

GOV. MSG. NO. 677

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE  
GOVERNOR

May 7, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB895 HD2 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB895 HD2 SD2 CD1

A BILL FOR AN ACT  
RELATING TO TAX ON TOBACCO PRODUCTS  
OTHER THAN CIGARETTES.

Sincerely,



LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

May 7, 2009

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 895

Honorable Members  
Twenty-Fifth Legislature  
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 895, entitled "A Bill for an Act Relating to Tax on Tobacco Products Other Than Cigarettes."

The purpose of this bill is to increase the tax rate on tobacco products other than cigarettes, including smokeless tobacco, snuff, cigars, and pipe tobacco.

This bill is objectionable because it contains major technical flaws that defeat the purpose of the legislation and will make it virtually impossible to implement.

First, this bill temporarily suspends the current 40 percent tax on all tobacco products other than cigarettes. Although this error may have been unintentional, it will, in effect, create a tax holiday for many tobacco products from the date the bill becomes law until September 29, 2009. This provision runs counter to the stated purpose of the bill and represents a major flaw that cannot be overlooked.

Second, provisions in this bill cannot be reconciled with existing statutes and proposed legislation to increase the tax on cigarettes. The bill sought to tax "little cigars" at a rate comparable to the cigarette tax rate and set forth the cigarette tax rate of 11 cents as of October 1, 2009, 12 cents on September 30, 2010, and 13 cents on September 30, 2011.

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However, this language would lower the cigarette tax rate, which is supposed to go into effect on July 1, 2010 from 14 cents per cigarette to 12 cents per cigarette on September 30, 2010. Similarly, the bill would lower the cigarette tax rate that would go into effect on July 1, 2011 from 15 cents per cigarette to 13 cents per cigarette on September 30, 2011. It is questionable what the actual intent of the Legislature is and whether the Legislative Reference Bureau can properly reconcile these matters when codifying these provisions into statutes.

Finally, most retailers and manufacturers nationwide recognize a difference between large and small cigars and are accustomed to labeling them accordingly. This bill creates a new category of cigars, which would require Hawaii retailers to establish a different labeling system in order to calculate the correct tax. The tax is to be imposed based on the ring gauge size of the cigar. However, manufacturers and retailers are not required to identify the ring gauge of their product and the federally established labeling requirements on these products do not require that the size be listed. Further, the federal Bureau of Tobacco and Firearms uses weight rather than ring gauge for the purposes of determining the federal tax on these types of tobacco products. Thus, to impose the tax, the Hawaii Department of Taxation would have to measure the size of cigars themselves or require wholesalers or distributors to do so. This would be extremely burdensome for Hawaii wholesalers and retailers and may prove impossible to enforce.


My position against smoking and the encouragement of healthy lifestyles remains steadfast. Unfortunately, the

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technical flaws in this bill defeat its stated purpose to lower the usage of certain types of tobacco products.

For the foregoing reasons, I am returning House Bill No. 895 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingie", with a stylized flourish at the end.

LINDA LINGIE  
Governor of Hawaii

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## A BILL FOR AN ACT

RELATING TO TAX ON TOBACCO PRODUCTS OTHER THAN CIGARETTES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that, according to the  
2 University of Minnesota, of the estimated ten million users of  
3 smokeless tobacco, three million are under the age of twenty-  
4 one. Almost twenty-five per cent of young users start by the  
5 sixth grade, and almost seventy-five per cent start by the ninth  
6 grade. In 1970, young males ages seventeen to nineteen used  
7 smokeless tobacco the least of any age group. Today, usage by  
8 males of these ages is the highest of any age group. In  
9 America, more than three per cent of adult males, and less than  
10 one per cent of females, use smokeless tobacco. Among youth in  
11 grades nine to twelve, eight per cent use smokeless tobacco at  
12 least once a month and two to three per cent use it daily.

