



GOV. MSG. NO. **751**

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE  
GOVERNOR

June 18, 2009

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fifth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on June 18, 2009, the following bill was signed into law:

SB972 SD2 HD1 CD1

A BILL FOR AN ACT  
RELATING TO TAX ADMINISTRATION.  
**ACT 134 (09)**

Sincerely,



LINDA LINGLE

Approved by the Governor

on JUN 18 2009

THE SENATE  
TWENTY-FIFTH LEGISLATURE, 2009  
STATE OF HAWAII

**ACT 134**  
**S.B. NO.** 972  
S.D. 2  
H.D. 1  
C.D. 1

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# A BILL FOR AN ACT

RELATING TO TAX ADMINISTRATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. In all tax systems, government administrators  
2 are continually working to reduce tax noncompliance known as the  
3 "tax gap." In the United States, the tax gap, which is the  
4 difference between the amount of tax that is required to be  
5 reported and timely paid and the amount of tax that is actually  
6 reported and paid, is estimated to be almost \$400,000,000,000  
7 per year. Of this tax gap, it is further estimated that about  
8 \$200,000,000,000, or half of the tax gap, is composed of what is  
9 known as the "cash economy." Hawaii's annual tax gap is  
10 estimated to be about \$2,000,000,000 in unreported and unpaid  
11 taxes with approximately \$1,000,000,000 attributed to the cash  
12 economy. Focusing resources on shoring up compliance in this  
13 area should be a priority.

14           Cash-based transactions are a fundamental part of any  
15 economy. As the oldest form of payment, cash continues to  
16 dominate many facets of the local economy. Cash is inherently  
17 private, efficient, and predictable for both purchaser and



1 seller. However, cash transactions are also the simplest means  
2 of underreporting or non-reporting for tax purposes, because no  
3 bank, no means of electronic oversight, and no intermediary  
4 maintains records of the movement of funds from one pocket to  
5 another.

6 As stated by former Internal Revenue Service Commissioner  
7 Mark Everson, "[t]he vast majority of Americans pay their taxes  
8 accurately and are shortchanged by those who don't pay their  
9 fair share. The magnitude of the tax gap highlights the  
10 critical role of enforcement in keeping our system of tax  
11 administration healthy." By focusing resources on the cash  
12 economy, the department of taxation can ensure fairness in the  
13 tax system for those that comply without raising taxes or  
14 otherwise substantially burdening Hawaii's economy as a whole.

15 The purpose of this Act is to provide the department of  
16 taxation with the necessary resources and tools to target high-  
17 risk, cash-based transactions to shore up confidence in Hawaii's  
18 tax system for those that do comply. Importantly, the  
19 legislature intends that the enforcement resources provided  
20 focus on the civil collection and enforcement nature of Hawaii's  
21 tax laws. In an effort to demonstrate the targets of this  
22 undertaking, this Act defines "cash-based business" for



1 enforcement purposes, and the department of taxation is directed  
2 to focus on such businesses. At the same time, education is  
3 equally important as enforcement. Therefore, this Act requires  
4 the department of taxation to reach out to industry groups,  
5 specific demographics in the economy, and practitioners to  
6 educate taxpayers on their tax responsibilities.

7 This Act shall be known as the "Cash Economy Enforcement  
8 Act of 2009."

9 SECTION 2. Chapter 231, Hawaii Revised Statutes, is  
10 amended by adding sixteen new sections to be appropriately  
11 designated and to read as follows:

12 "CIVIL COMPLIANCE; SPECIAL ENFORCEMENT SECTION"

13 §231-A Special enforcement section; created. There is  
14 created within the department of taxation the special  
15 enforcement section to carry out civil enforcement efforts as  
16 directed by the director of taxation. The director may staff  
17 the section as the exigencies of the public service may require.

