

AN ACT

RELATING TO CIGARETTES; ENACTING THE CIGARETTE ENFORCEMENT ACT; PRESCRIBING CRIMINAL PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Cigarette Enforcement Act".

Section 2. DEFINITIONS.--As used in the Cigarette Enforcement Act:

A. "cigarette" means any roll of tobacco or any substitute therefor wrapped in paper or any substance other than tobacco;

B. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "importer" means "importer" as that term is defined in 26 USCA 5702(1);

D. "package" means "package" as that term is defined in 15 USCA 1332(4); and

E. "secretary" means the secretary of taxation and revenue.

Section 3. PROHIBITED CONDUCT.--It is unlawful for a person to:

A. sell or distribute in this state; 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:

(1) cigarettes, the package of which:

(a) bears a 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 labels that state: "for export only", "U.S. tax exempt", "for use outside U.S." or similar wording; or

(b) does not comply with: 1) all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged or imported for sale, distribution or use in the United States, including the precise warning labels specified in 15 USCA 1333; and 2) all federal trademark and copyright laws;

(2) cigarettes imported into the United States on or after January 1, 2000 in violation of 26 USCA 5754, any other federal law or federal implementing regulations;

(3) cigarettes that the person acting in regard thereto otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed or used in the United States; or

(4) cigarettes for which there has not been submitted to the secretary of the United States department of health and human services the list or lists of the ingredients added to tobacco in the manufacture of those cigarettes as required by 15 USCA 1335A;

B. alter the package of any cigarettes prior to sale or distribution to the ultimate consumer by removing, concealing or obscuring:

(1) a statement, label, stamp, sticker or notice described in Subparagraph (a) of Paragraph (1) of Subsection A of this section; or

(2) a health warning that is not specified in, or does not conform with the requirements of, 15 USCA 1333; or

C. affix a stamp required pursuant to the Cigarette Tax Act to a package of cigarettes described in Subsection A of this section or altered in violation of Subsection B of this section.

Section 4. DOCUMENTATION.--On the first business day of each month, each person licensed or registered to affix a state tax stamp to cigarettes pursuant to Section 7-12-9 NMSA 1978 shall file with the department for all cigarettes imported into the United States to which the person has affixed a tax stamp in the preceding month:

A. copies of:

(1) the permit issued pursuant to 26 USCA 5713 to the person importing the cigarettes into the United States allowing the person to import the cigarettes; and

(2) the customs form containing, with respect to the cigarettes, the internal revenue tax information required by the federal bureau of alcohol, tobacco and firearms;

B. a statement signed under penalty of perjury by the person affixing the state tax stamp identifying the brand and brand styles of all the cigarettes, the quantity of each brand style, the supplier of the cigarettes and the person to whom the cigarettes were conveyed for resale and a separate statement by that person under penalty of perjury, which is not confidential or exempt from public disclosure, identifying only the brands and the brand styles of the cigarettes; and

C. a statement signed under penalty of perjury by an officer of the manufacturer or importer of the cigarettes certifying that the manufacturer or importer has complied with the package health warning and ingredient reporting requirements of 15 USCA Sections 1333 and 1335a with respect to the cigarettes, including a statement indicating whether the manufacturer is or is not a participating manufacturer within the meaning of that federal law.

Section 5. VIOLATION OF ACT CONSTITUTES AN UNFAIR TRADE PRACTICE.--A violation of Section 3 or 4 of the Cigarette Enforcement Act constitutes an unfair trade practice pursuant to the Unfair Practices Act.

Section 6. UNFAIR CIGARETTE SALES.--For the purposes of the Cigarette Enforcement Act, cigarettes imported or reimported into the United States for sale or distribution under a trade name, trade dress or trademark that is the same as, or is confusingly similar to, a trade name, trade dress or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States is presumed to have been purchased outside of the ordinary channels of trade.

Section 7. CRIMINAL PENALTIES FOR VIOLATION.--

A. A person who knowingly commits an act prohibited by Section 3 of the Cigarette Enforcement Act is guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with Section 31-18-15 NMSA 1978.

B. A person who fails to comply with a requirement of Section 4 of the Cigarette Enforcement Act is guilty of a fourth degree felony and upon conviction shall be sentenced in accordance with Section 31-18-15 NMSA 1978.

Section 8. ADMINISTRATIVE PENALTIES FOR VIOLATION.--

A. The secretary may revoke or suspend the registration or license of a person licensed or registered

pursuant to Section 7-12-9 NMSA 1978 who violates Section 3 or 4 of the Cigarette Enforcement Act. The decision to revoke or suspend shall be taken and is subject to review in accordance with the Tax Administration Act.

B. Cigarettes acquired, held, owned, possessed, transported in, imported into or sold or distributed in this state in violation of the Cigarette Enforcement Act are contraband and are subject to seizure, forfeiture and destruction by the department or a law enforcement agency.

Section 9. APPLICABILITY.--The provisions of the Cigarette Enforcement Act do not apply to:

A. cigarettes allowed to be imported or brought into the United States for personal use free of federal tax or duty or voluntarily abandoned to the federal secretary of the treasury at the time of entry; and

B. cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of 19 USCA 1555(b) and implementing regulations, but if the cigarettes are brought back in customs territory for resale within the customs territory, the provisions of that act apply.

Section 10. GENERAL PROVISIONS.--

A. The Cigarette Enforcement Act shall be enforced by the department; provided that, at the request of

the department, the state police and all local police authorities shall enforce the provisions of the Cigarette Enforcement Act.

B. For the purpose of enforcing the Cigarette Enforcement Act, the department may request information from any state or local agency, and may share information with, and request information from, any federal agency and any agency of any other state or any local agency thereof.

C. In addition to any other remedy provided by law, including enforcement as provided in subsection A of this section, any person may bring an action for appropriate injunctive or other equitable relief for a violation of the Cigarette Enforcement Act; actual damages, if any, sustained by reason of the violation; and, as determined by the court, interest on the damages from the date of the complaint, taxable costs and reasonable attorney's fees. If the trier of fact finds that the violation is flagrant, it may increase recovery to an amount not in excess of three times the actual damages sustained by reason of the violation.

Section 11. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2000. _____