S T A T E O F N E W Y O R K

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I N S E N A T E

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Introduced by Sens. VOLKER, STACHOWSKI -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to the licensure of cigarette manufacturers and to require the exclusive use of encrypted counterfeit-resistant cigarette tax stamps; and to amend the state finance law, in relation to establishing a cigarette tax criminal enforcement fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The tax law is amended by adding a new section 480-d to read as follows:

S 480-D. LICENSE OF CIGARETTE MANUFACTURERS. 1. (A) FOR THE PURPOSE OF THIS SECTION, A "MANUFACTURER" SHALL MEAN ANY PERSON WHO:

(I) MANUFACTURES, FABRICATES, ASSEMBLES, PROCESSES OR LABELS CIGARETTES; OR

(II) IMPORTS, WHETHER DIRECTLY OR INDIRECTLY, CIGARETTES INTO THE UNITED STATES FOR SALE OR DISTRIBUTION IN THIS STATE.

(B) A MANUFACTURER SHALL NOT SELL ANY CIGARETTES TO AN AGENT LICENSED TO STAMP CIGARETTES FOR THE STATE OF NEW YORK IN THE STATE OF NEW YORK UNLESS HE OR SHE FIRST SECURES A LICENSE TO ENGAGE IN THAT ACTIVITY FROM THE DEPARTMENT.

(C) NO LICENSE MAY BE ISSUED, MAINTAINED OR RENEWED IF THE MANUFACTURER HAS:

(I) IMPORTED ANY CIGARETTES INTO THE UNITED STATES IN VIOLATION OF 19 U.S.C. S 1681A; OR

(II) IMPORTED OR MANUFACTURED ANY CIGARETTES THAT DO NOT FULLY COMPLY WITH THE FEDERAL CIGARETTE LABELING AND ADVERTISING ACT, 15 U.S.C. SS1331 ET SEQ.

2. AN APPLICATION FOR A LICENSE MUST:

(A) BE MADE TO THE DEPARTMENT ON FORMS PRESCRIBED BY THE DEPARTMENT;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(B) INCLUDE THE NAME AND ADDRESS OF THE APPLICANT. IF THE APPLICANT IS A FIRM, ASSOCIATION OR PARTNERSHIP, THE APPLICATION MUST INCLUDE THE NAMES AND ADDRESSES OF EACH OF ITS MEMBERS. IF THE APPLICANT IS A CORPORATION, THE APPLICATION MUST INCLUDE THE NAMES AND ADDRESSES OF THE PRESIDENT, VICE PRESIDENT, SECRETARY AND MANAGING OFFICER OR OFFICERS;

(C) SPECIFY THE LOCATION, BY STREET AND NUMBER, OF THE PRINCIPAL PLACE OF BUSINESS OF THE APPLICANT AND OF THE PREMISES FOR WHICH THE LICENSE IS SOUGHT; AND

(D) SPECIFY ANY OTHER INFORMATION THE DEPARTMENT MAY REQUIRE.

3. A CURRENT LICENSE AS MANUFACTURER AUTHORIZES THE HOLDER THEREOF TO SELL CIGARETTES TO AN AGENT LICENSED TO STAMP CIGARETTES FOR THE STATE OF NEW YORK.

4. (A) ON OR BEFORE JUNE THIRTIETH, TWO THOUSAND NINE, EVERY MANUFACTURER REQUIRED TO BE LICENSED UNDER THIS SECTION SHALL BE REQUIRED TO PAY AN ANNUAL FEE FOR SUCH LICENSE IN AN AMOUNT ESTABLISHED PURSUANT TO RULES AND REGULATIONS OF THE DEPARTMENT, PROVIDED, HOWEVER, SUCH FEE SHALL NOT EXCEED FIFTEEN THOUSAND DOLLARS OR BE LESS THAN FIVE THOUSAND DOLLARS AND SHALL BE BASED UPON THE MANUFACTURER'S ANNUAL SHIPMENTS OF CIGARETTES INTO THE STATE FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR AS REQUIRED TO BE REPORTED TO THE DEPARTMENT.

(B) SUCH FEE SHALL BE PAID BY JUNE THIRTIETH OF EACH YEAR.

