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## A BILL FOR AN ACT

RELATING TO ELECTRONIC SMOKING DEVICES.

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

1           SECTION 1. Section 132C-2, Hawaii Revised Statutes, is  
2 amended by amending the definition of "cigarette" to read as  
3 follows:

4           ""Cigarette" means:

5           (1) Any roll for smoking, whether made wholly or in part  
6 of tobacco or any other substance, irrespective of  
7 size or shape, and whether or not the tobacco or  
8 substance is flavored, adulterated, or mixed with any  
9 other ingredient, with a wrapper or cover that is made  
10 of paper or any other substance or material, other  
11 than tobacco; [~~or~~]

12           (2) Any roll for smoking wrapped in any substance  
13 containing tobacco, which, due to its appearance, the  
14 type of tobacco used in the filler, or its packaging  
15 and labeling, is likely to be offered to or purchased  
16 by consumers as a cigarette as described in paragraph

17           (1) [-]; or



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1        (3) Any electronic smoking device, as that term is defined  
2                    in section 709-908."

3            SECTION 2. Section 245-1, Hawaii Revised Statutes, is  
4 amended by amending the definition of "cigarette" to read as  
5 follows:

6            "'Cigarette" means any roll for smoking made wholly or in  
7 part of tobacco, irrespective of size and shape and whether or  
8 not the tobacco is flavored, adulterated, or mixed with any  
9 other ingredient, the wrapper or cover of which is made of paper  
10 or any other substance or material except tobacco. "Cigarette"  
11 shall also mean an electronic smoking device as that term is  
12 defined in section 709-908."

13            SECTION 3. Section 328J-1, Hawaii Revised Statutes, is  
14 amended by amending the definition of "smoke" or "smoking" to  
15 read as follows:

16            "Smoke" or "smoking" means inhaling or exhaling the fumes  
17 of tobacco or any other plant material, or burning or carrying  
18 any lighted smoking equipment for tobacco or any other plant  
19 material. "Smoke" or "smoking" includes the use of an  
20 electronic smoking device to simulate smoking in the delivery of



1 nicotine or other substances to the person inhaling from the  
2 electronic smoking device."

3 SECTION 4. Section 328J-16, Hawaii Revised Statutes, is  
4 amended by amending subsection (c) to read as follows:

5 "(c) As used in this section:

6 "Cigarette" includes an electronic smoking device as that  
7 term is defined in section 709-908.

8 "Cigarette vending machine" means a self-service device  
9 that dispenses cigarettes, cigars, tobacco, or any other product  
10 containing tobacco.

11 "Lunch wagon" means a mobile vehicle designed and  
12 constructed to transport food and from which food is sold to the  
13 general public and includes but is not limited to manapua  
14 trucks.

15 "Sell" or "sale" means to solicit and receive an order for;  
16 to have, keep, offer, or expose for sale; to deliver for value  
17 or in any other manner than purely gratuitously; to peddle; to  
18 keep with intent to sell; or to traffic in."

19 SECTION 5. Section 328J-17, Hawaii Revised Statutes, is  
20 amended by amending subsection (e) to read as follows:

21 "(e) As used in this section:



1       "Cigarette" includes an electronic smoking device as that  
2 term is defined in section 709-908.

3       "Distribute" means to pass out to members of the general  
4 public free of charge for the exclusive purpose of promoting a  
5 product."

6       SECTION 6. Section 346-158, Hawaii Revised Statutes, is  
7 amended to read as follows:

8       "~~§~~346-158~~§~~ No smoking in child care facilities. (a)  
9 Smoking shall be prohibited in all group child care homes, group  
10 child care centers, and family child care homes during their  
11 hours of operation.

12       (b) For the purposes of this section:

13       "Smoking" includes the use of an electronic smoking device  
14 to simulate smoking in the delivery of nicotine or other  
15 substances to the person inhaling from the electronic smoking  
16 device."

17       SECTION 7. Section 356D-6.5, Hawaii Revised Statutes, is  
18 amended by amending subsection (e) to read as follows:

19       "(e) For purposes of this section:

20       "Common areas" means roofs, halls, sidewalks, corridors,  
21 lobbies, stairs, stairways, fire escapes, entrances and exits of



1 the building or buildings, basements, yards, gardens,  
2 recreational facilities, parking areas, storage spaces, and  
3 other parts of the project or household normally in common use  
4 or other areas designated by the authority.

5 "Smoking" means inhaling, exhaling, burning, or carrying  
6 any lighted or heated tobacco product or plant product intended  
7 for inhalation in any manner or in any form. "Smoking" includes  
8 the use of an electronic smoking device to simulate smoking in  
9 the delivery of nicotine or other substances to the person  
10 inhaling from the electronic smoking device."

11 SECTION 8. Section 486P-1, Hawaii Revised Statutes, is  
12 amended by amending the definition of "cigarette" to read as  
13 follows:

14 "'Cigarette" means any product that contains nicotine, is  
15 intended to be burned or heated under ordinary conditions of  
16 use, and consists of or contains:

- 17 (1) Any roll of tobacco wrapped in paper or in any  
18 substance not containing tobacco;
- 19 (2) Tobacco, in any form, that is functional in the  
20 product, which, because of its appearance, the type of  
21 tobacco used in the filler, or its packaging and



1 labeling, is likely to be offered to, or purchased by,  
2 consumers as a cigarette; [~~or~~]

3 (3) Any roll of tobacco wrapped in any substance  
4 containing tobacco which, because of its appearance,  
5 the type of tobacco used in the filler, or its  
6 packaging and labeling, is likely to be offered to, or  
7 purchased by, consumers as a cigarette described in  
8 [+]paragraph[+] (1) of this definition[-]; or

9 (4) Any electronic smoking device as that term is defined  
10 in section 709-908.

11 The term "cigarette" includes "roll-your-own" (i.e., any tobacco  
12 which, because of its appearance, type, packaging, or labeling  
13 is suitable for use and likely to be offered to, or purchased  
14 by, consumers as tobacco for making cigarettes). For purposes  
15 of this definition of "cigarette", 0.09 ounces of "roll-your-  
16 own" tobacco shall constitute one individual "cigarette".

17 SECTION 9. Section 675-2, Hawaii Revised Statutes, is  
18 amended by amending subsection (d) to read as follows:

19 "[+]§675-2[+] Definitions. [~~(a)~~] As used in this  
20 chapter, the following terms shall mean as follows:



1 "Adjusted for inflation" means increased in accordance with  
2 the formula for inflation adjustment set forth in Exhibit C to  
3 the Master Settlement Agreement.

4 ~~[(b)]~~ "Affiliate" means a person who directly or  
5 indirectly owns or controls, is owned or controlled by, or is  
6 under common ownership or control with, another person. Solely  
7 for purposes of this definition, the terms "owns," "is owned"  
8 and "ownership" mean ownership of an equity interest, or the  
9 equivalent thereof, of ten percent or more, and the term  
10 "person" means an individual, partnership, committee,  
11 association, corporation or any other organization or group of  
12 persons.

13 ~~[(e)]~~ "Allocable share" means Allocable Share as that term  
14 is defined in the Master Settlement Agreement.

15 ~~[(d)]~~ "Cigarette" means any product that contains  
16 nicotine, is intended to be burned or heated under ordinary  
17 conditions of use, and consists of or contains (1) any roll of  
18 tobacco wrapped in paper or in any substance not containing  
19 tobacco; or (2) tobacco, in any form, that is functional in the  
20 product, which, because of its appearance, the type of tobacco  
21 used in the filler, or its packaging and labeling, is likely to



1 be offered to, or purchased by, consumers as a cigarette; or (3)  
2 any roll of tobacco wrapped in any substance containing tobacco  
3 which, because of its appearance, the type of tobacco used in  
4 the filler, or its packaging and labeling, is likely to be  
5 offered to, or purchased by, consumers as a cigarette described  
6 in clause (1) of this definition. The term "cigarette" includes  
7 an electronic smoking device, as that term is defined in section  
8 709-908, and "roll-your-own" (i.e., any tobacco which, because  
9 of its appearance, type, packaging, or labeling is suitable for  
10 use and likely to be offered to, or purchased by, consumers as  
11 tobacco for making cigarettes). For purposes of this definition  
12 of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall  
13 constitute one individual "cigarette."

