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# 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 nicotine  
7 as well as liquids consisting of different flavors.

8       The electronic smoking device industry, including the  
9 production of e-liquids, is growing rapidly. According to a  
10 2016 report from the United States Surgeon General, e-cigarette  
11 use amongst the nation's youth and young adults has become a  
12 major public health concern. The Surgeon General's report noted  
13 that e-cigarette use has increased considerably in recent years,  
14 growing an astounding nine hundred per cent among high school  
15 students from 2011 to 2015. More than three million middle  
16 school and high school students were users of e-cigarettes in  
17 2015. Furthermore, e-cigarettes are now the most commonly used  
18 tobacco product among youth, surpassing conventional cigarettes  
19 in 2014. E-cigarette use among youth and young adults is also  
20 strongly associated with the use of other tobacco products,  
21 including combustible tobacco products. Toxicologists have also



1 warned that e-liquids pose significant risks to public health,  
2 particularly to children. According to the Surgeon General's  
3 report, if the contents of refill cartridges or bottles are  
4 consumed, ingestion of e-liquids containing nicotine can cause  
5 acute toxicity and possibly death. The Surgeon General's report  
6 also found that there are numerous policies and practices that  
7 can be implemented at the state and local levels to address  
8 electronic smoking device use among youth and young adults,  
9 including preventing access to e-cigarettes by youth,  
10 significant increases in tax and price of e-cigarettes, retail  
11 licensure, and regulation of e-cigarette marketing.

12 The legislature finds that the rapid growth of the  
13 electronic smoking device industry, including retail businesses  
14 selling electronic smoking devices or e-liquids, necessitates  
15 further regulations to protect consumers, such as requiring  
16 retailers of e-liquids to obtain a retail tobacco permit.

17 The legislature notes that the federal Food and Drug  
18 Administration recently finalized a rule that expands its  
19 regulatory authority to all tobacco products, including  
20 electronic smoking devices, cigars, and hookah and pipe tobacco.  
21 However, the legislature also notes that there is currently no



1 state tobacco tax attached to e-liquid, even though electronic  
2 smoking devices are now regulated as tobacco products.  
3 Furthermore, tobacco products other than cigarettes are  
4 currently taxed at a lower rate than cigarettes, even though  
5 their use carries similar health risks. Research has shown that  
6 increasing cigarette prices, such as through cigarette taxes,  
7 tends to reduce the rate of smoking by adult and youth smokers.  
8 However, the legislature is concerned that as the price of  
9 cigarettes increases, smokers may purchase less expensive  
10 tobacco products, such as electronic smoking devices or  
11 e-liquids.

12 Finally, the legislature concludes that there needs to be a  
13 tax on e-liquids and taxing these products as other tobacco  
14 products is the most equitable way to do so. Imposing a tax on  
15 e-liquids will also encourage users of e-liquids to quit,  
16 sustain cessation, prevent youth initiation, and reduce  
17 consumption among those who continue to use them.

18 The purpose of this Act is to:

19 (1) Make unlawful the shipment of tobacco products to  
20 anyone other than a licensee;



- 1           (2) Include e-liquid within the definition of "tobacco  
2           products", as used in the cigarette tax and tobacco  
3           tax law, thereby:
- 4           (A) Subjecting e-liquid to the excise tax on tobacco  
5           products;
- 6           (B) Requiring retailers of e-liquid to obtain a  
7           retail tobacco permit to sell, possess, keep,  
8           acquire, distribute, or transport e-liquid;
- 9           (C) Prohibit persons from engaging in the business of  
10          a wholesaler or dealer of e-liquid without first  
11          obtaining a license from the department of  
12          taxation; and
- 13          (D) Applying other requirements of chapter 245,  
14          Hawaii Revised Statutes;
- 15          (3) Increase the license fee for persons engaged as a  
16          wholesaler or dealer of cigarettes and tobacco  
17          products; and
- 18          (4) Increase the retail tobacco permit fee for retailers  
19          engaged in the retail sale of cigarettes and tobacco  
20          products.