13       Chewing, or smokeless, tobacco contains over two thousand  
14 chemicals, many of which have been directly related to causing  
15 cancer, especially in the oral cavity. Studies have revealed  
16 potent carcinogens in chewing tobacco and snuff. The major  
17 carcinogens in smokeless tobacco are nitrosamines, polynuclear



1 aromatic hydrocarbons, and radioactive and metallic compounds.  
2 The nitrosamine content of smokeless tobacco exceeds more than  
3 one thousand times the nitrosamine content allowed by the United  
4 States Food and Drug Administration in products such as beer and  
5 bacon.

6 Oral cancer has been shown to occur several times more  
7 frequently among individuals who use smokeless tobacco than  
8 nontobacco users, and the excess risk of cancers of the cheek  
9 and gum reaches nearly fifty-fold among long-term snuff users.  
10 Smokeless tobacco is also associated with cancers of the  
11 esophagus, larynx, and stomach and an increased risk of heart  
12 attacks and other cardiovascular diseases. About forty to sixty  
13 per cent of smokeless tobacco users exhibit leukoplakia, which  
14 is regarded as precancerous with a malignant transformation rate  
15 of two to six per cent, in the area where the quid is held,  
16 usually within a few months of beginning regular use.

17 Smokeless tobacco is also addictive. The nicotine in  
18 smokeless tobacco and snuff is absorbed directly into the  
19 bloodstream. An individual who uses smokeless tobacco has a  
20 similar, or even higher, level of nicotine than a smoker who  
21 smokes a pack or more a day.



1 The purpose of this Act is to increase deterrents against  
2 the use of tobacco products other than cigarettes, including  
3 smokeless tobacco, snuff, cigars, little cigars, and pipe  
4 tobacco.

5 SECTION 2. Section 245-1, Hawaii Revised Statutes, is  
6 amended by:

7 1. Adding a new definition to read as follows:

8 "Little cigar" means any roll for smoking made wholly or  
9 in part of tobacco if such product is wrapped in any substance  
10 containing tobacco, with a ring gauge of less than thirty (less  
11 than .467 inches in diameter), of any length."

12 2. Amending the definition of "tobacco products" to read  
13 as follows:

14 "Tobacco products" means tobacco in any form other than  
15 cigarettes or little cigars, that is prepared or intended for  
16 consumption [by,] or [the] for personal use [of,] by humans,  
17 including cigars and any substitutes thereof other than  
18 cigarettes [which] that bear the semblance thereof, snuff,  
19 chewing or smokeless tobacco, and smoking or pipe tobacco."

20 SECTION 3. Section 245-3, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1       "(a) Every wholesaler or dealer, in addition to any other  
2 taxes provided by law, shall pay for the privilege of conducting  
3 business and other activities in the State:

4       (1) An excise tax equal to 5.00 cents for each cigarette  
5 sold, used, or, possessed by a wholesaler or dealer  
6 after June 30, 1998, whether or not sold at wholesale,  
7 or if not sold then at the same rate upon the use by  
8 the wholesaler or dealer;

9       (2) An excise tax equal to 6.00 cents for each cigarette  
10 sold, used, or possessed by a wholesaler or dealer  
11 after September 30, 2002, whether or not sold at  
12 wholesale, or if not sold then at the same rate upon  
13 the use by the wholesaler or dealer;

14       (3) An excise tax equal to 6.50 cents for each cigarette  
15 sold, used, or possessed by a wholesaler or dealer  
16 after June 30, 2003, whether or not sold at wholesale,  
17 or if not sold then at the same rate upon the use by  
18 the wholesaler or dealer;

19       (4) An excise tax equal to 7.00 cents for each cigarette  
20 sold, used, or possessed by a wholesaler or dealer  
21 after June 30, 2004, whether or not sold at wholesale,





1 or if not sold then at the same rate upon the use by  
2 the wholesaler or dealer;

3 (5) An excise tax equal to 8.00 cents for each cigarette  
4 sold, used, or possessed by a wholesaler or dealer on  
5 and after September 30, 2006, whether or not sold at  
6 wholesale, or if not sold then at the same rate upon  
7 the use by the wholesaler or dealer;

