

SECOND REGULAR SESSION

SENATE BILL NO. 1266

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR KENNEY.

Read 1st time February 28, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4854S.011

AN ACT

To repeal sections 149.015, 149.200, 149.203, 149.206, 149.212, 149.215 and 407.924, RSMo, relating to sale of cigarettes, and to enact in lieu thereof seven new sections relating to the same subject, with penalty provisions and an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 149.015, 149.200, 149.203, 149.206, 149.212, 149.215 and 407.924, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 149.015, 149.200, 149.203, 149.206, 149.212, 149.215 and 407.924, to read as follows:

149.015. 1. A tax shall be levied upon the sale of cigarettes at an amount equal to eight and one-half mills per cigarette, until such time as the general assembly appropriates an amount equal to twenty-five percent of the net federal reimbursement allowance to the health initiatives fund, then the tax shall be six and one-half mills per cigarette beginning July first of the fiscal year immediately after such appropriation. As used in this section, "net federal reimbursement allowance" shall mean that amount of the federal reimbursement allowance in excess of the amount of state matching funds necessary for the state to make payments required by subsection 1 of section 208.471, RSMo, or, if the payments exceed the amount so required, the actual payments made for the purposes specified in subsection 1 of section 208.471,

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

RSMo.

2. The tax shall be evidenced by stamps which shall be furnished by and purchased from the director or by an impression of the tax by the use of a metering machine when authorized by the director as provided in this chapter, and the stamps or impression shall be securely affixed to one end of each package in which cigarettes are contained. All cigarettes must be stamped before being sold in this state.

3. Cigarette tax stamps shall be purchased only from the director. All stamps shall be purchased by the director in proper denominations, shall contain such appropriate wording as the director may prescribe, and shall be of such design, character, color combinations, color changes, sizes and material as the director may, by rules and regulations, determine to afford the greatest security to the state. It shall be the duty of the director to manufacture or contract for revenue stamps required by this chapter; provided that if the stamps are contracted for, the manufacturer thereof shall be within the jurisdiction of the criminal and civil courts of this state, unless the stamps cannot be obtained in this state at a fair price or of acceptable quality. If stamps are manufactured outside of the state, the director shall take any precautions which he deems necessary to safeguard the state against forgery and misdelivery of any stamps. The director may require of the manufacturer from whom stamps are purchased a bond in an amount to be determined by him commensurate with the monetary value of the stamps, containing such conditions as he may deem necessary in order to protect the state against loss.

4. It shall be the intent of this chapter that the impact of the tax levied hereunder be absorbed by the consumer or user and when the tax is paid by any other person, the payment shall be considered as an advance payment and shall thereafter be added to the price of the cigarettes and recovered from the ultimate consumer or user with the person first selling the cigarettes acting as an agent of the state for the payment and collection of the tax to the state, except that in furtherance of the intent of this chapter no refund of any tax collected and remitted by a retailer upon gross receipts from a sale of cigarettes subject to tax pursuant to this chapter shall be claimed pursuant to chapter 144, RSMo, for any amount illegally or erroneously overcharged or overcollected as a result of imposition of sales tax by the retailer upon amounts representing the tax imposed pursuant to this chapter and any such tax shall either be refunded to the person who paid such tax or paid to the director. The director may recoup from any retailer any tax illegally or erroneously

overcharged or overcollected unless such tax has been refunded to the person who paid such tax.

5. In making sales of cigarettes in the state, a wholesaler shall keep a record of the amount of tax on his gross sales. The tax shall be evidenced by appropriate stamps attached to each package of cigarettes sold. Notwithstanding any other law to the contrary, no tax stamp need be attached to a package of cigarettes transported in the state between wholesalers or distributors unless and until such package is sold to a retailer or consumer.

6. The tax on any cigarettes contained in packages of four, ten, twenty or similar quantities to be used solely for distribution as samples shall be computed on a per cigarette basis at the rate set forth in this section, and payment of the tax shall be remitted to the director at such time and in such manner as he may prescribe.

7. The revenue generated by the additional two mills tax imposed effective August 13, 1982, less any three percent reduction allowed pursuant to the provisions of section 149.021, shall be placed in a separate fund entitled "The Fair Share Fund". Such moneys in the fair share fund shall be distributed to the schools in this state on an average daily attendance basis, except as provided in section 163.031, RSMo.

