

NOTICE

EXPORT AND FOREIGN CIGARETTES Chapter 245, Part III ("245-51 through 245-63), Hawaii Revised Statutes Prohibits the Sale and Distribution of Cigarettes Designated for Export

Legislation in connection with export and foreign cigarettes was passed in the 2003 Regular Legislative Session and was signed by Governor Lingle. Effective date is May 20, 2003.

§245-51 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 (DHHS) 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.
- (7) The package of which bears a cigarette brand name that is a registered United States trademark of a participating manufacturer and the package was imported by anyone other than the participating manufacturer of that cigarette brand. "Participating Manufacturer" means any signatory to the "Master Settlement Agreement", as the latter term is defined in section 675-2 (HRS).

§245-52 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.

§245-53 CRIMINAL PENALTIES FOR ILLEGAL SALE OF EXPORT OR FOREIGN CIGARETTES.
Any person who knowingly violates section 245-51 or section 245-52 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.

§245-54 CONFISCATION AND SEIZURE OF ILLEGAL EXPORT OR 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, retained, held, owned, received, transported, imported, or caused to be imported, acquired, distributed, sold, or offered for sale in violation of this part.

§245-55 FORFEITURE.
Any cigarette, package of cigarettes, or carton of cigarettes unlawfully possessed, kept, stored, received, held, owned, acquired, retained, transported, imported, or caused to be imported, distributed, sold, or offered for sale, in violation of this part, shall be forfeited as contraband pursuant to Chapter 712A (HRS). Any cigarette, package of cigarettes, or carton of cigarettes forfeited as provided in this section shall be ordered destroyed.

§245-56 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 245-51 or altered in violation of section 245-52.

§245-57 DOCUMENTATION OF FOREIGN CIGARETTES.

On the first business day of each month, each licensee shall file the following documents with the Department of Taxation and the Department of 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 (BATF);
- (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 (HRS), 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 or 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. section 1333 and section 1335a with respect to the cigarettes; and
 - (B) Chapter 675 (HRS), including a statement of whether the manufacturer is or is not a participating manufacturer within the meaning of section 675-3 (HRS).

§245-58 ILLEGAL SALE OF EXPORT OR FOREIGN CIGARETTES; REVOCATION OR SUSPENSION OF LICENSE; CIVIL PENALTIES.

If any licensee violates this statute or any rule adopted pursuant to this statute, the director of the department may:

- (1) Revoke or suspend the licensee's license pursuant to procedures complying with Chapter 91 (HRS); 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.

§245-59 UNFAIR TRADE PRACTICES.

Any violation of this statute 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 (HRS), and shall be subject to a civil penalty as provided in section 480-3.1 (HRS). Each package of cigarettes sold in violation of this statute shall constitute a separate violation.

§245-60 DECEPTIVE CIGARETTE SALES.

The importation or re-importation 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 (HRS).

§245-61 ENFORCEMENT.

- (1) Enforcement of this statute 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.
- (2) 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 statute 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.

§245-62 APPLICABILITY.

- (a) This statute 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;
 - (2) Cigarettes sold or intended to be sold a 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 chapter shall apply to any cigarettes that are brought back into the customs territory for resale within the customs territory; or
 - (3) A delivery service when engaged in the business of transporting or delivering packages or other containers of cigarettes, if the delivery service is not a knowing accomplice in any act that circumvents the requirements of this chapter. The department and the attorney general shall retain inspection and investigation authority under this chapter. The delivery service shall provide the department or the attorney general with access to inspect any shipments of any cigarettes and shall provide any information, including shipping and delivery documents, deemed necessary to verify compliance with the requirements of this chapter.
- (b) As used in this section:

"Delivery service" means any entity, including the United States Postal Service (as defined in section 102 of Title 39, U.S.C.), that is engaged in the commercial transport or delivery by water,

land, or air of letters, packages, merchandise, or other containers whether or not the entity actually operates the vessel, vehicle, or aircraft by which the transportation is provided.

“Shipping documents” or “delivery documents” include by are not limited to bills of lading, air bills, or any other documents, records, or documentation in whatever format, including electronic format used to evidence the undertaking by a delivery service to ship, transport, or deliver letters, packages, merchandise, or other containers.

§245-63 PENALTIES CUMULATIVE.

The penalties provided in this part are in addition to any other penalties imposed under other law.

Questions concerning this law should be directed to:

State of Hawaii
Department of the Attorney General
Criminal Justice Division - Tobacco Enforcement Unit
425 Queen Street
Honolulu, Hawaii 96813
(808) 586-1203