

NITIJELA OF THE MARSHALL ISLANDS

25TH CONSTITUTIONAL REGULAR SESSION, 2004

BILL NO:34ND2

P.L.2004-16

AN ACT

to amend the Import Duties Act, 1989, by inserting new provisions in order to create a new regime; to limit the number importers of alcohol and tobacco products; to enhance enforcement of the requirements of the Act, with respect to the importation of alcohol and tobacco based products; and to provide for stiffer penalties for violations of this Act.

BE IT ENACTED BY THE NITIJELA OF THE MARSHALL ISLANDS

Section 1. **Short Title**

This Act may be cited as the Import Duties (Tobacco and Alcohol Amendment) Act, 2004

Section 2. **Amendment**

(1) The Import Duties Act is hereby amended by inserting the following provisions:

PART II - LIMITATION ON THE NUMBER OF IMPORTERS OF ALCOHOL AND TOBACCO PRODUCTS.

§203(A). Prohibition against Importation without a License

(1) Notwithstanding the provisions of any other Act to the contrary, no person corporation or any other business association or entity shall have the authority to import for re-sale within the Republic, any alcohol or alcohol based products or any tobacco, or any other tobacco based products, without the approval of the Secretary of Finance.

(2) Such approval shall be issued in the form of a license or licenses, pursuant to the provisions of this Part.

(3) Any person, corporation or any other business association or entity that violates the prohibition set out in subsection (1) above shall be liable to the penalties set out under Sections 203 (F) and 223 of this Act.

§203(B). License to Import Alcohol and Tobacco Products

(1) Any person, corporation or any other business association or entity who intends to import any alcohol and alcohol based products, tobacco, and any other tobacco based products, for re-sale within the Republic shall first apply to the Secretary of Finance, for license to import such goods under this part. The Secretary of Finance shall issue separate licenses for the importation of alcohol and alcohol based products and for the importation of tobacco and tobacco based products.

(2) Such licenses shall be in a form approved by the Secretary of Finance.

(3) The application for a license under this part shall contain:

(a) the name of the applicant's business;

(b) the applicant's principal place of business in the Republic and its authorized representative for purposes of the application;

(c) the purpose, scope, and objectives of the business activities to be conducted by the applicant;

(d) the proposed form of the business organization, including the ownership and management structure;

(e) the names, addresses, and citizenship of the initial owners and managers;

(f) proposals for ownership and management by citizens of the Republic;

P.L. 2004-16

(g) proposals to give employment preferences to citizens of the Republic
and to train citizens of the Republic for positions in management and at other levels;

(h) anticipated capital contributions, revenue and expenditure for the first
three (3) years;

(i) any other information that Secretary of Finance deems necessary or
appropriate.

(4) Any person, corporation or other business association or entity:

(a) that has past due and outstanding taxes under the laws of the Republic;

(b) that has failed to fulfil any arrangement with the Secretary of Finance
to settle any past due and outstanding taxes ;

shall not be eligible to apply for a license under this Part.

§203 (C) Invitations to Bid

(1) The Secretary of Finance shall solicit applications for a license under this Part,
through an invitation for bids.

(2) The Invitation for bids shall contain:

(a) an invitation to all those persons, corporations or other business
associations or entities intending to import alcohol and tobacco products to submit
an application pursuant to Section 203 (B) above.

(b) terms and conditions of the license, any fees payable under this Part and any other information deemed necessary by the Secretary of Finance; and

(c) a request for the production of any background information on the applicant and any other information deemed necessary by the Secretary of Finance;

(3) Adequate public notice of the Invitation for Bids shall be given by the Secretary of Finance, and may include publication in a newspaper of general circulation for a reasonable period of time

(4) Upon receipt of the applications, the Secretary of Finance shall review the applications pursuant to the provisions of this Part.

§203 (D) Number of Licenses Authorized under this Part

(1) The Secretary of Finance is hereby authorized to issue:

(a) no more than ten (10) licenses to businesses in Majuro for the importation of alcohol and alcohol based products each financial year ; and

(b) no more than ten (10) licenses to businesses in Majuro, for the importation of tobacco and tobacco based products each financial year;

(c) no more than five (5) licenses to businesses on Ebeye, for the importation of alcohol and alcohol based products each financial year;

(d) no more than five (5) licenses to businesses on Ebeye, for the importation of tobacco and tobacco based products each financial year;

(2) Except for the initial licenses, all licenses shall take effect on October 1st and remain in force for a period of twelve months.

(3) At the expiration of such period, the Secretary of Finance shall again, solicit applications through an invitation for bids pursuant to the provisions of Section 203(C) above and any Regulations promulgated pursuant to this Part.

(4) Where the Secretary of Finance determines that more than fifteen applicants are equally qualified, the Secretary of Finance shall decide the outcome by a drawing of lots.

§203 (E) Register.

(1) The Secretary of Finance shall maintain a register of all persons, corporations or business associations and entities that have been duly licensed to import goods under this part.

(2) All license holders under this Part shall advise the Secretary of Finance of any changes in their circumstances to allow for the appropriate amendments or modifications to the data on the license holder, contained in the register.

§ 203 (F) Modification, suspension, or revocation.

(1) A license granted under this Part shall at all times be subject to modification,

suspension, or revocation where:

(a) the application is found to have contained false or fraudulent information;

(b) the grantee presented false or fraudulent information to Secretary of Finance in support of his application;

(c) the grantee violates any of the laws of the Republic of the Marshall Islands;

(d) the grantee engages in business activities which are in violation of any condition or terms imposed in the license: and

(e) the grantee engages in business activities outside of the scope of the license.