8. The revenue generated by the additional two mills tax imposed effective October 1, 1993, less any three percent reduction allowed pursuant to the provisions of section 149.021, shall be deposited in the health initiatives fund created in section 191.831, RSMo. When the general assembly appropriates an amount equal to twenty-five percent of the net federal reimbursement allowance to the health initiatives fund, this subsection shall expire. The additional two mills tax levied pursuant to this section shall not apply to an amount of stamped cigarettes in the possession of licensed wholesalers on October 1, 1993, up to thirty-five percent of the total cigarette sales made by such licensed wholesaler during the six months immediately preceding October 1, 1993.

149.200. 1. It is unlawful for any person to:

(1) Sell or distribute in this state, to acquire, hold, own, possess or transport for sale or distribution in this state, or to import, or cause to be imported into this state for sale or distribution in this state, any cigarettes that do not comply with all requirements imposed by or pursuant to federal law and implementing regulations, including but not limited to the filing of ingredients

lists pursuant to Section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a); the permanent imprinting on the primary packaging of the precise package warning labels in the precise format specified in Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333); the rotation of label statements pursuant to Section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335(c)); restrictions on the importation, transfer and sale of previously exported tobacco products pursuant to Section 9302 of Public Law 105-33, the Balanced Budget Act of 1997, as amended; requirements of Title IV of Public Law 106-476, the Imported Cigarette Compliance Act of 2000; or

(2) Alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

(a) Any statement, label, stamp, sticker or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed or used in the United States, including but not limited to labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording; or

(b) Any health warning that is not the precise warning statement in the precise format specified in Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333).

2. It shall be unlawful for any person to affix any tax stamp or meter impression required pursuant to this chapter to the package of any cigarettes that does not comply with the requirements of subdivision (1) of subsection 1 of this section or that is altered in violation of subdivision (2) of subsection 1 of this section.

3. This section shall not apply to cigarettes allowed to be imported or brought into the United States for personal use, or to cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations; provided, however, that this act shall apply to any such cigarettes that are brought back into the customs territory for resale within the customs territory.

4. Any person who violates this section, whether acting knowingly or recklessly, is guilty of a class D felony.

5. As used in this section, "package" means a pack, box, carton or container of any kind in which cigarettes are offered for sale, sold or otherwise distributed to consumers.

149.203. 1. The director may revoke or suspend the license or licenses

of any wholesaler pursuant to the procedures set forth in section 149.035 upon finding a violation of section 149.200, or any implementing rule promulgated by the director pursuant to this chapter. In addition, the director may impose on any person a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes involved or five thousand dollars, upon finding a violation by such person of sections 149.200 to 149.215, or any implementing rule promulgated by the director pursuant to this chapter.

2. Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this state in violation of sections 149.200 to 149.215 or sections 196.1000 to 196.1003, RSMo, shall be deemed contraband pursuant to section 149.055 and are subject to seizure and forfeiture as provided therein. Any cigarettes shall be deemed contraband whether the violation of sections 149.200 to 149.215 is knowing or otherwise.

149.206. A violation of sections 149.200 to 149.215 shall constitute an unlawful trade practice as provided in section 407.020, RSMo, and in addition to any remedies or penalties set forth in sections 149.200 to 149.215, shall be subject to any remedies or penalties available for a violation of that section.

149.212. Sections 149.200 to 149.215 shall be enforced by the director provided, that at the request of the director or the director's duly authorized agent, the state highway patrol and all local police authorities shall enforce the provisions of sections 149.200 to 149.215. The attorney general has concurrent power with the prosecuting attorneys of the states to enforce the provisions of sections 149.200 to 149.215. Any person who sells, distributes, or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation of sections 149.200 to 149.215 may bring an action in good faith for appropriate injunctive relief.

149.215. If any provision of sections 149.200 to 149.212 is held invalid, the remainder of such sections shall not be affected.

407.924. 1. The division of liquor control within the department of public safety shall implement and enforce the provisions of sections 407.925 to 407.934.

