

# SENATE NO. 1324

## **AN ACT** AN ACT PROHIBITING THE SALE OF GRAY MARKET AND COUNTERFEIT TOBACCO PRODUCTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled,  
And by the authority of the same, as follows:*

1 SECTION 1. The General Laws are hereby amended by inserting after Chapter 94E the following new

2 Chapter:—

3 Chapter 94F.

4 CIGARETTE ENFORCEMENT.

5 SECTION 1. For purposes of this chapter, the following words shall have the following meanings:—

6 “Cigarette”, cigarette as defined in section 1 of chapter 94E.

7 “Commissioner”, the commissioner of the department of public health.

8 “Package”, a pack, box, carton or container of any kind in which cigarettes are offered for sale, sold or  
9 otherwise distributed to consumers.

10 “Counterfeit”, any unauthorized reproduction, copy, or colorable imitation offered in connection with  
11 the sale, offering for sale, or advertising of any tobacco product.

12 “Person”, an individual, company, corporation or partnership.

13 Section 2. (a) It shall be unlawful for any person:

14 (1) to sell, distribute, acquire, hold, own, possess, transport, import or cause to be imported into or in  
15 the commonwealth for sale or distribution in the commonwealth, any cigarettes that are counterfeit or  
16 do not comply with all requirements imposed under federal law and implementing regulations,  
17 including but not limited to the requirements on the filing of ingredients lists under the federal  
18 Cigarette Labeling and Advertising Act, 15 U.S.C. section 1335a; the permanent imprinting of  
19 package warning labels in the precise format specified under the federal Cigarette Labeling and  
20 Advertising Act, 15 U.S.C. section 1333; the rotation of label statements under the federal Cigarette  
21 Labeling and Advertising Act, 15 U.S.C. section 1333(c); restrictions on the importation, transfer and  
22 sale of previously exported tobacco products pursuant to Section 9302 of Public Law 105-33, the  
23 Balanced Budget Act of 1997, as amended; the requirements of Title IV of the Imported Cigarette  
24 Compliance Act of 2000; and federal trademark and copyright laws;

25 (2) to alter the package of any cigarettes, prior to sale or distribution to the ultimate consumer, so as to  
26 remove, conceal or obscure:

27 (i) any statement, label stamp, sticker, or notice indicating that the manufacturer did not intend the  
28 cigarettes to be sold, distributed or used in the United States, including but not limited to labels stating  
29 “For Export Only,” “U.S. Tax Exempt,” “For Use Outside U.S.,” or similar wording; or

30 (ii) any health warning that is not the precise warning statement in the precise format specified in the  
31 federal Cigarette Labeling and Advertising Act, 15 U.S.C. section 1333; or

32 (3) to affix any tax stamp or meter impression required pursuant to chapter 64C to the package of any  
33 cigarettes that does not comply with the requirements set forth in clause (1) or that is altered in  
34 violation of clause (2).

35 (b) This chapter shall not apply to cigarettes allowed to be imported or brought into the United States  
36 for personal use, or to cigarettes sold or intended to be sold as duty-free merchandise by a duty-free

37 sales enterprise in accordance with 19 U.S.C. section 1555(b) and any implementing regulations.

38 However, this chapter shall apply to any such cigarettes that are brought back into the customs

39 territory for resale within the customs territory.

40 Section 3. Cigarettes imported or reimported into the United States for sale or distribution under any

41 trade name, trade dress or trademark that is the same as, or is confusingly similar to, any trade name,

42 trade dress or trademark used for cigarettes manufactured in the United States for sale or distribution

43 in the United States shall be presumed to have been purchased outside of the ordinary channels of

44 trade.

45 Section 4. A violation of section 2 shall constitute an unfair trade practice under chapter 93A and a

46 person who violates section 2 shall be subject the same penalties and remedies as available under

47 chapter 93A in addition to any penalties or remedies set forth in this chapter.

48 Section 5. (a) The commissioner shall enforce this chapter. At the request of the commissioner, or the

49 commissioner's duly authorized agent, the state police and all municipal police authorities shall also

50 enforce this chapter. The attorney general shall have concurrent jurisdiction with the prosecuting

51 attorneys to prosecute violations of this act.

52 (b) For the purpose of enforcing this chapter, the commissioner and any agency or department to

53 which the commissioner delegates enforcement responsibility under subsection (a) may request

54 information from any state or local agency, and may share information with, and request information

55 from, any federal, state or local agency in the United States.

56 Section 6. (a) The commissioner may revoke or suspend the license of any licensee under chapter 64C

57 upon finding, after notice and a hearing, of a violation by the licensee of this chapter or any

58 implementing regulation promulgated thereunder by the commissioner. The commissioner may also

59 impose on any person a civil penalty in an amount not to exceed the greater of 500 per cent of the

60 retail value of the cigarettes involved or \$5,000 upon finding a violation by such person of this chapter  
61 or any regulation promulgated thereunder.

62 (b) Cigarettes that are acquired, held, owned, possessed, transported in, imported into, or sold or  
63 distributed in the commonwealth in violation of this chapter shall be deemed contraband and shall be  
64 subject to seizure and forfeiture in the same manner as provided for unstamped cigarettes under  
65 section 38A of chapter 64C. Any cigarettes so seized and forfeited shall be destroyed. Such cigarettes  
66 shall be deemed contraband whether a violation of this act is knowing or otherwise.

67 Section 7. A person who commits any of the acts prohibited under section 2, either knowing or having  
68 reason to know he is doing so, shall be punished by a fine of not more than \$5,000 or imprisonment in  
69 the state prison for not more than 5 years, or by both such fine and imprisonment.