8 (6) An excise tax equal to 9.00 cents for each cigarette  
9 sold, used, or possessed by a wholesaler or dealer on  
10 and after September 30, 2007, whether or not sold at  
11 wholesale, or if not sold then at the same rate upon  
12 the use by the wholesaler or dealer;

13 (7) An excise tax equal to 10.00 cents for each cigarette  
14 sold, used, or possessed by a wholesaler or dealer on  
15 and after September 30, 2008, whether or not sold at  
16 wholesale, or if not sold then at the same rate upon  
17 the use by the wholesaler or dealer;

18 (8) An excise tax equal to 11.00 cents for each cigarette  
19 sold, used, or possessed by a wholesaler or dealer on  
20 and after September 30, 2009, whether or not sold at  
21 wholesale, or if not sold then at the same rate upon  
22 the use by the wholesaler or dealer;



1        (9) An excise tax equal to 11.00 cents for each little  
2        cigar sold, used, or possessed by a wholesaler or  
3        dealer on and after October 1, 2009, whether or not  
4        sold at wholesale, or if not sold then at the same  
5        rate upon the use by the wholesaler or dealer;

6        [~~(9)~~] (10) An excise tax equal to 12.00 cents for each  
7        cigarette or little cigar sold, used, or possessed by  
8        a wholesaler or dealer on and after September 30,  
9        2010, whether or not sold at wholesale, or if not sold  
10       then at the same rate upon the use by the wholesaler  
11       or dealer;

12       [~~(10)~~] (11) An excise tax equal to 13.00 cents for each  
13       cigarette or little cigar sold, used, or possessed by  
14       a wholesaler or dealer on and after September 30,  
15       2011, whether or not sold at wholesale, or if not sold  
16       then at the same rate upon the use by the wholesaler  
17       or dealer; [and]

18       [~~(11)~~] (12) Except as provided in paragraph (13), [An] an  
19       excise tax equal to [~~forty~~] seventy per cent of the  
20       wholesale price of each article or item of tobacco  
21       products sold by the wholesaler or dealer[~~7~~] on and  
22       after September 30, 2009, whether or not sold at



1           wholesale, or if not sold then at the same rate upon  
2           the use by the wholesaler or dealer[-]; and

3       (13) An excise tax equal to fifty per cent of the wholesale  
4       price of each cigar with a ring gauge of thirty or  
5       more (.467 inches in diameter or more), of any length,  
6       sold, used, or possessed by a wholesaler or dealer on  
7       and after September 30, 2009, whether or not sold at  
8       wholesale, or if not sold then at the same rate upon  
9       the use by the wholesaler or dealer.

10   Where the tax imposed has been paid on cigarettes, little  
11   cigars, or tobacco products that thereafter become the subject  
12   of a casualty loss deduction allowable under chapter 235, the  
13   tax paid shall be refunded or credited to the account of the  
14   wholesaler or dealer. The tax shall be applied to cigarettes  
15   through the use of stamps."

16       SECTION 4. Section 245-15, Hawaii Revised Statutes, is  
17   amended to read as follows:

18       "**§245-15 Disposition of revenues.** All moneys collected  
19   pursuant to this chapter shall be paid into the state treasury  
20   as state realizations to be kept and accounted for as provided  
21   by law; provided that, of the moneys collected under the tax  
22   imposed pursuant to:



1 (1) Section 245-3(a)(5), after September 30, 2006, and  
2 prior to October 1, 2007, 1.0 cent per cigarette shall  
3 be deposited to the credit of the Hawaii cancer  
4 research special fund, established pursuant to section  
5 304A-2168, for research and operating expenses and for  
6 capital expenditures;

7 (2) Section 245-3(a)(6), after September 30, 2007, and  
8 prior to October 1, 2008:

9 (A) 1.5 cents per cigarette shall be deposited to the  
10 credit of the Hawaii cancer research special  
11 fund, established pursuant to section 304A-2168,  
12 for research and operating expenses and for  
13 capital expenditures;

