

JAN 23 2015

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 245-1, Hawaii Revised Statutes, is
2 amended by adding a new definition to be appropriately inserted
3 and to read as follows:

4 "Electronic smoking device" means any electronic product
5 that can be used to vaporize and deliver nicotine or other
6 substances to the person inhaling from the device, including but
7 not limited to an electronic cigarette, electronic cigar,
8 electronic cigarillo, or electronic pipe, and any cartridge or
9 other component of the device or related product."

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

12 "(a) Every wholesaler or dealer, in addition to any other
13 taxes provided by law, shall pay for the privilege of conducting
14 business and other activities in the State:

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,



1 or if not sold then at the same rate upon the use by
2 the wholesaler or dealer;

3 (2) An excise tax equal to 6.00 cents for each cigarette
4 sold, used, or possessed by a wholesaler or dealer
5 after September 30, 2002, whether or not sold at
6 wholesale, or if not sold then at the same rate upon
7 the use by the wholesaler or dealer;

8 (3) An excise tax equal to 6.50 cents for each cigarette
9 sold, used, or possessed by a wholesaler or dealer
10 after June 30, 2003, whether or not sold at wholesale,
11 or if not sold then at the same rate upon the use by
12 the wholesaler or dealer;

13 (4) An excise tax equal to 7.00 cents for each cigarette
14 sold, used, or possessed by a wholesaler or dealer
15 after June 30, 2004, whether or not sold at wholesale,
16 or if not sold then at the same rate upon the use by
17 the wholesaler or dealer;

18 (5) An excise tax equal to 8.00 cents for each cigarette
19 sold, used, or possessed by a wholesaler or dealer on
20 and after September 30, 2006, 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 (6) An excise tax equal to 9.00 cents for each cigarette
4 sold, used, or possessed by a wholesaler or dealer on
5 and after September 30, 2007, whether or not sold at
6 wholesale, or if not sold then at the same rate upon
7 the use by the wholesaler or dealer;

8 (7) An excise tax equal to 10.00 cents for each cigarette
9 sold, used, or possessed by a wholesaler or dealer on
10 and after September 30, 2008, whether or not sold at
11 wholesale, or if not sold then at the same rate upon
12 the use by the wholesaler or dealer;

13 (8) An excise tax equal to 13.00 cents for each cigarette
14 sold, used, or possessed by a wholesaler or dealer on
15 and after July 1, 2009, whether or not sold at
16 wholesale, or if not sold then at the same rate upon
17 the use by the wholesaler or dealer;

18 (9) An excise tax equal to 11.00 cents for each little
19 cigar sold, used, or possessed by a wholesaler or
20 dealer on and after October 1, 2009, whether or not



1 sold at wholesale, or if not sold then at the same
2 rate upon the use by the wholesaler or dealer;

3 (10) An excise tax equal to 15.00 cents for each cigarette
4 or little cigar sold, used, or possessed by a
5 wholesaler or dealer on and after July 1, 2010,
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 (11) An excise tax equal to 16.00 cents for each cigarette
10 or little cigar sold, used, or possessed by a
11 wholesaler or dealer on and after July 1, 2011,
12 whether or not sold at wholesale, or if not sold then
13 at the same rate upon the use by the wholesaler or
14 dealer;

15 (12) An excise tax equal to [~~seventy~~] 70 per cent of the
16 wholesale price of each article or item of tobacco
17 products, other than large cigars, sold by the
18 wholesaler or dealer on and after September 30, 2009,
19 whether or not sold at wholesale, or if not sold then
20 at the same rate upon the use by the wholesaler or
21 dealer; [~~and~~]



1 (13) An excise tax equal to fifty per cent of the wholesale
2 price of each large cigar of any length, sold, used,
3 or possessed by a wholesaler or dealer on and after
4 September 30, 2009, whether or not sold at wholesale,
5 or if not sold then at the same rate upon the use by
6 the wholesaler or dealer[-]; and

7 (14) An excise tax equal to 30 per cent of the wholesale
8 price of each electronic smoking device kit,
9 electronic smoking device nicotine cartridge, or
10 electronic smoking device nicotine refill sold, used,
11 or possessed by a wholesaler or dealer on or after
12 January 1, 2016, whether or not sold at wholesale, or
13 if not sold then at the same rate upon the use by the
14 wholesaler or dealer.

15 Where the tax imposed has been paid on cigarettes, little
16 cigars, or tobacco products that thereafter become the subject
17 of a casualty loss deduction allowable under chapter 235, the
18 tax paid shall be refunded or credited to the account of the
19 wholesaler or dealer. The tax shall be applied to cigarettes
20 through the use of stamps."



