

JAN 17 2020

A BILL FOR AN ACT

RELATING TO ELECTRONIC SMOKING PRODUCTS.

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

1 SECTION 1. The legislature 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 The legislature is concerned with the health and safety of
7 e-cigarette products.

8 The legislature further finds that electronic smoking
9 devices are known to contain volatile organic compounds that, at
10 certain levels, can cause eye, nose and throat irritation,
11 headaches and nausea, and can damage the liver, kidneys and the
12 nervous system. The liquids used in e-smoking devices are
13 largely unregulated and contain harmful chemicals. Some
14 flavorings are more toxic than others. Studies have shown that
15 some flavors contain different levels of diacetyl, a chemical
16 that has been linked to a serious lung disease called
17 bronchiolitis obliterans. Formaldehyde is another chemical



1 associated with e-liquids. It is a cancer-causing substance
2 that forms if e-liquid overheats or not enough liquid reaches
3 the heating element.

4 In 2019, the U.S. Department of Health and Human Services
5 declared that e-cigarette users are falling ill to a new illness
6 named E-Cigarette and Vaping Associated Lung Injury (EVALI) and
7 notes that sixteen percent of patients hospitalized were younger
8 than eighteen years of age. While research is still being
9 conducted on the causes of the illnesses, this unregulated
10 product is a threat to the health and safety of youth. Cases of
11 EVALI have been reported in Hawaii. As of November 2019, the
12 Hawaii department of health's disease outbreak control division
13 confirmed four cases of severe respiratory illness associated
14 with e-cigarettes. Each county has reported one case of EVALI.

15 The legislature also finds that the use of these e-smoking
16 devices has been increasing exponentially, and that e-cigarette
17 use is especially popular among youth in Hawaii. While young
18 people's use of e-cigarettes has risen nationally, use in Hawaii
19 by young people is even higher. According to the latest data
20 from the Hawaii department of health Youth Risk Behavior Study,
21 forty-two per cent of the State's high school students and



1 twenty-seven percent of its middle school students have tried or
2 use e-cigarettes. By county, the state high school rates of
3 e-cigarette use are thirty-nine percent for Oahu, forty-five per
4 cent for Kauai, fifty-one per cent for Maui, and fifty per cent
5 for Hawaii.

6 The legislature additionally finds that the e-smoking
7 device industry, including the production of e-liquids, is
8 growing rapidly. On December 18, 2018, the United States
9 Surgeon General made the unprecedented move of classifying the
10 danger of youth usage of e-smoking devices as an epidemic.
11 Since the Surgeon General first issued a warning in 2016 about
12 the dangers of these products, data has shown a historic rise in
13 use by youth and young adults. According to the 2016 report,
14 e-cigarette use among the nation's youth and young adults has
15 become a major public health concern. The Surgeon General's
16 report noted that e-cigarette use has increased considerably in
17 recent years. Usage increased an astounding nine hundred per
18 cent among high school students from 2011 to 2015 alone.

19 In a 2018 study conducted by the National Institute on Drug
20 Abuse, teens' use of e-smoking devices increased from 27.8 per
21 cent to 37.3 per cent in a twelve-month period. The increase



1 translates to 1.3 million more teens using e-smoking devices in
2 a single year. E-cigarette use among youth and young adults is
3 also strongly associated with the use of other tobacco products,
4 including combustible tobacco products. Toxicologists have also
5 warned that e-liquids pose significant risks to public health,
6 particularly to children.

7 According to the Surgeon General's report, if the contents
8 of refill cartridges or bottles are consumed, ingestion of
9 e-liquids containing nicotine can cause acute toxicity and
10 possibly death. The Surgeon General's report also found that
11 there are numerous policies and practices that can be
12 implemented at the state and local levels to address e-smoking
13 device use among youth and young adults, including preventing
14 access to e cigarettes by youth, significant increases in tax
15 and price of e-cigarettes, retail licensure, and regulation of
16 e-cigarette marketing.