14 [~~e~~] "Master Settlement Agreement" means the settlement  
15 agreement (and related documents) entered into on November 23,  
16 1998 by the State and leading United States tobacco product  
17 manufacturers.

18 [~~f~~] "Qualified escrow fund" means an escrow arrangement  
19 with a federally or State chartered financial institution having  
20 no affiliation with any tobacco product manufacturer and having  
21 assets of at least \$1,000,000,000 where such arrangement





1 requires that such financial institution hold the escrowed  
2 funds' principal for the benefit of releasing parties and  
3 prohibits the tobacco product manufacturer placing the funds  
4 into escrow from using, accessing or directing the use of the  
5 funds' principal except as consistent with section 3(b) of this  
6 Act.

7       ~~[(g)]~~ "Released claims" means Released Claims as that term  
8 is defined in the Master Settlement Agreement.

9       ~~[(h)]~~ "Releasing parties" means Releasing Parties as that  
10 term is defined in the Master Settlement Agreement.

11       ~~[(i)]~~ "Tobacco product manufacturer" means an entity that  
12 after the date of enactment of this Act directly (and not  
13 exclusively through any affiliate):

- 14       (1) manufactures cigarettes anywhere that such  
15 manufacturer intends to be sold in the United States,  
16 including cigarettes intended to be sold in the United  
17 States through an importer (except where such importer  
18 is an original participating manufacturer (as that  
19 term is defined in the Master Settlement Agreement)  
20 that will be responsible for the payments under the  
21 Master Settlement Agreement with respect to such



1 cigarettes as a result of the provisions of subsection  
2 II(mm) of the Master Settlement Agreement and that  
3 pays the taxes specified in subsection II(z) of the  
4 Master Settlement Agreement, and provided that the  
5 manufacturer of such cigarettes does not market or  
6 advertise such cigarettes in the United States);

7 (2) is the first purchaser anywhere for resale in the  
8 United States of cigarettes manufactured anywhere that  
9 the manufacturer does not intend to be sold in the  
10 United States; or

11 (3) becomes a successor of an entity described in  
12 paragraph (1) or (2).

13 The term "Tobacco Product Manufacturer" shall not include  
14 an affiliate of a tobacco product manufacturer unless such  
15 affiliate itself falls within any of (1)-(3) above.

16 [~~+~~] "Units sold" means the number of individual  
17 cigarettes sold in the State by the applicable tobacco product  
18 manufacturer (whether directly or through a distributor,  
19 retailer or similar intermediary or intermediaries) during the  
20 year in question, as measured by excise taxes collected by the  
21 State on packs (or "roll-your-own" tobacco containers) bearing



1 the excise tax stamp of the State. The Department of the  
2 Attorney General shall promulgate such regulations as are  
3 necessary to ascertain the amount of State excise tax paid on  
4 the cigarettes of such tobacco product manufacturer for each  
5 year."

6 SECTION 10. This Act does not affect rights and duties  
7 that matured, penalties that were incurred, and proceedings that  
8 were begun before its effective date.

9 SECTION 11. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

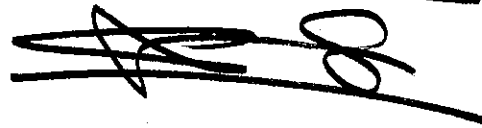
11 SECTION 12. This Act shall take effect on July 1, 2015.

12

INTRODUCED BY:







JAN 23 2015



# H.B. NO. 349

**Report Title:**

Electronic Smoking Devices; Cigarettes

**Description:**

Regulates electronic smoking devices as cigarettes for purposes such as cigarette and tobacco taxes, smoking restrictions, tobacco products reporting, and tobacco liability.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

