

JAN 21 2021

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 tobacco use remains
2 the leading cause of preventable disease and death in the United
3 States and in Hawaii. Tobacco use and nicotine addiction is a
4 serious public health problem that results in loss of life and
5 financial burdens on society and the healthcare system. Each
6 year, tobacco use costs approximately \$170,000,000,000 in direct
7 health care expenditures and \$156,000,000,000 in lost
8 productivity around the nation. The legislature further finds
9 that all tobacco products are addictive and inherently
10 dangerous, including electronic smoking devices, also known as
11 e-cigarettes, capable of delivering nicotine, flavor, and other
12 chemicals inhaled by the user.

13 The legislature has determined that comprehensive
14 regulatory action on tobacco products in Hawaii is necessary to
15 reduce tobacco-related health disparities and end the youth
16 vaping epidemic. The legislature has a substantial interest in
17 reducing the number of individuals of all ages who use tobacco



1 products, protecting adolescents from tobacco dependence and
2 nicotine addiction, and reducing the illnesses and premature
3 death associated with tobacco use.

4 The legislature further finds that while there has been a
5 decline in the use of combustible cigarettes over the last
6 decade, there has been a dramatic increase in the use of
7 electronic smoking devices by Hawaii's youth. Results from the
8 2019 Youth Risk Behavior Survey released by the Centers for
9 Disease Control and Prevention showed an increase in youth
10 e-cigarette use among high school students in Hawaii. Nearly
11 one in three high school students, or roughly thirty-one per
12 cent used e-cigarettes in the last thirty days, an increase from
13 25.5 per cent in 2017. Additionally, the percentage of frequent
14 high school users doubled from 5.1 per cent in 2017 to 10.4 per
15 cent in 2019, and daily e-cigarette use has more than doubled
16 from 3.5 per cent in 2017 to 7.9 per cent in 2019.

17 Current use of electronic smoking devices by county reveals
18 an even more troubling situation, with 2017 figures exceeding
19 thirty per cent on the islands of Hawaii, Maui, and Kauai.
20 These rates are higher than the national average, demonstrating
21 a disturbing trend of youth nicotine use in Hawaii, and threaten



1 to undermine the benefits derived from the decline in
2 combustible cigarette use that has been achieved.

3 The popularity of electronic cigarettes among youth is
4 especially concerning because these products contain nicotine.
5 The United States Surgeon General noted in the 2016 report
6 titled "E-Cigarette Use Among Youth and Young Adults" that
7 "[b]ecause the adolescent brain is still developing, nicotine
8 use during adolescence can disrupt the formation of brain
9 circuits that control attention, learning, and susceptibility to
10 addiction."

11 Use of an electronic smoking device also puts the user at
12 risk for lung injury and even death. In 2019, the Centers for
13 Disease Control sounded the alarm on the national outbreak of
14 e-cigarette, or vaping, product use-associated lung injury
15 (EVALI). As of February 18, 2020, a total of 2,807 EVALI cases
16 and sixty-eight deaths were reported nationwide. In 2019, the
17 Hawaii state department of health confirmed four local cases of
18 EVALI. A recent 2020 Stanford study has also determined that
19 teenagers and young adults who used e-cigarettes were five times
20 more likely to be diagnosed with COVID-19 than nonusers. Those
21 who had used both e-cigarettes and conventional cigarettes were



1 almost seven times more likely to be diagnosed with coronavirus
2 disease 2019.

3 The legislature further finds that a significant driver to
4 increased youth use of electronic smoking devices is the
5 availability of flavored tobacco products. While the Family
6 Smoking Prevention and Tobacco Control Act of 2009 prohibited
7 characterizing flavors, including fruit and candy flavorings, in
8 cigarettes, it did not ban the use of characterizing flavors in
9 other tobacco products, such as electronic smoking devices.

10 Adding flavoring to tobacco changes the taste and reduces
11 the harshness of the otherwise unflavored tobacco product,
12 making smoking more appealing and easier for beginners to try
13 and become addicted. According to a recent survey, eighty-one
14 per cent of youth and eighty-six per cent who have ever used a
15 tobacco product reported that the first tobacco product they
16 used was flavored.

17 The legislature additionally finds that young people are
18 disproportionately using flavored tobacco products including
19 menthol. In 2010, seventy-eight per cent of Native Hawaiians
20 and pacific islanders and forty-two per cent of white adult
21 smokers consume menthol cigarettes. By 2050, conservative



1 estimates suggest that over three hundred thousand deaths can be
2 averted if it were not for menthol cigarette smoking.

