



1 distributes or uses such electronic smoking devices or e-liquid  
2 products.

3 "Department" means the department of taxation.

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

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

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



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

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

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

13 § -2 **Taxes; limitations.** (a) Every wholesaler or  
14 dealer, in addition to any other taxes provided by law, shall  
15 pay for the privilege of conducting business and other  
16 activities in the State an excise tax equal to seventy per cent  
17 of the manufacturer's list price of each electronic smoking  
18 device or e-liquid product sold by the wholesaler or dealer on  
19 or after , whether or not sold at wholesale, or if not  
20 sold then at the same rate upon the use by the wholesaler or  
21 dealer.



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

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

- 11 (1) A separate statement of the number and manufacturer's  
12 list price of electronic smoking devices;
- 13 (2) A separate statement of the number and manufacturer's  
14 list price of e-liquid products sold, possessed, or  
15 used; and
- 16 (3) Any other information that the department may deem  
17 necessary, for the proper administration of this  
18 chapter.

19 § -4 **Payment of taxes; penalties.** At the time of the  
20 filing of the return required under section -3 and within the  
21 time prescribed, each wholesaler or dealer shall pay to the



1 department the taxes imposed by this chapter, required to be  
2 shown by the return, including the unpaid amount of taxes  
3 imposed by this chapter.

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

6 **§ -5 Determination of taxes; additional assessments,**  
7 **credits, and refunds.** (a) As soon as practicable after each  
8 return shall have been filed, the department shall cause it to  
9 be examined and shall compute and determine the amount of the  
10 taxes payable thereon.

11 (b) If it should appear upon the examination or within  
12 five years after the filing of the return, or at any time if no  
13 return has been filed, as a result of the examination, or as a  
14 result of any examination of the records of the wholesaler or  
15 dealer, or of any other inquiry or investigation, that the  
16 correct amount of the taxes is greater than that shown on the  
17 return, or that any taxes imposed by this chapter have not been  
18 paid, an assessment of the taxes may be made in the manner  
19 provided in section 235-108(b). The amount of the taxes for the  
20 period covered by the assessment shall not be reduced below the



1 amount determined by an assessment so made, except upon appeal  
2 or in a proceeding brought pursuant to section 40-35.

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

15 § -6 **Records to be kept.** (a) Each wholesaler or dealer  
16 shall keep a record of:

- 17 (1) Every sale or use of electronic smoking devices and e-  
18 liquid products by the wholesaler or dealer;
- 19 (2) The number and manufacturer's list price of electronic  
20 smoking devices;



1           (3) The manufacturer's list price of e-liquid products,  
2           sold, possessed, or used; and

3           (4) The taxes payable on electronic smoking devices and e-  
4           liquid products sold, possessed, or used, if any,  
5 in a form as the department may prescribe. The records shall be  
6 offered for inspection and examination at any time upon demand  
7 by the department or the attorney general, and shall be  
8 preserved for a period of five years, except that the department  
9 and the attorney general, in writing, shall both consent to  
10 their destruction within the five-year period or either the  
11 department or the attorney general may require that they be kept  
12 longer. The department, by rule, may require the wholesaler or  
13 dealer to keep other records as it may deem necessary for the  
14 proper enforcement of this chapter.

15           (b) If any wholesaler or dealer fails to keep records from  
16 which a proper determination of the taxes due under this chapter  
17 may be made, the department may fix the amount of the taxes for  
18 any period from the best information obtainable by it and assess  
19 the taxes as provided in this chapter.

20           § -7 **Inspection.** The department and the attorney  
21 general may examine all records, including tax returns, required



1 to be kept or filed under this chapter, and books, paper, and  
2 records of any person engaged in the business of wholesaling or  
3 dealing electronic smoking devices and e-liquid products to  
4 verify the accuracy of the payment of the taxes imposed by this  
5 chapter. Every person in possession of any books, papers, and  
6 records, and the person's agents and employees, are directed and  
7 required to give the department and the attorney general the  
8 means, facilities, and opportunities for the examinations.

9       **§ -8 Appeals.** Any person aggrieved by any assessment of  
10 the taxes imposed by this chapter may appeal from the assessment  
11 in the manner and within the time and in all other respects as  
12 provided in the case of income tax appeals by section 235-114.  
13 The hearing and disposition of the appeal, including the  
14 distribution of costs shall be as provided in chapter 232.

15       **§ -9 Investigations; contempt; fees.** (a) The director  
16 of taxation, and any agent of the director duly authorized by  
17 the director to conduct any inquiry, investigation, or hearing  
18 hereunder, shall have power to administer oaths and take  
19 testimony under oath relative to the matter of inquiry or  
20 investigation. At any hearing ordered by the director, the  
21 director or the director's agent authorized to conduct the





1 hearing may subpoena witnesses and require the production of  
2 books, papers, and documents pertinent to the inquiry. No  
3 witness under subpoena authorized to be issued by this section  
4 shall be excused from testifying or from producing books or  
5 papers on the ground that such testimony or the production of  
6 such books or other documentary evidence would tend to  
7 incriminate the witness, or subject the witness to penalty or  
8 forfeiture; but no person shall be prosecuted, punished, or  
9 subjected to any penalty or forfeiture for or on account of any  
10 act, transaction, matter, or thing concerning which the person  
11 shall, under oath, have testified or produced documentary  
12 evidence.

