

JAN 25 2023

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**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 The latest data published in July 2022 by the Centers for  
4 Disease Control and Prevention Office on Smoking and Health  
5 shows the economic cost of cigarette smoking now exceeds  
6 \$600,000,000,000, including \$240,000,000,000 for direct health  
7 care spending, nearly \$185,000,000,000 in lost productivity from  
8 smoking-related illnesses and health conditions, almost  
9 \$180,000,000,000 in lost productivity from smoking-related  
10 premature death, and \$7,000,000,000 in lost productivity from  
11 premature death from secondhand smoke exposure. Tobacco use  
12 continues to be a problem in Hawaii. The Centers for Disease  
13 Control and Prevention's State Tobacco Activities Tracking and  
14 Evaluation System estimates tobacco causes approximately one  
15 thousand four hundred deaths per year among adults in Hawaii.  
16 In a 2014 report titled "The Health Consequences of Smoking: 50  
17 Years of Progress," the United States Surgeon General projected  
18 an estimated twenty-one thousand children now under the age of

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1 eighteen and alive in Hawaii will die prematurely from smoking.  
2 Consequently, tobacco use poses a heavy burden on Hawaii's  
3 health care system and economy.

4 Tobacco products are addictive and inherently dangerous,  
5 causing many different types of cancer, heart disease, and other  
6 serious illnesses. Hawaii has a substantial interest in  
7 reducing the number of individuals of all ages who use tobacco  
8 products, and a particular interest in protecting adolescents  
9 from tobacco dependence and the illnesses and premature death  
10 associated with tobacco use.

11 Electronic smoking devices, also known as e-cigarettes, are  
12 battery-operated products designed to deliver nicotine, flavor,  
13 and other chemicals to the user. Electronic smoking devices  
14 have quickly evolved since entering the United States  
15 marketplace in 2007. Initial products were disposable,  
16 resembled the size and shape of conventional cigarettes, and  
17 used free-base nicotine. However, newer products are  
18 rechargeable, resemble common objects, including flash drives  
19 and lighters, and typically deliver nicotine salts, which  
20 allow higher levels of nicotine to be inhaled more easily by the  
21 user.

22 The electronic smoking device industry, which includes the  
23 production of e-liquid in a variety of forms, has grown rapidly.

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1 In the September 18, 2020 Morbidity and Mortality Weekly Report,  
2 the Centers for Disease Control and Prevention reported that  
3 electronic smoking devices have been the most commonly used  
4 tobacco product among United States youths since 2014. The  
5 United States Surgeon General first issued a warning in 2016  
6 about the dangers of these products, stating that use among the  
7 nation's youth and young adults had become a major public health  
8 concern. In response to the continuing rise in use, in 2018,  
9 the Surgeon General made the unprecedented move of classifying  
10 the danger of youth usage of electronic smoking devices as an  
11 epidemic in the Surgeon General's Advisory on E-Cigarette Use  
12 Among Youth.

13 The 2019 Youth Risk Behavior Survey issued by the Centers  
14 for Disease Control and Prevention reported that the use of  
15 electronic smoking devices among high school seniors increased  
16 nationally from 24.1 per cent in 2015 to 37.7 per cent in 2019.  
17 The same survey reported that in Hawaii, 48.3 per cent of public  
18 high school students report having experimented with electronic  
19 smoking devices, and 30.6 per cent are current users of  
20 electronic smoking devices. Further, in the 2016 report titled  
21 "E-Cigarette Use Among Youth and Adults" (Surgeon General's  
22 Report), the United States Surgeon General stated that  
23 electronic smoking device use among youth and young adults is

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1 also strongly associated with the use of other tobacco products,  
2 including combustible tobacco products.

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

8 The Centers for Disease Control and Prevention reported in  
9 the September 18, 2020 Morbidity and Mortality Weekly Report  
10 that from November of 2016 to August of 2019, total electronic  
11 smoking device unit sales in the United States increased nearly  
12 three hundred per cent. Continued monitoring of electronic  
13 smoking device sales and use is critical to inform strategies to  
14 minimize risk among Hawaii's most vulnerable youth users.

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

22 Additionally, the rapid growth of the electronic smoking  
23 device industry, including retail businesses selling electronic

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1 smoking devices or e-liquid, necessitates further regulations to  
2 protect consumers, such as requiring retailers of e-liquid to  
3 obtain a retail tobacco permit. The 2016 Surgeon General's  
4 Report found that children and youth are especially vulnerable  
5 to the targeted online social and digital media marketing of  
6 inexpensive electronic smoking devices offered in enticing  
7 flavors and concealable forms.

