
A BILL FOR AN ACT

RELATING TO TOBACCO PRODUCTS.

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 one thousand four hundred deaths
5 per year among adults. An estimated twenty-one thousand
6 children in Hawaii currently under the age of eighteen will
7 ultimately die prematurely from smoking. Tobacco use poses a
8 heavy burden on Hawaii's health care system and economy. Each
9 year, smoking costs approximately \$526,000,000 in direct health
10 care expenditures and \$387,300,000 in lost productivity in the
11 State.

12 The legislature further finds that tobacco products are
13 addictive and inherently dangerous, causing many different types
14 of cancer, heart disease, and other serious illnesses. Hawaii
15 has a substantial interest in reducing the number of individuals
16 of all ages who use tobacco products, and a particular interest



1 in protecting adolescents from tobacco dependence and the
2 illnesses and premature death associated with tobacco use.

3 The legislature additionally finds that electronic smoking
4 devices, also known as e-cigarettes, are battery-operated
5 products designed to deliver flavor and chemicals to the user by
6 turning the chemicals, including highly addictive nicotine, into
7 an aerosol or vapor that is inhaled by the user. Consumers may
8 choose from varying strengths of e-liquid nicotine as well as
9 liquids consisting of different flavors.

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



1 high school students from 2011 to 2015. In a 2018 study
2 conducted by the National Institute on Drug Abuse, the use of
3 electronic smoking devices among high school seniors increased
4 nationally from 27.8 per cent to 37.3 per cent in a twelve-month
5 period. The increase translates to 1.3 million more teens using
6 electronic smoking devices in a single year. E-cigarette use
7 among youth and young adults is also strongly associated with
8 the use of other tobacco products, including combustible tobacco
9 products. Toxicologists have also warned that e-liquids pose
10 significant risks to public health, particularly to children.
11 According to the Surgeon General's report, if the contents of
12 refill cartridges or bottles are consumed, ingestion of e-
13 liquids containing nicotine can cause acute toxicity and
14 possibly death. The Surgeon General's report also found that
15 there are numerous policies and practices that can be
16 implemented at the state and local levels to address electronic
17 smoking device use among youth and young adults, including
18 preventing access to e-cigarettes by youth, significant
19 increases in tax and price of e-cigarettes, retail licensure,
20 and regulation of e-cigarette marketing.



1 The legislature additionally finds that the rapid growth of
2 the electronic smoking device industry, including retail
3 businesses selling electronic smoking devices or e-liquid,
4 necessitates further regulations to protect consumers, such as
5 requiring retailers of e-liquid to obtain a retail tobacco
6 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, hookah, and pipe tobacco.
11 However, there is currently no state tobacco tax attached to e-
12 liquid, even though electronic smoking devices are now regulated
13 as tobacco products. Furthermore, tobacco products other than
14 cigarettes are currently taxed at a lower rate than cigarettes,
15 even though their use carries similar health risks. Research
16 has shown that increasing cigarette prices, such as through
17 cigarette taxes, tends to reduce the rate of smoking by adult
18 and youth smokers. However, the legislature is concerned that
19 as the price of cigarettes increases, smokers may purchase less
20 expensive tobacco products, such as electronic smoking devices
21 or e-liquids.



1 The purpose of this Act is to:

2 (1) Establish the offense of unlawful shipment of tobacco
3 products;

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

7 (3) Increase the retail tobacco permit fee for retailers
8 engaged in the retail sale of cigarettes and tobacco
9 products;

10 (4) Fund health education and prevention programs
11 concerning the risks and dangers of the use of
12 electronic smoking devices for youth; and

13 (5) Repeal various statutory provisions relating to
14 electronic smoking devices.

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

18 "§245- Unlawful shipment of tobacco products; penalty;
19 reports; liability for unpaid taxes. (a) A person commits the
20 offense of unlawful shipment of tobacco products if the person:



- 1 (1) Is engaged in the business of selling tobacco
2 products; and
- 3 (2) Ships or causes to be shipped any tobacco products to
4 a person or entity in this State that is not a
5 licensee under this chapter.

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

- 8 (1) The tobacco products are exempt from taxes as provided
9 by section 245-3(b) or are otherwise exempt from the
10 applicability of this chapter as provided by
11 section 245-62; or
- 12 (2) All applicable Hawaii taxes on the tobacco products
13 are paid in accordance with the requirements of this
14 chapter.

15 (c) Unlawful shipment of tobacco products is a class C
16 felony if the person or entity knowingly ships or causes to be
17 shipped tobacco products with a value of \$10,000 or more.

18 (d) Unlawful shipment of tobacco products is a misdemeanor
19 if the person or entity knowingly ships or causes to be shipped
20 tobacco products with a value of less than \$10,000.



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

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

10 (g) For the purpose of this section:

11 "Value" means the fair market value at the time of the
12 offense."

