A BILL FOR AN ACT

RELATING TO CHAPTER 245, HAWAII REVISED STATUTES.

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

- 1 SECTION 1. The legislature finds that tobacco use is the
- 2 single most preventable cause of disease, disability, and death
- 3 in the United States. Tobacco use continues to be a problem in
- 4 Hawaii, causing approximately 1,400 deaths per year among
- 5 adults. An estimated 21,000 children in Hawaii currently under
- 6 the age of eighteen will ultimately die prematurely from
- 7 smoking. Tobacco use poses a heavy burden on Hawaii's health
- 8 care system and economy. Each year, smoking costs approximately
- 9 \$526,000,000 in direct health care expenditures and \$387,300,000
- 10 in lost productivity in the State.
- 11 The legislature further finds that tobacco products are
- 12 addictive and inherently dangerous, causing many different types
- 13 of cancer, heart disease, and other serious illnesses. Hawaii
- 14 has a substantial interest in reducing the number of individuals
- 15 of all ages who use tobacco products, and a particular interest
- 16 in protecting adolescents from tobacco dependence and the
- 17 illnesses and premature death associated with tobacco use.

- 1 The legislature additionally finds that electronic smoking
- 2 devices, also known as e-cigarettes, are battery-operated
- 3 products designed to deliver nicotine, flavor, and other
- 4 chemicals to the user by turning chemicals including highly
- 5 addictive nicotine into an aerosol that is inhaled by the user.
- 6 Consumers may choose from varying strengths of e-liquid as well
- 7 as liquids consisting of different flavors. The electronic
- 8 smoking device industry, along with the production of e-liquid,
- 9 are growing rapidly. According to the Centers for Disease
- 10 Control and Prevention, more than 1,700,000 middle school and
- 11 high school students tried electronic cigarettes in 2012.
- 12 Toxicologists warn that e-liquids pose significant risks to
- 13 public health, particularly to children. The rapid growth of
- 14 the electronic smoking device industry, including retail
- 15 businesses selling electronic smoking devices or e-liquid,
- 16 necessitates further regulations to protect consumers, such as
- 17 requiring retailers of electronic smoking devices or e-liquid to
- 18 obtain a retail tobacco permit.
- The legislature also finds that taxes on e-liquid should be
- 20 similar to the tax rates already imposed on cigarettes.
- 21 E-liquid and tobacco products other than cigarettes are

- 1 currently taxed at a lower rate than cigarettes, even though
- 2 their use carries similar health risks. Research has shown that
- 3 either a tax on cigarettes or cigarette price increases have the
- 4 propensity to reduce the rate of smoking by adult and youth
- 5 smokers. However, the legislature is concerned that as the
- 6 price of cigarettes increases, smokers may be tempted to
- 7 purchase less expensive products such as electronic smoking
- 8 devices.
- 9 Finally, the legislature concludes that there should not be
- 10 a lower-priced tobacco alternative to cigarettes in Hawaii;
- 11 therefore, a similar tax rate for cigarettes and e-liquids that
- 12 acts as a deterrent for all forms of tobacco and nicotine use is
- 13 needed. Higher prices on e-liquids and electronic smoking
- 14 devices will encourage users of electronic smoking devices to
- 15 quit, sustain cessation, prevent youth initiation, and reduce
- 16 consumption among those who continue to use.
- 17 The purpose of this Act is to:
- 18 (1) Impose an excise tax on disposable electronic smoking
- devices and e-liquid sold by a wholesaler or dealer on
- and after January 1, 2017, whether or not sold at

1		wholesale, or if not sold then at the same rate upon
2		the use by the wholesaler or dealer;
3	(2)	Require every retailer engaged in the retail sale of
4		cigarettes, tobacco products, electronic smoking
5		devices, or e-liquid to obtain a retail tobacco permit
6		to sell, possess, keep, acquire, distribute, or
7		transport cigarettes, tobacco products, electronic
8		smoking devices, or e-liquid for retail sale;
9	(3)	Increase the license fee for persons engaged as a
10		wholesaler or dealer of cigarettes, tobacco products,
11		electronic smoking devices, and e-liquid; and
12	(4)	Increase the retail tobacco permit fee for retailers
13		engaged in the retail sale of cigarettes, tobacco
14		products, electronic smoking devices, and e-liquid.
15	SECT	ION 2. Section 245-1, Hawaii Revised Statutes, is
16	amended as	s follows:
17	1. I	By adding four new definitions to be appropriately
18	inserted a	and to read:
19	"_"Dis	sposable electronic smoking device" means an electronic
20	smoking de	evice that is designed or intended not to be reused or
21	refilled.	