8 The United States Food and Drug Administration has expanded  
9 its regulatory authority to all tobacco products, including  
10 electronic smoking devices, cigars, and hookah and pipe tobacco.  
11 While there is federal consensus that electronic smoking devices  
12 are tobacco products, Hawaii has no state tobacco tax attached  
13 to electronic smoking devices and e-liquids. While the use of  
14 electronic smoking devices and e-liquids also carry the risk of  
15 adverse health consequences, these products are currently taxed  
16 at a much lower rate than cigarettes. Decades of research have  
17 shown that increasing cigarette prices, such as through  
18 cigarette taxes, can reduce the rate of smoking by adult and  
19 youth smokers. As outlined in the 2016 Surgeon General's  
20 Report, current findings show this public health policy can  
21 likewise be applied to electronic smoking devices and e-liquids  
22 to reduce youth consumption.

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1 Taxing e-liquids and electronic smoking devices, as tobacco  
2 products, will provide pricing parity between products on the  
3 market. Pricing parity among tobacco products on the market  
4 will result in positive health benefits, including encouraging  
5 young, price-conscious consumers to quit, sustaining cessation,  
6 preventing youth initiation, and reducing consumption among  
7 those who continue to use them.

8 The purposes of this Act are to:

9 (1) Establish the criminal offense of unlawful shipment of  
10 tobacco products;

11 (2) Include "e-liquid" and "electronic smoking devices"  
12 within the definition of "tobacco products" as used in  
13 the cigarette tax and tobacco tax law, thereby:

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

16 (B) Requiring retailers of e-liquids or electronic  
17 smoking devices to obtain a retail tobacco permit  
18 to sell, possess, keep, acquire, distribute, or  
19 transport e-liquids or electronic smoking  
20 devices;

21 (C) Prohibiting persons from engaging in the business  
22 of a wholesaler or dealer of e-liquids or  
23 electronic smoking devices without first

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- 1                   obtaining a license from the department of  
2                   taxation; and
- 3           (D)   Applying other requirements of chapter 245,  
4                   Hawaii Revised Statutes to e-liquids and  
5                   electronic smoking devices;
- 6           (3)   Increase the license fee for persons engaged as  
7                   wholesalers or dealers of cigarettes and tobacco  
8                   products;
- 9           (4)   Increase the retail tobacco permit fee for retailers  
10                  engaged in the retail sale of cigarettes and tobacco  
11                  products; and
- 12           (5)   Repeal various statutory provisions relating to  
13                  electronic smoking devices to avoid conflict with  
14                  taxation and regulation under chapter 245, Hawaii  
15                  Revised Statutes.

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

19           "§245-    Unlawful shipment of tobacco products; penalty;  
20           liability for unpaid taxes.   (a) A person or entity commits the  
21           offense of unlawful shipment of tobacco products if the person  
22           or entity:

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

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

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

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

10      (2) All applicable Hawaii taxes on the tobacco products  
11           are paid in accordance with the requirements of this  
12           chapter.

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

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

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

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

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

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

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

13        "Electronic smoking device" means any device that may be  
14 used to deliver any aerosolized or vaporized substance to the  
15 person inhaling from the device, including, but not limited to,  
16 an electronic cigarette, electronic cigar, electronic pipe, vape  
17 pen, or electronic hookah. "Electronic smoking device" includes  
18 any component, part, or accessory of the device, and also  
19 includes any substance that may be aerosolized or vaporized by  
20 such device, whether or not the substance contains nicotine.  
21 "Electronic smoking device" does not include drugs, devices, or  
22 combination products authorized for sale by the United States

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1 Food and Drug Administration, as those terms are defined in the  
2 Federal Food, Drug, and Cosmetic Act.

3 "E-liquid" means any liquid or like substance, which may or  
4 may not contain nicotine, that is designed or intended to be  
5 used in an electronic smoking device, whether or not packaged in  
6 a cartridge or other container. "E-liquid" does not include  
7 prescription drugs; cannabis for medical use pursuant to chapter  
8 329 or manufactured cannabis products pursuant to chapter 329D;  
9 or medical devices used to aerosolize, inhale, or ingest  
10 prescription drugs, including manufactured cannabis products  
11 manufactured or distributed in accordance with section 329D-  
12 10(a)."

13 2. By amending the definition of "tobacco products" to  
14 read:

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

16 (1) Any product containing, made of, or derived from  
17 tobacco or nicotine, other than cigarettes or little  
18 cigars, that is [~~prepared or~~] intended for human  
19 consumption [~~or for personal use by humans,~~] or is  
20 likely to be consumed whether inhaled, absorbed, or  
21 ingested by any other means, including but not limited  
22 to large cigars and any substitutes thereof other than  
23 cigarettes that bear the semblance thereof, and

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1           including snuff, snus, chewing or smokeless tobacco,  
2           and smoking or pipe tobacco[-];

3           (2) Any electronic smoking device as defined in this  
4           section and any substance, including e-liquids, that  
5           may be aerosolized or vaporized by such device,  
6           whether or not the substance contains nicotine; or

7           (3) Any component, part, or accessory of any item  
8           described in paragraph (1) or (2), whether or not any  
9           of these contains tobacco or nicotine, including but  
10          not limited to filters, rolling papers, blunt or hemp  
11          wraps, hookahs, and pipes.

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

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

18           "(b) The license shall be issued by the department upon  
19 application therefor, in such form and manner as shall be  
20 required by rule of the department, and the payment of a fee of  
21 [~~\$2.50~~] \$250, and shall be renewable annually on July 1 for the  
22 twelve months ending the succeeding June 30."

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

3 "(c) The retail tobacco permit shall be issued by the  
4 department upon application by the retailer in the form and  
5 manner prescribed by the department, and the payment of a fee of  
6 [~~\$20-~~] \$50. Permits shall be valid for one year, from December  
7 1 to November 30, and renewable annually. Whenever a retail  
8 tobacco permit is defaced, destroyed, or lost, or the permittee  
9 relocates the permittee's business, the department may issue a  
10 duplicate retail tobacco permit to the permittee for a fee of \$5  
11 per copy.

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

23 SECTION 6. Chapter 28, part XII, Hawaii Revised Statutes,

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1 is repealed.

2 SECTION 7. Section 245-17, Hawaii Revised Statutes, is  
3 repealed.

4 [~~"§245-17~~] ~~Delivery sales.~~ (a) ~~No person shall conduct~~  
5 ~~a delivery sale or otherwise ship or transport, or cause to be~~  
6 ~~shipped or transported, any electronic smoking device in~~  
7 ~~connection with a delivery sale to any person under the age of~~  
8 ~~twenty one.~~

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

13 (1) ~~An independently operated third party database or~~  
14 ~~aggregate of databases that are regularly used by~~  
15 ~~government and businesses for the purpose of age and~~  
16 ~~identity verification and authentication;~~

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

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

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

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1       ~~(d) Any person who violates this section shall be fined~~  
2       ~~\$500 for the first offense. Any subsequent offenses shall~~  
3       ~~subject the person to a fine of no less than \$500 but no more~~  
4       ~~than \$2,000. Any person under twenty one years of age who~~  
5       ~~violates this section shall be fined \$10 for the first offense;~~  
6       ~~provided that any subsequent offense shall subject the person to~~  
7       ~~a fine of \$50, no part of which shall be suspended, or the~~  
8       ~~person shall be required to perform no less than forty eight~~  
9       ~~hours but no more than seventy two hours of community service~~  
10       ~~during hours when the person is not employed or attending~~  
11       ~~school.~~

12       ~~(e) The department shall not adopt rules prohibiting~~  
13       ~~delivery sales.~~

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

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

17       ~~(1) The purchaser submits the order for sale by means of a~~  
18       ~~telephonic or other method of voice transmission, the~~  
19       ~~mail or any other delivery service, or the internet or~~  
20       ~~other online service; or~~

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

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

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

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

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

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

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

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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, upon its approval, shall take effect  
13 on July 1, 2023; provided that section 4 shall take effect on  
14 July 1, 2024, and section 5 shall take effect on December 1,  
15 2024.

