

JAN 22 2021

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, and hookah and pipe tobacco.
11 However, the legislature also notes that there is currently no
12 state tobacco tax attached to e-liquid, even though electronic
13 smoking devices are now regulated as tobacco products.
14 Furthermore, tobacco products other than cigarettes are
15 currently taxed at a lower rate than cigarettes, even though
16 their use carries similar health risks. Research has shown that
17 increasing cigarette prices, such as through cigarette taxes,
18 tends to reduce the rate of smoking by adult and youth smokers.
19 However, the legislature is concerned that as the price of
20 cigarettes increases, smokers may purchase less expensive



1 tobacco products, such as electronic smoking devices or
2 e-liquids.

3 Finally, the legislature concludes that there needs to be a
4 tax on e-liquids and electronic smoking devices and taxing these
5 products as other tobacco products is the most equitable way to
6 do so. Imposing a tax on e-liquids and electronic smoking
7 devices will also encourage users of e-liquids to quit, sustain
8 cessation, prevent youth initiation, and reduce consumption
9 among those who continue to use them.

10 The purpose of this Act is to:

- 11 (1) Establish the offense of unlawful shipment of tobacco
12 products;
- 13 (2) Include e-liquid and electronic smoking devices within
14 the definition of "tobacco products", as used in the
15 cigarette tax and tobacco tax law, thereby:
 - 16 (A) Subjecting electronic smoking devices to the
17 excise tax on tobacco products;
 - 18 (B) Requiring retailers of tobacco products to obtain
19 a retail tobacco permit to sell, possess, keep,
20 acquire, distribute, or transport tobacco
21 products;



1 (C) Prohibiting persons from engaging in the business
2 of a wholesaler or dealer of tobacco products
3 without first obtaining a license from the
4 department of taxation; and

5 (D) Applying other requirements of chapter 245,
6 Hawaii Revised Statutes;

7 (3) Increase the license fee for persons engaged as a
8 wholesaler or dealer of cigarettes and tobacco
9 products;

10 (4) Increase the retail tobacco permit fee for retailers
11 engaged in the retail sale of cigarettes and tobacco
12 products;

13 (5) Fund health education and prevention programs
14 concerning the risks and dangers of the use of
15 electronic smoking devices for youth; and

16 (6) Repeal various statutory provisions relating to
17 electronic smoking devices.

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



1 "§245- Unlawful shipment of tobacco products; penalty;
2 reports; liability for unpaid taxes. (a) A person commits the
3 offense of unlawful shipment of tobacco products if the person:
4 (1) Is engaged in the business of selling tobacco
5 products; and
6 (2) Ships or causes to be shipped any tobacco products to
7 a person or entity in this State that is not a
8 licensee under this chapter.
9 (b) This section shall not apply to the shipment of
10 tobacco products if any of the following conditions is met:
11 (1) The tobacco products are exempt from taxes as provided
12 by section 245-3(b) or are otherwise exempt from the
13 applicability of this chapter as provided by section
14 245-62; or
15 (2) All applicable Hawaii taxes on the tobacco products
16 are paid in accordance with the requirements of this
17 chapter.
18 (c) Unlawful shipment of tobacco products is a class C
19 felony if the person or entity knowingly ships or causes to be
20 shipped tobacco products with a value of \$10,000 or more in
21 violation of subsection (a).



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

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

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

14 (g) For the purpose of this section:

15 "Value" means the fair market value at the time of the
16 offense."

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

19 1. By adding a new definition to be appropriately inserted
20 and to read:



1 "Electronic smoking device" means any device that can be
2 used to deliver aerosolized or vaporized nicotine to the person
3 inhaling from the device, including but not limited to an
4 e-cigarette, e-cigar, e-pipe, vape pen or e-hookah. "Electronic
5 smoking device" includes any component, part, or accessory of
6 such device, whether or not sold separately, and includes any
7 substance intended to be aerosolized or vaporized during the use
8 of the device. "Electronic smoking device" does not include any
9 battery or battery charger when sold separately. In addition,
10 "electronic smoking device" does not include drugs, devices, or
11 combination products authorized for sale by the U.S. Food and
12 Drug Administration, as those terms are defined in title 21
13 United States Code chapter 9."

