

EXECUTIVE CHAMBERS

HONOLULU

May 7, 2009

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 895

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 895, entitled "A Bill for an Act Relating to Tax on Tobacco Products Other Than Cigarettes."

The purpose of this bill is to increase the tax rate on tobacco products other than cigarettes, including smokeless tobacco, snuff, cigars, and pipe tobacco.

This bill is objectionable because it contains major technical flaws that defeat the purpose of the legislation and will make it virtually impossible to implement.

First, this bill temporarily suspends the current 40 percent tax on all tobacco products other than cigarettes. Although this error may have been unintentional, it will, in effect, create a tax holiday for many tobacco products from the date the bill becomes law until September 29, 2009. This provision runs counter to the stated purpose of the bill and represents a major flaw that cannot be overlooked.

Second, provisions in this bill cannot be reconciled with existing statutes and proposed legislation to increase the tax on cigarettes. The bill sought to tax "little cigars" at a rate comparable to the cigarette tax rate and set forth the cigarette tax rate of 11 cents as of October 1, 2009, 12 cents on September 30, 2010, and 13 cents on September 30, 2011.

STATEMENT OF OBJECTIONS

HOUSE BILL NO. 895

Page 2

However, this language would lower the cigarette tax rate, which is supposed to go into effect on July 1, 2010 from 14 cents per cigarette to 12 cents per cigarette on September 30, 2010.

Similarly, the bill would lower the cigarette tax rate that would go into effect on July 1, 2011 from 15 cents per cigarette to 13 cents per cigarette on September 30, 2011. It is questionable what the actual intent of the Legislature is and whether the Legislative Reference Bureau can properly reconcile these matters when codifying these provisions into statutes.

Finally, most retailers and manufacturers nationwide recognize a difference between large and small cigars and are accustomed to labeling them accordingly. This bill creates a new category of cigars, which would require Hawaii retailers to establish a different labeling system in order to calculate the correct tax. The tax is to be imposed based on the ring gauge size of the cigar. However, manufacturers and retailers are not required to identify the ring gauge of their product and the federally established labeling requirements on these products do not require that the size be listed. Further, the federal Bureau of Tobacco and Firearms uses weight rather than ring gauge for the purposes of determining the federal tax on these types of tobacco products. Thus, to impose the tax, the Hawaii Department of Taxation would have to measure the size of cigars themselves or require wholesalers or distributors to do so. This would be extremely burdensome for Hawaii wholesalers and retailers and may prove impossible to enforce.

My position against smoking and the encouragement of healthy lifestyles remains steadfast. Unfortunately, the

STATEMENT OF OBJECTIONS

HOUSE BILL NO. 895

Page 3

technical flaws in this bill defeat its stated purpose to lower the usage of certain types of tobacco products.

For the foregoing reasons, I am returning House Bill No. 895 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read 'Linda Lingle', written in a cursive style.

LINDA LINGLE
Governor of Hawaii