

JAN 26 2022

A BILL FOR AN ACT

RELATING TO TOBACCO PRODUCTS.

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

1 SECTION 1. Tobacco use is the single most preventable
2 cause of disease, disability, and death in the United States.
3 Tobacco use continues to be a problem in Hawaii. The Centers
4 for Disease Control and Prevention's State Tobacco Activities
5 Tracking and Evaluation System estimates tobacco causes
6 approximately one thousand four hundred deaths per year among
7 adults. In a 2014 report titled "The Health Consequences of
8 Smoking: 50 Years of Progress," the United States Surgeon
9 General projected an estimated twenty-one thousand children now
10 under the age of eighteen and alive in Hawaii will die
11 prematurely from smoking. Consequently, tobacco use poses a
12 heavy burden on Hawaii's health care system and economy.
13 According to the Centers for Disease Control and Prevention's
14 2014 "Best Practices for Tobacco Control Programs" guide,
15 \$526,000,000 in health care expenditures and \$387,300,000 in
16 lost productivity are directly attributed to smoking.

17 Furthermore, tobacco products are addictive and inherently
18 dangerous, causing many different types of cancer, heart

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1 disease, and other serious illnesses. Hawaii has a substantial
2 interest in reducing the number of individuals of all ages who
3 use tobacco products, and a particular interest in protecting
4 adolescents from tobacco dependence and the illnesses and
5 premature death associated with tobacco use.

6 Electronic smoking devices, also known as e-cigarettes, are
7 battery-operated products designed to deliver nicotine, flavor,
8 and other chemicals to the user. E-cigarettes have quickly
9 evolved since entering the United States marketplace in 2007.
10 Initial products were disposable, resembled the size and shape
11 of conventional cigarettes, and used free-base nicotine.
12 However, newer products are rechargeable, resemble common
13 objects, including flash drives and highlighters, and typically
14 deliver nicotine salts, which allow higher levels of nicotine to
15 be inhaled more easily by the user.

16 The e-cigarette industry, which includes the production of
17 e-liquid in a variety of forms, has grown rapidly. In the
18 September 18, 2020 Morbidity and Mortality Weekly Report, the
19 Centers for Disease Control and Prevention reported that e-
20 cigarettes have been the most commonly used tobacco product
21 among United States youths since 2014. The United States
22 Surgeon General first issued a warning in 2016 about the dangers
23 of these products, stating that use among the nation's youth and

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1 young adults had become a major public health concern. In
2 response to the continuing rise in use, in 2018, the Surgeon
3 General made the unprecedented move of classifying the danger of
4 youth usage of e-cigarettes as an epidemic in the Surgeon
5 General's Advisory on E-Cigarette Use Among Youth.

6 The 2019 Youth Risk Behavior Survey issued by the Centers
7 for Disease Control and Prevention reported that the use of
8 electronic smoking devices among high school seniors increased
9 nationally from 24.1 per cent in 2015 to 37.7 per cent in 2019.
10 The same survey reported that in Hawaii, 48.3 per cent of public
11 high school students report having experimented with e-
12 cigarettes, and 30.6 per cent are current users of e-cigarettes.
13 Further, in the 2016 report titled "E-Cigarette Use Among Youth
14 and Adults" (Surgeon General's Report), the United States
15 Surgeon General stated that e-cigarette use among youth and
16 young adults is also strongly associated with the use of other
17 tobacco products, including combustible tobacco products.

18 Toxicologists have warned that e-liquids pose significant
19 risks to public health, particularly to children. The 2016
20 Surgeon General's Report further states that if the contents of
21 prefilled cartridges or bottles of e-liquids containing nicotine
22 are ingested, they may cause acute toxicity and possibly death.

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1 The Centers for Disease Control and Prevention reported in
2 the September 18, 2020 Morbidity and Mortality Weekly Report,
3 that from November of 2016 to August of 2019, total e-cigarette
4 unit sales in the United States increased nearly 300 per cent.
5 Continued monitoring of e-cigarette sales and use is critical to
6 inform strategies to minimize risk among Hawaii's most vulnerable
7 youth users.

8 According to the Behavioral Risk Factors Surveillance
9 System, e-cigarette use is markedly higher among young adults in
10 Hawaii, between the ages of 18 and 24 years, than young adults
11 on the mainland. In 2019, 6.2 per cent of Hawaii residents ages
12 18 and older reported current vaping, about one-third higher
13 than the 4.5 per cent reporting current e-cigarette use
14 nationally.

