

ENROLLED ACT NO. 45, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

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

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

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

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

(a) As used in this article:

(v) "Wholesaler" means any person who:

(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 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;

ORIGINAL HOUSE  
BILL NO. 0096

ENROLLED ACT NO. 45, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

(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.**

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

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

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

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

ORIGINAL HOUSE  
BILL NO. 0096

ENROLLED ACT NO. 45, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

(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.).

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

(c) Penalties. The following shall apply:

(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;

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

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

ORIGINAL HOUSE  
BILL NO. 0096

ENROLLED ACT NO. 45, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

(ix) Any fixture, equipment or other personal property used by a tobacco product wholesaler or retailer to commit any of the following acts shall be subject to forfeiture to the state, if the retail value of the cigarettes involved or any tax involved in the act exceeds five hundred dollars (\$500.00):

(A) Failing to keep or make any record, return, report or inventory required by this article, if the failure was with the intent to defraud the state;

(B) Keeping or making any false or fraudulent record, return, report or inventory required under this article;

(C) Refusing to pay any tax imposed by this article;

(D) Attempting in any manner to evade or defeat the requirements of this article.

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

(xi) Notwithstanding any other provision of law, the sale or possession for sale of counterfeit cigarettes with the intent to defraud by a cigarette manufacturer, importer, wholesaler or retailer may result in the seizure of the product and related machinery by the department or any law enforcement agency and shall be punishable as provided in this paragraph. As used in this paragraph,

ORIGINAL HOUSE  
BILL NO. 0096

ENROLLED ACT NO. 45, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

"counterfeit cigarettes" means cigarettes which have a false manufacturing label or any package of cigarettes which bears a counterfeit tax stamp. Any counterfeit cigarettes seized by the department under paragraph (i) of this subsection shall be destroyed. The following penalties shall apply:

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

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

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

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

(xii) Any penalty collected under the provisions of this subsection shall be deposited in the public school fund of the appropriate county as required by article 7, section 5 of the Wyoming constitution.

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

ORIGINAL HOUSE  
BILL NO. 0096

ENROLLED ACT NO. 45, HOUSE OF REPRESENTATIVES

FIFTY-EIGHTH LEGISLATURE OF THE STATE OF WYOMING  
2005 GENERAL SESSION

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

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk