

HOUSE BILL NO. HB0096

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.

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

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7 **Section 1.** W.S. 39-18-101(a)(v)(A), by creating a new
8 subparagraph (D) and by creating new paragraphs (vi) and
9 (vii), 39-18-106(a) and by creating a new subsection (c)
10 and 39-18-108(c)(iii), (iv) and by creating new paragraphs
11 (vii) through (xi) are amended to read:

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13 **39-18-101. Definitions.**

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15 (a) As used in this article:

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

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(A) Whether located within or without Wyoming, imports, sells or distributes cigarettes, cigars, snuff or other tobacco products into this state for sale or resale;

(D) Sells or distributes for sale or resale cigarettes, cigars, snuff or other tobacco products over the internet or through any other means of direct or indirect mail solicitation or delivery to any person in this state.

(vi) "Cigarette importer" means any person who imports into the United States, either directly or indirectly, a finished cigarette for sale or distribution in this state;

(vii) "Cigarette manufacturer" means any person who manufactures, fabricates, assembles, processes or labels a finished cigarette for sale in this state.

39-18-106. Licensing; permits.

1 (a) Every wholesaler, cigarette importer and
2 cigarette manufacturer who sells or offers to sell
3 cigarettes, cigars, snuff or other tobacco products in this
4 state must have a license to do so issued by the
5 department. No license or renewal of a license shall be
6 granted under this section unless the wholesaler states in
7 writing, under penalty for false swearing, that he shall
8 comply fully with W.S. 9-4-1201 through 9-4-1209. The
9 license fee is ten dollars (\$10.00) per year or fraction
10 thereof and is valid through June 30 in each year. The
11 license will be granted only to wholesalers who own or
12 operate the place from which sales are made and additional
13 licenses must be obtained for each separate location. The
14 licenses are transferable pursuant to rules and regulations
15 promulgated by the department.

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17 (c) No license for a wholesaler, cigarette importer
18 or cigarette manufacturer shall be granted, maintained or
19 renewed if the applicant:

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21 (i) Is not a participating manufacturer as
22 defined in subsection II(jj) of the master settlement
23 agreement as defined in W.S. 9-4-1201(a)(v), or is not in
24 full compliance with W.S. 9-4-1201 through 9-4-1210;

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39-18-108. Enforcement.

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(c) Penalties. The following shall apply:

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(ii) Has imported or caused to be imported into the United States any tobacco products in violation of 19 U.S.C. 1681a; or

(iii) Has imported or caused to be imported into the United States, or manufactured for sale or distribution in the United States any cigarette that does not fully comply with the federal Cigarette Labeling and Advertising Act, (15 U.S.C. 1331, et seq.).

(iii) Each act in violation of ~~paragraph~~ paragraphs (ii) and (vii) through (xi) of this subsection is a separate offense;

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

1 (vii) Any person who does any act prohibited by
2 this article, or omits, neglects or refuses to comply with
3 any duty imposed upon him by this article, or causes not to
4 be done any of the things required by this article, or does
5 any act prohibited by this article, may, in addition to any
6 other penalty provided by this article, be liable for a
7 penalty of not to exceed one thousand dollars (\$1,000.00)
8 or five (5) times the retail value of the tobacco product
9 at issue, whichever is greater, to be recovered in a civil
10 action;

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12 (viii) Any person who fails to pay any tax
13 imposed by this article at the time prescribed by law or
14 department rule or regulation may, in addition to any other
15 penalty provided by this article, be liable for a penalty
16 of not to exceed five (5) times the tax due, but unpaid, to
17 be recovered in a civil action;

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19 (ix) Any fixture, equipment or any other
20 material or personal property on the premises of any
21 tobacco product wholesaler or retailer who, with intent to
22 defraud the state, fails to keep or make any record,
23 return, report or inventory, or who keeps or makes any
24 false or fraudulent record, return, report or inventory

1 required by this article, or who refuses to pay any tax
2 imposed by this article, or who attempts in any manner to
3 evade or defeat the requirements of this article shall be
4 forfeited to the state;

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6 (x) Any person who, with intent to defraud,
7 fails to comply with any requirement of this article or
8 regulation prescribed hereunder may, in addition to any
9 other penalty provided in this article, for each such
10 offense, be fined not to exceed ten thousand dollars
11 (\$10,000.00), or be imprisoned for not to exceed one (1)
12 year, or both;

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14 (xi) Notwithstanding any other provision of law,
15 the sale or possession for sale of counterfeit cigarettes
16 with the intent to defraud by a cigarette manufacturer,
17 importer, wholesaler or retailer may result in the seizure
18 of the product and related machinery by the department or
19 any law enforcement agency and shall be punishable as
20 provided in this paragraph. As used in this paragraph,
21 "counterfeit cigarettes" means cigarettes which have a
22 false manufacturing label or any package of cigarettes
23 which bears a counterfeit tax stamp. Any counterfeit
24 cigarettes seized by the department under paragraph (i) of

1 this subsection shall be destroyed. The following
2 penalties shall apply:

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4 (A) A first violation involving a total
5 quantity of less than two (2) cartons of cigarettes may be
6 punishable by a fine of not to exceed one thousand dollars
7 (\$1,000.00) or five (5) times the retail value of the
8 cigarettes involved, whichever is less;

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10 (B) A subsequent violation involving a
11 total quantity of less than two (2) cartons of cigarettes
12 may be punishable by a fine of not to exceed five thousand
13 dollars (\$5,000.00) or five (5) times the retail value of
14 the cigarettes involved, whichever is greater;

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

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22 (D) A subsequent violation involving a
23 quantity of two (2) cartons of cigarettes or more shall be

1 punishable by a fine of not to exceed fifty thousand
2 dollars (\$50,000.00).

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4 **Section 2.** W.S. 39-18-106(b) is repealed.

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6 **Section 3.** This act is effective July 1, 2005.

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8 (END)