5. THE DEPARTMENT SHALL ADOPT REGULATIONS ESTABLISHING:

(A) REPORTING REQUIREMENTS FOR MANUFACTURERS; AND

(B) PROCEDURES FOR THE ELECTRONIC SUBMISSION OF REPORTS REQUIRED PURSUANT TO ANY REPORTING REQUIREMENTS ESTABLISHED UNDER PARAGRAPH (A) OF THIS SUBDIVISION.

6. ANY REGULATIONS ADOPTED PURSUANT TO SUBDIVISION FIVE OF THIS SECTION RELATING TO REPORTING REQUIREMENTS FOR MANUFACTURERS MUST PROVIDE FOR SUBMISSION TO THE DEPARTMENT PERIODIC REPORTS OF:

(A) THE QUANTITY OF CIGARETTE PACKAGES THAT WERE DISTRIBUTED OR SHIPPED TO AN AGENT LICENSED TO STAMP CIGARETTES FOR THE STATE DURING THE REPORTING PERIOD, AND THE NAME AND ADDRESS OF EACH PERSON TO WHOM THOSE PRODUCTS WERE DISTRIBUTED OR SHIPPED;

(B) THE QUANTITY OF CIGARETTE PACKAGES THAT WERE DISTRIBUTED OR SHIPPED TO ANOTHER FACILITY OF THE SAME MANUFACTURER WITHIN THE BORDERS OF THIS STATE DURING THE REPORTING PERIOD; AND

(C) THE QUANTITY OF CIGARETTE PACKAGES THAT WERE DISTRIBUTED OR SHIPPED WITHIN THE BORDERS OF THIS STATE TO INDIAN TRIBES OR INSTRUMENTALITIES OF THE FEDERAL GOVERNMENT DURING THE REPORTING PERIOD, AND THE NAME AND ADDRESS OF EACH PERSON TO WHOM THOSE PRODUCTS WERE DISTRIBUTED OR SHIPPED.

7. MANUFACTURER SHALL MAINTAIN COPIES OF INVOICES OR EQUIVALENT DOCUMENTATION FOR EACH OF ITS FACILITIES FOR EVERY TRANSACTION IN WHICH THE MANUFACTURER IS THE SELLER, PURCHASER, CONSIGNOR, CONSIGNEE OR RECIPIENT OF CIGARETTES. THE INVOICES OR DOCUMENTATION MUST INDICATE THE NAME AND ADDRESS OF THE CONSIGNOR, SELLER, PURCHASER OR CONSIGNEE, AND THE QUANTITY BY BRAND AND STYLE OF THE CIGARETTES INVOLVED IN THE TRANSACTION.

8. ALL OF THE PROVISIONS OF SECTION FOUR HUNDRED EIGHTY OF THIS ARTICLE RELATING TO WHOLESALE DEALERS' LICENSES, INCLUDING THE PROCEDURE FOR SUSPENSION, REVOCATION, REFUSAL TO LICENSE AND FOR HEARINGS, EXCEPT FOR PARAGRAPHS (A), (B), (C), (D), (E), (F) AND (G) OF SUBDIVISION ONE OF SECTION FOUR HUNDRED EIGHTY OF THIS ARTICLE, SHALL BE APPLICABLE TO MANUFACTURERS' LICENSES APPLIED FOR OR GRANTED PURSUANT TO THIS SECTION, AS IF SUCH PROVISIONS HAD BEEN SET FORTH IN FULL IN THIS SUBDIVISION AND

HAD EXPRESSLY REFERRED TO THE APPLICANT FOR, OR THE HOLDER OF, A MANUFACTURER'S LICENSE.

9. IN THE CASE OF A MANUFACTURER WHO IS A LICENSED STAMPING AGENT AS OF THE EFFECTIVE DATE OF THIS SUBDIVISION, SUCH MANUFACTURER SHALL BE DEEMED TO BE LICENSED UNDER THIS SECTION.

