
A BILL FOR AN ACT

RELATING TO CHAPTER 245, HAWAII REVISED STATUTES.

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

1

PART I

2

SECTION 1. The legislature finds that tobacco use is the
3 single most preventable cause of disease, disability, and death
4 in the United States. Tobacco use continues to be a problem in
5 Hawaii, causing approximately one thousand four hundred deaths
6 per year among adults. An estimated twenty-one thousand
7 children in Hawaii currently under the age of eighteen will
8 ultimately die prematurely from smoking. Tobacco use poses a
9 heavy burden on Hawaii's health care system and economy. Each
10 year, smoking costs approximately \$526,000,000 in direct health
11 care expenditures and \$387,300,000 in lost productivity in the
12 State.

13

The legislature further finds that tobacco products are
14 addictive and inherently dangerous, causing many different types
15 of cancer, heart disease, and other serious illnesses. Hawaii
16 has a substantial interest in reducing the number of individuals
17 of all ages who use tobacco products, and a particular interest



1 in protecting adolescents from tobacco dependence and the
2 illnesses and premature death associated with tobacco use.

3 The legislature additionally finds that electronic smoking
4 devices, also known as e-cigarettes, are battery-operated
5 products designed to turn highly addictive nicotine, flavor, and
6 other chemicals into an aerosol that is inhaled by the user.
7 Consumers may choose from varying strengths of e-liquid nicotine
8 as well as liquids consisting of different flavors. A 2015
9 study of more than fifty-eight million e-cigarettes found that
10 ninety-nine per cent contained nicotine, whether or not they
11 were labeled as "zero nicotine" or "nicotine-free". The
12 legislature is concerned that labeling alone is not an effective
13 measure of nicotine content.

14 The electronic smoking device industry, including the
15 production of e-liquids, is growing rapidly. According to a
16 2016 report from the United States Surgeon General, e-cigarette
17 use amongst the nation's youth and young adults has become a
18 major public health concern. The Surgeon General's report noted
19 that e-cigarette use has increased considerably in recent years,
20 growing an astounding nine hundred per cent among high school
21 students from 2011 to 2015. More than three million middle



1 school and high school students were users of e-cigarettes in
2 2015. Furthermore, e-cigarettes are now the most commonly used
3 tobacco product among youth, surpassing conventional cigarettes
4 in 2014. E-cigarette use among youth and young adults is also
5 strongly associated with the use of other tobacco products,
6 including combustible tobacco products. Toxicologists have also
7 warned that e-liquids pose significant risks to public health,
8 particularly to children. According to the Surgeon General's
9 report, if the contents of refill cartridges or bottles are
10 consumed, ingestion of e-liquids containing nicotine can cause
11 acute toxicity and possibly death. The Surgeon General's report
12 also found that there are numerous policies and practices that
13 can be implemented at the state and local levels to address
14 electronic smoking device use among youth and young adults,
15 including preventing access to e-cigarettes by youth,
16 significant increases in tax and price of e-cigarettes, retail
17 licensure, and regulation of e-cigarette marketing.

18 The legislature finds that the rapid growth of the
19 electronic smoking device industry, including retail businesses
20 selling electronic smoking devices or e-liquids, necessitates



1 further regulations to protect consumers, such as requiring
2 retailers of e-liquids to obtain a retail tobacco permit.

3 The legislature notes that the federal Food and Drug
4 Administration recently finalized a rule that expands its
5 regulatory authority to all tobacco products, including
6 electronic smoking devices, cigars, and hookah and pipe tobacco.
7 However, the legislature also notes that there is currently no
8 state tobacco tax attached to e-liquid, even though electronic
9 smoking devices are now regulated as tobacco products. The
10 legislature finds that states such as Indiana, Pennsylvania, and
11 West Virginia tax e-liquids that may or may not contain
12 nicotine. Furthermore, tobacco products other than cigarettes
13 are currently taxed at a lower rate than cigarettes, even though
14 their use carries similar health risks. Research has shown that
15 increasing cigarette prices, such as through cigarette taxes,
16 tends to reduce the rate of smoking by adult and youth smokers.
17 However, the legislature is concerned that as the price of
18 cigarettes increases, smokers may purchase less expensive
19 tobacco products, such as electronic smoking devices or
20 e-liquids.