17 The legislature additionally finds that the rapid growth of
18 the e-smoking device industry, including retail businesses
19 selling e-smoking devices or e-liquids, necessitates further
20 regulation to protect consumers, such as creating policy parity
21 between the sale of e-cigarettes and the sale of traditional



1 cigarettes through tobacco taxation and by requiring retailers
2 of e-cigarettes and 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 e-smoking devices, cigars, and hookah and pipe tobacco; yet
7 federal delays are expected for at least five more years. The
8 legislature also notes that there is currently no state tobacco
9 tax attached to the sale of e-liquid, even though e-smoking
10 devices are now regulated as tobacco products. Furthermore,
11 tobacco products, other than e-cigarettes, are currently taxed
12 at a lower rate than cigarettes, even though their use carries
13 similar health risks. Research has shown that increasing
14 cigarette prices, such as through cigarette sales taxes, tends
15 to reduce the rate of smoking by adult and youth smokers. The
16 legislature finds that minors are three times more sensitive to
17 price increases than are adults.

18 The legislature is also concerned that there are currently
19 no state resources allocated to assist the department of health
20 and the department of education in combatting the youth vaping
21 epidemic and in treating youth for nicotine addiction.



1 Cessation treatment options, such as nicotine replacement
2 therapy, are currently designed for adults. Because youth are
3 not vaping to quit cigarettes, and because there is no safe
4 level of nicotine for youth, there are no approved treatment
5 guidelines to help youth break their addiction.

6 Finally, the legislature concludes that there needs to be a
7 sales tax on e-cigarettes. Taxing the sale of these products,
8 as the state does the sale of other tobacco, is fair and
9 equitable. Imposing a sales tax on e-cigarettes will also
10 encourage users of e-cigarettes to quit, sustain cessation,
11 prevent youth initiation, and reduce consumption among those who
12 continue to use them.

13 The purpose of this Act is to:

- 14 (1) Include e-smoking devices within the definition of
15 "tobacco products", as used in the cigarette tax and
16 tobacco tax law, thereby:
- 17 (A) Subjecting e-smoking devices to the excise tax on
18 tobacco products;
- 19 (B) Requiring retailers of e-smoking devices to
20 obtain a retail tobacco permit to sell, possess,



1 keep, acquire, distribute, or transport e-smoking
2 devices;

3 (C) Prohibiting persons from engaging in the business
4 of a wholesaler or dealer of e-smoking devices
5 without first obtaining a license from the
6 department of taxation; and

7 (D) Applying other requirements of chapter 245,
8 Hawaii Revised Statutes;

9 (2) Increase the license fee for persons engaged as a
10 wholesaler or dealer of cigarettes and tobacco
11 products;

12 (3) Increase the retail tobacco permit fee for retailers
13 engaged in the retail sale of cigarettes and tobacco
14 products; and

15 (4) Fund health education, prevention, and cessation
16 programs having to do with the risks and dangers of
17 the use of e-smoking devices by youth.

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

20 1. By adding three new definitions to be appropriately
21 inserted and to read:



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

10 "E-smoking device" means any electronic product, or part
11 thereof, that can be used by a person to simulate smoking in the
12 delivery of nicotine or any other substance, intended for human
13 consumption, through inhalation of vapor or aerosol from the
14 product. E-smoking device includes but is not limited to an
15 electronic cigarette, electronic cigar, electronic cigarillo,
16 electronic pipe, electronic hookah, vape pen or related product,
17 and any cartridge or other component part of the device or
18 product.

19 "Smoke" or "smoking" means inhaling, exhaling, burning,
20 carrying, or possessing any lighted or heated tobacco product,
21 or similar substance intended for human consumption, including



1 the use of an e-smoking device that creates an aerosol or vapor,
2 in any manner or in any form."

3 2. By amending the definition of "tobacco products" to
4 read:

5 "Tobacco products" means in any form, other than cigarettes
6 or little cigars [~~, that is prepared or intended for consumption~~
7 ~~or for personal use by humans, including large cigars and any~~
8 ~~substitutes thereof other than cigarettes that bear the~~
9 ~~semblance thereof, snuff, chewing or smokeless tobacco, and~~
10 ~~smoking or pipe tobacco.]; including, but not limited to large
11 cigars and any substitutes thereof other than cigarettes that
12 bear the semblance thereof, pipe tobacco, chewing or smokeless
13 tobacco, snuff, snus, e-liquid, e-smoking devices containing
14 e-liquid, component parts containing e-liquid, and related
15 products."~~

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

18 "(b) The license shall be issued by the department upon
19 application therefor, in such form and manner as shall be
20 required by rule of the department, and the payment of a fee of



1 [~~\$2.50,~~] \$250, and shall be renewable annually on July 1 for the
2 twelve months ending the succeeding June 30."