18 §231-B Special enforcement section; functions, powers, and  
19 duties. The special enforcement section shall have the  
20 following functions, powers, and duties:

21 (1) Investigate reported or suspected violations of tax  
22 laws for civil enforcement purposes, including through



- 1 covert means, with a stated priority of investigating  
2 cash-based businesses as defined in section 231-I;
- 3 (2) Enforce the tax laws by issuing, enforcing, or  
4 executing citations, fines, infractions, assessments,  
5 liens, levies, writs, warrants, injunctions, or other  
6 process;
- 7 (3) Serve as fraud referral specialists to assist in the  
8 development and review of fraud cases for appropriate  
9 disposition of potentially fraudulent activities,  
10 including referral to criminal investigators and  
11 assessment of civil fraud penalties; provided that  
12 personnel assigned to the special enforcement section  
13 may not participate in any criminal investigation;
- 14 (4) Organize and hold public informational meetings on  
15 issues of tax laws, including compliance deficiencies  
16 in segments of the economy, and undertake any other  
17 activities to encourage taxpayers, practitioners, or  
18 others to maintain responsibility and compliance with  
19 their tax obligations;
- 20 (5) Coordinate with other sections or divisions within the  
21 department of taxation, other departments or branches  
22 of the state government, any branches of the county



1 government, or the federal government on matters  
2 relating to civil enforcement of the tax laws,  
3 including joint investigations, information-sharing  
4 arrangements, or concurrent collection efforts;  
5 provided that personnel assigned to the special  
6 enforcement section may not participate in any  
7 criminal investigation;

8 (6) Compile information received by third parties,  
9 including taxpayers, competitors, government agencies,  
10 confidential sources, or public sources and delegate  
11 this information within the department for proper  
12 handling. Proper handling may include referral  
13 internally to other civil or criminal enforcement  
14 sections;

15 (7) Conduct investigations, research, and studies of  
16 matters relevant to the complex or sensitive civil  
17 enforcement of the tax laws; and

18 (8) Perform such other acts as may be incidental to the  
19 exercise of the functions, powers, and duties set  
20 forth in this section or as otherwise directed by the  
21 director of taxation.



1        §231-C Investigators and personnel, appointment and  
2 power. (a) The director of taxation may appoint, commission,  
3 or detail to the special enforcement section one or more persons  
4 as investigators, investigator assistants, and other support  
5 staff as the exigencies of the public service may require.  
6 Investigators may be legal or accounting professionals; provided  
7 that their primary duty is to conduct investigations pursuant to  
8 the authorities of the special enforcement section and they  
9 shall not conduct or participate in criminal investigations of  
10 the tax laws or render legal advice. Investigators may serve  
11 process and apply for and execute search warrants or writs of  
12 entry pursuant to section 231-D but shall not otherwise have the  
13 powers of a police officer or deputy sheriff.

14        (b) Notwithstanding any other law to the contrary relating  
15 to employment, bargaining, labor, or compensation rights or  
16 duties, any person appointed, commissioned, or detailed to the  
17 special enforcement section:

- 18        (1) May be an employee of the department in any capacity,  
19        including exempt from or subject to chapters 76 and 89  
20        as an employee of the department;  
21        (2) Shall be exempt from chapters 76 and 89 for purposes  
22        of their appointment, commission, or detail capacity



1 as investigator, whether full-time, part-time, or  
2 temporary;

3 (3) May be appointed, commissioned, or detailed in any  
4 capacity, and whose appointment, commission, or detail  
5 may be dismissed at the pleasure of the director of  
6 taxation;

7 (4) If appointed, commissioned, or detailed on a temporary  
8 basis, shall have the right to return to the person's  
9 same position or to a related position in the same  
10 class or division within the department when the  
11 person's appointment expires. The return rights  
12 provided under this section shall apply to persons  
13 exempt from or subject to chapters 76 and 89; and

14 (5) May be paid overtime as prescribed by an applicable  
15 collective bargaining agreement or existing policy for  
16 excluded employees. The compensation rights under  
17 this section shall apply to persons exempt from or  
18 subject to chapters 76 and 89.

19 §231-D Right to inspection of books, records, and  
20 premises; warrants and writs; levy and seizure. (a) Upon  
21 presenting credentials, the special enforcement section may  
22 examine any books, papers, records, and any article or item of





1 business transacted of any person engaged in business in this  
2 State to verify the accuracy of the reporting and payment of the  
3 taxes imposed by law. Every person in possession of any books,  
4 papers, records, or articles or items of business transacted,  
5 and the person's agents and employees, shall provide the special  
6 enforcement section the means, facilities, and opportunities for  
7 the examinations upon request, to the extent reasonably possible  
8 under the circumstances.

9 (b) The special enforcement section may inspect the  
10 operations, premises, and storage areas of any person engaged in  
11 business in this State during regular business hours.

