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# 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 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 and notes  
7 that sixteen per cent of patients hospitalized were younger than  
8 eighteen years of age. While research is still being conducted  
9 on the causes of the illnesses, this unregulated product is a  
10 threat to the health and safety of youth. Cases of e-cigarette  
11 and vaping associated lung injury have been reported in Hawaii.  
12 As of November 2019, the Hawaii department of health's disease  
13 outbreak control division confirmed four cases of severe  
14 respiratory illness associated with e-cigarettes. Each county  
15 has reported one case of e-cigarette and vaping associated lung  
16 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 latest data from the Hawaii department of health's youth risk  
2 behavior study, forty-two per cent of the State's high school  
3 students and twenty-seven per cent of its middle school students  
4 have tried or use e-cigarettes. By county, the state high  
5 school rates of e-cigarette use are thirty-nine per cent for  
6 Oahu, forty-five per cent for Kauai, fifty-one per cent for  
7 Maui, and 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 additionally finds that the rapid growth of  
21 the electronic smoking device industry, including retail



1 businesses selling electronic smoking devices or e-liquids,  
2 necessitates further regulation to protect consumers, such as  
3 creating policy parity between the sale of e-cigarettes and the  
4 sale of traditional cigarettes through tobacco taxation and by  
5 requiring retailers of e-cigarettes and e-liquids to obtain a  
6 retail 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 e-  
16 cigarettes, are currently taxed at a lower rate than cigarettes,  
17 even though their use carries similar health risks. Research  
18 has shown that increasing cigarette prices, such as through  
19 cigarette sales taxes, tends to reduce the rate of smoking by  
20 adult and youth smokers. The legislature finds that minors are  
21 three times more sensitive to price increases than are adults.



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

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

17           The purpose of this Act is to:

18           (1) Include electronic smoking devices within the  
19 definition of "tobacco products", as used in the  
20 cigarette tax and tobacco tax law, thereby:



- 1 (A) Subjecting electronic smoking devices to the
- 2 excise tax on tobacco products;
- 3 (B) Requiring retailers of electronic smoking devices
- 4 to obtain a retail tobacco permit to sell,
- 5 possess, keep, acquire, distribute, or transport
- 6 electronic smoking devices;
- 7 (C) Prohibiting persons from engaging in the business
- 8 of a wholesaler or dealer of electronic smoking
- 9 devices without first obtaining a license from
- 10 the department of taxation; and
- 11 (D) Applying other requirements of chapter 245,
- 12 Hawaii Revised Statutes;
- 13 (2) Increase the license fee for persons engaged as a
- 14 wholesaler or dealer of cigarettes and tobacco
- 15 products;
- 16 (3) Increase the retail tobacco permit fee for retailers
- 17 engaged in the retail sale of cigarettes and tobacco
- 18 products; and
- 19 (4) Fund health education, prevention, and cessation
- 20 programs having to do with the risks and dangers of
- 21 the use of electronic smoking devices by youth.



1 SECTION 2. 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:

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. E-liquid shall not include  
9 prescription drugs; medical 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. Electronic smoking device includes  
19 but is not limited to an electronic cigarette, electronic cigar,  
20 electronic cigarillo, electronic pipe, electronic hookah, vape





1 pen or related product, and any cartridge or other component  
2 part of the device or product.

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

8 2. By amending the definition of "tobacco products" to  
9 read:

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



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

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

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

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

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



1           **"§245-15 Disposition of revenues.** All moneys collected  
2 pursuant to this chapter shall be paid into the state treasury  
3 as state realizations to be kept and accounted for as provided  
4 by law; provided that, of the moneys collected under the tax  
5 imposed pursuant to:

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

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

14           (A) 1.5 cents per cigarette shall be deposited to the  
15           credit of the Hawaii cancer research special  
16           fund, established pursuant to section 304A-2168,  
17           for research and operating expenses and for  
18           capital expenditures;

19           (B) 0.25 cents per cigarette shall be deposited to  
20           the credit of the trauma system special fund  
21           established pursuant to section 321-22.5; and



1 (C) 0.25 cents per cigarette shall be deposited to  
2 the credit of the emergency medical services  
3 special fund established pursuant to section  
4 321-234;

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

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

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

15 (C) 0.25 cents per cigarette shall be deposited to  
16 the credit of the community health centers  
17 special fund established pursuant to section  
18 321-1.65; and

19 (D) 0.25 cents per cigarette shall be deposited to  
20 the credit of the emergency medical services



1 special fund established pursuant to section  
2 321-234;

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

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

10 (B) 0.75 cents per cigarette shall be deposited to  
11 the credit of the trauma system special fund  
12 established pursuant to section 321-22.5;

13 (C) 0.75 cents per cigarette shall be deposited to  
14 the credit of the community health centers  
15 special fund established pursuant to section  
16 321-1.65; and

17 (D) 0.5 cents per cigarette shall be deposited to the  
18 credit of the emergency medical services special  
19 fund established pursuant to section 321-234;

20 (5) Section 245-3(a)(11), after June 30, 2013, and prior  
21 to July 1, 2015:



- 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) 1.5 cents per cigarette shall be deposited to the  
7 credit of the trauma system special fund  
8 established pursuant to section 321-22.5;
- 9 (C) 1.25 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) 1.25 cents per cigarette shall be deposited to  
14 the credit of the emergency medical services  
15 special fund established pursuant to section  
16 321-234; ~~and~~
- 17 (6) Section 245-3(a)(11), after June 30, 2015, and  
18 thereafter:
- 19 (A) 2.0 cents per cigarette shall be deposited to the  
20 credit of the Hawaii cancer research special  
21 fund, established pursuant to section 304A-2168,



- 1 for research and operating expenses and for  
2 capital expenditures;
- 3 (B) 1.125 cents per cigarette, but not more than  
4 \$7,400,000 in a fiscal year, shall be deposited  
5 to the credit of the trauma system special fund  
6 established pursuant to section 321-22.5;
- 7 (C) 1.25 cents per cigarette, but not more than  
8 \$8,800,000 in a fiscal year, shall be deposited  
9 to the credit of the community health centers  
10 special fund established pursuant to section  
11 321-1.65; and
- 12 (D) 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 emergency medical services  
15 special fund established pursuant to section  
16 321-234 [-]; and
- 17 (7) Section 245-3(a)(12), after September 1, 2020, and  
18 thereafter, \$2,000,000 shall be deposited to the  
19 credit of the Hawaii tobacco prevention and control  
20 trust fund established pursuant to section 328L-5 to  
21 establish a comprehensive youth tobacco cessation



1           program to fund health education, prevention, and  
2           nicotine cessation programs about the risks and  
3           dangers of the use of electronic smoking devices for  
4           youth.

5 The department shall provide an annual accounting of these  
6 dispositions to the legislature."

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

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

11           ~~["§245-17] Delivery sales. (a) No person shall conduct~~  
12 ~~a 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~~





1 ~~government and businesses for the purpose of age and~~  
2 ~~identity verification and authentication;~~

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

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

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

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

20 ~~(e) The department shall not adopt rules prohibiting~~  
21 ~~delivery sales.~~



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

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

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

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

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

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

19 SECTION 8. This Act does not affect rights and duties that  
20 matured, penalties that were incurred, and proceedings that were  
21 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 September 1,  
4 2020.



**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 electronic 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 electronic smoking devices. Repeals certain provisions of the Hawaii Revised Statutes relating to electronic smoking devices. Effective 9/1/2020.  
(SD1)

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