A BILL FOR AN ACT

RELATING TO CHAPTER 245, HAWAII REVISED STATUTES.

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

SECTION 1. The legislature finds that tobacco use is the single most preventable cause of disease, disability, and death in the United States. Tobacco use continues to be a problem in Hawaii, causing approximately 1,400 deaths per year among adults. An estimated 21,000 children in Hawaii currently under the age of eighteen will ultimately die prematurely from smoking. Tobacco use poses a heavy burden on Hawaii's health care system and economy. Each year, smoking costs approximately $526,000,000 in direct health care expenditures and $387,300,000 in lost productivity in the State.

The legislature further finds that tobacco products are addictive and inherently dangerous, causing many different types of cancer, heart disease, and other serious illnesses. Hawaii has a substantial interest in reducing the number of individuals of all ages who use tobacco products, and a particular interest in protecting adolescents from tobacco dependence and the illnesses and premature death associated with tobacco use.
The legislature additionally finds that electronic smoking devices, also known as e-cigarettes, are battery-operated products designed to deliver nicotine, flavor, and other chemicals to the user by turning chemicals including highly addictive nicotine into an aerosol that is inhaled by the user. Consumers may choose from varying strengths of e-liquid as well as liquids consisting of different flavors. The electronic smoking device industry, along with the production of e-liquid, are growing rapidly. According to the Centers for Disease Control and Prevention, more than 1,700,000 middle school and high school students tried electronic cigarettes in 2012. Toxicologists warn that e-liquids pose significant risks to public health, particularly to children. The rapid growth of the electronic smoking device industry, including retail businesses selling electronic smoking devices or e-liquid, necessitates further regulations to protect consumers, such as requiring retailers of electronic smoking devices or e-liquid to obtain a retail tobacco permit.

The legislature also finds that taxes on e-liquid should be similar to the tax rates already imposed on cigarettes. E-liquid and tobacco products other than cigarettes are
currently taxed at a lower rate than cigarettes, even though their use carries similar health risks. Research has shown that either a tax on cigarettes or cigarette price increases have the propensity to reduce the rate of smoking by adult and youth smokers. However, the legislature is concerned that as the price of cigarettes increases, smokers may be tempted to purchase less expensive products such as electronic smoking devices.

Finally, the legislature concludes that there should not be a lower-priced tobacco alternative to cigarettes in Hawaii; therefore a similar tax rate for cigarettes and e-liquids that acts as a deterrent for all forms of tobacco and nicotine use is needed. Higher prices on e-liquids and electronic smoking devices will encourage users of electronic smoking devices to quit, sustain cessation, prevent youth initiation, and reduce consumption among those who continue to use.

The purpose of this Act is to:

(1) Impose an excise tax on disposable electronic smoking devices and e-liquid sold by a wholesaler or dealer on and after January 1, 2017, whether or not sold at
wholesale, or if not sold then at the same rate upon
the use by the wholesaler or dealer; and
(2) Require every retailer engaged in the retail sale of
cigarettes, tobacco products, electronic smoking
devices, or e-liquid to obtain a retail tobacco permit
in order to sell, possess, keep, acquire, distribute,
or transport cigarettes, tobacco products, electronic
smoking devices, or e-liquid for retail sale.

SECTION 2. Section 245-1, Hawaii Revised Statutes, is
amended as follows:
1. By adding four new definitions to be appropriately
inserted and to read:

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

"Electronic smoking device" means any electronic product
that can be used to aerosolize and deliver nicotine to the
person inhaling from the device, including but not limited to an
electronic cigarette, electronic cigar, electronic cigarillo,
electronic pipe, hookah pipe, or hookah pen, and any component
of the device or related product, whether or not sold
separately, including but not limited to atomizers, coils, drip tips, and tanks.

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

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

2. By amending the definition of "dealer" to read:

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

3. By amending the definition of "retailer" to read:
"Retailer" means an entity that engages in the practice of selling cigarettes, tobacco products, electronic smoking devices, or e-liquid to consumers and includes the owner of a cigarette, tobacco product, electronic smoking device, or e-liquid vending machine.

4. By amending the definition of "sale" or "sold" to read:

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

5. By amending the definition of "wholesale price" to read:

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

(1) If made by a person who during the month preceding the accrual of the tax made substantial sales to retailers of like tobacco products, electronic smoking devices, or e-liquid, the average price of the sales and

(2) If made by any other person, the average price of sales to retailers of like tobacco products.
electronic smoking devices, or e-liquid made by other taxpayers in the same county during the month preceding the accrual of the tax."