15 The 2016 Surgeon General's Report found that there are
16 numerous policies and practices that can be implemented at state
17 and local levels to address electronic smoking device use among
18 youth and young adults, including preventing access to
19 e-cigarettes by youth, increasing taxes upon e-cigarettes,
20 increasing prices of retail licensure, and regulating e-
21 cigarette marketing.

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1 Additionally, the rapid growth of the electronic smoking
2 device industry, including retail businesses selling e-
3 cigarettes or e-liquid, necessitates further regulations to
4 protect consumers, such as requiring retailers of e-liquid to
5 obtain a retail tobacco permit. The 2016 Surgeon General's
6 Report found that children and youth are especially vulnerable
7 to the targeted online social and digital media marketing of
8 inexpensive e-cigarettes offered in enticing flavors and
9 concealable forms.

10 The United States Food and Drug Administration has expanded
11 its regulatory authority to all tobacco products, including e-
12 cigarettes, cigars, and hookah and pipe tobacco. While there
13 is federal consensus that electronic smoking devices are tobacco
14 products, Hawaii has no State tobacco tax attached to e-
15 cigarettes and e-liquids. While the use of tobacco products
16 other than cigarettes carries similar health risks, these
17 products are currently taxed at a lower rate than cigarettes.
18 Decades of research have shown that increasing cigarette prices,
19 such as through cigarette taxes, can reduce the rate of smoking
20 by adult and youth smokers. As outlined in the 2016 Surgeon
21 General's Report, current findings show this public health
22 policy can likewise be applied to other tobacco products to
23 reduce youth consumption.

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1 Taxing e-liquids and e-cigarettes, similar to other tobacco
2 products, will provide pricing parity between products on the
3 market. Pricing parity between tobacco products on the market
4 will result in positive health benefits, including encouraging
5 young, price-conscious consumers to quit, sustaining cessation,
6 preventing youth initiation, and reducing consumption among
7 those who continue to use them.

8 The purposes of this Act are to:

- 9 (1) Establish the offense of unlawful shipment of tobacco
10 products;
- 11 (2) Include e-liquid and electronic smoking devices within
12 the definition of "tobacco products" as used in the
13 cigarette tax and tobacco tax law, thereby:
 - 14 (A) Subjecting e-liquid and electronic smoking
15 devices to the excise tax on tobacco products;
 - 16 (B) Requiring retailers of tobacco products to obtain
17 a retail tobacco permit to sell, possess, keep,
18 acquire, distribute, or transport tobacco
19 products;
 - 20 (C) Prohibiting persons from engaging in the business
21 of a wholesaler or dealer of tobacco products
22 without first obtaining a license from the
23 department of taxation; and

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- 1 (D) Applying other requirements of chapter 245,
2 Hawaii Revised Statutes;
- 3 (3) Increase the license fee for persons engaged as
4 wholesalers or dealers of cigarettes and tobacco
5 products;
- 6 (4) Increase the retail tobacco permit fee for retailers
7 engaged in the retail sale of cigarettes and tobacco
8 products; and
- 9 (5) Repeal various statutory provisions relating to
10 electronic smoking devices to avoid conflict with
11 taxation and regulation under chapter 245, Hawaii
12 Revised Statutes.

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

16 "§245- Unlawful shipment of tobacco products; penalty;
17 reports; liability for unpaid taxes. (a) A person or entity
18 commits the offense of unlawful shipment of tobacco products if
19 the person or entity:

- 20 (1) Is engaged in the business of selling tobacco
21 products; and

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

4 (b) This section shall not apply to the shipment of
5 tobacco products if any of the following conditions are met:

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

8 (2) All applicable Hawaii taxes on the tobacco products
9 are paid in accordance with the requirements of this
10 chapter.

11 (c) Unlawful shipment of tobacco products is a class C
12 felony if the person or entity knowingly ships or causes to be
13 shipped tobacco products with a value of \$10,000 or more in
14 violation of subsection (a).

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

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

22 (f) Notwithstanding the existence of other remedies at
23 law, any person or entity that purchases, uses, controls, or

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1 possesses any tobacco products for which the applicable taxes
2 imposed under title 14 have not been paid, shall be liable for
3 the applicable taxes, plus any penalty and interest as provided
4 for by law.

