
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 electronic smoking devices
13 are 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 United States Department of Health and Human
5 Services declared that e-cigarette users were falling ill to a
6 new illness named e-cigarette and vaping associated lung injury
7 and noted that sixteen per cent of patients hospitalized were
8 younger than eighteen years of age. While research is still
9 being conducted on the causes of the illness, this unregulated
10 product is a threat to the health and safety of youth. Cases of
11 e-cigarette and vaping associated lung injury have been reported
12 in Hawaii. As of November 2019, the Hawaii department of
13 health's disease outbreak control division confirmed four cases
14 of severe respiratory illness associated with e-cigarettes.
15 Each county has reported one case of e-cigarette and vaping
16 associated lung injury.

17 The legislature also finds that the use of these electronic
18 smoking devices has been increasing exponentially, and that e-
19 cigarette use is especially popular among youth in Hawaii.
20 While young people's use of e-cigarettes has risen nationally,
21 use in Hawaii by young people is even higher. According to the



1 2017 data from the department of health's youth risk behavior
2 study, forty-two per cent of the State's high school students
3 and twenty-seven per cent of its middle school students have
4 tried or use e-cigarettes. By county, the state high school
5 rates of e-cigarette use are thirty-nine per cent for Oahu,
6 forty-five per cent for Kauai, fifty-one per cent for Maui, and
7 fifty per cent for Hawaii.

8 The legislature additionally finds that the electronic
9 smoking device industry, including the production of e-liquids,
10 is growing rapidly. On December 18, 2018, the United States
11 Surgeon General made the unprecedented move of classifying the
12 danger of youth usage of electronic smoking devices as an
13 epidemic. Since the Surgeon General first issued a warning in
14 2016 about the dangers of these products, data has shown a
15 historic rise in use by youth and young adults. According to
16 the 2016 report, e-cigarette use among the nation's youth and
17 young adults has become a major public health concern. The
18 Surgeon General's report noted that e-cigarette use has
19 increased considerably in recent years. Usage increased an
20 astounding nine hundred per cent among high school students from
21 2011 to 2015 alone.



1 In a 2018 study conducted by the National Institute on Drug
2 Abuse, teens' use of electronic smoking devices increased from
3 27.8 per cent to 37.3 per cent in a twelve-month period. The
4 increase translates to 1,300,000 more teens using electronic
5 smoking devices in a single year. E-cigarette use among youth
6 and young adults is also strongly associated with the use of
7 other tobacco products, including combustible tobacco products.
8 Toxicologists have also warned that e-liquids pose significant
9 risks to public health, particularly to children.

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

20 The legislature further finds that the rapid growth of the
21 electronic smoking device industry, including retail businesses



1 selling electronic smoking devices or e-liquids, necessitates
2 further regulation to protect consumers, such as creating policy
3 parity between the sale of e-cigarettes and the sale of
4 traditional cigarettes through tobacco taxation and by requiring
5 retailers of e-cigarettes and e-liquids to obtain a retail
6 tobacco permit.

7 The legislature notes that the federal Food and Drug
8 Administration recently finalized a rule that expands its
9 regulatory authority to all tobacco products, including
10 electronic smoking devices, cigars, and hookah and pipe tobacco;
11 yet, federal delays are expected for at least five more years.
12 The legislature also notes that there is currently no state
13 tobacco tax attached to the sale of e-liquid, even though
14 electronic smoking devices are now regulated as tobacco
15 products. Furthermore, tobacco products, other than
16 e-cigarettes, are currently taxed at a lower rate than
17 cigarettes, even though their use carries similar health risks.
18 Research has shown that increasing cigarette prices, such as
19 through cigarette sales taxes, tends to reduce the rate of
20 smoking by adult and youth smokers. The legislature finds that



1 minors are three times more sensitive to price increases than
2 are adults.

3 The legislature is also concerned that there are currently
4 no state resources allocated to assist the department of health
5 and department of education in combatting the youth vaping
6 epidemic and in treating youth for nicotine addiction.
7 Cessation treatment options, such as nicotine replacement
8 therapy, are currently designed for adults. Because youth are
9 not vaping to quit cigarettes, and because there is no safe
10 level of nicotine for youth, there are no approved treatment
11 guidelines to help youth break their addiction.

