RELATING TO SMOKING.

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 one thousand four hundred deaths per year among adults. An estimated twenty-one thousand 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. Raising the cost of tobacco wholesaler or dealer licenses and retail tobacco permits will help to offset the costs to the State that result from smoking and tobacco use.

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 nicotine 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 varying nicotine strengths of e-liquid as
well as various liquids consisting of different flavors.
The electronic smoking device industry, including the
production of e-liquids, is growing rapidly. On December 18,
2018, the United States Surgeon General made the unprecedented
move of classifying the danger of youth usage of electronic
smoking devices as an epidemic. Since the Surgeon General first
issued a warning in 2016 about the dangers of these products,
data has shown a historic rise in use by youth and young adults.
According to the 2016 report from the Surgeon General, e-
cigarette use among the nation's youth and young adults has
become a major public health concern. The Surgeon General's
report noted that e-cigarette use has increased considerably in
recent years, growing an astounding nine hundred per cent among
high school students from 2011 to 2015. In a 2018 study
carried out by the National Institute on Drug Abuse, the use of
electronic smoking devices by teens increased nationally from
27.8 per cent to 37.3 per cent in a twelve month period. The
increase translates to 1,300,000 more teens using electronic
smoking devices in a single year. E-cigarette use among youth
and young adults is also strongly associated with the use of
other tobacco products, including combustible tobacco products.
Toxicologists have also warned that e-liquids pose significant
risks to public health, particularly to children. According to
the Surgeon General's report, if the contents of refill
cartridges or bottles are consumed, ingestion of e-liquids
containing nicotine can cause acute toxicity and possibly death.
The Surgeon General's report also found that there are numerous
policies and practices that can be implemented at the state and
local levels to address electronic smoking device use among
youth and young adults, including preventing access to
e-cigarettes by youth, significant increases in tax and price of
e-cigarettes, retail licensure, and regulation of e-cigarette
marketing.
In response to the growing use of electronic smoking devices, the legislature established a system of registration and regulation for sellers of electronic smoking devices and e-liquid through Act 206, Session Laws of Hawaii 2018. The legislature finds that the rapid growth of the electronic smoking device industry, including retail businesses selling electronic smoking devices or e-liquids, necessitates further regulations to protect consumers.

The legislature notes that the federal Food and Drug Administration recently finalized a rule that expands its regulatory authority to all tobacco products, including electronic smoking devices, cigars, and hookah and pipe tobacco. However, the legislature also notes that there is currently no state tobacco tax attached to e-liquid, even though electronic smoking devices are now regulated in a manner similar to tobacco products. Research has shown that increasing cigarette prices, such as through cigarette taxes, tends to reduce the rate of cigarette smoking by adult and youth smokers. However, the legislature is concerned that as the price of cigarettes increases, smokers may purchase less expensive smoking products,
such as electronic smoking devices or e-liquids, if these
products are not taxed at a similar rate.

Finally, the legislature concludes that there must be a tax
on e-liquids. Taxing these products in a manner similar to
other non-cigarette or cigar tobacco products is the most
equitable way to calculate that tax amount. Imposing a tax on
e-liquids will also encourage users of e-liquids to quit and to
sustain cessation, prevent youth initiation, and reduce
consumption among those who continue to use them.

The purpose of this Act is to:

(1) Transfer from the department of the attorney general
to the department of taxation the authority to tax,
license, and regulate retailers of electronic smoking
devices in a manner consistent with the taxation,
regulation, and permitting of tobacco products;

(2) Impose a new excise tax on e-liquids and electronic
smoking devices in a manner consistent with existing
excise taxes on tobacco products;

(3) Increase the fee for tobacco wholesaler and dealer
licenses;

(4) Increase the retail tobacco permit fee;
(5) Fund health education and prevention programs to reduce the use of electronic smoking devices; and
(6) Repeal the electronic smoking device retailer registration unit established in the attorney general's office by Act 206, Session Laws of Hawaii 2018.

