

ACT 201

S.B. NO. 3179

A Bill for an Act Relating to Tobacco.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 245, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . EXPORT AND FOREIGN CIGARETTES

§245-A Sale of export cigarettes prohibited. It shall be unlawful for a person to sell or distribute in the State; to acquire, hold, own, possess, or transport for sale or distribution in the State, or to import or cause to be imported into the State for sale or distribution in the State any of the following cigarettes:

- (1) The package of which bears 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;

- (2) The package of which does not comply with all requirements imposed by 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 but not limited to the specific warning labels specified in the federal Cigarette Labeling and Advertising Act, title 15 U.S.C. section 1333;
- (3) The package of which does not comply with all federal trademark and copyright laws;
- (4) Imported into the United States on or after January 1, 2000, in violation of title 26 U.S.C. section 5754 or any other federal law or regulation;
- (5) For which the person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States; or
- (6) For which there has not been submitted to the Secretary of the United States Department of Health and Human Services the list of the ingredients added to tobacco in the manufacture of such cigarettes required by the federal Cigarette Labeling and Advertising Act, title 15 U.S.C. section 1335a.

§245-B Alteration of packaging prohibited. It shall be unlawful for any person to alter the package of any cigarettes, prior to sale or distribution to remove, conceal, or obscure:

- (1) 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
- (2) Any health warning that is not specified in or does not conform with the requirements of the federal Cigarette Labeling and Advertising Act, title 15 U.S.C. section 1333.

§245-C Criminal penalties for illegal sale of export or foreign cigarettes. Any person who knowingly violates section 245-A or 245-B shall be guilty of a class C felony, and upon conviction thereof, shall be fined not more than \$10,000, and may be imprisoned not less than one year and not more than five years, or both.

§245-D Confiscation and seizure of illegal sale or export of foreign cigarettes. The attorney general and the police departments of each of the counties may seize and confiscate any cigarette, package of cigarettes, or carton of cigarettes that is possessed, kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of this part.

§245-E Forfeiture. The forfeiture of any cigarette, package of cigarettes, or carton of cigarettes unlawfully possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale, in violation of this part, may be enforced pursuant to chapter 712A by an appropriate administrative or judicial proceeding. Any cigarette, package of cigarettes, or carton of cigarettes forfeited as provided in this section shall be ordered destroyed.

§245-F Affixing of cigarette tax stamps to export cigarettes or altered packages prohibited. It shall be unlawful for any person to affix any cigarette tax

stamp required under this chapter to the package of any cigarettes described in section 245-A or altered in violation of section 245-B.

§245-G Documentation of foreign cigarettes. On the first business day of each month, each licensee shall file the following documents with the department and the attorney general for all cigarettes imported into the United States to which the licensee or licensee's agent has affixed a cigarette tax stamp in the preceding month:

- (1) A copy of a permit issued pursuant to the Internal Revenue Code, title 26 U.S.C. section 5713, to the person importing the cigarettes into the United States, permitting the person to import the cigarettes;
- (2) A copy of the United States Customs Service form containing, with respect to the cigarettes, the internal revenue tax information required by the United States Bureau of Alcohol, Tobacco and Firearms;
- (3) A statement, signed by the licensee under penalty of perjury, that shall be treated as confidential by the department and shall be exempt from disclosure under chapter 92F, identifying:
 - (A) The brand and brand styles of all cigarettes;
 - (B) The quantity of each brand style of the cigarettes;
 - (C) The supplier of the cigarettes; and
 - (D) The person or persons, if any, to whom the cigarettes have been conveyed for resale; and
- (4) 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:
 - (A) The package health warning and ingredient reporting requirements of the Federal Cigarette Labeling and Advertising Act, title 15 U.S.C. sections 1333 and 1335a, with respect to the cigarettes; and
 - (B) Chapter 675, including a statement of whether the manufacturer is or is not a participating manufacturer within the meaning of section 675-3.

§245-H Illegal sale of export or foreign cigarettes; revocation or suspension of license; civil penalties. If any licensee violates this part or any rule adopted pursuant to this part, the director may:

- (1) Revoke or suspend the licensee's license pursuant to procedures complying with chapter 91; and
- (2) Impose a civil penalty in an amount not to exceed the greater of five times the retail value of the cigarettes involved, or \$5,000.

§245-I Unfair trade practices. Any violation of this part shall constitute an unfair method of competition and unfair and deceptive acts or practices in the conduct of any trade of commerce under section 480-2 and shall be subject to a civil penalty as provided in section 480-3.1. Each package of cigarettes sold in violation of this part shall constitute a separate violation.

§245-J Deceptive cigarette sales. The importation or reimportation of cigarettes 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 shall be deemed to violate section 481A-3.

§245-K Enforcement. (a) Enforcement of this part shall be under the concurrent jurisdiction of the attorney general, the prosecuting attorneys or deputy prosecuting attorneys of the various counties, and the police departments of the various counties.

(b) In addition to any other remedy provided by law, including enforcement as provided in subsection (a), any person may bring an action for appropriate injunctive or other equitable relief for a violation of this part and for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than \$1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys fees together with the costs of suit.

§245-L Applicability. This part shall not apply to:

- (1) 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 United States Secretary of Treasury at the time of entry; or
- (2) Cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of title 19 U.S.C. section 1555(b) and any implementing regulations; provided that this part shall apply to any such cigarettes that are brought back into the customs territory for resale within the customs territory.

§245-M Penalties cumulative. The penalties provided in this part are in addition to any other penalties imposed under other law.”

SECTION 2. Section 712-1257, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) Any person who violates subsection (1), shall be fined not more than \$2,500 for the first offense. Any subsequent offense shall subject the person to a fine of not less than \$100 and not more than \$5,000. Any person who knowingly violates subsection (1) shall be guilty of a class C felony.”

SECTION 3. In codifying the new part added to chapter 245, Hawaii Revised Statutes, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. This Act shall take effect on July 1, 2000, only if Senate Bill No. 2486,¹ in any form passed by the legislature, Regular Session of 2000, becomes an Act.

(Approved June 8, 2000.)

Note

- 1. Act 249.