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## 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 exercise the  
2 police powers of the State for the purpose of protecting the  
3 health and welfare of its residents by prohibiting the sale and  
4 purchase of a dangerous commodity, namely, tobacco products.  
5 Specifically, this Act:

6           (1) Expands the prohibition against the sale and purchase  
7 of tobacco products to and by minors, under section  
8 709-908, Hawaii Revised Statutes, to also include the  
9 sale and purchase of tobacco products to and by any  
10 person; and

11           (2) Repeals several state programs related to the sale or  
12 taxation of tobacco products or with the tobacco  
13 master settlement agreement.

14       SECTION 2. Section 102-14, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

16           "(a) For the purpose of providing blind or visually  
17 handicapped persons, as defined in sections 235-1, 347-1, and  
18 347-2 with remunerative employment, enlarging their economic



1 opportunities and stimulating them to greater efforts in  
2 striving to make themselves self-supporting, blind or visually  
3 handicapped persons registered by the department of human  
4 services under section 347-6 and issued permits under subsection  
5 (c) shall be authorized to operate vending facilities and  
6 machines in any state or county public building for the vending  
7 of newspapers, periodicals, confections, [~~tobacco products,~~]  
8 foods, beverages, and such other articles or services prepared  
9 on or off the premises in accordance with all applicable laws."

10 SECTION 3. Section 132-16, Hawaii Revised Statutes, is  
11 amended by amending subsection (b) to read as follows:

12 "(b) In addition to adopting a state fire code pursuant to  
13 section 132-3, the state fire council shall[+]

14 ~~(1) Administer the requirements for reduced ignition~~  
15 ~~propensity cigarettes, in accordance with chapter~~  
16 ~~132C; and~~

17 ~~(2) Serve]~~ serve as a focal point through which all  
18 applications to the federal government for federal  
19 grant assistance for fire-related projects shall be  
20 made. Upon the receipt of any such federal grants,  
21 the state fire council shall administer those federal  
22 grants."



1 SECTION 4. Section 132-18, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) The administrator and administrative assistant shall  
4 assist the state fire council in carrying out the duties of the  
5 council under section 132-16, including:

6 (1) Administration of the daily operations of the state  
7 fire council;

8 (2) Administration of the adoption process of the state  
9 fire code by the counties;

10 (3) Submission of applications for and expending of  
11 federal grants and assistance for fire-related  
12 projects;

13 ~~[-(4) Administration of the reduced ignition propensity~~  
14 ~~cigarette program;~~

15 ~~[-(5)]~~ (4) Coordination of the statewide fire and life  
16 safety training, education, and data collection  
17 programs; and

18 ~~[-(6)]~~ (5) Implementation of other related duties as  
19 directed by the state fire council."

20 SECTION 5. Section 231-40.5, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1           "(a) Notwithstanding any other law to the contrary  
2 limiting the time for assessment of any tax, if a taxpayer omits  
3 an amount of:

- 4           (1) Gross income or gross proceeds of sale;
- 5           (2) Gross rental or gross rental proceeds;
- 6           (3) Price, value, or consideration paid or received for  
7           any property;
- 8           (4) Gross receipts; or
- 9           (5) Gallonage, tonnage, [~~cigarette count~~<sup>7</sup>] day, or other  
10           weight or measure applicable to any tax,

11 properly includable therein that is in excess of twenty-five per  
12 cent of the amount stated in the return, the tax may be assessed  
13 or a proceeding in court with respect to the tax without  
14 assessment may be begun without assessment, at any time within  
15 six years after the return was filed."

16           SECTION 6. Section 237-24, Hawaii Revised Statutes, is  
17 amended to read as follows:

18           "**§237-24 Amounts not taxable.** This chapter shall not  
19 apply to the following amounts:

- 20           (1) Amounts received under life insurance policies and  
21           contracts paid by reason of the death of the insured;



- 1       (2) Amounts received (other than amounts paid by reason of  
2           death of the insured) under life insurance, endowment,  
3           or annuity contracts, either during the term or at  
4           maturity or upon surrender of the contract;
- 5       (3) Amounts received under any accident insurance or  
6           health insurance policy or contract or under workers'  
7           compensation acts or employers' liability acts, as  
8           compensation for personal injuries, death, or  
9           sickness, including also the amount of any damages or  
10          other compensation received, whether as a result of  
11          action or by private agreement between the parties on  
12          account of the personal injuries, death, or sickness;
- 13       (4) The value of all property of every kind and sort  
14          acquired by gift, bequest, or devise, and the value of  
15          all property acquired by descent or inheritance;
- 16       (5) Amounts received by any person as compensatory damages  
17          for any tort injury to the person, or to the person's  
18          character reputation, or received as compensatory  
19          damages for any tort injury to or destruction of  
20          property, whether as the result of action or by  
21          private agreement between the parties (provided that  
22          amounts received as punitive damages for tort injury



