
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. Consequently, tobacco
8 use poses a heavy burden on Hawaii's healthcare system and
9 economy. Each year, smoking costs approximately \$526,000,000 in
10 direct healthcare expenditures and \$387,300,000 in lost
11 productivity in the State.

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



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

3 The legislature also finds that electronic smoking devices,
4 also known as e-cigarettes, are battery-operated products
5 designed to deliver nicotine, flavor, and other chemicals into
6 the user's body. E-cigarettes have quickly evolved since
7 entering the U.S. marketplace in 2007. Initial products were
8 disposable, resembled the size and shape of conventional
9 cigarettes, and used free base nicotine. However, newer
10 products are rechargeable, resemble common objects (e.g., USB
11 flash drives and highlighters), and typically deliver nicotine
12 salts that allow higher levels of nicotine to be inhaled more
13 easily by the user.

14 The e-cigarette industry, which includes the production of
15 e-liquid in a variety of forms, has grown rapidly. E-cigarettes
16 have been the most commonly used tobacco product among American
17 youths since 2014. The United States Surgeon General first
18 issued a warning in 2016 about the dangers of these products,
19 stating that use among the nation's youth and young adults had
20 become a major public health concern. In response to the
21 continuing rise in use, in 2018, the Surgeon General made the



1 unprecedented move of classifying the danger of youth usage of
2 e-cigarettes as an epidemic in the Surgeon General's Advisory on
3 E-Cigarette Use Among Youth.

4 The 2019 Youth Risk Behavior Survey issued by the Centers
5 for Disease Control and Prevention, reported that the use of
6 electronic smoking devices among high school students increased
7 nationally from 24.1 per cent in 2015 to 32.7 per cent in 2019.
8 In Hawaii, 48.3 per cent of public high school students report
9 having experimented with e-cigarettes and 30.6 per cent are
10 current users of e-cigarettes.

11 The legislature additionally finds that e-cigarette use
12 among youth and young adults is also strongly associated with
13 the use of other tobacco products, including combustible tobacco
14 products. Toxicologists have also warned that e-liquids pose
15 significant risks to public health, particularly to children.
16 According to the E-Cigarette Use Among Youth and Young Adults; A
17 Report of the Surgeon General, 2016 (Surgeon General's Report),
18 if the contents of prefilled cartridges or bottles are consumed,
19 ingestion of e-liquids containing nicotine can cause acute
20 toxicity and possibly death.



1 In its September 9, 2020, Morbidity and Mortality Report,
2 the Centers for Disease Control and Prevention stated that from
3 November of 2016 to August of 2019, total e-cigarette unit sales
4 in the U.S. increased nearly three hundred per cent. Continued
5 monitoring of e-cigarette sales and use is critical to develop
6 strategies to minimize risk among our most vulnerable youth
7 users. Further, e-cigarette use is markedly higher among youth
8 than adults.

9 The Surgeon General's report found that there are numerous
10 policies and practices that can be implemented at the state and
11 local levels to address electronic smoking device use among
12 youth and young adults, including preventing access to
13 e-cigarettes by youth, significant increases in tax and price of
14 e-cigarettes, retail licensure, and regulation of e-cigarette
15 marketing.

16 Additionally, the rapid growth of the electronic smoking
17 device industry, including retail businesses selling e-
18 cigarettes or e-liquid, necessitates further regulations to
19 protect consumers, such as requiring retailers of e-liquid to
20 obtain a retail tobacco permit.



1 The U.S. Food and Drug Administration has expanded its
2 regulatory authority to all tobacco products, including e-
3 cigarettes, cigars, and hookah and pipe tobacco. However, there
4 is currently no state tobacco tax attached to e-liquid, even
5 though electronic smoking devices are now regulated by the
6 federal government as tobacco products. Furthermore, tobacco
7 products, other than cigarettes, are currently taxed at a lower
8 rate than cigarettes, even though their use carries similar
9 health risks. Research has shown that increasing cigarette
10 prices, such as through cigarette taxes, can reduce the rate of
11 smoking by adult and youth smokers.

12 The purpose of this Act is to:

- 13 (1) Make unlawful the sale of flavored tobacco products,
14 mislabeling of e-liquid products containing nicotine,
15 and sale of tobacco products other than through retail
16 sales via in-person exchange;
- 17 (2) Establish the offense of unlawful shipment of tobacco
18 products;
- 19 (3) Include e-liquid and electronic smoking devices within
20 the definition of "tobacco products" as used in the
21 cigarette tax and tobacco tax law, thereby:



- 1 (A) Subjecting e-liquid and electronic smoking
- 2 devices to the excise tax on tobacco products;
- 3 (B) Requiring retailers of tobacco products to obtain
- 4 a retail tobacco permit to sell, possess, keep,
- 5 acquire, distribute, or transport tobacco
- 6 products;
- 7 (C) Prohibiting persons from engaging in the business
- 8 of a wholesaler or dealer of tobacco products
- 9 without first obtaining a license from the
- 10 department of taxation; and
- 11 (D) Applying other requirements of chapter 245,
- 12 Hawaii Revised Statutes;
- 13 (4) Increase the license fee for persons engaged as a
- 14 wholesaler or dealer of cigarettes and tobacco
- 15 products;
- 16 (5) Increase the retail tobacco permit fee for retailers
- 17 engaged in the retail sale of cigarettes and tobacco
- 18 products; and
- 19 (6) Repeal various statutory provisions relating to
- 20 electronic smoking devices.



