

---

# A BILL FOR AN ACT

RELATING TO ELECTRONIC SMOKING DEVICES.

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

1           SECTION 1. The legislature finds that the introduction of  
2 flavored e-cigarettes, electronic smoking devices, and other  
3 electronic nicotine delivery systems into the marketplace has  
4 had a negative impact on Hawaii's youth. According to the  
5 Hawaii Youth Risk Behavior Survey, Hawaii suffers from the  
6 highest rate of usage of e-cigarettes among middle school  
7 students and the second highest rate of usage among high school  
8 students in the nation. The United States Surgeon General,  
9 United States Department of Health and Human Services, and  
10 Centers for Disease Control and Prevention caution against the  
11 use of electronic nicotine delivery systems due to the highly  
12 addictive nature of nicotine and its potential detriment to  
13 developing adolescents.

14           There has been recent federal action to better regulate  
15 electronic nicotine delivery systems, with the implementation of  
16 the premarket tobacco product applications--the equivalent of a  
17 federal Food and Drug Administration scientific certification.



1 All manufacturers of existing tobacco products and new tobacco  
2 products were required to submit premarket tobacco product  
3 application to the Food and Drug Administration by September 9,  
4 2020, to continue legal sales of those products. In January  
5 2021, the Food and Drug Administration began issuing warning  
6 letters to manufacturers that failed to submit premarket tobacco  
7 product applications for products being marketed for sale.

8 The legislature further finds that at the end of December  
9 2020, Congress passed and the President signed the Consolidated  
10 Appropriations Act, 2021 (P.L. 116-260). Title VI of  
11 division FF of the Consolidated Appropriations Act, 2021, named  
12 the "Preventing Online Sales of E-Cigarettes to Children Act",  
13 extended the restrictions on interstate shipping and sales of  
14 cigarettes and smokeless tobacco, and extended the prohibition  
15 on the mailing of cigarettes through the United States Postal  
16 Service to include electronic nicotine delivery systems. This  
17 has the effect of ensuring only private package delivery  
18 companies, such as the United Parcel Service and FedEx, can  
19 deliver electronic nicotine delivery systems. This federal  
20 legislation helps to close the loopholes in underage illegal  
21 purchasing of electronic nicotine delivery systems, as all



1 deliveries of electronic nicotine delivery systems will now  
2 require verification that a person is at least twenty-one years  
3 of age with a government-issued identification.

4 The legislature further finds that the intent of this Act  
5 is to not compromise existing Master Settlement Agreement  
6 mandated enforcement activities, but rather to provide  
7 additional enforcement-related resources to the department of  
8 the attorney general to protect public health for all nicotine  
9 related products.

10 The purpose of this Act is to:

- 11 (1) Expand the purposes for which moneys in the tobacco  
12 enforcement special fund may be used, to include all  
13 functions of the department of the attorney general;
- 14 (2) Expand the scope of the electronic smoking device  
15 retailer registration unit within the department of  
16 the attorney general to better regulate and ensure the  
17 removal of unsafe, noncertified electronic nicotine  
18 delivery systems from the marketplace;
- 19 (3) Establish a special fund for the deposit of moneys  
20 collected for violations of electronic smoking device  
21 compliance;



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



1 SECTION 2. Section 28-15, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) The tobacco enforcement special fund shall be  
4 administered by the department of the attorney general and shall  
5 be used for administering, operating, monitoring, and ensuring  
6 compliance with and enforcement of:

7 (1) The Master Settlement Agreement as defined in  
8 chapter 675 and any other statutes or programs  
9 relating to that agreement;

10 (2) Chapter 675;

11 (3) Tobacco prevention programs;

12 (4) The cigarette tax stamp as defined in chapter 245 and  
13 any other statutes or programs relating to that  
14 chapter;

15 (5) Chapter 245;

16 (6) Chapter 486P and any other statutes or programs  
17 relating to that chapter; ~~and~~

18 (7) Chapter 28; and

19 ~~(7)~~ (8) Any other requirement deemed necessary to carry  
20 out the purposes of the fund."



