
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 "§245- 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
16 by section 245-3(b); or



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 (a).

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 under title 14 have not been paid shall be liable for
17 the applicable taxes, plus any penalty and interest as provided
18 for by law.

19 (e) For purposes of this section:



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 SECTION 2. Section 245-1, Hawaii Revised Statutes, is
7 amended as follows:

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

10 "E-liquid" means any liquid or like substance, which may
11 or may not contain nicotine, that is designed or intended to be
12 used in an electronic smoking device, whether or not packaged in
13 a cartridge or other container.

14 "E-liquid" 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.



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 an
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 [~~tobacco~~]:

- 13 (1) Tobacco 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."



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

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

8 SECTION 4. Section 245-2.5, Hawaii Revised Statutes, is
9 amended by amending subsections (c) and (d) to read as follows:

10 "(c) The retail tobacco permit shall be issued by the
11 department upon application by the retailer in the form and
12 manner prescribed by the department, and the payment of a fee of
13 [~~\$20.~~] \$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.

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



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) [~~An excise tax equal to~~] 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) [~~An excise tax equal to~~] 6.00 cents for each cigarette
 21 sold, used, or possessed by a wholesaler or dealer



- 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) [~~An excise tax equal to~~] 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) [~~An excise tax equal to~~] 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



- 1 wholesale, or if not sold, then at the same rate upon
2 the use by the wholesaler or dealer;
- 3 (7) ~~[An excise tax equal to]~~ 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) ~~[An excise tax equal to]~~ 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, then at the same
17 rate upon the use by the wholesaler or dealer;
- 18 (10) ~~[An excise tax equal to]~~ 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



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

3 (11) [~~An excise tax equal to~~] 16.00 cents for each
4 cigarette or little cigar sold, used, or possessed by
5 a wholesaler or dealer on and after July 1, 2011,
6 whether or not sold at wholesale, or if not sold, then
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
10 the wholesale price of each article or item of tobacco
11 products, other than large cigars, electronic smoking
12 devices, and e-liquids, sold by the wholesaler or
13 dealer on and after September 30, 2009, whether or not
14 sold at wholesale, or if not sold, then at the same
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[~~-~~]
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
21 the use by the wholesaler or dealer[~~-~~]; and



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 ~~["§245-17] Delivery sales. (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.~~



1 ~~(b) A person who makes delivery sales shall not accept a~~
2 ~~purchase or order from any person without first 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 party database or~~
6 ~~aggregate of databases that are regularly used by~~
7 ~~government and businesses for the purpose of age and~~
8 ~~identity verification and authentication;~~

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

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

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

15 ~~(d) Any person who violates this section shall be fined~~
16 ~~\$500 for the first offense. Any subsequent offenses shall~~
17 ~~subject the person to a fine of no less than \$500 but no more~~
18 ~~than \$2,000. Any person under twenty one years of age who~~
19 ~~violates this section shall be fined \$10 for 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 suspended, or the~~



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 ~~(e) 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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