S.B. NO. ⁹⁷² S.D. 2 H.D. 1

C.D. 1

A BILL FOR AN ACT

RELATING TO TAX ADMINISTRATION.

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

1 SECTION 1. In all tax systems, government administrators 2 are continually working to reduce tax noncompliance known as the 3 "tax gap." In the United States, the tax gap, which is the difference between the amount of tax that is required to be 4 5 reported and timely paid and the amount of tax that is actually 6 reported and paid, is estimated to be almost \$400,000,000,000 7 per year. Of this tax gap, it is further estimated that about 8 \$200,000,000,000, or half of the tax gap, is composed of what is 9 known as the "cash economy." Hawaii's annual tax gap is 10 estimated to be about \$2,000,000,000 in unreported and unpaid 11 taxes with approximately \$1,000,000,000 attributed to the cash 12 economy. Focusing resources on shoring up compliance in this 13 area should be a priority.

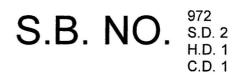
14 Cash-based transactions are a fundamental part of any 15 economy. As the oldest form of payment, cash continues to 16 dominate many facets of the local economy. Cash is inherently 17 private, efficient, and predictable for both purchaser and

S.B. NO. ⁹⁷² S.D. 2 H.D. 1 C.D. 1

seller. However, cash transactions are also the simplest means
 of underreporting or non-reporting for tax purposes, because no
 bank, no means of electronic oversight, and no intermediary
 maintains records of the movement of funds from one pocket to
 another.

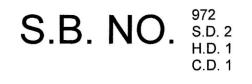
6 As stated by former Internal Revenue Service Commissioner Mark Everson, "[t]he vast majority of Americans pay their taxes 7 8 accurately and are shortchanged by those who don't pay their 9 fair share. The magnitude of the tax gap highlights the 10 critical role of enforcement in keeping our system of tax 11 administration healthy." By focusing resources on the cash 12 economy, the department of taxation can ensure fairness in the 13 tax system for those that comply without raising taxes or 14 otherwise substantially burdening Hawaii's economy as a whole.

15 The purpose of this Act is to provide the department of 16 taxation with the necessary resources and tools to target high-17 risk, cash-based transactions to shore up confidence in Hawaii's 18 tax system for those that do comply. Importantly, the 19 legislature intends that the enforcement resources provided 20 focus on the civil collection and enforcement nature of Hawaii's 21 tax laws. In an effort to demonstrate the targets of this 22 undertaking, this Act defines "cash-based business" for



1	enforcement purposes, and the department of taxation is directed		
2	to focus on such businesses. At the same time, education is		
3	equally important as enforcement. Therefore, this Act requires		
4	the department of taxation to reach out to industry groups,		
5	specific demographics in the economy, and practitioners to		
6	educate taxpayers on their tax responsibilities.		
7	This Act shall be known as the "Cash Economy Enforcement		
8	Act of 2009."		
9	SECTION 2. Chapter 231, Hawaii Revised Statutes, is		
10	amended by adding sixteen new sections to be appropriately		
11	designated and to read as follows:		
12	"CIVIL COMPLIANCE; SPECIAL ENFORCEMENT SECTION		
13	§231-A Special enforcement section; created. There is		
13 14	§231-A Special enforcement section; created. There is created within the department of taxation the special		
14	created within the department of taxation the special		
14 15	created within the department of taxation the special enforcement section to carry out civil enforcement efforts as		
14 15 16	created within the department of taxation the special enforcement section to carry out civil enforcement efforts as directed by the director of taxation. The director may staff		
14 15 16 17	created within the department of taxation the special enforcement section to carry out civil enforcement efforts as directed by the director of taxation. The director may staff the section as the exigencies of the public service may require.		
14 15 16 17 18	created within the department of taxation the special enforcement section to carry out civil enforcement efforts as directed by the director of taxation. The director may staff the section as the exigencies of the public service may require. §231-B Special enforcement section; functions, powers, and		
14 15 16 17 18 19	created within the department of taxation the special enforcement section to carry out civil enforcement efforts as directed by the director of taxation. The director may staff the section as the exigencies of the public service may require. <u>§231-B</u> Special enforcement section; functions, powers, and duties. The special enforcement section shall have the		
14 15 16 17 18 19 20	created within the department of taxation the special enforcement section to carry out civil enforcement efforts as directed by the director of taxation. The director may staff the section as the exigencies of the public service may require. <u>\$231-B</u> Special enforcement section; functions, powers, and duties. The special enforcement section shall have the following functions, powers, and duties:		

