

'JAN 2 0 2023

A BILL FOR AN ACT

RELATING TO HEALTH.

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

1 SECTION 1. Tobacco use is the single most preventable
2 cause of disease, disability, and death in the United States.
3 Tobacco use continues to be a problem in Hawai'i, causing
4 approximately one thousand four hundred deaths per year among
5 adults. An estimated twenty-one thousand children in Hawai'i
6 currently under the age of eighteen will ultimately die
7 prematurely from smoking. Tobacco use poses a heavy burden on
8 Hawai'i's health care system and economy. Each year, smoking
9 costs approximately \$526,000,000 in direct health care
10 expenditures and \$387,300,000 in lost productivity in the State.

11 Tobacco products are addictive and inherently dangerous,
12 causing various types of cancer, heart disease, and other
13 serious illnesses. Hawai'i has a substantial interest in
14 reducing the number of individuals of all ages who use tobacco
15 products, and a particular interest in protecting adolescents
16 from tobacco dependence and illnesses and premature death
17 associated with tobacco use.



1 Electronic smoking devices, also known as e-cigarettes, are
2 battery-operated products designed to deliver nicotine, flavor,
3 and other chemicals to the user. Electronic smoking devices
4 have quickly evolved since entering the United States
5 marketplace in 2007. Initial products were disposable,
6 resembled the size and shape of conventional cigarettes, and
7 used free-base nicotine; however, the products have evolved to
8 better entice new and younger users. Current products are
9 rechargeable and resemble common objects, such as candy or juice
10 boxes with cartoon characters on them. Products also come in the
11 form of flash drives and highlighters, and typically deliver
12 nicotine salts, which allow higher levels of nicotine to be
13 inhaled more easily by the user.

14 The electronic smoking device industry, including the
15 production of e-liquid in a variety of forms, has grown rapidly.
16 In its Morbidity and Mortality Weekly Report dated September 18,
17 2020, the Centers for Disease Control and Prevention (CDC)
18 reported that electronic smoking devices have been the most
19 commonly used tobacco product among United States youths since
20 2014. The United States Surgeon General first issued a warning
21 in 2016 stating that use of electronic smoking devices among the



1 nation's youth and young adults had become a major public health
2 concern. In 2018, the Surgeon General classified the danger of
3 youth use of electronic smoking devices as an epidemic.

4 According to a report titled "E-Cigarette Use Among Youth
5 and Young Adults", the United States Surgeon General explained
6 that ninety-five per cent of all smokers start smoking before
7 the age of twenty-one. As there has been an overall decline in
8 the use of combustible cigarettes over the last decade, there
9 has been a dramatic increase in the use of electronic smoking
10 devices by Hawai'i's youth. The rise in use of electronic
11 smoking devices among Hawai'i youth is higher than the national
12 average. Between 2011 to 2015, the proportion of youth
13 experimenting with electronic smoking devices increased six-fold
14 among middle school youth and four-fold among high school youth.
15 In 2017, twenty-seven per cent of public middle school students
16 and forty-two per cent of public high school students tried
17 electronic smoking devices. By 2019, thirty-one percent of
18 public middle school students and forty-eight percent of public
19 high school students had used an electronic smoking device. In
20 2020, eight in ten youth who currently use e-cigarettes reported
21 using a flavored product. These rates are higher than the



1 national average, demonstrate an alarming increase in Hawai'i
2 youth nicotine use, and serve to illustrate a bleak future of
3 nicotine addiction in the next generation.

4 Toxicologists have warned that e-liquids pose significant
5 risks to public health, particularly to children. The 2016
6 Surgeon General's Report further states that if the contents of
7 prefilled cartridges or bottles of e-liquids containing nicotine
8 are ingested, they may cause acute toxicity and possibly death.

9 According to CDC's Morbidity and Mortality Weekly Report
10 dated September 18, 2020, from November of 2016 to August of
11 2019, total electronic smoking device unit sales in the United
12 States increased nearly three hundred per cent. Continued
13 monitoring of electronic smoking device sales and use is
14 critical to inform strategies to minimize risk among Hawai'i's
15 most vulnerable populations, including youth users.

16 The 2016 Surgeon General's Report found that there are
17 numerous policies and practices that can be implemented at state
18 and local levels to address electronic smoking device use among
19 youth and young adults, including preventing access to
20 electronic smoking devices by youth, increasing taxes imposed



1 upon electronic smoking devices, increasing prices of retail
2 licensure, and regulating electronic smoking device marketing.

