

WORKING DRAFT

HOUSE BILL NO. _____

Tobacco taxes.

Sponsored by: Joint Revenue Interim Committee

A BILL

for

1 AN ACT relating to taxation and revenue; providing for
2 enforcement of tobacco tax provisions as specified;
3 providing definitions; and providing for an effective date.

4

5 *Be It Enacted by the Legislature of the State of Wyoming:*

6

7 **Section 1.** W.S. 39-18-101(a)(v) by creating a new
8 subparagraph (D) and 39-18-108(c)(iii), (iv) and by
9 creating new paragraphs (vii) through (xi) are amended to
10 read:

11

12 **39-18-101. Definitions.**

13

14 (a) As used in this article:

15

16 (v) "Wholesaler" means any person who:

17

18 (D) Delivers cigarettes, cigars, snuff or
19 other tobacco products over the internet or through any
20 other means of direct or indirect mail solicitation and
21 delivery.

22

23 **39-18-108. Enforcement.**

24

1 (c) Penalties. The following shall apply:

2
3 (i) Any package of cigarettes found in this
4 state without stamps, imprints or impressions affixed
5 thereto as provided by this article is contraband goods and
6 may be seized without a warrant by the department, with
7 board approval, or any peace officer of this state when so
8 directed by the department. This section does not apply to
9 cigarettes in the original unopened shipping package in the
10 possession of or in transit to a licensed wholesaler or to
11 owners of cigarettes not willfully or intentionally evading
12 the tax imposed by this article;

13
14 (ii) The following acts are misdemeanors
15 punishable by a fine of not more than one hundred dollars
16 (\$100.00) or imprisonment in the county jail for not more
17 than six (6) months or both:

18
19 (A) Selling or distributing cigarettes,
20 cigars, snuff or other tobacco products as a wholesaler
21 without a license;

22
23 (B) Selling, offering to sell, displaying
24 for sale or possessing with intent to sell cigarettes
25 without proper stamps, imprints or impressions;

26
27 (C) Evading or aiding or abetting any
28 person to evade the payment of the taxes imposed by this
29 article;

30
31 (D) Making any false or fraudulent return.

32
33 (iii) Each act in violation of paragraphs (ii)
34 and (vii) through (xi) of this subsection is a separate
35 offense;

36
37 (iv) The penalties specified in paragraphs (ii),
38 and (iii) and (vii) through (xi) of this subsection are in
39 addition to the provisions of paragraph (i) of this
40 subsection and subsection (e) of this section;

41
42 (v) The department may revoke the license of any
43 wholesaler violating any provision of this article after a
44 hearing. No license shall be issued to a wholesaler for two
45 (2) years following revocation of his license;

46

1 (vi) Any person who purchases any tobacco
2 product for resale in this state from other than a licensed
3 wholesaler is liable for the tax and any penalties and
4 interest imposed under this paragraph as if he were a
5 wholesaler under this act and shall pay an additional
6 penalty of twenty-five percent (25%) of any tax due. Any
7 wholesaler or other person who fails to file any return or
8 to pay any tax within the time required or permitted by
9 this subsection shall be subject to a penalty of five
10 percent (5%) of the amount of the tax due, plus one percent
11 (1%) of the tax for each month of delinquency or fraction
12 thereof. The department may waive all or any part of this
13 penalty for good cause shown.

14
15 (vii) Any person who omits, neglects or refuses
16 to comply with any duty imposed upon him by this article,
17 or to do or cause to be done any of the things required by
18 this article, or does any act prohibited by this article,
19 may, in addition to any other penalty provided by this
20 article, be liable for a penalty of not to exceed one
21 thousand dollars (\$1,000.00) or five (5) times the retail
22 value of the tobacco product at issue, whichever is
23 greater, to be recovered in a civil action;

24
25 (viii) Any person who fails to pay any tax
26 imposed by this article at the time prescribed by law or
27 department rule or regulation may, in addition to any other
28 penalty provided by this article, be liable for a penalty
29 of not to exceed five (5) times the tax due, but unpaid, to
30 be recovered in a civil action;

31
32 (ix) Any fixture, equipment or any other
33 material or personal property on the premises of any
34 tobacco product wholesaler or retailer who, with intent to
35 defraud the state, fails to keep or make any record,
36 return, report or inventory, or who keeps or makes any
37 false or fraudulent record, return, report or inventory
38 required by this article, or who refuses to pay any tax
39 imposed by this article, or who attempts in any manner to
40 evade or defeat the requirements of this article shall be
41 forfeited to the state;

42
43 (x) Any person who, with intent to defraud,
44 fails to comply with any requirement of this article or
45 regulation prescribed hereunder may, in addition to any
46 other penalty provided in this article, for each such
47 offense, be fined not to exceed ten thousand dollars

1 (\$10,000.00), or be imprisoned for not to exceed one (1)
2 year, or both;

3
4 (xi) Notwithstanding any other provision of law,
5 the sale or possession for sale of counterfeit cigarettes
6 with the intent to defraud by a cigarette manufacturer,
7 importer, wholesaler or retailer may result in the seizure
8 of the product and related machinery by the department or
9 any law enforcement agency and shall be punishable as
10 provided in this paragraph. As used in this paragraph,
11 "counterfeit cigarettes" means cigarettes which have a
12 false manufacturing label or any package of cigarettes
13 which bears a counterfeit tax stamp. Any counterfeit
14 cigarettes seized by the department under paragraph (i) of
15 this subsection shall be destroyed. The following
16 penalties shall apply:

17
18 (A) A first violation involving a total
19 quantity of less than two (2) cartons of cigarettes may be
20 punishable by a fine of not to exceed one thousand dollars
21 (\$1,000.00) or five (5) times the retail value of the
22 cigarettes involved, whichever is greater;

23
24 (B) A subsequent violation involving a
25 total quantity of less than two (2) cartons of cigarettes
26 may be punishable by a fine of not to exceed five thousand
27 dollars (\$5,000.00) or five (5) times the retail value of
28 the cigarettes involved, whichever is greater;

29
30 (C) A first violation involving a total
31 quantity of two (2) cartons of cigarettes or more may be
32 punishable by a fine of not to exceed two thousand dollars
33 (\$2,000.00) or five (5) times the retail value of the
34 cigarettes involved, whichever is greater;

35
36 (D) A subsequent violation involving a
37 quantity of two (2) cartons of cigarettes or more shall be
38 punishable by a fine of not to exceed fifty thousand
39 dollars (\$50,000.00).

40
41 (d) Liens. There are no specific applicable
42 provisions for liens for this chapter.

43
44 (e) Tax sales. Cigarettes seized in accordance with
45 paragraph (c)(i) of this section shall be sold by the
46 department to a licensed wholesaler to the best advantage
47 of the state. Proceeds from the sale shall be remitted to

1 the state treasurer for deposit into the general fund. The
2 licensed wholesaler purchasing the cigarettes shall pay
3 taxes and affix stamps, imprints or impressions as provided
4 by this article on cigarettes so purchased.

5

6 **Section 2.** This act is effective July 1, 2005.

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8

(END)