- 1 or breach of contract injury shall be included in  
2 gross income);
- 3 (6) Amounts received as salaries or wages for services  
4 rendered by an employee to an employer;
- 5 (7) Amounts received as alimony and other similar payments  
6 and settlements;
- 7 (8) Amounts collected by distributors as fuel taxes on  
8 "liquid fuel" imposed by chapter 243, and the amounts  
9 collected by such distributors as a fuel tax imposed  
10 by any Act of the Congress of the United States;
- 11 (9) Taxes on liquor imposed by chapter 244D on dealers  
12 holding permits under that chapter;
- 13 ~~[(10)]~~ ~~The amounts of taxes on cigarettes and tobacco~~  
14 ~~products imposed by chapter 245 on wholesalers or~~  
15 ~~dealers holding licenses under that chapter and~~  
16 ~~selling the products at wholesale;~~
- 17 ~~[(11)]~~ (10) Federal excise taxes imposed on articles sold at  
18 retail and collected from the purchasers thereof and  
19 paid to the federal government by the retailer;
- 20 ~~[(12)]~~ (11) The amounts of federal taxes under chapter 37 of  
21 the Internal Revenue Code, or similar federal taxes,



1 imposed on sugar manufactured in the State, paid by  
2 the manufacturer to the federal government;

3 ~~[(13)]~~ (12) An amount up to, but not in excess of, \$2,000 a  
4 year of gross income received by any blind, deaf, or  
5 totally disabled person engaging, or continuing, in  
6 any business, trade, activity, occupation, or calling  
7 within the State; a corporation all of whose  
8 outstanding shares are owned by an individual or  
9 individuals who are blind, deaf, or totally disabled;  
10 a general, limited, or limited liability partnership,  
11 all of whose partners are blind, deaf, or totally  
12 disabled; or a limited liability company, all of whose  
13 members are blind, deaf, or totally disabled;

14 ~~[(14)]~~ (13) Amounts received by a producer of sugarcane from  
15 the manufacturer to whom the producer sells the  
16 sugarcane, where:

17 (A) The producer is an independent cane farmer, so  
18 classed by the Secretary of Agriculture under the  
19 Sugar Act of 1948 (61 Stat. 922, Chapter 519) as  
20 the Act may be amended or supplemented;

21 (B) The value or gross proceeds of the sale of the  
22 sugar, and other products manufactured from the



1                   sugarcane, are included in the measure of the tax  
2                   levied on the manufacturer under section 237-  
3                   13(1) or (2);

4                   (C) The producer's gross proceeds of sales are  
5                   dependent upon the actual value of the products  
6                   manufactured therefrom or the average value of  
7                   all similar products manufactured by the  
8                   manufacturer; and

9                   (D) The producer's gross proceeds of sales are  
10                  reduced by reason of the tax on the value or sale  
11                  of the manufactured products;

12                  [~~(15)~~] (14) Money paid by the State or eleemosynary child-  
13                  placing organizations to foster parents for their care  
14                  of children in foster homes;

15                  [~~(16)~~] (15) Amounts received by a cooperative housing  
16                  corporation from its shareholders in reimbursement of  
17                  funds paid by the corporation for lease rental, real  
18                  property taxes, and other expenses of operating and  
19                  maintaining the cooperative land and improvements;  
20                  provided that the cooperative corporation is a  
21                  corporation:



- 1 (A) Having one and only one class of stock
- 2 outstanding;
- 3 (B) Each of the stockholders of which is entitled
- 4 solely by reason of the stockholder's ownership
- 5 of stock in the corporation, to occupy for
- 6 dwelling purposes a house, or an apartment in a
- 7 building owned or leased by the corporation; and
- 8 (C) No stockholder of which is entitled (either
- 9 conditionally or unconditionally) to receive any
- 10 distribution not out of earnings and profits of
- 11 the corporation except in a complete or partial
- 12 liquidation of the corporation; and

13 [~~17~~] (16) Amounts received by a managed care support  
14 contractor of the TRICARE program that is established  
15 under title 10 United States Code chapter 55, as  
16 amended, for the actual cost or advancement to third  
17 party health care providers pursuant to a contract  
18 with the United States."

19 SECTION 7. Section 237-25, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:

21 "(a) Any provision of law to the contrary notwithstanding,  
22 there shall be exempted from, and excluded from the measures of,

1 the tax imposed by chapter 237 all sales, and the gross proceeds  
2 of all sales, of:

3 (1) Intoxicating liquor, as defined in chapter 281,  
4 hereafter sold by any person licensed under chapter  
5 281 to the United States (including any agency or  
6 instrumentality of the United States that is wholly  
7 owned or otherwise so constituted as to be immune from  
8 the levy of a tax under chapter 238 or 244D but not  
9 including national banks), or to any organization to  
10 which that sale is permitted by the proviso of "Class  
11 3" of section 281-31, located on any Army, Navy, or  
12 Air Force reservation, but the person making the sale  
13 shall nevertheless, within the meaning of chapters  
14 237, 244D, and 281 be deemed to be a licensed seller;

15 [~~2~~] ~~Tobacco products and cigarettes, as defined in chapter~~  
16 ~~245, sold by any person licensed under the chapter to~~  
17 ~~the United States (including any agency or~~  
18 ~~instrumentality thereof that is wholly owned or~~  
19 ~~otherwise so constituted as to be immune from the levy~~  
20 ~~of a tax under chapter 238 or 245 but not including~~  
21 ~~national banks), but the person making the sale shall~~



1 ~~nevertheless, within the meaning of chapters 237 and~~  
2 ~~245, be deemed to be a licensed seller;~~

3 ~~(3)]~~ (2) Other tangible personal property sold by any  
4 person licensed under this chapter to the United  
5 States (including any agency, instrumentality, or  
6 federal credit union thereof but not including  
7 national banks), and to any state-chartered credit  
8 union, but the person making such sale shall  
9 nevertheless, within the meaning of this chapter, be  
10 deemed a licensed seller; and

11 ~~[(4)]~~ (3) When the amount of property sold by a licensee  
12 turns upon the amount of the property sold through a  
13 vending machine or similar device to the customer  
14 using the device, there shall not be deemed to have  
15 occurred any sale covered by an exemption under  
16 paragraph (1) ~~[7]~~ or (2) ~~[7-or-(3)]~~."