12 (c) The special enforcement section may inspect the  
13 operations, premises, and storage areas of any person engaged in  
14 business in this State at any time, without notice, upon the  
15 issuance of a warrant or writ of entry based upon probable cause  
16 of a violation under title 14. The determination of probable  
17 cause for purposes of this section shall be made based upon the  
18 standard of probable cause for an administrative or civil search  
19 or seizure. Application for a search warrant or writ of entry  
20 under this section shall be made by making a declaration, under  
21 oath, which includes the following:

22 (1) The taxpayer's form of business;



1        (2) The taxpayer's interest in and address of the premises  
2        sought to be searched;

3        (3) Whether permission to search the premises has been  
4        requested in advance of requesting the warrant or  
5        writ;

6        (4) The particular books, records, items, articles,  
7        assets, or contraband reasonably believed to be on the  
8        premises; and

9        (5) The alleged violation reasonably believed to have  
10       occurred, including nonpayment of taxes; and, if  
11       searching or seizing in furtherance of collection,  
12       identification of the assets reasonably believed to be  
13       on the premises.

14       The special enforcement section may apply to the circuit  
15       court where the person is located for issuance of such warrant  
16       or writ. The special enforcement section may execute warrants  
17       or writs of entry. Any police officer, criminal investigator,  
18       or deputy sheriff of this State or any county shall be required  
19       to render assistance and aid to the special enforcement section  
20       in executing warrants and writs, upon request. Criminal law  
21       enforcement agencies that assist the special enforcement section  
22       may be compensated, as determined by the director; provided that



1 no person or agency shall be compensated on the basis of a  
2 specific percentage or fraction of the money collected from  
3 taxpayers.

4 (d) The special enforcement section's ability to inspect  
5 shall include inspection of all statements, books, papers, and  
6 records in whatever format, including electronic format,  
7 articles or items of business transacted, including inventory,  
8 supplies, stock, and cash on hand, pertaining to the sales or  
9 other business activities of any person to verify the accuracy  
10 of the reporting and payment of taxes imposed by law.

11 (e) The special enforcement section may seize and levy any  
12 assets in the custody or control of any person pursuant to this  
13 chapter, and subject to all rights of appeal set forth herein.

14 §231-E Identification of cash-economy cases; retention of  
15 funds. Notwithstanding any law to the contrary, each fiscal  
16 year, the special enforcement section may identify any taxpayer,  
17 assessment, investigation, or collection matter as a matter of  
18 the special enforcement section. All revenues collected from  
19 special enforcement section matters shall be deposited into the  
20 tax administration special fund.

21 §231-F Violent interference with a tax official. Any  
22 person who interferes, hinders, obstructs, prevents, or impedes



1 any investigator or employee of the department with violence or  
2 threat of violence, shall be guilty of a class C felony and,  
3 upon conviction, shall be subject to one or any combination of  
4 the following:

- 5       (1) A fine of not more than \$4,000;
- 6       (2) Imprisonment for not more than three years; or
- 7       (3) Probation;

8 provided that a corporation shall be fined not less than  
9 \$10,000.

10       This section shall be construed in accordance with  
11 regulations and judicial interpretations given to similar  
12 provisions of the Internal Revenue Code.

13                   CASH ECONOMY ENFORCEMENT; CITATIONS

14       §231-G Citations for violations; deposits. (a) The  
15 special enforcement section may issue cease and desist citations  
16 to any person if the special enforcement section has cause to  
17 believe the person has violated, is violating, or is about to  
18 violate any provision of title 14 or administrative rule adopted  
19 thereunder. A cease and desist citation may include a monetary  
20 fine for any unlawful act.



1        (b) The department may recommend legislation defining the  
2 circumstances and the civil monetary fines citable for unlawful  
3 actions under title 14.

4        (c) Any fine assessed under this section shall be a matter  
5 of the special enforcement section under section 231-E and shall  
6 be retained and deposited into the tax administration special  
7 fund.

8        (d) Any fine assessed shall be due and payable thirty days  
9 after issuance, subject to appeal rights provided under  
10 subsection (e); provided that if payment of the fine is  
11 determined to be in jeopardy, such fine shall be payable  
12 immediately and shall be immediately collected. A finding of  
13 jeopardy shall be made in writing, setting forth the specific  
14 reasons for the finding. The finding of jeopardy shall be  
15 subject to immediate appeal under subsection (e), and at the  
16 taxpayer's request the appeal shall be expedited and heard as  
17 soon as reasonably practicable. Any amount of fine collected  
18 under jeopardy shall only be returned upon a finding by the  
19 director of taxation or the circuit court that there was no  
20 violation of title 14 pursuant to appeal rights provided under  
21 subsection (e).



