

1 "Electronic smoking device" has the same meaning as defined
2 in section 28-162.

3 "E-liquid" means any liquid or like substance, including
4 heated smoking products, which may or may not contain nicotine,
5 that is designed or intended to be used in an electronic smoking
6 device, regardless of whether packaged in a cartridge or other
7 container. "E-liquid" does not include prescription drugs;
8 medical cannabis or manufactured cannabis products; or medical
9 devices used to inhale or ingest prescription drugs, including
10 devices sold at a licensed medical cannabis dispensary.

11 "Entity" means one or more individuals, a company,
12 corporation, a partnership, an association, or any other type of
13 legal entity.

14 "Manufacturer's list price" means the invoice price for
15 which a manufacturer or supplier sells an electronic smoking
16 device or e-liquid product to a distributor or wholesaler
17 exclusive of any discount or other reduction.

18 "Persons" means one or more people, a company, corporation,
19 a partnership, or an association.

20 "Place of business" has the same meaning as defined in
21 section 28-162.



1 "Retailer" means an entity that engages in the practice of
2 selling electronic smoking devices or e-liquid products to
3 consumers.

4 "Sale" includes every act of selling, whether in a face-to-
5 face transaction or otherwise, and includes any sale or act of
6 selling that originates from any order that is placed or
7 submitted by means of a telephonic or other method of voice
8 transmission, the mail, or any other delivery service, or the
9 Internet or other online service.

10 "Sell" has the same meaning as defined in section 245-1.

11 "Use" means the exercise of any right or power incident to
12 ownership or possession, other than the sale, or the keeping or
13 retention for the purpose of sale.

14 "Wholesaler" means a person rendering a distribution
15 service who buys and maintains, at the person's place of
16 business, a stock of electronic smoking devices or e-liquid
17 products that the person uses, possess, or distributes only to
18 retailers or other wholesalers, or both.

19 § -2 **Taxes; limitations.** (a) Every wholesaler or
20 dealer, in addition to any other taxes provided by law, shall
21 pay for the privilege of conducting business and other



1 activities in the State an excise tax equal to per cent of
2 the manufacturer's list price of each electronic smoking device
3 or e-liquid product sold, used, or possessed by the wholesaler
4 or dealer on or after , whether or not sold at
5 wholesale, or if not sold then at the same rate upon the use by
6 the wholesaler or dealer.

7 (b) The taxes shall be paid only once with respect to the
8 same electronic smoking device or e-liquid product.

9 § -3 **Returns.** Every wholesaler or dealer, on or before
10 the twentieth day of each month, shall file with the department
11 a return showing the electronic smoking devices or e-liquid
12 products sold, used, or possessed by the wholesaler or dealer
13 during the preceding calendar month and of the taxes chargeable
14 against the taxpayer in accordance with this chapter. The form
15 of the return shall be prescribed by the department and shall
16 include:

17 (1) A separate statement of the number and manufacturer's
18 list price of electronic smoking devices;

19 (2) A separate statement of the number and manufacturer's
20 list price of e-liquid products sold, used, or
21 possessed; and



1 (3) Any other information that the department may deem
2 necessary, for the proper administration of this
3 chapter.

4 § -4 **Payment of taxes; penalties.** At the time of the
5 filing of the return required under section -3 and within the
6 time prescribed, each wholesaler or dealer shall pay to the
7 department the taxes imposed by this chapter, required to be
8 shown by the return, including the unpaid amount of taxes
9 imposed by this chapter.

10 Penalties and interest shall be added to and become a part
11 of the taxes, when and as provided by section 231-39.

12 § -5 **Determination of taxes; additional assessments,**
13 **credits, and refunds.** (a) As soon as practicable after each
14 return has been filed, the department shall cause it to be
15 examined and shall compute and determine the amount of the taxes
16 payable thereon.

17 (b) If it should appear upon the examination or within
18 five years after the filing of the return, or at any time if no
19 return has been filed, as a result of the examination, or as a
20 result of any examination of the records of the wholesaler or
21 dealer, or of any other inquiry or investigation, that the



1 correct amount of the taxes is greater than that shown on the
2 return, or that any taxes imposed by this chapter have not been
3 paid, an assessment of the taxes may be made in the manner
4 provided in section 235-108(b). The amount of the taxes for the
5 period covered by the assessment shall not be reduced below the
6 amount determined by an assessment so made, except upon appeal
7 or in a proceeding brought pursuant to section 40-35.

8 (c) If the wholesaler or dealer has paid or returned with
9 respect to any month more than the amount determined to be the
10 correct amount of taxes for the month, the amount of the taxes
11 so returned and any assessment of taxes made pursuant to the
12 return may be reduced, and any overpayment of taxes may be
13 credited upon the taxes imposed by this chapter, or at the
14 election of the wholesaler or dealer, the wholesaler or dealer
15 not being delinquent in the payment of any taxes owing to the
16 State, may be refunded in the manner provided in section 231-
17 23(c); provided that no reduction of taxes may be made when
18 forbidden by subsection (b) or more than five years after the
19 filing of the return.