13 (b) If any person disobeys such process or, having  
14 appeared in obedience thereto, refuses to answer any pertinent  
15 question put to the person by the director or the director's  
16 authorized agent, or to produce any books and papers pursuant  
17 thereto, the director or such agent may apply to the circuit  
18 court of the circuit wherein the taxpayer resides or wherein the  
19 transaction, act, or activity under investigation has occurred,  
20 or to any judge of such court, setting forth such disobedience  
21 to process or refusal to answer, and the court or the judge



1 shall cite such person to appear before the court or the judge  
2 to answer such question or to produce such books and papers and,  
3 upon the person's refusal so to do, shall commit such person to  
4 jail until the person shall testify, but not for a longer period  
5 than sixty days. Notwithstanding the serving of the term of  
6 such commitment by any person, the director may proceed in all  
7 respects with such inquiry and examination as if the witness had  
8 not previously been called upon to testify.

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

16 § -10 Administration by director; rules and regulations.

17 The administration of this chapter is vested in the director of  
18 taxation, who may prescribe and enforce rules and regulations  
19 for the enforcement and administration of this chapter.

20 The rules and regulations shall be prescribed by the  
21 director, subject to chapter 91.



1           §   -11   **Chapter 235 and chapter 237 applicable.** All of  
2 the provisions of chapter 235 and chapter 237 not inconsistent  
3 with this chapter and which may appropriately be applied to the  
4 taxes, persons, circumstances, and situations involved in this  
5 chapter, including (without prejudice to the generality of the  
6 foregoing) provisions as to penalties and interest, and  
7 provisions granting administrative powers to the department, and  
8 provisions for the assessment, levy, and collection of taxes,  
9 shall be applicable to the taxes imposed by this chapter, and to  
10 the assessment, levy, and collection thereof.

11           §   -12   **Distribution of revenues.** All moneys collected  
12 pursuant to this chapter shall be paid into the state treasury  
13 as state realizations, to be kept and accounted for as provided  
14 by law."

15           SECTION 2. Chapter 28, part XIII is amended by amending  
16 its title to read as follows:

17                   "PART XII.   ELECTRONIC SMOKING DEVICE RETAILER AND  
18                                   WHOLESALE REGISTRATION UNIT"

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



1           "[\S28-161] **Policy.** The registration of electronic  
2 smoking device retailers and wholesalers is reasonably necessary  
3 to protect the health, safety, or welfare of consumers of  
4 electronic smoking devices and for the enforcement of the laws  
5 that regulate the sale of electronic smoking devices."

6           SECTION 4. Section 28-162, Hawaii Revised Statutes, is  
7 amended by adding two new definitions to be appropriately  
8 inserted and to read as follows:

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

11           "Wholesale sale" or "electronic smoking device wholesaling"  
12 means the sale of an electronic smoking device by a wholesaler  
13 to a retailer, other wholesaler, or both."

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

16           "[\S28-163] **Electronic smoking device retailer and**  
17 **wholesaler registration unit.** There is established in the  
18 department of the attorney general the electronic smoking device  
19 retailer and wholesaler registration unit."

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



1           "(a) Every entity with a place of business in the State  
2 that engages in the retail or wholesale sale of electronic  
3 smoking devices shall register with the unit by providing all of  
4 the information required by this section. Registration shall  
5 not be approved unless all of the applicable provisions of this  
6 section have been met to the satisfaction of the unit."

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

9           "(a) Upon approval of an entity's registration, the unit  
10 shall issue a certificate to the entity for each place of  
11 business where the entity will engage in electronic smoking  
12 device retailing[~~-~~] or wholesaling."

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

15           "~~[+]~~**\$28-166[+]** **Inspection.** (a) The unit may examine all  
16 records of any entity engaged in the business of electronic  
17 smoking device retailing or wholesaling to verify the accuracy  
18 of the information provided for registration or to verify that  
19 an entity is selling electronic smoking devices without being  
20 registered. Every person in possession of any books, papers,  
21 and records, and the person's agents and employees, are directed



1 and required to give the unit opportunities for examination of  
2 applicable records.

3 (b) The unit may inspect the operations, premises, and  
4 storage areas of any entity engaged in the retail or wholesale  
5 sale of electronic smoking devices as necessary."

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

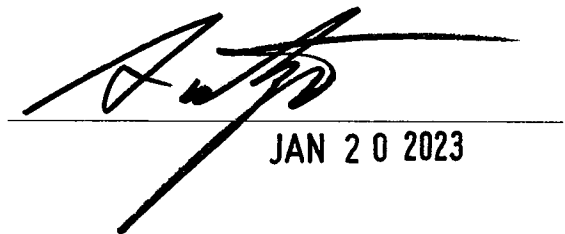
8 "[~~f~~]**\$28-168**[~~]~~ **Civil penalty for failure to register.** An  
9 entity that fails to register with the unit within thirty days  
10 of engaging in the retail or wholesale sale of electronic  
11 smoking devices shall be subject to a civil penalty of \$100 for  
12 each day that the violation of this section continues, plus the  
13 costs of any investigations conducted by the unit."

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

16 SECTION 11. This Act, upon its approval, shall apply to  
17 taxable years beginning after December 31, 2023.

18

INTRODUCED BY:

  
JAN 20 2023



# H.B. NO. 537

**Report Title:**

Electronic Smoking Devices; E-Liquids; Electronic Smoking Device  
Retailer Registration Unit; Wholesalers; Tax

**Description:**

Establishes a tax equal to seventy per cent of the manufacturer's list price for electronic smoking devices and e-liquid products. Expands the electronic smoking device retailer registration unit to include wholesalers. Requires electronic cigarette wholesalers to register with the electronic smoking device retailer and wholesaler registration unit.

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