THE SENATE THIRTY-SECOND LEGISLATURE, 2023 STATE OF HAWAII S.B. NO. <sup>975</sup> S.D. 2 H.D. 3

C.D. 1

## A BILL FOR AN ACT

RELATING TO HEALTH.

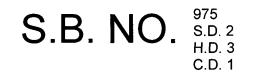
### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1	SECTION 1. Chapter 245, Hawaii Revised Statutes, is
2	amended by adding a new section to part I to be appropriately
3	designated and to read as follows:
4	" <u>§245-</u> Unlawful shipment of tobacco products; penalty;
5	liability for unpaid taxes. (a) A person or entity commits the
6	offense of unlawful shipment of tobacco products if the person
7	or entity:
8	(1) Is engaged in the business of selling tobacco
9	products; and
10	(2) Knowingly ships or causes to be shipped any tobacco
11	products to a person or entity in this State that is
12	not a licensee under this chapter.
13	(b) This section shall not apply to the shipment of
14	tobacco products if any of the following conditions are met:
15	(1) The tobacco products are exempt from taxes as provided

by section 245-3(b); or

16

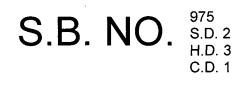




1	(2)	All applicable state taxes on the tobacco products are
2		paid in accordance with the requirements of this
3		chapter.
4	(c)	Unlawful shipment of tobacco products shall be:
5	(1)	A misdemeanor if the person or entity knowingly ships
6		or causes to be shipped tobacco products having a
7		value of less than \$10,000, in violation of subsection
8		(a); and
9	(2)	A class C felony if the person or entity knowingly
10		ships or causes to be shipped tobacco products having
11		a value of \$10,000 or more, in violation of subsection
12		<u>(a)</u> .
13	(d)	Notwithstanding the existence of other remedies at
14	law, any	person or entity that purchases, uses, controls, or
15	possesses	any tobacco products for which the applicable taxes
16	imposed u	nder title 14 have not been paid shall be liable for
17	the appli	cable taxes, plus any penalty and interest as provided
18	for by la	<u>W.</u>
19	<u>(e)</u>	For purposes of this section:

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1	(1)	A person or entity is a licensee if the person's or
2		entity's name appears on a list of authorized
3		licensees published by the department; and
4	(2)	"Value" means the retail fair market value at the time
5		of the offense."
6	SECT	ION 2. Section 245-1, Hawaii Revised Statutes, is
7	amended a	s follows:
8	1.	By adding two new definitions to be appropriately
9	inserted	and to read:
10	" <u>"E-</u>	liquid" means any liquid or like substance, which may
11	or may no	t contain nicotine, that is designed or intended to be
12	used in a	n electronic smoking device, whether or not packaged in
13	<u>a cartrid</u>	ge or other container.
14	<u>"E-l</u>	iquid" does not include:
15	(1)	Prescription drugs;
16	(2)	Cannabis for medical use pursuant to chapter 329 or
17		manufactured cannabis products pursuant to chapter
18		329D; or
19	(3)	Medical devices used to aerosolize, inhale, or ingest
20		prescription drugs, including manufactured cannabis
21		products described in section 329D-10.



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1	"Electronic smoking device" means any device that may be
2	used to deliver any aerosolized or vaporized substance to a
3	person inhaling from the device, including but not limited to ar
4	electronic cigarette, electronic cigar, electronic pipe, vape
5	pen, or electronic hookah. "Electronic smoking device" does not
6	include drugs, devices, or combination products authorized for
7	sale by the United States Food and Drug Administration, and
8	subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C.
9	301 et seq.)."
10	2. By amending the definition of "tobacco products" to
11	read:
12	""Tobacco products" means [ <del>tobacco</del> ]:
13	(1) <u>Tobacco</u> in any form, other than cigarettes or little
14	cigars, that is prepared or intended for consumption
15	or for personal use by humans, including large cigars
16	and any substitutes thereof other than cigarettes that
17	bear the semblance thereof, snuff, chewing or
18	smokeless tobacco, and smoking or pipe tobacco $[-]$ ; or
19	(2) Electronic smoking devices; or
20	(3) E-liquid."

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SECTION 3. Section 245-2, Hawaii Revised Statutes, is 1 2 amended by amending subsection (b) to read as follows: The license shall be issued by the department upon 3 "(b) application therefor, in [such] the form and manner [as shall 4 be] required by rule of the department, and the payment of a fee 5 6 of  $[\frac{2.50}{2}]$  \$250, and shall be renewable annually on July 1 for 7 the twelve months ending the succeeding June 30." SECTION 4. Section 245-2.5, Hawaii Revised Statutes, is 8 9 amended by amending subsections (c) and (d) to read as follows: 10 "(c) The retail tobacco permit shall be issued by the department upon application by the retailer in the form and 11 manner prescribed by the department, and the payment of a fee of 12 13 [<del>\$20.</del>] \$50. Permits shall be valid for one year, from 14 December 1 to November 30, and renewable annually. Whenever a 15 retail tobacco permit is defaced, destroyed, or lost, or the 16 permittee relocates the permittee's business, the department may 17 issue a duplicate retail tobacco permit to the permittee for a 18 fee of \$5 per copy.

