

ACT 177

S.B. NO. 1279

A Bill for an Act Relating to Tobacco.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 28-15, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

“(a) There is established in the state treasury the tobacco enforcement special fund, into which shall be deposited the tobacco settlement moneys as provided by section 328L-2(a)[-], the allocated portion of the stamp fee designated to

pay for the cost of enforcing the cigarette tax stamp as provided by section 245-26, and fines as provided for by section 245-41.

(b) The tobacco enforcement special fund shall be administered by the department of the attorney general and shall be used for administering, operating, monitoring, and ensuring compliance with and enforcement of:

- (1) The Master Settlement Agreement as defined in chapter 675 and any other statutes or programs relating to that agreement;
- (2) Chapter 675;
- (3) Tobacco prevention programs;~~[and]~~
- (4) ~~[Any other requirement deemed necessary to carry out the purposes of the fund.]~~ The cigarette tax stamp as defined in chapter 245 and any other statutes or programs relating to that chapter;
- (5) Chapter 245;
- (6) Chapter 486P and any other statutes or programs relating to that chapter; and
- (7) Any other requirement deemed necessary to carry out the purposes of the fund.

(c) All unencumbered and unexpended moneys in excess of ~~[\$350,000]~~ \$1,000,000 remaining on balance in the tobacco enforcement special fund at the close of June 30 of each year shall lapse to the credit of the ~~[Hawaii tobacco settlement special fund.]~~ state general fund.”

SECTION 2. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses.

Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center enterprise special fund under section 201B-8;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees’ retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 201B-11;
- (19) Department of commerce and consumer affairs’ special funds;
- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;

- (22) Integrated tax information management systems special fund under section 231-3.2;
- (23) Hawaii tobacco settlement special fund under section 328L-2;
- (24) Emergency and budget reserve fund under section 328L-3;
- (25) Probation services special fund under section 706-649;
- (26) High technology special fund under section 206M-15.5;
- (27) Public schools special fees and charges fund under section 302A-1130(f);
- [~~(28)~~] ~~Cigarette tax stamp enforcement special fund established by section 28-14;~~
- [~~(29)~~] (28) Cigarette tax stamp administrative special fund established by section 245-41.5;
- [~~(30)~~] (29) Tobacco enforcement special fund established by section 28-15;
- [~~(31)~~] (30) Sport fish special fund under section 187A-9.5;
- [~~(32)~~] (31) Neurotrauma special fund under section 321H-4;
- [~~(33)~~] (32) Deposit beverage container deposit special fund under section 342G-104; and
- [~~(34)~~] (33) Glass advance disposal fee special fund established by section 342G-82,

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 3. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
 - (2) Special out-of-school time instructional program fund under section 302A-1310;
 - (3) School cafeteria special funds of the department of education;
 - (4) Special funds of the University of Hawaii;
 - (5) State educational facilities improvement special fund;
 - (6) Special funds established by section 206E-6;
 - (7) Aloha Tower fund created by section 206J-17;
 - (8) Domestic violence prevention special fund under section 321-1.3;
 - (9) Spouse and child abuse special account under section 346-7.5;
 - (10) Spouse and child abuse special account under section 601-3.6;
 - (11) Funds of the employees’ retirement system created by section 88-109;
 - (12) Unemployment compensation fund established under section 383-121;
 - (13) Hawaii hurricane relief fund established under chapter 431P;
 - (14) Convention center enterprise special fund established under section 201B-8;
 - (15) Hawaii health systems corporation special funds;
 - (16) Tourism special fund established under section 201B-11;
 - (17) Compliance resolution fund established under section 26-9;
 - (18) Universal service fund established under chapter 269;

- (19) Integrated tax information management systems special fund under section 231-3.2;
- (20) Hawaii tobacco settlement special fund under section 328L-2;
- (21) Emergency and budget reserve fund under section 328L-3;
- (22) Probation services special fund under section 706-649;
- (23) High technology special fund under section 206M-15.5;
- (24) Public schools special fees and charges fund under section 302A-1130(f);
- ~~[(25) Cigarette tax stamp enforcement special fund established by section 28-14;~~
- (26) (25) Cigarette tax stamp administrative special fund established by section 245-41.5;
- ~~[(27) (26) Tobacco enforcement special fund established by section 28-15;~~
- ~~[(28) (27) Sport fish special fund under section 187A-9.5; and~~
- ~~[(29) (28) Neurotrauma special fund under section 321H-4;~~

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 4. Section 245-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Stamps shall be sold at their denominated values, plus a stamp fee of 1.7 per cent of the denominated value of each stamp sold, composed of the aggregate of:

- (1) .2 per cent of the denominated value of the stamp to pay for the cost to the State of providing the stamps, with ~~[such]~~ that amount to be deposited to the credit of the department of taxation’s cigarette tax stamp administrative special fund; and
- (2) 1.5 per cent of the denominated value of the stamp to pay for the cost of enforcing the stamp tax, with ~~[such]~~ that amount to be deposited to the credit of the department of the attorney general’s ~~[cigarette tax stamp enforcement special fund;]~~ tobacco enforcement special fund;

provided that the department¹ by rule may modify the stamp fee to reflect actual costs incurred by the State in providing the stamps.”

SECTION 5. Section 245-41, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Where the attorney general initiates and conducts an investigation resulting in the imposition and collection of a criminal fine pursuant to this part, one hundred per cent of the fine shall be distributed to the attorney general to be deposited to the credit of the department of the attorney general’s ~~[cigarette tax stamp]~~ tobacco enforcement special fund; provided that if the attorney general engages the prosecuting attorney for the investigation or prosecution, or both, resulting in the imposition and collection of a criminal fine under this part, the fine shall be shared equally between the attorney general and the prosecuting attorney.”

SECTION 6. Section 328L-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established in the state treasury the Hawaii tobacco settlement special fund into which shall be deposited:

- (1) All tobacco settlement moneys; and
- (2) All interest and earnings accruing from the investment of moneys in the fund;

provided that of all tobacco settlement moneys received by the State each fiscal year, the sum representing ~~[the difference between]~~ the first \$350,000 of ~~[such]~~ those

moneys [and the unexpended and unencumbered balance of the tobacco enforcement special fund at the close of the previous fiscal year] shall first be deposited in the state treasury in each fiscal year to the credit of the tobacco enforcement special fund. The Hawaii tobacco settlement special fund shall be administered by the department.”

SECTION 7. Section 675-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§675-3**~~]]~~ **Requirements.** Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

- (a) become a participating manufacturer (as that term is defined in section II(j) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or
- (b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)—
 - 1999: \$.0094241 per unit sold after the date of enactment of this Act;
 - 2000: \$.0104712 per unit sold;
 - for each of 2001 and 2002: \$.0136125 per unit sold;
 - for each of 2003 through 2006: \$.0167539 per unit sold;
 - for each of 2007 and each year thereafter: \$.0188482 per unit sold.
- (2) a tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances—
 - (A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;
 - (B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow [~~in a particular year was greater than the State’s allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment)] on account of units sold in the State in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the~~

- excess shall be released from escrow and revert back to such tobacco product manufacturer; or
- (C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.
- (3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall—
- (A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the State in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;
 - (B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and
 - (C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

The State shall be awarded its attorneys' fees and expenses incurred in prosecuting violations of this chapter."

SECTION 8. Section 28-14, Hawaii Revised Statutes, is repealed.

SECTION 9. If this Act, or any portion of the amendment to subparagraph (B) of section 675-3(b)(2), Hawaii Revised Statutes, made by this Act, is held by a court of competent jurisdiction to be unconstitutional, then subparagraph (B) of section 675-3(b)(2) shall be deemed to be repealed in its entirety. If section 675-3(b)(2) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then the amendment to subparagraph (B) of section 675-3(b)(2) made by this Act shall be deemed repealed, and subparagraph (B) of section 675-3(b)(2) shall be reenacted as it read on the day before the effective date of this Act. Neither any holding of unconstitutionality nor the repeal of subparagraph (B) of section 675-3(b)(2) shall affect, impair, or invalidate any other portion of section 675-3, or the application of such section to any other person or circumstance, and such remaining portions of section 675-3 shall at all times continue in full force and effect.

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SECTION 10. The director of finance shall transfer the unexpended balance, including encumbrances and accrued liabilities, of the cigarette tax stamp enforcement special fund as of the close of business on June 29, 2003, to the credit of the tobacco enforcement special fund. Encumbered moneys shall continue to be encumbered until paid out or released from prior encumbrances.

SECTION 11. There is appropriated out of the tobacco enforcement special fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2003-2004 and the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the administration and operation of tobacco enforcement activities.

The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 12. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 13. This Act shall take effect on June 29, 2003; provided that:

- (1) The amendments made to section 36-27, Hawaii Revised Statutes, by section 2 of this Act shall not be repealed when that section is reenacted on July 31, 2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998;
- (2) Section 8 shall take effect on June 30, 2003; and
- (3) Section 11 shall take effect on July 1, 2003.

(Approved June 16, 2003.)

Notes

1. Prior to amendment "of taxation" appeared here.
2. Edited pursuant to HRS §23G-16.5.