2. Beginning January 1, 2003, the division of liquor control shall submit an annual report to the general assembly on the effectiveness of sections 407.925 to 407.934 in reducing tobacco possession by minors and the enforcement activities by the division for violations of sections 407.925 to 407.934.

[149.015. 1. A tax shall be levied upon the sale of cigarettes at an amount equal to eight and one-half mills per cigarette, until such time as the

general assembly appropriates an amount equal to twenty-five percent of the net federal reimbursement allowance to the health initiatives fund, then the tax shall be six and one-half mills per cigarette beginning July first of the fiscal year immediately after such appropriation. As used in this section, "net federal reimbursement allowance" shall mean that amount of the federal reimbursement allowance in excess of the amount of state matching funds necessary for the state to make payments required by subsection 1 of section 208.471, RSMo, or, if the payments exceed the amount so required, the actual payments made for the purposes specified in subsection 1 of section 208.471, RSMo.

2. The tax shall be evidenced by stamps which shall be furnished by and purchased from the director or by an impression of the tax by the use of a metering machine when authorized by the director as provided in this chapter, and the stamps or impression shall be securely affixed to one end of each package in which cigarettes are contained. All cigarettes must be stamped before being sold in this state.

3. Cigarette tax stamps shall be purchased only from the director. All stamps shall be purchased by the director in proper denominations, shall contain such appropriate wording as the director may prescribe, and shall be of such design, character, color combinations, color changes, sizes and material as the director may, by rules and regulations, determine to afford the greatest security to the state. It shall be the duty of the director to manufacture or contract for revenue stamps required by this chapter; provided that if the stamps are contracted for, the manufacturer thereof shall be within the jurisdiction of the criminal and civil courts of this state, unless the stamps cannot be obtained in this state at a fair price or of acceptable quality. If stamps are manufactured outside of the state, the director shall take any precautions which he deems necessary to safeguard the state against forgery and misdelivery of any stamps. The director may require of the manufacturer from whom stamps are purchased a bond in an amount to be determined by him commensurate with the monetary value of the stamps, containing such conditions as he may deem necessary in order to protect the state against loss.

4. It shall be the intent of this chapter that the impact of the tax levied hereunder be absorbed by the consumer or user and when the tax is paid by any other person, the payment shall be considered as an advance payment and shall thereafter be added to the price of the cigarettes and recovered from the ultimate consumer or user with the person first selling the cigarettes acting as an agent of the state for the payment and collection of the tax to the state, except that in

furtherance of the intent of this chapter no refund of any tax collected and remitted by a retailer upon gross receipts from a sale of cigarettes subject to tax pursuant to this chapter shall be claimed pursuant to chapter 144, RSMo, for any amount illegally or erroneously overcharged or overcollected as a result of imposition of sales tax by the retailer upon amounts representing the tax imposed pursuant to this chapter and any such tax shall either be refunded to the person who paid such tax or paid to the director. The director may recoup from any retailer any tax illegally or erroneously overcharged or overcollected unless such tax has been refunded to the person who paid such tax.

5. In making sales of cigarettes in the state, a wholesaler shall keep a record of the amount of tax on his gross sales. The tax shall be evidenced by appropriate stamps attached to each package of cigarettes sold. Notwithstanding any other law to the contrary, no tax stamp need be attached to a package of cigarettes transported in the state between wholesalers or distributors unless and until such package is sold to a retailer or consumer.

6. The tax on any cigarettes contained in packages of four, ten, twenty or similar quantities to be used solely for distribution as samples shall be computed on a per cigarette basis at the rate set forth in this section, and payment of the tax shall be remitted to the director at such time and in such manner as he may prescribe.

7. The revenue generated by the additional two mills tax imposed effective August 13, 1982, less any three percent reduction allowed pursuant to the provisions of section 149.021, shall be placed in a separate fund entitled "The Fair Share Fund". Such moneys in the fair share fund shall be distributed to the schools in this state on an average daily attendance basis, except as provided in section 163.031, RSMo.

8. The revenue generated by the additional two mills tax imposed effective October 1, 1993, less any three percent reduction allowed pursuant to the provisions of section 149.021, shall be deposited in the health initiatives fund created in section 191.831, RSMo. When the general assembly appropriates an amount equal to twenty-five percent of the net federal reimbursement allowance to the health initiatives fund, this subsection shall expire. The additional two mills tax levied pursuant to this section shall not apply to an amount of stamped cigarettes in the possession of licensed wholesalers on October 1, 1993, up to thirty-five percent of the total cigarette sales made by such licensed wholesaler during the six months immediately preceding October 1, 1993.]