Page 4



4

1		covert means, with a stated priority of investigating
2		cash-based businesses as defined in section 231-I;
3	(2)	Enforce the tax laws by issuing, enforcing, or
4		executing citations, fines, infractions, assessments,
5		liens, levies, writs, warrants, injunctions, or other
6		process;
7	(3)	Serve as fraud referral specialists to assist in the
8		development and review of fraud cases for appropriate
9		disposition of potentially fraudulent activities,
10		including referral to criminal investigators and
11		assessment of civil fraud penalties; provided that
12		personnel assigned to the special enforcement section
13		may not participate in any criminal investigation;
14	(4)	Organize and hold public informational meetings on
15		issues of tax laws, including compliance deficiencies
16		in segments of the economy, and undertake any other
17		activities to encourage taxpayers, practitioners, or
18		others to maintain responsibility and compliance with
19		their tax obligations;
20	(5)	Coordinate with other sections or divisions within the
21		department of taxation, other departments or branches
22		of the state government, any branches of the county
	2009-2382	SB972 CD1 SMA-2.doc





5

1		government, or the federal government on matters
2		relating to civil enforcement of the tax laws,
3		including joint investigations, information-sharing
4		arrangements, or concurrent collection efforts;
5		provided that personnel assigned to the special
6		enforcement section may not participate in any
7		criminal investigation;
8	(6)	Compile information received by third parties,
9		including taxpayers, competitors, government agencies,
10		confidential sources, or public sources and delegate
11		this information within the department for proper
12		handling. Proper handling may include referral
13		internally to other civil or criminal enforcement
14		sections;
15	(7)	Conduct investigations, research, and studies of
16		matters relevant to the complex or sensitive civil
17		enforcement of the tax laws; and
18	(8)	Perform such other acts as may be incidental to the
19		exercise of the functions, powers, and duties set
20		forth in this section or as otherwise directed by the
21		director of taxation.

S.B. NO. ⁹⁷² S.D. 2 H.D. 1 C.D. 1

1	<u>§231</u>	-C Investigators and personnel, appointment and		
2	power. (a) The director of taxation may appoint, commission,			
3	or detail to the special enforcement section one or more persons			
4	as investigators, investigator assistants, and other support			
5	staff as the exigencies of the public service may require.			
6	Investigators may be legal or accounting professionals; provided			
7	that thei	r primary duty is to conduct investigations pursuant to		
8	the authorities of the special enforcement section and they			
9	shall not conduct or participate in criminal investigations of			
10	the tax laws or render legal advice. Investigators may serve			
11	process and apply for and execute search warrants or writs of			
12	entry pursuant to section 231-D but shall not otherwise have the			
13	powers of a police officer or deputy sheriff.			
14	(b) Notwithstanding any other law to the contrary relating			
15	to employ	ment, bargaining, labor, or compensation rights or		
16	duties, any person appointed, commissioned, or detailed to the			
17	special enforcement section:			
18	(1)	May be an employee of the department in any capacity,		
19		including exempt from or subject to chapters 76 and 89		
20		as an employee of the department;		
21	(2)	Shall be exempt from chapters 76 and 89 for purposes		
22		of their appointment, commission, or detail capacity		
		SB972 CD1 SMA-2.doc		

Page 7

S.B. NO. 972 S.D. 2 H.D. 1 C.D. 1

1		as investigator, whether full-time, part-time, or
2		temporary;
3	(3)	May be appointed, commissioned, or detailed in any
4		capacity, and whose appointment, commission, or detail
5		may be dismissed at the pleasure of the director of
6		taxation;
7	(4)	If appointed, commissioned, or detailed on a temporary
8		basis, shall have the right to return to the person's
9		same position or to a related position in the same
10		class or division within the department when the
11		person's appointment expires. The return rights
12		provided under this section shall apply to persons
13		exempt from or subject to chapters 76 and 89; and
14	(5)	May be paid overtime as prescribed by an applicable
15		collective bargaining agreement or existing policy for
16		excluded employees. The compensation rights under
17		this section shall apply to persons exempt from or
18		subject to chapters 76 and 89.
19	<u>§231</u>	-D Right to inspection of books, records, and
20	premises;	warrants and writs; levy and seizure. (a) Upon
21	presenting	g credentials, the special enforcement section may
22	examine an	ny books, papers, records, and any article or item of
		SB972 CD1 SMA-2.doc

