

# State of South Dakota

SEVENTY-FIFTH SESSION  
LEGISLATIVE ASSEMBLY, 2000

248D0662

## SENATE BILL NO. 168

Introduced by: Senator Munson (David) and Representative Peterson

1 FOR AN ACT ENTITLED, An Act to establish certain requirements regarding the sale,  
2 distribution, and importation or cigarettes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. No person may sell or distribute in this state; acquire, hold, own, possess, or  
5 transport, for sale or distribution in this state; or import, or cause to be imported, into this state  
6 for sale or distribution in this state:

7 (1) Any cigarettes the package of which:

8 (a) Bears any statement, label, stamp, sticker, or notice indicating that the  
9 manufacturer did not intend the cigarettes to be sold, distributed, or used in the  
10 United States, including labels stating For Export Only, U.S. Tax Exempt, for  
11 Use, For Use Outside U.S., or similar wording; or

12 (b) Does not comply with all requirements imposed by or pursuant to federal law  
13 regarding warnings and other information on packages of cigarettes  
14 manufactured, packaged, or imported for sale, distribution, or use in the United  
15 States, including the precise warning labels specified in the Federal Cigarette  
16 Labeling and Advertising Act, 15 U.S.C. 1333 as of January 1, 2000, and all  
17 federal trademark and copyright laws;

- 1       (2) Any cigarettes imported into the United States on or after January 1, 2000, in  
2           violation of 26 U.S.C. 5754 or any other federal law, or implementing federal  
3           regulations;
- 4       (3) Any cigarettes that the person otherwise knows or has reason to know the  
5           manufacturer did not intend to be sold, distributed, or used in the United States; or
- 6       (4) Any cigarettes for which there has not been submitted to the Secretary of the U.S.  
7           Department of Health and Human Services the list or lists of the ingredients added to  
8           tobacco in the manufacture of such cigarettes required by the Federal Cigarette  
9           Labeling and Advertising Act, 15 U.S.C. 1335 as of January 1, 2000.

10       Section 2. No person may alter the package of any cigarettes, prior to sale or distribution to  
11       the ultimate consumer, so as to remove, conceal, or obscure:

- 12       (1) Any statement, label, stamp, sticker, or notice described in subsection (a) of  
13           subdivision (1) of section 1 of this Act; or
- 14       (2) Any health warning that is not specified in, or does not conform with the requirements  
15           of, the Federal Cigarette Labeling and Advertising Act, 15 U.S.C 1333 as of  
16           January 1, 2000.

17       Section 3. No person may affix any stamp required pursuant to chapter 10-50 to the package  
18       of any cigarettes described in section 1 of this Act or altered in violation of section 2 of this Act.

19       Section 4. On the first business day of each month, each person licensed to affix the state tax  
20       stamp to cigarettes shall file with the secretary of revenue for all cigarettes imported into the  
21       United States to which such person has affixed the tax stamp in the preceding month:

- 22       (1) A copy of the permit issued pursuant to the Internal Revenue Code, 26 U.S.C. 5713,  
23           to the person importing such cigarettes into the United States allowing such person  
24           to import such cigarettes; and the customs form containing, with respect to such  
25           cigarettes, the internal revenue tax information required by the U.S. Bureau of

1 Alcohol, Tobacco, and Firearms;

2 (2) A statement, signed by the person under penalty of perjury, which shall be treated as  
3 confidential by the secretary of revenue, identifying the brand and brand styles of all  
4 the cigarettes, the quantity of each brand style of the cigarettes, the supplier of the  
5 cigarettes, and the person or persons, if any, to whom the cigarettes have been  
6 conveyed for resale; and

7 (3) A statement, signed by an officer of the manufacturer or importer under penalty of  
8 perjury, certifying that the manufacturer or importer has complied with the package  
9 health warning and ingredient reporting requirements of the Federal Cigarette  
10 Labeling and Advertising Act, 15 U.S.C. 1333 and 1335 as of January 1, 2000, with  
11 respect to the cigarettes; and with chapter 10-50B, including a statement indicating  
12 whether the manufacturer is, or is not, a participating tobacco manufacturer within the  
13 meaning of that statute.

14 Section 5. Any person that commits any of the acts prohibited by sections 1, 2, or 3 of this  
15 Act, either knowing or having reason to know he or she is doing so, or that fails to comply with  
16 any of the requirements of section 4 of this Act is guilty of a Class 5 felony.

17 Section 6. The secretary of revenue may revoke or suspend, pursuant to chapter 1-26, the  
18 license of any person issued pursuant to chapter 10-50 upon finding a violation by the person of  
19 this Act. The secretary may impose on the person a civil penalty in an amount not to exceed the  
20 greater of five hundred percent of the retail value of the cigarettes involved or five thousand  
21 dollars upon finding a violation by the person of this Act.

22 Section 7. Cigarettes that are acquired, held, owned, possessed, transported in, imported  
23 into, or sold, or distributed in this state in violation of this Act shall be deemed contraband and  
24 are subject to seizure and forfeiture. Any cigarettes so seized and forfeited shall be destroyed.  
25 The cigarettes shall be deemed contraband whether the violation of this Act is knowing or

1 otherwise.

2 Section 8. A violation of this Act constitutes an unlawful trade practice.

3 Section 9. Cigarettes imported or reimported into the United States for sale or distribution  
4 under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to,  
5 any trade name, trade dress, or trademark used for cigarettes manufactured in the United States  
6 for sale or distribution in the United States shall be presumed to have been purchased outside of  
7 the ordinary channels of trade.

8 Section 10. This Act does not apply to:

- 9 (1) Cigarettes allowed to be imported or brought into the United States for personal use  
10 free of federal tax or duty or voluntarily abandoned to the U.S. Secretary of the  
11 Treasury at the time of entry; and
- 12 (2) Cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales  
13 enterprise in accordance with the provisions of 19 U.S.C. 1555(b) and any  
14 implementing regulations as of January 1, 2000. However, this Act applies to any  
15 cigarettes that are brought back into the customs territory for resale within the  
16 customs territory.