

JAN 23 2015

A BILL FOR AN ACT

RELATING TO TOBACCO PRODUCTS.

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

1 SECTION 1. The legislature finds that premium cigar
2 sellers whose products are made for adult consumers, including
3 cigars produced with Hawaii-grown tobacco, are unfairly burdened
4 as a result of a percentage tax and a self-service display ban.
5 As a result, cigar retailers are put at a competitive
6 disadvantage when lower priced cigars can be purchased legally
7 through mail order sales. Few, if any, consumers file usage
8 taxes for cigars purchased through mail order sales, creating a
9 loss of revenue for the State. The legislature further finds
10 that the United States Food and Drug Administration's proposed
11 rules defining premium cigars provide helpful guidance on these
12 issues by recognizing that premium cigars are fundamentally
13 different from other tobacco products and should be exempt from
14 onerous regulations and restrictions.

15 The purpose of this Act is to ease the unfair burden on the
16 local premium cigar industry, which has been at a competitive
17 disadvantage as a result of a percentage tax and self-service



1 display ban, and to bring Hawaii's tobacco regulations into
2 parity with the new rules proposed by the United States Food and
3 Drug Administration.

4 SECTION 2. Section 245-1, Hawaii Revised Statutes, is
5 amended as follows:

6 1. By adding two new definitions to be appropriately
7 inserted and to read:

8 "Characterizing flavor" means a distinguishable taste or
9 aroma of candy, chocolate, vanilla, fruit, berry, nut, herb,
10 spice, honey, or an alcoholic drink that is imparted to tobacco
11 or tobacco smoke either prior to or during consumption and is
12 deemed to have a characterizing flavor if the cigar is
13 advertised or marketed as having or producing the taste or aroma
14 of candy, chocolate, vanilla, fruit, berry nut, herb, spice,
15 honey, or an alcoholic drink. "Characterizing flavor" does not
16 include a taste or aroma from tobacco.

17 "Premium cigar" means a cigar that:

- 18 (1) Is wrapped in whole tobacco leaf;
19 (2) Contains 100 per cent leaf tobacco binder;
20 (3) Contains primarily long filler tobacco;



- (4) Is made by manually combining the wrapper, filler, and binder;
- (5) Has no filter, tip, or non-tobacco mouthpiece and is capped by hand;
- (6) Does not have a characterizing flavor other than tobacco; and
- (7) Weights more than six pounds per one thousand units."

2. By amending the definition of "tobacco products" to read:

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

3. By deleting the definition of "large cigar."

~~["Large cigar" means any roll for smoking made wholly or in part of tobacco if such product is wrapped in any substance containing tobacco and weighs more than four pounds per thousand."]~~



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

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

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

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

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



1 (4) An excise tax equal to 7.00 cents for each cigarette
2 sold, used, or possessed by a wholesaler or dealer
3 after June 30, 2004, whether or not sold at wholesale,
4 or if not sold then at the same rate upon the use by
5 the wholesaler or dealer;

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

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

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



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1 (8) An excise tax equal to 13.00 cents for each cigarette
2 sold, used, or possessed by a wholesaler or dealer on
3 and after July 1, 2009, whether or not sold at
4 wholesale, or if not sold then at the same rate upon
5 the use by the wholesaler or dealer;

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

11 (10) An excise tax equal to 15.00 cents for each cigarette
12 or little cigar sold, used, or possessed by a
13 wholesaler or dealer on and after July 1, 2010,
14 whether or not sold at wholesale, or if not sold then
15 at the same rate upon the use by the wholesaler or
16 dealer;

17 (11) An excise tax equal to 16.00 cents for each cigarette
18 or little cigar sold, used, or possessed by a
19 wholesaler or dealer on and after July 1, 2011,
20 whether or not sold at wholesale, or if not sold then



1 at the same rate upon the use by the wholesaler or
2 dealer;

3 (12) An excise tax equal to [~~seventy~~] 70 per cent of the
4 wholesale price of each article or item of tobacco
5 products, other than [~~large cigars,~~] premium cigars,
6 sold by the wholesaler or dealer on and after
7 September 30, 2009, whether or not sold at wholesale,
8 or if not sold then at the same rate upon the use by
9 the wholesaler or dealer; and

10 [~~(13) An excise tax equal to fifty per cent of the wholesale~~
11 ~~price of each large cigar of any length, sold, used,~~
12 ~~or possessed by a wholesaler or dealer on and after~~
13 ~~September 30, 2009, whether or not sold at wholesale,~~
14 ~~or if not sold then at the same rate upon the use by~~
15 ~~the wholesaler or dealer.]~~

16 (13) An excise tax equal to 50.00 cents for each premium
17 cigar of any length, sold, used, or possessed by a
18 wholesaler or dealer on and after July 1, 2015,
19 whether or not sold at wholesale, or if not sold then
20 at the same rate upon the use by the wholesaler or
21 dealer.