§203 (G) Authority of Secretary of Finance

In addition to the provisions of this Part, the Secretary of Finance is hereby authorized to formulate and adopt Rules and Regulations pursuant to the Administrative Procedures Act, for the administration of the provisions of this part. Such authority shall include but is not limited to:

(a) the formulation of a list of prerequisites, or standards of compliance, necessary for the issuance of a license under this Part;

(b) the formulation of a procedure to govern the bid process;

(2) The ensuing Parts of the Act are re-numbered in order to accommodate the insertion of this Part under the Act.

(3) By amending section 222 to read as follows;

§222. . OFFENSES

(1) Any person who:

(a) turns over any goods imported into the Republic to a consignee in violation of the provisions of section 221 above; or

(b) hinders or obstructs a Customs Officer or other person in the exercise of his powers or the performance of his duties under this Chapter or the regulations made thereunder, or

(c) makes in any document produced to a Customs Officer pursuant to the provisions of this Act, any statement which is false or misleading in any particular, or;

(d) smuggles or attempts to smuggle any goods into the Republic, or;

(e) moves, alters or interferes with goods subject to Customs control; or

(f) enters any Customs baggage processing area during the performance of such baggage processing, without the approval of the Chief;

(g) violates the prohibition contained in section 203A of this Act;

shall be guilty of an offense under this Act, and upon conviction, shall be liable to the penalties set out under section 223 of this Act.

(2) The provisions of paragraph (f) above shall not apply to on-duty

P.L. 2004-16

airline, shipping personnel or officers of the Republic performing duty in relation to baggage processing.

(3) "Person" as used in subsection (1) above and in section 223 (2) below means any natural person or persons, corporations and other legal entities.

(4) By amending section 223 to read in the following manner:

§223. Penalties.

(1) Any person who commits an offense under Section 222 subsection (1) paragraphs (a), (b) and (f) above, shall, upon conviction, be liable to a fine not exceeding one thousand dollars (\$US 1,000) or to a term of imprisonment not exceeding one year, or both.

(2) Any person who commits an offense under section 222 subsection (1) paragraphs (c), (d) and (e) or violates the prohibition contained in Section 203A above shall be punishable as follows;

(a) for a first offense, the offender shall be liable to a fine in an amount equal to double the value of the goods involved or two thousand five-hundred dollars (\$2,500), which ever is the greater amount, or imprisonment for a term not exceeding 3 months, or both.

(b) for a second offense, the offender shall be liable to a fine in an amount equal to double the value of the goods involved or five thousand dollars (\$5000), which ever is the greater amount, and to a term of imprisonment not exceeding six

P.L. 2004-16

1 (6) months, or both. If the offender in this case is a corporation or other legal entity,
2 doing business in the Republic, the Secretary of Finance shall recommend to the
3 appropriate Local Government, for the suspension of such entity's business license
4 for a period of three months.

5 (c) for a third offense, the penalty shall be a fine in an amount equal to double
6 the value of the goods involved or ten thousand dollars (\$10,000), which ever is the
7 greater amount, or to a term of imprisonment not exceeding twelve (12) months, or
8 both. If the offender is a corporation or other legal entity doing business in the
9 Republic, the Secretary of Finance shall recommend to the appropriate Local
10 Government, for the permanent revocation of any such entity's business license.

11 (3) For the purposes of this Section, the Secretary of Finance shall, subject to
12 approval by Cabinet, enter into a Memorandum of Understanding with all Local
13 Governments concerned, setting out a procedure for the suspension or revocation of a
14 business license. The terms of such a Memorandum of Agreement shall first be approved by
15 Cabinet.

16 **(3) by amending Section 225(1) to read as follows:**

17 (1) Any goods in respect of which a person has been convicted of an offense pursuant
18 to Section 222 (c) , (d) and (e) shall be forfeited to the Republic.
19
20

(4) By inserting a new section 228 to provide as follows;

§228. Incentive Fee

(1) Any person who has information that a violation of the provisions of this Act has occurred, or is about to occur, and provides such information to the Secretary of Finance, which information results in the successful conviction of the offender, shall be entitled to an incentive fee in an amount amount equal to five per cent (5%) of the fines payable under Section 223 of this Act. Such incentive fee shall be payable from the proceeds realized from under the provisions of Section 225 above.

(2) "Person" as used in subsection (1) above does not include employees of the Public Service Commission and other agencies of government who by nature of their employment are required to report such violations.

(3) Any person who makes any false and frivolous reports under Section 228 above shall be liable to a civil penalty in the amount of one thousand dollars (\$1,000).

Section 3. Effective Date

This Act shall take effect on a date to be decided by the Secretary of Finance, publicly

P.L. 2004-16

notified by circular, newspaper and radio notices, after certification, in accordance with Article IV
Section 21 of the Constitution and the Rules and Procedures of the Nitijela.

CERTIFICATE

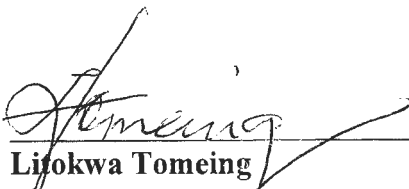
I hereby certify:

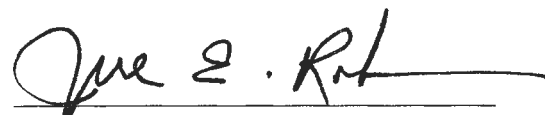
(1) that the above Nitijela Bill No. 34N2 was passed by the Nitijela of the
Marshall Islands on the 25th day of October 2004; and

(2). that I am satisfied that Nitijela Bill No. 34ND2 was passed in accordance
with the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the
Nitijela..

I hereby place my signature before the Clerk of the Nitijela on this 22nd day November 2004.

Attest:


Lifokwa Tomeing
Speaker,
Nitijela of the Marshall Islands


Joe E Riklon
Clerk,
Nitijela of the Marshall Islands