

S.B. NO. 1273

JAN 24 2019

A BILL FOR AN ACT

RELATING TO ELECTRONIC SMOKING.

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

1 SECTION 1. Section 245-1, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding three new definitions to be appropriately
4 inserted and to read as follows:

5 "E-liquid" means any liquid or like substance, which may
6 or may not contain nicotine, that is designed or intended to be
7 used in an electronic smoking device, whether or not packaged in
8 a cartridge or other container. The term "e-liquid" does not
9 include prescription drugs; cannabis or manufactured cannabis
10 products under chapter 329D; or medical devices used to
11 aerosolize, inhale, or ingest prescription drugs, including
12 manufactured cannabis products manufactured or distributed in
13 accordance with section 329D-10(a).

14 "Electronic smoking device" means any electronic product,
15 or part thereof, that can be used by a person to simulate
16 smoking in the delivery of nicotine or any other substance,
17 intended for human consumption through inhalation of vapor or
18 aerosol from the product. The term "electronic smoking device"

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1 includes, but is not limited to, an electronic cigarette,
2 electronic cigar, electronic cigarillo, electronic pipe,
3 electronic hookah, vape pen or related product, and any
4 cartridge or other component part of the device or product.

5 "Smoke" or "smoking" means inhaling, exhaling, burning,
6 carrying, or possessing any lighted or heated tobacco product,
7 or similar substance intended for human consumption, including
8 the use of an electronic smoking device that creates an aerosol
9 or vapor, in any manner or in any form."

10 2. By amending the definition of "tobacco products" to
11 read as follows:

12 "Tobacco products" means:

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

19 (2) E-liquid;
20 that is intended for human consumption, or is likely to be
21 consumed, whether smoked, heated, chewed, absorbed, dissolved,
22 inhaled, or ingested by other means. The term "tobacco

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1 products" includes, but is not limited to, large cigars and any
2 substitutes thereof other than cigarettes that bear the
3 semblance thereof, pipe tobacco, chewing or smokeless tobacco,
4 snuff, snus, e-liquid, electronic smoking devices containing e-
5 liquid, component parts containing e-liquid, and related
6 products."

7 SECTION 2. Chapter 28, part XII, Hawaii Revised Statutes,
8 is repealed.

9 SECTION 3. Section 245-17, Hawaii Revised Statutes, is
10 repealed.

11 ~~[[§245-17] Delivery sales. (a) No person shall conduct a~~
12 ~~delivery sale or otherwise ship or transport, or cause to be~~
13 ~~shipped or transported, any electronic smoking device in~~
14 ~~connection with a delivery sale to any person under the age of~~
15 ~~twenty one.~~

16 ~~(b) A person who makes delivery sales shall not accept a~~
17 ~~purchase or order from any person without first obtaining the~~
18 ~~full name, birth date, and address of that person and verifying~~
19 ~~the purchaser's age by:~~

20 ~~(1) An independently operated third party database or~~
21 ~~aggregate of databases that are regularly used by~~

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~~government and businesses for the purpose of age and~~

~~identity verification and authentication;~~

~~(2) Receiving a copy of a government issued identification~~

~~card from the purchaser; or~~

~~(3) Requiring age and signature verification in the~~

~~shipment process and upon and before actual delivery.~~

~~(c) The purchaser shall certify their age before~~

~~completing the purchaser's order.~~

~~(d) Any person who violates this section shall be fined~~

~~\$500 for the first offense. Any subsequent offenses shall~~

~~subject the person to a fine of no less than \$500 but no more~~

~~than \$2,000. Any person under twenty one years of age who~~

~~violates this section shall be fined \$10 for the first offense;~~

~~provided that any subsequent offense shall subject the person to~~

~~a fine of \$50, no part of which shall be suspended, or the~~

~~person shall be required to perform no less than forty eight~~

~~hours but no more than seventy two hours of community service~~

~~during hours when the person is not employed or attending~~

~~school.~~

~~(e) The department shall not adopt rules prohibiting~~

~~delivery sales.~~

~~(f) For the purposes of this section:~~

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1 ~~"Delivery sale" means any sale of an electronic smoking~~
2 ~~device to a purchaser in the State where either:~~

3 ~~(1) The purchaser submits the order for sale by means of a~~
4 ~~telephonic or other method of voice transmission, the~~
5 ~~mail or any other delivery service, or the internet or~~
6 ~~other online service; or~~

7 ~~(2) The electronic smoking device is delivered by use of~~
8 ~~the mail or any other delivery service.~~

9 ~~The foregoing sales of electronic smoking devices shall~~
10 ~~constitute a delivery sale regardless of whether the seller is~~
11 ~~located within or without the State.~~

12 ~~"Electronic smoking device" means any electronic product~~
13 ~~that can be used to aerosolize and deliver nicotine or other~~
14 ~~substances to the person inhaling from the device, including but~~
15 ~~not limited to an electronic cigarette, electronic cigar,~~
16 ~~electronic cigarillo, or electronic pipe, and any cartridge or~~
17 ~~other component of the device or related product.]~~

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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1 SECTION 5. This Act, upon its approval, shall take effect
2 January 1, 2019, provided that section 1 shall take effect
3 January 1, 2020.