[149.200. 1. It is unlawful for any person to:

(1) Sell or distribute in this state, to acquire, hold, own, possess or transport for sale or distribution in this state, or to import, or cause to be imported into this state for sale or distribution in this state, any cigarettes that do not comply with all requirements imposed by or pursuant to federal law and implementing regulations, including but not limited to the filing of ingredients lists pursuant to Section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a); the permanent imprinting on the primary packaging of the precise package warning labels in the precise format specified in Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333); the rotation of label statements pursuant to Section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335(c)); restrictions on the importation, transfer and sale of previously exported tobacco products pursuant to Section 9302 of Public Law 105-33, the Balanced Budget Act of 1997, as amended; requirements of Title IV of Public Law 106-476, the Imported Cigarette Compliance Act of 2000; or

(2) Alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to remove, conceal or obscure:

(a) Any statement, label, stamp, sticker or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed or used in the United States, including but not limited to labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording; or

(b) Any health warning that is not the precise warning statement in the precise format specified in Section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333).

2. It shall be unlawful for any person to affix any tax stamp or meter impression required pursuant to this chapter to the package of any cigarettes that does not comply with the requirements of subdivision (1) of subsection 1 of this section or that is altered in violation of subdivision (2) of subsection 1 of this section.

3. This section shall not apply to cigarettes allowed to be imported or brought into the United States for personal use, or to cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any implementing regulations; provided, however, that this act shall apply to any such cigarettes that are brought back into the customs territory for resale within the customs territory.

4. Any person who violates this section, whether acting knowingly or recklessly, is guilty of a class D felony.

5. As used in this section, "package" means a pack, box, carton or

container of any kind in which cigarettes are offered for sale, sold or otherwise distributed to consumers.]

[149.203. 1. The director may revoke or suspend the license or licenses of any wholesaler pursuant to the procedures set forth in section 149.035 upon finding a violation of section 149.200, or any implementing rule promulgated by the director pursuant to this chapter. In addition, the director may impose on any person a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes involved or five thousand dollars, upon finding a violation by such person of sections 149.200 to 149.215, or any implementing rule promulgated by the director pursuant to this chapter.

2. Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this state in violation of sections 149.200 to 149.215 or sections 196.1000 to 196.1003, RSMo, shall be deemed contraband pursuant to section 149.055 and are subject to seizure and forfeiture as provided therein. Any cigarettes shall be deemed contraband whether the violation of sections 149.200 to 149.215 is knowing or otherwise.]

[149.206. A violation of sections 149.200 to 149.215 shall constitute an unlawful trade practice as provided in section 407.020, RSMo, and in addition to any remedies or penalties set forth in sections 149.200 to 149.215, shall be subject to any remedies or penalties available for a violation of that section.]

[149.212. Sections 149.200 to 149.215 shall be enforced by the director provided, that at the request of the director or the director's duly authorized agent, the state highway patrol and all local police authorities shall enforce the provisions of sections 149.200 to 149.215. The attorney general has concurrent power with the prosecuting attorneys of the states to enforce the provisions of sections 149.200 to 149.215. Any person who sells, distributes, or manufactures cigarettes and sustains direct economic or commercial injury as a result of a violation of sections 149.200 to 149.215 may bring an action in good faith for appropriate injunctive relief.]

[149.215. If any provision of sections 149.200 to 149.212 is held invalid, the remainder of such sections shall not be affected.]

[407.924. 1. The division of liquor control within the department of public safety shall implement and enforce the provisions of sections 407.925 to 407.934.

2. Beginning January 1, 2003, the division of liquor control shall submit an annual report to the general assembly on the effectiveness of sections 407.925 to 407.934 in reducing tobacco possession by minors and the enforcement activities by the division for violations of sections 407.925 to 407.934.]

Section B. Because of the need to protect consumers, Section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and Section A of this act shall be in full force and effect upon its passage and approval.

T

Unofficial

Bill

Copy