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

7 The purpose of this part is to:

- 8 (1) Make unlawful the shipment of tobacco products to
9 anyone other than a licensee;
- 10 (2) Make unlawful the transport of tobacco products
11 ordered through remote sale to anyone other than a
12 licensee;
- 13 (3) Include e-liquid within the definition of "tobacco
14 products", as used in the cigarette tax and tobacco
15 tax law, thereby:
 - 16 (A) Subjecting e-liquid to the excise tax on tobacco
17 products;
 - 18 (B) Requiring retailers of e-liquid to obtain a
19 retail tobacco permit to sell, possess, keep,
20 acquire, distribute, or transport e-liquid;



1 (C) Prohibiting persons from engaging in the business
2 of wholesaling or dealing e-liquid without first
3 obtaining a license from the department of
4 taxation; and

5 (D) Applying other requirements of chapter 245,
6 Hawaii Revised Statutes;

7 (4) Increase the license fee for persons engaged as a
8 wholesaler or dealer of cigarettes and tobacco
9 products; and

10 (5) Increase the retail tobacco permit fee for retailers
11 engaged in the retail sale of cigarettes and tobacco
12 products.

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

16 "§245- Unlawful shipment of tobacco products; penalty;
17 reports; liability for unpaid taxes. (a) A person or entity
18 commits the offense of unlawful shipment of tobacco products if
19 the person or entity is engaged in the business of selling
20 tobacco products and ships or causes to be shipped, any tobacco



1 products ordered or purchased through a remote sale, to a person
2 or entity in the State that is not:

3 (1) A licensee under this chapter; or

4 (2) A person or entity transporting tobacco products, as
5 defined in section 245-1, under federal internal
6 revenue bond or customs control that are non-tax-paid
7 under title 26 of the United States Code, or an
8 operator of a customs bonded warehouse pursuant to
9 title 19 United States Code section 1311 or 1555.

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

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

14 (2) The person or entity engaged in the business of
15 selling, advertising, or offering tobacco products for
16 sale and transfer or shipment includes on the outside
17 of the shipping container an externally visible and
18 easily legible notice located on the same side of the
19 shipping container as the address to which the
20 shipping container is delivered stating as follows:



1 "HAWAII LAW PROHIBITS THE SALE OF CIGARETTES OR
2 TOBACCO PRODUCTS TO INDIVIDUALS UNDER TWENTY-ONE YEARS
3 OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE
4 TAXES. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE
5 UNPAID TAXES ON THESE CIGARETTES AND TOBACCO
6 PRODUCTS."; or

7 (3) All applicable Hawaii taxes on the tobacco products
8 are paid in accordance with the requirements of this
9 section.

10 (c) Any person or entity who knowingly violates this
11 section shall be guilty of a misdemeanor. Each shipment that
12 violates or fails to comply with this section shall be a
13 separate and distinct violation.

14 (d) For the purposes of this section:

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

19 "Licensee" means a person or entity that is on a list of
20 authorized licensees published by the department.



1 "Mail order" means any means of soliciting cigarettes or
2 tobacco products, including electronic smoking devices, that are
3 set forth in a catalog or other printed solicitation of a
4 business that is generally available to the public.

5 "Remote sale" means a sale that is conducted by mail order,
6 telephone, computer, internet sale, or any means other than a
7 physical storefront.

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

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

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



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

3 "E-liquid" means any liquid or like substance which may or
4 may not contain nicotine that is designed or intended to be used
5 in an electronic smoking device, as defined in section 328J-1,
6 whether or not packaged in a cartridge or other container. E-
7 liquid shall not include prescription drugs; medical cannabis or
8 manufactured cannabis products; or medical devices used to
9 inhale or ingest prescription drugs, including devices sold at a
10 licensed medical cannabis dispensary."

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

13 "Tobacco products" means tobacco in any form, other than
14 cigarettes or little cigars, that is prepared or intended for
15 consumption or for personal use by humans, including large
16 cigars and any substitutes thereof other than cigarettes that
17 bear the semblance thereof, snuff, chewing or smokeless tobacco,
18 [and] smoking or pipe tobacco[-], and e-liquid."