17 SECTION 8. Section 238-3, Hawaii Revised Statutes, is  
18 amended by amending subsection (g) to read as follows:

19 "(g) The tax imposed by this chapter shall not apply to  
20 any intoxicating liquor as defined in chapter 244D ~~[and~~  
21 ~~cigarettes and tobacco products as defined in chapter 245]~~,  
22 imported into the State and sold to any person or common carrier



1 in interstate commerce, whether ocean-going or air, for  
2 consumption out-of-state by the person, crew, or passengers on  
3 the shipper's vessels or airplanes."

4 SECTION 9. Section 321-22.5, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) There is established within the state treasury a  
7 special fund to be known as the trauma system special fund to be  
8 administered and expended by the department of health. The fund  
9 shall consist of:

10 (1) Surcharges collected pursuant to sections 291-15,  
11 291C-2, and 291E-7;

12 [~~2~~] ~~Cigarette tax revenues designated under section 245-~~  
13 ~~15,~~

14 ~~(3)]~~ (2) Federal funds granted by Congress or executive  
15 order for the purpose of this chapter; provided that  
16 the acceptance and use of federal funds shall not  
17 commit state funds for services and shall not place an  
18 obligation upon the legislature to continue the  
19 purpose for which the federal funds are made  
20 available;

21 [~~4~~] (3) Funds appropriated by the legislature for this  
22 purpose, including grants-in-aid;



1        [~~(5)~~] (4) Grants, donations, and contributions from private  
2                    or public sources for the purposes of the trauma  
3                    system special fund; and

4        [~~(6)~~] (5) Interest on and other income from the fund, which  
5                    shall be separately accounted for.

6            Moneys in the trauma system special fund shall not lapse at  
7 the end of the fiscal year. Expenditures from the trauma system  
8 special fund shall be exempt from chapters 103D and 103F."

9            SECTION 10. Section 321-234, Hawaii Revised Statutes, is  
10 amended by amending subsection (c) to read as follows:

11            "(c) Fees remitted pursuant to section 249-31, [~~cigarette~~  
12 ~~tax revenues designated under section 245-15,~~] interest and  
13 investment earnings attributable to the moneys in the special  
14 fund, legislative appropriations, and grants, donations, and  
15 contributions from private or public sources for the purposes of  
16 the fund, shall be deposited into the special fund."

17            SECTION 11. Section 328-1, Hawaii Revised Statutes, is  
18 amended by amending the definition of "consumer commodity" to  
19 read as follows:

20            "'Consumer commodity" means any food, drug, cosmetic, or  
21 device as those terms are defined by this part or the Federal  
22 Act. The term shall not include:



- 1           (1) Any meat or meat products or poultry or poultry  
2           products, except as these products are sold at retail  
3           in stores and restaurants in normal retail quantities;  
4           provided that any labeling requirements imposed under  
5           authority of this part shall comply with those  
6           established by the Secretary of Agriculture, United  
7           States Department of Agriculture;
- 8           ~~[-(2) Any tobacco or tobacco products;~~
- 9           ~~[-(3)]~~ (2) Any commodity subject to packaging and labeling  
10          requirements imposed by the Secretary of Agriculture  
11          pursuant to the Federal Insecticide, Fungicide, and  
12          Rodenticide Act or the provisions of the eighth  
13          paragraph under the heading "Bureau of Animal  
14          Industry" of the Act of March 4, 1913 (37 Stat. 832-  
15          833; 21 U.S.C. §§151-158), commonly known as the  
16          Virus-Serum-Toxin Act;
- 17          ~~[-(4)]~~ (3) Any drug subject to section 503(b)(1) or 506 of  
18          the Federal Food, Drug, and Cosmetic Act (21 U.S.C.  
19          §§353(b)(1) and 356);
- 20          ~~[-(5)]~~ (4) Any beverage subject to or complying with  
21          packaging and labeling requirements imposed under the



1 Federal Alcohol Administration Act (27 U.S.C. §§201-  
2 219a); or

3 [~~4~~] (5) Any commodity subject to the Federal Seed Act (7  
4 U.S.C. §§1551-1611)."

5 SECTION 12. Section 328J-1, Hawaii Revised Statutes, is  
6 amended by deleting the definition of "retail tobacco store".