(d) A separate retail tobacco permit shall be obtained for
each place of business owned, controlled, or operated by a
retailer. In seeking a retail tobacco permit, the applicant

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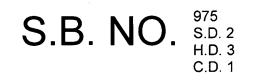
1	shall specify whether each place of business sells electronic
2	smoking devices, e-liquid, or both. A retailer that owns or
3	controls more than one place of business may submit a single
4	application for more than one retail tobacco permit. Each
5	retail tobacco permit issued shall clearly describe the place of
6	business where the operation of the business is conducted[-] and
7	whether the place of business sells electronic smoking devices,
8	e-liquid, or both."
9	SECTION 5. Section 245-3, Hawaii Revised Statutes, is
10	amended by amending subsection (a) to read as follows:
11	"(a) Every wholesaler or dealer, in addition to any other
12	taxes provided by law, shall pay, for the privilege of
13	conducting business and other activities in the State $[+]$ , an
14	excise tax equal to:
15	(1) [ <del>An excise tax equal to</del> ] 5.00 cents for each cigarette
16	sold, used, or possessed by a wholesaler or dealer
17	after June 30, 1998, whether or not sold at wholesale,
18	or if not sold, then at the same rate upon the use by
19	the wholesaler or dealer;
20	(2) [ <del>An excise tax equal to</del> ] 6.00 cents for each cigarette
21	sold, used, or possessed by a wholesaler or dealer

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1		after September 30, 2002, whether or not sold at
2		wholesale, or if not sold, then at the same rate upon
3		the use by the wholesaler or dealer;
4	(3)	[ <del>An excise tax equal to</del> ] 6.50 cents for each cigarette
5		sold, used, or possessed by a wholesaler or dealer
6		after June 30, 2003, whether or not sold at wholesale,
7		or if not sold, then at the same rate upon the use by
8		the wholesaler or dealer;
9	(4)	[An excise tax equal to] 7.00 cents for each cigarette
10		sold, used, or possessed by a wholesaler or dealer
11		after June 30, 2004, whether or not sold at wholesale,
12		or if not sold, then at the same rate upon the use by
13		the wholesaler or dealer;
14	(5)	[An excise tax equal to] 8.00 cents for each cigarette
15		sold, used, or possessed by a wholesaler or dealer on
16		and after September 30, 2006, whether or not sold at
17		wholesale, or if not sold, then at the same rate upon
18		the use by the wholesaler or dealer;
19	(6)	[ <del>An excise tax equal to</del> ] 9.00 cents for each cigarette
20		sold, used, or possessed by a wholesaler or dealer on
21		and after September 30, 2007, whether or not sold at

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1		wholesale, or if not sold, then at the same rate upon
2		the use by the wholesaler or dealer;
3	(7)	[ <del>An excise tax equal to</del> ] 10.00 cents for each
4		cigarette sold, used, or possessed by a wholesaler or
5		dealer on and after September 30, 2008, whether or not
6		sold at wholesale, or if not sold, then at the same
7		rate upon the use by the wholesaler or dealer;
8	(8)	[An excise tax equal to] 13.00 cents for each
9		cigarette sold, used, or possessed by a wholesaler or
10		dealer on and after July 1, 2009, whether or not sold
11		at wholesale, or if not sold, then at the same rate
12		upon the use by the wholesaler or dealer;
13	(9)	[ <del>An excise tax equal to</del> ] 11.00 cents for each little
14		cigar sold, used, or possessed by a wholesaler or
15		dealer on and after October 1, 2009, whether or not
16		sold at wholesale, or if not sold <u>,</u> then at the same
17		rate upon the use by the wholesaler or dealer;
18	(10)	[ <del>An excise tax equal to</del> ] 15.00 cents for each
19		cigarette or little cigar sold, used, or possessed by
20		a wholesaler or dealer on and after July 1, 2010,
21		whether or not sold at wholesale, or if not sold, then



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1 at the same rate upon the use by the wholesaler or dealer; 2 [An excise tax-equal to] 16.00 cents for each 3 (11) cigarette or little cigar sold, used, or possessed by 4 a wholesaler or dealer on and after July 1, 2011, 5 whether or not sold at wholesale, or if not sold, then 6 7 at the same rate upon the use by the wholesaler or 8 dealer; 9 (12)[An excise tax equal to seventy] Seventy per cent of the wholesale price of each article or item of tobacco 10 products, other than large cigars, electronic smoking 11 devices, and e-liquids, sold by the wholesaler or 12 dealer on and after September 30, 2009, whether or not 13 sold at wholesale, or if not sold, then at the same 14 15 rate upon the use by the wholesaler or dealer; [and] 16 (13) [An excise-tax equal to fifty] Fifty per cent of the 17 wholesale price of each large cigar of any length  $[\tau]$ 18 sold, used, or possessed by a wholesaler or dealer on 19 and after September 30, 2009, whether or not sold at 20 wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer [-;]; and 21