20 § -6 **Records to be kept.** (a) Each wholesaler or dealer
21 shall keep a record of:



- 1 (1) Every sale or use of electronic smoking devices and e-
2 liquid products by the wholesaler or dealer;
- 3 (2) The number and manufacturer's list price of electronic
4 smoking devices;
- 5 (3) The manufacturer's list price of e-liquid products
6 sold, used, or possessed; and
- 7 (4) The taxes payable on electronic smoking devices and e-
8 liquid products sold, used, or possessed, if any,
9 in a form as the department may prescribe. The records shall be
10 offered for inspection and examination at any time upon demand
11 by the department or the attorney general, and shall be
12 preserved for a period of five years, except that the department
13 and the attorney general, in writing, shall both consent to
14 their destruction within the five-year period or either the
15 department or the attorney general may require that the records
16 be kept longer. The department, by rule, may require the
17 wholesaler or dealer to keep other records as the department may
18 deem necessary for the proper enforcement of this chapter.
- 19 (b) If any wholesaler or dealer fails to keep records from
20 which a proper determination of the taxes due under this chapter
21 may be made, the department may fix the amount of the taxes for



1 any period from the best information obtainable by the
2 department and assess the taxes as provided in this chapter.

3 **§ -7 Inspection.** The department and the attorney
4 general may examine all records, including tax returns, required
5 to be kept or filed under this chapter, and books, paper, and
6 records of any person engaged in the business of wholesaling or
7 dealing electronic smoking devices and e-liquid products to
8 verify the accuracy of the payment of the taxes imposed by this
9 chapter. Every person in possession of any books, papers, and
10 records, and the person's agents and employees, are directed and
11 required to give the department and the attorney general the
12 means, facilities, and opportunities for the examinations.

13 **§ -8 Appeals.** Any person aggrieved by any assessment of
14 the taxes imposed by this chapter may appeal from the assessment
15 in the manner and within the time and in all other respects as
16 provided in the case of income tax appeals by section 235-114.
17 The hearing and disposition of the appeal, including the
18 distribution of costs shall be as provided in chapter 232.

19 **§ -9 Investigations; contempt; fees.** (a) The director
20 of taxation, and any agent of the director duly authorized by
21 the director to conduct any inquiry, investigation, or hearing



1 hereunder, shall have power to administer oaths and take
2 testimony under oath relative to the matter of inquiry or
3 investigation. At any hearing ordered by the director, the
4 director or the director's agent authorized to conduct the
5 hearing may subpoena witnesses and require the production of
6 books, papers, and documents pertinent to the inquiry. No
7 witness under subpoena authorized to be issued by this section
8 shall be excused from testifying or from producing books or
9 papers on the ground that the testimony or the production of the
10 books or other documentary evidence would tend to incriminate
11 the witness, or subject the witness to penalty or forfeiture;
12 provided that no person shall be prosecuted, punished, or
13 subjected to any penalty or forfeiture for or on account of any
14 act, transaction, matter, or thing concerning which the person
15 shall, under oath, have testified or produced documentary
16 evidence.

17 (b) If any person disobeys such process or, having
18 appeared in obedience thereto, refuses to answer any pertinent
19 question put to the person by the director or the director's
20 authorized agent, or to produce any books and papers pursuant
21 thereto, the director or agent may apply to the circuit court of



1 the circuit where the taxpayer resides or where the transaction,
2 act, or activity under investigation has occurred, or to any
3 judge of the court, setting forth the disobedience to process or
4 refusal to answer, and the court or the judge shall cite the
5 person to appear before the court or the judge to answer the
6 question or to produce the books and papers and, upon the
7 person's refusal so to do, shall commit the person to jail until
8 the person shall testify, but not for a longer period than sixty
9 days. Notwithstanding the serving of the term of commitment by
10 any person, the director may proceed in all respects with the
11 inquiry and examination as if the witness had not previously
12 been called upon to testify.

13 (c) Officers who serve subpoenas issued by the director or
14 under the director's authority, and witnesses attending hearings
15 conducted by the director hereunder, shall receive like fees and
16 compensation as officers and witnesses in the circuit courts of
17 the State, to be paid on vouchers of the director, from any
18 moneys available for litigation expenses of the department of
19 taxation.

20 § -10 **Administration by director; rules.** The
21 administration of this chapter is vested in the director of



1 taxation, who may adopt and enforce rules for the enforcement
2 and administration of this chapter.

3 The rules shall be adopted by the director pursuant to
4 chapter 91.

5 § -11 **Chapter 235 and chapter 237 applicable.** All of
6 the provisions of chapter 235 and chapter 237 not inconsistent
7 with this chapter and that may appropriately be applied to the
8 taxes, persons, circumstances, and situations involved in this
9 chapter, including (without prejudice to the generality of the
10 foregoing) provisions as to penalties and interest, and
11 provisions granting administrative powers to the department, and
12 provisions for the assessment, levy, and collection of taxes,
13 shall be applicable to the taxes imposed by this chapter, and to
14 the assessment, levy, and collection thereof.