16

17

INTRODUCED BY: 

18

BY REQUEST

# S.B. NO. 1375

**Report Title:**

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

**Description:**

Establishes the criminal offense of unlawful shipment of tobacco products. Includes electronic smoking devices and e-liquids within the definition of "tobacco products", as used in the Cigarette Tax and Tobacco Tax Law. Increases the license fee for persons engaged as wholesalers or dealers of cigarettes and tobacco products. Increases the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes and tobacco products. Repeals certain provisions of the Hawaii Revised Statutes relating to electronic smoking devices and the sale of tobacco products. Effective July 1, 2023; provided that section 4 shall take effect on July 1, 2024, and section 5 shall take effect on December 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.*

## JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO HEALTH.

PURPOSE: To establish the criminal offense of unlawful shipment of tobacco products; amend the definition of "tobacco products" to include "electronic smoking device" and "e-liquid"; require electronic smoking devices and e-liquids to be taxed and subject to license and permit requirement as tobacco products; define "e-liquid" and "electronic smoking device"; and increase the license fee and retail permit fee for the sale of cigarettes and tobacco products.

MEANS: Add a new section to chapter 245, Hawaii Revised Statutes (HRS), amend sections 245-1, 245-2(b), 245-2.5(c) and (d) HRS, and repeal chapter 28, part XII, HRS, section 245-17, HRS, and section 328J-11.5, HRS.

JUSTIFICATION: This measure responds to the increasing trend of youth vaping. Across the country, thirty-four states, territories, and the District of Columbia, along with several local governments, levy taxes on electronic smoking devices (ESDs) and e-liquids. This measure creates tax parity between ESDs and e-liquids and other tobacco products on the market by establishing taxes for ESDs and e-liquids that currently do not exist. Taxing ESDs and e-liquids at the same rate as the taxes currently imposed on other tobacco products and cigarettes will create parity and remove price incentives that lead to youth initiation of vaping. This measure requires licensing and permitting of ESD retailers and distributors, a requirement currently imposed on other tobacco retailers and distributors.

This measure criminalizes the shipment of tobacco products to individuals not licensed

by the department of taxation under chapter 245, with certain exceptions.

This measure increases licensure and permitting fees, which have remained unchanged since 1995, despite high tobacco taxes and ever-increasing tobacco industry expenditures in marketing and advertising.

- Of forty states with licensing fees, twenty-six states charge  $\geq$ \$100/year and fourteen charge  $\geq$ \$200/year. Nine states charge \$500/year to \$1,500/year. Currently, Hawaii requires payment of a \$2.50 fee for a tobacco license under section 245-2(b), HRS. The bill increases the license fee to \$250.
- Of thirty-three states with retailer fees, fifteen states charge  $\geq$ \$20/year but less than \$100/year, with eight of fifteen charging  $\geq$ \$50/year. Currently, Hawaii requires payment of a \$20 fee for a retail tobacco permit under section 245-2.5(c), HRS. The bill increases the permit fee to \$50.

Repeal of chapter 28, part XII, HRS, is necessary to avoid conflict with this measure's goal of subjecting ESDs and e-liquids to taxation and regulation under chapter 245, HRS.

Repeal of section 245-17, HRS, and section 328J-11.5, HRS, are necessary to avoid conflicts with this measure's goal of creating parity with the handling of ESDs and e-liquids with other tobacco products and cigarettes in chapter 245, HRS.

Revenue Projections:

- E-cigarette tax of 70% of wholesale price: \$7.3 million.<sup>1</sup>

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<sup>1</sup>Chaloupka, F. J. *Revenue Potential of a Tax on E-Cigarettes in Hawaii*, University of Illinois at Chicago, 2021.

Impact on the public: This measure will protect youth through prohibiting the online sales or shipment of ESDs. Tobacco licensing/permitting ensures that wholesalers and retailers comply with responsible sales practices. Because youth are sensitive to prices, implementing the proven strategy of increasing the price of electronic smoking devices and e-liquids will likely result in a reduction in the rates of vaping experimentation by youths. It is currently estimated that approximately 48% of high school students and 31% of middle school students experiment with vaping.<sup>2</sup>

Impact on the department and other agencies: This proposal will make enforcement simpler because of the additional specificity and will create parity with existing cigarette policies. In addition to the revenue generated by taxation and increased fees, the health and economic consequences of vaping would be favorably impacted.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: HTH-590.

OTHER AFFECTED  
AGENCIES: Department of the Attorney General;  
Department of Taxation; County prosecuting attorneys.

EFFECTIVE DATE: July 1, 2023; provided that section 4 shall take effect on July 1, 2024, and section 5 shall take effect on December 1, 2024.

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<sup>2</sup>Hawaii State Department of Health, Hawaii Health Data Warehouse, *Youth Risk Behavior Survey*, (2019). <http://hhdw.org>.