S.B. NO. 972 S.D. 2 H.D. 1 C.D. 1

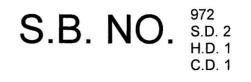
8

1	business transacted of any person engaged in business in this	
2	State to verify the accuracy of the reporting and payment of the	
3	taxes imposed by law. Every person in possession of any books,	
4	papers, records, or articles or items of business transacted,	
5	and the person's agents and employees, shall provide the special	
6	enforcement section the means, facilities, and opportunities for	
7	the examinations upon request, to the extent reasonably possible	
8	under the circumstances.	
9	(b) The special enforcement section may inspect the	
10	operations, premises, and storage areas of any person engaged in	
11	business in this State during regular business hours.	
12	(c) The special enforcement section may inspect the	
13	operations, premises, and storage areas of any person engaged in	
14	business in this State at any time, without notice, upon the	
15	issuance of a warrant or writ of entry based upon probable cause	
16	of a violation under title 14. The determination of probable	
17	cause for purposes of this section shall be made based upon the	
18	standard of probable cause for an administrative or civil search	
19	or seizure. Application for a search warrant or writ of entry	
20	under this section shall be made by making a declaration, under	
21	oath, which includes the following:	
22	(1) The taxpaver's form of business;	

22 (1) The taxpayer's form of business;

2009-2382 SB972 CD1 SMA-2.doc

Page 8



1	(2)	The taxpayer's interest in and address of the premises
2		sought to be searched;
3	(3)	Whether permission to search the premises has been
4		requested in advance of requesting the warrant or
5		writ;
6	(4)	The particular books, records, items, articles,
7		assets, or contraband reasonably believed to be on the
8		premises; and
9	(5)	The alleged violation reasonably believed to have
10		occurred, including nonpayment of taxes; and, if
11		searching or seizing in furtherance of collection,
12		identification of the assets reasonably believed to be
13		on the premises.
14	The	special enforcement section may apply to the circuit
15	court whe	re the person is located for issuance of such warrant
16	or writ.	The special enforcement section may execute warrants
17	or writs o	of entry. Any police officer, criminal investigator,
18	or deputy	sheriff of this State or any county shall be required
19	to render	assistance and aid to the special enforcement section
20	in execut:	ing warrants and writs, upon request. Criminal law
21	enforcemen	nt agencies that assist the special enforcement section
22	may be con	mpensated, as determined by the director; provided that
	concrete the second	SB972 CD1 SMA-2.doc ,

S.B. NO. 972 S.D. 2 H.D. 1 C.D. 1

10

1	no person or agency shall be compensated on the basis of a
2	specific percentage or fraction of the money collected from
3	taxpayers.
4	(d) The special enforcement section's ability to inspect
5	shall include inspection of all statements, books, papers, and
6	records in whatever format, including electronic format,
7	articles or items of business transacted, including inventory,
8	supplies, stock, and cash on hand, pertaining to the sales or
9	other business activities of any person to verify the accuracy
10	of the reporting and payment of taxes imposed by law.
11	(e) The special enforcement section may seize and levy any
12	assets in the custody or control of any person pursuant to this
13	chapter, and subject to all rights of appeal set forth herein.
14	<u>§231-E</u> Identification of cash-economy cases; retention of
15	funds. Notwithstanding any law to the contrary, each fiscal
16	year, the special enforcement section may identify any taxpayer,
17	assessment, investigation, or collection matter as a matter of
18	the special enforcement section. All revenues collected from
19	special enforcement section matters shall be deposited into the
20	tax administration special fund.
21	§231-F Violent interference with a tax official. Any
22	person who interferes, hinders, obstructs, prevents, or impedes

1	any investigator or employee of the department with violence or
2	threat of violence, shall be guilty of a class C felony and,
3	upon conviction, shall be subject to one or any combination of
4	the following:
5	(1) A fine of not more than \$4,000;
6	(2) Imprisonment for not more than three years; or
7	(3) Probation;
8	provided that a corporation shall be fined not less than
9	\$10,000.
10	This section shall be construed in accordance with
11	regulations and judicial interpretations given to similar
12	provisions of the Internal Revenue Code.
13	CASH ECONOMY ENFORCEMENT; CITATIONS
14	§231-G Citations for violations; deposits. (a) The
15	special enforcement section may issue cease and desist citations
16	to any person if the special enforcement section has cause to
17	believe the person has violated, is violating, or is about to
18	violate any provision of title 14 or administrative rule adopted
19	thereunder. A cease and desist citation may include a monetary
20	fine for any unlawful act.

