
A BILL FOR AN ACT

RELATING TO REMOTE SALES OF CIGARETTES AND TOBACCO PRODUCTS.

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 and death in the United
3 States and is a top public health priority. The health
4 consequences of tobacco use include heart disease, multiple
5 types of cancer, pulmonary disease, adverse reproductive
6 effects, and the exacerbation of chronic health conditions. In
7 Hawaii, smoking claims fourteen hundred adult lives each year.
8 Twenty-one thousand children and youth now under eighteen years
9 old will ultimately die prematurely from smoking. Annually,
10 \$526,000,000 in health care costs are directly attributed to
11 smoking in the State.

12 The legislature further finds that tobacco products are
13 addictive and inherently dangerous. The United States Surgeon
14 General has reported that most people begin to smoke in
15 adolescence and develop characteristic patterns of nicotine
16 dependence before adulthood.



1 The legislature recognizes that electronic smoking devices
2 include a diverse group of devices that allow users to inhale an
3 aerosol, which typically contains nicotine, flavorings, and
4 other additives. Electronic smoking devices are tobacco
5 products and are regulated as such under the federal Food, Drug,
6 and Cosmetic Act, as amended by the Family Smoking Prevention
7 and Tobacco Control Act of 2009. In recent years, electronic
8 smoking device use by youth and young adults has increased at an
9 alarming rate. Electronic smoking devices are now the most
10 commonly used tobacco product among youth in the nation and in
11 Hawaii. The electronic cigarette industry is growing rapidly,
12 with retail and online sales of electronic smoking devices
13 projected to reach \$10,000,000,000 in 2017. Until passage of a
14 final regulation in 2016 granting the Food and Drug
15 Administration authority over electronic cigarettes, cigars, and
16 other tobacco products, minimal regulation of these products
17 existed. Despite product regulation, the online electronic
18 smoking device industry has not prevented youth access.

19 The legislature finds that most tobacco product sales occur
20 via face-to-face transactions, however there is a growing trend
21 toward the marketing and sales of electronic smoking devices to



1 consumers online. Selling tobacco products to persons under the
2 age of twenty-one is illegal in Hawaii. However, restricting
3 face-to-face sales of tobacco products to those twenty-one and
4 over does not go far enough, given how easily youth can and do
5 circumvent the age verification process. Internet and mail-
6 order sellers offer youth relatively easy access to tobacco
7 products, including electronic smoking devices. Failing to
8 restrict internet sales defeats the purpose of the law, which is
9 to reduce the public health impact of tobacco use, in part by
10 reducing all tobacco use among youth. In addition to the
11 inability to accurately and adequately verify a purchaser's age,
12 the sale of tobacco products through the Internet avoids federal
13 and state taxes, resulting in loss of revenue. This avoidance
14 of taxation also lowers the price of tobacco products. By
15 evading taxes, internet sellers place traditional, licensed
16 wholesalers and retailers at a competitive disadvantage.

17 The purpose of this Act is to correct a loophole in Hawaii
18 law that allows remote sellers to undermine the State's age
19 verification, taxation, and public health goals by prohibiting
20 the shipment of certain tobacco products purchased through the



1 Internet or by mail order to recipients in the State other than
2 licensed wholesalers, dealers, or retailers.

3 SECTION 2. This Act shall be known and may be cited as the
4 "Internet Marketing and Purchase of Cigarettes and Tobacco Act
5 of 2017".

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

9 "§245- Unlawful transport of cigarettes or tobacco
10 products including electronic smoking devices ordered through
11 remote sale; penalty. (a) A person or entity commits the
12 offense of unlawful transport of cigarettes or tobacco products
13 including electronic smoking devices if the person or entity is
14 engaged in the business of selling or providing cigarettes or
15 tobacco products, including electronic smoking devices, and:

16 (1) Ships or transports, or causes to be shipped or
17 transported, any cigarette or tobacco product,
18 including any electronic smoking device, ordered or
19 purchased through a remote sale to anyone in the State
20 other than a licensed wholesaler or dealer or retailer
21 with a valid retail tobacco permit; or



1 (2) Provides substantial assistance to a person or entity
2 in violating this section while having the knowledge
3 or reason to know of the violation;
4 provided that a remote sale to a person or entity with a valid
5 general excise tax license from the department of taxation and a
6 physical building or structure for the purpose of retail tobacco
7 sales is not a violation of this section.

8 (b) Any manufacturer, wholesaler, dealer, retailer, or
9 other person or entity who knowingly violates this section shall
10 be guilty of a class C felony. Each shipment that violates or
11 fails to comply with this section shall be a separate and
12 distinct violation.

13 (c) In addition to, or in lieu of, any other civil or
14 criminal remedy provided by law, a person or entity who has
15 violated this section shall be subject to a civil penalty of up
16 to \$5,000 for each violation. The attorney general may initiate
17 a civil action seeking recovery of such penalties."

18 SECTION 4. Section 245-1, Hawaii Revised Statutes, is
19 amended as follows:

20 1. By adding four new definitions to be appropriately
21 inserted and to read:



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, electronic pipe, electronic hookah pipe,
6 or hookah pen, and any cartridge or other component of the
7 device or related product, whether or not sold separately.

8 "Internet sale" means any internet website or
9 electronically networked means that solicits or sells cigarettes
10 or tobacco products, including electronic smoking devices,
11 regardless of whether cash is actually paid for the product.

12 "Mail order" means any means of soliciting cigarettes or
13 tobacco products, including electronic smoking devices, which
14 are set forth in a catalog or other printed solicitation of a
15 business, which is generally available to the public.

16 "Remote sale" means a sale that is conducted by mail order,
17 telephone, computer, internet sale, or any means other than a
18 physical storefront."

19 2. By amending the definition of "tobacco products" to
20 read:



1 ""Tobacco products" means tobacco in any form, other than
2 cigarettes or little cigars, that is prepared or intended for
3 consumption or for personal use by humans, including large
4 cigars and any substitutes thereof other than cigarettes that
5 bear the semblance thereof, snuff, snus, chewing or smokeless
6 tobacco, [~~and~~] smoking or pipe tobacco[-], and electronic
7 smoking devices. "Tobacco products" does not include drugs,
8 devices, or combination products approved for sale by the United
9 States Food and Drug Administration, as those terms are defined
10 in the Federal Food, Drug, and Cosmetic Act."

11 SECTION 5. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect on July 1, 2090.



Report Title:

Internet Marketing and Purchase of Cigarettes and Tobacco Product Act of 2017; Electronic Smoking Device; Remote Sale; Mail Order; Internet Sale

Description:

Prohibits the remote sale and distribution of cigarettes and tobacco products, including electronic smoking devices, to any person in the State other than a licensed wholesaler or dealer or a permit-holding tobacco product retailer. Makes violation of the prohibition a class C felony. (HB1495 HD1)

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