7 [~~"Retail tobacco store" means a retail store used  
8 primarily for the sale of tobacco products and accessories."~~]

9 SECTION 13. Section 328J-7, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "§328J-7 **Exceptions.** Notwithstanding any other provision  
12 of this chapter to the contrary, the following areas shall be  
13 exempt from the provisions of sections 328J-3, 328J-4, and  
14 328J-5:

15 (1) Private residences, except when used as a licensed  
16 child care, adult day care, or health care facility;

17 (2) Hotel and motel rooms that are rented to guests and  
18 are designated as smoking rooms; provided that not  
19 more than twenty per cent of rooms rented to guests in  
20 a hotel or motel may be so designated. All smoking  
21 rooms on the same floor shall be contiguous and smoke  
22 from these rooms shall not infiltrate into areas where



1 smoking is prohibited under this chapter. The status  
2 of rooms as smoking or nonsmoking may not be changed,  
3 except to add additional nonsmoking rooms;

4 ~~[(3)]~~ ~~Retail tobacco stores, provided that smoke from these~~  
5 ~~places shall not infiltrate into areas where smoking~~  
6 ~~is prohibited under this chapter;~~

7 ~~[(4)]~~ (3) Private and semiprivate rooms in nursing homes  
8 and long-term care facilities that are occupied by one  
9 or more persons, all of whom are smokers and have  
10 requested in writing to be placed in a room where  
11 smoking is permitted; provided that smoke from these  
12 places shall not infiltrate into areas where smoking  
13 is prohibited under this chapter;

14 ~~[(5)]~~ (4) Outdoor areas of places of employment except  
15 those covered by the provisions of sections 328J-3 and  
16 328J-5;

17 ~~[(6)]~~ (5) All areas covered by this chapter when smoking is  
18 part of a production being filmed; and

19 ~~[(7)]~~ (6) State correctional facilities; provided that  
20 smoking shall only be authorized for employees and  
21 volunteers of a correctional facility in an area  
22 outside the secure confines of a correctional facility





1           restricted from access by inmates or detainees that  
2           has been designated by the warden of a correctional  
3           facility."

4           SECTION 14. Section 328J-17, Hawaii Revised Statutes, is  
5 amended to read as follows:

6           "[+]§328J-17[+] Distribution of sample cigarette or  
7 tobacco products, cigarette or tobacco promotional materials,  
8 and coupons redeemable for cigarette or tobacco products or  
9 promotional materials. (a) It is unlawful for any person to  
10 distribute samples of cigarette or tobacco products, or coupons  
11 redeemable for cigarette or tobacco products, in or on any  
12 public street, sidewalk, or park, or within one thousand feet of  
13 any elementary, middle or intermediate, or high school.

14           (b) It is unlawful for any person to distribute cigarette  
15 or tobacco promotional materials, or coupons redeemable for  
16 cigarette or tobacco promotional materials, within one thousand  
17 feet of any elementary, middle or intermediate, or high school.

18           ~~[-(c) This section shall not apply.~~

19           ~~[-(1) Within private commercial establishments, such as  
20 stores and restaurants, where tobacco products are  
21 sold, as long as distribution is not visible to the  
22 public from outside the establishment; or~~



1       ~~(2) To commercial establishments where access to the~~  
2               ~~premises by persons under eighteen years of age is~~  
3               ~~prohibited by law.~~

4       ~~(d)]~~ (c) Any person convicted of violating this section  
5 shall be fined not more than \$1,000.

6       ~~[-e)]~~ (d) As used in this section:

7               "Distribute" means to pass out to members of the general  
8 public free of charge for the exclusive purpose of promoting a  
9 product."

10       SECTION 15. Section 329-1, Hawaii Revised Statutes, is  
11 amended by amending the definition of "drug paraphernalia" to  
12 read as follows:

13       "Drug paraphernalia" means all equipment, products, and  
14 materials of any kind which are used, primarily intended for  
15 use, or primarily designed for use, in planting, propagating,  
16 cultivating, growing, harvesting, manufacturing, compounding,  
17 converting, producing, processing, preparing, testing,  
18 analyzing, packaging, repackaging, storing, containing,  
19 concealing, injecting, ingesting, inhaling, or otherwise  
20 introducing into the human body a controlled substance in  
21 violation of this chapter. It includes but is not limited to:



- 1           (1) Kits used, primarily intended for use, or primarily  
2           designed for use in planting, propagating,  
3           cultivating, growing, or harvesting of any species of  
4           plant which is a controlled substance or from which a  
5           prohibited controlled substance can be derived;
- 6           (2) Kits used, primarily intended for use, or primarily  
7           designed for use in manufacturing, compounding,  
8           converting, producing, processing, or preparing  
9           prohibited controlled substances;
- 10          (3) Isomerization devices used, primarily intended for  
11          use, or primarily designed for use in increasing the  
12          potency of any species of plant which is a prohibited  
13          controlled substance;
- 14          (4) Testing equipment used, primarily intended for use, or  
15          primarily designed for use in identifying, or in  
16          analyzing the strength, effectiveness, or purity of  
17          prohibited controlled substances;
- 18          (5) Scales and balances used, primarily intended for use,  
19          or primarily designed for use in weighing or measuring  
20          prohibited controlled substances;
- 21          (6) Diluents and adulterants; such as quinine  
22          hydrochloride, mannitol, mannite, dextrose, and



- 1 lactose, used, primarily intended for use, or  
2 primarily designed for use in cutting prohibited  
3 controlled substances;
- 4 (7) Separation gins and sifters used, primarily intended  
5 for use, or primarily designed for use in removing  
6 twigs and seeds from, or in otherwise cleaning or  
7 refining, prohibited marijuana;
- 8 (8) Blenders, bowls, containers, spoons, and mixing  
9 devices used, primarily intended for use, or primarily  
10 designed for use in compounding prohibited controlled  
11 substances;
- 12 (9) Capsules, balloons, envelopes, and other containers  
13 used, primarily intended for use, or primarily  
14 designed for use in packaging small quantities of  
15 prohibited controlled substances;
- 16 (10) Containers and other objects used, primarily intended  
17 for use, or primarily designed for use in storing or  
18 concealing prohibited controlled substances;
- 19 (11) Hypodermic syringes, needles, and other objects used,  
20 primarily intended for use, or primarily designed for  
21 use in parenterally injecting prohibited controlled  
22 substances into the human body;