3 Additionally, the rapid growth of the electronic smoking
4 device industry, including retail businesses selling electronic
5 smoking devices or e-liquid, necessitates further regulations to
6 protect consumers, such as requiring retailers of e-liquid to
7 obtain a retail tobacco permit. The 2016 Surgeon General's
8 Report found that children and youth are especially vulnerable
9 to the targeted online social and digital media marketing of
10 inexpensive electronic smoking devices offered in enticing
11 concealable forms and e-liquids in various flavors.

12 The United States Food and Drug Administration has expanded
13 its regulatory authority to all tobacco products, including
14 electronic smoking devices, cigars, and hookah and pipe tobacco.
15 While there is federal consensus that electronic smoking devices
16 are tobacco products, Hawai'i has no state tobacco tax imposed on
17 electronic smoking devices and e-liquids. While the use of
18 electronic smoking devices and e-liquids also carry the risk of
19 adverse health consequences, these products are currently taxed
20 at a much lower rate than cigarettes. Decades of research have
21 shown that increasing cigarette prices, such as through the



1 imposition of cigarette taxes, can reduce the rate of smoking by
2 adult and youth smokers. As outlined in the 2016 Surgeon
3 General's Report, current findings show this public health
4 policy can likewise be applied to electronic smoking devices and
5 e-liquids to reduce youth consumption.

6 Taxing e-liquids and electronic smoking devices as tobacco
7 products will provide pricing parity between products on the
8 market, which will result in consumer clarity and positive
9 health benefits, including encouraging young, price-conscious
10 consumers to quit smoking or sustain cessation, preventing youth
11 initiation, and reducing consumption among those who continue to
12 use them.

13 The purpose of this Act is to:

14 (1) Establish the criminal offense of unlawful shipment of
15 tobacco products;

16 (2) Amend the definition of "tobacco products" as used in
17 the State's cigarette tax and tobacco tax law to
18 include e-liquid and electronic smoking devices,
19 thereby:

20 (A) Subjecting e-liquids and electronic smoking
21 devices to the excise tax on tobacco products;



- 1 (B) Requiring retailers of e-liquids or electronic
2 smoking devices to obtain a retail tobacco permit
3 to sell, possess, keep, acquire, distribute, or
4 transport e-liquids or electronic smoking
5 devices;
- 6 (C) Prohibiting persons from engaging in the business
7 of a wholesaler or dealer of e-liquids or
8 electronic smoking devices without first
9 obtaining a license from the department of
10 taxation; and
- 11 (D) Applying other requirements of the cigarette tax
12 and tobacco tax law to e-liquids and electronic
13 smoking devices;
- 14 (3) Increase the license fee for persons engaged as
15 wholesalers or dealers of cigarettes and tobacco
16 products;
- 17 (4) Increase the retail tobacco permit fee for retailers
18 engaged in the retail sale of cigarettes and tobacco
19 products; and
- 20 (5) Repeal various statutory provisions relating to
21 electronic smoking devices to avoid conflict with



1 taxation and regulation under the cigarette tax and
2 tobacco tax law.

3 SECTION 2. Chapter 245, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§245- Unlawful shipment of tobacco products; penalty;
7 liability for unpaid taxes. (a) A person or entity commits the
8 offense of unlawful shipment of tobacco products if the person
9 or entity:

10 (1) Is engaged in the business of selling tobacco
11 products; and

12 (2) Ships or causes to be shipped any tobacco products to
13 a person or entity in this State that is not a
14 licensee under this chapter.

15 (b) This section shall not apply to the shipment of
16 tobacco products if any of the following conditions are met:

17 (1) The tobacco products are exempt from taxes as provided
18 by section 245-3(b); or

19 (2) All applicable State taxes on the tobacco products are
20 paid in accordance with the requirements of this
21 chapter.



1 (c) Unlawful shipment of tobacco products is a class C
2 felony if the person or entity knowingly ships or causes to be
3 shipped tobacco products with a value of \$10,000 or more in
4 violation of subsection (a).

5 (d) Unlawful shipment of tobacco products is a misdemeanor
6 if the person or entity knowingly ships or causes to be shipped
7 tobacco products with a value of less than \$10,000 in violation
8 of subsection (a).

9 (e) For purposes of this section, a person or entity is a
10 licensee if the person's or entity's name appears on a list of
11 authorized licensees published by the department.

12 (f) Notwithstanding the existence of other remedies at
13 law, any person or entity that purchases, uses, controls, or
14 possesses any tobacco products for which the applicable taxes
15 imposed under title 14 have not been paid, shall be liable for
16 the applicable taxes, plus any penalty and interest as provided
17 for by law.

18 (g) For the purpose of this section, "value" means the
19 retail fair market value at the time of the offense."