3 Given the significant threat to public health posed by
4 electronic smoking devices, the legislature has introduced
5 numerous policies and practices to subject electronic smoking
6 devices to the same regulations as cigarettes, including
7 removing flavored products, establishing a tobacco tax on
8 e-cigarettes, requiring retail licensure, and restricting online
9 sales. The legislature also notes that while twenty-five states
10 have placed taxes on e-cigarettes, Hawaii currently levies no
11 state tobacco tax on e-cigarettes and that prices of e-cigarette
12 products are often lower than cigarettes, even though their use
13 carries similar health risks. Research has shown that
14 increasing the price of tobacco products, such as through
15 cigarette taxes, is a proven intervention that reduces the rate
16 of smoking by adult and youth smokers. The legislature
17 concludes that comprehensive regulatory action on e-cigarettes
18 in Hawaii is necessary to reduce tobacco-related health
19 disparities and end the youth vaping epidemic.

20 Accordingly, the purpose of this Act is to:



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- 1 (1) 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;
- 5 (2) Include e-liquid and electronic smoking devices in the
6 definition of "tobacco products" for purposes of the
7 cigarette tax and tobacco tax law;
- 8 (3) Increase the license fee for wholesalers and dealers
9 of tobacco products and retail tobacco permit fee;
- 10 (4) Require retailers to pay an additional excise tax on
11 the gross receipts from the retail sale of electronic
12 smoking devices on and after July 1, 2021;
- 13 (5) Direct a certain percentage of moneys received from
14 the cigarette tax and tobacco tax to the Hawaii
15 tobacco prevention and control trust fund to establish
16 and fund a comprehensive youth tobacco cessation
17 program;
- 18 (6) Repeal the electronic smoking device retailer
19 registration unit; and
- 20 (7) Repeal provisions relating to delivery of sales under
21 the cigarette tax and tobacco tax law.



1 This Act shall be known and may be cited as the Reversing
2 the Youth Tobacco Epidemic Act of 2021.

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

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, subject to immediate
16 forfeiture and destruction or disposal as hazardous waste, and
17 shall not be subject to the procedures set forth in chapter
18 712A.

19 (4) Any retailer who violates this section shall be
20 punished as follows:

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



1 (b) For the second offense, a fine of \$2,000; and
2 (c) For a third and subsequent offense, a fine of \$5,000.
3 All fines shall be paid to the department of health and
4 deposited into the Hawaii tobacco prevention and control trust
5 fund established pursuant to section 328L-5. Retailers shall be
6 responsible for all costs associated with disposing of their
7 confiscated product found to be in violation of this section.
8 (5) Notwithstanding any other law to the contrary, any
9 county may adopt a rule or ordinance that places greater
10 restrictions on the access to tobacco or electronic smoking
11 device products than provided for in this section. In the case
12 of a conflict between the restrictions in this section and any
13 county rule or ordinance, the more stringent restrictions shall
14 prevail.
15 (6) For the purposes of this section:
16 "Distinguishable" means perceivable by either the sense of
17 smell or taste.
18 "Electronic smoking device" has the same meaning as defined
19 in section 712-1258(7).
20 "E-liquid" means any liquid or like substance, which may or
21 may not contain nicotine, that is capable of being used in an



1 electronic smoking device, whether or not packaged in a
2 cartridge or other container.

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

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

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

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

21 "Tobacco product" means any:



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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 3. 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 drugs, devices, or a combination of products approved for sale
12 by the United States Food and Drug Administration as those terms
13 are defined in the Federal Food, Drug, and Cosmetic Act; medical
14 cannabis; or manufactured cannabis products under chapter 329D,
15 including devices uses to aerosolize, inhale, or ingest
16 manufactured cannabis products manufactured or distributed in
17 accordance with section 329D-10(a).

18 "Electronic smoking device" means any electronic product,
19 or part thereof, whether for one-time use or reusable that can
20 be used to deliver nicotine or another substance to a person
21 inhaling from the device including but not limited to electronic



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

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



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

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

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

10 "Tobacco products" means [tobacco]:

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

17 (2) Electronic smoking devices.