1	"Electronic smoking device" means any electronic product
2	that can be used to aerosolize and deliver nicotine to the
3	person inhaling from the device, including but not limited to an
4	electronic cigarette, electronic cigar, electronic cigarillo,
5	electronic pipe, hookah pipe, or hookah pen, and any component
6	of the device or related product, whether or not sold
7	separately, including but not limited to atomizers, coils, drip
8	tips, and tanks.
9	"E-liquid" means any liquid containing nicotine that is
10	designed or intended to be used in a reusable electronic smoking
11	device, whether or not packaged in a cartridge or other
12	container.
13	"Reusable electronic smoking device" means an electronic
14	smoking device that is designed or intended to be reused or
15	refilled."
16	2. By amending the definition of "dealer" to read:
17	""Dealer" means any person coming into the possession of
18	cigarettes [or], tobacco products, electronic smoking devices,
19	or e-liquid, which have not been acquired from an authorized
20	permit holder or licensee under this chapter, or any person
21	rendering a distribution service who buys and maintains at the

- 1 person's place of business, a stock of cigarettes [ox], tobacco
- 2 products, electronic smoking devices, or e-liquid that have not
- 3 been acquired from a licensee and who distributes or uses such
- 4 cigarettes [ex], tobacco products[+], electronic smoking
- 5 devices, or e-liquid."
- 6 3. By amending the definition of "retailer" to read:
- 7 ""Retailer" means an entity that engages in the practice of
- 8 selling cigarettes [ex], tobacco products, electronic smoking
- 9 devices, or e-liquid to consumers and includes the owner of a
- 10 cigarette [$\frac{6x}{2}$], tobacco product, electronic smoking device, or
- 11 e-liquid vending machine."
- 4. By amending the definition of "sale" or "sold" to read:
- ""Sale" or "sold" includes any delivery of cigarettes [ex]_
- 14 tobacco products, electronic smoking devices, or e-liquid,
- 15 whether cash is actually paid therefor or not."
- 16 5. By amending the definition of "wholesale price" to
- 17 read:
- 18 ""Wholesale price", in addition to any other meaning of the
- 19 term, means in the case of a tax upon the use of tobacco
- 20 products, electronic smoking devices, or e-liquid, or upon a
- 21 sale not made at wholesale:

1	(1)	If made by a person who during the month preceding the
2		accrual of the tax made substantial sales to retailers
3		of like tobacco products, electronic smoking devices,
4		or e-liquid, the average price of the sales[-]; and
5	(2)	If made by any other person, the average price of
6		sales to retailers of like tobacco products,
7		electronic smoking devices, or e-liquid made by other
8		taxpayers in the same county during the month
9		preceding the accrual of the tax."
10	6. 1	By amending the definition of "wholesaler" to read:
11	""Wh	olesaler" means a person rendering a distribution
12	service w	ho buys and maintains, at the person's place of
13	business,	a stock of cigarettes [or], tobacco products,
14	electronic	smoking devices, or e-liquid that the person uses,
15	possesses	, or distributes only to retailers, or other
16	wholesale	rs, or both."
17	SECT	ION 3. Section 245-2, Hawaii Revised Statutes, is
18	amended by	y amending subsection (b) to read as follows:
19	"(b)	The license shall be issued by the department upon
20	application	on therefor, in such form and manner as shall be
21	required h	by rule of the department, and the payment of a fee of