SECTION 2. Chapter 245, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . ELECTRONIC SMOKING DEVICES

§245-A Policy. The licensing and permitting of electronic smoking device retailers is reasonably necessary to protect the health, safety, or welfare of consumers of electronic smoking devices and for the enforcement of the laws that regulate the sale of electronic smoking devices.

§245-B Definitions. As used in this part:

"Business location" or "place of business" means the entire premises occupied by a retailer of electronic smoking devices and shall include but is not limited to any store, stand, outlet, vehicle, cart, location, or structure from which
electronic smoking devices are sold or distributed to a consumer.

"Dealer" means any person coming into the possession of electronic smoking devices or e-liquid products which have not been acquired by 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 electronic smoking devices or e-liquid products that have not been acquired from a licensee and who distributes or uses such electronic smoking devices or e-liquid products.

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

"E-liquid" means any liquid or liquid-like substance that is designed or intended to be used in an electronic smoking device, whether or not it is packaged in a cartridge or other container. E-liquid shall not include prescription drugs; medical cannabis or manufactured cannabis products; or medical
devices used to inhale or ingest prescription drugs, including devices sold or licensed at a medical cannabis dispensary.

"Entity" means one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity.

"License" means a license as a wholesaler, dealer, or retailer as granted under this part.

"Licensee" means the holder of a license as a wholesaler, dealer, or retailer granted under this part.

"Retailer" means an entity that engages in the practice of selling electronic smoking devices or e-liquids to consumers.

"Retail sale" or "electronic smoking device retailing" means the practice of selling electronic smoking devices to consumers.

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

§245-C Licenses and permits. (a) Any retailer of electronic smoking devices or e-liquids shall obtain a retail
license for the sale of electronic smoking devices according to
the process set forth in section 245-2, as applicable; provided
that any licensee who is already licensed to sell cigarettes and
other tobacco products need only have one license for the sale
of electronic smoking devices, e-liquids, cigarettes and other
tobacco products.

(b) A retailer of electronic smoking devices or e-liquids
shall obtain a retail tobacco and electronic smoking devices
permit according to the process set forth in section 245-2.5, as
applicable; provided that the retailer who is also permitted to
sell cigarettes and other tobacco products need only have one
such permit for each location or place of business.

§245-D Unlawful electronic smoking device or e-liquid
retailing in the first degree. (a) Beginning January 1, 2020,
a person or entity required to obtain a retail permit under
section 245-C for the sale of electronic smoking devices or e-
liquids commits the offense of unlawful electronic smoking
device or e-liquid retailing in the first degree if the person
or entity knowingly fails to obtain a valid permit required
under section 245-2.5 and, for the purposes of retail sale,
recklessly sells, possesses, stores, acquires, distributes, or
transports five thousand or more electronic smoking devices, units of e-liquid products, or a combination of both. (b) Unlawful electronic smoking device or e-liquid retailing in the first degree is a misdemeanor, except that any offense under subsection (a) that occurs within five years of a prior conviction for unlawful electronic smoking device or e-liquid retailing in the first degree is a class C felony.

§245-E Unlawful electronic smoking device or e-liquid retailing in the second degree. (a) Beginning January 1, 2020, a person or entity required to obtain a retail permit for the sale of electronic smoking devices or e-liquids under section 245-C commits the offense of unlawful electronic smoking device or e-liquid retailing in the second degree if the person or entity recklessly fails to obtain a valid permit required under section 245-2.5 and, for the purposes of retail sale, recklessly sells, possesses, stores, acquires, distributes, or transports fewer than five thousand electronic smoking devices, units of e-liquid products, or a combination of both. (b) Unlawful electronic smoking device or e-liquid retailing in the second degree is a petty misdemeanor, except that any offense under subsection (a) that occurs within five
years of a prior conviction for unlawful electronic smoking device or e-liquid retailing in the first or second degree is a misdemeanor.

§245-F Taxes. 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, an excise tax equal to seventy per cent of the wholesale price of each article or item of e-liquid products sold by the wholesaler or dealer on or after September 30, 2019, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer.

