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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. 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 and twenty-one thousand children and youth now under eighteen  
9 years old will ultimately die prematurely from smoking.  
10 Annually, \$526,000,000 in health care costs are directly  
11 attributed to 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, and typically contain nicotine, flavorings, and other  
4 additives. Electronic smoking devices are tobacco products and  
5 are regulated as such under the Federal Food, Drug, and Cosmetic  
6 Act, as amended by the Family Smoking Prevention and Tobacco  
7 Control Act of 2009. In recent years, electronic smoking device  
8 use by youth and young adults has increased at an alarming rate.  
9 Electronic smoking devices are now the most commonly used  
10 tobacco product among youth in the nation and in Hawaii, and the  
11 electronic cigarette industry is growing rapidly. Until passage  
12 of a final regulation in 2016 granting the Food and Drug  
13 Administration authority over electronic cigarettes, cigars, and  
14 other tobacco products, minimal regulation of these products  
15 existed. Despite product regulation, the online electronic  
16 smoking device industry has not prevented youth access.

17           The legislature finds that most tobacco product sales occur  
18 via face-to-face transactions, however there is a growing trend  
19 toward the marketing and sales of electronic smoking devices to  
20 consumers online. Selling tobacco products to persons under the  
21 age of twenty-one is illegal in Hawaii. Simply restricting the



1 sale of tobacco products to those who are twenty-one and over  
2 does not go far enough, given how easily youth can and do  
3 circumvent the age verification process. Internet and mail-  
4 order sellers offer youth relatively easy access to tobacco  
5 products, including electronic smoking devices. Failing to  
6 restrict internet sales defeats the purpose of the law, which is  
7 to reduce the public health impact of tobacco use, in part by  
8 reducing all tobacco use among youth. In addition to the  
9 inability to accurately and adequately verify a purchaser's age,  
10 selling tobacco products through the Internet provides a way for  
11 the purchaser and the tobacco industry to avoid federal and  
12 state taxes, resulting in loss of revenue. This lack of  
13 taxation furthers the lowering of tobacco product pricing. By  
14 evading taxes, internet sellers place traditional, licensed  
15 wholesalers and retailers at a competitive disadvantage.

16 The purpose of this Act is to prohibit the shipment of  
17 certain tobacco products purchased through the Internet or by  
18 mail order to anyone other than licensed wholesalers or dealers.

19 SECTION 2. This Act shall be known and may be cited as the  
20 "Internet Marketing and Purchase of Cigarettes and Tobacco  
21 Products Act of 2018".



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

4 "§245- Unlawful transport of tobacco products ordered  
5 through remote sale; penalty. (a) A person or entity commits  
6 the offense of unlawful transport of tobacco products if the  
7 person or entity is engaged in the business of selling or  
8 providing tobacco products, including electronic cigarettes,  
9 and:

10 (1) Ships or transports, or causes to be shipped or  
11 transported, any tobacco product, including electronic  
12 smoking devices, ordered or purchased through a remote  
13 sale to anyone in the State other than a licensed  
14 wholesaler or dealer; or

15 (2) Provides substantial assistance to a person or entity  
16 in violating this section while having the knowledge  
17 or reason to know of the violation;

18 provided that a remote sale to a person or entity with a valid  
19 general excise tax license from the department of taxation and a  
20 physical building or structure for the purpose of retail is not  
21 a violation of this section.



1       (b) Any manufacturer, wholesaler, dealer, retailer, or  
 2 other person or entity who knowingly violates this section shall  
 3 be guilty of a                   . Each shipment that violates or fails  
 4 to comply with this section shall be a separate and distinct  
 5 violation.

6       (c) In addition to, or in lieu of, any other civil or  
 7 criminal remedy provided by law, a person or entity who has  
 8 violated this section is subject to a civil penalty of up to  
 9 \$5,000 for each violation. The attorney general may initiate a  
 10 civil action seeking recovery of such penalties."

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

13       1. By adding four new definitions to be appropriately  
 14 inserted and to read:

15       "Electronic smoking device" means any electronic product  
 16 that can be used to aerosolize and deliver nicotine or other  
 17 substances to the person inhaling from the device, including but  
 18 not limited to an electronic cigarette, electronic cigar,  
 19 electronic cigarillo, electronic pipe, electronic hookah pipe,  
 20 or hookah pen, and any cartridge or other component of the  
 21 device or related product, whether or not sold separately.



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

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

9        "Remote sale" means a sale that is conducted by mail order,  
10 telephone, computer, internet sale, or any means other than a  
11 physical storefront."

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

14        "'Tobacco products" means tobacco in any form, other than  
15 cigarettes or little cigars, that is prepared or intended for  
16 consumption or for personal use by humans, including large  
17 cigars and any substitutes thereof other than cigarettes that  
18 bear the semblance thereof, snuff, snus, chewing or smokeless  
19 tobacco, [~~and~~] smoking or pipe tobacco[-], and electronic  
20 smoking devices. "Tobacco products" does not include drugs,  
21 devices, or combination products approved for sale by the United



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

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

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

8 SECTION 7. This Act shall take effect on July 1, 3000.



**Report Title:**

Internet Marketing and Purchase of Cigarettes and Tobacco Products Act of 2018; Electronic Smoking Device; Remote Sale; Mail Order; Internet Sale

**Description:**

Prohibits the remote sale and shipment of cigarettes and tobacco products, including electronic smoking devices, to consumers except to licensed wholesalers or dealers. Imposes criminal liability for a violation. (HB1907 HD1)

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