
A BILL FOR AN ACT

RELATING TO HEALTH.

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

- 1 SECTION 1. The purpose of this Act is to:
- 2 (1) Make unlawful the shipment of tobacco products to
- 3 anyone other than a licensee;
- 4 (2) Make unlawful the transport of tobacco products
- 5 ordered through remote sale to anyone other than a
- 6 licensee;
- 7 (3) Increase the license fee for persons engaged as a
- 8 wholesaler or dealer of cigarettes and tobacco
- 9 products; and
- 10 (4) Increase the retail tobacco permit fee for retailers
- 11 engaged in the retail sale of cigarettes and tobacco
- 12 products.

13 SECTION 2. Chapter 245, Hawaii Revised Statutes, is

14 amended by adding a new section to be appropriately designated

15 and to read as follows:

16 "§245-A Unlawful shipment of tobacco products; penalty;

17 reports; liability for unpaid taxes. (a) A person or entity



1 commits the offense of unlawful shipment of tobacco products if
2 the person or entity is engaged in the business of selling
3 tobacco products and ships, or causes to be shipped, any tobacco
4 products ordered or purchased through a remote sale, to a person
5 or entity in the State that is not:

- 6 (1) A licensee under this chapter; or
- 7 (2) A person or entity transporting tobacco products, as
8 defined in section 245-1, under federal internal
9 revenue bond or customs control that are non-tax-paid
10 under title 26 of the United States Code, or an
11 operator of a customs bonded warehouse pursuant to
12 title 19 United States Code section 1311 or 1555.

13 (b) This section may not apply to the shipment of tobacco
14 products if any of the following conditions are met:

- 15 (1) The tobacco products are exempt from taxes as provided
16 by section 245-3 (b);
- 17 (2) The person or entity engaged in the business of
18 selling, advertising, or offering tobacco products for
19 sale and transfer or shipment includes on the outside
20 of the shipping container an externally visible and
21 easily legible notice located on the same side of the



1 shipping container as the address to which the
2 shipping container is delivered stating as follows:
3 "HAWAII LAW PROHIBITS THE SALE OF CIGARETTES OR
4 TOBACCO PRODUCTS TO INDIVIDUALS UNDER TWENTY-ONE YEARS
5 OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE
6 TAXES. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE
7 UNPAID TAXES ON THESE CIGARETTES AND TOBACCO
8 PRODUCTS."; or

9 (3) All applicable Hawaii taxes on the tobacco products
10 are paid in accordance with the requirements of this
11 section.

12 (c) Any person or entity that knowingly violates this
13 section may be guilty of a misdemeanor. Each shipment that
14 violates or fails to comply with this section may be a separate
15 and distinct violation.

16 (d) Notwithstanding the existence of other remedies at
17 law, any person or entity that purchases, uses, controls, or
18 possesses any tobacco products for which the applicable taxes
19 imposed under title 14 have not been paid may be liable for the
20 applicable taxes, plus any penalty and interest as provided for
21 by law.



1 (e) In addition to, or in lieu of, any other civil or
2 criminal remedy provided by law, a person or entity that has
3 violated this section is subject to a civil penalty of up to
4 \$5,000 for each violation. The attorney general may initiate a
5 civil action seeking recovery of the penalties.

6 (f) For the purposes of this section:

7 "Internet sale" means any internet website or
8 electronically networked means that solicits or sells cigarettes
9 or tobacco products, regardless of whether cash is actually paid
10 for the product.

11 "Licensee" means a person or entity that is on a list of
12 authorized licensees published by the department.

13 "Mail order" means any means of soliciting cigarettes or
14 tobacco products, that are set forth in a catalog or other
15 printed solicitation of a business that is generally available
16 to the public.

17 "Remote sale" means a sale that is conducted by mail order,
18 telephone, computer, internet sale, or any means other than
19 using a physical storefront.

20 **§245-B Investigations; action upon investigation.** (a)

21 Upon receiving a report that a person or entity may have



1 committed the offense of unlawful shipment of tobacco, the
2 department may conduct an investigation for the limited purposes
3 of determining whether the person or entity is unlawfully
4 shipping tobacco in the following provisions:

- 5 (1) The department may request access to the location
6 indicated in the report; or
7 (2) The department may file a complaint with the district
8 court of the circuit of the location indicated in the
9 report, and the district court, upon a finding of
10 probable cause, may issue a search warrant directed to
11 the department and the appropriate county police
12 department, if necessary, to investigate the location
13 pursuant to this section.