1        (e) Cease and desist citations may be appealed to the  
2 director of taxation or the director's designee, and the  
3 determination of the director may be appealed to the circuit  
4 court, pursuant to chapter 91.

5        §231-H Cash-based businesses; injunction. The special  
6 enforcement section, with the director of taxation's approval,  
7 may bring civil actions in the circuit court where the cash-  
8 based business is located to enjoin any unlawful act under title  
9 14, including any administrative rule adopted thereunder, by a  
10 cash-based business. To the extent provided by statute, the  
11 special enforcement section may include in any action an  
12 assessment of a monetary fine.

13        §231-I Cash-based business; defined. For purposes of  
14 sections 231-G to 231-P, "cash-based business" means any person  
15 who operates a business, including for-profit or not-for-profit,  
16 where transactions in goods or services are exchanged  
17 substantially for cash and where the business is found, based  
18 upon reasonable cause including observation or evidence, to have  
19 met one of the following factors:

20        (1) Is found to have substantially underreported or  
21 misrepresented the proper amount of tax liability on  
22 any return or other submission to the department. For



1 purposes of this paragraph, an amount has been  
2 substantially underreported if the amount properly  
3 includible on the return or submission is in excess of  
4 twenty-five per cent of the amount stated on the  
5 return or submission;

6 (2) Is required to be licensed, registered, or permitted  
7 under title 14 and is in fact not so licensed,  
8 registered, or permitted;

9 (3) Has a past pattern of noncompliance of obligations  
10 under title 14;

11 (4) Does not have a fixed and permanent principal place of  
12 business;

13 (5) Has not obtained any required tax clearance;

14 (6) Has failed to maintain adequate books and records, or  
15 those records required to be maintained by law or  
16 administrative rule;

17 (7) Does not accept checks or electronic payment devices  
18 for business transactions; provided that a business  
19 may establish reasonable criteria for accepting  
20 personal checks;

21 (8) Offers price differentials or otherwise deviates from  
22 usual business practices when the business transaction



1 substantially involves payment of cash, except where  
2 there is a bona-fide business reason for a price  
3 differential, such as the avoidance of merchant fees  
4 imposed by credit card companies; or

5 (9) Any other factor relevant to describing a cash-based  
6 business capable of noncompliance as determined by the  
7 director of taxation and issued pursuant to a tax  
8 information release;

9 provided that a business shall not be deemed to have met any of  
10 these factors while a genuine dispute as to that factor is  
11 pending in a contested case before any administrative agency or  
12 in any court.

13 §231-J Failure to produce license upon demand. Every  
14 person required to be licensed or permitted under title 14,  
15 whether or not so licensed or permitted, shall be required to  
16 produce the license or permit upon demand by the special  
17 enforcement section. Failure to produce the license or permit  
18 upon demand shall be unlawful. Any person who violates this  
19 section shall be subject to a fine not to exceed \$500; provided  
20 that if the person is a cash-based business, the fine shall not  
21 exceed \$1,000. It shall be an absolute defense to this section  
22 if the person produces a license or permit number on file with





1 the department and the department confirms that the person  
2 associated with the number is true and accurate.

3 §231-K Failure to keep adequate books and records. It  
4 shall be unlawful for any person required under title 14 to keep  
5 books or records to fail to produce the books or records upon  
6 demand by the special enforcement section, or as soon thereafter  
7 as is reasonable under the circumstances. Any person who  
8 violates this section shall be subject to a fine not to exceed  
9 \$1,000; provided that if the person is a cash-based business,  
10 the fine shall not exceed \$2,000.

11 §231-L Failure to record transaction by receipt. It shall  
12 be unlawful to conduct more than ten taxable business  
13 transactions per day in cash and fail to provide a receipt or  
14 other record of the transaction when the means for issuing a  
15 receipt or recording the transaction are available. Each day a  
16 person is in violation of this section shall be treated as a  
17 separate violation. Any person who violates this section shall  
18 be subject to a fine not to exceed \$1,000; provided that if the  
19 person is a cash-based business, the fine shall not exceed  
20 \$2,000.

