

JAN 26 2009

S.B. NO. 847

A BILL FOR AN ACT

RELATING TO TOBACCO.

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

1 SECTION 1. The purpose of this Act is to continue the
2 requirement that businesses engaged in the sale of cigarettes
3 and other tobacco products at the retail level acquire a retail
4 tobacco permit from the Department of Taxation to engage in such
5 activity. Act 131, Session Laws of Hawaii 2005, which enacted
6 the requirement of a retail tobacco permit, contains a sunset
7 clause that will repeal Act 131 on July 1, 2009. The
8 legislature finds that the retail tobacco permit program has
9 facilitated the enforcement of chapter 245, Hawaii Revised
10 Statutes, and has resulted in an increase in taxes collected.
11 Consequently, this Act removes the sunset clause and keeps in
12 place the requirement that an entity engaged in the retail sale
13 of cigarettes or other tobacco products obtain a retail tobacco
14 permit.

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

17 "SECTION 9. This Act shall take effect upon its approval;
18 provided that[+]

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

3 ~~(2) This Act shall be repealed on July 1, 2009; provided~~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

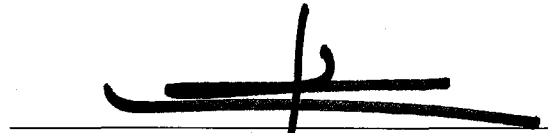
8 SECTION 3. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take effect on June 30, 2009.

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INTRODUCED BY:



13

BY REQUEST

Report Title:

Tobacco; Retail Permit

Description:

Removes sunset clause in Act 131, Session Laws of Hawaii 2005, which contains a repeal date of July 1, 2009, 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.

SB 847

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO TOBACCO.

PURPOSE: The purpose of this bill is to continue the requirement 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: Act 131, Session Laws of Hawaii 2005, which enacted the requirement of a retail tobacco permit, contains a sunset clause that will repeal Act 131 on July 1, 2009. This bill removes that 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, Hawaii Revised Statutes, by providing a known and measurable list of entities engaged in the retail sale of cigarettes and other tobacco products. There are currently over 1,561 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.

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 permit (section 245-2.5, Hawaii Revised Statutes). 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. In testimony submitted to the Legislature during the last session, the Department of Taxation projected that any loss in enforcement efforts in the monitoring of tobacco retailers could result in a revenue loss of approximately \$4,700,000 per year.

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. It is interesting to note that for fiscal year 2007-2008 the Department of Taxation reports cigarette tax revenues of \$101,560,051, which represents an increase of \$12,788,385 or a 12.6 percent increase, over the \$88,771,666 in cigarette tax revenues collected in fiscal year 2006-2007.

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 requirement is 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, Hawaii Revised Statutes, 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 nothing new to the Department of Taxation. 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 and 1,561 permits issued during fiscal year 2007-2008 approximately \$31,220 in permit fees were collected in fiscal year 2007-2008.

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:

June 30, 2009.