



TO: Legislative Operating Committee (LOC)
FROM: Clorissa N. Santiago, Legislative Reference Office, Senior Staff Attorney *CNS*
DATE: May 11, 2020
RE: Tobacco Law Amendments: Public Comment Period Review

An outbreak of the COVID-19 virus has turned into a worldwide pandemic resulting in many countries experiencing the effects of health issues and mortality related to COVID-19 and vast economic impacts.

On March 12, 2020, Chairman Tehassi Hill signed a “*Declaration of Public Health State of Emergency*” regarding COVID-19 which declared a Public Health State of Emergency for the Nation until April 12, 2020, and set into place the necessary authority for action to be taken and allows the Nation to seek reimbursement of emergency management actions that may result in unexpected expenses.

On March 24, 2020, the Nation’s COVID-19 Core Decision Making Team issued a “*Safer at Home*” declaration which orders all individuals present within the Oneida Reservation to stay at home or at their place of residence, with certain exceptions allowed. The “*Safer at Home*” declaration prohibits all public gatherings of any number of people.

Then on March 27, 2020, the Nation’s COVID-19 Core Decision Making Team issued a “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration which suspended the Legislative Procedures Act’s requirement to hold a public meeting during the public comment period, but allows members of the community to still participate in the legislative process by submitting written comments, questions, data, or input on proposed legislation to the Legislative Operating Committee via e-mail during the public comment period.

On March 28, 2020 the Oneida Business Committee adopted resolution BC-03-28-20-A titled, “*Extension of March 12th Declaration of Public Health State of Emergency*” which extended the Nation’s Public Health State of emergency declaration until May 12, 2020.

On March 31, 2020, the Legislative Operating Committee approved the Tobacco law amendments public comment period packet and set the public comment period for the Tobacco law amendments to be held open until May 7, 2020.

On May 6, 2020 the Oneida Business Committee adopted resolution BC-05-06-20-A titled, “*Extension of Declaration of Public Health State of Emergency Until June 11, 2020*” which further extended the Nation’s Public Health State of Emergency declaration until June 11, 2020.

Although the Nation’s COVID-19 Core Decision Making Team’s “*Suspension of Public Meetings under the Legislative Procedures Act*” declaration suspended public meetings and therefore no public meeting was scheduled for the amendments to the Tobacco law, a public comment period

was still held to allow members of the community to provide written submissions of comments or questions to the Legislative Operating Committee through e-mail.

No written comments were received during the public comment period for the proposed amendments to the Tobacco law. A copy of the public meeting draft has been attached to this memorandum.

Title 1. Government and Finances - Chapter 115**Oy&=kwa> Olihw@=ke
matters concerning tobacco
TOBACCO**

115.1. Purpose and Policy
 115.2. Adoption, Amendment, Repeal
 115.3. Definitions
 115.4. Oneida Retail Locations

115.5. Purchase of, Title to And Possession of Tobacco Products
 115.6. Restrictions on Sales
 115.7. Liability
 115.8. Violations

115.1. Purpose and Policy

115.1-1. *Purpose.* The purpose of this law is to regulate the sale, possession, and distribution of cigarettes within the Reservation.

115.1-2. *Policy.* It is the policy of the Nation to ensure that all cigarette sales on the Reservation are conducted in a lawful manner.

115.2. Adoption, Amendment, Repeal

115.2-1. This law was adopted by the Oneida Business Committee by resolution BC- 11-18-81-A and amended by resolution BC-10-10-07-A, BC-04-09-14-F, BC-01-25-17-B, and BC-02-26-20-A, and BC- - - - .

115.2-2. This law may be amended or repealed by the Oneida Business Committee and/or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

115.2-3. Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

115.2-4. In the event of a conflict between a provision of this law and a provision of another law, the provisions of this law shall control.

115.2-5. This law is adopted under authority of the Constitution of the Oneida Nation.

115.3. Definitions

115.3-1. This section shall govern the definitions of words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) “Cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size, shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(b) “Electronic cigarette” means a device that enables a person to ingest nicotine, or other chemicals or substances, by inhaling a vaporized liquid and shall include the cartridges and other products used to refill the device. “Electronic cigarette” shall not include any device that is prescribed by a healthcare professional.

(c) “Employee” means a person employed by the Oneida Nation working in an Oneida retail location.

(d) “Nation” means the Oneida Nation.

(e) “Oneida Retail Location” means an Oneida Nation retail sales business selling stamped cigarettes within the Oneida Nation Reservation.

(f) “Reservation” means all land within the exterior boundaries of the Reservation of the

Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any land added thereto pursuant to federal law.

(g) "Stamped Cigarettes" means cigarettes bearing valid Wisconsin tax stamps.

(h) "Tobacco products" means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

115.4. Oneida Retail Locations

115.4-1. The Nation shall maintain Oneida retail locations within the Reservation as it deems necessary to provide adequate service to consumers of stamped cigarettes.

115.4-2. Each Oneida retail location established hereunder shall be managed and operated by the Oneida Nation.

115.5. Purchase of, Title to and Possession of Tobacco Products

115.5-1. The Nation shall purchase stamped cigarettes from such suppliers as it may choose and shall take title and possession on delivery to an Oneida retail location on the Reservation ~~(the. The~~ title shall be subject to any purchase money security interest~~);~~. Possession of the stamped cigarettes ~~(, but not title);~~ shall be transferred to the manager of the Oneida retail location to be held for sale to the consumers. The Nation shall retain title to stamped cigarettes until sold to a consumer.