21 §231-M Failure to record transaction by register. It  
22 shall be unlawful to conduct more than ten taxable business



1 transactions per day in cash and fail to record the transaction  
2 in a cash register when the means for recording the transaction  
3 in a cash register are available. Each day a person is in  
4 violation of this section shall be treated as a separate  
5 violation. Any person who violates this section shall be  
6 subject to a fine not to exceed \$1,000; provided that if the  
7 person is a cash-based business, the fine shall not exceed  
8 \$2,000.

9 §231-N Tax avoidance price fixing. It shall be unlawful  
10 for any person to sell, offer to sell, or otherwise convey more  
11 than one price for any business to be transacted when the lower  
12 price is offered if the transaction is paid for in cash. It  
13 shall not be an offense under this section if a business charges  
14 a higher price for legitimate business purposes, such as for the  
15 purpose of recovering any charges assessed the business,  
16 including for facilitating electronic payment. Any person who  
17 violates this section shall be subject to a fine not to exceed  
18 \$2,000; provided that if the person is a cash-based business,  
19 the fine shall not exceed \$3,000.

20 §231-O Possession of currency for tax avoidance purposes.  
21 It shall be unlawful for any person engaged in business in this  
22 State to possess currency in the form of coin or note, where the



1 possession is for tax avoidance purposes. It shall be the  
2 department's burden to establish that currency is possessed for  
3 tax avoidance purposes; provided that circumstantial evidence  
4 may be used by the department in any proceeding. Any person who  
5 violates this section shall be subject to a fine not to exceed  
6 \$2,000; provided that if the person is a cash-based business,  
7 the fine shall not exceed \$3,000.

8 §231-P Interference with a tax official. It is unlawful  
9 for any person to intentionally interfere with, hinder,  
10 obstruct, prevent, or impede any investigator, auditor,  
11 collector, or other employee of the department from obtaining  
12 license information, books, records, articles, or items of  
13 business transacted, or other information or property rightfully  
14 entitled the department. Any person who violates this section  
15 shall be subject to a fine of not more than \$2,000. It shall be  
16 an absolute defense to the fine under this section that the  
17 person acted with good cause."

18 SECTION 3. Chapter 237, Hawaii Revised Statutes, is  
19 amended by adding a new section to be appropriately designated  
20 and to read as follows:

21 "§237- Reporting requirement for contractors on federal  
22 construction projects. All persons who do not possess a valid



1 license under this chapter at the time of the contract award and  
2 who contract with the federal government for any construction  
3 project located in the State shall report to the department, on  
4 forms prescribed by the department, its estimated gross receipts  
5 or any other information requested by the department on the  
6 prescribed form, from the construction project within thirty  
7 days of the contract being awarded. Failure to report as  
8 provided in this section shall result in a penalty of \$1,000 per  
9 month, or fraction thereof, for each month that a failure to  
10 report exists; provided that the maximum penalty allowed under  
11 this section in the aggregate shall not be more than \$6,000."

12 SECTION 4. Section 231-1, Hawaii Revised Statutes, is  
13 amended by amending the definition of "person" to read as  
14 follows:

15 ""Person" [~~as used in sections 231-34, 231-35, and 231-36~~]  
16 includes one or more individuals, a company, corporation, a  
17 partnership, an association, or any other type of legal entity,  
18 and also includes an officer or employee of a corporation, a  
19 partner or employee of a partnership, a trustee of a trust, a  
20 fiduciary of an estate, or a member, employee, or principal of  
21 any other entity, who as such officer, employee, partner,  
22 trustee, fiduciary, member, or principal is under a duty to



1 perform and is principally responsible for performing the act  
2 [~~in respect of which the violation occurs~~]."

3 SECTION 5. Section 235-20.5, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§235-20.5 Tax administration special fund; established.

6 (a) There is established a tax administration special fund,  
7 into which shall be deposited [~~fees~~]:

8 (1) Fees collected under sections 235-20, 235-110.9, and  
9 235-110.91 [~~and penalties~~];

10 (2) Penalties collected under section 2 of Act 206,  
11 [~~+~~]Session Laws of Hawaii 2007 [~~+~~]; and

12 (3) Revenues collected by the special enforcement section  
13 pursuant to section 231-E; provided that in each  
14 fiscal year, of the total revenues collected by the  
15 special enforcement section, all revenues in excess of  
16 \$500,000 shall be deposited into the general fund.

