

JAN 19 2018

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 ~~[\$2-50-]~~ \$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.
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INTRODUCED BY:

Rossly H. Baker
Kel Nhoah J. Kiki Ogih
Mike Hubbard
Breene Hunt
Paul E. Rk
Will Egan
Ann Macadok



S.B. NO. 2654

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.

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