S 2. Subdivision 1 of section 472 of the tax law, as amended by chapter 629 of the laws of 1996, is amended to read as follows:

1. The commissioner shall prescribe, prepare and furnish stamps of such denominations and quantities as may be necessary for the payment of the tax on cigarettes imposed by this article, and may from time to time and as often as he OR SHE deems advisable provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design, in the manner and with the effect provided in section two hundred seventy-four of this chapter. The commissioner shall make provisions for the sale of such stamps at such places and at such times as he OR SHE may deem necessary and may license agents for such purpose. The commissioner may license dealers in cigarettes, who maintain separate warehousing facilities for the purpose of receiving and distributing cigarettes and conducting their business, who have received commitments from at least two cigarette manufacturers whose aggregate market share is at least forty percent of the New York state cigarette market, and importers, exporters and manufacturers of cigarettes, and other persons within or without the state as agents to buy or affix stamps to be used in paying the tax herein imposed, but an agent shall at all times have the right to appoint the person in his OR HER employ who is to affix the stamps to any cigarettes under the agent's control. The fee for filing such application for an agent's license shall be [one thousand five] FIFTEEN hundred dollars, unless such fee has been paid during the preceding twelve months, in which case, the fee for a new license shall be one thousand dollars. All of the provisions of section four hundred eighty OF THIS ARTICLE relating to wholesale dealers' licenses, including the procedure for suspension, revocation, refusal to license and for hearings, except for paragraphs (c) and (g) of subdivision one of such section, shall be applicable to agents' licenses applied for or granted pursuant to this section, as if such provisions had been set forth in full in this subdivision and had expressly referred to the applicant for, or the holder of, an agent's license.

(A) Whenever the commissioner shall sell and deliver to any such agent any such stamps, such agent shall be entitled to receive as compensation for his services and expenses as such agent in selling or affixing such stamps, and to retain out of the moneys to be paid by him for such stamps, a commission on the par value thereof. The commissioner is hereby authorized to prescribe a schedule of commissions, not exceeding five per centum, allowable to such agent for buying and affixing such stamps. Such schedule shall be uniform with respect to the different types of stamps used, and may be on a graduated scale with respect to the number of stamps purchased. ADDITIONALLY, THE COMMISSIONER SHALL PAY SUCH AGENT A COMMISSION OF NOT LESS THAN TEN CENTS PER STAMP PURCHASED.

(B) The commissioner may, in his OR HER discretion, permit an agent to pay for such stamps within thirty days after the date of purchase and may require any such agent to file with the department [of taxation and finance] a bond issued by a surety company approved by the superintendent of insurance as to solvency and responsibility and authorized to transact business in the state or other security acceptable to the commissioner, in such amount as the commissioner may fix, to secure the payment of any sums due from such agent pursuant to this article. If securities are deposited as security under this subdivision, such securities shall be kept in the custody of the commissioner and may be sold by the commissioner if it becomes necessary so to do in order to recover any sums due from such agent pursuant to this article, but no such sale shall be had until after such agent shall have had opportunity to litigate the validity of any tax if it elects so to do. Upon any such sale, the surplus, if any, above the sums due under this article shall be returned to such agent.

S 3. The tax law is amended by adding a new section 472-a to read as follows:

S 472-A. ENCRYPTED COUNTERFEIT-RESISTANT CIGARETTE TAX STAMP. 1. PURSUANT TO THE POWERS VESTED IN THE COMMISSIONER UNDER SECTION FOUR HUNDRED SEVENTY-TWO OF THIS ARTICLE, THE COMMISSIONER SHALL PROVIDE FOR THE ISSUANCE AND EXCLUSIVE USE OF ENCRYPTED CIGARETTE TAX STAMPS BY STAMPING AGENTS LICENSED PURSUANT TO SECTION FOUR HUNDRED SEVENTY-TWO OF THIS ARTICLE. SUCH STAMPS SHALL BE ENCRYPTED TO IDENTIFY, AT A MINIMUM:

(A) THE NAME AND ADDRESS OF THE LICENSED STAMPING AGENT AFFIXING THE STAMP;

(B) THE DATE THE STAMP WAS AFFIXED TO THE CIGARETTE PRODUCT; AND

(C) THE DENOMINATED VALUE OF THE STAMP OR METER IMPRESSION.