20 SECTION 3. Section 245-1, Hawaii Revised Statutes, is
21 amended as follows:



1 1. By adding two new definitions to be appropriately
2 inserted and to read:

3 "Electronic smoking device" means any device that may be
4 used to deliver any aerosolized or vaporized substance to the
5 person inhaling from the device, including but not limited to an
6 electronic-cigarette, electronic-cigar, electronic-pipe, vape
7 pen, or electronic-hookah. "Electronic smoking device" includes
8 any component, part, or accessory of the device, and any
9 substance that may be aerosolized or vaporized by the device,
10 whether or not the substance contains nicotine. "Electronic
11 smoking device" does not include drugs, devices, or combination
12 products authorized for sale by the United States Food and Drug
13 Administration, as those terms are defined in the Federal Food,
14 Drug, and Cosmetic Act.

15 "E-liquid" means any liquid or like substance, which may or
16 may not contain nicotine, that is designed or intended to be
17 used in an electronic smoking device, whether or not packaged in
18 a cartridge or other container. "E-liquid" does not include
19 prescription drugs; cannabis for medical use governed by chapter
20 329; manufactured cannabis products governed by chapter 329D; or
21 medical devices used to aerosolize, inhale, or ingest



1 prescription drugs, including manufactured cannabis products
2 manufactured or distributed in accordance with section
3 329D-10(a)."

4 2. By amending the definition of "tobacco products" to
5 read:

6 "'Tobacco products" means [~~tobacco in any form,~~]:

- 7 (1) Any product containing, made of, or derived from
8 tobacco or nicotine, other than cigarettes or little
9 cigars, that is [~~prepared or~~] intended for human
10 consumption [~~or for personal use by humans,~~] or is
11 likely to be consumed by inhalation, absorption, or
12 any other means of ingestion, including large cigars
13 and any substitutes thereof other than cigarettes that
14 bear the semblance thereof, snuff, snus, chewing or
15 smokeless tobacco, and smoking or pipe tobacco[-];
16 (2) Any electronic smoking device as defined in this
17 section and any substance, including e-liquids, that
18 may be aerosolized or vaporized by the device, whether
19 or not the substance contains nicotine; or
20 (3) Any component, part, or accessory of any item
21 described in paragraph (1) or (2), whether or not any



1 of these contains tobacco or nicotine, including but
2 not limited to filters, rolling papers, blunt or hemp
3 wraps, hookahs, and pipes.

4 "Tobacco products" does not mean drugs, devices, or combination
5 products authorized for sale by the United States Food and Drug
6 Administration, as those terms are defined in the Federal Food,
7 Drug, and Cosmetic Act."

8 SECTION 4. Section 245-2, Hawaii Revised Statutes, is
9 amended by amending subsection (b) to read as follows:

10 "(b) The license shall be issued by the department upon
11 application therefor, in such form and manner as shall be
12 required by rule of the department, and the payment of a fee of
13 ~~[\$2.50,]~~ \$250, and shall be renewable annually on July 1 for the
14 twelve months ending the succeeding June 30."

15 SECTION 5. Section 245-2.5, Hawaii Revised Statutes, is
16 amended by amending subsections (c) and (d) to read as follows:

17 "(c) The retail tobacco permit shall be issued by the
18 department upon application by the retailer in the form and
19 manner prescribed by the department, and the payment of a fee of
20 ~~[\$20-]~~ \$50. Permits shall be valid for one year, from
21 December 1 to November 30, and renewable annually. Whenever a



1 retail tobacco permit is defaced, destroyed, or lost, or the
2 permittee relocates the permittee's business, the department may
3 issue a duplicate retail tobacco permit to the permittee for a
4 fee of \$5 per copy.

5 (d) A separate retail tobacco permit shall be obtained for
6 each place of business owned, controlled, or operated by a
7 retailer. In seeking a retail tobacco permit, the applicant
8 shall specify whether each place of business sells e-liquid,
9 electronic smoking devices, or both. A retailer that owns or
10 controls more than one place of business may submit a single
11 application for more than one retail tobacco permit. Each
12 retail tobacco permit issued shall clearly describe the place of
13 business where the operation of the business is conducted[-] and
14 whether the place of business sells e-liquid, electronic smoking
15 devices, or both."