2009-2382 SB972 CD1 SMA-2.doc

11

S.B. NO. 972 S.D. 2 H.D. 1 C.D. 1

1	(b) The department may recommend legislation defining the			
2	circumstances and the civil monetary fines citable for unlawful			
3	actions under title 14.			
4	(c) Any fine assessed under this section shall be a matter			
5	of the special enforcement section under section 231-E and shall			
6	be retained and deposited into the tax administration special			
7	fund.			
8	(d) Any fine assessed shall be due and payable thirty days			
9	after issuance, subject to appeal rights provided under			
10	subsection (e); provided that if payment of the fine is			
11	determined to be in jeopardy, such fine shall be payable			
12	immediately and shall be immediately collected. A finding of			
13	jeopardy shall be made in writing, setting forth the specific			
14	reasons for the finding. The finding of jeopardy shall be			
15	subject to immediate appeal under subsection (e), and at the			
16	taxpayer's request the appeal shall be expedited and heard as			
17	soon as reasonably practicable. Any amount of fine collected			
18	under jeopardy shall only be returned upon a finding by the			
19	director of taxation or the circuit court that there was no			
20	violation of title 14 pursuant to appeal rights provided under			
21	subsection (e).			

2009-2382 SB972 CD1 SMA-2.doc

12

S.B.	NO.	972 S.D. 2 H.D. 1 C.D. 1

13

1	(e) Cease and desist citations may be appealed to the		
2	director of taxation or the director's designee, and the		
3	determination of the director may be appealed to the circuit		
4	court, pursuant to chapter 91.		
5	§231-H Cash-based businesses; injunction. The special		
6	enforcement section, with the director of taxation's approval,		
7	may bring civil actions in the circuit court where the cash-		
8	based business is located to enjoin any unlawful act under title		
9	14, including any administrative rule adopted thereunder, by a		
10	cash-based business. To the extent provided by statute, the		
11	special enforcement section may include in any action an		
12	assessment of a monetary fine.		
13	§231-I Cash-based business; defined. For purposes of		
14	sections 231-G to 231-P, "cash-based business" means any person		
15	who operates a business, including for-profit or not-for-profit,		
16	where transactions in goods or services are exchanged		
17	substantially for cash and where the business is found, based		
18	upon reasonable cause including observation or evidence, to have		
19	met one of the following factors:		
20	(1) Is found to have substantially underreported or		
21	misrepresented the proper amount of tax liability on		
22			
	any return or other submission to the department. For		

S.B. NO. ⁹⁷² S.D. 2 H.D. 1 C.D. 1

1		purposes of this paragraph, an amount has been
2		substantially underreported if the amount properly
3		includible on the return or submission is in excess of
4		twenty-five per cent of the amount stated on the
5		return or submission;
6	(2)	Is required to be licensed, registered, or permitted
7		under title 14 and is in fact not so licensed,
8		registered, or permitted;
9	(3)	Has a past pattern of noncompliance of obligations
10		under title 14;
11	(4)	Does not have a fixed and permanent principal place of
12		business;
13	(5)	Has not obtained any required tax clearance;
14	(6)	Has failed to maintain adequate books and records, or
15		those records required to be maintained by law or
16		administrative rule;
17	(7)	Does not accept checks or electronic payment devices
18		for business transactions; provided that a business
19		may establish reasonable criteria for accepting
20		personal checks;
21	(8)	Offers price differentials or otherwise deviates from
22		usual business practices when the business transaction
	2009-2382	SB972 CD1 SMA-2.doc