2. SUCH STAMPS SHALL:

(A) BE PRODUCED IN A PROVEN SECURE FACILITY CERTIFIED IN ACCORDANCE WITH THE SECURITY ASSISTANCE STANDARDS ESTABLISHED IN TWO THOUSAND FIVE BY THE AMERICAN NATIONAL STANDARDS INSTITUTE AND THE NORTH AMERICAN SECURITY PRODUCTS ORGANIZATION;

(B) INCORPORATE A MINIMUM OF FOUR LAYERS OF OVERT, SEMI-COVERT AND COVERT DATA;

(C) BE APPLIED BY MACHINES WHEREUPON THE ENCRYPTED DATA SHALL BE INSTANTANEOUSLY CAPTURED AND STORED BY AND FOR THE DEPARTMENT;

(D) BE READABLE AND TRACEABLE FROM STAMP PRODUCTION THROUGH DISTRIBUTION AND AT THE POINT OF SALE; AND

(E) BE CAPABLE OF BEING READ BY A SCANNING OR SIMILAR DEVICE THAT CAN BE UTILIZED BY ENFORCEMENT AGENTS OF THE DEPARTMENT AND/OR BY LICENSED CIGARETTE WHOLESALERS AND RETAILERS.

3. SUCH STAMPS AND THE ENCRYPTED DATA THEREIN SHALL BE PURCHASED BY THE STATE AND DISTRIBUTED TO LICENSED STAMPING AGENTS. THE ENCRYPTED DATA COLLECTED SHALL BE PURCHASED AND RETAINED BY THE STATE AND SHALL BE HELD IN A SECURE DATA COLLECTION, MANAGEMENT AND DECISION SUPPORT SYSTEM.

S 4. The department of taxation and finance shall issue a request for proposal for the purpose of manufacturing the encrypted stamp and application machinery authorized under section 472-a of the tax law within 90 days of the effective date of this act. Bids from qualified vendors shall be received by the department of taxation and finance no later than 60 days following the issuance of the request for proposal. Any contract issued pursuant to this section shall be issued within 90 days following receipt of bids.

S 5. The state finance law is amended by adding a new section 97-jjjj to read as follows:

S 97-JJJJ. CIGARETTE TAX CRIMINAL ENFORCEMENT FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE CIGARETTE TAX CRIMINAL ENFORCEMENT FUND.

2. SUCH FUND SHALL CONSIST ANNUALLY OF FIVE PERCENT OF THE RECEIPTS FROM THE IMPOSITION OF CIGARETTE AND TOBACCO TAXES PURSUANT TO ARTICLE TWENTY OF THE TAX LAW, LESS SUCH AMOUNTS TO BE DEPOSITED IN THE TOBACCO

CONTROL AND INSURANCE INITIATIVES POOL PURSUANT TO SECTION FOUR HUNDRED EIGHTY-TWO OF SUCH ARTICLE AND LESS SUCH AMOUNTS AS THE COMMISSIONER OF TAXATION AND FINANCE MAY DETERMINE TO BE NECESSARY FOR REFUNDS. THE CIGARETTE TAX CRIMINAL ENFORCEMENT FUND SHALL BE USED SOLELY FOR THE PURPOSES OF CRIMINAL ENFORCEMENT AND NECESSARY AUDITS OF CIGARETTE AND TOBACCO TAXES. ANY INTEREST RECEIVED BY THE COMPTROLLER ON MONEYS ON DEPOSIT IN SUCH FUND SHALL BE RETAINED IN AND BECOME PART OF SUCH FUND.

3. THE MONIES IN SUCH FUND, FOLLOWING APPROPRIATION BY THE LEGISLATURE AND ALLOCATION BY THE DIRECTOR OF THE BUDGET, SHALL BE AVAILABLE FOR THE DEPARTMENT OF TAXATION AND FINANCE FOR THE CRIMINAL ENFORCEMENT AND NECESSARY AUDITS OF ARTICLE TWENTY OF THE TAX LAW.

S 6. This act shall take effect immediately; provided, however the department of taxation and finance shall promulgate regulations setting forth the date by which the use of encrypted counterfeit-resistant cigarette tax stamps as required pursuant to section 472-a of the tax law, as added by section three of this act, shall take effect and the manner of implementation; such date shall be the earliest practical date by which the stamping system can be implemented by the department of taxation and finance, provided however that in no case shall the use of such stamps commence any earlier that 180 days following the issuance of a contract; provided further that any product shown to be purchased and stamped to such department's satisfaction prior to the implementation date specified in department of taxation and finance regulations may be sold bearing unencrypted stamps for the succeeding 12 months.