15 § -12 **Distribution of revenues.** All moneys collected
16 pursuant to this chapter shall be paid into the state treasury
17 as state realizations, to be kept and accounted for as provided
18 by law."

19 SECTION 2. Chapter 28, part XII, is amended by amending
20 its title to read as follows:



1 "PART XII. ELECTRONIC SMOKING DEVICE AND E-LIQUID PRODUCTS
2 RETAILER AND WHOLESALER REGISTRATION UNIT"

3 SECTION 3. Section 28-161, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~+~~\$28-161~~+~~ **Policy.** The registration of electronic
6 smoking device and e-liquid products retailers and wholesalers
7 is reasonably necessary to protect the health, safety, or
8 welfare of consumers of electronic smoking devices and e-liquid
9 products and for the enforcement of the laws that regulate the
10 sale of electronic smoking devices~~-~~ and e-liquid products."

11 SECTION 4. Section 28-162, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By inserting three new definitions to be appropriately
14 inserted and to read as follows:

15 ""E-liquid" has the same meaning as defined in section -
16 1.

17 "Wholesale sale" or "electronic smoking device or e-liquid
18 product wholesaling" means the sale of an electronic smoking
19 device or e-liquid product by a wholesaler to a retailer or
20 other wholesaler, or both.



1 "Wholesaler" has the same meaning as defined in
2 section -1."

3 2. By amending the definition of "business location" or
4 "place of business" to read:

5 ""Business location" or "place of business" means the
6 entire premises occupied by a retailer of electronic smoking
7 devices or e-liquid products and shall include but is not
8 limited to any store, stand, outlet, vehicle, cart, location,
9 vending machine, or structure from which electronic smoking
10 devices or e-liquid products are sold or distributed to a
11 consumer."

12 3. By amending the definition of "retail sale" or
13 "electronic smoking device retailing" to read:

14 "Retail sale" or "electronic smoking device or e-liquid
15 product retailing" means the practice of selling electronic
16 smoking devices or e-liquid products to consumers."

17 SECTION 5. Section 28-163, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**[+]§28-163[+] Electronic smoking device and e-liquid**
20 **products retailer and wholesaler registration unit.** There is
21 established in the department of the attorney general the



1 electronic smoking device and e-liquid products retailer and
2 wholesaler registration unit."

3 SECTION 6. Section 28-164, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) Every entity with a place of business in the State
6 that engages in the retail sale or wholesale sale of electronic
7 smoking devices or e-liquid products shall register with the
8 unit by providing all of the information required by this
9 section. Registration shall not be approved unless all of the
10 applicable provisions of this section have been met to the
11 satisfaction of the unit."

12 SECTION 7. Section 28-165, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) Upon approval of an entity's registration, the unit
15 shall issue a certificate to the entity for each place of
16 business where the entity will engage in electronic smoking
17 device or e-liquid product retailing[+] or electronic smoking
18 device or e-liquid product wholesaling."

19 SECTION 8. Section 28-166, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "**[+]§28-166[+]** **Inspection.** (a) The unit may examine all
2 records of any entity engaged in the business of electronic
3 smoking device or e-liquid product retailing or electronic
4 smoking device or e-liquid product wholesaling to verify the
5 accuracy of the information provided for registration or to
6 verify that an entity is selling electronic smoking devices or
7 e-liquid products without being registered. Every person in
8 possession of any books, papers, and records, and the person's
9 agents and employees, are directed and required to give the unit
10 opportunities for examination of applicable records.

11 (b) The unit may inspect the operations, premises, and
12 storage areas of any entity engaged in the retail sale or
13 wholesale sale of electronic smoking devices or e-liquid
14 products as necessary."

15 SECTION 9. Section 28-168, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "**[+]§28-168[+]** **Civil penalty for failure to register.** An
18 entity that fails to register with the unit within thirty days
19 of engaging in the retail sale or wholesale sale of electronic
20 smoking devices or e-liquid products shall be subject to a civil
21 penalty of \$100 for each day that the violation of this section



1 continues, plus the costs of any investigations conducted by the
2 unit."

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

5 SECTION 11. This Act shall take effect on January 1, 3000.

6



Report Title:

Electronic Smoking Devices; E-Liquids; Electronic Smoking Device and E-Liquid Products Retailer and Wholesaler Registration Unit; Wholesalers; Tax

Description:

Establishes a tax equal based on the manufacturer's list price for electronic smoking devices and e-liquid products. Expands the electronic smoking device retailer registration unit to include wholesalers and e-liquid products retailers and wholesalers. Requires electronic cigarette and e-liquid products retailers and wholesalers to register with the electronic smoking device and e-liquid products retailer and wholesaler registration unit. Effective 1/1/3000. (HD1)

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