3 SECTION 4. Section 245-2.5, Hawaii Revised Statutes, is
4 amended by amending subsection (c) to read as follows:

5 "(c) The retail tobacco permit shall be issued by the
6 department upon application by the retailer in the form and
7 manner prescribed by the department, and the payment of a fee of
8 [~~\$20.~~] \$50. Permits shall be valid for one year, from
9 December 1 to November 30, and renewable annually. Whenever a
10 retail tobacco permit is defaced, destroyed, or lost, or the
11 permittee relocates the permittee's business, the department may
12 issue a duplicate retail tobacco permit to the permittee for a
13 fee of \$5 per copy."

14 SECTION 5. Section 245-15, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§245-15 Disposition of revenues.** All moneys collected
17 pursuant to this chapter shall be paid into the state treasury
18 as state realizations to be kept and accounted for as provided
19 by law; provided that, of the moneys collected under the tax
20 imposed pursuant to:



- 1 (1) Section 245-3(a)(5), after September 30, 2006, and
2 prior to October 1, 2007, 1.0 cent per cigarette shall
3 be deposited to the credit of the Hawaii cancer
4 research special fund, established pursuant to section
5 304A-2168, for research and operating expenses and for
6 capital expenditures;
- 7 (2) Section 245-3(a)(6), after September 30, 2007, and
8 prior to October 1, 2008:
- 9 (A) 1.5 cents per cigarette shall be deposited to the
10 credit of the Hawaii cancer research special
11 fund, established pursuant to section 304A-2168,
12 for research and operating expenses and for
13 capital expenditures;
- 14 (B) 0.25 cents per cigarette shall be deposited to
15 the credit of the trauma system special fund
16 established pursuant to section 321-22.5; and
- 17 (C) 0.25 cents per cigarette shall be deposited to
18 the credit of the emergency medical services
19 special fund established pursuant to section
20 321-234;



1 (3) Section 245-3(a)(7), after September 30, 2008, and
2 prior to July 1, 2009:

3 (A) 2.0 cents per cigarette shall be deposited to the
4 credit of the Hawaii cancer research special
5 fund, established pursuant to section 304A-2168,
6 for research and operating expenses and for
7 capital expenditures;

8 (B) 0.5 cents per cigarette shall be deposited to the
9 credit of the trauma system special fund
10 established pursuant to section 321-22.5;

11 (C) 0.25 cents per cigarette shall be deposited to
12 the credit of the community health centers
13 special fund established pursuant to section
14 321-1.65; and

15 (D) 0.25 cents per cigarette shall be deposited to
16 the credit of the emergency medical services
17 special fund established pursuant to section
18 321-234;

19 (4) Section 245-3(a)(8), after June 30, 2009, and prior to
20 July 1, 2013:



- 1 (A) 2.0 cents per cigarette shall be deposited to the
2 credit of the Hawaii cancer research special
3 fund, established pursuant to section 304A-2168,
4 for research and operating expenses and for
5 capital expenditures;
- 6 (B) 0.75 cents per cigarette shall be deposited to
7 the credit of the trauma system special fund
8 established pursuant to section 321-22.5;
- 9 (C) 0.75 cents per cigarette shall be deposited to
10 the credit of the community health centers
11 special fund established pursuant to section
12 321-1.65; and
- 13 (D) 0.5 cents per cigarette shall be deposited to the
14 credit of the emergency medical services special
15 fund established pursuant to section 321-234;
- 16 (5) Section 245-3(a)(11), after June 30, 2013, and prior
17 to July 1, 2015:
- 18 (A) 2.0 cents per cigarette shall be deposited to the
19 credit of the Hawaii cancer research special
20 fund, established pursuant to section 304A-2168,



S.B. NO. 2227

1 for research and operating expenses and for
2 capital expenditures;

3 (B) 1.5 cents per cigarette shall be deposited to the
4 credit of the trauma system special fund
5 established pursuant to section 321-22.5;

6 (C) 1.25 cents per cigarette shall be deposited to
7 the credit of the community health centers
8 special fund established pursuant to section
9 321-1.65; and