1 SECTION 3. Chapter 28, Hawaii Revised Statutes, is amended  
2 by amending the title of part XII to read as follows:

3 "PART XII. ELECTRONIC SMOKING DEVICE RETAILER  
4 REGISTRATION AND ENFORCEMENT UNIT"

5 SECTION 4. Section 28-161, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "[+]§28-161[+] Policy. The registration of and  
8 enforcement of compliance by electronic smoking device retailers  
9 is reasonably necessary to protect the health, safety, or  
10 welfare of consumers of electronic smoking devices and for the  
11 enforcement of the laws that regulate the sale of electronic  
12 smoking devices."

13 SECTION 5. Section 28-166, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[+]§28-166[+] Inspection[-] and enforcement; special  
16 fund. (a) The unit may examine all records of any entity  
17 engaged in the business of electronic smoking device retailing  
18 to verify the accuracy of the information provided for  
19 registration or to verify that an entity is selling electronic  
20 smoking devices without being registered. Every person in  
21 possession of any books, papers, and records, and the person's



1 agents and employees, are directed and required to give the unit  
2 opportunities for examination of applicable records.

3 (b) The unit may inspect the operations, premises, and  
4 storage areas of any entity engaged in the retail sale of  
5 electronic smoking devices as necessary.

6 (c) The unit shall enforce compliance of any electronic  
7 smoking device with the Federal Food, Drug, and Cosmetic Act,  
8 P.L. 75-717, as amended by the Family Smoking Prevention and  
9 Tobacco Control Act, P.L. 111-31, and its regulations, and shall  
10 have all powers necessary for the enforcement of compliance,  
11 including but not limited to inspection warrants, search  
12 warrants, warning letters, seizure and disposal, injunction, and  
13 criminal prosecution and fines, in addition to any other  
14 administrative or judicial remedy provided by law.

15 (d) There is established in the state treasury the  
16 electronic smoking device retailer registration and enforcement  
17 unit special fund to be administered by the department of the  
18 attorney general and into which shall be deposited all moneys  
19 collected for violations of electronic smoking device compliance  
20 pursuant to subsection (c). Moneys in the special fund shall be



1 used to support a portion of the operating expenses of the  
2 unit."

3 SECTION 6. Chapter 712, Hawaii Revised Statutes, is  
4 amended by adding a new section to part IV to be appropriately  
5 designated and to read as follows:

6 "§712- Sale of tobacco products; flavored; nicotine-  
7 free; remote retail sales. (1) Beginning July 1, 2021, it  
8 shall be unlawful for any retailer or any agents or employees of  
9 the retailer to:

10 (a) Sell, offer for sale, or possess with the intent to  
11 sell or offer for sale, a flavored tobacco product or  
12 e-liquid;

13 (b) Mislabel as nicotine-free, or sell or market for sale  
14 as nicotine-free, any e-liquid product that contains  
15 nicotine; and

16 (c) Have tobacco products, including electronic smoking  
17 devices, e-liquid, and electronic smoking device  
18 accessories delivered or sold to end consumers other  
19 than through retail sales through a direct, face-to-  
20 face, or over-the-counter exchange between a licensed  
21 retailer and a consumer at a tobacco retail location.



1           This restriction includes a prohibition on sales  
2           performed through mail, curbside pickup, or delivery  
3           anywhere outside a licensed retail location.

4           (2) A statement or claim, including but not limited to  
5           text, color, or images on the tobacco product's labeling or  
6           packaging, that is used to explicitly or implicitly communicate  
7           that the tobacco product has a flavor other than tobacco, made  
8           by a manufacturer or an agent or employee of the manufacturer in  
9           the course of the person's agency or employment, and directed to  
10           consumers or the public that a tobacco product is flavored,  
11           shall be prima facie evidence that the tobacco product is a  
12           flavored tobacco product.

13           (3) Any flavored tobacco product found in a retailer's  
14           possession that is in violation of this section shall be  
15           considered contraband, promptly seized, and subject to immediate  
16           forfeiture and destruction or disposal as hazardous waste  
17           following the conclusion of an administrative or judicial  
18           proceeding finding that a violation of subsection (1) has been  
19           committed, and shall not be subject to the procedures set forth  
20           in chapter 712A.