1 SECTION 3. Section 245-15, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§245-15 Disposition of revenues.** All moneys collected
4 pursuant to this chapter shall be paid into the state treasury
5 as state realizations to be kept and accounted for as provided
6 by law; provided that, of the moneys collected under the tax
7 imposed pursuant to:

8 (1) Section 245-3(a)(5), after September 30, 2006, and
9 prior to October 1, 2007, 1.0 cent per cigarette shall
10 be deposited to the credit of the Hawaii cancer
11 research special fund, established pursuant to section
12 304A-2168, for research and operating expenses and for
13 capital expenditures;

14 (2) Section 245-3(a)(6), after September 30, 2007, and
15 prior to October 1, 2008:

16 (A) 1.5 cents per cigarette shall be deposited to the
17 credit of the Hawaii cancer research special
18 fund, established pursuant to section 304A-2168,
19 for research and operating expenses and for
20 capital expenditures;



- 1 (B) 0.25 cents per cigarette shall be deposited to
2 the credit of the trauma system special fund
3 established pursuant to section 321-22.5; and
- 4 (C) 0.25 cents per cigarette shall be deposited to
5 the credit of the emergency medical services
6 special fund established pursuant to section
7 321-234;
- 8 (3) Section 245-3(a)(7), after September 30, 2008, and
9 prior to July 1, 2009:
- 10 (A) 2.0 cents per cigarette shall be deposited to the
11 credit of the Hawaii cancer research special
12 fund, established pursuant to section 304A-2168,
13 for research and operating expenses and for
14 capital expenditures;
- 15 (B) 0.5 cents per cigarette shall be deposited to the
16 credit of the trauma system special fund
17 established pursuant to section 321-22.5;
- 18 (C) 0.25 cents per cigarette shall be deposited to
19 the credit of the community health centers
20 special fund established pursuant to section
21 321-1.65; and



1 (D) 0.25 cents per cigarette shall be deposited to
2 the credit of the emergency medical services
3 special fund established pursuant to section
4 321-234;

5 (4) Section 245-3(a)(8), after June 30, 2009, and prior to
6 July 1, 2013:

7 (A) 2.0 cents per cigarette shall be deposited to the
8 credit of the Hawaii cancer research special
9 fund, established pursuant to section 304A-2168,
10 for research and operating expenses and for
11 capital expenditures;

12 (B) 0.75 cents per cigarette shall be deposited to
13 the credit of the trauma system special fund
14 established pursuant to section 321-22.5;

15 (C) 0.75 cents per cigarette shall be deposited to
16 the credit of the community health centers
17 special fund established pursuant to section
18 321-1.65; and

19 (D) 0.5 cents per cigarette shall be deposited to the
20 credit of the emergency medical services special



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1 fund established pursuant to section 321-234;

2 [~~and~~]

3 (5) Section 245-3(a)(11), after June 30, 2013, and
4 thereafter:

5 (A) 2.0 cents per cigarette shall be deposited to the
6 credit of the Hawaii cancer research special
7 fund, established pursuant to section 304A-2168,
8 for research and operating expenses and for
9 capital expenditures;

10 (B) 1.5 cents per cigarette shall be deposited to the
11 credit of the trauma system special fund
12 established pursuant to section 321-22.5;

13 (C) 1.25 cents per cigarette shall be deposited to
14 the credit of the community health centers
15 special fund established pursuant to section
16 321-1.65; and

17 (D) 1.25 cents per cigarette shall be deposited to
18 the credit of the emergency medical services
19 special fund established pursuant to section
20 321-234[~~+~~]; and



1 (6) Section 245-3(a)(14), after January 1, 2016, and
2 thereafter, all proceeds shall be deposited to the
3 credit of the Hawaii tobacco prevention and control
4 trust fund established pursuant to section 328L-5, for
5 smoking cessation programs in Hawaii, with an emphasis
6 on teen smoking prevention and cessation programs.

7 The department shall provide an annual accounting of these
8 dispositions to the legislature."

9 SECTION 4. Section 328J-1, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By adding two new definitions to be appropriately
12 inserted and to read:

13 "Electronic smoking device" means any electronic product
14 that can be used to vaporize and deliver nicotine or other
15 substances to the person inhaling from the device, including but
16 not limited to an electronic cigarette, electronic cigar,
17 electronic cigarillo, or electronic pipe, and any cartridge or
18 other component of the device or related product.

19 "Tobacco product" means any product made or derived from
20 tobacco, that contains nicotine or other substances, and is
21 intended for human consumption or is likely to be consumed,



1 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
2 ingested by any other means, including but not limited to a
3 cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, or
4 an electronic smoking device. "Tobacco product" does not
5 include any product specifically approved by the United States
6 Food and Drug Administration for legal sale as a tobacco
7 cessation product that is being marketed and sold solely for
8 that approved purpose."