Page 15

S.B. NO. 972 S.D. 2 H.D. 1 C.D. 1

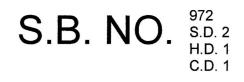
1	substantially involves payment of cash, except where	
2	there is a bona-fide business reason for a price	
3	differential, such as the avoidance of merchant fees	
4	imposed by credit card companies; or	
5	(9) Any other factor relevant to describing a cash-based	
6	business capable of noncompliance as determined by the	
7	director of taxation and issued pursuant to a tax	
8	information release;	
9	provided that a business shall not be deemed to have met any of	
10	these factors while a genuine dispute as to that factor is	
11	pending in a contested case before any administrative agency or	
12	in any court.	
13	<u>§231-J</u> Failure to produce license upon demand. Every	
14	person required to be licensed or permitted under title 14,	
15	whether or not so licensed or permitted, shall be required to	
16	produce the license or permit upon demand by the special	
17	enforcement section. Failure to produce the license or permit	
18	upon demand shall be unlawful. Any person who violates this	
19	section shall be subject to a fine not to exceed \$500; provided	
20	that if the person is a cash-based business, the fine shall not	
21	exceed \$1,000. It shall be an absolute defense to this section	
21	exceed \$1,000. It shall be an abbilate actembe to this section	
21 22	if the person produces a license or permit number on file with	

S.B. NO. 972 S.D. 2 H.D. 1 C.D. 1

16

1	the department and the department confirms that the person
2	associated with the number is true and accurate.
3	§231-K Failure to keep adequate books and records. It
4	shall be unlawful for any person required under title 14 to keep
5	books or records to fail to produce the books or records upon
6	demand by the special enforcement section, or as soon thereafter
7	as is reasonable under the circumstances. Any person who
8	violates this section shall be subject to a fine not to exceed
9	\$1,000; provided that if the person is a cash-based business,
10	the fine shall not exceed \$2,000.
11	§231-L Failure to record transaction by receipt. It shall
12	be unlawful to conduct more than ten taxable business
13	transactions per day in cash and fail to provide a receipt or
14	other record of the transaction when the means for issuing a
15	receipt or recording the transaction are available. Each day a
16	person is in violation of this section shall be treated as a
17	separate violation. Any person who violates this section shall
18	be subject to a fine not to exceed \$1,000; provided that if the
19	person is a cash-based business, the fine shall not exceed
20	\$2,000.
21	§231-M Failure to record transaction by register. It

22 shall be unlawful to conduct more than ten taxable business



1	transactions per day in cash and fail to record the transaction
2	in a cash register when the means for recording the transaction
3	in a cash register are available. Each day a person is in
4	violation of this section shall be treated as a separate
5	violation. Any person who violates this section shall be
6	subject to a fine not to exceed \$1,000; provided that if the
7	person is a cash-based business, the fine shall not exceed
8	\$2,000.
9	§231-N Tax avoidance price fixing. It shall be unlawful
10	for any person to sell, offer to sell, or otherwise convey more
11	than one price for any business to be transacted when the lower
12	price is offered if the transaction is paid for in cash. It
13	shall not be an offense under this section if a business charges
14	a higher price for legitimate business purposes, such as for the
15	purpose of recovering any charges assessed the business,
16	including for facilitating electronic payment. Any person who
17	violates this section shall be subject to a fine not to exceed
18	\$2,000; provided that if the person is a cash-based business,
19	the fine shall not exceed \$3,000.
20	§231-0 Possession of currency for tax avoidance purposes.
21	It shall be unlawful for any person engaged in business in this
22	State to possess currency in the form of coin or note, where the

Page 18

S.B. NO. 972 S.D. 2 H.D. 1 C.D. 1

1	possession is for tax avoidance purposes. It shall be the		
2	department's burden to establish that currency is possessed for		
3	tax avoidance purposes; provided that circumstantial evidence		
4	may be used by the department in any proceeding. Any person who		
5	violates this section shall be subject to a fine not to exceed		
6	\$2,000; provided that if the person is a cash-based business,		
7	the fine shall not exceed \$3,000.		
8	§231-P Interference with a tax official. It is unlawful		
9	for any person to intentionally interfere with, hinder,		
10	obstruct, prevent, or impede any investigator, auditor,		
11	collector, or other employee of the department from obtaining		
12	license information, books, records, articles, or items of		
13	business transacted, or other information or property rightfully		
14	entitled the department. Any person who violates this section		
15	shall be subject to a fine of not more than \$2,000. It shall be		
16	an absolute defense to the fine under this section that the		
17	person acted with good cause."		
18	SECTION 3. Chapter 237, Hawaii Revised Statutes, is		
19	amended by adding a new section to be appropriately designated		
20	and to read as follows:		
21	"§237- Reporting requirement for contractors on federal		
22	construction projects. All persons who do not possess a valid		
	2009-2382 SB972 CD1 SMA-2.doc		