1           (12) Objects used, primarily intended for use, or primarily  
2           designed for use in ingesting, inhaling, or otherwise  
3           introducing prohibited marijuana, cocaine, hashish,  
4           hashish oil, or methamphetamine into the human body,  
5           such as:

6           (A) Metal, wooden, acrylic, glass, stone, plastic, or  
7           ceramic pipes with or without screens, permanent  
8           screens, hashish heads, or punctured metal bowls;

9           (B) Water pipes;

10          (C) Carburetion tubes and devices;

11          (D) Smoking and carburetion masks;

12          (E) Roach clips: meaning objects used to hold  
13          burning materials, such as marijuana cigarettes,  
14          that have become too small or too short to be  
15          held in the hand;

16          (F) Miniature cocaine spoons, and cocaine vials;

17          (G) Chamber pipes;

18          (H) Carburetor pipes;

19          (I) Electric pipes;

20          (J) Air-driven pipes;

21          (K) Chillums;

22          (L) Bongs; and



1 (M) Ice pipes or chillers.

2 In determining whether an object is drug paraphernalia, a  
3 court or other authority should consider, in addition to all  
4 other logically relevant factors, the following:

5 (1) Statements by an owner or by anyone in control of the  
6 object concerning its use;

7 (2) Prior convictions, if any, of an owner, or of anyone  
8 in control of the object, under any state or federal  
9 law relating to any controlled substance;

10 (3) The proximity of the object, in time and space, to a  
11 direct violation of this chapter;

12 (4) The proximity of the object to controlled substances;

13 (5) The existence of any residue of controlled substances  
14 on the object;

15 (6) Direct or circumstantial evidence of the intent of an  
16 owner, or of anyone in control of the object, to  
17 deliver it to a person or persons whom the owner or  
18 person in control knows, or should reasonably know,  
19 intend to use the object to facilitate a violation of  
20 this chapter; the innocence of an owner, or of anyone  
21 in control of the object, as to a direct violation of  
22 this chapter shall not prevent a finding that the



- 1 object is intended for use, or designed for use as
- 2 drug paraphernalia;
- 3 (7) Instructions, oral or written, provided with the
- 4 object concerning its use;
- 5 (8) Descriptive materials accompanying the object which
- 6 explain or depict its use;
- 7 (9) National and local advertising concerning its use;
- 8 (10) The manner in which the object is displayed for sale;
- 9 (11) Whether the owner, or anyone in control of the object,
- 10 is a legitimate supplier of like or related items to
- 11 the community [~~such as a licensed distributor or~~
- 12 ~~dealer of tobacco products~~];
- 13 (12) Direct or circumstantial evidence of the ratio of
- 14 sales of the object or objects to the total sales of
- 15 the business enterprise;
- 16 (13) The existence and scope of legitimate uses for the
- 17 object in the community; and
- 18 (14) Expert testimony concerning its use."

19 SECTION 16. Section 607-26, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "[~~§~~§607-26~~§~~] **Limit on supersedeas bond.** (a) In any  
22 civil action brought under any legal theory, the amount of a



1 supersedeas bond or other form of security necessary to stay  
2 execution of a judgment granting legal, equitable, or any other  
3 form of relief during the entire course of all appeals or  
4 discretionary review of that judgment by all appellate courts  
5 shall be set in accordance with applicable law, except that:

6 (1) The total amount of the supersedeas bond or other form  
7 of security that is required of any party shall not  
8 exceed \$25,000,000, regardless of the amount or any  
9 other provision of the judgment that is appealed;

10 (2) If the party posting the supersedeas bond is a "small  
11 business concern" as defined by section 210-1, the  
12 supersedeas bond shall not exceed \$1,000,000; and

13 (3) If a party in whose favor the judgment has been  
14 entered proves to a court by a preponderance of the  
15 evidence that an appellant who has posted a  
16 supersedeas bond is intentionally dissipating assets  
17 outside the ordinary course of its business for the  
18 purpose of avoiding payment of the judgment, a court  
19 may require the appellant to post a supersedeas bond  
20 in an amount up to the total amount of the judgment  
21 appealed. Dissipation of assets shall not include  
22 expenditures, including payments to the owners of a





1           business, of the kind that the appellant made in the  
2           regular course of business prior to entry of the  
3           judgment being appealed.

4           ~~[(b) This section shall not apply to the limitation on~~  
5           ~~bonds for tobacco master settlement agreement signatories and~~  
6           ~~their successors and affiliates under section 328L-7.~~

7           ~~(e)]~~ (b) For purposes of this section:

8           "Civil action" includes, without limitation, cases  
9           involving individual, aggregated, class action, or otherwise  
10          joined claims.

11          "Legal, equitable, or any other form of relief" means all  
12          forms of relief, including without limitation, compensatory,  
13          special, punitive, exemplary or other damages, injunctive  
14          relief, or any other form of relief."

