

SENATE PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR

SENATE BILL 491

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;

ENACTING THE CIGARETTE ENFORCEMENT ACT.

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

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underscored material = new
~~[bracketed material]~~ = delete

1 defined in 26 USCA 5702(1);

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

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

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

8 A. sell or distribute in this state; acquire,
9 hold, own, possess or transport for sale or distribution in
10 this state; or to import, or cause to be imported, into this
11 state for sale or distribution in this state:

12 (1) cigarettes, the package of which:

13 (a) bears a statement, label, stamp,
14 sticker or notice indicating that the manufacturer did not
15 intend the cigarettes to be sold, distributed or used in the
16 United States, including labels that state: "for export
17 only", "U.S. tax exempt", "for use outside U.S." or similar
18 wording; or

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

(2) cigarettes imported into the United
States on or after January 1, 2000 in violation of 26 USCA

1 5754, any other federal law or federal implementing
2 regulations;

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

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

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

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

18 (2) a health warning that is not specified
19 in, or does not conform with the requirements of, 15 USCA
20 1333; or

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

25 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

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1 1978 shall file with the department for all cigarettes
2 imported into the United States to which the person has
3 affixed a tax stamp in the preceding month:

4 A. copies of:

5 (1) the permit issued pursuant to 26 USCA
6 5713 to the person importing the cigarettes into the United
7 States allowing the person to import the cigarettes; and

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

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

21 C. a statement signed under penalty of perjury by
22 an officer of the manufacturer or importer of the cigarettes
23 certifying that the manufacturer or importer has complied
24 with the package health warning and ingredient reporting
25 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

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1 within the meaning of that federal law.

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

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

15 Section 7. CRIMINAL PENALTIES FOR VIOLATION.--

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

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

24 Section 8. ADMINISTRATIVE PENALTIES FOR VIOLATION.--

25 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

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1 or 4 of the Cigarette Enforcement Act. The decision to
2 revoke or suspend shall be taken and is subject to review in
3 accordance with the Tax Administration Act.

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

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

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

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

21 Section 10. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2000.