

JAN 24 2024

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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The legislature finds that the definition of  
2 "premium cigar", once proposed by the United States Food and  
3 Drug Administration, as discussed in *Cigar Ass'n of Am. v. U.S.*  
4 *Food & Drug Admin.*, 480 F.Supp.3d 256 (D.D.C. 2020), and used in  
5 *Cigar Ass'n of Am. v. U.S. Food & Drug Admin.*, No. 16-cv-01460  
6 (APM), (D.D.C. Aug. 9, 2023), distinguishes premium cigars from  
7 other tobacco products.

8           The legislature further finds that local premium cigar  
9 sellers whose products are made for adult consumers, including  
10 cigars produced with Hawaii-grown tobacco, are unfairly burdened  
11 by being subject to a non-differentiated state percentage tax  
12 that is generally passed on to customers. As a result, cigar  
13 retailers are put at a competitive disadvantage as lower priced  
14 premium cigars can be purchased from the mainland United States  
15 or through the black market at a significantly lower cost.

16           The legislature finds that it is necessary to ease the  
17 unfair burden on the local premium cigar industry that has been



1 at a competitive disadvantage due to the percentage tax, which  
2 can also help the State collect more tax revenue as in-state  
3 premium cigar sales should increase when prices become more  
4 competitive with the other states.

5 Accordingly, the purpose of this Act is to:

- 6 (1) Establish a definition for "premium cigar" that is  
7 distinct from a "large cigar";  
8 (2) Exclude premium cigars from percentage excise tax; and  
9 (3) Establish an excise tax on premium cigars at a rate of  
10 50 cents per premium cigar.

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

13 1. By adding two new definitions to be appropriately  
14 inserted and to read:

15 "Characterizing flavor" means a distinguishable taste or  
16 aroma of candy, chocolate, vanilla, fruit, berry, nut, herb,  
17 spice, honey, or an alcoholic drink that is imparted to tobacco  
18 or tobacco smoke either before or during consumption. Tobacco  
19 products are deemed to have a "characterizing flavor" if the  
20 product is advertised or marketed as having or producing the  
21 taste or aroma of candy, chocolate, vanilla, fruit, berry, nut,



1 herb, spice, honey, or an alcoholic drink. "Characterizing  
2 flavor" does not include a taste or aroma from tobacco.

3 "Premium cigar" means any roll for smoking that:

4 (1) Is wrapped in whole tobacco leaf;

5 (2) Contains a one hundred per cent leaf tobacco binder;

6 (3) Contains at least fifty per cent (of the filler by  
7 weight) long filler tobacco;

8 (4) Is handmade or hand rolled;

9 (5) Has no filter, non-tobacco tip, or non-tobacco  
10 mouthpiece;

11 (6) Does not have a characterizing flavor other than  
12 tobacco;

13 (7) Contains only tobacco, water, and vegetable gum with  
14 no other ingredients or additives; and

15 (8) Weighs more than six pounds per thousand units."

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

18 ""Tobacco products" means:

19 (1) Tobacco in any form, other than cigarettes or little  
20 cigars, that is prepared or intended for consumption  
21 or for personal use by humans, including large cigars,



1           premium cigars, and any substitutes thereof other than  
 2           cigarettes that bear the semblance thereof, snuff,  
 3           chewing or smokeless tobacco, and smoking or pipe  
 4           tobacco; or

5           (2) Electronic smoking devices; or

6           (3) E-liquid."

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

9           "(a) Every wholesaler or dealer, in addition to any other  
 10          taxes provided by law, shall pay, for the privilege of  
 11          conducting business and other activities in the State, an excise  
 12          tax equal to:

13          (1) 5.00 cents for each cigarette sold, used, or possessed  
 14               by a wholesaler or dealer after June 30, 1998, whether  
 15               or not sold at wholesale, or if not sold, then at the  
 16               same rate upon the use by the wholesaler or dealer;

17          (2) 6.00 cents for each cigarette sold, used, or possessed  
 18               by a wholesaler or dealer after September 30, 2002,  
 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           (3) 6.50 cents for each cigarette sold, used, or possessed  
2                    by a wholesaler or dealer after June 30, 2003, whether  
3                    or not sold at wholesale, or if not sold, then at the  
4                    same rate upon the use by the wholesaler or dealer;
- 5           (4) 7.00 cents for each cigarette sold, used, or possessed  
6                    by a wholesaler or dealer after June 30, 2004, whether  
7                    or not sold at wholesale, or if not sold, then at the  
8                    same rate upon the use by the wholesaler or dealer;
- 9           (5) 8.00 cents for each cigarette sold, used, or possessed  
10                   by a wholesaler or dealer on and after September 30,  
11                   2006, whether or not sold at wholesale, or if not  
12                   sold, then at the same rate upon the use by the  
13                   wholesaler or dealer;
- 14           (6) 9.00 cents for each cigarette sold, used, or possessed  
15                   by a wholesaler or dealer on and after September 30,  
16                   2007, whether or not sold at wholesale, or if not  
17                   sold, then at the same rate upon the use by the  
18                   wholesaler or dealer;
- 19           (7) 10.00 cents for each cigarette sold, used, or  
20                   possessed by a wholesaler or dealer on and after  
21                   September 30, 2008, 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 (8) 13.00 cents for each cigarette sold, used, or  
4 possessed by a wholesaler or dealer on and after  
5 July 1, 2009, whether or not sold at wholesale, or if  
6 not sold, then at the same rate upon the use by the  
7 wholesaler or dealer;

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

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

18 (11) 16.00 cents for each cigarette or little cigar sold,  
19 used, or possessed by a wholesaler or dealer on and  
20 after July 1, 2011, 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 (12) 50.00 cents for each premium cigar of any length sold,  
4 used, or possessed by a wholesaler or dealer on or  
5 after January 1, 2025, 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 ~~[(12)]~~ (13) Seventy per cent of the wholesale price of each  
9 article or item of tobacco products, other than large  
10 cigars, premium cigars, electronic smoking devices,  
11 and e-liquids, sold by the wholesaler or dealer on and  
12 after September 30, 2009, whether or not sold at  
13 wholesale, or if not sold, then at the same rate upon  
14 the use by the wholesaler or dealer;  
15 ~~[(13)]~~ (14) Fifty per cent of the wholesale price of each  
16 large cigar of any length sold, used, or possessed by  
17 a wholesaler or dealer on and after September 30,  
18 2009, whether or not sold at wholesale, or if not  
19 sold, then at the same rate upon the use by the  
20 wholesaler or dealer; and





# S.B. NO. 3288

**Report Title:**

Tobacco Products; Premium Cigars; Definition; Excise Tax

**Description:**

Establishes a definition for "premium cigar" that is distinct from a "large cigar" and adds a definition for "characterizing flavor" in the Cigarette Tax and Tobacco Tax Law. Excludes premium cigars from percentage excise tax. Establishes an excise tax at a rate of 50 cents per premium cigar.

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