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

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

9 1. By adding two new definitions to be appropriately
10 inserted and to read:

11 "E-liquid" means any liquid or like substance, which may
12 or may not contain nicotine, that is designed or intended to be
13 used in an electronic smoking device, whether or not packaged in
14 a cartridge or other container. "E-liquid" shall not include
15 prescription drugs; cannabis for medical use or manufactured
16 cannabis products pursuant to chapter 329D; or medical devices
17 used to aerosolize, inhale, or ingest prescription drugs,
18 including manufactured cannabis products manufactured or
19 distributed in accordance with section 329D-10(a).

20 "Electronic smoking device" means any device that may be
21 used to deliver any aerosolized or vaporized substance to the
22 person inhaling from the device, including, but not limited to
23 an electronic cigarette, electronic cigar, electronic pipe, vape

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1 pen, or electronic hookah. "Electronic smoking device" includes
2 any component, part, or accessory of the device, and also
3 includes any substance that may be aerosolized or vaporized by
4 the device, whether or not the substance contains nicotine.
5 Electronic smoking device does not include drugs, devices, or
6 combination products authorized for sale by the United States
7 Food and Drug Administration, as those terms are defined in the
8 Federal Food, Drug, and Cosmetic Act.

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

11 "Tobacco products" means [~~tobacco in any form,~~]:

12 (1) Any product containing, made of, or derived from
13 tobacco or nicotine, other than cigarettes or little
14 cigars, that is [~~prepared or~~] intended for human
15 consumption [~~or for personal use by humans,~~] or is
16 likely to be consumed whether inhaled, absorbed, or
17 ingested by any other means, including but not limited
18 to large cigars and any substitutes thereof other than
19 cigarettes that bear the semblance thereof, and
20 including snuff, snus, chewing or smokeless tobacco,
21 and smoking or pipe tobacco[-], or

22 (2) Any electronic smoking device as defined in this
23 section and any substance, including e-liquids, that

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1 may be aerosolized or vaporized by such device,
2 whether or not the substance contains nicotine, or
3 (3) Any component, part, or accessory of any item
4 described in paragraph (1) or paragraph (2), whether
5 or not any of these contains tobacco or nicotine,
6 including but not limited to filters, rolling papers,
7 blunt or hemp wraps, hookahs, or pipes.

8 "Tobacco products" does not mean drugs, devices, or combination
9 products authorized for sale by the United States Food and Drug
10 Administration, as those terms are defined in the Federal Food,
11 Drug, and Cosmetic Act.

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

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

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

21 "(c) The retail tobacco permit shall be issued by the
22 department upon application by the retailer in the form and
23 manner prescribed by the department, and the payment of a fee of

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1 [~~\$20-~~] \$50. Permits shall be valid for one year, from December
2 1 to November 30, and renewable annually. Whenever a retail
3 tobacco permit is defaced, destroyed, or lost, or the permittee
4 relocates the permittee's business, the department may issue a
5 duplicate retail tobacco permit to the permittee for a fee of \$5
6 per copy.

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

18 SECTION 6. Chapter 28, part XII, Hawaii Revised Statutes,
19 is repealed.

20 SECTION 7. Section 245-17, Hawaii Revised Statutes, is
21 repealed.

22 [~~§245-17~~] ~~Delivery sales.~~ (a) ~~No person shall conduct~~
23 ~~a delivery sale or otherwise ship or transport, or cause to be~~

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1 ~~shipped or transported, any electronic smoking device in~~
2 ~~connection with a delivery sale to any person under the age of~~
3 ~~twenty one.~~

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

8 ~~(1) An independently operated third party database or~~
9 ~~aggregate of databases that are regularly used by~~
10 ~~government and businesses for the purpose of age and~~
11 ~~identity verification and authentication;~~

12 ~~(2) Receiving a copy of a government issued identification~~
13 ~~card from the purchaser; or~~

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

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

18 ~~(d) Any person who violates this section shall be fined~~
19 ~~\$500 for the first offense. Any subsequent offenses shall~~
20 ~~subject the person to a fine of no less than \$500 but no more~~
21 ~~than \$2,000. Any person under twenty one years of age who~~
22 ~~violates this section shall be fined \$10 for the first offense;~~
23 ~~provided that any subsequent offense shall subject the person to~~