115.6. Restrictions on Sales

115.6-1. The Nation shall be the exclusive retailer of cigarettes bearing the Wisconsin Tribal Cigarette tax stamp within the Reservation. Furthermore, only the Nation may claim the tax refunds on cigarettes sold on the Reservation as provided for under state law.

115.6-2. The Nation reserves the right to restrict sales, volume, pricing, and profit margin of stamped cigarettes sold at an Oneida retail location.

115.6-3. Cigarettes ~~and,~~ electronic cigarettes, and/or other tobacco products shall not be sold to any person under the age of twenty-one (21) ~~);~~. Cigarettes ~~and,~~ electronic cigarettes, and/or other tobacco products for sale at an Oneida retail location shall be on display behind a counter. No person other than an authorized employee shall sell cigarettes ~~and,~~ electronic cigarettes, and/or other tobacco products at an Oneida retail location.

115.6-4. No person may sell or offer for sale unstamped cigarettes on the Reservation.

115.7. Liability

115.7-1. The Nation shall be responsible for all risks to the stamped cigarettes and shall carry full insurance against fire, theft, and other hazards, and such insurance shall include as a beneficiary any person owning a purchase money security interest in the products to the extent his or her interest may appear.

115.8 Violations

115.8-1. Issuance of a Citation. An individual who violates a provision of this law may be issued a citation by the Oneida Police Department.

(a) A citation for a violation of this law and/or any orders issued pursuant to this law may include fines and other penalties, as well as conditional orders made by the Trial Court.

(b) A citation for a violation of this law shall be processed in accordance with the procedure contained in the Nation's laws and policies governing citations.

(c) The Oneida Business Committee shall hereby be delegated the authority to adopt through resolution a fine and penalty schedule for citations issued as a result of a violation of this law.

115.8-2. Additional Penalties. In addition to the issuance of a citation and the resulting fine and/or penalty, an individual who violates a provision of this law may be subject to the following:

(a) Seizure. All cigarettes acquired, owned, possessed, sold, or distributed in violation of this law are unlawful property and subject to seizure by ~~any~~the Oneida ~~law enforcement officer~~Police Department.

~~(a) Violators subject to the jurisdiction of the Nation shall be subject to a fine of not more than ten dollars (\$10) per pack of un-stamped cigarettes to be issued by the Oneida Police Department and paid to the Nation.~~

(b) ~~Employees~~Disciplinary Action. An employee who ~~violate~~violates this law shall be subject to disciplinary action in accordance with the Nation's laws, ~~rules,~~ and policies governing employment.-

~~115.8-2. All fines assessed under this section shall be paid within sixty (60) days of issuance of the citation, unless the person contests the citation with the Nation's judicial system before the fine is to be paid.~~

End.

Adopted - BC-~~303~~-15-76-A

Adopted - BC-09-07-77-B

Adopted - BC-09-04-79-C

Adopted - BC-11-18-81-A

Amended - BC-10-10-07-A

Amended - BC-04-09-14-F

Amended - BC-01-25-17-B

~~Adopted - BC-9-7-77-B~~ ~~Amended - BC-10-10-07-A~~ Emergency Amended - BC-02-26-20-A

~~Adopted - BC-9-4-79-C~~ ~~Amended - BC-04-09-14-F~~ - - -

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(b) “Electronic cigarette” means a device that enables a person to ingest nicotine, or other chemicals or substances, by inhaling a vaporized liquid and shall include the cartridges and other products used to refill the device. “Electronic cigarette” shall not include any device that is prescribed by a healthcare professional.

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(e) “Oneida Retail Location” means an Oneida Nation retail sales business selling stamped cigarettes within the Oneida Nation Reservation.

(f) “Reservation” means all land within the exterior boundaries of the Reservation of the

Oneida Nation, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any land added thereto pursuant to federal law.

(g) “Stamped Cigarettes” means cigarettes bearing valid Wisconsin tax stamps.

(h) “Tobacco products” means cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready-rubbed and other smoking tobacco; snuff, including moist snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

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(b) A citation for a violation of this law shall be processed in accordance with the

87 procedure contained in the Nation's laws and policies governing citations.

88 (c) The Oneida Business Committee shall hereby be delegated the authority to adopt
89 through resolution a fine and penalty schedule for citations issued as a result of a violation
90 of this law.

91 115.8-2. *Additional Penalties.* In addition to the issuance of a citation and the resulting fine and/or
92 penalty, an individual who violates a provision of this law may be subject to the following:

93 (a) *Seizure.* All cigarettes acquired, owned, possessed, sold, or distributed in violation of
94 this law are unlawful property and subject to seizure by the Oneida Police Department.

95 (b) *Disciplinary Action.* An employee who violates this law shall be subject to disciplinary
96 action in accordance with the Nation's laws and policies governing employment.

97
98 *End.*

100
101 _____
102 Adopted - BC-03-15-76-A

103 Adopted - BC-09-07-77-B

104 Adopted - BC-09-04-79-C

105 Adopted - BC-11-18-81-A

106 Amended - BC-10-10-07-A

107 Amended - BC-04-09-14-F

108 Amended - BC-01-25-17-B

109 Emergency Amended – BC-02-26-20-A

110 Amended – BC-__-__-__-__