- 1 $[\frac{$2.50}{}]$ $\frac{$250}{}$ and shall be renewable annually on July 1 for the
- 2 twelve months ending the succeeding June 30."
- 3 SECTION 4. Section 245-2.5, Hawaii Revised Statutes, is
- 4 amended as follows:
- 5 1. By amending subsections (a), (b), and (c) to read:
- 6 "(a) [Beginning December 1, 2006, every] Every retailer
- 7 engaged in the retail sale of cigarettes [and other], tobacco
- 8 products [upon which a tax is required to be paid under this
- 9 chapter], electronic smoking devices, or e-liquid shall obtain a
- 10 retail tobacco permit.
- (b) [Beginning March 1, 2007, it] It shall be unlawful for
- 12 any retailer engaged in the retail sale of cigarettes [and
- 13 other] tobacco products [upon which a tax is required to be
- 14 paid under this chapter], electronic smoking devices, or
- 15 <u>e-liquid</u> to sell, possess, keep, acquire, distribute, or
- 16 transport cigarettes [or other], tobacco products, electronic
- 17 smoking devices, or e-liquid for retail sale unless a retail
- 18 tobacco permit has been issued to the retailer under this
- 19 section and the retail tobacco permit is in full force and
- 20 effect.

- 1 (c) The retail tobacco permit shall be issued by the
- 2 department upon application by the retailer in the form and
- 3 manner prescribed by the department, and the payment of a fee of
- 4 [\$20.] \$50. Permits shall be valid for one year, from
- 5 December 1 to November 30, and renewable annually. Whenever a
- 6 retail tobacco permit is defaced, destroyed, or lost, or the
- 7 permittee relocates the permittee's business, the department may
- 8 issue a duplicate retail tobacco permit to the permittee for a
- 9 fee of \$5 per copy."
- 10 2. By amending subsection (e) to read:
- "(e) Any entity that operates as a dealer or wholesaler
- 12 and also sells cigarettes [or other], tobacco products,
- 13 electronic smoking devices, or e-liquid to consumers at retail
- 14 shall acquire a separate retail tobacco permit."
- 3. By amending subsection (h) to read:
- 16 "(h) Any sales of cigarettes [ex], tobacco products,
- 17 electronic smoking devices, or e-liquid made through a
- 18 [cigarette or tobacco product] vending machine are subject to
- 19 the terms, conditions, and penalties of this chapter. A retail
- 20 tobacco permit need not be displayed on [cigarette or tobacco
- 21 product vending machines if the retail tobacco permit holder is

- 1 the owner of the [cigarette or tobacco-product] vending machines
- 2 and the [cigarette or tobacco product] vending machines are
- 3 operated at the location described in the retail tobacco
- 4 permit."
- 5 4. By amending subsection (j) to read:
- 6 "(j) A vehicle from which cigarettes [ex], tobacco
- 7 products [are], electronic smoking devices, or e-liquid is sold
- 8 is considered a place of business and requires a retail tobacco
- 9 permit. Retail tobacco permits for a vehicle shall be issued
- 10 bearing a specific motor vehicle identification number and are
- 11 valid only when physically carried in the vehicle having the
- 12 corresponding motor vehicle identification number. Retail
- 13 tobacco permits for vehicles shall not be moved from one vehicle
- 14 to another."
- 15 5. By amending subsection (1) to read:
- "(1) A permittee shall keep a complete and accurate record
- 17 of the permittee's cigarette [ex], tobacco product, electronic
- 18 smoking device, and e-liquid inventory. The records shall:
- 19 (1) Include:
- 20 (A) A written statement containing the name and
- address of the permittee's source of its

Ţ			cigarettes [and], tobacco products[+], electronic
2			smoking devices, and e-liquid;
3		(B)	The date of delivery, quantity, trade name or
4			brand, and price of the cigarettes [and], tobacco
5			products[+], electronic smoking devices, and
6			e-liquid; and
7		(C)	Documentation in the form of any purchase orders,
8			invoices, bills of lading, other written
9			statements, books, papers, or records in whatever
10			format, including electronic format, which
11			substantiate the purchase or acquisition of the
12			cigarettes [and], tobacco products, electronic
13			smoking devices, and e-liquid stored or offered
14			for sale; and
15	(2)	Be o	effered for inspection and examination within
16		twen	ty-four hours of demand by the department or the
17		atto	rney general, and shall be preserved for a period
18		of t	hree years; provided that:
19		(A)	Specified records may be destroyed if the
20			department and the attornor gonoral bath control