6. By amending the definition of "wholesaler" to read:

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

SECTION 3. Section 245-2.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) [Beginning December 1, 2006, every] Every retailer engaged in the retail sale of cigarettes [\textit{or other]} tobacco products [upon which a tax is required to be paid under this chapter], electronic smoking devices, or e-liquid shall obtain a retail tobacco permit.

(b) [Beginning March 1, 2007, it] It shall be unlawful for any retailer engaged in the retail sale of cigarettes [\textit{or other]} tobacco products [upon which a tax is required to be
paid under this chapter], electronic smoking devices, or e-liquid to sell, possess, keep, acquire, distribute, or transport cigarettes [other], tobacco products, electronic smoking devices, or e-liquid for retail sale unless a retail tobacco permit has been issued to the retailer under this section and the retail tobacco permit is in full force and effect."

2. By amending subsection (e) to read:

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

3. By amending subsection (h) to read:

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

4. By amending subsection (j) to read:

"(j) A vehicle from which cigarettes, tobacco products, electronic smoking devices, or e-liquid is sold is considered a place of business and requires a retail tobacco permit. Retail tobacco permits for a vehicle shall be issued bearing a specific motor vehicle identification number and are valid only when physically carried in the vehicle having the corresponding motor vehicle identification number. Retail tobacco permits for vehicles shall not be moved from one vehicle to another."

5. By amending subsection (l) to read:

"(l) A permittee shall keep a complete and accurate record of the permittee's cigarette, tobacco product, electronic smoking device, and e-liquid inventory. The records shall:

(1) Include:

(A) A written statement containing the name and address of the permittee's source of its cigarettes, tobacco products, electronic smoking devices, and e-liquid;
(B) The date of delivery, quantity, trade name or brand, and price of the cigarettes and tobacco products, electronic smoking devices, and e-liquid; and

(C) Documentation in the form of any purchase orders, invoices, bills of lading, other written statements, books, papers, or records in whatever format, including electronic format, which substantiate the purchase or acquisition of the cigarettes and tobacco products, electronic smoking devices, and e-liquid stored or offered for sale; and

(2) Be offered for inspection and examination within twenty-four hours of demand by the department or the attorney general, and shall be preserved for a period of three years; provided that:

(A) Specified records may be destroyed if the department and the attorney general both consent to their destruction within the three-year period; and
(B) Either the department or the attorney general may adopt rules pursuant to chapter 91 that require specified records to be kept longer than a period of three years."

6. By amending subsection (o) to read:

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

SECTION 4. Section 245-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

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

(1) An excise tax equal to 5.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer
after June 30, 1998, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

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

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

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

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

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

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

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

(9) An excise tax equal to 11.00 cents for each little
cigar sold, used, or possessed by a wholesaler or
dealer on and after October 1, 2009, whether or not
sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

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

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

(12) An excise tax equal to seventy per cent of the wholesale price of each article or item of tobacco products, other than large cigars, sold by the wholesaler or dealer on and after September 30, 2009, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; [and]
An excise tax equal to fifty per cent of the wholesale price of each large cigar of any length, sold, used, or possessed by a wholesaler or dealer on and after September 30, 2009, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer.

An excise tax equal to per cent of the wholesale price of each disposable electronic smoking device, sold, used, or possessed by a wholesaler or dealer on and after January 1, 2017, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; and

An excise tax equal to cents per milliliter of e-liquid sold, used, or possessed by a wholesaler or dealer on and after January 1, 2017, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; provided that liquids used with electronic smoking devices that do not contain nicotine are exempt from the excise tax established pursuant to this paragraph.
Where the tax imposed has been paid on cigarettes, little cigars, [etc] tobacco products, electronic smoking devices, or e-liquid that thereafter become the subject of a casualty loss deduction allowable under chapter 235, the tax paid shall be refunded or credited to the account of the wholesaler or dealer.

The tax shall be applied to cigarettes through the use of stamps."

SECTION 5. Section 245-5, Hawaii Revised Statutes, is amended to read as follows:

"§245-5 Returns. Every wholesaler or dealer, on or before the twentieth day of each month, shall file with the department a return showing the cigarettes [and], tobacco products, electronic smoking devices, and e-liquid sold, possessed, or used by the wholesaler or dealer during the preceding calendar month and of the taxes chargeable against the taxpayer in accordance with this chapter. The form of the return shall be prescribed by the department and shall include:

(1) A separate statement of the number and wholesale price of cigarettes;

(2) The amount of stamps purchased and used;
(3) The wholesale price of tobacco products, sold, possessed, or used; [and]

(4) The wholesale price of disposable electronic smoking devices sold, possessed, or used;

(5) The milliliters of e-liquid sold, possessed, or used;

(6) The wholesale price of reusable electronic smoking devices sold, possessed, or used; and

(7) Any other information that the department may deem necessary, for the proper administration of this chapter."