15          SECTION 17. Section 706-650, Hawaii Revised Statutes, is  
16          amended by amending subsection (1) to read as follows:

17          "(1) In addition to any disposition authorized by chapter  
18          706 or 853, any person who is:

19          (a) Convicted of an offense under part IV of chapter 712,  
20          except ~~[sections]~~ section 712-1250.5 ~~[and 712-1257];~~

21          (b) Convicted under section 707-702.5;



- 1 (c) Convicted of a felony or misdemeanor offense under  
2 part IV of chapter 329;
- 3 (d) Convicted under section 291-3.1, 291-3.2, 291-3.3,  
4 291E-61, or 291E-61.5;
- 5 (e) Found in violation of part III of chapter 291E; or
- 6 (f) Charged with any offense under paragraphs (a) to (d)  
7 who has been granted a deferred acceptance of guilty  
8 or no contest plea;
- 9 shall be ordered to pay a monetary assessment under subsection  
10 (2), except as provided under subsection (6)."

11 SECTION 18. Section 706-660, Hawaii Revised Statutes, is  
12 amended by amending subsection (2) to read as follows:

13 "(2) A person who has been convicted of a class B or class  
14 C felony for any offense under part IV of chapter 712 may be  
15 sentenced to an indeterminate term of imprisonment; provided  
16 that this subsection shall not apply to sentences imposed under  
17 sections 706-606.5, 706-660.1, 712-1240.5, 712-1240.8, 712-1242,  
18 712-1245, 712-1249.5, 712-1249.6, and 712-1249.7 [~~and 712-~~  
19 ~~1257~~].

20 When ordering a sentence under this subsection, the court  
21 shall impose a term of imprisonment which shall be as follows:



1 (a) For a class B felony--ten years or less, but not less  
2 than five years; and

3 (b) For a class C felony--five years or less, but not less  
4 than one year.

5 The minimum length of imprisonment shall be determined by the  
6 Hawaii paroling authority in accordance with section 706-669."

7 SECTION 19. Section 709-908, Hawaii Revised Statutes, is  
8 amended to read as follows:

9 "§709-908 Tobacco and electronic smoking devices

10 prohibited[~~+-minors~~]. (1) It shall be unlawful to sell or  
11 furnish tobacco in any shape or form, including chewing tobacco  
12 and snuff, or an electronic smoking device [~~to a minor under~~  
13 ~~eighteen years of age~~].

14 (2) Signs using the statement, "The sale of tobacco  
15 products or electronic smoking devices [~~to persons under~~  
16 ~~eighteen~~] is prohibited", shall be posted on or near any vending  
17 machine in letters at least one-half inch high and at or near  
18 the point of sale of any other location where tobacco products  
19 or electronic smoking devices [~~are~~] were formerly sold in  
20 letters at least one-half inch high.

21 (3) It shall be unlawful for [~~a minor under eighteen years~~  
22 ~~of age~~] any person to purchase any tobacco product, as described



1 under subsection (1), or an electronic smoking device, as  
2 described under subsection (5). [~~This provision does not apply~~  
3 ~~if a person under the age of eighteen, with parental~~  
4 ~~authorization, is participating in a controlled purchase as part~~  
5 ~~of a law enforcement activity or a study authorized by the~~  
6 ~~department of health under the supervision of law enforcement to~~  
7 ~~determine the level of incidence of tobacco or electronic~~  
8 ~~smoking devices sales to minors.]~~

9 (4) Any person who violates subsection (1) or (2), or  
10 both, shall be fined \$500 for the first offense. Any subsequent  
11 offenses shall subject the person to a fine not less than \$500  
12 nor more than \$2,000. Any [~~minor under eighteen years of age]~~  
13 person who violates subsection (3) shall be fined \$10 for the  
14 first offense. Any subsequent offense shall subject the  
15 violator to a fine of \$50, no part of which shall be suspended,  
16 or the person shall be required to perform not less than forty-  
17 eight hours nor more than seventy-two hours of community service  
18 during hours [~~when the person is not employed and is not~~  
19 ~~attending school]~~.

20 (5) For the purposes of this section:

21 "Electronic smoking device" means any electronic product  
22 that can be used to simulate smoking in the delivery of nicotine



1 or other substances to the person inhaling from the device,  
2 including but not limited to an electronic cigarette, electronic  
3 cigar, electronic cigarillo, or electronic pipe, and any  
4 cartridge or other component of the device or related product."

5 SECTION 20. Section 712A-5, Hawaii Revised Statutes, is  
6 amended by amending subsection (1) to read as follows:

7 "(1) The following is subject to forfeiture:

8 (a) Property described in a statute authorizing  
9 forfeiture;

10 (b) Property used or intended for use in the commission  
11 of, attempt to commit, or conspiracy to commit a  
12 covered offense, or which facilitated or assisted such  
13 activity;

14 (c) Any firearm which is subject to forfeiture under any  
15 other subsection of this section or which is carried  
16 during, visible, or used in furtherance of the  
17 commission, attempt to commit, or conspiracy to commit  
18 a covered offense, or any firearm found in proximity  
19 to contraband or to instrumentalities of an offense;

20 [~~(d)~~ Contraband or untaxed cigarettes in violation of  
21 chapter 245, shall be seized and summarily forfeited



1 ~~to the State without regard to the procedures set~~  
2 ~~forth in this chapter;~~

3 ~~[(e)]~~ (d) Any proceeds or other property acquired,  
4 maintained, or produced by means of or as a result of  
5 the commission of the covered offense;

6 ~~[(f)]~~ (e) Any property derived from any proceeds which were  
7 obtained directly or indirectly from the commission of  
8 a covered offense;

9 ~~[(g)]~~ (f) Any interest in, security of, claim against, or  
10 property or contractual right of any kind affording a  
11 source of influence over any enterprise which has been  
12 established, participated in, operated, controlled, or  
13 conducted in order to commit a covered offense;

14 ~~[(h)]~~ (g) All books, records, bank statements, accounting  
15 records, microfilms, tapes, computer data, or other  
16 data which are used, intended for use, or which  
17 facilitated or assisted in the commission of a covered  
18 offense, or which document the use of the proceeds of  
19 a covered offense."

