
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 assist the
7 department of the attorney general in efficiently protecting
8 public health from the damages caused by the use of nicotine-
9 related products.

10 The purpose of this Act is to:

11 (1) Make unlawful the sale of flavored tobacco products,
12 mislabeling of e-liquid products containing nicotine,
13 and sale of tobacco products other than through retail
14 sales via in-person exchange;

15 (2) Include e-liquid and electronic smoking devices within
16 the definition of "tobacco products" as used in the
17 cigarette tax and tobacco tax law, thereby:

18 (A) Subjecting e-liquid and electronic smoking
19 devices to the excise tax on tobacco products;

20 (B) Requiring retailers of tobacco products to obtain
21 a retail tobacco permit to sell, possess, keep,



- 1 acquire, distribute, or transport tobacco
- 2 products;
- 3 (C) Prohibiting persons from engaging in the business
- 4 of a wholesaler or dealer of tobacco products
- 5 without first obtaining a license from the
- 6 department of taxation; and
- 7 (D) Applying other requirements of the cigarette tax
- 8 and tobacco tax law pursuant to chapter 245,
- 9 Hawaii Revised Statutes; and
- 10 (3) Abolish the electronic smoking device retailer
- 11 registration unit.

12 SECTION 2. Chapter 712, Hawaii Revised Statutes, is
 13 amended by adding a new section to part IV to be appropriately
 14 designated and to read as follows:

15 "§712- Sale of tobacco products; flavored;
 16 nicotine-free; remote retail sales. (1) Beginning July 1,
 17 2021, it shall be unlawful for any retailer or any agents or
 18 employees of the retailer to:

- 19 (a) Sell, offer for sale, or possess with the intent to
- 20 sell or offer for sale, a flavored tobacco product or
- 21 e-liquid;



1 (b) Mislabeled as nicotine-free, or sell or market for sale
2 as nicotine-free, any e-liquid product that contains
3 nicotine; and

4 (c) Have tobacco products, including electronic smoking
5 devices, e-liquid, and electronic smoking device
6 accessories delivered or sold to end consumers other
7 than through retail sales through a direct, face-to-
8 face, or over-the-counter exchange between a licensed
9 retailer and a consumer at a tobacco retail location.
10 This restriction includes a prohibition on sales
11 performed through mail, curbside pickup, or delivery
12 anywhere outside a licensed retail location.

13 (2) A statement or claim, including but not limited to
14 text, color, or images on the tobacco product's labeling or
15 packaging, that is used to explicitly or implicitly communicate
16 that the tobacco product has a flavor other than tobacco, made
17 by a manufacturer or an agent or employee of the manufacturer in
18 the course of the person's agency or employment, and directed to
19 consumers or the public that a tobacco product is flavored,
20 shall be prima facie evidence that the tobacco product is a
21 flavored tobacco product.



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

9 (4) Any retailer who violates this section shall be fined
10 as follows:

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

12 (b) For the second offense committed within years of
13 a first offense, a fine of \$2,000; and

14 (c) For a third and subsequent offense committed
15 within years of a first offense, a fine of
16 \$5,000.

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



1 (5) Notwithstanding any other law to the contrary, any
2 county may adopt a rule or ordinance that places greater
3 restrictions on the access to tobacco or electronic smoking
4 device products than provided for in this section. In the case
5 of a conflict between the restrictions in this section and any
6 county rule or ordinance, the more stringent restrictions shall
7 prevail.

8 (6) For the purposes of this section:

9 "Distinguishable" means perceivable by either the sense of
10 smell or taste.

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

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

17 "Flavored tobacco product" means any tobacco product that
18 contains a taste or smell, other than the taste or smell of
19 tobacco, that is distinguishable by an ordinary consumer either
20 prior to, or during the consumption of, a tobacco product,
21 including but not limited to any taste or smell relating to



1 fruit, mint, wintergreen, chocolate, cocoa, vanilla, honey,
2 molasses, or any candy, dessert, alcoholic beverage, herb, or
3 spice. "Flavored tobacco product" does not include tobacco
4 products that contain a taste or smell of menthol.

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

7 "Packaging" means a pack, box, carton, or container of any
8 kind, or if no other container, wrapping, including cellophane,
9 in which a tobacco product is sold or offered for sale to a
10 consumer.