17 (b) The moneys in the fund shall be [~~expended by the~~  
18 ~~department to offset the costs associated with~~] used for the  
19 following purposes:

20 (1) Issuing comfort letters [~~+~~], letter rulings, written  
21 opinions, and other guidance to taxpayers;

- 1 (2) Administering the tax [~~credit~~] credits under [~~section~~]  
2 sections 235-110.9 [~~, including issuing certificates,~~  
3 ~~and~~  
4 ~~(3) Issuing certificates under section] and 235-110.91 [~~-~~];  
5 and  
6 (3) Administering the operations of the special  
7 enforcement section."~~

8 SECTION 6. Section 237-9, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "§237-9 Licenses; penalty. (a) Except as provided in  
11 this section, any person who has a gross income or gross  
12 proceeds of sales or value of products upon which a privilege  
13 tax is imposed by this chapter, as a condition precedent to  
14 engaging or continuing in such business, shall in writing apply  
15 for and obtain from the department of taxation, upon a one-time  
16 payment of the sum of \$20, a license to engage in and to conduct  
17 such business, upon condition that the person shall pay the  
18 taxes accruing to the State under this chapter, and the person  
19 shall thereby be duly licensed to engage in and conduct the  
20 business. [~~Any person licensed or holding a license under this~~  
21 ~~chapter before January 1, 1990, shall pay a one-time license~~  
22 ~~renewal fee of \$20 on or before January 31, 1990, as a condition~~



1 ~~precedent to engaging or continuing in business.]~~ The license  
2 shall not be transferable and shall be valid only for the person  
3 in whose name it is issued and for the transaction of business  
4 at the place designated therein. The license may be inspected  
5 and examined, and shall at all times be conspicuously displayed  
6 at the place for which it is issued.

7 (b) Licenses and applications therefor shall be in such  
8 form as the department shall prescribe, except that where the  
9 licensee is engaged in two or more forms of business of  
10 different classification, the license shall so state on its  
11 face. The license provided for by this section shall be  
12 effective until canceled in writing. Any application for the  
13 reissuance of a previously canceled license identification  
14 number after December 31, 1989, shall be regarded as a new  
15 license application and subject to the payment of the one-time  
16 license fee of \$20. The director may revoke or cancel any  
17 license issued under this chapter for cause as provided by rules  
18 adopted pursuant to chapter 91.

19 (c) Any person who receives gross income or gross proceeds  
20 of sales or value of products from engaging in business in the  
21 State and who fails to obtain a license or receives gross income  
22 or gross proceeds of sales or value of products from engaging in



1 business in the State without a license required under this  
2 section may be fined not more than \$500; provided that a cash-  
3 based business may be fined not less than \$500 and not more than  
4 \$2,000, as determined by the director or the director's  
5 designee. The penalty under this subsection shall be in  
6 addition to any other penalty provided under law and may be  
7 waived or canceled upon a showing of good cause.

8       ~~[(e)]~~ (d) If the license fee is paid, the department shall  
9 not refuse to issue a license or revoke or cancel a license for  
10 the exercise of a privilege protected by the First Amendment of  
11 the Constitution of the United States, or for the carrying on of  
12 interstate or foreign commerce, or for any privilege the  
13 exercise of which, under the Constitution and laws of the United  
14 States, cannot be restrained on account of nonpayment of taxes,  
15 nor shall section 237-46 be invoked to restrain the exercise of  
16 such a privilege, or the carrying on of such commerce.

17       ~~[(d)]~~ (e) The director may permit a person engaged in  
18 network marketing, multi-level marketing, or other similar  
19 business to obtain the license required under this section for  
20 purposes of becoming a tax collection agent on behalf of its  
21 direct sellers. The tax collection agent shall report, collect,  
22 and pay over the taxes due under this chapter and chapter 238 on





1 behalf of its direct sellers who are covered by the tax  
2 collection agreement. The tax collection agent's direct sellers  
3 shall be deemed to be licensed under this chapter; provided that  
4 the licensure shall apply solely to the business activity  
5 conducted directly through the marketing arrangement. Under  
6 this section, a tax collection agent shall:

- 7 (1) Notify all of its direct sellers making sales in the  
8 State that it has been designated to collect, report,  
9 and pay over the tax imposed by this chapter and  
10 chapter 238 on their behalf on the business activity  
11 conducted through the marketing arrangement;
- 12 (2) If required by the director as a condition of  
13 obtaining the license, furnish with the annual return,  
14 a list (including identification numbers) of all  
15 direct sellers for the taxable year who have been  
16 provided (by the tax collection agent) information  
17 returns required under ~~[section]~~ Section 6041A of the  
18 Internal Revenue Code of 1986, as amended, and any  
19 other information that is relevant to ensure proper  
20 payment of taxes due under this section; and
- 21 (3) Be personally liable for the taxes due and collected  
22 under the tax collection agreement if taxes are



1 collected, but not reported or paid, together with  
2 penalties and interest as provided by law.

