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# A BILL FOR AN ACT

RELATING TO CHAPTER 245, HAWAII REVISED STATUTES.

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

1           SECTION 1. The legislature finds that the public health  
2 rationale for the regulation of cigarettes and tobacco products  
3 is well developed, as tobacco use is the single most preventable  
4 cause of disease, disability, and death in the United States.  
5 In addition to substantive laws in the State governing specific  
6 aspects of tobacco production, sales, and use, Hawaii law  
7 requires retailers, wholesalers, and dealers of cigarettes or  
8 tobacco products to obtain a special license or permit. These  
9 licenses and permits facilitate the enforcement of the cigarette  
10 tax and tobacco tax law under chapter 245, Hawaii Revised  
11 Statutes. However, the current license fee for wholesalers and  
12 dealers is only \$2.50 a year, while retail tobacco permit fees  
13 cost only \$20 a year. To ensure continued tobacco regulation  
14 and enforcement of relevant tax laws, the legislature concludes  
15 that these fees should be increased and the law updated to  
16 include electronic smoking devices and e-liquid.

17           Accordingly, the purpose of this Act is to:



- 1           (1) Add and amend various definitions in chapter 245,  
2           Hawaii Revised Statutes, to ensure that dealers,  
3           retailers, and wholesalers of electronic smoking  
4           devices and e-liquid obtain the applicable license or  
5           permit;
- 6           (2) Increase the license fee for persons engaged as a  
7           wholesaler or dealer of cigarettes or tobacco  
8           products; and
- 9           (3) Increase the retail tobacco permit fee for retailers  
10          engaged in the retail sale of cigarettes, tobacco  
11          products, electronic smoking devices, and e-liquid.

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

14           1. By adding four new definitions to be appropriately  
15          inserted and to read:

16           "Disposable electronic smoking device" means an electronic  
17          smoking device that is designed or intended not to be reused or  
18          refilled.

19           "Electronic smoking device" means any electronic product  
20          that can be used to aerosolize and deliver nicotine to the  
21          person inhaling from the device, including but not limited to an



1 electronic cigarette, electronic cigar, electronic cigarillo,  
2 electronic pipe, hookah pipe, or hookah pen, and any component  
3 of the device or related product, whether or not sold  
4 separately, including but not limited to atomizers, coils, drip  
5 tips, and tanks.

6 "E-liquid" means any liquid containing nicotine that is  
7 designed or intended to be used in a reusable electronic smoking  
8 device, whether or not packaged in a cartridge or other  
9 container.

10 "Reusable electronic smoking device" means an electronic  
11 smoking device that is designed or intended to be reused or  
12 refilled."

13 2. By amending the definitions of "dealer", "retailer",  
14 "sale" or "sold", "wholesale price", and "wholesaler" to read:

15 "Dealer" means any person coming into the possession of  
16 cigarettes [e], tobacco products, electronic smoking devices,  
17 or e-liquid which have not been acquired from an authorized  
18 permit holder or licensee under this chapter, or any person  
19 rendering a distribution service who buys and maintains, at the  
20 person's place of business, a stock of cigarettes [e], tobacco  
21 products, electronic smoking devices, or e-liquid that have not



1 been acquired from a licensee and who distributes or uses such  
2 cigarettes [e], tobacco products[-], electronic smoking  
3 devices, or e-liquid.

4 "Retailer" means an entity that engages in the practice of  
5 selling cigarettes [e], tobacco products, electronic smoking  
6 devices, or e-liquid to consumers and includes the owner of a  
7 cigarette [e], tobacco product, electronic smoking device, or  
8 e-liquid vending machine.

9 "Sale" or "sold" includes any delivery of cigarettes [e],  
10 tobacco products, electronic smoking devices, or e-liquid  
11 whether cash is actually paid therefor or not.

12 "Wholesale price", in addition to any other meaning of the  
13 term, means in the case of a tax upon the use of tobacco  
14 products, electronic smoking devices, or e-liquid, or upon a  
15 sale not made at wholesale:

- 16 (1) If made by a person who during the month preceding the  
17 accrual of the tax made substantial sales to retailers  
18 of like tobacco products, electronic smoking devices,  
19 or e-liquid, the average price of the sales[-]; and  
20 (2) If made by any other person, the average price of  
21 sales to retailers of like tobacco products,



1           electronic smoking devices, or e-liquid, made by other  
2           taxpayers in the same county during the month  
3           preceding the accrual of the tax.

4           "Wholesaler" means a person rendering a distribution  
5           service who buys and maintains, at the person's place of  
6           business, a stock of cigarettes [~~or~~], tobacco products,  
7           electronic smoking devices, or e-liquid that the person uses,  
8           possesses, or distributes only to retailers, or other  
9           wholesalers, or both."

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

12           "(b) The license shall be issued by the department upon  
13           application therefor, in such form and manner as shall be  
14           required by rule of the department, and the payment of a fee of  
15           [~~\$2.50,~~] \$250, and shall be renewable annually on July 1 for the  
16           twelve months ending the succeeding June 30."

17           SECTION 4. Section 245-2.5, Hawaii Revised Statutes, is  
18           amended as follows:

19           1. By amending subsections (a) to (c) to read:

20           "(a) [~~Beginning December 1, 2006, every~~] Every retailer  
21           engaged in the retail sale of cigarettes [~~and other~~], tobacco



1 products [~~upon which a tax is required to be paid under this~~  
2 ~~chapter~~], electronic smoking devices, or e-liquid shall obtain a  
3 retail tobacco permit.