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

15 "Tobacco product" means any:

16 (a) Product containing, made of, or derived from tobacco
17 or nicotine that is intended for human consumption or
18 is likely to be consumed, whether inhaled, absorbed,
19 or ingested by any other means, including but not
20 limited to a cigarette, cigar, pipe tobacco, chewing
21 tobacco, snuff, or snus;



1 (b) Electronic smoking device and any substances that may
2 be aerosolized or vaporized by such device, whether or
3 not the substance contains nicotine; or

4 (c) Component, part, or accessory of paragraph (a) or (b),
5 whether or not any of these contains tobacco or
6 nicotine, including but not limited to filters,
7 rolling papers, blunt or hemp wraps, hookahs, and
8 pipes.

9 "Tobacco product" does not include drugs, devices, or
10 combination products authorized for sale by the United States
11 Food and Drug Administration and subject to the Federal Food,
12 Drug, and Cosmetic Act, title 21 United States Code chapter 9;
13 medical cannabis; or manufactured cannabis products under
14 chapter 329D.

15 "Tobacco retail location" means any premises where tobacco
16 products are sold or distributed to a consumer, including but
17 not limited to any store, bar, lounge, cafe, vending machine, or
18 structure."

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



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

3 "E-liquid" means any liquid or like substance, which may
4 or 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. "E-liquid" does not include
7 prescription drugs, devices, or a combination of products
8 approved for sale by the United States Food and Drug
9 Administration and subject to the Federal Food, Drug, and
10 Cosmetic Act, title 21 United States Code chapter 9; medical
11 cannabis; or manufactured cannabis products under chapter 329D,
12 including devices uses to aerosolize, inhale, or ingest
13 manufactured cannabis products manufactured or distributed in
14 accordance with section 329D-10.

15 "Electronic smoking device" means any electronic product,
16 or part thereof, whether for one-time use or reusable that can
17 be used to deliver nicotine or another substance to a person
18 inhaling from the device including but not limited to electronic
19 cigarettes, electronic cigars, electronic cigarillos, electronic
20 pipes, vaping pens, hookah pens, and other similar devices that
21 rely on vaporization or aerosolization, and any cartridge or



1 component part of the device or product. "Electronic smoking
2 device" includes any liquid or gel capable of use in such
3 electronic device that can be used by a person to simulate
4 smoking in the delivery of nicotine or any other substance,
5 intended for human consumption, through inhalation of vapor or
6 aerosol from the product. "Electronic smoking device" does not
7 include:

8 (1) Cigarettes;

9 (2) A product that has been approved by the United States
10 Food and Drug Administration for the sale of or use as
11 a tobacco cessation product or for other medical
12 purposes and is marketed and sold or prescribed
13 exclusively for that approved purpose;

14 (3) Prescription drugs;

15 (4) Medical cannabis or manufactured cannabis products
16 under chapter 329D; and

17 (5) Medical devices used to aerosolize, inhale, or ingest
18 prescription drugs, including manufactured cannabis
19 products manufactured or distributed in accordance
20 with section 329D-10.



1 "Smoke" or "smoking" means inhaling, exhaling, burning,
2 carrying, or possessing any activated, lighted, or heated
3 tobacco product, plant product, or any similar substance
4 intended for human consumption or inhalation, including the use
5 of an electronic smoking device."

6 2. By amending the definition of "tobacco products" to
7 read:

8 "Tobacco products" means [~~tobacco~~]:

9 (1) Tobacco in any form, other than cigarettes or little
10 cigars [~~, that is prepared or intended for consumption~~
11 ~~or for personal use by humans, including large cigars~~
12 ~~and any substitutes thereof other than cigarettes that~~
13 ~~bear the semblance thereof, snuff, chewing or~~
14 ~~smokeless tobacco, and smoking or pipe tobacco.]; or~~

15 (2) Electronic smoking devices.

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



1 SECTION 4. Chapter 28, part XII, Hawaii Revised Statutes,
2 is repealed.

3 SECTION 5. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2021-2022 and
6 the same sum or so much thereof as may be necessary for fiscal
7 year 2022-2023 to establish and hire full-time equivalent
8 (.0 FTE) permanent positions and related equipment within the
9 department of the attorney general for the purposes of this Act.

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

12 SECTION 6. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 7. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect on July 1, 2060.



Report Title:

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

Description:

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. Abolishes the Electronic Smoking Device Retailer Registration and Enforcement Unit. Effective 07/01/2060. (SD2)

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