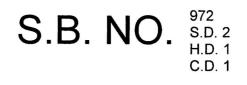
S.B. NO. ⁹⁷² S.D. 2 H.D. 1 C.D. 1

1	license under this chapter at the time of the contract award and		
2	who contract with the federal government for any construction		
3	project located in the State shall report to the department, on		
4	forms prescribed by the department, its estimated gross receipts		
5	or any other information requested by the department on the		
6	prescribed form, from the construction project within thirty		
7	days of the contract being awarded. Failure to report as		
8	provided in this section shall result in a penalty of \$1,000 per		
9	month, or fraction thereof, for each month that a failure to		
10	report exists; provided that the maximum penalty allowed under		
11	this section in the aggregate shall not be more than \$6,000."		
12	SECTION 4. Section 231-1, Hawaii Revised Statutes, is		
13	amended by amending the definition of "person" to read as		
14	follows:		
15	""Person" [as used in sections 231-34, 231-35, and 231-36]		
16	includes one or more individuals, a company, corporation, a		
17	partnership, an association, or any other type of legal entity,		
18	and also includes an officer or employee of a corporation, a		
19	partner or employee of a partnership, a trustee of a trust, a		
20	fiduciary of an estate, or a member, employee, or principal of		
21	any other entity, who as such officer, employee, partner,		
22	trustee, fiduciary, member, or principal is under a duty to		
	2009-2382 SB972 CD1 SMA-2.doc		

972 S.D. 2 H.D. 1 C.D. 1 S.B. NO.

1	perform a	nd is principally responsible for performing the act
2	[in resp e	et of which the violation occurs]."
3	SECT	ION 5. Section 235-20.5, Hawaii Revised Statutes, is
4	amended t	o read as follows:
5	"§23	5-20.5 Tax administration special fund; established.
6	<u>(a)</u> The	re is established a tax administration special fund,
7	into whic	h shall be deposited [fees] <u>:</u>
8	(1)	Fees collected under sections 235-20, 235-110.9, and
9		235-110.91[, and penalties] <u>;</u>
10	(2)	Penalties collected under section 2 of Act 206,
11		[+]Session Laws of Hawaii 2007[+.]; and
12	(3)	Revenues collected by the special enforcement section
13		pursuant to section 231-E; provided that in each
14		fiscal year, of the total revenues collected by the
15		special enforcement section, all revenues in excess of
16		\$500,000 shall be deposited into the general fund.
17	(b)	The moneys in the fund shall be [expended by the
18	department	t to offset the costs associated with:] used for the
19	following	purposes:
20	(1)	Issuing comfort letters[+], letter rulings, written
21		opinions, and other guidance to taxpayers;

Page 21



1 Administering the tax [credit] credits under [section] (2) 2 sections 235-110.9[, including issuing certificates; 3 and Issuing certificates under section] and 235-110.91[-]; 4 (3)5 and Administering the operations of the special 6 (3) 7 enforcement section." 8 SECTION 6. Section 237-9, Hawaii Revised Statutes, is 9 amended to read as follows: 10 "§237-9 Licenses; penalty. (a) Except as provided in 11 this section, any person who has a gross income or gross 12 proceeds of sales or value of products upon which a privilege 13 tax is imposed by this chapter, as a condition precedent to 14 engaging or continuing in such business, shall in writing apply 15 for and obtain from the department of taxation, upon a one-time 16 payment of the sum of \$20, a license to engage in and to conduct 17 such business, upon condition that the person shall pay the 18 taxes accruing to the State under this chapter, and the person 19 shall thereby be duly licensed to engage in and conduct the 20 business. [Any person licensed or holding a license under this 21 chapter before January 1, 1990, shall pay a one-time-license 22 renewal fee of \$20 on or before January 31, 1990, as a condition 2009-2382 SB972 CD1 SMA-2.doc 21

S.B. NO. 972 S.D. 2 H.D. 1 C.D. 1

precedent to engaging or continuing in business.] The license shall not be transferable and shall be valid only for the person in whose name it is issued and for the transaction of business at the place designated therein. The license may be inspected and examined, and shall at all times be conspicuously displayed at the place for which it is issued.

