

**ACT 270**

S.B. NO. 992

A Bill for an Act Relating to Tobacco.

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

SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“28- Cigarette tax stamp enforcement special fund.** (a) There is established in the state treasury the cigarette tax stamp enforcement special fund, into which shall be deposited the allocated portion of the stamp fee designated to pay for the cost of enforcing the cigarette tax stamp as provided by section 245-26 and fines as provided for by section 245-41.

(b) Moneys in the cigarette tax stamp enforcement special fund shall be administered by the department of the attorney general and shall be used for administering, operating, monitoring, and ensuring compliance with and enforcement of:

- (1) The cigarette tax stamp as defined in chapter 245 and any other statutes or programs relating to that chapter;
- (2) Chapter 245; and
- (3) Any other requirement deemed necessary to carry out the purposes of chapter 245.

**§28- Tobacco enforcement special fund.** (a) There is established in the state treasury the tobacco enforcement special fund, into which shall be deposited the tobacco settlement moneys as provided by section 328L-2(a).

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

- (1) The Master Settlement Agreement as defined in chapter 675 and any other statutes or programs relating to that agreement;
- (2) Chapter 675;
- (3) Tobacco prevention programs; and
- (4) Any other requirement deemed necessary to carry out the purposes of the fund.

(c) All unencumbered and unexpended moneys in excess of \$350,000 remaining on balance in the tobacco enforcement special fund at the close of June 30 of each year shall lapse to the credit of the Hawaii tobacco settlement special fund.

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

SECTION 2. Chapter 245, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

**“245- Cigarette tax stamp administrative special fund.** (a) There is established in the state treasury the cigarette tax stamp administrative special fund, into which shall be deposited the allocated portion of the stamp fee designated to pay for the cost to the State of providing the stamps as provided by section 245-26.

(b) Moneys in the cigarette tax stamp administrative special fund shall be administered by the department of taxation and shall be used:

- (1) To provide the stamps and administer the cigarette tax stamp provisions as provided in chapter 245; and
- (2) For any other requirements deemed necessary to carry out the purposes of chapter 245.”

SECTION 3. Section 245-1, Hawaii Revised Statutes, is amended by adding eight new definitions to be appropriately inserted and to read as follows:

““Armed services of the United States” for purposes of this chapter shall include the Department of Defense, United States Army, Navy, Air Force, Marines, Department of Transportation in the case of Coast Guard facilities, or Coast Guard, and their respective reserve, National Guard, and auxiliaries.

“Distribute” means to sell, transfer, give, or deliver to another, or to leave, barter, or exchange with another, or to offer or agree to do the same.

“Entity” means one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity.

“Intentionally” for purposes of this chapter shall have the same meaning as in section 702-206.

“Knowingly” for purposes of this chapter shall have the same meaning as in section 702-206.

“Possession” means knowingly having direct physical control at a given time or knowingly having the power and the intention, at a given time, to exercise dominion or control, either directly or through another entity.

“Recklessly” for purposes of this chapter shall have the same meaning as in section 702-206.

“Use” means the exercise of any right or power incident to ownership or possession, other than the sale, or the keeping or retention for the purpose of sale.”

SECTION 4. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

**“§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special summer school and intersession fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center capital and operations special fund under section 206X-10.5;
- (6) Special funds established by section 206E-6;
- (7) Housing loan program revenue bond special fund;
- (8) Housing project bond special fund;
- (9) Aloha Tower fund created by section 206J-17;
- (10) Domestic violence prevention special fund under section 321-1.3;
- (11) Spouse and child abuse special account under section 346-7.5;
- (12) Spouse and child abuse special account under section 601-3.6;
- (13) Funds of the employees’ retirement system created by section 88-109;
- (14) Unemployment compensation fund established under section 383-121;
- (15) Hawaii hurricane relief fund established under chapter 431P;
- (16) Hawaii health systems corporation special funds;
- (17) Boiler and elevator safety revolving fund established under section 397-5.5;
- (18) Tourism special fund established under section 201B-11;
- (19) Department of commerce and consumer affairs’ special funds;
- (20) Compliance resolution fund established under section 26-9;
- (21) Universal service fund established under chapter 269;
- (22) Integrated tax information management systems special fund under section 231-3.2;
- (23) Insurance regulation fund under section 431:2-215;
- (24) Hawaii tobacco settlement special fund under section 328L-2;
- (25) Emergency budget and reserve fund under section 328L-3;
- (26) Probation services special fund under section 706-649; [and]
- (27) High technology special fund under section 206M-15.5;