12 Finally, the legislature concludes that there needs to be a
13 sales tax on e-cigarettes. Taxing the sale of these products,
14 as the State does the sale of other tobacco products, is fair
15 and equitable. Imposing a sales tax on e-cigarettes will also
16 encourage users of e-cigarettes to quit, sustain cessation,
17 prevent youth initiation, and reduce consumption among those who
18 continue to use them.

19 The purpose of this Act is to:

20 (1) Establish the offense of unlawful shipment of tobacco
21 products;



- 1 (2) Include electronic smoking devices within the
- 2 definition of "tobacco products", as used in the
- 3 cigarette tax and tobacco tax law, thereby:
- 4 (A) Subjecting electronic smoking devices to the
- 5 excise tax on tobacco products;
- 6 (B) Requiring retailers of electronic smoking devices
- 7 to obtain a retail tobacco permit to sell,
- 8 possess, keep, acquire, distribute, or transport
- 9 electronic smoking devices;
- 10 (C) Prohibiting persons from engaging in the business
- 11 of a wholesaler or dealer of electronic smoking
- 12 devices without first obtaining a license from
- 13 the department of taxation; and
- 14 (D) Applying other requirements of chapter 245,
- 15 Hawaii Revised Statutes;
- 16 (3) Increase the license fee for persons engaged as a
- 17 wholesaler or dealer of cigarettes and tobacco
- 18 products;
- 19 (4) Increase the retail tobacco permit fee for retailers
- 20 engaged in the retail sale of cigarettes and tobacco
- 21 products;



- 1 (5) Fund health education, prevention, and cessation
- 2 programs having to do with the risks and dangers of
- 3 the use of electronic smoking devices by youth; and
- 4 (6) Repeal various statutory provisions relating to
- 5 electronic smoking devices.

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

9 "§245- Unlawful shipment of e-liquids and electronic
10 smoking devices; penalty; reports; liability for unpaid taxes.

11 (a) A person or entity commits the offense of unlawful shipment
12 of e-liquids and electronic smoking devices if the person or
13 entity:

14 (1) Is engaged in the business of selling e-liquids and
15 electronic smoking devices; and

16 (2) Ships or causes to be shipped any e-liquids and
17 electronic smoking devices to a person or entity in
18 the State that is not a licensee under this chapter.

19 (b) This section shall not apply to the shipment of
20 e-liquids and electronic smoking devices if any of the following
21 conditions is met:



1 (1) The e-liquids and electronic smoking devices are
2 exempt from taxes as provided by section 245-3(b); or
3 (2) All applicable Hawaii taxes on the e-liquids and
4 electronic smoking devices are paid in accordance with
5 the requirements of this chapter.
6 (c) Unlawful shipment of e-liquids and electronic smoking
7 devices is a class C felony if the person or entity knowingly
8 ships or causes to be shipped e-liquids and electronic smoking
9 devices with a value of \$10,000 or more in violation of
10 subsection (a).
11 (d) Unlawful shipment of e-liquids and electronic smoking
12 devices is a misdemeanor if the person or entity knowingly ships
13 or causes to be shipped e-liquids and electronic smoking devices
14 with a value of less than \$10,000 in violation of subsection
15 (a).
16 (e) Notwithstanding the existence of other remedies at
17 law, any person or entity that purchases, uses, controls, or
18 possesses any e-liquids and electronic smoking devices for which
19 the applicable taxes imposed under title 14 have not been paid,
20 shall be liable for the applicable taxes, plus any penalty and
21 interest as provided for by law.



1 (f) For purposes of this section, a person or entity is a
2 licensee if the person's or entity's name appears on a list of
3 authorized licensees published by the department.

4 (g) For purposes of this section:

5 "Value" means the fair market value at the time of the
6 offense."