20 SECTION 21. Section 712A-16, Hawaii Revised Statutes, is  
21 amended by amending subsection (1) to read as follows:



1           "(1) All property forfeited to the State under this  
2 chapter shall be transferred to the attorney general who:  
3           (a) May transfer property, other than currency, which  
4           shall be distributed in accordance with subsection (2)  
5           to any local or state government entity, municipality,  
6           or law enforcement agency within the State;  
7           (b) May sell forfeited property to the public by public  
8           sale; provided that for leasehold real property:  
9           (i) The attorney general shall first offer the holder  
10           of the immediate reversionary interest the right  
11           to acquire the leasehold interest and any  
12           improvements built or paid for by the lessee for  
13           the then fair market value of the leasehold  
14           interest and improvements. The holder of the  
15           immediate reversionary interest shall have thirty  
16           days after receiving written notice within which  
17           to accept or reject the offer in writing;  
18           provided that the offer shall be deemed to be  
19           rejected if the holder of the immediate  
20           reversionary interest has not communicated  
21           acceptance to the attorney general within the  
22           thirty-day period. The holder of the immediate



1           reversionary interest shall have thirty days  
2           after acceptance to tender to the attorney  
3           general the purchase price for the leasehold  
4           interest and any improvements, upon which tender  
5           the leasehold interest and improvements shall be  
6           conveyed to the holder of the immediate  
7           reversionary interest.

8           (ii) If the holder of the immediate reversionary  
9           interest fails to exercise the right of first  
10          refusal provided in subparagraph (i), the  
11          attorney general may proceed to sell the  
12          leasehold interest and any improvements by public  
13          sale.

14          (iii) Any dispute between the attorney general and the  
15          holder of the immediate reversionary interest as  
16          to the fair market value of the leasehold  
17          interest and improvements shall be settled by  
18          arbitration pursuant to chapter 658A;

19          (c) May sell or destroy all raw materials, products, and  
20          equipment of any kind used or intended for use in  
21          manufacturing, compounding, or processing a controlled





1 substance [~~or any untaxed cigarettes in violation of~~  
2 ~~chapter 245~~];

3 (d) May compromise and pay valid claims against property  
4 forfeited pursuant to this chapter; or

5 (e) May make any other disposition of forfeited property  
6 authorized by law."

7 SECTION 22. The following chapters of the Hawaii Revised  
8 Statutes are repealed:

9 (1) Chapter 132C, relating to the reduced ignition  
10 propensity cigarettes law;

11 (2) Chapter 245, relating to the cigarette tax and tobacco  
12 tax law;

13 (3) Chapter 328L, relating to the Hawaii tobacco  
14 settlement moneys;

15 (4) Chapter 486P, relating to tobacco products reporting;  
16 and

17 (5) Chapter 675, relating to the tobacco liability act.

18 SECTION 23. Section 28-15, Hawaii Revised Statutes, is  
19 repealed.

20 [~~§28-15 Tobacco enforcement special fund. (a) There is~~  
21 ~~established in the state treasury the tobacco enforcement~~  
22 ~~special fund, into which shall be deposited the tobacco~~

1 ~~settlement moneys as provided by section 328L-2(a), the~~  
2 ~~allocated portion of the stamp fee designated to pay for the~~  
3 ~~cost of enforcing the cigarette tax stamp as provided by section~~  
4 ~~245-26, and fines as provided for by section 245-41.~~

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

9 ~~(1) The Master Settlement Agreement as defined in chapter~~  
10 ~~675 and any other statutes or programs relating to~~  
11 ~~that agreement;~~

12 ~~(2) Chapter 675;~~

13 ~~(3) Tobacco prevention programs;~~

14 ~~(4) The cigarette tax stamp as defined in chapter 245 and~~  
15 ~~any other statutes or programs relating to that~~  
16 ~~chapter;~~

17 ~~(5) Chapter 245;~~

18 ~~(6) Chapter 486P and any other statutes or programs~~  
19 ~~relating to that chapter; and~~

20 ~~(7) Any other requirement deemed necessary to carry out~~  
21 ~~the purposes of the fund.~~



1       ~~(c) All unencumbered and unexpended moneys in excess of~~  
2       ~~\$500,000 remaining on balance in the tobacco enforcement special~~  
3       ~~fund at the close of June 30 of each year shall lapse to the~~  
4       ~~credit of the state general fund.~~

5       ~~(d) The department of the attorney general shall submit a~~  
6       ~~report to the legislature, no later than twenty days prior to~~  
7       ~~the convening of each regular session, providing an accounting~~  
8       ~~of the receipts and expenditures of the fund." ]~~