1       (4) Any retailer who violates this section shall be fined  
2 as follows:

3       (a) For the first offense, a fine of \$1,000;

4       (b) For the second offense, a fine of \$2,000; and

5       (c) For a third and subsequent offense, a fine of \$5,000.

6 All fines shall be paid to and deposited into the Hawaii tobacco  
7 prevention and control trust fund established pursuant to  
8 section 328L-5. Retailers shall be responsible for all costs  
9 associated with disposing of their confiscated product found to  
10 be in violation of this section.

11       (5) Notwithstanding any other law to the contrary, any  
12 county may adopt a rule or ordinance that places greater  
13 restrictions on the access to tobacco or electronic smoking  
14 device products than provided for in this section. In the case  
15 of a conflict between the restrictions in this section and any  
16 county rule or ordinance, the more stringent restrictions shall  
17 prevail.

18       (6) For the purposes of this section:

19       "Distinguishable" means perceivable by either the sense of  
20 smell or taste.



1       "Electronic smoking device" has the same meaning as defined  
2 in section 712-1258(7).

3       "E-liquid" means any liquid or like substance, which may or  
4 may not contain nicotine, that is capable of being used in an  
5 electronic smoking device, whether or not packaged in a  
6 cartridge or other container.

7       "Flavored tobacco product" means any tobacco product that  
8 contains a taste or smell, other than the taste or smell of  
9 tobacco, that is distinguishable by an ordinary consumer either  
10 prior to, or during the consumption of, a tobacco product,  
11 including but not limited to any taste or smell relating to  
12 fruit, mint, wintergreen, chocolate, cocoa, vanilla, honey,  
13 molasses, or any candy, dessert, alcoholic beverage, herb, or  
14 spice. "Flavored tobacco product" does not include tobacco  
15 products that contain a taste or smell of menthol.

16       "Labeling" means written, printed, pictorial, or graphic  
17 matter upon a tobacco product or any of its packaging.

18       "Packaging" means a pack, box, carton, or container of any  
19 kind, or if no other container, wrapping, including cellophane,  
20 in which a tobacco product is sold or offered for sale to a  
21 consumer.



1 "Retailer" means an entity that sells, offers for sale, or  
2 exchanges or offers to exchange for any form of consideration  
3 tobacco products or e-liquids to consumers. "Retailer" includes  
4 the owner of a tobacco retail location.

5 "Tobacco product" means any:

- 6 (a) Product containing, made of, or derived from tobacco  
7 or nicotine that is intended for human consumption or  
8 is likely to be consumed, whether inhaled, absorbed,  
9 or ingested by any other means, including but not  
10 limited to a cigarette, cigar, pipe tobacco, chewing  
11 tobacco, snuff, or snus;
- 12 (b) Electronic smoking device and any substances that may  
13 be aerosolized or vaporized by such device, whether or  
14 not the substance contains nicotine; or
- 15 (c) Component, part, or accessory of paragraph (a) or (b),  
16 whether or not any of these contains tobacco or  
17 nicotine, including but not limited to filters,  
18 rolling papers, blunt or hemp wraps, hookahs, and  
19 pipes.

20 "Tobacco product" does not include drugs, devices, or  
21 combination products authorized for sale by the United States



1 Food and Drug Administration, as those terms are defined in the  
2 Federal Food, Drug, and Cosmetic Act; medical cannabis; or  
3 manufactured cannabis products under chapter 329D.

4 "Tobacco retail location" means any premises where tobacco  
5 products are sold or distributed to a consumer, including but  
6 not limited to any store, bar, lounge, cafe, vending machine, or  
7 structure."

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

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

12 "E-liquid" means any liquid or like substance, which may  
13 or may not contain nicotine, that is capable of being used in an  
14 electronic smoking device, whether or not packaged in a  
15 cartridge or other container. "E-liquid" does not include  
16 prescription drugs, devices, or a combination of products  
17 approved for sale by the United States Food and Drug  
18 Administration, as those terms are defined in the Federal Food,  
19 Drug, and Cosmetic Act; medical cannabis; or manufactured  
20 cannabis products under chapter 329D, including devices uses to  
21 aerosolize, inhale, or ingest manufactured cannabis products



1 manufactured or distributed in accordance with section 329D-  
2 10(a).

