

## LEGISLATIVE BILL 358

Approved by the Governor April 30, 2001

Introduced by Hartnett, 45

AN ACT relating to cigarettes; to provide labeling requirements; to create a deceptive trade practice; to define terms; to create penalties; to provide enforcement; to provide powers and duties; to provide severability; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. For purposes of sections 1 to 7 of this act:

(1) Cigarettes has the same meaning as in section 77-2601;

(2) Package has the same meaning as in 15 U.S.C. 1332(4), as such section existed on the effective date of this act; and

(3) Person has the same meaning as in section 77-2601.

Sec. 2. It is unlawful for any person to:

(1) Sell or distribute in this state, acquire, hold, own, possess, or transport for sale or distribution in this state, or 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 regulations, including, but not limited to:

(a) The filing of ingredients lists pursuant to section 7 of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1335a, as such section existed on the effective date of this act;

(b) 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, as such section existed on the effective date of this act;

(c) The rotation of label statements pursuant to section 4(c) of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333(c), as such section existed on the effective date of this act;

(d) The 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 such section existed on the effective date of this act;

(e) The requirements of Title IV of Public Law 106-476, the Imported Cigarette Compliance Act of 2000, as the act existed on the effective date of this act; and

(f) The federal trademark and copyright laws;

(2) Alter a package of 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 indicting 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 package warning statement in the precise format specified in section 4 of the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. 1333, as such section existed on the effective date of this act;

(3) Affix any tax stamps or meter impression required pursuant to sections 77-2601 to 77-2615 to the package of any cigarettes that does not comply with the requirements of subdivision (1) of this section or that is altered in violation of subdivision (2) of this section; and

(4) Import or reimport into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States.

Sec. 3. Sections 1 to 7 of this act shall not apply to cigarettes allowed to be imported or brought into the United States for personal use or 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), as such section existed on the effective date of this act.

Sec. 4. Any person that commits any of the acts prohibited by section 2 of this act, either knowing or having reason to know he or she is doing so, is guilty of a Class IV felony.

Sec. 5. (1) The cigarette tax division of the Tax Commissioner may, after notice and hearing, revoke or suspend for any violation of section 2 of

this act the license or licenses of any person licensed under the provisions of sections 28-1418 to 28-1429 or sections 77-2601 to 77-2622.

(2) Cigarettes that are acquired, held, owned, possessed, transported, sold, or distributed in or imported into this state in violation of section 2 of this act are declared to be contraband goods and are subject to seizure and forfeiture. Any cigarettes so seized and forfeited shall be destroyed. Such cigarettes shall be declared to be contraband goods whether the violation of section 2 of this act is knowing or otherwise.

Sec. 6. A violation of section 2 of this act shall constitute a deceptive trade practice under the Uniform Deceptive Trade Practices Act and, in addition to any remedies or penalties set forth in sections 1 to 7 of this act, shall be subject to any remedies or penalties available for a violation under the Uniform Deceptive Trade Practices Act.

Sec. 7. (1) Sections 1 to 7 of this act shall be enforced by the cigarette tax division of the Tax Commissioner, except that at the request of the division or the division's duly authorized agent, the Nebraska State Patrol and any peace officer shall enforce the provisions of sections 1 to 7 of this act. The Attorney General has concurrent power with the county attorney or other prosecuting attorney of the state to enforce sections 1 to 7 of this act.

(2) For the purpose of enforcing sections 1 to 7 of this act, the division and any agency delegated enforcement responsibility pursuant to subsection (1) of this section may request information from any state or local agency and may share information with, and request information from, any federal agency and any other state or local agency.

Sec. 8. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 9. Since an emergency exists, this act takes effect when passed and approved according to law.