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

16 "Tobacco products" means [~~tobacco in any form,~~] any
17 product, other than cigarettes or little cigars, that is
18 [~~prepared or intended for consumption or for personal use by~~
19 humans, including large cigars and any substitutes thereof other
20 than cigarettes that bear the semblance thereof, snuff, chewing
21 or smokeless tobacco, and smoking or pipe tobacco.] made from or



1 derived from tobacco, or that contains nicotine, that is
2 intended for human consumption or is likely to be consumed,
3 whether smoked, heated, chewed, absorbed, dissolved, inhaled or
4 ingested by any other means, including but not limited to a
5 cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or
6 snus. "Tobacco products" also means electronic smoking devices
7 and any component or accessory used in the consumption of a
8 tobacco product, such as filters, rolling papers, pipes, and
9 substances used in electronic smoking devices, whether or not
10 they contain nicotine. "Tobacco products" does not include
11 drugs, devices, or combination products authorized for sale by
12 the U.S. Food and Drug Administration, as those terms are
13 defined in title 21 United States Code chapter 9."

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

16 "(b) The license shall be issued by the department upon
17 application therefor, in such form and manner as shall be
18 required by rule of the department, and the payment of a fee of
19 [~~\$2.50~~] \$250, and shall be renewable annually on July 1 for the
20 twelve months ending the succeeding June 30."



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

3 "(c) The retail tobacco permit shall be issued by the
4 department upon application by the retailer in the form and
5 manner prescribed by the department, and the payment of a fee of
6 [~~\$20-~~] \$300. Permits shall be valid for one year, from
7 December 1 to November 30, and renewable annually. Whenever a
8 retail tobacco permit is defaced, destroyed, or lost, or the
9 permittee relocates the permittee's business, the department may
10 issue a duplicate retail tobacco permit to the permittee for a
11 fee of \$5 per copy.

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



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

3 "§245-15 Disposition of revenues. All moneys collected
4 pursuant to this chapter shall be paid into the state treasury
5 as state realizations to be kept and accounted for as provided
6 by law; provided that, of the moneys collected under the tax
7 imposed pursuant to:

8 (1) Section 245-3(a)(5), after September 30, 2006, and
9 prior to October 1, 2007, 1.0 cent per cigarette shall
10 be deposited to the credit of the Hawaii cancer
11 research special fund, established pursuant to section
12 304A-2168, for research and operating expenses and for
13 capital expenditures;

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

16 (A) 1.5 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;



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- 1 (B) 0.25 cents per cigarette shall be deposited to
2 the credit of the trauma system special fund
3 established pursuant to section 321-22.5; and
- 4 (C) 0.25 cents per cigarette shall be deposited to
5 the credit of the emergency medical services
6 special fund established pursuant to section
7 321-234;
- 8 (3) Section 245-3(a)(7), after September 30, 2008, and
9 prior to July 1, 2009:
- 10 (A) 2.0 cents per cigarette shall be deposited to the
11 credit of the Hawaii cancer research special
12 fund, established pursuant to section 304A-2168,
13 for research and operating expenses and for
14 capital expenditures;
- 15 (B) 0.5 cents per cigarette shall be deposited to the
16 credit of the trauma system special fund
17 established pursuant to section 321-22.5;
- 18 (C) 0.25 cents per cigarette shall be deposited to
19 the credit of the community health centers
20 special fund established pursuant to section
21 321-1.65; and