1		to their destruction within the three-year
2		period; and
3	(B)	Either the department or the attorney general may
4		adopt rules pursuant to chapter 91 that require
5		specified records to be kept longer than a period
6		of three years."
7	6. By am	ending subsection (o) to read:
8	"(o) Any	cigarette, package of cigarettes, carton of
9	cigarettes, co	ntainer of cigarettes, tobacco product, package of
10	tobacco produc	ts, [or any] container of tobacco products <u>,</u>
11	electronic smo	king device, package of electronic smoking
12	devices, conta	iner of electronic smoking devices, e-liquid,
13	package of e-l	iquid, or container of e-liquid unlawfully sold,
· 14	possessed, kep	t, stored, acquired, distributed, or transported
15	in violation o	f this section may be seized and ordered forfeited
16	pursuant to ch	apter 712A."
17	SECTION 5	. Section 245-3, Hawaii Revised Statutes, is
18	amended by ame	nding subsection (a) to read as follows:
19	"(a) Eve	ry wholesaler or dealer, in addition to any other
20	taxes provided	by law, shall pay for the privilege of conducting
21	business and of	ther activities in the State:

1	(1)	An excise tax equal to 5.00 cents for each cigarette
2		sold, used, or possessed by a wholesaler or dealer
3		after June 30, 1998, whether or not sold at wholesale
4		or if not sold then at the same rate upon the use by
5		the wholesaler or dealer;
6	(2)	An excise tax equal to 6.00 cents for each cigarette
7		sold, used, or possessed by a wholesaler or dealer
8		after September 30, 2002, whether or not sold at
9		wholesale, or if not sold then at the same rate upon
10		the use by the wholesaler or dealer;
11	(3)	An excise tax equal to 6.50 cents for each cigarette
12		sold, used, or possessed by a wholesaler or dealer
13		after June 30, 2003, whether or not sold at wholesale,
14		or if not sold then at the same rate upon the use by
15		the wholesaler or dealer;
16	(4)	An excise tax equal to 7.00 cents for each cigarette
17		sold, used, or possessed by a wholesaler or dealer
18		after June 30, 2004, whether or not sold at wholesale,

or if not sold then at the same rate upon the use by

the wholesaler or dealer;

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1	(5)	An excise tax equal to 8.00 cents for each cigarette
2		sold, used, or possessed by a wholesaler or dealer or
3		and after September 30, 2006, whether or not sold at
4		wholesale, or if not sold then at the same rate upon
5		the use by the wholesaler or dealer;
6	(6)	An excise tax equal to 9.00 cents for each cigarette
7		sold, used, or possessed by a wholesaler or dealer on
8		and after September 30, 2007, whether or not sold at
9		wholesale, or if not sold then at the same rate upon
10		the use by the wholesaler or dealer;
11	(7)	An excise tax equal to 10.00 cents for each cigarette
12		sold, used, or possessed by a wholesaler or dealer on
13		and after September 30, 2008, whether or not sold at
14		wholesale, or if not sold then at the same rate upon
15		the use by the wholesaler or dealer;
16	(8)	An excise tax equal to 13.00 cents for each cigarette
17		sold, used, or possessed by a wholesaler or dealer on
18		and after July 1, 2009, whether or not sold at
19		wholesale, or if not sold then at the same rate upon

the use by the wholesaler or dealer;

20

1	(9)	An excise tax equal to 11.00 cents for each little
2		cigar sold, used, or possessed by a wholesaler or
3		dealer on and after October 1, 2009, whether or not
4		sold at wholesale, or if not sold then at the same
5		rate upon the use by the wholesaler or dealer;
6	(10)	An excise tax equal to 15.00 cents for each cigarette
7		or little cigar sold, used, or possessed by a
8		wholesaler or dealer on and after July 1, 2010,
9		whether or not sold at wholesale, or if not sold then
10		at the same rate upon the use by the wholesaler or
11		dealer;
12	(11)	An excise tax equal to 16.00 cents for each cigarette
13		or little cigar sold, used, or possessed by a
14		wholesaler or dealer on and after July 1, 2011,
15		whether or not sold at wholesale, or if not sold then
16		at the same rate upon the use by the wholesaler or
17		dealer;
18	(12)	An excise tax equal to seventy per cent of the
19		wholesale price of each article or item of tobacco
20		products, other than large cigars, sold by the
21		Wholesaler or dealer on and after September 30 2000