18 "Tobacco products" includes but is not limited to large cigars
19 and any substitutes thereof other than cigarettes that bear the
20 semblance thereof, pipe tobacco, chewing or smokeless tobacco,



1 snuff, snus, e-liquid, electronic smoking devices containing e-
2 liquid, and components or parts containing e-liquid."

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

5 "(b) The license shall be issued by the department upon
6 application therefor, in such form and manner as shall be
7 required by rule of the department, and the payment of a fee of
8 [~~\$2,500~~] \$2,500, and shall be renewable annually on July 1 for
9 the twelve months ending the succeeding June 30."

10 SECTION 5. Section 245-2.5, Hawaii Revised Statutes, is
11 amended by amending subsection (c) to read as follows:

12 "(c) The retail tobacco permit shall be issued by the
13 department upon application by the retailer in the form and
14 manner prescribed by the department, and the payment of a fee of
15 [~~\$20~~] \$100. Permits shall be valid for one year, from
16 December 1 to November 30, and renewable annually. Whenever a
17 retail tobacco permit is defaced, destroyed, or lost, or the
18 permittee relocates the permittee's business, the department may
19 issue a duplicate retail tobacco permit to the permittee for a
20 fee of \$5 per copy."



1 SECTION 6. Section 245-3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§245-3 Taxes.** (a) Every wholesaler or dealer, in
4 addition to any other taxes provided by law, shall pay for the
5 privilege of conducting business and other activities in the
6 State:

7 (1) An excise tax equal to 5.00 cents for each cigarette
8 sold, used, or possessed by a wholesaler or dealer
9 after June 30, 1998, whether or not sold at wholesale,
10 or if not sold then at the same rate upon the use by
11 the wholesaler or dealer;

12 (2) An excise tax equal to 6.00 cents for each cigarette
13 sold, used, or possessed by a wholesaler or dealer
14 after September 30, 2002, whether or not sold at
15 wholesale, or if not sold then at the same rate upon
16 the use by the wholesaler or dealer;

17 (3) An excise tax equal to 6.50 cents for each cigarette
18 sold, used, or possessed by a wholesaler or dealer
19 after June 30, 2003, whether or not sold at wholesale,
20 or if not sold then at the same rate upon the use by
21 the wholesaler or dealer;



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- 1 (4) An excise tax equal to 7.00 cents for each cigarette
2 sold, used, or possessed by a wholesaler or dealer
3 after June 30, 2004, whether or not sold at wholesale,
4 or if not sold then at the same rate upon the use by
5 the wholesaler or dealer;
- 6 (5) An excise tax equal to 8.00 cents for each cigarette
7 sold, used, or possessed by a wholesaler or dealer on
8 and after September 30, 2006, whether or not sold at
9 wholesale, or if not sold then at the same rate upon
10 the use by the wholesaler or dealer;
- 11 (6) An excise tax equal to 9.00 cents for each cigarette
12 sold, used, or possessed by a wholesaler or dealer on
13 and after September 30, 2007, whether or not sold at
14 wholesale, or if not sold then at the same rate upon
15 the use by the wholesaler or dealer;
- 16 (7) An excise tax equal to 10.00 cents for each cigarette
17 sold, used, or possessed by a wholesaler or dealer on
18 and after September 30, 2008, whether or not sold at
19 wholesale, or if not sold then at the same rate upon
20 the use by the wholesaler or dealer;



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1 (8) An excise tax equal to 13.00 cents for each cigarette
2 sold, used, or possessed by a wholesaler or dealer on
3 and after July 1, 2009, whether or not sold at
4 wholesale, or if not sold then at the same rate upon
5 the use by the wholesaler or dealer;

6 (9) An excise tax equal to 11.00 cents for each little
7 cigar sold, used, or possessed by a wholesaler or
8 dealer on and after October 1, 2009, whether or not
9 sold at wholesale, or if not sold then at the same
10 rate upon the use by the wholesaler or dealer;

11 (10) An excise tax equal to 15.00 cents for each cigarette
12 or little cigar sold, used, or possessed by a
13 wholesaler or dealer on and after July 1, 2010,
14 whether or not sold at wholesale, or if not sold then
15 at the same rate upon the use by the wholesaler or
16 dealer;

17 (11) An excise tax equal to 16.00 cents for each cigarette
18 or little cigar sold, used, or possessed by a
19 wholesaler or dealer on and after July 1, 2011,
20 whether or not sold at wholesale, or if not sold then