13 SECTION 3. Section 245-1, Hawaii Revised Statutes, is
14 amended by adding a new definition to be appropriately inserted
15 and to read as follows:

16 "Electronic smoking device" means any device that can be
17 used to deliver aerosolized or vaporized nicotine to the person
18 inhaling from the device, including but not limited to an
19 e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. "Electronic
20 smoking device" includes any component, part, or accessory of
21 such device, whether or not sold separately, and includes any



1 substance intended to be aerosolized or vaporized during the use
2 of the device. "Electronic smoking device" does not include any
3 battery or battery charger when sold separately. In addition,
4 "electronic smoking device" does not include drugs, devices, or
5 combination products authorized for sale by the United States
6 Food and Drug Administration, as those terms are defined in
7 title 21 United States Code chapter 9."

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

10 "(b) The license shall be issued by the department upon
11 application therefor, in such form and manner as shall be
12 required by rule of the department, and the payment of a fee of
13 [~~\$2.50,~~] \$250, and shall be renewable annually on July 1 for the
14 twelve months ending the succeeding June 30."

15 SECTION 5. Section 245-2.5, Hawaii Revised Statutes, is
16 amended by amending subsections (c) and (d) to read as follows:

17 "(c) The retail tobacco permit shall be issued by the
18 department upon application by the retailer in the form and
19 manner prescribed by the department, and the payment of a fee of
20 [~~\$20-~~] \$300. Permits shall be valid for one year, from
21 December 1 to November 30, and renewable annually. Whenever a



1 retail tobacco permit is defaced, destroyed, or lost, or the
2 permittee relocates the permittee's business, the department may
3 issue a duplicate retail tobacco permit to the permittee for a
4 fee of \$5 per copy.

5 (d) A separate retail tobacco permit shall be obtained for
6 each place of business owned, controlled, or operated by a
7 retailer. In applying for a retail tobacco permit, the
8 applicant shall specify whether each place of business sells
9 electronic smoking devices. A retailer that owns or controls
10 more than one place of business may submit a single application
11 for more than one retail tobacco permit. Each retail tobacco
12 permit issued shall clearly describe the place of business where
13 the operation of the business is conducted[~~-~~] and whether the
14 place of business sells electronic smoking devices."

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

17 "**§245-15 Disposition of revenues.** All moneys collected
18 pursuant to this chapter shall be paid into the state treasury
19 as state realizations to be kept and accounted for as provided
20 by law; provided that, of the moneys collected under the tax
21 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
5 section 304A-2168, for research and operating expenses
6 and for 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
20 section 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
14 section 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
18 section 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
12 section 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,



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
9 section 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
13 section 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;



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
9 section 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
14 section 321-234[-]; and

15 (7) Section 245-3(a)(12), on July 1, 2020, and every
16 July 1 thereafter, \$750,000 shall be deposited to the
17 credit of the Hawaii tobacco prevention and control
18 trust fund established pursuant to section 328L-5 to
19 support health education and prevention programs
20 concerning the risks and danger of the use of
21 electronic smoking devices for youth.



1 The department shall provide an annual accounting of these
2 dispositions to the legislature."

3 SECTION 7. Section 328L-5, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (a) to read:

6 "(a) There is established the Hawaii tobacco prevention
7 and control trust fund as a separate fund of a nonprofit entity
8 having a board of directors and qualifying under
9 section 501(c)(3) of the Internal Revenue Code of 1986, as
10 amended, into which shall be deposited moneys received as
11 provided under ~~[section]~~ sections 245-15(7) and 328L-2(b)(2).
12 The director of health with the concurrence of the governor,
13 shall select, in accordance with law, the entity based upon the
14 proven record of accomplishment of the entity in administering a
15 similar trust fund."

16 2. By amending subsection (e) to read:

17 "(e) The assets of the Hawaii tobacco prevention and
18 control trust fund shall consist of:

19 (1) Moneys appropriated under section 328L-2(b)(2);

20 (2) Moneys collected pursuant to section 245-15(7);



1 ~~[(2)]~~ (3) Moneys appropriated to the Hawaii tobacco
2 prevention and control trust fund by the state,
3 county, or federal government;

4 ~~[(3)]~~ (4) Private contributions of cash or property; and

5 ~~[(4)]~~ (5) Income and capital gains earned by the trust
6 fund."

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

9 SECTION 9. 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 10. This Act does not affect rights and duties
20 that matured, penalties that were incurred, and proceedings that
21 were begun before its effective date.



1 SECTION 11. If any provision of this Act, or the
2 application thereof to any person or circumstance, is held
3 invalid, the invalidity does not affect other provisions or
4 applications of the Act that can be given effect without the
5 invalid provision or application, and to this end the provisions
6 of this Act are severable.

7 SECTION 12. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 13. This Act shall take effect on July 1, 2050.



Report Title:

Unlawful Shipment of Tobacco Products; E-liquid; Electronic Smoking Devices; License Fee; Retail Permit Fee

Description:

Establishes the offense of unlawful shipment of tobacco products. 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 from excise taxes on tobacco products to health education and prevention programs concerning the risks and dangers of the use of electronic smoking devices for youth. Repeals certain provisions of the Hawaii Revised Statutes relating to electronic smoking devices. Effective 7/1/2050.
(HD1)

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