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- 1 (D) 0.25 cents per cigarette shall be deposited to
2 the credit of the emergency medical services
3 special fund established pursuant to section
4 321-234;
- 5 (4) Section 245-3(a)(8), after June 30, 2009, and prior to
6 July 1, 2013:
- 7 (A) 2.0 cents per cigarette shall be deposited to the
8 credit of the Hawaii cancer research special
9 fund, established pursuant to section 304A-2168,
10 for research and operating expenses and for
11 capital expenditures;
- 12 (B) 0.75 cents per cigarette shall be deposited to
13 the credit of the trauma system special fund
14 established pursuant to section 321-22.5;
- 15 (C) 0.75 cents per cigarette shall be deposited to
16 the credit of the community health centers
17 special fund established pursuant to section
18 321-1.65; and
- 19 (D) 0.5 cents per cigarette shall be deposited to the
20 credit of the emergency medical services special
21 fund established pursuant to section 321-234;



- 1 (5) Section 245-3(a)(11), after June 30, 2013, and prior
2 to July 1, 2015:
- 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) 1.5 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) 1.25 cents per cigarette shall be deposited to
12 the credit of the community health centers
13 special fund established pursuant to section
14 321-1.65; and
- 15 (D) 1.25 cents per cigarette shall be deposited to
16 the credit of the emergency medical services
17 special fund established pursuant to section
18 321-234; [~~and~~]
- 19 (6) Section 245-3(a)(11), after June 30, 2015, and
20 thereafter:



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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) 1.125 cents per cigarette, but not more than
7 \$7,400,000 in a fiscal year, shall be deposited
8 to the credit of the trauma system special fund
9 established pursuant to section 321-22.5;

10 (C) 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 community health centers
13 special fund established pursuant to section
14 321-1.65; and

15 (D) 1.25 cents per cigarette, but not more than
16 \$8,800,000 in a fiscal year, shall be deposited
17 to the credit of the emergency medical services
18 special fund established pursuant to section
19 321-234 [-]; and

20 (7) Section 245-3(a)(12), on July 1, 2020, and every
21 July 1 thereafter, \$750,000 shall be deposited to the



1 credit of the Hawaii tobacco prevention and control
2 trust fund established pursuant to section 328L-5 to
3 support health education and prevention programs
4 concerning the risks and danger of the use of
5 electronic smoking devices for youth.

6 The department shall provide an annual accounting of these
7 dispositions to the legislature."

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

10 SECTION 8. Section 245-17, Hawaii Revised Statutes, is
11 repealed.

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

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



- 1 ~~(1) An independently operated third party database or~~
- 2 ~~aggregate of databases that are regularly used by~~
- 3 ~~government and businesses for the purpose of age and~~
- 4 ~~identity verification and authentication;~~
- 5 ~~(2) Receiving a copy of a government issued identification~~
- 6 ~~card from the purchaser; or~~
- 7 ~~(3) Requiring age and signature verification in the~~
- 8 ~~shipment process and upon and before actual delivery.~~
- 9 ~~(c) The purchaser shall certify their age before~~
- 10 ~~completing the purchaser's order.~~
- 11 ~~(d) Any person who violates this section shall be fined~~
- 12 ~~\$500 for the first offense. Any subsequent offenses shall~~
- 13 ~~subject the person to a fine of no less than \$500 but no more~~
- 14 ~~than \$2,000. Any person under twenty one years of age who~~
- 15 ~~violates this section shall be fined \$10 for the first offense;~~
- 16 ~~provided that any subsequent offense shall subject the person to~~
- 17 ~~a fine of \$50, no part of which shall be suspended, or the~~
- 18 ~~person shall be required to perform no less than forty eight~~
- 19 ~~hours but no more than seventy two hours of community service~~
- 20 ~~during hours when the person is not employed or attending~~
- 21 ~~school.~~



1 ~~(e) The department shall not adopt rules prohibiting~~
2 ~~delivery sales.~~

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

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

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

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

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

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



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1 SECTION 9. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 10. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 11. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 12. This Act shall take effect on January 1, 2022.

13

INTRODUCED BY: *Randy H. Bak*



S.B. NO. 621

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. 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. 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 January 1, 2022.

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