14 (B) 0.25 cents per cigarette shall be deposited to  
15 the credit of the trauma system special fund  
16 established pursuant to section 321-22.5; and

17 (C) 0.25 cents per cigarette shall be deposited to  
18 the credit of the emergency medical services  
19 special fund established pursuant to section 321-  
20 234;

21 (3) Section 245-3(a)(7), after September 30, 2008, and  
22 prior to October 1, 2009:



1 (A) 2.0 cents per cigarette shall be deposited to the  
2 credit of the Hawaii cancer research special  
3 fund, established pursuant to section 304A-2168,  
4 for research and operating expenses and for  
5 capital expenditures;

6 (B) 0.5 cents per cigarette shall be deposited to the  
7 credit of the trauma system special fund  
8 established pursuant to section 321-22.5;

9 (C) 0.25 cents per cigarette shall be deposited to  
10 the credit of the community health centers  
11 special fund[+] established pursuant to section  
12 321-1.65; and

13 (D) 0.25 cents per cigarette shall be deposited to  
14 the credit of the emergency medical services  
15 special fund established pursuant to section 321-  
16 234;

17 (4) Section 245-3(a)(8), after September 30, 2009, and  
18 prior to October 1, 2010:

19 (A) 2.0 cents per cigarette shall be deposited to the  
20 credit of the Hawaii cancer research special  
21 fund, established pursuant to section 304A-2168,



1 for research and operating expenses and for  
2 capital expenditures;

3 (B) 0.75 cents per cigarette shall be deposited to  
4 the credit of the trauma system special fund  
5 established pursuant to section 321-22.5;

6 (C) 0.75 cents per cigarette shall be deposited to  
7 the credit of the community health centers  
8 special fund[+] established pursuant to section  
9 321-1.65; and

10 (D) 0.5 cents per cigarette shall be deposited to the  
11 credit of the emergency medical services special  
12 fund established pursuant to section 321-234;

13 (5) Section 245-3(a) [~~+9~~] (10), after September 30, 2010,  
14 and prior to October 1, 2011:

15 (A) 2.0 cents per cigarette shall be deposited to the  
16 credit of the Hawaii cancer research special  
17 fund, established pursuant to section 304A-2168,  
18 for research and operating expenses and for  
19 capital expenditures;

20 (B) 1.0 cent per cigarette shall be deposited to the  
21 credit of the trauma system special fund  
22 established pursuant to section 321-22.5;



1 (C) 1.0 cent per cigarette shall be deposited to the  
2 credit of the community health centers special  
3 fund[+] established pursuant to section 321-1.65;  
4 and

5 (D) 1.0 cent per cigarette shall be deposited to the  
6 credit of the emergency medical services special  
7 fund established pursuant to section 321-234; and

8 (6) Section 245-3(a) [~~10~~] (11), after September 30, 2011,  
9 and thereafter:

10 (A) 2.0 cents per cigarette shall be deposited to the  
11 credit of the Hawaii cancer research special  
12 fund, established pursuant to section 304A-2168,  
13 for research and operating expenses and for  
14 capital expenditures;

15 (B) 1.5 cents per cigarette shall be deposited to the  
16 credit of the trauma system special fund  
17 established pursuant to section 321-22.5;

18 (C) 1.25 cents per cigarette shall be deposited to  
19 the credit of the community health centers  
20 special fund[+] established pursuant to section  
21 321-1.65; and



1 (D) 1.25 cents per cigarette shall be deposited to  
2 the credit of the emergency medical services  
3 special fund established pursuant to section 321-  
4 234.

5 The department shall provide an annual accounting of these  
6 dispositions to the legislature."

7 SECTION 5. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect upon its approval;  
10 provided that the amendments made to section 245-1, Hawaii  
11 Revised Statutes, by this Act shall not be repealed when that  
12 section is reenacted on July 1, 2009, pursuant to section 9 of  
13 Act 131, Session Laws of Hawaii 2005.