9       SECTION 24. Section 328J-18, Hawaii Revised Statutes, is  
10      repealed.

11      ~~[ " [§328J-18] Placement of cigarettes and tobacco products.~~

12      ~~(a) Except as otherwise provided under this section, a retailer~~  
13      ~~may sell cigarettes, smokeless tobacco, and all other tobacco~~  
14      ~~products only in a direct, face to face exchange between the~~  
15      ~~retailer and the consumer. Examples of methods of sale that are~~  
16      ~~not permitted include vending machines and self service~~  
17      ~~displays.~~

18      ~~(b) This section shall not apply to:~~

19      ~~(1) A duty free sales enterprise selling duty free~~  
20              ~~merchandise in accordance with the provisions of title~~  
21              ~~19 United States Code section 1555(b), and any~~  
22              ~~implementing regulations; and~~



1       ~~(2) Retail tobacco stores, bars, or any other~~  
2           ~~establishment for which the minimum age for admission~~  
3           ~~is eighteen." ]~~

4       SECTION 25. Section 712-1257, Hawaii Revised Statutes, is  
5       repealed.

6       ~~[ "§712-1257 Prohibited cigarette sales of less than~~  
7       ~~twenty. (1) It shall be unlawful to sell single cigarettes or~~  
8       ~~packs of cigarettes containing less than twenty cigarettes. It~~  
9       ~~further shall be unlawful to sell cigarettes other than in~~  
10       ~~sealed packages originating with the manufacturer and bearing~~  
11       ~~the health warning required by law.~~

12       ~~(2) As used in this section, "to sell" includes: to~~  
13       ~~solicit and receive an order for; to have, or keep, or offer, or~~  
14       ~~expose for sale; to deliver for value or in any other way than~~  
15       ~~purely gratuitously; to peddle; to keep with intent to sell; and~~  
16       ~~to traffic in.~~

17       ~~(3) "Sale" includes every act of selling as defined in~~  
18       ~~[subsection (2)].~~

19       ~~(4) Any person who violates subsection (1), shall be fined~~  
20       ~~not more than \$2,500 for the first offense. Any subsequent~~  
21       ~~offense shall subject the person to a fine of not less than \$100~~



1 ~~and not more than \$5,000. Any person who knowingly violates~~  
2 ~~subsection (1) shall be guilty of a class C felony."]~~

3 SECTION 26. On January 1, 2016, and thereafter, any moneys  
4 collected pursuant to chapter 245, Hawaii Revised Statutes,  
5 relating to the cigarette tax and tobacco tax law, shall be paid  
6 into the state treasury as state realizations and shall not be  
7 disbursed as provided under section 245-15, Hawaii Revised  
8 Statutes.

9 SECTION 27. (a) On January 1, 2016, the balance of funds  
10 in the following special funds or trust fund shall lapse to the  
11 general fund:

12 (1) Tobacco enforcement special fund established under  
13 section 28-15, Hawaii Revised Statutes, and  
14 administered by the department of the attorney  
15 general;

16 (2) Hawaii tobacco settlement special fund established  
17 under section 328L-2, Hawaii Revised Statute, and  
18 administered by the department of health;

19 (3) Emergency and budget reserve fund established under  
20 section 328L-3, Hawaii Revised Statutes, and  
21 administered by the director of finance; and



1           (4) Hawaii tobacco prevention and control trust fund  
2           established under section 328L-5, Hawaii Revised  
3           Statutes, and administered by the private entity  
4           selected by the director of health.

5           SECTION 28. In submitting the executive budget request to  
6 the legislature for the regular session of 2017, the governor,  
7 with the assistance of the director of finance, shall revise any  
8 program ID that is affected by the repeal of programs under this  
9 Act, including program IDs with the abbreviations "HTH" or  
10 "BUF".

11          SECTION 29. This Act does not affect rights and duties  
12 that matured, penalties that were incurred, and proceedings that  
13 were begun before its effective date.

14          SECTION 30. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

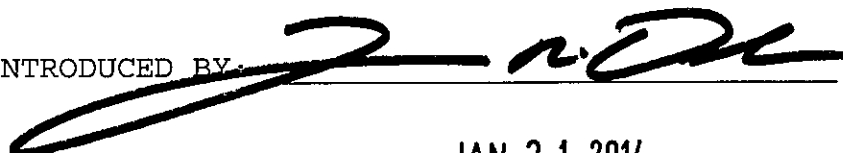
16          SECTION 31. This Act shall take effect on January 1, 2016;  
17 provided that the amendments made under section 6 of this Act to  
18 section 237-24, Hawaii Revised Statutes, shall not be repealed  
19 when section 237-24, Hawaii Revised Statutes, is repealed and  
20 reenacted on December 31, 2018, pursuant to section 4 of Act 70,



1 Session Laws of Hawaii 2009, as amended by section 2 of Act 164,  
2 Session Laws of Hawaii 2013.

3

INTRODUCED BY:

A handwritten signature in black ink, appearing to read "J. R. DeLoach", is written over a horizontal line.

JAN 21 2014



# H.B. NO. 2110

**Report Title:**

Tobacco Products; Sale; Tax; Settlement Agreement; Programs

**Description:**

Expands the prohibition against the sale and purchase of tobacco products to and by minors to include all persons. Repeals laws related to the sale or taxation of tobacco products and the tobacco master settlement agreement. Retains in the general fund cigarette tax revenues. Transfers balances of repealed special and trust funds to the general fund. Requires the governor to revise affected program IDs. Effective 1/1/16.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