- (28) Cigarette tax stamp enforcement special fund established by section 28-\_\_\_\_\_;
- (29) Cigarette tax stamp administrative special fund established by section 245-\_\_\_\_\_; and
- (30) Tobacco enforcement special fund established by section 28-\_\_\_\_\_;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 5. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special summer school and intersession fund under section 302A-1310;
- (3) School cafeteria special funds of the department of education;
- (4) Special funds of the University of Hawaii;
- (5) State educational facilities improvement special fund;
- (6) Special funds established by section 206E-6;
- (7) Aloha Tower fund created by section 206J-17;
- (8) Domestic violence prevention special fund under section 321-1.3;
- (9) Spouse and child abuse special account under section 346-7.5;
- (10) Spouse and child abuse special account under section 601-3.6;
- (11) Funds of the employees’ retirement system created by section 88-109;
- (12) Unemployment compensation fund established under section 383-121;
- (13) Hawaii hurricane relief fund established under chapter 431P;
- (14) Convention center capital and operations special fund established under section 206X-10.5;
- (15) Hawaii health systems corporation special funds;
- (16) Tourism special fund established under section 201B-11;
- (17) Compliance resolution fund established under section 26-9;
- (18) Universal service fund established under chapter 269;
- (19) Integrated tax information management systems special fund[;] under section 231-3.2;
- (20) Insurance regulation fund under section 431:2-215;
- (21) Hawaii tobacco settlement special fund under section 328L-2;
- (22) Emergency and budget reserve fund under section 328L-3;
- (23) Probation services special fund under section 706-649; [and]
- (24) High technology special fund under section 206M-15.5;
- (25) Cigarette tax stamp enforcement special fund established by section 28-\_\_\_\_\_;
- (26) Cigarette tax stamp administrative special fund established by section 245-\_\_\_\_\_; and
- (27) Tobacco enforcement special fund established by section 28-\_\_\_\_\_;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 6. Section 245-15, Hawaii Revised Statutes, is amended to read as follows:

**“§245-15 Disposition of revenues.** All moneys collected pursuant to this chapter shall be paid into the state treasury as state realizations to be kept and accounted for as provided by law~~[-, except for the amounts designated by section 245-41 for distribution to the attorney general].~~”

SECTION 7. Section 245-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Stamps shall be sold at their denominated values, plus a stamp fee of 1.7 per cent of the denominated value of each stamp sold, composed of the aggregate of:

- (1) .2 per cent of the denominated value of the stamp to pay for the cost to the State of providing the stamps~~[-];~~ with such amount to be deposited to the credit of the department of taxation’s cigarette tax stamp administrative special fund; and
- (2) 1.5 per cent of the denominated value of the stamp to pay for the cost of enforcing the stamp tax~~[-];~~ with such amount to be deposited to the credit of the department of the attorney general’s cigarette tax stamp enforcement special fund;

provided that the department of taxation by rule may modify the stamp fee to reflect actual costs incurred by the State in providing the stamps.”

SECTION 8. Section 245-22, Hawaii Revised Statutes, is amended to read as follows:

**“[[§245-22]] Affixation; required prior to distribution; method and manner.** (a) Beginning January 1, 2001, a licensee or the authorized agent or designee of a licensee shall affix a stamp to the bottom of each individual package of cigarettes prior to distribution.