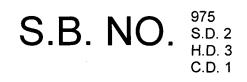
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1	(14) Seventy per cent of the wholesale price of each
2	electronic smoking device or e-liquid sold, used, or
3	possessed by a wholesaler or dealer on and after
4	January 1, 2024, whether or not sold at wholesale, or
5	if not sold, then at the same rate upon the use by the
6	wholesaler or dealer.
7	Where the tax imposed has been paid on cigarettes, little
8	cigars, or tobacco products that thereafter become the subject
9	of a casualty loss deduction allowable under chapter 235, the
10	tax paid shall be refunded or credited to the account of the
11	wholesaler or dealer. The tax shall be applied to cigarettes
12	through the use of stamps."
13	SECTION 6. Chapter 28, part XII, Hawaii Revised Statutes,
14	is repealed.
15	SECTION 7. Section 245-17, Hawaii Revised Statutes, is
16	repealed.
17	[" <del>[§245-17] Delivery sales. (</del> a) No person shall conduct
18	a delivery sale or otherwise ship or transport, or cause to be
19	shipped or transported, any electronic smoking device in
20	connection with a delivery sale to any person under the age of
21	twenty-one.

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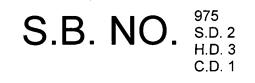
1	(b) A person who makes delivery sales	<del>-shall not accept a</del>
2	purchase or order from any person without f	irst-obtaining the
3	full name, birth date, and address of that	person and verifying
4	the purchaser's age by:	
5	(1) An independently operated third-p	<del>arty-database or</del>
6	aggregate of databases that are r	<del>egularly used by</del>
7	government and businesses for the	- purpose of age and
8	identity verification and authent	ication;
9	(2) Receiving a copy of a government	issued identification
10	card from the purchaser; or	
11	(3) Requiring age and signature verif	ication in the
12	shipment process and upon and bef	ore actual delivery.
13	(e) The purchaser shall certify their	-age before
14	completing the purchaser's order.	
15	(d) Any person who violates this sect	ion shall be-fined
16	\$500 for the first offense. Any subsequent	offenses shall
17	subject the person to a fine of no less tha	<del>n \$500 but no more</del>
18	than \$2,000. Any person under twenty one y	ears of age who
19	violates this section shall be fined \$10 fo	r the first offense;
20	provided that any subsequent offense shall	subject the person to
21	a fine of \$50, no part of which shall be su	<del>spended, or the</del>

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1	person shall be required to perform no less than forty-eight
2	hours but no more than seventy two hours of community service
3	during hours when the person is not employed or attending
4	school.
5	(c) The department shall not adopt rules prohibiting
6	delivery sales.
7	(f) For the purposes of this section:
8	"Delivery sale" means any sale of an electronic smoking
9	device to a purchaser in the State where either:
10	(1) The purchaser submits the order for sale by means of a
11	telephonic or other method of voice transmission, the
12	mail or any other delivery service, or the internet or
13	other online-service; or
14	(2) The electronic smoking device is delivered by use of
15	the mail or any other delivery service.
16	The foregoing sales of electronic smoking devices shall
17	constitute a delivery sale regardless of whether the seller is
18	located within or without the State.
19	"Electronic smoking device" means any electronic product
20	that can be used to aerosolize and deliver nicotine or other
21	substances-to the person inhaling from the device, including but





1	not limited to an electronic cigarette, electronic cigar,
2	electronic-cigarillo, or electronic pipe, and any cartridge or
3	other component of the device or related product."]
4	SECTION 8. This Act does not affect rights and duties that
5	matured, penalties that were incurred, and proceedings that were
6	begun before its effective date.
7	SECTION 9. Statutory material to be repealed is bracketed
8	and stricken. New statutory material is underscored.
9	SECTION 10. This Act shall take effect on July 1, 2023.





#### Report Title:

Electronic Smoking Devices; Unlawful Shipment of Tobacco Products; Penalties; E-Liquids; Tobacco Products; License Fees; Permit Fees; Tax

#### Description:

Establishes the offense of unlawful shipment of tobacco products. Includes electronic smoking devices and e-liquids under the definition of "tobacco products" for purposes of the cigarette tax and tobacco tax law. Amends the license and permit fees for wholesalers, dealers, and retailers. Beginning 1/1/2024, imposes an excise tax on each electronic smoking device or e-liquid sold, used, or possessed by a wholesaler or dealer. Repeals the electronic smoking device retailer registration unit under the department of the attorney general. Repeals provisions governing delivery sales. (CD1)

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