

ENROLLED ORIGINAL

AN ACT

*Codification
District of
Columbia
Code
2001 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 47 of the District of Columbia Code to prohibit the sale of gray market cigarettes in the District of Columbia by prescribing the condition of cigarette packages to which excise tax stamps may be affixed and limiting the persons authorized under District law to affix such tax stamps to manufacturers and those wholesalers who purchase cigarettes directly from cigarette manufacturers or the agents of foreign manufacturers; revise and add definitions; require monthly filings with the Office of Tax and Revenue; establish a criminal penalty for violating the prohibitions; establish administrative sanctions; allow for the seizure and forfeiture of gray market cigarettes; allow for equitable relief; and exempt cigarettes imported for personal use and duty-free sales.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Gray Market Cigarette Prohibition Act of 2000".

Sec. 2. Chapter 24 of Title 47 of the District of Columbia Code is amended as follows:

(a) The table of contents for Chapter 24 is amended by adding the following section designations at the end to read as follows:

"47-2419. Prohibitions on gray market cigarettes.

"47-2420. Documentation.

"47-2421. Criminal penalties.

"47-2422. Civil penalties and administrative sanctions.

"47-2423. Seizure and forfeiture of gray market cigarettes.

"47-2424. Unfair cigarette sales.

"47-2425. General provisions.

"47-2426. Application of §§ 2419 through 2425."

(b) Section 47-2401 is amended as follows:

(1) Paragraph (1) is amended to read as follows:

"(1) The term "cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

ENROLLED ORIGINAL

"(A) A roll of tobacco wrapped in paper or in any substance not containing tobacco;

"(B) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

"(C) A roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A) of this paragraph."

(2) A new paragraph (3A) is added to read as follows:

"(3A) The term "importer" means "importer" as the term is defined in section 5702(l) of the Internal Revenue Code of 1986, approved October 22, 1986 (68A Stat. 707; 26 U.S.C. § 5702 (1))."

(3) A new paragraph (3B) is added to read as follows:

"(3B) The term "manufacturer" means "manufacturer of tobacco products" as the term is defined in section 5702(d) of the Internal Revenue Code of 1986, approved October 22, 1986 (68A Stat. 707; 26 U.S.C. § 5702 (d))."

(4) A new paragraph (5A) is added to read as follows:

"(5A) The term "package" means "package" as the term is defined in section 3(4) of the Federal Cigarette Labeling and Advertising Act, approved July 27, 1965 (79 Stat. 282; 15 U.S.C. § 1332(4))."

(c) New sections 47-2419 through 47-2426 are added to read as follows:

"§ 47-2419. Prohibitions on gray market cigarettes.

"No person shall:

"(1) Sell or distribute in the District, to acquire, hold, own, possess, or transport, for sale or distribution in the District, or to import, or cause to be imported, into the District for sale or distribution in the District:

"(A)(i) Any cigarettes the package of which 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 stating "For Export Only," "U.S. Tax-Exempt," "For Use Outside U.S.," or similar wording; or

(ii) Any cigarettes the package of which does not comply with:

(I) All requirements imposed by or under 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 section 4 of the Federal Cigarette Labeling and Advertising Act, approved July 27, 1965 (79 Stat. 283; 15 U.S.C. § 1333) ("1965 Act"); or

(II) All federal trademark and copyright laws;

ENROLLED ORIGINAL

"(B) Any cigarettes imported into the United States after December 31, 1999, in violation of section 5754 of the Internal Revenue Code of 1986, approved October 22, 1986 (111 Stat. 673; 26 U.S.C. § 5754), or any other federal law, or implementing regulations;

"(C) Any cigarettes that the person otherwise knows, or has reason to know, that the manufacturer did not intend to be sold, distributed, or used in the United States; or

"(D) Any cigarettes for which there has not been submitted to the Secretary of the U. S. Department of Health and Human Services the list of the ingredients added to tobacco in the manufacture of the cigarettes required by section 7 of the Federal Cigarette Labeling and Advertising Act, approved October 12, 1984 (98 Stat. 2203; 15 U.S.C. § 1335a) ("1984 Act").

"(2) Alter the package of any cigarettes, before sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:

(A) Any statement, label, stamp, sticker, or notice described in paragraph (1)(A) of this section; or

(B) Any health warning that is not specified in, or does not conform with the requirements of, section 4 of the 1965 Act;

"(3) To affix any stamp, required under this chapter, to the package of any cigarettes described in paragraph (1) of this section or altered in violation of paragraph (2) of this section.