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



1 SECTION 7. Section 245-3, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) Every wholesaler or dealer, in addition to any other
4 taxes provided by law, shall pay for the privilege of conducting
5 business and other activities in the State:

6 (1) An excise tax equal to 5.00 cents for each cigarette
7 sold, used, or possessed by a wholesaler or dealer
8 after June 30, 1998, whether or not sold at wholesale,
9 or if not sold then at the same rate upon the use by
10 the wholesaler or dealer;

11 (2) An excise tax equal to 6.00 cents for each cigarette
12 sold, used, or possessed by a wholesaler or dealer
13 after September 30, 2002, 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 (3) An excise tax equal to 6.50 cents for each cigarette
17 sold, used, or possessed by a wholesaler or dealer
18 after June 30, 2003, whether or not sold at wholesale,
19 or if not sold then at the same rate upon the use by
20 the wholesaler or dealer;



- 1 (4) An excise tax equal to 7.00 cents for each cigarette
2 sold, used, or possessed by a wholesaler or dealer
3 after June 30, 2004, 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 (5) An excise tax equal to 8.00 cents for each cigarette
7 sold, used, or possessed by a wholesaler or dealer on
8 and after September 30, 2006, 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 (6) An excise tax equal to 9.00 cents for each cigarette
12 sold, used, or possessed by a wholesaler or dealer on
13 and after September 30, 2007, 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 (7) An excise tax equal to 10.00 cents for each cigarette
17 sold, used, or possessed by a wholesaler or dealer on
18 and after September 30, 2008, whether or not sold at
19 wholesale, or if not sold then at the same rate upon
20 the use by the wholesaler or dealer;



- 1 (8) An excise tax equal to 13.00 cents for each cigarette
2 sold, used, or possessed by a wholesaler or dealer on
3 and after July 1, 2009, 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 (9) An excise tax equal to 11.00 cents for each little
7 cigar sold, used, or possessed by a wholesaler or
8 dealer on and after October 1, 2009, whether or not
9 sold at wholesale, or if not sold then at the same
10 rate upon the use by the wholesaler or dealer;
- 11 (10) An excise tax equal to 15.00 cents for each cigarette
12 or little cigar sold, used, or possessed by a
13 wholesaler or dealer on and after July 1, 2010,
14 whether or not sold at wholesale, or if not sold then
15 at the same rate upon the use by the wholesaler or
16 dealer;
- 17 (11) An excise tax equal to 16.00 cents for each cigarette
18 or little cigar sold, used, or possessed by a
19 wholesaler or dealer on and after July 1, 2011,
20 whether or not sold at wholesale, or if not sold then



1 at the same rate upon the use by the wholesaler or
2 dealer;

3 (12) An excise tax equal to _____ cents for each cigarette or
4 little cigar sold, used, or possessed by a wholesaler
5 or dealer on and after November 1, 2018, whether or
6 not sold at wholesale, or if not sold then at the same
7 rate upon the use by the wholesaler or dealer;

8 (13) An excise tax equal to seventy per cent of the
9 wholesale price of each article or item of tobacco
10 products, other than large cigars, sold by the
11 wholesaler or dealer on and after September 30, 2009,
12 whether or not sold at wholesale, or if not sold then
13 at the same rate upon the use by the wholesaler or
14 dealer; [and

15 ~~(13)~~] (14) An excise tax equal to _____ per cent of the
16 wholesale price of each article or item of tobacco
17 products, other than large cigars, sold by the
18 wholesaler or dealer on and after July 1, 2018,
19 whether or not sold at wholesale, or if not sold then
20 at the same rate upon the use by the wholesaler or
21 dealer; and

Report Title:

Unlawful Shipment and Transport of Tobacco Products; Electronic Smoking Devices; E-liquid; Tax; Permit; License; Excise Tax

Description:

Prohibits the shipment of tobacco products, and the transport of tobacco products ordered or purchased through a remote sale, to anyone other than a licensee. Makes all provisions of the cigarette tax and tobacco tax law that relate to tobacco products applicable to e-liquid. Increases the license fee for wholesalers or dealers and the retail tobacco permit fee. Amends the taxes on cigarettes and tobacco products. Increases the excise tax for each cigarette or little cigar sold, used, or possessed by a wholesaler or dealer. Increases the excise tax on the wholesale price of each article or item of tobacco products, other than large cigars, sold by the wholesaler or dealer. (SB2654 HD1)

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