five (5) times the retail
32 value of the cigarettes involved, whichever is greater, or imprisoned not more than five (5) years,
33 or both.

34 **44-20-51. Penalty for violations generally.** -- Except as provided in this chapter, any

1 person who violates any provision of this chapter is guilty of a misdemeanor and shall be fined
2 ~~not more than one hundred dollars (\$100) for each offense.~~ one thousand dollars (\$1,000) or five
3 (5) times the retail value of the cigarettes involved, whichever is greater. Whoever knowingly
4 violates any provision of this chapter, or of regulations prescribed thereunder, shall, in addition to
5 any other penalty provided in this chapter, for each such offense, be fined not more than five
6 thousand dollars (\$5,000) or imprisoned not more than one year, or both.

7 SECTION 6. This act shall take effect ninety (90) days after passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL OFFENSES - TAXATION AND TOBACCO - DELIVERY AND
SALE OF TOBACCO PRODUCTS

1 This act would make extensive amendments to process of the delivery and sale of
2 cigarettes in this state. This act would also amend the requirements for obtaining a license to
3 manufacturer, deliver, or sell cigarettes within the state. The act would also increase the penalties
4 for manufacturing, delivering, or selling cigarettes in this state without an appropriate license, and
5 for selling cigarettes which do not have the appropriate tax stamps affixed thereto.

6 This act would take effect ninety (90) days after passage.

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