9 2. By amending the definition of "smoke" or "smoking" to
10 read:

11 "Smoke" or "smoking" means [~~inhaling or exhaling the fumes~~
12 ~~of tobacco or any other plant material, or burning or carrying~~
13 ~~any lighted smoking equipment for tobacco or any other plant~~
14 ~~material.] inhaling, exhaling, burning, or carrying any lighted
15 or heated tobacco product or plant product intended for
16 inhalation in any manner or in any form. "Smoking" includes the
17 use of an electronic smoking device."~~

18 SECTION 5. Section 709-908, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§709-908 Tobacco and electronic smoking devices**

21 **prohibited; minors.** (1) It shall be unlawful to sell or



1 furnish tobacco in any shape or form, including chewing tobacco
2 and snuff, [~~or an electronic smoking device~~] to a minor under
3 eighteen years of age. It shall be unlawful to sell or furnish
4 an electronic smoking device to a minor under twenty-one years
5 of age.

6 (2) Signs using the statement, "The sale of tobacco
7 products [~~or electronic smoking devices~~] to persons under
8 eighteen is prohibited[~~,"~~]. The sale of electronic smoking
9 devices to persons under twenty-one is prohibited", shall be
10 posted on or near any vending machine in letters at least one-
11 half inch high and at or near the point of sale of any other
12 location where tobacco products or electronic smoking devices
13 are sold in letters at least one-half inch high.

14 (3) It shall be unlawful for a minor under eighteen years
15 of age to purchase any tobacco product, as described under
16 subsection (1) [~~, or an electronic smoking device, as described~~
17 ~~under subsection (5)~~]. This provision does not apply if a
18 person under the age of eighteen, with parental authorization,
19 is participating in a controlled purchase as part of a law
20 enforcement activity or a study authorized by the department of
21 health under the supervision of law enforcement to determine the



1 level of incidence of tobacco [~~or electronic smoking devices~~]
2 sales to minors.

3 (4) It shall be unlawful for a minor under twenty-one
4 years of age to purchase an electronic smoking device, as
5 described under subsection (6). This provision does not apply
6 if a person under the age of twenty-one, with parental
7 authorization, is participating in a controlled purchase as part
8 of a law enforcement activity or a study authorized by the
9 department of health under the supervision of law enforcement to
10 determine the level of incidence of electronic smoking devices
11 sales to minors.

12 [~~4~~] (5) Any person who violates subsection (1) or (2),
13 or both, shall be fined \$500 for the first offense. Any
14 subsequent offenses shall subject the person to a fine not less
15 than \$500 nor more than \$2,000. Any minor under eighteen years
16 of age who violates subsection (3) or any minor under twenty-one
17 years of age who violates subsection (4) shall be fined \$10 for
18 the first offense. Any subsequent offense shall subject the
19 violator to a fine of \$50, no part of which shall be suspended,
20 or the person shall be required to perform not less than forty-
21 eight hours nor more than seventy-two hours of community service



1 during hours when the person is not employed and is not
2 attending school.

3 [+5+] (6) For the purposes of this section:

4 "Electronic smoking device" means any electronic product
5 that can be used to [~~simulate smoking in the delivery of~~]
6 vaporize and deliver nicotine or other substances to the person
7 inhaling from the device, including but not limited to an
8 electronic cigarette, electronic cigar, electronic cigarillo, or
9 electronic pipe, and any cartridge or other component of the
10 device or related product."

11 SECTION 6. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 7. This Act shall take effect on July 1, 2015.

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INTRODUCED BY: John Muen

Paul E. Ryan
Michelle
DC. Sub. Ag.

Ed Aviero
Michelle Lidaani
Carolyn de Bock

John Muen

Breene Hunt



S.B. NO. 299

Report Title:

Electronic Smoking Device; Excise Tax; Tobacco Prevention and Control Trust Fund; Smoking Cessation; Smoking; Minors; Sale or Purchase Prohibited

Description:

Establishes an excise tax on electronic smoking devices equal to 30 per cent of the wholesale price of each electronic smoking device kit, electronic smoking device nicotine cartridge, or electronic smoking device nicotine refill sold, used, or possessed by a wholesaler or dealer on or after January 1, 2016. Allocates taxes collected to the Hawaii tobacco prevention and control trust fund, to be used for smoking cessation programs in Hawaii, with an emphasis on teen smoking prevention and cessation programs. Amends Hawaii's anti-smoking statute to prohibit the use of electronic smoking devices in places open to the public and other specified locations. Prohibits the sale or furnishing of electronic smoking devices to a minor under twenty-one years of age. Prohibits minors under twenty-one years of age from purchasing electronic smoking devices.

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