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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. A 2015  
8 study of more than fifty-eight million e-cigarettes found that  
9 ninety-nine per cent contained nicotine, whether or not they  
10 were labeled as "zero nicotine" or "nicotine-free". The  
11 legislature is concerned that labeling alone is not an effective  
12 measure of nicotine content.

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



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

17 The legislature finds that the rapid growth of the  
18 electronic smoking device industry, including retail businesses  
19 selling electronic smoking devices or e-liquids, necessitates  
20 further regulations to protect consumers, such as requiring  
21 retailers of e-liquids to obtain a retail tobacco permit.



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

19       Finally, the legislature concludes that there needs to be a  
20 tax on e-liquids and taxing these products as other tobacco  
21 products is the most equitable way to do so. Imposing a tax on



1 e-liquids will also encourage users of e-liquids to quit,  
2 sustain cessation, prevent youth initiation, and reduce  
3 consumption among those who continue to use them.

4 The purpose of this Act is to:

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

7 (2) Make unlawful the transport of tobacco products  
8 ordered through remote sale to anyone other than a  
9 licensee;

10 (3) Include e-liquid within the definition of "tobacco  
11 products", as used in the cigarette tax and tobacco  
12 tax law, thereby:

13 (A) Subjecting e-liquid to the excise tax on tobacco  
14 products;

15 (B) Requiring retailers of e-liquid to obtain a  
16 retail tobacco permit to sell, possess, keep,  
17 acquire, distribute, or transport e-liquid;

18 (C) Prohibiting persons from engaging in the business  
19 of a wholesaler or dealer of e-liquid without  
20 first obtaining a license from the department of  
21 taxation; and



1 (D) Applying other requirements of chapter 245,

2 Hawaii Revised Statutes;

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

6 (5) Increase the retail tobacco permit fee for retailers  
7 engaged in the retail sale of cigarettes and tobacco  
8 products.

9 SECTION 2. Chapter 245, Hawaii Revised Statutes, is  
10 amended by adding two new sections to be appropriately  
11 designated and to read as follows:

12 "§245- Unlawful shipment of tobacco products; penalty;  
13 reports; liability for unpaid taxes. (a) A person or entity  
14 commits the offense of unlawful shipment of tobacco products if  
15 the person or entity is engaged in the business of selling  
16 tobacco products and ships tobacco products or causes tobacco  
17 products to be shipped to a person or entity in this State that  
18 is not:

19 (1) A licensee under this chapter; or

20 (2) A person or entity transporting tobacco products, as  
21 defined in section 245-1, under federal internal



1 revenue bond or customs control that are non-tax-paid  
2 under title 26 of the United States Code, or an  
3 operator of a customs bonded warehouse pursuant to  
4 title 19 United States Code section 1311 or 1555.

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

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

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

16 "HAWAII LAW PROHIBITS THE SALE OF CIGARETTES OR  
17 TOBACCO PRODUCTS TO INDIVIDUALS UNDER TWENTY-ONE YEARS  
18 OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE  
19 TAXES. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE  
20 UNPAID TAXES ON THESE CIGARETTES AND TOBACCO  
21 PRODUCTS."; or



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

4       (c) Any person who knowingly engages in the unlawful  
5       shipment of tobacco products shall be guilty of a misdemeanor.

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

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

15       §245- Unlawful transport of tobacco products ordered  
16       through remote sale; penalty. (a) A person or entity commits  
17       the offense of unlawful transport of tobacco products if the  
18       person or entity is engaged in the business of selling or  
19       providing tobacco products and ships or transports or causes to  
20       be shipped or transported, any tobacco product ordered or





1 purchased through a remote sale to anyone in the State other  
2 than a licensed wholesaler or dealer.

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

8 (c) In addition to, or in lieu of, any other civil or  
9 criminal remedy provided by law, a person or entity who has  
10 violated this section is subject to a civil penalty of up to  
11 \$5,000 for each violation. The attorney general may initiate a  
12 civil action seeking recovery of such penalties.

13 (d) For the purposes of this section:

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

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



1       "Remote sale" means a sale that is conducted by mail order,  
2       telephone, computer, internet sale, or any means other than a  
3       physical storefront."

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

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

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

16      2. By amending the definition of "tobacco products" to  
17      read:

18      "Tobacco products" means tobacco in any form, other than  
19      cigarettes or little cigars, that is prepared or intended for  
20      consumption or for personal use by humans, including large  
21      cigars and any substitutes thereof other than cigarettes that



1 bear the semblance thereof, snuff, chewing or smokeless tobacco,  
2 [~~and~~] smoking or pipe tobacco[~~-~~], and e-liquid."

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

5 "(b) The license shall be issued by the department upon  
6 application therefor, in such form and manner as shall be  
7 required by rule of the department, and the payment of a fee of  
8 [~~\$2.50~~] \$250, and shall be renewable annually on July 1 for the  
9 twelve months ending the succeeding June 30."

10 SECTION 5. Section 245-2.5, Hawaii Revised Statutes, is  
11 amended by amending subsection (c) to read as follows:

12 "(c) The retail tobacco permit shall be issued by the  
13 department upon application by the retailer in the form and  
14 manner prescribed by the department, and the payment of a fee of  
15 [~~\$20~~] \$50. Permits shall be valid for one year, from  
16 December 1 to November 30, and renewable annually. Whenever a  
17 retail tobacco permit is defaced, destroyed, or lost, or the  
18 permittee relocates the permittee's business, the department may  
19 issue a duplicate retail tobacco permit to the permittee for a  
20 fee of \$5 per copy."



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

3       SECTION 7. This Act shall take effect on January 1, 2019.

4



**Report Title:**

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

**Description:**

Makes unlawful shipment of tobacco products, and transport of tobacco products ordered or purchased through a remote sale, 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. Effective 1/1/2019. (SD1)

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