

S.B. NO. 2974

JAN 22 2008

A BILL FOR AN ACT

RELATING TO TOBACCO.

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

1 SECTION 1. Act 131, Session Laws of Hawaii 2005, is
2 amended by amending section 9 to read as follows:

3 "SECTION 9. This Act shall take effect upon its approval;
4 provided that [+

5 ~~(1) Sections]~~ sections 4 and 5 of this Act shall take
6 effect on July 1, 2006 [~~and~~

7 ~~(2) This Act shall be repealed on July 1, 2009; provided~~
8 ~~that sections 245-1 and 245-2, Hawaii Revised~~
9 ~~Statutes, shall be reenacted in the form in which they~~
10 ~~read on the day before the approval of this Act]."~~

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 Statutory material to be repealed is bracketed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

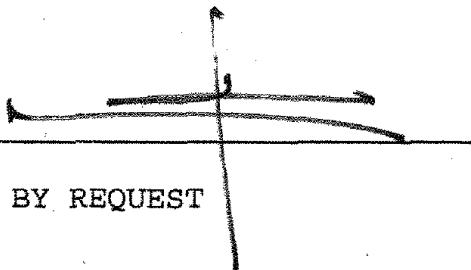
13 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: _____


BY REQUEST

S.B. NO. 2974

Report Title:

TOBACCO.

Description:

Repeals the July 1, 2009 sunset clause of the law requiring those who sell tobacco at a retail level to get a retail tobacco permit from the Department of Taxation; without this law, no permits will be necessary starting July 1, 2009.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO TOBACCO.

PURPOSE: The purpose of this bill is to repeal the sunset clause contained in section 9 of Act 131, Session Laws of Hawaii 2005. The sunset clause terminates on July 1, 2009, the requirement contained in section 245-2.5, Hawaii Revised Statutes (HRS), which mandates that those businesses engaged in the sale of cigarettes and other tobacco products at the retail level acquire a retail tobacco permit from the Department of Taxation to engage in such activity.

MEANS: Amend section 9 of Act 131, Session Laws of Hawaii 2005.

JUSTIFICATION: This bill will strengthen the mechanisms available to regulate the sale of taxed cigarettes and other tobacco products.

First, the bill removes the sunset clause and keeps in place the requirement that an entity engaged in the retail sale of cigarettes or other tobacco products obtain a retail tobacco permit. The retail tobacco permit facilitates the enforcement of chapter 245, HRS, by providing a known and measurable list of entities engaged in the retail sale of cigarettes and other tobacco products. There are currently over 1,300 entities in the State presently engaged in the retail sale of cigarettes and other tobacco products that have applied for and received a retail tobacco permit issued by the Department of Taxation. The current statute allows for the inspection of records and invoices that are to be kept by the retail tobacco permit holder in order to facilitate a determination of the proper source of cigarettes and tobacco products as well as payment of all taxes. The bill

requires that a permit be acquired for each location where cigarettes are sold at retail.

Second, the retail tobacco permit program has resulted in an increase in taxes being collected in the area of other tobacco products. Beginning December 1, 2006, every retailer engaged in the retail sale of cigarettes and other tobacco products was required to obtain a retail tobacco permit¹. In addition, every holder of a retail tobacco permit is required to keep a complete and accurate record of the permit holder's cigarette or tobacco product inventory. This requirement is meant as a tool to make sure that all of the tobacco products sold at retail are compliant and that all tobacco taxes are paid. It is interesting to note that for fiscal year 2006-2007 the Department of Taxation reports tobacco taxes from tobacco products other than cigarettes to be \$5,587,849, which represents an increase in taxes of \$3,029,716 over the \$2,558,133 collected in fiscal year 2005-2006. While there has not been an increase in tax rate for the other tobacco products and in light of the amount of other tobacco product revenues reported in prior years, a reasonable inference may be made that the retail permit requirements have had a positive impact on tax revenues.

Third, the retail tobacco permit program facilitates the collection of cigarette taxes by making it clear that no retailer or cigarette vending machine operator shall purchase any pack of cigarettes without the appropriate tax stamp being affixed to the bottom of each pack of cigarettes as required by chapter 245. In fiscal year 2006-2007 cigarette tax revenues were reported by the Department of Taxation as being \$88,771,666, an increase of

¹ Section 245-2.5, Hawaii Revised Statutes.

\$3,069,578, over the fiscal year 2005-2006 reported revenues of \$85,702,088.

Impact on the public: We note that retail licensing is not a unique concept. Retail licensing or permitting is common in other jurisdictions. The continuation of the retail tobacco permit requirements are necessary to assure compliance with and enforcement of chapter 245 and related statutes, thus assuring continued receipt of the full measure of cigarette tax revenues via increased compliance with the cigarette tax requirements of chapter 245. Effective monitoring, enforcement, and administration will have the further benefit of curbing the sale of contraband cigarettes to minors. Multiple convictions for violations of chapter 245 will provide a basis for the Department of Taxation to consider whether a retail tobacco permit should be renewed, suspended, or revoked. Similarly, multiple convictions for the sale of cigarettes or tobacco products to minors under section 709-908, HRS, may be a consideration along with other violations of chapter 245 as a basis to suspend or revoke a retail tobacco permit.

Impact on the department and other agencies: Basing the monitoring and enforcement efforts with the Department of the Attorney General as opposed to having this effort handled by the various state departments saves fiscal resources, and lends itself to a consistent, focused approach.

The requirement that the Department of Taxation issue retail permits is adding another responsibility to the department. Permitting of retail businesses is nothing new to the Department of Taxation. Section 243-3(a), HRS, calls for the retail permitting of the retail sale of fuel and section 244D-2(a), HRS, calls for a permit in order to engage in the sale of liquor.

Further, the requirement that the Department of Taxation suspend or revoke a license or permit may impact on resources and personnel. Currently both sections 243-3(e) and 244D-2(d), HRS, address revocation and or suspension of permits under the fuel and liquor tax statutes. We note that administrative rules have been drafted and published to facilitate enforcement of the retail tobacco permit program. Due to the additional permit workload additional positions have been added to the Department of Taxation's licensing section.

GENERAL FUND: Increased fees and cigarette and tobacco tax revenues for the general fund. Increased expense of approximately \$140,000 per year to be incurred by the Department of Taxation to implement and administer the retail tobacco permit program. At the current fee of \$20 per permit \$27,595 was collected in fiscal year 2006-2007.

OTHER FUNDS: With increased sale of taxed cigarettes there will be an increase to the special funds that are based upon the application of tax stamps.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Department of Taxation.

EFFECTIVE DATE: Upon approval.