(b) Beginning April 1, 2001, no individual package of cigarettes may be sold or offered for sale to the general public unless affixed with the stamp required under this section.

(c) Beginning April 1, 2001, no cigarette package may be placed or stored in a vending machine unless affixed with the stamp required under subsection (a).

(d) The department shall adopt rules describing the method and manner in which stamps are to be affixed to packages of cigarettes.

(e) For the purpose of allowing compensation for the costs necessarily incurred in affixing the proper tax stamps to each package of cigarettes prior to distribution, each licensee or authorized agent or a designee of a licensee purchasing stamps from the department may purchase the stamps at a reduction of 0.4 per cent of the denominated value of each stamp purchased. The reduction shall be the only discount allowed to purchasers from the department. If a purchaser does not comply with all of the provisions of title 14, the licensee shall pay the full denominated value of the stamps purchased until the licensee has complied. The department may increase or decrease the 0.4 per cent reduction by rule under chapter 91.”

SECTION 9. Section 245-39, Hawaii Revised Statutes, is amended to read as follows:

**“[[§245-39]] Penalty exemptions[-]; presumptions.** (a) Sections 245-37 and 245-38 shall not apply to cigarettes that are exempt from taxes as provided by section 245-3(b).

(b) [Sections 245-37 and 245-38 shall not apply to the resale of tax-exempt cigarettes that were purchased from sales outlets operated under the regulations of the Armed Services of the United States.] No cigarette tax stamp shall be required to be paid upon cigarettes that are sold for personal use at sales outlets operated under the regulations of the armed services of the United States; provided that it shall be unlawful for any person, including members of the armed services of the United States, to purchase such tax-exempt cigarettes for purposes of resale. Any person who intentionally, knowingly, or recklessly resells, or offers for resale, tax-exempt cigarettes purchased at sales outlets operated under the regulations of the armed services of the United States shall be guilty of a violation of this chapter, and punishable as provided in section 245-37 or 245-38. For purposes of this subsection, "person" means one or more people, a company, corporation, a partnership, or any combination of individuals.

(c) Unless otherwise exempt from taxes by this chapter, it shall be presumed that all cigarettes are subject to the tax imposed by this chapter, unless the contrary is established, and the burden of proof that they are not taxable shall be upon the person having possession of them."

SECTION 10. Section 245-41, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Where the attorney general initiates and conducts an investigation resulting in the imposition and collection of a criminal fine pursuant to this part, one hundred per cent of the fine shall be distributed to the attorney general<sup>[;]</sup> to be deposited to the credit of the department of the attorney general's cigarette tax stamp enforcement special fund; provided that if the attorney general engages the prosecuting attorney for the investigation or prosecution, or both, resulting in the imposition and collection of a criminal fine under this part, the fine shall be shared equally between the attorney general and the prosecuting attorney."

SECTION 11. Section 328L-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There is established in the state treasury the Hawaii tobacco settlement special fund into which shall be deposited:

- (1) All tobacco settlement moneys; and
- (2) All interest and earnings accruing from the investment of moneys in the fund<sup>[;]</sup>;

provided that of all tobacco settlement moneys received by the State each fiscal year, the sum representing the difference between the first \$350,000 of such moneys and the unexpended and unencumbered balance of the tobacco enforcement special fund at the close of the previous fiscal year shall first be deposited in the state treasury in each fiscal year to the credit of the tobacco enforcement special fund. The Hawaii tobacco settlement special fund shall be administered by the department."

SECTION 12. Section 486P-2, Hawaii Revised Statutes, is amended to read as follows:

**"[E]§486P-2[E] Reports to attorney general.** (a) Except as provided in subsection (b), any tobacco product manufacturer selling cigarettes to consumers within this State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) shall file a report with the attorney general setting forth:

- (1) Its name and trade name (if any);
- (2) The address of its principal place of business;

- (3) A memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar quarter into this State; and
- (4) Other information as may be required by the attorney general.