1		whether or not sold at wholesale, or if not sold then
2		at the same rate upon the use by the wholesaler or
3		dealer; [and]
4	(13)	An excise tax equal to fifty per cent of the wholesale
5		price of each large cigar of any length, sold, used,
6		or possessed by a wholesaler or dealer on and after
7		September 30, 2009, whether or not sold at wholesale,
8		or if not sold then at the same rate upon the use by
9		the wholesaler or dealer [+];
10	(14)	An excise tax equal to per cent of the wholesale
11		price of each disposable electronic smoking device,
12		sold, used, or possessed by a wholesaler or dealer on
13		and after January 1, 2017, whether or not sold at
14		wholesale, or if not sold then at the same rate upon
15		the use by the wholesaler or dealer; and
16	<u>(15)</u>	An excise tax equal to cents per milliliter of e-
17		liquid sold, used, or possessed by a wholesaler or
18		dealer on and after January 1, 2017, whether or not
19		sold at wholesale, or if not sold then at the same
20		rate upon the use by the wholesaler or dealer;
21		provided that liquids used with electronic smoking

1	devices that do not contain nicotine are exempt from
2	the excise tax established pursuant to this paragraph
3	Where the tax imposed has been paid on cigarettes, little
4	cigars, [er] tobacco products, electronic smoking devices, or
5	e-liquid that thereafter become the subject of a casualty loss
6	deduction allowable under chapter 235, the tax paid shall be
7	refunded or credited to the account of the wholesaler or dealer.
8	The tax shall be applied to cigarettes through the use of
9	stamps."
10	SECTION 6. Section 245-5, Hawaii Revised Statutes, is
11	amended to read as follows:
12	"§245-5 Returns. Every wholesaler or dealer, on or before
13	the twentieth day of each month, shall file with the department
14	a return showing the cigarettes [and], tobacco products,
15	electronic smoking devices, and e-liquid sold, possessed, or
16	used by the wholesaler or dealer during the preceding calendar
17	month and of the taxes chargeable against the taxpayer in
18	accordance with this chapter. The form of the return shall be
19	prescribed by the department and shall include:
20	(1) A separate statement of the number and wholesale price
21	of cigarettes;

1	(2)	The amount of stamps purchased and used;
2	(3)	The wholesale price of tobacco products, sold,
3		possessed, or used; [and]
4	(4)	The wholesale price of disposable electronic smoking
5		devices sold, possessed, or used;
6	<u>(5)</u>	The milliliters of e-liquid sold, possessed, or used,
7	(6)	The wholesale price of reusable electronic smoking
8		devices sold, possessed, or used; and
9	[-(4)-]	(7) Any other information that the department may
10		deem necessary, for the proper administration of this
11		chapter."
12	SECT	ION 7. Section 245-8, Hawaii Revised Statutes, is
13	amended by	y amending subsection (a) to read as follows:
14	"(a)	Each wholesaler or dealer shall keep a record of:
15	(1)	Every sale or use of cigarettes [and], tobacco
16		products, electronic smoking devices, and e-liquid by
17		the wholesaler or dealer;
18	(2)	The number and wholesale price of cigarettes;
19	(3)	The wholesale price of tobacco products[7] and
20		electronic smoking devices sold, possessed, or used;
21	(4)	The milliliters of e-liquid sold possessed or used.

1	$\left[\frac{(4)}{(5)}\right]$ The taxes payable on tobacco products, electronic
2	smoking products, and e-liquid sold, possessed, or
3	used, if any; and
4	$[\frac{(5)}{(6)}]$ The amounts of stamps purchased and used,
5	in a form as the department may prescribe. The records shall be
6	offered for inspection and examination at any time upon demand
7	by the department or the attorney general, and shall be
8	preserved for a period of five years, except that the department
9	and the attorney general, in writing, shall both consent to
10	their destruction within the five-year period or either the
11	department or the attorney general may require that they be kept
12	longer. The department, by rule, may require the wholesaler or
13	dealer to keep other records as it may deem necessary for the
14	proper enforcement of this chapter."
15	SECTION 8. Section 245-9, Hawaii Revised Statutes, is
16	amended by amending subsections (a) and (b) to read as follows:
17	"(a) The department and the attorney general may examine
18	all records, including tax returns and reports under section
19	245-31, required to be kept or filed under this chapter, and
20	books, papers, and records of any person engaged in the business
21	of wholesaling or dealing cigarettes [and], tobacco products,