"47-2420. Documentation.

"On the first business day of each month, each person licensed to affix the state tax stamp to cigarettes shall file with the Mayor, for all cigarettes imported into the United States to which the person has affixed the tax stamp in the preceding month:

"(1) A copy of the permit issued under section 5713 of the Internal Revenue Code of 1986, approved October 22, 1986 (68A Stat 712; 26 U.S.C. § 5713), to the person importing the cigarettes into the United States allowing the person to import the cigarettes, and the customs form containing, with respect to the cigarettes, the internal revenue tax information required by the U. S. Bureau of Alcohol, Tobacco and Firearms;

"(2) A statement, signed by the person under the penalty of perjury, which shall be treated as confidential by the Mayor and exempt from disclosure under Subchapter II of Chapter 15 of Title 1, identifying the brand and brand styles of the cigarettes, and the person, if any, to whom the cigarettes have been conveyed for resale; and

"(3) A statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with the package health warning and ingredient reporting requirements of section 4 of the 1965 Act and section 7 of the 1984 Act with respect to the cigarettes.

ENROLLED ORIGINAL

"47-2421. Criminal penalties.

"Any person who commits any of the acts prohibited by § 47-2419, either knowingly or having reason to know he is doing so, or who fails to comply with any of the requirements of § 47-2420, shall, upon conviction thereof, be subject to the penalties under § 47-2414(a).

"47-2422. Civil penalties and administrative sanctions.

"(a) The Mayor may revoke, suspend, or deny under § 47-2405 the general sales license endorsement on the master business license of any cigarette dealer for a violation of this chapter or any implementing rule promulgated by the Mayor as provided under § 47-2415.

"(b) The Mayor may (1) impose a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or \$5,000 for a violation of this chapter, or (2) assess tax due and interest on any product acquired, possessed, sold, or offered for sale in violation of this chapter.

"(c) The license or authorization to affix stamps of an agent, distributor, dealer, or person found liable for a civil penalty under subsection (b)(1) of this section on 2 or more occasions shall be revoked and the agent, distributor, dealer, or person shall not be eligible for a license or authorized by the District to affix tax stamps under this chapter for one year.

"47-2423. Seizure and forfeiture of gray market cigarettes.

"Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or distributed in the District in violation of § 47-2419 shall be deemed contraband and shall be subject to seizure, forfeiture, and destruction by the Mayor under § 47-2409. The cigarettes shall be deemed contraband whether the violation of this chapter is knowing or otherwise.

"47-2424. Unfair cigarette sales.

"For the purposes of this chapter, 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 shall be presumed to have been purchased outside of the ordinary channels of trade.

"47-2425. General provisions.

"(a) For the purpose of enforcing this chapter, the Mayor may request or share information with any state or local agency, federal agency, or any agency of a state or local agency.

"(b) Any person who acquires, owns, possesses, transports into, or imports into the District cigarettes which are subject to this chapter shall, with respect to such cigarettes, maintain and keep all records required under this chapter and District law.

"(c) In addition to any other remedy provided by law, any person who suffers economic injury or commercial harm as a result of a violation of this chapter may bring an action for injunctive or other equitable relief for a violation of this chapter, actual damages, if any, sustained by reason of the violation, and, as determined by the court, interest on the damages

ENROLLED ORIGINAL

from the date of the complaint and taxable costs. If the trier of facts finds that the violation was willful, it may increase the damages to an amount not exceeding 3 times the actual damages sustained by reason of the violation.

"(d) The Mayor shall provide a copy of the Gray Market Cigarette Prohibition Act of 2000 to all District licensed wholesale and retail sellers of cigarettes. The Mayor should also provide translations of the act, in Spanish, Chinese, Korean, Spanish, Vietnamese, and other languages as necessary, to license applicants. These translations should be prepared in collaboration with the Office on Latino Affairs and the Office on Asian and Pacific Islander Affairs.

"47-2426. Application of §§ 2419 through 2425.

"(a) Sections 2419 through 2425 shall not apply to cigarettes which, in accordance with section 555 of An Act to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect labor and for other purposes, approved June 17, 1930 (46 Stat. 743; 19 U.S.C. § 1555(b)), and any implementing regulations, are (1) allowed to be imported or brought into the United States, or (2) sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise; provided, that this section shall apply to any such cigarettes that are brought back into the customs territory for resale within the customs territory.

"(b) The penalties provided in this chapter are in addition to any other penalties imposed under law."

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in

ENROLLED ORIGINAL

section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia