

## ACT 131

S.B. NO. 682

A Bill for an Act Relating to Tobacco.

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

SECTION 1. Chapter 245, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

**“§245-A Retail tobacco permit.** (a) Beginning December 1, 2006, every retailer engaged in the retail sale of cigarettes and other tobacco products upon which a tax is required to be paid under this chapter shall obtain a retail tobacco permit.

(b) Beginning March 1, 2007, it shall be unlawful for any retailer engaged in the retail sale of cigarettes and other tobacco products upon which a tax is required to be paid under this chapter to sell, possess, keep, acquire, distribute, or transport cigarettes or other tobacco products for retail sale unless a retail tobacco permit has been issued to the retailer under this section and the retail tobacco permit is in full force and effect.

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

(d) A separate retail tobacco permit shall be obtained for each place of business owned, controlled, or operated by a retailer. A retailer that owns or controls more than one place of business may submit a single application for more than one retail tobacco permit. Each retail tobacco permit issued shall clearly describe the place of business where the operation of the business is conducted.

(e) Any entity that operates as a dealer or wholesaler and also sells cigarettes or other tobacco products to consumers at retail shall acquire a separate retail tobacco permit.

(f) A retail tobacco permit shall be nonassignable and nontransferable from one entity to another entity. A retail tobacco permit may be transferred from one business location to another business location after an application has been filed with the department requesting that transfer and approval has been obtained from the department.

(g) A retail tobacco permit issued under this section shall be displayed at all times in a conspicuous place at the place of business requiring the retail tobacco permit.

(h) Any sales of cigarettes or tobacco products made through a cigarette or tobacco product vending machine are subject to the terms, conditions, and penalties of this chapter. A retail tobacco permit need not be displayed on cigarette or tobacco product vending machines if the retail tobacco permit holder is the owner of the cigarette or tobacco product vending machines and the cigarette or tobacco product vending machines are operated at the location described in the retail tobacco permit.

(i) No retailer shall purchase any pack of cigarettes without the appropriate tax stamp being affixed to the bottom of the pack as required by this chapter.

(j) A vehicle from which cigarettes or tobacco products are sold is considered a place of business and requires a retail tobacco permit. Retail tobacco permits for a vehicle shall be issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number. Retail tobacco permits for vehicles shall not be moved from one vehicle to another.

(k) A permittee shall be subject to the inspection and investigation requirements of this chapter and shall provide the department or the attorney general with any information deemed necessary to verify compliance with the requirements of this chapter.

(l) A permittee shall keep a complete and accurate record of the permittee's cigarette or tobacco product inventory. The records shall:

(1) Include:

- (A) A written statement containing the name and address of the permittee's source of its cigarettes and tobacco products;
- (B) The date of delivery, quantity, trade name or brand, and price of the cigarettes and tobacco products; and
- (C) Documentation in the form of any purchase orders, invoices, bills of lading, other written statements, books, papers, or records in whatever format, including electronic format, which substantiate the purchase or acquisition of the cigarettes and tobacco products stored or offered for sale; and

(2) Be offered for inspection and examination within twenty-four hours of demand by the department or the attorney general, and shall be preserved for a period of three years; provided that:

- (A) Specified records may be destroyed if the department and the attorney general both consent to their destruction within the three-year period; and
- (B) Either the department or the attorney general may adopt rules pursuant to chapter 91 that require specified records to be kept longer than a period of three years.

(m) The department may suspend or, after hearing, revoke or decline to renew any retail tobacco permit issued under this chapter whenever the department

finds that the applicant or permittee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes but is not limited to instances where an applicant or permittee has:

- (1) Submitted a false or fraudulent application or provided a false statement in an application; or
- (2) Possessed or displayed a false or fraudulent retail tobacco permit.

Upon suspending or revoking any retail tobacco permit, the department shall request that the permittee immediately surrender any retail tobacco permit or duplicate issued to the permittee, and the permittee shall surrender the permit or duplicate promptly to the department as requested.

(n) Whenever the department suspends, revokes, or declines to renew a retail tobacco permit, the department shall notify the applicant or permittee immediately and afford the applicant or permittee a hearing, if requested and if a hearing has not already been afforded. After the hearing, the department shall:

- (1) Rescind its order of suspension;
- (2) Continue the suspension;
- (3) Revoke the retail tobacco permit;
- (4) Rescind its order of revocation;
- (5) Decline to renew the retail tobacco permit; or
- (6) Renew the retail tobacco permit.

(o) Any cigarette, package of cigarettes, carton of cigarettes, container of cigarettes, tobacco product, package of tobacco products, or any container of tobacco products unlawfully sold, possessed, kept, stored, acquired, distributed, or transported in violation of this section may be seized and ordered forfeited pursuant to chapter 712A.

**§245-B Unlawful tobacco retailing in the first degree.** (a) Beginning March 1, 2007, a person or entity required to obtain a retail tobacco permit commits the offense of unlawful tobacco retailing in the first degree if the person or entity knowingly fails to obtain a valid permit required under section 245-A and, for the purposes of retail sale, recklessly sells, possesses, stores, acquires, distributes, or transports five thousand or more cigarettes.

(b) Unlawful tobacco retailing in the first degree is a misdemeanor, except that any offense under subsection (a) that occurs within five years of a conviction for unlawful tobacco retailing in the first degree is a class C felony.

**§245-C Unlawful tobacco retailing in the second degree.** (a) Beginning March 1, 2007, a person or entity required to obtain a retail tobacco permit commits the offense of unlawful tobacco retailing in the second degree if the person or entity recklessly fails to obtain a valid permit required under section 245-A and, for the purposes of retail sale, recklessly sells, possesses, stores, acquires, distributes, or transports fewer than five thousand cigarettes or any tobacco products.

(b) Unlawful tobacco retailing in the second degree is petty misdemeanor, except that any offense under subsection (a) that occurs within five years of a conviction for unlawful tobacco retailing in the first or second degree is a misdemeanor.”

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

(1) By adding six new definitions to be appropriately inserted and to read as follows:

““Business location” or “place of business” means the entire premises occupied by a retail tobacco permit applicant or an entity required to hold a retail

tobacco permit under this chapter and shall include but is not limited to any store, stand, outlet, vehicle, cart, location, vending machine, or structure from which cigarettes or tobacco products are sold or distributed to a consumer.

“Consumer” means a person who acquires or possesses a cigarette or a tobacco product for personal consumption and not for resale or distribution.

“Permittee” means the holder of a retail tobacco permit in accordance with this chapter.

“Retail sale” or “tobacco retailing” means the practice of selling cigarettes or tobacco products to consumers and includes the sale of cigarettes or tobacco through a vending machine.

“Retail tobacco permit” means a permit granted under this chapter that authorizes an entity to engage in the business of selling cigarettes and tobacco products to consumers.

“Retailer” means an entity that engages in the practice of selling cigarettes or tobacco products to consumers and includes the owner of a cigarette or tobacco product vending machine.”

(2) By amending the definitions of “license” and “licensee” to read as follows:

““License” means a license granted under this chapter, that authorizes the holder to engage in the business of a wholesaler or dealer of cigarettes or tobacco products in the State. For purposes of any action brought pursuant to section 231-35, the term “license” shall include a retail tobacco permit required under this chapter.

“Licensee” means the holder of a license as a wholesaler or dealer granted under this chapter.”

SECTION 3. Section 245-2, Hawaii Revised Statutes, is amended to read as follows:

**“§245-2 License.** (a) It shall be unlawful for any person to engage in the business of a wholesaler or dealer in the State without having received first a license therefor issued by the department of taxation under this chapter; provided that this section shall not be construed to supersede any other law relating to licensing of persons in the same business.

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

(c) The department may suspend or, after hearing, revoke or decline to renew any license issued under this chapter whenever the department finds that the applicant or licensee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes but is not limited to instances where an applicant or licensee has:

(1) Submitted a false or fraudulent application or provided a false statement in an application; or

(2) Possessed or displayed a false or fraudulent license.

Upon suspending or revoking any license, the department shall request that the licensee immediately surrender the license or any duplicate issued to the licensee and the licensee shall surrender the license or duplicate promptly to the department as requested.

(d) Whenever the department suspends, revokes, or declines to renew a license, the department shall notify the applicant or licensee immediately and afford the applicant or licensee a hearing, if requested and if a hearing has not already been afforded. After the hearing, the department shall:

- (1) Rescind its order of suspension;
- (2) Continue the suspension;
- (3) Revoke the license;
- (4) Rescind its order of revocation;
- (5) Decline to renew the license; or
- (6) Renew the license.”

SECTION 4. There is appropriated out of the tobacco enforcement special fund the sum of \$130,953 or so much thereof as may be necessary for fiscal year 2006-2007, and such sum shall be transferred to the department of taxation to establish and administer the licensing and permitting of tobacco and cigarette sales, including the establishment of three permanent full-time equivalent (3.00 FTE) positions, and for other expenses incurred by the department of taxation in order to carry out the purposes of this Act.

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

SECTION 5. There is appropriated from the interdepartmental appropriation transferred from the department of the attorney general the sum of \$130,953, or so much thereof as may be necessary, for fiscal year 2006-2007, for the department of taxation to establish and administer the licensing and permitting of tobacco and cigarette sales, including the establishment of three permanent full-time equivalent (3.00 FTE) positions, and for other expenses incurred in order to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of taxation for the purposes of this Act.

SECTION 6. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect upon its approval; provided that:

- (1) Sections 4 and 5 of this Act shall take effect on July 1, 2006; and
- (2) This Act shall be repealed on July 1, 2009; provided that sections 245-1 and 245-2, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act.

(Approved June 16, 2005.)

**Note**

1. Edited pursuant to HRS §23G-16.5.