14 (b) Upon investigation, the department may take action on
15 confirmed findings that the subject is unlawfully shipping
16 tobacco and may do the following:

- 17 (1) Resolve the matter in an informal fashion as is
18 appropriate under the circumstances;
19 (2) File a petition with the district court for
20 enforcement or remedial action; or
21 (3) Pursue any remedial actions authorized by law."



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

3 "(b) The license shall be issued by the department upon
4 application therefor, in [~~such~~] a form and manner as shall be
5 required by rule of the department, and the payment of a fee of
6 [~~\$2.50,~~] \$250, and shall be renewable annually on July 1 for the
7 twelve months ending the succeeding June 30."

8 SECTION 4. Section 245-2.5, Hawaii Revised Statutes, is
9 amended by amending subsection (c) to read as follows:

10 "(c) The retail tobacco permit shall be issued by the
11 department upon application by the retailer in the form and
12 manner prescribed by the department, and the payment of a fee of
13 [~~\$20.~~] \$50. Permits shall be valid for one year, from December
14 1 to November 30, and renewable annually. Whenever a retail
15 tobacco permit is defaced, destroyed, or lost, or the permittee
16 relocates the permittee's business, the department may issue a
17 duplicate retail tobacco permit to the permittee for a fee of \$5
18 per copy."

19 SECTION 5. Section 245-3, Hawaii Revised Statutes, is
20 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 13.00 cents for each cigarette
19 sold, used, or possessed by a wholesaler or dealer on
20 and after July 1, 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;

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

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

14 (11) An excise tax equal to 16.00 cents for each cigarette
15 or little cigar sold, used, or possessed by a
16 wholesaler or dealer on and after July 1, 2011,
17 whether or not sold at wholesale, or if not sold then
18 at the same rate upon the use by the wholesaler or
19 dealer;

20 (12) An excise tax equal to cents for each cigarette
21 sold, used, or possessed by a wholesaler or dealer on



1 or after November 1, 2019, whether or not sold at
2 wholesale, or if not sold then at the same rate upon
3 the use by the wholesaler or dealer;

4 ~~(12)~~ (13) An excise tax equal to seventy per cent of the
5 wholesale price of each article or item of tobacco
6 products, other than large cigars, sold by the
7 wholesaler or dealer on and after September 30, 2009,
8 whether or not sold at wholesale, or if not sold then
9 at the same rate upon the use by the wholesaler or
10 dealer; ~~and~~

11 ~~(13)~~ (14) An excise tax equal to _____ per cent of the
12 wholesale price of each article or item of tobacco
13 products sold by the wholesaler or dealer on and after
14 July 1, 2019, whether or not sold at wholesale, or if
15 not sold then at the same rate upon the use by the
16 wholesaler or dealer; and

17 (15) An excise tax equal to fifty per cent of the wholesale
18 price of each large cigar of any length, sold, used,
19 or possessed by a wholesaler or dealer on and after
20 September 30, 2009, 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 Where the tax imposed has been paid on cigarettes, little
4 cigars, or tobacco products that thereafter become the subject
5 of a casualty loss deduction allowable under chapter 235, the
6 tax paid shall be refunded or credited to the account of the
7 wholesaler or dealer. The tax shall be applied to cigarettes
8 through the use of stamps."

9 SECTION 6. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 7. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 8. This Act shall take effect on July 1, 2050.



Report Title:

Unlawful Shipment and Transport of Tobacco Products; Tax;
Permit; License; Excise Tax; Department of the Attorney General

Description:

Prohibits the shipment of tobacco products, and the transport of tobacco products ordered or purchased through a remote sale, to anyone other than a licensee. Increases the license fee for wholesalers or dealers and the retail tobacco permit fee. Increases the excise tax for each cigarette sold, used, or possessed by a wholesaler or dealer. Increases the excise tax on the wholesale price of each article or item of tobacco products sold by the wholesaler or dealer. (HB387 HD1)

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