3 [~~e~~] (f) For the purposes of this section:

4 "Cash-based business" has the same meaning as in section  
5 231-I.

6 "Consumer product" shall include tangible consumer products  
7 and intangible consumer services.

8 "Direct seller" means any person who is engaged in the  
9 trade or business of selling (or soliciting the sale of)  
10 consumer products:

11 (1) To any buyer on a buy-sell basis, a deposit-commission  
12 basis, or any similar basis, that the director  
13 prescribes by rule adopted pursuant to chapter 91, for  
14 resale other than in a permanent retail establishment;

15 (2) Other than in a permanent retail establishment;  
16 provided that:

17 (A) Substantially all the remuneration (whether or  
18 not paid in cash) for the sale of consumer  
19 products is directly related to sales or other  
20 output rather than to the number of hours worked;  
21 and



1 (B) The sales of consumer products by the person are  
2 performed pursuant to a written contract that  
3 provides that the person will not be treated as  
4 an employee with respect to those sales for  
5 federal or state tax purposes.

6 "Direct seller" includes individuals who realize  
7 remuneration dependent on the productivity of other individuals  
8 in the marketing arrangement.

9 "Network marketing" or "multi-level marketing" means a  
10 marketing arrangement in which consumer products are distributed  
11 and sold to or through direct sellers."

12 SECTION 7. Section 237-12, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14 "(b) In the case of any person entitled to the protection  
15 of section [~~237-9(e),~~] 237-9(d), the tax shall be collected only  
16 through ordinary means."

17 SECTION 8. The department of taxation may establish six  
18 new full-time equivalent (6.0 FTE) positions that may be staffed  
19 by investigators, investigator assistants, licensed attorneys,  
20 or other support staff, in addition to using current and  
21 existing employees of the department of taxation, to staff the



1 special enforcement section established in section 2 of this Act  
2 as the exigencies of the public service may require.

3 SECTION 9. The department of taxation shall report to the  
4 legislature no later than thirty days prior to the convening of  
5 each regular session the state resources committed to  
6 implementing this Act, and the additional revenues raised  
7 therefor.

8 SECTION 10. This Act does not affect rights and duties  
9 that matured, penalties that were incurred, and proceedings that  
10 were begun, before its effective date.

11 SECTION 11. In codifying the new sections added to chapter  
12 231, Hawaii Revised Statutes, by section 2 of this Act, the  
13 revisor of statutes shall substitute appropriate section numbers  
14 for the letters used in designating and referring to the new  
15 sections in this Act.

16 SECTION 12. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 13. This Act shall take effect upon its approval;  
19 provided that:

- 20 (1) The amendments made to section 235-20.5, Hawaii  
21 Revised Statutes, by this Act shall not be repealed  
22 when section 235-20.5, Hawaii Revised Statutes, is



1 reenacted on January 1, 2011, pursuant to section 8 of  
2 Act 206, Session Laws of Hawaii 2007;  
3 (2) Sections 231-F, 231-J, 231-K, 231-L, 231-M, 231-N,  
4 231-O, and 231-P, Hawaii Revised Statutes, in section  
5 2 of this Act shall take effect on July 1, 2009; and  
6 (3) This Act shall be repealed on June 30, 2014, and  
7 section 235-20.5, Hawaii Revised Statutes, shall be  
8 reenacted in the form in which it read on the day  
9 prior to the effective date of section 8 of Act 206,  
10 Session Laws of Hawaii 2007; provided further that  
11 sections 231-1, 237-9, and 237-12(b), Hawaii Revised  
12 Statutes, shall be reenacted in the form in which they  
13 read on the day prior to the effective date of this  
14 Act.

APPROVED this 18 day of JUN, 2009



GOVERNOR OF THE STATE OF HAWAII