The memorandum or copy of the invoice shall include the name and address of the person to whom the shipment was made, the brand, and the quantity of cigarettes shipped. The attorney general may prescribe the format the report shall take. The report shall be filed with the attorney general not later than the thirtieth day of each calendar quarter covering the previous calendar quarter.

(b) In lieu of the reports required to be provided in subsection (a), any tobacco product manufacturer that is a signatory to the Master Settlement Agreement, as defined in section 675-2, and whose cigarettes are sold to consumers within this State (whether directly by the manufacturer or through a distributor, retailer, or similar intermediary or intermediaries), may file with the attorney general copies of reports that the tobacco product manufacturer submits to the department of taxation regarding its sales activities in this State.

(c) Information provided to the attorney general pursuant to this section that tends to identify customers of tobacco product manufacturers, terms of sale (including price), and non-aggregated sales volume data shall be exempt from disclosure under section 92F-11.

(d) Notwithstanding any law to the contrary, the department of taxation shall provide to the attorney general any information necessary for the proper administration and enforcement of this chapter and chapter 675, including: access to inspect, examine, and use the tax returns and records that are required to be filed pursuant to this chapter, chapter 245, chapter 675, or title 15 United States Code section 376 by any entity engaged in the business of manufacturing, wholesaling, distributing, or dealing in cigarettes or tobacco products on file with the department of taxation. For purposes of this chapter "entity" means one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity.

(e) Any entity that is required to file a return or report pursuant to this chapter, chapter 245, chapter 675, or title 15 United States Code section 376 shall also provide any information that the department of the attorney general may deem necessary, for the proper administration of this chapter or chapter 675."

SECTION 13. Section 486P-3, Hawaii Revised Statutes, is amended to read as follows:

**“~~[[~~§486P-3~~]] Penalties.~~ (a) The attorney general may bring a civil action against any ~~[tobacco product manufacturer]~~ entity that fails to file the reports required under this chapter.**

**(b) The attorney general may bring a civil action against any entity engaged in the business of manufacturing, wholesaling, distributing, or dealing in cigarettes or tobacco products who fails to provide the information that the department of the attorney general may deem necessary, for the proper administration of this chapter or chapter 675.**

**(c) The State shall be awarded its attorney's fees and expenses incurred in prosecuting violations of this chapter."**

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2001-2002 to be deposited into the cigarette tax stamp enforcement special fund created in section 1 of this Act.

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

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SECTION 15. There is appropriated out of the cigarette tax stamp enforcement special fund the sum of \$700,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2002-2003 for the attorney general to further cigarette tax stamp enforcement.

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

SECTION 16. There is appropriated out of the general revenues of the State of Hawaii the sum of \$40,000 or so much thereof as may be necessary for fiscal year 2001-2002 to be deposited into the cigarette tax stamp administrative special fund created in section 2 of this Act.

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

SECTION 17. There is appropriated out of cigarette tax stamp administrative special fund the sum of \$120,000 or so much thereof as may be necessary for fiscal year 2001-2002 and the sum of \$80,000 or so much thereof as may be necessary for fiscal year 2002-2003 for the department of taxation to continue to administer the cigarette tax stamp program.

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

SECTION 18. There is appropriated out of the tobacco enforcement special fund the sum of \$350,000, or so much thereof as may be necessary, for fiscal year 2001-2002 and the sum of \$350,000, or so much thereof as may be necessary, for fiscal year 2002-2003 to carry out the purposes of the tobacco enforcement special fund. The sums appropriated shall be expended by the department of the attorney general.

SECTION 19. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 20. This Act shall take effect upon approval; provided that section 8 shall take effect on September 1, 2001, sections 14 to 18 shall take effect on July 1, 2001 and provided further that the amendments made to section 36-27, Hawaii Revised Statutes, by this Act, shall not be repealed when that section is reenacted on July 31, 2003, by section 9 of Act 142, Session Laws of Hawaii 1998.

(Approved June 22, 2001.)

### Note

1. Edited pursuant to HRS §23G-16.5.