1 at the same rate upon the use by the wholesaler or
2 dealer;

3 (12) An excise tax equal to seventy per cent of the
4 wholesale price of each article or item of tobacco
5 products, other than large cigars, sold by the
6 wholesaler or dealer on and after September 30, 2009,
7 whether or not sold at wholesale, or if not sold then
8 at the same rate upon the use by the wholesaler or
9 dealer; and

10 (13) An excise tax equal to fifty per cent of the wholesale
11 price of each large cigar of any length, sold, used,
12 or possessed by a wholesaler or dealer on and after
13 September 30, 2009, whether or not sold at wholesale,
14 or if not sold then at the same rate upon the use by
15 the wholesaler or dealer.

16 Where the tax imposed has been paid on cigarettes, little
17 cigars, or tobacco products that thereafter become the subject
18 of a casualty loss deduction allowable under chapter 235, the
19 tax paid shall be refunded or credited to the account of the
20 wholesaler or dealer. The tax shall be applied to cigarettes
21 through the use of stamps.



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1 (b) Every retailer, in addition to any other taxes
2 provided by law, shall pay for the privilege of conducting
3 business and other activities in the State an excise tax equal
4 to seventy per cent of the gross proceeds from the retail sale
5 of each electronic smoking device sold on and after July 1,
6 2021; provided that the tax imposed under this subsection shall
7 not be subject to the limitations on tax described in subsection
8 (c) (3) with respect to persons and amounts previously taxed.

9 [~~b~~] (c) The taxes, however, are subject to the following
10 limitations:

- 11 (1) The measure of the taxes shall not include any
12 cigarettes or tobacco products exempted, and so long
13 as the same are exempted, from the imposition of taxes
14 by the Constitution or laws of the United States;
- 15 (2) The measure of taxes shall exempt and exclude all
16 sales of cigarettes and tobacco products to the United
17 States (including any agency or instrumentality
18 thereof that is wholly owned or otherwise so
19 constituted as to be immune from the levy of a tax
20 under this chapter), sold by any person licensed under
21 this chapter; and



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1 (3) The taxes shall be paid only once with respect to the
2 same cigarettes or tobacco product. This limitation
3 shall not prohibit the imposition of the excise tax on
4 receipts from sales of tobacco products under
5 subsection (a) (5); provided that the amount subject to
6 the tax on each sale shall not include amounts
7 previously taxed under this chapter."

8 SECTION 7. Section 245-15, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§245-15 Disposition of revenues.** All moneys collected
11 pursuant to this chapter shall be paid into the state treasury
12 as state realizations to be kept and accounted for as provided
13 by law; provided that, of the moneys collected under the tax
14 imposed pursuant to:

15 (1) Section 245-3(a) (5), after September 30, 2006, and
16 prior to October 1, 2007, 1.0 cent per cigarette shall
17 be deposited to the credit of the Hawaii cancer
18 research special fund, established pursuant to section
19 304A-2168, for research and operating expenses and for
20 capital expenditures;



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

3 (A) 1.5 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) 0.25 cents per cigarette shall be deposited to
9 the credit of the trauma system special fund
10 established pursuant to section 321-22.5; and

11 (C) 0.25 cents per cigarette shall be deposited to
12 the credit of the emergency medical services
13 special fund established pursuant to section
14 321-234;

15 (3) Section 245-3(a)(7), after September 30, 2008, and
16 prior to July 1, 2009:

17 (A) 2.0 cents per cigarette shall be deposited to the
18 credit of the Hawaii cancer research special
19 fund, established pursuant to section 304A-2168,
20 for research and operating expenses and for
21 capital expenditures;



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1 (B) 0.5 cents per cigarette shall be deposited to the
2 credit of the trauma system special fund
3 established pursuant to section 321-22.5;

4 (C) 0.25 cents per cigarette shall be deposited to
5 the credit of the community health centers
6 special fund established pursuant to section
7 321-1.65; and

8 (D) 0.25 cents per cigarette shall be deposited to
9 the credit of the emergency medical services
10 special fund established pursuant to section
11 321-234;

12 (4) Section 245-3(a)(8), after June 30, 2009, and prior to
13 July 1, 2013:

14 (A) 2.0 cents per cigarette shall be deposited to the
15 credit of the Hawaii cancer research special
16 fund, established pursuant to section 304A-2168,
17 for research and operating expenses and for
18 capital expenditures;