- 1 electronic smoking devices, and e-liquid, to verify the accuracy
- 2 of the payment of the taxes imposed by this chapter. Every
- 3 person in possession of any books, papers, and records, and the
- 4 person's agents and employees, are directed and required to give
- 5 the department and the attorney general the means, facilities,
- 6 and opportunities for the examinations.
- 7 (b) The department and the attorney general may inspect
- 8 the operations, premises, and storage areas of any entity
- 9 engaged in the sale of cigarettes, or the contents of a specific
- 10 vending machine, during regular business hours. This inspection
- 11 shall include inspection of all statements, books, papers, and
- 12 records in whatever format, including electronic format,
- 13 pertaining to the acquisition, possession, transportation, sale,
- 14 or use of packages of cigarettes [and], tobacco products other
- 15 than cigarettes, electronic smoking devices, and e-liquid, to
- 16 verify the accuracy of the payment of taxes imposed by this
- 17 chapter, and of the contents of cartons and shipping or storage
- 18 containers to ascertain that all individual packages of
- 19 cigarettes have an affixed stamp of proper denomination as
- 20 required by this chapter. This inspection may also verify that
- 21 all stamps were produced under the authority of the department.

- 1 Every entity in possession of any books, papers, and records,
- 2 and the entity's agents and employees, are directed and required
- 3 to give the department and the attorney general the means,
- 4 facilities, and opportunities for the examinations. For
- 5 purposes of this chapter "entity" means one or more individuals,
- 6 a company, corporation, a partnership, an association, or any
- 7 other type of legal entity."
- 8 SECTION 9. Section 245-31, Hawaii Revised Statutes, is
- 9 amended as follows:
- 10 1. By amending its title to read:
- 11 "§245-31 Monthly report on distributions of cigarettes
- 12 [and], tobacco products, electronic smoking devices, e-liquid,
- 13 and purchases of stamps."
- 14 2. By amending subsection (b) to read:
- 15 "(b) On or before the twentieth day of each month, every
- 16 licensee shall file on forms prescribed by the department:
- 17 (1) A report of the licensee's distributions of tobacco
- 18 products and the wholesale costs of tobacco products
- during the preceding month; [and]
- 20 (2) A report of the licensee's distributions of disposable
- 21 electronic smoking devices and the wholesale costs of

1		the disposable electronic smoking devices during the
2		preceding month;
3	(3)	A report of the licensee's distributions of e-liquid
4		and milliliters distributed during the preceding
5		month;
6	(4)	A report of the licensee's distributions of reusable
7		electronic smoking devices and the wholesale costs of
8		the reusable electronic smoking devices during the
9		preceding month; and
10	[(2)]	(5) Any other information that the department may
11		require to carry out this part."
12	SECTION 10. Section 245-32, Hawaii Revised Statutes, is	
13	amended to read as follows:	
14	"[+]§245-32[+] Tax refund or credit for cigarettes [and],	
15	tobacco products, electronic smoking devices, and e-liquid	
16	shipped for sale or use outside the State. (a) The department	
17	shall adopt rules to provide a tobacco tax refund or credit to	
18	licensee who has paid a tobacco tax on the distribution of	
19	cigarettes [ex], tobacco products, electronic smoking devices,	
20	or e-liquid that are shipped to a point outside the State for	
21	subsequent sale or use outside the State	

- 1 (b) This part shall not apply to cigarettes $[\frac{\partial \mathbf{r}}{\mathbf{r}}]_{\underline{r}}$ tobacco
- 2 products, electronic smoking devices, or e-liquid that are
- 3 distributed in this State to consumers and that are subsequently
- 4 taken outside the State."
- 5 SECTION 11. Statutory material to be repealed is bracketed
- 6 and stricken. New statutory material is underscored.
- 7 SECTION 12. This Act shall take effect on July 1, 2112.

Report Title:

Disposable Electronic Smoking Device; Electronic Smoking Device; E-liquid; Excise Tax

Description:

Regulates electronic smoking devices and e-liquid under chapter 245, Hawaii Revised Statutes. (SB2691 HD1)

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