

---

---

# 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. The  
15 State has a substantial interest in reducing the number of  
16 individuals of all ages who use tobacco products, and a  
17 particular interest in protecting adolescents from tobacco



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



1 2018 study conducted by the National Institute on Drug Abuse,  
2 the use of electronic smoking devices among high school seniors  
3 increased nationally from 27.8 per cent to 37.3 per cent in a  
4 twelve-month period. The increase translates to 1,300,000 more  
5 teens using electronic smoking devices in a single year.  
6 E-cigarette use among youth and young adults is also strongly  
7 associated with the use of other tobacco products, including  
8 combustible tobacco products. The Surgeon General's report also  
9 found that there are numerous policies and practices that can be  
10 implemented at the state and local levels to address electronic  
11 smoking device use among youth and young adults, including  
12 preventing access to e-cigarettes by youth, significant  
13 increases in tax and price of e-cigarettes, retail licensure,  
14 and regulation of e-cigarette marketing.

15 The legislature additionally finds that the rapid growth of  
16 the electronic smoking device industry, including retail  
17 businesses selling electronic smoking devices, necessitates  
18 further regulations to protect consumers, such as requiring  
19 retailers of electronic smoking devices to obtain a retail  
20 tobacco permit.

21 The purpose of this Act is to:



- 1 (1) Establish the offense of unlawful shipment of tobacco  
2 products;
- 3 (2) Increase the license fee for persons or entities  
4 engaged as a wholesaler or dealer of cigarettes and  
5 tobacco products;
- 6 (3) Increase the retail tobacco permit fee for retailers  
7 engaged in the retail sale of cigarettes and tobacco  
8 products;
- 9 (4) Fund health education and prevention programs  
10 concerning the risks and dangers of the use of  
11 electronic smoking devices for youth; and
- 12 (5) Repeal various statutory provisions relating to  
13 electronic smoking devices.

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

17 "§245- Unlawful shipment of tobacco products; penalty;  
18 reports; liability for unpaid taxes. (a) A person or entity  
19 commits the offense of unlawful shipment of tobacco products if  
20 the person or entity:



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 or entity  
2 is a licensee if the person or entity's name appears on a list  
3 of 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 as follows:

15       1. By adding a new definition to be appropriately inserted  
16 and to read:

17       "Electronic smoking device" means any device that can be  
18 used to deliver aerosolized or vaporized nicotine to the person  
19 inhaling from the device, including but not limited to an  
20 e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

21       "Electronic smoking device" includes any component, part, or



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

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

11       "Tobacco products" means [~~tobacco in any form,~~] any  
12 product, other than cigarettes or little cigars, that is  
13 [~~prepared or intended for consumption or for personal use by~~  
14 humans, ~~including large cigars and any substitutes thereof other~~  
15 than cigarettes that bear the semblance thereof, snuff, chewing  
16 or ~~smokeless tobacco, and smoking or pipe tobacco.~~] made from or  
17 derived from tobacco, or that contains nicotine, that is  
18 intended for human consumption or is likely to be consumed,  
19 whether smoked, heated, chewed, absorbed, dissolved, inhaled or  
20 ingested by any other means, including but not limited to a  
21 cigarette, cigar, pipe tobacco, chewing tobacco, snuff, or snus.



1 "Tobacco products" also means electronic smoking devices and any  
2 component or accessory used in the consumption of a tobacco  
3 product, such as filters, rolling papers, pipes, and substances  
4 used in electronic smoking devices, whether or not they contain  
5 nicotine. "Tobacco products" does not include drugs, devices,  
6 or combination products authorized for sale by the U.S. Food and  
7 Drug Administration, as those terms are defined in title 21  
8 United States Code chapter 9."

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

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

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

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



1 December 1 to November 30, and renewable annually. Whenever a  
2 retail tobacco permit is defaced, destroyed, or lost, or the  
3 permittee relocates the permittee's business, the department may  
4 issue a duplicate retail tobacco permit to the permittee for a  
5 fee of \$5 per copy.

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

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

18 "**§245-15 Disposition of revenues.** All moneys collected  
19 pursuant to this chapter shall be paid into the state treasury  
20 as state realizations to be kept and accounted for as provided



1 by law; provided that, of the moneys collected under the tax  
2 imposed pursuant to:

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

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

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

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

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



- 1 special fund established pursuant to  
2 section 321-234;
- 3 (3) Section 245-3(a)(7), after September 30, 2008, and  
4 prior to July 1, 2009:
- 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) 0.5 cents per cigarette shall be deposited to the  
11 credit of the trauma system special fund  
12 established pursuant to section 321-22.5;
- 13 (C) 0.25 cents per cigarette shall be deposited to  
14 the credit of the community health centers  
15 special fund established pursuant to  
16 section 321-1.65; and
- 17 (D) 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 (4) Section 245-3(a)(8), after June 30, 2009, and prior to  
2 July 1, 2013:

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

11 (C) 0.75 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) 0.5 cents per cigarette shall be deposited to the  
16 credit of the emergency medical services special  
17 fund established pursuant to section 321-234;

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

20 (A) 2.0 cents per cigarette shall be deposited to the  
21 credit of the Hawaii cancer research special



- 1 fund, established pursuant to section 304A-2168,  
2 for research and operating expenses and for  
3 capital expenditures;
- 4 (B) 1.5 cents per cigarette shall be deposited to the  
5 credit of the trauma system special fund  
6 established pursuant to section 321-22.5;
- 7 (C) 1.25 cents per cigarette shall be deposited to  
8 the credit of the community health centers  
9 special fund established pursuant to  
10 section 321-1.65; and
- 11 (D) 1.25 cents per cigarette shall be deposited to  
12 the credit of the emergency medical services  
13 special fund established pursuant to  
14 section 321-234; [~~and~~]
- 15 (6) Section 245-3(a)(11), after June 30, 2015, and  
16 thereafter:
- 17 (A) 2.0 cents per cigarette shall be deposited to the  
18 credit of the Hawaii cancer research special  
19 fund, established pursuant to section 304A-2168,  
20 for research and operating expenses and for  
21 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, 2021, 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.  
(SD1)

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