7 Licenses and applications therefor shall be in such (b) 8 form as the department shall prescribe, except that where the 9 licensee is engaged in two or more forms of business of 10 different classification, the license shall so state on its 11 face. The license provided for by this section shall be 12 effective until canceled in writing. Any application for the 13 reissuance of a previously canceled license identification 14 number after December 31, 1989, shall be regarded as a new 15 license application and subject to the payment of the one-time 16 license fee of \$20. The director may revoke or cancel any 17 license issued under this chapter for cause as provided by rules 18 adopted pursuant to chapter 91.

19 (c) Any person who receives gross income or gross proceeds
 20 of sales or value of products from engaging in business in the
 21 State and who fails to obtain a license or receives gross income
 22 or gross proceeds of sales or value of products from engaging in
 2009-2382 SB972 CD1 SMA-2.doc

S.B. NO. 972 S.D. 2 H.D. 1 C.D. 1

1	business in the State without a license required under this		
2	section may be fined not more than \$500; provided that a cash-		
3	based business may be fined not less than \$500 and not more than		
4	\$2,000, as determined by the director or the director's		
5	designee. The penalty under this subsection shall be in		
6	addition to any other penalty provided under law and may be		
7	waived or canceled upon a showing of good cause.		
8	$\left[\frac{d}{d}\right]$ If the license fee is paid, the department shall		
9	not refuse to issue a license or revoke or cancel a license for		
10	the exercise of a privilege protected by the First Amendment of		
11	the Constitution of the United States, or for the carrying on of		
12	interstate or foreign commerce, or for any privilege the		
13	exercise of which, under the Constitution and laws of the United		
14	States, cannot be restrained on account of nonpayment of taxes,		
15	nor shall section 237-46 be invoked to restrain the exercise of		
16	such a privilege, or the carrying on of such commerce.		
17	[(d)] <u>(e)</u> The director may permit a person engaged in		
18	network marketing, multi-level marketing, or other similar		
19	business to obtain the license required under this section for		
20	purposes of becoming a tax collection agent on behalf of its		
21	direct sellers. The tax collection agent shall report, collect,		
22	and pay over the taxes due under this chapter and chapter 238 on		
	2009-2382 SB972 CD1 SMA-2.doc 20		



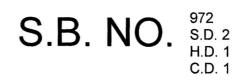
24

1 behalf of its direct sellers who are covered by the tax 2 collection agreement. The tax collection agent's direct sellers 3 shall be deemed to be licensed under this chapter; provided that 4 the licensure shall apply solely to the business activity 5 conducted directly through the marketing arrangement. Under this section, a tax collection agent shall: 6 Notify all of its direct sellers making sales in the 7 (1) 8 State that it has been designated to collect, report, 9 and pay over the tax imposed by this chapter and chapter 238 on their behalf on the business activity 10 11 conducted through the marketing arrangement; 12 (2) If required by the director as a condition of 13 obtaining the license, furnish with the annual return, 14 a list (including identification numbers) of all 15 direct sellers for the taxable year who have been 16 provided (by the tax collection agent) information 17 returns required under [section] Section 6041A of the 18 Internal Revenue Code of 1986, as amended, and any 19 other information that is relevant to ensure proper 20 payment of taxes due under this section; and 21 (3) Be personally liable for the taxes due and collected 22 under the tax collection agreement if taxes are