3 "Electronic smoking device" means any electronic product,  
4 or part thereof, whether for one-time use or reusable that can  
5 be used to deliver nicotine or another substance to a person  
6 inhaling from the device including but not limited to electronic  
7 cigarettes, electronic cigars, electronic cigarillos, electronic  
8 pipes, vaping pens, hookah pens, and other similar devices that  
9 rely on vaporization or aerosolization, and any cartridge or  
10 component part of the device or product. "Electronic smoking  
11 device" includes any liquid or gel capable of use in such  
12 electronic device that can be used by a person to simulate  
13 smoking in the delivery of nicotine or any other substance,  
14 intended for human consumption, through inhalation of vapor or  
15 aerosol from the product. "Electronic smoking device" does not  
16 include:

- 17 (1) Cigarettes;  
18 (2) A product that has been approved by the United States  
19 Food and Drug Administration for the sale of or use as  
20 a tobacco cessation product or for other medical



- 1 purposes and is marketed and sold or prescribed  
2 exclusively for that approved purpose;  
3 (3) Prescription drugs;  
4 (4) Medical cannabis or manufactured cannabis products  
5 under chapter 329D; and  
6 (5) Medical devices used to aerosolize, inhale, or ingest  
7 prescription drugs, including manufactured cannabis  
8 products manufactured or distributed in accordance  
9 with section 329D-10(a).

10 "Smoke" or "smoking" means inhaling, exhaling, burning,  
11 carrying, or possessing any activated, lighted, or heated  
12 tobacco product, plant product, or any similar substance  
13 intended for human consumption or inhalation, including the use  
14 of an electronic smoking device."

15 2. By amending the definition of "tobacco products" to  
16 read:

17 "Tobacco products" means [tobacco]:

- 18 (1) Tobacco in any form, other than cigarettes or little  
19 cigars [~~, that is prepared or intended for consumption~~  
20 ~~or for personal use by humans, including large cigars~~  
21 ~~and any substitutes thereof other than cigarettes that~~



1           ~~bear the semblance thereof, snuff, chewing or~~  
2           ~~smokeless tobacco, and smoking or pipe tobacco.]~~; or

3           (2) Electronic smoking devices.

4           "Tobacco products" includes but is not limited to large cigars  
5           and any substitutes thereof other than cigarettes that bear the  
6           semblance thereof, pipe tobacco, chewing or smokeless tobacco,  
7           snuff, snus, e-liquid, electronic smoking devices containing e-  
8           liquid, and components or parts containing e-liquid."

9           SECTION 8. There is appropriated out of the general  
10 revenues of the State of Hawaii the sum of \$                    or so  
11 much thereof as may be necessary for fiscal year 2021-2022 and  
12 the same sum or so much thereof as may be necessary for fiscal  
13 year 2022-2023 to establish and hire                   full-time equivalent  
14 ( .0 FTE) permanent positions and related equipment within the  
15 department of the attorney general for the purposes of this Act.

16           The sums appropriated shall be expended by the department  
17 of the attorney general for the purposes of this Act.

18           SECTION 9. 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 10. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 11. This Act shall take effect on July 1, 2060.



**Report Title:**

Electronic Smoking Devices; Tobacco Enforcement Special Fund;  
Electronic Smoking Device Retailer Registration and Enforcement  
Unit; Special Fund; Attorney General; Appropriation

**Description:**

Expands the purposes for which moneys in the tobacco enforcement special fund may be used to include all functions of the department of the attorney general. Renames the electronic smoking device retailer registration unit to the electronic smoking device retailer registration and enforcement unit. Makes unlawful the sale of flavored tobacco products, mislabeling of e-liquid products containing nicotine, and sale of tobacco products other than through retail sales via in-person exchange. Includes e-liquid and electronic smoking devices within the definition of "tobacco products" as used in the cigarette tax and tobacco tax law. Expands the scope of the unit to include enforcement of compliance of electronic smoking devices with the Federal Food, Drug, and Cosmetic Act. Establishes a special fund for moneys received from enforcement actions. Appropriates funds. Effective 07/01/2060. (SD1)

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