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1 ~~a fine of \$50, no part of which shall be suspended, or the~~
2 ~~person shall be required to perform no less than forty eight~~
3 ~~hours but no more than seventy two hours of community service~~
4 ~~during hours when the person is not employed or attending~~
5 ~~school.~~

6 ~~(e) The department shall not adopt rules prohibiting~~
7 ~~delivery sales.~~

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

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

11 ~~(1) The purchaser submits the order for sale by means of a~~
12 ~~telephonic or other method of voice transmission, the~~
13 ~~mail or any other delivery service, or the internet or~~
14 ~~other online service; or~~

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

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

20 ~~"Electronic smoking device" means any electronic product~~
21 ~~that can be used to aerosolize and deliver nicotine or other~~
22 ~~substances to the person inhaling from the device, including but~~
23 ~~not limited to an electronic cigarette, electronic cigar,~~

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1 ~~electronic cigarillo, or electronic pipe, and any cartridge or~~
2 ~~other component of the device or related product."]~~

3 SECTION 8. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

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

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

14 SECTION 11. This Act, upon its approval, shall take effect
15 on January 1, 2023.

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INTRODUCED BY: 
BY REQUEST

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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 wholesalers or dealers 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. Effective January 1, 2023.

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

JUSTIFICATION SHEET

SB. NO. 3119

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO TOBACCO PRODUCTS.

PURPOSE: Establish unlawful shipment of tobacco products; add definition and taxation of "e-liquid" and "electronic smoking device" (ESDs); amend definition of "tobacco products"; and establish requirement for license fee and retail permit fee.

MEANS: Add a new section to chapter 245, Hawaii Revised Statutes (HRS), amend sections 245-1, 245-2(b), 245-2.5(c) and (d), and repeal chapter 28, part XII, HRS, and section 245-17, HRS.

JUSTIFICATION: This measure responds to the increasing trend of youth vaping. Across the country, twenty-nine (29) states and the District of Columbia, along with several local governments, levy taxes on ESDs. This measure creates tax parity between ESDs by establishing additional taxes for ESDs that currently do not exist. Taxing ESD products and e-liquids at a similar rate to the taxes currently imposed on traditional tobacco products, such as cigarettes, will create parity and remove price incentives that lead to youth initiation of vaping. This measure requires licensing and permitting of ESD retailers and distributors, a requirement currently imposed on traditional tobacco retailers and distributors. This measure bans shipment of tobacco products to individuals not licensed by the department of taxation under chapter 245, with certain exceptions. This measure increases licensure and permitting fees, which have remained unchanged since 1995, despite high tobacco taxes and ever-increasing tobacco industry expenditures in marketing and advertising.

- Of 40 states with licensing fees, 26 states charge \geq \$100/year, 14 charge \geq \$200/year. Nine

states charge \$500/year to \$1,500/year. Currently Hawaii requires payment of a \$2.50 fee for a tobacco license under section 245-2(b), HRS.

- Of 30 states with retailer fees, 15 states charge \geq \$20/year but less than \$100/year, with 8 of 15 charging \geq \$50/year. Currently Hawaii requires payment of a \$20 fee for a retail tobacco permit under section 245-2.5(c), HRS.

Repeal of chapter 28, part XII, HRS, is necessary to avoid conflict with this measure's goal of subjecting ESDs and e-liquids to taxation and regulation under chapter 245, HRS.

Impact on the public: This measure will protect youth through prohibiting the online sales or shipment of ESDs. Tobacco licensing/permitting ensures that wholesalers and retailers comply with responsible sales practices. Because youth are sensitive to prices, implementing the proven strategy of increasing the price of tobacco products will likely result in a reduction in the rates of vaping experimentation by youths. It is currently estimated that 48 per cent of high school students and 31 per cent of middle school students experiment with vaping.

Impact on the department and other agencies: This proposal will make enforcement simpler because of the additional specificity and will create parity with existing cigarette policies. In addition to the revenue generated by taxation and increased fees, the health and economic consequences of vaping would be favorably impacted.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HTH-590.

OTHER AFFECTED
AGENCIES:

Department of the Attorney General; County
law enforcement agencies; Department of
Taxation.

EFFECTIVE DATE:

January 1, 2023.