10 (D) 1.25 cents per cigarette shall be deposited to
11 the credit of the emergency medical services
12 special fund established pursuant to section
13 321-234; ~~and~~

14 (6) Section 245-3(a)(11), after June 30, 2015, and
15 thereafter:

16 (A) 2.0 cents per cigarette shall be deposited to the
17 credit of the Hawaii cancer research special
18 fund, established pursuant to section 304A-2168,
19 for research and operating expenses and for
20 capital expenditures;



S.B. NO. 2227

1 (B) 1.125 cents per cigarette, but not more than
2 \$7,400,000 in a fiscal year, shall be deposited
3 to the credit of the trauma system special fund
4 established pursuant to section 321-22.5;

5 (C) 1.25 cents per cigarette, but not more than
6 \$8,800,000 in a fiscal year, shall be deposited
7 to the credit of the community health centers
8 special fund established pursuant to section
9 321-1.65; and

10 (D) 1.25 cents per cigarette, but not more than
11 \$8,800,000 in a fiscal year, shall be deposited
12 to the credit of the emergency medical services
13 special fund established pursuant to section
14 321-234 [-]; and

15 (7) Section 245-3(a)(12), after June 30, 2020, and
16 thereafter \$2,000,000 shall be deposited to the credit
17 of the Hawaii tobacco prevention and control trust
18 fund established pursuant to section 328L-5 to
19 establish a comprehensive youth tobacco cessation
20 program to fund health education, prevention, and
21 nicotine cessation programs about the risks and



1 dangers of the use of electronic smoking devices for
2 youth.

3 The department shall provide an annual accounting of these
4 dispositions to the legislature."

5 SECTION 6. Chapter 28, part XII, Hawaii Revised Statutes,
6 is repealed.

7 SECTION 7. Section 245-17, Hawaii Revised Statutes, is
8 repealed.

9 ~~["~~§245-17~~ Delivery sales. (a) No person shall conduct~~
10 ~~a delivery sale or otherwise ship or transport, or cause to be~~
11 ~~shipped or transported, any electronic smoking device in~~
12 ~~connection with a delivery sale to any person under the age of~~
13 ~~twenty one.~~

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

18 ~~(1) An independently operated third party database or~~
19 ~~aggregate of databases that are regularly used by~~
20 ~~government and businesses for the purpose of age and~~
21 ~~identity verification and authentication;~~



1 ~~(2) Receiving a copy of a government issued identification~~
2 ~~card from the purchaser; or~~

3 ~~(3) Requiring age and signature verification in the~~
4 ~~shipment process and upon and before actual delivery.~~

5 ~~(e) The purchaser shall certify their age before~~
6 ~~completing the purchaser's order.~~

7 ~~(d) Any person who violates this section shall be fined~~
8 ~~\$500 for the first offense. Any subsequent offenses shall~~
9 ~~subject the person to a fine of no less than \$500 but no more~~
10 ~~than \$2,000. Any person under twenty one years of age who~~
11 ~~violates this section shall be fined \$10 for the first offense;~~
12 ~~provided that any subsequent offense shall subject the person to~~
13 ~~a fine of \$50, no part of which shall be suspended, or the~~
14 ~~person shall be required to perform no less than forty eight~~
15 ~~hours but no more than seventy two hours of community service~~
16 ~~during hours when the person is not employed or attending~~
17 ~~school.~~

18 ~~(e) The department shall not adopt rules prohibiting~~
19 ~~delivery sales.~~

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



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 8. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



1 SECTION 9. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 10. This Act shall take effect on July 1, 2020.
4

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S.B. NO. 2227

Report Title:

Electronic Smoking Products; Tobacco Products; E-liquid; License Fee; Retail Permit Fee; Health Education, Nicotine Cessation, and Prevention Programs

Description:

Requires that e-liquid and e-smoking devices be included within the definition of "tobacco products", as used in the cigarette tax and tobacco tax law. Increases the license fee for persons engaged as a wholesaler or dealer of cigarettes and tobacco products. Increases the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes and tobacco products. Allocates a portion of funds collected on excise taxes on tobacco products to fund health education, prevention, and nicotine cessation programs for youth, regarding the risks and dangers of the use of e-smoking devices. Repeals certain provisions of the Hawaii Revised Statutes relating to e-smoking devices.

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