19 (B) 0.75 cents per cigarette shall be deposited to
20 the credit of the trauma system special fund
21 established pursuant to section 321-22.5;



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- 1 (C) 0.75 cents per cigarette shall be deposited to
2 the credit of the community health centers
3 special fund established pursuant to section
4 321-1.65; and
- 5 (D) 0.5 cents per cigarette shall be deposited to the
6 credit of the emergency medical services special
7 fund established pursuant to section 321-234;
- 8 (5) Section 245-3(a)(11), after June 30, 2013, and prior
9 to July 1, 2015:
- 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) 1.5 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) 1.25 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) 1.25 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; [~~and~~]

5 (6) Section 245-3(a)(11), after June 30, 2015, and
6 thereafter:

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) 1.125 cents per cigarette, but not more than
13 \$7,400,000 in a fiscal year, shall be deposited
14 to the credit of the trauma system special fund
15 established pursuant to section 321-22.5;

16 (C) 1.25 cents per cigarette, but not more than
17 \$8,800,000 in a fiscal year, shall be deposited
18 to the credit of the community health centers
19 special fund established pursuant to section
20 321-1.65; and



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1 (D) 1.25 cents per cigarette, but not more than
 2 \$8,800,000 in a fiscal year, shall be deposited
 3 to the credit of the emergency medical services
 4 special fund established pursuant to section
 5 321-234 [-]; and

6 (7) Section 245-3(b), after June 30, 2021, and thereafter
 7 _____ per cent of the taxes accumulated shall be
 8 deposited to the credit of the Hawaii tobacco
 9 prevention and control trust fund established pursuant
 10 to section 328L-5, to establish a comprehensive youth
 11 tobacco cessation program to fund health education,
 12 prevention, and nicotine cessation programs about the
 13 risks and dangers of the use of electronic smoking
 14 devices for youth.

15 The department shall provide an annual accounting of these
 16 dispositions to the legislature."

17 SECTION 8. Section 245-16, Hawaii Revised Statutes, is
 18 amended by amending subsection (b) to read as follows:

19 "(b) This section shall not apply to the shipment of
 20 cigarettes if any of the following conditions are met:



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1 (1) The cigarettes are exempt from taxes as provided by
2 section [~~245-3(b)~~] 245-3(c) or are otherwise exempt
3 from the applicability of this chapter as provided by
4 section 245-62;

5 (2) All applicable Hawaii taxes on the cigarettes are paid
6 in accordance with the requirements of this chapter;
7 or

8 (3) The person or entity engaged in the business of
9 selling, advertising, or offering cigarettes for sale
10 and transfer or shipment:

11 (A) Has fully complied with all of the requirements
12 of chapter 10A (commencing with section 375) of
13 title 15 of the United States Code, otherwise
14 known as the Jenkins Act; and

15 (B) Includes on the outside of the shipping container
16 an externally visible and easily legible notice
17 located on the same side of the shipping
18 container as the address to which the shipping
19 container is delivered stating as follows:

20 "CIGARETTES: HAWAII LAW PROHIBITS THE SALE OF
21 CIGARETTES TO INDIVIDUALS UNDER TWENTY-ONE YEARS



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1 OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE
 2 TAXES. YOU ARE LEGALLY RESPONSIBLE FOR ALL
 3 APPLICABLE UNPAID TAXES ON THESE CIGARETTES."

4 SECTION 9. Section 245-22.5, Hawaii Revised Statutes, is
 5 amended by amending subsection (d) to read as follows:

6 "(d) This section shall not apply to cigarettes that are
 7 exempt from taxes as provided by section ~~[245-3(b)-.]~~ 245-3(c)."

8 SECTION 10. Section 245-39, Hawaii Revised Statutes, is
 9 amended by amending subsection (a) to read as follows:

10 "(a) Sections 245-37 and 245-38 shall not apply to
 11 cigarettes that are exempt from taxes as provided by section
 12 ~~[245-3(b)-.]~~ 245-3(c)."

13 SECTION 11. Section 328L-5, Hawaii Revised Statutes, is
 14 amended as follows:

15 1. By amending subsection (a) to read:

16 "(a) There is established the Hawaii tobacco prevention
 17 and control trust fund as a separate fund of a nonprofit entity
 18 having a board of directors and qualifying under section
 19 501(c)(3) of the Internal Revenue Code of 1986, as amended, into
 20 which shall be deposited moneys received as provided under
 21 ~~[section]~~ sections 245-15(7) and 328L-2(b)(2). The director of



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1 health with the concurrence of the governor, shall select, in
2 accordance with law, the entity based upon the proven record of
3 accomplishment of the entity in administering a similar trust
4 fund."