16 SECTION 6. Chapter 28, part XII, Hawaii Revised Statutes,
17 is repealed.

18 SECTION 7. Section 245-17, Hawaii Revised Statutes, is
19 repealed.

20 [~~"§245-17~~] ~~Delivery sales.~~ (a) ~~No person shall conduct~~
21 ~~a delivery sale or otherwise ship or transport, or cause to be~~



1 ~~shipped or transported, any electronic smoking device in~~
2 ~~connection with a delivery sale to any person under the age of~~
3 ~~twenty one.~~

4 ~~(b) A person who makes delivery sales shall not accept a~~
5 ~~purchase or order from any person without first obtaining the~~
6 ~~full name, birth date, and address of that person and verifying~~
7 ~~the purchaser's age by:~~

8 ~~(1) An independently operated third party database or~~
9 ~~aggregate of databases that are regularly used by~~
10 ~~government and businesses for the purpose of age and~~
11 ~~identity verification and authentication;~~

12 ~~(2) Receiving a copy of a government issued identification~~
13 ~~card from the purchaser; or~~

14 ~~(3) Requiring age and signature verification in the~~
15 ~~shipment process and upon and before actual delivery.~~

16 ~~(c) The purchaser shall certify their age before~~
17 ~~completing the purchaser's order.~~

18 ~~(d) Any person who violates this section shall be fined~~
19 ~~\$500 for the first offense. Any subsequent offenses shall~~
20 ~~subject the person to a fine of no less than \$500 but no more~~
21 ~~than \$2,000. Any person under twenty one years of age who~~



1 ~~violates this section shall be fined \$10 for the first offense,~~
2 ~~provided that any subsequent offense shall subject the person to~~
3 ~~a fine of \$50, no part of which shall be suspended, or the~~
4 ~~person shall be required to perform no less than forty eight~~
5 ~~hours but no more than seventy two hours of community service~~
6 ~~during hours when the person is not employed or attending~~
7 ~~school.~~

8 ~~(e) The department shall not adopt rules prohibiting~~
9 ~~delivery sales.~~

10 ~~(f) For the purposes of this section:~~

11 ~~"Delivery sale" means any sale of an electronic smoking~~
12 ~~device to a purchaser in the State where either:~~

13 ~~(1) The purchaser submits the order for sale by means of a~~
14 ~~telephonic or other method of voice transmission, the~~
15 ~~mail or any other delivery service, or the internet or~~
16 ~~other online service; or~~

17 ~~(2) The electronic smoking device is delivered by use of~~
18 ~~the mail or any other delivery service.~~

19 ~~The foregoing sales of electronic smoking devices shall~~
20 ~~constitute a delivery sale regardless of whether the seller is~~
21 ~~located within or without the State.~~



1 ~~"Electronic smoking device" means any electronic product~~
2 ~~that can be used to aerosolize and deliver nicotine or other~~
3 ~~substances to the person inhaling from the device, including but~~
4 ~~not limited to an electronic cigarette, electronic cigar,~~
5 ~~electronic cigarillo, or electronic pipe, and any cartridge or~~
6 ~~other component of the device or related product."]~~

7 SECTION 8. Section 328J-11.5, Hawaii Revised Statutes, is
8 repealed.

9 ~~["~~§328J-11.5~~ Statewide concern. (a) Sales of~~
10 ~~cigarettes, tobacco products, and electronic smoking devices are~~
11 ~~a statewide concern. It is the intent of the legislature to~~
12 ~~regulate the sale of cigarettes, tobacco products, and~~
13 ~~electronic smoking devices in a uniform and exclusive manner.~~

14 ~~(b) All local ordinances or regulations that regulate the~~
15 ~~sale of cigarettes, tobacco products, and electronic smoking~~
16 ~~devices are preempted, and existing local laws and regulations~~
17 ~~conflicting with this chapter are null and void.~~

18 ~~(c) Nothing in this chapter shall be construed to limit a~~
19 ~~county's authority under section 328J-15."]~~



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

4 SECTION 10. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 11. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 12. This Act shall take effect on January 1, 2024.

13

INTRODUCED BY:



S.B. NO. 975

Report Title:

Tobacco Products; E-Liquid; Electronic Smoking Devices; Unlawful Shipment; License Fee; Retail Permit Fee

Description:

Establishes the criminal offense of unlawful shipment of tobacco products. Amends the definition of "tobacco products" under the Cigarette Tax and Tobacco Tax Law to include electronic smoking devices and e-liquids. Increases the license fee for persons engaged as wholesalers or dealers of cigarettes and tobacco products and the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes and tobacco products. Repeals state laws that establish and govern the Electronic Smoking Device Retailer Registration Unit within the Department of the Attorney General; provisions of the Cigarette Tax and Tobacco Tax Law that govern delivery sales; and state law governing smoking that preempts and voids local ordinances and regulations conflicting with state law. Effective January 1, 2024.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