1 Where the tax imposed has been paid on cigarettes, little
2 cigars, or tobacco products that thereafter become the subject
3 of a casualty loss deduction allowable under chapter 235, the
4 tax paid shall be refunded or credited to the account of the
5 wholesaler or dealer. The tax shall be applied to cigarettes
6 through the use of stamps."

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

9 **"§245-15 Disposition of revenues.** All moneys collected
10 pursuant to this chapter shall be paid into the state treasury
11 as state realizations to be kept and accounted for as provided
12 by law; provided that, of the moneys collected under the tax
13 imposed pursuant to:

14 (1) Section 245-3(a)(5), after September 30, 2006, and
15 prior to October 1, 2007, 1.0 cent per cigarette shall
16 be deposited to the credit of the Hawaii cancer
17 research special fund, established pursuant to section
18 304A-2168, for research and operating expenses and for
19 capital expenditures;

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



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

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

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

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

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



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

(C) 0.25 cents per cigarette shall be deposited to the credit of the community health centers special fund established pursuant to section 321-1.65; and

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

(4) Section 245-3(a)(8), after June 30, 2009, and prior to July 1, 2013:

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

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



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(C) 0.75 cents per cigarette shall be deposited to the credit of the community health centers special fund established pursuant to section 321-1.65; and

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

(5) Section 245-3(a)(11), after June 30, 2013, and thereafter:

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

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

(C) 1.25 cents per cigarette shall be deposited to the credit of the community health centers



1 special fund established pursuant to section

2 321-1.65; and

3 (D) 1.25 cents per cigarette shall be deposited to

4 the credit of the emergency medical services

5 special fund established pursuant to section

6 321-234[-]; and

7 (6) Section 245-3(a)(13), after June 30, 2015, and

8 thereafter, all amounts collected per premium cigar

9 shall be deposited to the credit of the Hawaii cancer

10 research special fund, established pursuant to section

11 304A-2168, for research and operating expenses and

12 capital expenditures.

13 The department shall provide an annual accounting of these

14 dispositions to the legislature."

15 SECTION 5. Section 328J-1, Hawaii Revised Statutes, is

16 amended by adding a new definition to be appropriately inserted

17 and to read as follows:

18 "Premium cigar" means a cigar that:

19 (1) Is wrapped in whole tobacco leaf;

20 (2) Contains 100 per cent leaf tobacco binder;

21 (3) Contains primarily long filler tobacco;



- 1 (4) Is made by manually combining the wrapper, filler, and
2 binder;
- 3 (5) Has no filter, tip, or non-tobacco mouthpiece and is
4 capped by hand;
- 5 (6) Does not have a characterizing flavor other than
6 tobacco; and
- 7 (7) Weighs more than six pounds per one thousand units."

8 SECTION 6. Section 328J-18, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) This section shall not apply to:

- 11 (1) A duty-free sales enterprise selling duty-free
12 merchandise in accordance with the provisions of title
13 19 United States Code section 1555(b), and any
14 implementing regulations; [~~and~~]
- 15 (2) Retail tobacco stores, bars, or any other
16 establishment for which the minimum age for admission
17 is eighteen[-]; and
- 18 (3) Premium cigars."

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 8. This Act shall take effect upon its approval
2 and shall apply to the sale of tobacco products occurring on and
3 after July 1, 2015.

4

INTRODUCED BY:

Allen W.
John H.



S.B. NO. 400

Report Title:

Tobacco Products; Premium Cigars; Tax

Description:

Replaces the term "large cigar" with "premium cigar". Replaces the percentage tax on large cigars with a tax of 50.00 cents per premium cigar. Exempts premium cigars from self-service display ban. Applies to the sale of tobacco products occurring on and after July 1, 2015.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