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

9 1. By adding three new definitions to be appropriately
10 inserted and to read:

11 "E-liquid" means any liquid or like substance, which may
12 or may not contain nicotine, that is designed or intended to be
13 used in an electronic smoking device, whether or not packaged in
14 a cartridge or other container. "E-liquid" shall not include
15 prescription drugs; medical cannabis or manufactured cannabis
16 products under chapter 329D; or medical devices used to
17 aerosolize, inhale, or ingest prescription drugs, including
18 manufactured cannabis products manufactured or distributed in
19 accordance with section 329D-10(a).

20 "Electronic smoking device" means any electronic product,
21 or part thereof, that can be used by a person to simulate



1 smoking in the delivery of nicotine or any other substance,
2 intended for human consumption, through inhalation of vapor or
3 aerosol from the product. "Electronic smoking device" includes
4 but is not limited to an electronic cigarette, electronic cigar,
5 electronic cigarillo, electronic pipe, electronic hookah, vape
6 pen or related product, and any cartridge or other component
7 part of the device or product.

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

13 2. By amending the definition of "tobacco products" to
14 read:

15 ""Tobacco products" means tobacco in any form, other than
16 cigarettes or little cigars[, ~~that is prepared or intended for~~
17 ~~consumption or for personal use by humans, including large~~
18 ~~cigars and any substitutes thereof other than cigarettes that~~
19 ~~bear the semblance thereof, snuff, chewing or smokeless tobacco,~~
20 ~~and smoking or pipe tobacco.]; including but not limited to
21 large cigars and any substitutes thereof other than cigarettes~~



1 that bear the semblance thereof, pipe tobacco, chewing or
2 smokeless tobacco, snuff, snus, e-liquid, electronic smoking
3 devices, any cartridge or other component parts of the device or
4 product, and related products."

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

7 "(b) The license shall be issued by the department upon
8 application therefor, in such form and manner as shall be
9 required by rule of the department, and the payment of a fee of
10 [~~\$2.50,~~] \$250, and shall be renewable annually on July 1 for the
11 twelve months ending the succeeding June 30."

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

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



1 issue a duplicate retail tobacco permit to the permittee for a
2 fee of \$5 per copy."

3 SECTION 6. Section 245-15, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§245-15 **Disposition of revenues.** All moneys collected
6 pursuant to this chapter shall be paid into the state treasury
7 as state realizations to be kept and accounted for as provided
8 by law; provided that, of the moneys collected under the tax
9 imposed pursuant to:

10 (1) Section 245-3(a)(5), after September 30, 2006, and
11 prior to October 1, 2007, 1.0 cent per cigarette shall
12 be deposited to the credit of the Hawaii cancer
13 research special fund, established pursuant to section
14 304A-2168, for research and operating expenses and for
15 capital expenditures;

16 (2) Section 245-3(a)(6), after September 30, 2007, and
17 prior to October 1, 2008:

18 (A) 1.5 cents per cigarette shall be deposited to the
19 credit of the Hawaii cancer research special
20 fund, established pursuant to section 304A-2168,



- 1 for research and operating expenses and for
2 capital expenditures;
- 3 (B) 0.25 cents per cigarette shall be deposited to
4 the credit of the trauma system special fund
5 established pursuant to section 321-22.5; and
- 6 (C) 0.25 cents per cigarette shall be deposited to
7 the credit of the emergency medical services
8 special fund established pursuant to section
9 321-234;
- 10 (3) Section 245-3(a)(7), after September 30, 2008, and
11 prior to July 1, 2009:
- 12 (A) 2.0 cents per cigarette shall be deposited to the
13 credit of the Hawaii cancer research special
14 fund, established pursuant to section 304A-2168,
15 for research and operating expenses and for
16 capital expenditures;
- 17 (B) 0.5 cents per cigarette shall be deposited to the
18 credit of the trauma system special fund
19 established pursuant to section 321-22.5;
- 20 (C) 0.25 cents per cigarette shall be deposited to
21 the credit of the community health centers



- 1 special fund established pursuant to section
2 321-1.65; and
- 3 (D) 0.25 cents per cigarette shall be deposited to
4 the credit of the emergency medical services
5 special fund established pursuant to section
6 321-234;
- 7 (4) Section 245-3(a)(8), after June 30, 2009, and prior to
8 July 1, 2013:
- 9 (A) 2.0 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) 0.75 cents per cigarette shall be deposited to
15 the credit of the trauma system special fund
16 established pursuant to section 321-22.5;
- 17 (C) 0.75 cents per cigarette shall be deposited to
18 the credit of the community health centers
19 special fund established pursuant to section
20 321-1.65; and



