

A Bill for an Act Relating to Bulk Transfers.

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

SECTION 1. Section 237-43, Hawaii Revised Statutes, is amended to read as follows:

“§237-43 **Bulk sales; transfers; penalties.** (a) In any case of the sale or transfer in bulk of the whole, or a large part of a stock of merchandise and fixtures, or merchandise, or fixtures, or other assets or property of a business, otherwise than in the ordinary course of trade, business, commerce, or sales, the seller shall make a written and verified report of the bulk sale or transfer to the department not later than ten days after the possession, or the control, or the title of the property, or any part thereof, has passed to the purchaser. The report shall contain the name and address of the purchaser, a brief description of the property sold and the purchase price, the date when the sale or transfer is to be or was consummated, and such other facts as the department may require. The purchaser may make the report for the seller.

(b) The purchaser of the property shall withhold payment of the purchase price until the receipt of a certificate from the department to the effect that all taxes, penalties, and interest levied or accrued under title 14 for taxes administered by the department against the seller, or constituting a lien upon the property, have been paid. A certificate shall not be issued while the department investigates (including by audit) whether taxes have been levied or accrued against the seller. The certificate shall show on its face that the department has had notice of the bulk sale or transfer, and shall also show the names of the seller and purchaser, a brief description of the property sold or transferred, and the date of consummation of the sale or transfer, together with such other information as the department shall prescribe.

(c) If the required report of the bulk sale or transfer is not made, or if the taxes, penalties, and interest shall not be paid within twenty days after the sale or transfer, or within such further time as the department may allow, the purchaser shall be personally liable to pay to the State the amount of all taxes, penalties, and interest levied or accrued under title 14 for taxes administered by the department against the seller or constituting a lien upon the property, together with penalties and interest thereafter accruing, not exceeding, however, the amount of the purchase price. The issuance of a certificate in the prescribed form shall be a complete defense to the bulk sale or transfer liability imposed in the preceding sentence, but shall not be a defense to any liability of the purchaser under any other provision of law for liabilities and obligations. Any purchaser succeeding to the liabilities of the seller under this section shall make a written report thereof upon the next due date for the reporting of gross income taxes.

(d) For purposes of this section:

“Property” means anything that may be the subject of ownership, including every kind of asset, whether real or personal, tangible or intangible, and without limitation, such as land and buildings, goodwill, notes, accounts, and other intangible property. The term “property” shall not include any interest in residential real property.

“Purchase price” means the total fair market value, as of the date of sale or transfer, of all property transferred, whether or not money or property is exchanged therefor.

“Purchaser” means any person who receives property in a bulk sale or transfer, whether or not money or property is exchanged therefor.

“Sale” means the transfer of property for compensation.

“Seller” means any person who sells or transfers any property in a bulk sale or transfer, whether or not money or property is exchanged therefor.

“Transfer” means the sale, conveyance, or distribution by any mode, direct or indirect, absolute or conditional, voluntary or involuntary, of title to or beneficial ownership in property, or interest therein. The term “transfer” does not include a bona fide, arm’s length:

- (1) Creation, modification, or termination of a lease interest;
- (2) Creation, modification, or release of a lien or encumbrance; or
- (3) Transfer occurring as a result of the enforcement of a lien.

(e) Failure to make the report required by this section shall be punishable by a fine of not more than \$100. Any seller who wilfully fails to make the report required by this section shall, in addition to other penalties provided by law, be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

(f) The purchaser shall have the purchaser’s remedy against the seller for the amount of taxes, penalties, or interest paid by the purchaser.

(g) This section supplements and does not displace any remedies available to the department under the Uniform Fraudulent Transfer Act and the principles of law and equity.”

SECTION 2. Act 92, Session Laws of Hawaii 1995, is amended by repealing section 14.

[“SECTION 14. Section 237-43, Hawaii Revised Statutes, is amended to read as follows:

**“§237-43 Bulk sales.** (a) Report. In any case of the sale in bulk of the whole, or a large part of a stock of merchandise and fixtures, or merchandise, or fixtures, or other assets of a business, otherwise than in the ordinary course of trade, and in the regular and usual prosecution of the seller’s business, the seller shall make a written and verified report of the bulk sale to the department of taxation not later than ten days after the possession, or the control, or the title of the property, or any part thereof, has passed to the purchaser. The report shall contain the name and address of the purchaser, a brief description of the property sold and the purchase price, the date when the sale is to be or was consummated, and such other facts as the department may require. The purchaser may make the report for the seller.

(b) Tax clearance. The purchaser of the property shall withhold payment of the purchase price until the receipt of a certificate from the department to the effect that all taxes, penalties, and interest levied or accrued under this chapter against the seller, or constituting a lien upon the property, have been paid, which certificate shall show on its face that the department has had notice of the bulk sale, and shall also show the names of the seller and purchaser, a brief description of the property sold, and the date of consummation of the sale, together with such other information as the department shall prescribe.

(c) Purchaser’s liability. If the required report of the bulk sale is not made, or if the taxes, penalties, and interest shall not be paid within twenty days after the possession, or the control, or the title of the property, or any part thereof, has passed to the purchaser, or within such further time as the department may allow, the purchaser shall be personally liable to pay to the State the amount of all taxes, penalties, and interest levied or accrued under this chapter against the seller or constituting a lien upon the property, together with penalties and interest thereafter accruing, not exceeding, however, the amount of the purchase price, but the issuance of a certificate in the prescribed form shall be a complete defense to such liability of the purchaser. In any case of such liability upon the part of the purchaser, a written

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report thereof shall be made by the purchaser upon the next due date for the payment of gross income taxes.

(d) Purchase price defined. For the purposes of this section the “purchase price” shall include money, or the value of any consideration other than money.

(e) Purchaser’s remedy. The purchaser shall have the purchaser’s remedy against the seller for the amount of taxes, penalties, or interest paid by the purchaser.”]

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1996.)