SECTION 6. Section 245-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each wholesaler or dealer shall keep a record of:

(1) Every sale or use of cigarettes and tobacco products, electronic smoking devices, and e-liquid by the wholesaler or dealer;

(2) The number and wholesale price of cigarettes;

(3) The wholesale price of tobacco products and electronic smoking devices sold, possessed, or used;

(4) The milliliters of e-liquid sold, possessed, or used;
The taxes payable on tobacco products, electronic smoking products, and e-liquid sold, possessed, or used, if any; and

The amounts of stamps purchased and used, in a form as the department may prescribe. The records shall be offered for inspection and examination at any time upon demand by the department or the attorney general, and shall be preserved for a period of five years, except that the department and the attorney general, in writing, shall both consent to their destruction within the five-year period or either the department or the attorney general may require that they be kept longer. The department, by rule, may require the wholesaler or dealer to keep other records as it may deem necessary for the proper enforcement of this chapter."

SECTION 7. Section 245-9, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The department and the attorney general may examine all records, including tax returns and reports under section 245-31, required to be kept or filed under this chapter, and books, papers, and records of any person engaged in the business of wholesaling or dealing cigarettes [and] tobacco products,
electronic smoking devices, and e-liquid, to verify the accuracy of the payment of the taxes imposed by this chapter. Every person in possession of any books, papers, and records, and the person's agents and employees, are directed and required to give the department and the attorney general the means, facilities, and opportunities for the examinations.

(b) The department and the attorney general may inspect the operations, premises, and storage areas of any entity engaged in the sale of cigarettes, or the contents of a specific vending machine, during regular business hours. This inspection shall include inspection of all statements, books, papers, and records in whatever format, including electronic format, pertaining to the acquisition, possession, transportation, sale, or use of packages of cigarettes and tobacco products other than cigarettes, electronic smoking devices, and e-liquid, to verify the accuracy of the payment of taxes imposed by this chapter, and of the contents of cartons and shipping or storage containers to ascertain that all individual packages of cigarettes have an affixed stamp of proper denomination as required by this chapter. This inspection may also verify that all stamps were produced under the authority of the department.
Every entity in possession of any books, papers, and records, and the entity's agents and employees, are directed and required to give the department and the attorney general the means, facilities, and opportunities for the examinations. For purposes of this chapter "entity" means one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity."

SECTION 8. Section 245-31, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

"§245-31 Monthly report on distributions of cigarettes and tobacco products, electronic smoking devices, e-liquid, and purchases of stamps."

2. By amending subsection (b) to read:

"(b) On or before the twentieth day of each month, every licensee shall file on forms prescribed by the department:

(1) A report of the licensee's distributions of tobacco products and the wholesale costs of tobacco products during the preceding month; [and]

(2) A report of the licensee's distributions of disposable electronic smoking devices and the wholesale costs of
the disposable electronic smoking devices during the preceding month;

(3) A report of the licensee's distributions of e-liquid and milliliters distributed during the preceding month;

(4) A report of the licensee's distributions of reusable electronic smoking devices and the wholesale costs of the reusable electronic smoking devices during the preceding month; and

(5) Any other information that the department may require to carry out this part."

SECTION 9. Section 245-32, Hawaii Revised Statutes, is amended to read as follows:

"[4] § 245-32. Tax refund or credit for cigarettes [and], tobacco products, electronic smoking devices, and e-liquid shipped for sale or use outside the State. (a) The department shall adopt rules to provide a tobacco tax refund or credit to a licensee who has paid a tobacco tax on the distribution of cigarettes [and], tobacco products, electronic smoking devices, or e-liquid that are shipped to a point outside the State for subsequent sale or use outside the State.
(b) This part shall not apply to cigarettes [and] tobacco products, electronic smoking devices, or e-liquid that are distributed in this State to consumers and that are subsequently taken outside the State."

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

SECTION 11. This Act shall take effect on January 1, 2017.
Report Title:
Disposable Electronic Smoking Device; Electronic Smoking Device; E-liquid; Excise Tax

Description:
Defines disposable electronic smoking device, electronic smoking device, e-liquid, and reusable electronic smoking device in the State's cigarette tax and tobacco tax law. Imposes an excise tax on an e-liquid sold by a wholesaler or dealer on or after 1/1/2017, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer. Imposes an excise tax on the wholesale price of disposable electronic smoking devices sold by a wholesaler or dealer on or after January 1, 2017, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer. Establishes requirements for retailers, wholesalers, and dealers of electronic smoking devices or e-liquid related to permits, reports, and records. Takes effect on 1/1/2017. (SD1)

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