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

4 "§245- Unlawful shipment of tobacco products; penalty;
5 reports; liability for unpaid taxes. (a) A person or entity
6 commits the offense of unlawful shipment of tobacco products if
7 the person or entity:

8 (1) Is engaged in the business of selling tobacco
9 products; and

10 (2) Ships or causes to be shipped any tobacco products to
11 a person or entity in this State that is not a
12 licensee under this chapter.

13 (b) This section shall not apply to the shipment of
14 tobacco products if any of the following conditions is met:

15 (1) The tobacco products are exempt from taxes as provided
16 by section 245-3(b); or

17 (2) All applicable Hawaii taxes on the tobacco products
18 are paid in accordance with the requirements of this
19 chapter.

20 (c) Unlawful shipment of tobacco products is a class C
21 felony if the person or entity knowingly ships or causes to be



1 shipped tobacco products with a value of \$10,000 or more in
2 violation of subsection (a).

3 (d) Unlawful shipment of tobacco products is a misdemeanor
4 if the person or entity knowingly ships or causes to be shipped
5 tobacco products with a value of less than \$10,000 in violation
6 of subsection (a).

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

10 (f) Notwithstanding the existence of other remedies at
11 law, any person or entity that purchases, uses, controls, or
12 possesses any tobacco products for which the applicable taxes
13 imposed under this chapter have not been paid, shall be liable
14 for the applicable taxes, plus any penalty and interest as
15 provided for by law.

16 (g) For the purpose of this section, "value" means the
17 fair market value at the time of the offense."

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



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

5 (a) Sell, offer for sale, or possess with the intent to
6 sell or offer for sale, a flavored tobacco product or
7 e-liquid;

8 (b) Mislabeled as nicotine-free, or sell or market for sale
9 as nicotine-free, any e-liquid product that contains
10 nicotine; and

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

20 (2) A statement or claim, including but not limited to
21 text, color, or images on the tobacco product's labeling or



1 packaging, that is used to explicitly or implicitly communicate
2 that the tobacco product has a flavor other than tobacco, made
3 by a manufacturer or an agent or employee of the manufacturer in
4 the course of the person's agency or employment, and directed to
5 consumers or the public that a tobacco product is flavored,
6 shall be prima facie evidence that the tobacco product is a
7 flavored tobacco product.

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

16 (4) Any retailer who violates this section shall be fined
17 as follows:

- 18 (a) For the first offense, a fine of \$1,000;
- 19 (b) For the second offense, a fine of \$2,000; and
- 20 (c) For a third and subsequent offense, a fine of \$5,000.



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

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

13 (6) For the purposes of this section:

14 "Distinguishable" means perceivable by either the sense of
15 smell or taste.

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

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



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

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

12 "Packaging" means a pack, box, carton, or container of any
13 kind, or if no other container, wrapping, including cellophane,
14 in which a tobacco product is sold or offered for sale to a
15 consumer.

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

20 "Tobacco product" means any:



- 1 (a) Product containing, made of, or derived from tobacco
2 or nicotine that is intended for human consumption or
3 is likely to be consumed, whether inhaled, absorbed,
4 or ingested by any other means, including but not
5 limited to a cigarette, cigar, pipe tobacco, chewing
6 tobacco, snuff, or snus;
- 7 (b) Electronic smoking device and any substances that may
8 be aerosolized or vaporized by such device, whether or
9 not the substance contains nicotine; or
- 10 (c) Component, part, or accessory of paragraph (a) or (b),
11 whether or not any of these contains tobacco or
12 nicotine, including but not limited to filters,
13 rolling papers, blunt or hemp wraps, hookahs, and
14 pipes.
- 15 "Tobacco product" does not include drugs, devices, or
16 combination products authorized for sale by the United States
17 Food and Drug Administration; as those terms are defined in the
18 Federal Food, Drug, and Cosmetic Act; medical cannabis, or
19 manufactured cannabis products under chapter 329D.
- 20 "Tobacco retail location" means any premises where tobacco
21 products are sold or distributed to a consumer, including but



1 not limited to any store, bar, lounge, cafe, vending machine, or
2 structure."