INTRODUCED BY: 
BY REQUEST

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Report Title:

Electronic Smoking

Description:

Repeals sections 4 and 5 of Act 206, Session Laws of Hawaii 2018, which created an electronic smoking device retailer registration unit within the Department of the Attorney General and created a fine for delivery sales of electronic smoking devices to persons under the age of twenty-one. Amends chapter 245, Hawaii Revised Statutes, by clearly classifying e-liquid and electronic smoking devices containing e-liquid as tobacco products subject to the tobacco tax.

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

JUSTIFICATION SHEET

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO ELECTRONIC SMOKING.

PURPOSE: The purpose of this bill is to categorize e-liquids and electronic smoking devices containing e-liquids as tobacco products subject to chapter 245, HRS, the "Cigarette Tax and Tobacco Tax Law," by amending the existing definition of "tobacco products", and adding definitions for "e-liquid", "electronic smoking device", and "smoke" or "smoking." Clearly categorizing such electronic smoking devices and e-liquids as tobacco products would subject such products to the wholesaler and dealer licensing and permitting functions carried out by the Department of Taxation under chapter 245, HRS. This bill also repeals the Electronic Smoking Device Retailer Registration Unit and its related functions, established within the Department of the Attorney general by section 4 of Act 206, Session Laws of Hawaii 2018, codified as part XII of chapter 28, HRS. Keeping the licensing and permitting function within the Department of Taxation eliminates the need for a separate Electronic Smoking Device Retailer Registration Unit. This bill also repeals the fine for delivery sales of electronic smoking devices to persons under the age of twenty-one established by section 5 of Act 206, Session Laws of Hawaii 2018, codified as section 245-17, HRS. There is no existing, similar fine for delivery sales of any other type of tobacco product.

MEANS: Amend section 245-1, HRS, and repeal part XII of chapter 28 and section 245-17, HRS.

JUSTIFICATION:

The Cigarette Tax and Tobacco Tax Law (Tobacco Tax Law) as set forth in Chapter 245, Hawaii Revised Statutes, was amended by Act 206, Session Laws of Hawaii 2018 (Act 206). The Tobacco Tax Law was amended by adding a new definition of "electronic smoking device." The legislature's intent to treat electronic smoking devices as tobacco products subject to the applicable tobacco tax rate is demonstrated by the inclusion of the definition of "electronic smoking device" in chapter 245.

Effective July 1, 2018, part XII of chapter 28, HRS, requires the Department of the Attorney General to establish the Electronic Smoking Device Retailer Registration Unit for purposes of registering electronic smoking device retailers and issuing certificates to those retailers upon approval. Treating e-liquid and electronic smoking devices containing e-liquid as tobacco products would require the Department of Taxation to carry out wholesaler and dealer licensing duties similarly to cigarettes and other tobacco products and thus eliminates the need for a new unit dedicated solely to electronic smoking device retailer registration.

Effective July 1, 2018, section 245-17, HRS, creates a fine for delivery sales of electronic smoking devices to persons under the age of twenty-one. There is no similar fine for delivery sales of any other type of tobacco product. This bill will treat delivery sales of all types of tobacco products equally.

Impact on the public: This bill addresses the public health issue of electronic smoking devices by requiring e-liquid and electronic smoking devices containing e-liquid to be regulated as tobacco products.

Impact on the department and other agencies: The Department of Taxation will need to

amend its current forms and instructions to accommodate registration of wholesalers and dealers of e-liquid and electronic smoking devices containing e-liquid. This bill eliminates the need for a new unit within the Department of the Attorney General, and the fiscal resources necessary to effectuate it.

GENERAL FUND: Additional tax revenue may be generated by applying the current tobacco tax rate to e-liquids and electronic smoking devices containing e-liquid. The Department of the Attorney General will not require funding to establish and maintain a new Electronic Smoking Device Retailer Registration Unit.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Department of Taxation; Department of Budget and Finance; Department of the Attorney General.

EFFECTIVE DATE: January 1, 2019, provided that section 1 shall take effect January 1, 2020.