- 1 (D) 0.5 cents per cigarette shall be deposited to the
2 credit of the emergency medical services special
3 fund established pursuant to section 321-234;
- 4 (5) Section 245-3(a)(11), after June 30, 2013, and prior
5 to July 1, 2015:
- 6 (A) 2.0 cents per cigarette shall be deposited to the
7 credit of the Hawaii cancer research special
8 fund, established pursuant to section 304A-2168,
9 for research and operating expenses and for
10 capital expenditures;
- 11 (B) 1.5 cents per cigarette shall be deposited to the
12 credit of the trauma system special fund
13 established pursuant to section 321-22.5;
- 14 (C) 1.25 cents per cigarette shall be deposited to
15 the credit of the community health centers
16 special fund established pursuant to section
17 321-1.65; and
- 18 (D) 1.25 cents per cigarette shall be deposited to
19 the credit of the emergency medical services
20 special fund established pursuant to section
21 321-234; [and]



- 1 (6) Section 245-3(a)(11), after June 30, 2015, and
2 thereafter:
- 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) 1.125 cents per cigarette, but not more than
9 \$7,400,000 in a fiscal year, shall be deposited
10 to the credit of the trauma system special fund
11 established pursuant to section 321-22.5;
- 12 (C) 1.25 cents per cigarette, but not more than
13 \$8,800,000 in a fiscal year, shall be deposited
14 to the credit of the community health centers
15 special fund established pursuant to section
16 321-1.65; and
- 17 (D) 1.25 cents per cigarette, but not more than
18 \$8,800,000 in a fiscal year, shall be deposited
19 to the credit of the emergency medical services
20 special fund established pursuant to section
21 321-234 [-]; and



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

5 ~~(1) An independently operated third party database or~~
6 ~~aggregate of databases that are regularly used by~~
7 ~~government and businesses for the purpose of age and~~
8 ~~identity verification and authentication;~~

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

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

13 ~~(c) The purchaser shall certify their age before~~
14 ~~completing the purchaser's order.~~

15 ~~(d) Any person who violates this section shall be fined~~
16 ~~\$500 for the first offense. Any subsequent offenses shall~~
17 ~~subject the person to a fine of no less than \$500 but no more~~
18 ~~than \$2,000. Any person under twenty one years of age who~~
19 ~~violates this section shall be fined \$10 for the first offense,~~
20 ~~provided that any subsequent offense shall subject the person to~~
21 ~~a fine of \$50, no part of which shall be suspended, or the~~



1 ~~person shall be required to perform no less than forty eight~~
2 ~~hours but no more than seventy two hours of community service~~
3 ~~during hours when the person is not employed or attending~~
4 ~~school.~~

5 ~~(e) The department shall not adopt rules prohibiting~~
6 ~~delivery sales.~~

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

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

10 ~~(1) The purchaser submits the order for sale by means of a~~
11 ~~telephonic or other method of voice transmission, the~~
12 ~~mail or any other delivery service, or the internet or~~
13 ~~other online service; or~~

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

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

19 ~~"Electronic smoking device" means any electronic product~~
20 ~~that can be used to aerosolize and deliver nicotine or other~~
21 ~~substances to the person inhaling from the device, including but~~



1 ~~not limited to an electronic cigarette, electronic cigar,~~
2 ~~electronic cigarillo, or electronic pipe, and any cartridge or~~
3 ~~other component of the device or related product."]~~

4 SECTION 9. This Act does not affect rights and duties that
5 matured, penalties that were incurred, and proceedings that were
6 begun before its effective date.

7 SECTION 10. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 11. This Act shall take effect on June 18, 2050.



Report Title:

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

Description:

Establishes the offense of unlawful shipment of tobacco products. Includes e-liquid and electronic smoking devices 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 electronic smoking devices. Repeals certain statutory provisions relating to electronic smoking devices. Effective 6/18/2050. (HD1)

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