4 (b) [~~Beginning March 1, 2007, it~~] It shall be unlawful for  
5 any retailer engaged in the retail sale of cigarettes [~~and~~  
6 ~~either~~], tobacco products [upon which a tax is required to be  
7 paid under this chapter], electronic smoking devices, or  
8 e-liquid to sell, possess, keep, acquire, distribute, or  
9 transport cigarettes [~~or either~~], tobacco products, electronic  
10 smoking devices, or e-liquid for retail sale unless a retail  
11 tobacco permit has been issued to the retailer under this  
12 section and the retail tobacco permit is in full force and  
13 effect.

14 (c) The retail tobacco permit shall be issued by the  
15 department upon application by the retailer in the form and  
16 manner prescribed by the department, and the payment of a fee of  
17 [~~\$20.~~] \$50. Permits shall be valid for one year, from  
18 December 1 to November 30, and renewable annually. Whenever a  
19 retail tobacco permit is defaced, destroyed, or lost, or the  
20 permittee relocates the permittee's business, the department may



1 issue a duplicate retail tobacco permit to the permittee for a  
2 fee of \$5 per copy."

3 2. By amending subsection (e) to read:

4 "(e) Any entity that operates as a dealer or wholesaler  
5 and also sells cigarettes ~~[e]~~, other tobacco products,  
6 electronic smoking devices, or e-liquid to consumers at retail  
7 shall acquire a separate retail tobacco permit."

8 3. By amending subsection (h) to read:

9 "(h) Any sales of cigarettes ~~[e]~~, tobacco products,  
10 electronic smoking devices, or e-liquid made through a  
11 [~~cigarette or tobacco product~~] vending machine are subject to  
12 the terms, conditions, and penalties of this chapter. A retail  
13 tobacco permit need not be displayed on [~~cigarette or tobacco~~  
14 ~~product~~] vending machines if the retail tobacco permit holder is  
15 the owner of the [~~cigarette or tobacco product~~] vending machines  
16 and the [~~cigarette or tobacco product~~] vending machines are  
17 operated at the location described in the retail tobacco  
18 permit."

19 4. By amending subsection (j) to read:

20 "(j) A vehicle from which cigarettes ~~[e]~~, tobacco  
21 products ~~[are]~~, electronic smoking devices, or e-liquid is sold



1 is considered a place of business and requires a retail tobacco  
 2 permit. Retail tobacco permits for a vehicle shall be issued  
 3 bearing a specific motor vehicle identification number and are  
 4 valid only when physically carried in the vehicle having the  
 5 corresponding motor vehicle identification number. Retail  
 6 tobacco permits for vehicles shall not be moved from one vehicle  
 7 to another."

8 5. By amending subsection (1) to read:

9 "(1) A permittee shall keep a complete and accurate record  
 10 of the permittee's cigarette [~~æ~~], tobacco product, electronic  
 11 smoking devices, and e-liquid inventory. The records shall:

12 (1) Include:

13 (A) A written statement containing the name and  
 14 address of the permittee's source of its  
 15 cigarettes [~~and~~], tobacco products [~~+~~], electronic  
 16 smoking devices, and e-liquid;

17 (B) The date of delivery, quantity, trade name or  
 18 brand, and price of the cigarettes [~~and~~], tobacco  
 19 products [~~+~~], electronic smoking devices, and  
 20 e-liquid; and





- 1 (C) Documentation in the form of any purchase orders,  
2 invoices, bills of lading, other written  
3 statements, books, papers, or records in whatever  
4 format, including electronic format, which  
5 substantiate the purchase or acquisition of the  
6 cigarettes [~~and~~], tobacco products, electronic  
7 smoking devices, and e-liquid stored or offered  
8 for sale; and
- 9 (2) Be offered for inspection and examination within  
10 twenty-four hours of demand by the department or the  
11 attorney general, and shall be preserved for a period  
12 of three years; provided that:
- 13 (A) Specified records may be destroyed if the  
14 department and the attorney general both consent  
15 to their destruction within the three-year  
16 period; and
- 17 (B) Either the department or the attorney general may  
18 adopt rules pursuant to chapter 91 that require  
19 specified records to be kept longer than a period  
20 of three years."
- 21 6. By amending subsection (o) to read:



1           "(o) Any cigarette, package of cigarettes, carton of  
2 cigarettes, container of cigarettes, tobacco product, package of  
3 tobacco products, [~~or any~~] container of tobacco products,  
4 electronic smoking device, package of electronic smoking  
5 devices, container of electronic smoking devices, e-liquid,  
6 package of e-liquid, or container of e-liquid unlawfully sold,  
7 possessed, kept, stored, acquired, distributed, or transported  
8 in violation of this section may be seized and ordered forfeited  
9 pursuant to chapter 712A."

10           SECTION 5. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12           SECTION 6. This Act shall take effect on January 1, 2017.

13



**Report Title:**

Tobacco Regulation; License Fee; Retail Tobacco Permit;  
Cigarettes; Tobacco Products

**Description:**

Amends the definitions of "dealer", "retailer", "wholesale price" and "wholesaler" to include electronic smoking devices and e-liquid. Establishes definitions for "disposable electronic smoking device", "electronic smoking device", "e-liquid", and "reusable electronic smoking device". Allows electronic smoking devices, packages of electronic smoking devices, containers of electronic smoking devices, e-liquid, packages of e-liquid, and containers of e-liquid to be seized and forfeited if unlawfully sold, possessed, kept, stored, acquired, distributed, or transported. Increases the license fee for persons engaged as a wholesaler or dealer. Increases the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes and tobacco products, and includes electronic smoking devices and e-liquid. Effective January 1, 2017. (SD1)

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