S.B. NO. 972 S.D. 2 H.D. 1 C.D. 1

25

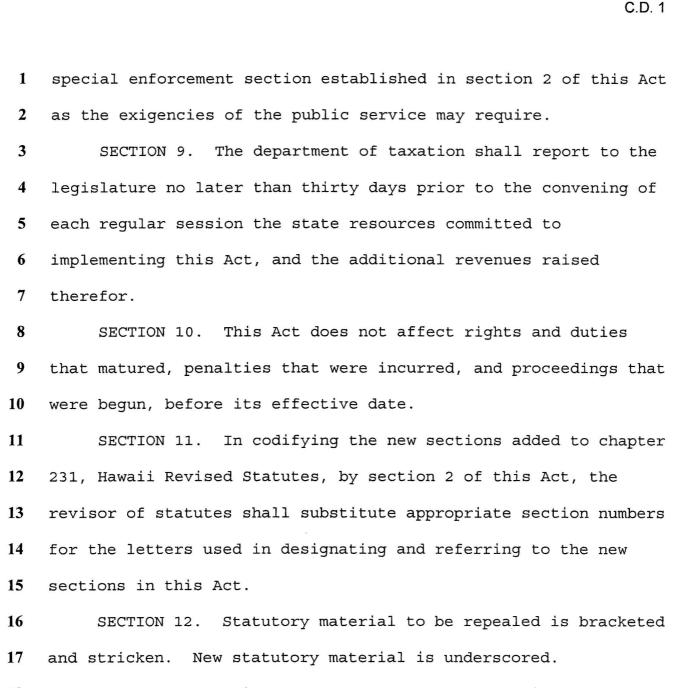
1	collected, but not reported or paid, together with
2	penalties and interest as provided by law.
3	$\left[\frac{1}{(e)}\right]$ (f) For the purposes of this section:
4	"Cash-based business" has the same meaning as in section
5	<u>231-I.</u>
6	"Consumer product" shall include tangible consumer products
7	and intangible consumer services.
8	"Direct seller" means any person who is engaged in the
9	trade or business of selling (or soliciting the sale of)
10	consumer products:
11	(1) To any buyer on a buy-sell basis, a deposit-commission
12	basis, or any similar basis, that the director
13	prescribes by rule adopted pursuant to chapter 91, for
14	resale other than in a permanent retail establishment;
15	(2) Other than in a permanent retail establishment;
16	provided that:
17	(A) Substantially all the remuneration (whether or
18	not paid in cash) for the sale of consumer
19	products is directly related to sales or other
20	output rather than to the number of hours worked;
21	and



26

1 (B) The sales of consumer products by the person are 2 performed pursuant to a written contract that 3 provides that the person will not be treated as 4 an employee with respect to those sales for 5 federal or state tax purposes. "Direct seller" includes individuals who realize 6 7 remuneration dependent on the productivity of other individuals 8 in the marketing arrangement. 9 "Network marketing" or "multi-level marketing" means a 10 marketing arrangement in which consumer products are distributed 11 and sold to or through direct sellers." SECTION 7. Section 237-12, Hawaii Revised Statutes, is 12 13 amended by amending subsection (b) to read as follows: 14 "(b) In the case of any person entitled to the protection 15 of section $\left[\frac{237-9(c)}{r}\right]$ 237-9(d), the tax shall be collected only 16 through ordinary means." SECTION 8. The department of taxation may establish six 17 18 new full-time equivalent (6.0 FTE) positions that may be staffed 19 by investigators, investigator assistants, licensed attorneys, 20 or other support staff, in addition to using current and existing employees of the department of taxation, to staff the 21

Page 27



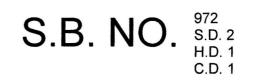
18 SECTION 13. This Act shall take effect upon its approval; 19 provided that:

20 (1) The amendments made to section 235-20.5, Hawaii
21 Revised Statutes, by this Act shall not be repealed
22 when section 235-20.5, Hawaii Revised Statutes, is

2009-2382 SB972 CD1 SMA-2.doc

27

S.B. NO. 5.D. 2



1		reenacted on January 1, 2011, pursuant to section 8 of
2		Act 206, Session Laws of Hawaii 2007;
3	(2)	Sections 231-F, 231-J, 231-K, 231-L, 231-M, 231-N,
4		231-0, and 231-P, Hawaii Revised Statutes, in section
5		2 of this Act shall take effect on July 1, 2009; and
6	(3)	This Act shall be repealed on June 30, 2014, and
7		section 235-20.5, Hawaii Revised Statutes, shall be
8		reenacted in the form in which it read on the day
9		prior to the effective date of section 8 of Act 206,
10		Session Laws of Hawaii 2007; provided further that
11		sections 231-1, 237-9, and 237-12(b), Hawaii Revised
12		Statutes, shall be reenacted in the form in which they
13		read on the day prior to the effective date of this
14		Act.

28

S.B. NO. 972 S.D. 2 H.D. 1 C.D. 1

Report Title:

Tax Administration; Cash Economy Enforcement Act

Description:

Ensures Hawaii businesses and residents are paying their fair share of taxes by providing the Department of Taxation with resources to seek enforcement against non-compliant cash-based businesses. (CD1)