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

"§245- Unlawful shipment of tobacco products; penalty; reports; liability for unpaid taxes. (a) A person or entity commits the offense of unlawful shipment of tobacco products if the person or entity is engaged in the business of selling tobacco products and ships tobacco products or causes tobacco products to be shipped to a person or entity in this State that is not:

(1) A licensee under this chapter; or

(2) An export warehouse proprietor pursuant to title 26 United States Code chapter 52 or an operator of a customs bonded warehouse pursuant to title 19 United States Code section 1311 or 1555.

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

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



1       (2) The person or entity engaged in the business of  
2       selling, advertising, or offering tobacco products for  
3       sale and transfer or shipment:

4       (A) Has fully complied with all of the requirements  
5       of title 15 United States Code chapter 10A; and

6       (B) Includes on the outside of the shipping container  
7       an externally visible and easily legible notice  
8       located on the same side of the shipping  
9       container as the address to which the shipping  
10       container is delivered stating as follows:

11       "HAWAII LAW PROHIBITS THE SALE OF CIGARETTES OR  
12       TOBACCO PRODUCTS TO INDIVIDUALS UNDER TWENTY-ONE  
13       YEARS OF AGE AND REQUIRES THE PAYMENT OF ALL  
14       APPLICABLE TAXES. YOU ARE LEGALLY RESPONSIBLE FOR  
15       ALL APPLICABLE UNPAID TAXES ON THESE CIGARETTES  
16       AND TOBACCO PRODUCTS."

17       (c) Unlawful shipment of tobacco products is a  
18       misdemeanor.

19       (d) For purposes of this section, "licensee" means a  
20       person or entity that is on a list of authorized licensees  
21       published by the department.



1        (e) Any person or entity that is required to comply with  
2        the requirements of title 15 United States Code chapter 10A  
3        shall file the required report with the department on or before  
4        the tenth day of each calendar month.

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

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

13       1. By adding a new definition to be appropriately inserted  
14       and to read:

15       "E-liquid" means any liquid or like substance that is  
16       designed or intended to be used in an electronic smoking device  
17       as defined in section 328J-1, whether or not packaged in a  
18       cartridge or other container."

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, chewing or smokeless tobacco,  
6 [~~and~~] smoking or pipe tobacco[~~-~~], and e-liquid.\"

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

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

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

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

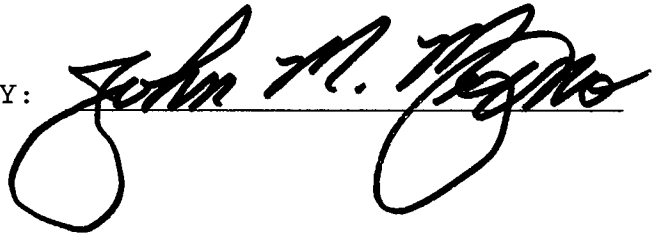


1    permittee relocates the permittee's business, the department may  
2    issue a duplicate retail tobacco permit to the permittee for a  
3    fee of \$5 per copy."

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

6            SECTION 7.   This Act shall take effect on July 1, 2018.

7  
INTRODUCED BY:

A handwritten signature in black ink, appearing to read "John M. Payne", is written over a horizontal line.

JAN 24 2018



# H.B. NO. 2737

**Report Title:**

Electronic Smoking Devices; E-liquid; Tax; Permit; License

**Description:**

Makes unlawful shipment of tobacco products to anyone other than a licensee. Includes e-liquid within the definition of "tobacco products", as used in the cigarette tax and tobacco tax law, thereby making all provisions of the cigarette tax and tobacco tax law that relate to tobacco products applicable to e-liquid as well. Increases the license fee for wholesalers or dealers and the retail tobacco permit fee.

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