5 2. By amending subsection (c) to read:

6 "(c) The entity selected under subsection (a), for each
7 fiscal year, may expend up to fifty per cent of the total market
8 value of the Hawaii tobacco prevention and control trust fund on
9 the preceding June 30, for tobacco prevention and control,
10 including but not limited to [7] establishing and funding a
11 comprehensive youth tobacco cessation program pursuant to
12 section 245-15(7), reducing cigarette smoking and tobacco use
13 among youth and adults through education and enforcement
14 activities, and controlling and preventing chronic diseases
15 where tobacco is a risk factor."

16 SECTION 12. Section 712-1258, Hawaii Revised Statutes, is
17 amended by amending subsection (6) to read as follows:

18 "(6) Any person who violates subsection (1) or (4), or
19 both, shall be fined \$500 for the first offense. Any subsequent
20 offenses shall subject the person to a fine not less than \$500



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1 nor more than \$2,000. Any person under twenty-one years of age
2 who violates subsection (5) [~~shall be~~]:

3 (a) For the first offense, shall:

4 (i) Be fined \$10 for the first offense[~~Any~~];

5 (ii) Complete a tobacco education program or a tobacco
6 use cessation program approved by the director of
7 health or;

8 (iii) Perform three hours of community service during
9 hours when the person is not employed and is not
10 attending school; and

11 (b) For any subsequent offense, shall [~~subject the~~
12 ~~violate~~]:

13 (i) Be subject to a fine of \$50, no part of which
14 shall be suspended[~~7~~]; or [~~the person shall be~~
15 ~~required to perform~~]

16 (ii) Perform not less than forty-eight hours nor more
17 than seventy-two hours of community service
18 during hours when the person is not employed and
19 is not attending school.

20 Any tobacco product or electronic smoking device, as those
21 terms are defined in subsection (7), in the person's possession



1 at the time of violation of subsection (5) shall be seized,
2 summarily forfeited to the State, and destroyed by law
3 enforcement following the conclusion of an administrative or
4 judicial proceeding finding that a violation of subsection (5)
5 has been committed. The procedures set forth in chapter 712A
6 shall not apply to this subsection."

7 SECTION 13. Chapter 28, part XII, Hawaii Revised Statutes,
8 is repealed.

9 SECTION 14. Section 245-17, Hawaii Revised Statutes, is
10 repealed.

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

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

20 ~~(1) An independently operated third party database or~~
21 ~~aggregate of databases that are regularly used by~~



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



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

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

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

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

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

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

19 SECTION 15. This Act does not affect rights and duties
20 that matured, penalties that were incurred, and proceedings that
21 were begun before its effective date.



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1 SECTION 16. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 17. This Act shall take effect on July 1, 2021.

4

INTRODUCED BY: *Rosey H Baker*



S.B. NO. 63

Report Title:

Flavored Tobacco Products; Cigarette Tax and Tobacco Tax; Retail Sale; Electronic Smoking Device; Tobacco Products; Hawaii Tobacco Prevention and Control Trust Fund; Comprehensive Youth Tobacco Cessation Program

Description:

Makes unlawful the sale of flavored products for electronic smoking devices, mislabeling of e-liquid products containing nicotine, and sale of tobacco products other than through retail sales via in-person exchange. Establishes penalties. Includes e-liquid and electronic smoking devices in the definition of "tobacco products" for purposes of the cigarette tax and tobacco tax law. Increases the license fee for wholesalers and dealers of tobacco products and retail tobacco permit fee. Requires retailers to pay an additional excise tax on the retail price of electronic smoking devices on and after 7/1/2021. Directs a certain percentage of moneys received from the cigarette tax and tobacco tax to the Hawaii tobacco prevention and control trust fund to establish and fund a comprehensive youth tobacco cessation program. Requires a person under twenty-one years of age who unlawfully purchases or possesses tobacco products, including electronic smoking devices, to complete a tobacco education or use cessation program or perform community service for a first offense. Repeals the electronic smoking device retailer registration unit. Repeals provisions relating to delivery of sales under the cigarette tax and tobacco tax law.

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