3 SECTION 4. Section 245-1, Hawaii Revised Statutes, is
4 amended as follows:

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

7 "E-liquid" means any liquid or like substance, which may
8 or may not contain nicotine, that is capable of being used in an
9 electronic smoking device, whether or not packaged in a
10 cartridge or other container. "E-liquid" does not include
11 prescription drugs, devices, or a combination of products
12 approved for sale by the United States Food and Drug
13 Administration as those terms are defined in the Federal Food,
14 Drug, and Cosmetic Act; medical cannabis; or manufactured
15 cannabis products under chapter 329D, including devices uses to
16 aerosolize, inhale, or ingest manufactured cannabis products
17 manufactured or distributed in accordance with section 329D-
18 10(a).

19 "Electronic smoking device" means any electronic product,
20 or part thereof, whether for one-time use or reusable that can
21 be used to deliver nicotine or another substance to a person



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

- 12 (1) Cigarettes;
- 13 (2) A product that has been approved by the United States
14 Food and Drug Administration for the sale of or use as
15 a tobacco cessation product or for other medical
16 purposes and is marketed and sold or prescribed
17 exclusively for that approved purpose;
- 18 (3) Prescription drugs;
- 19 (4) Medical cannabis or manufactured cannabis products
20 under chapter 329D; and



1 (5) Medical devices used to aerosolize, inhale, or ingest
2 prescription drugs, including manufactured cannabis
3 products manufactured or distributed in accordance
4 with section 329D-10(a).

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

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

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

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

19 (2) Electronic smoking devices.

20 "Tobacco products" includes but is not limited to large cigars
21 and any substitutes thereof other than cigarettes that bear the



1 semblance thereof, pipe tobacco, chewing or smokeless tobacco,
2 snuff, snus, e-liquid, electronic smoking devices containing e-
3 liquid, and components or parts containing e-liquid."

4 SECTION 5. Section 245-2, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) The license shall be issued by the department upon
7 application therefor, in such form and manner as shall be
8 required by rule of the department, and the payment of a fee of
9 [~~\$2.50,~~] \$ _____, and shall be renewable annually on July 1
10 for the twelve months ending the succeeding June 30."

11 SECTION 6. Section 245-2.5, Hawaii Revised Statutes, is
12 amended by amending subsections (c) and (d) to read as follows:

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



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

11 SECTION 7. Section 706-643, Hawaii Revised Statutes, is
12 amended by amending subsection (2) to read as follows:

13 "(2) All fines and other final payments received by a
14 clerk or other officer of a court shall be accounted for, with
15 the names of persons making payment, and the amount and date
16 thereof, being recorded. All such funds shall be deposited with
17 the director of finance to the credit of the general fund of the
18 State. With respect to fines and bail forfeitures that are
19 proceeds of the wildlife revolving fund under section 183D-10.5,
20 fines that are proceeds of the Hawaii tobacco prevention and
21 control trust fund under section 328L-5, and fines that are



1 proceeds of the compliance resolution fund under sections 26-
2 9(o) and 431:2-410, the director of finance shall transmit the
3 fines and forfeitures to the respective funds."

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

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

8 ~~["§245-17] Delivery sales. (a) No person shall conduct~~
9 ~~a delivery sale or otherwise ship or transport, or cause to be~~
10 ~~shipped or transported, any electronic smoking device in~~
11 ~~connection with a delivery sale to any person under the age of~~
12 ~~twenty one.~~

13 ~~(b) A person who makes delivery sales shall not accept a~~
14 ~~purchase or order from any person without first obtaining the~~
15 ~~full name, birth date, and address of that person and verifying~~
16 ~~the purchaser's age by:~~

17 ~~(1) An independently operated third party database or~~
18 ~~aggregate of databases that are regularly used by~~
19 ~~government and businesses for the purpose of age and~~
20 ~~identity verification and authentication;~~



1 ~~(2) Receiving a copy of a government issued identification~~
2 ~~card from the purchaser, or~~

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

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

7 ~~(d) Any person who violates this section shall be fined~~
8 ~~\$500 for the first offense. Any subsequent offenses shall~~
9 ~~subject the person to a fine of no less than \$500 but no more~~
10 ~~than \$2,000. Any person under twenty one years of age who~~
11 ~~violates this section shall be fined \$10 for the first offense,~~
12 ~~provided that any subsequent offense shall subject the person to~~
13 ~~a fine of \$50, no part of which shall be suspended, or the~~
14 ~~person shall be required to perform no less than forty eight~~
15 ~~hours but no more than seventy two hours of community service~~
16 ~~during hours when the person is not employed or attending~~
17 ~~school.~~

18 ~~(e) The department shall not adopt rules prohibiting~~
19 ~~delivery sales.~~

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



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

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

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

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

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

18 SECTION 10. This Act does not affect rights and duties
19 that matured, penalties that were incurred, and proceedings that
20 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 January 1, 2050.



Report Title:

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

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. Establishes the offense of unlawful shipment of tobacco products. Includes e-liquid and electronic smoking devices 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. Repeals certain provisions of the Hawaii Revised Statutes relating to electronic smoking devices. Provides for the disposition of fines paid for the unlawful shipment of tobacco products into the Hawaii Tobacco Prevention and Control Trust Fund. Effective 1/1/2050. (SD2)

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