Of the revenue generated by this tax, $200,000 shall be deposited to the credit of the Hawaii tobacco prevention and control trust fund established pursuant to section 328L-5; the remainder of the tax revenue shall be deposited to the general fund.

§245-G Returns. Every wholesaler or dealer, on or before the twentieth day of each month, shall file with the department a return showing the electronic smoking devices or e-liquid products 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 part. 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 electronic smoking devices;

(2) The wholesale price of units of e-liquid products
sold, possessed, or used; and

(3) Any other information that the department may deem
necessary, for the proper administration of this part.

§245-H Determination of taxes; additional assessments,
credits, and refunds. (a) As soon as practicable after each
return shall have been filed, the department of taxation shall
examine and compute and determine the amount of taxes payable
thereon in accordance with section 245-F and section 245-7.

(b) All provisions of section 245-7(b) and (c) related to
assessments, credits, and refunds shall apply to the
department's determination pursuant to this part.

§245-I Records to be kept. (a) Each wholesaler or dealer
shall keep a record of:

(1) Every sale or use of electronic smoking devices and e-
liquids by the wholesaler or dealer;
(2) The number and wholesale price of electronic smoking devices sold, possessed, or used;
(3) The number and wholesale price of e-liquids sold, possessed, or used; and
(4) The taxes payable on electronic smoking devices and e-liquids sold, possessed, or used, if any;
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.

(b) If any wholesaler or dealer fails to keep records from which a proper determination of the taxes due under this chapter may be made, the department may fix the amount of the taxes for any period from the best information obtainable by it and assess the taxes as provided in this chapter."
SECTION 3. Section 245-2, Hawaii Revised Statutes, is amended to read as follows:

"§245-2 License. (a) It shall be unlawful for any person to engage in the business of a wholesaler or dealer, including the business of a wholesaler or dealer of electronic smoking devices pursuant to part , in the State without having received first a license therefor issued by the department of taxation under this chapter; provided that this section shall not be construed to supersede any other law relating to licensing of persons in the same business.

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

(c) The department may suspend or, after hearing, revoke or decline to renew any license issued under this chapter whenever the department finds that the applicant or licensee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes
but is not limited to instances where an applicant or licensee has:

1. Submitted a false or fraudulent application or
   provided a false statement in an application; or
2. Possessed or displayed a false or fraudulent license.

Upon suspending or revoking any license, the department shall request that the licensee immediately surrender the license or any duplicate issued to the licensee and the licensee shall surrender the license or duplicate promptly to the department as requested.

Whenever the department suspends, revokes, or declines to renew a license, the department shall notify the applicant or licensee immediately and afford the applicant or licensee a hearing, if requested and if a hearing has not already been afforded. After the hearing, the department shall:

1. Rescind its order of suspension;
2. Continue the suspension;
3. Revoke the license;
4. Rescind its order of revocation;
5. Decline to renew the license; or
6. Renew the license.
SECTION 4. Section 245-2.5, Hawaii Revised Statutes, is amended to read as follows:

"[¶]§245-2.5[¶] Retail tobacco and electronic smoking device permit. (a) Beginning December 1, 2006, every retailer engaged in the retail sale of electronic smoking devices, e-liquids, cigarettes, and other tobacco products upon which a tax is required to be paid under this chapter shall obtain a retail tobacco and electronic smoking device permit.

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

(c) The retail tobacco and electronic smoking device permit shall be issued by the department upon application by the retailer in the form and manner prescribed by the department,
and the payment of a fee of [$20. $20.] $50. Permits shall be valid
for one year, from December 1 to November 30, and renewable
annually. Whenever a retail tobacco and electronic smoking
device permit is defaced, destroyed, or lost, or the permittee
relocates the permittee's business, the department may issue a
duplicate retail tobacco and electronic smoking device permit to
the permittee for a fee of $5 per copy.
(d) A separate retail tobacco and electronic smoking
device permit shall be obtained for each place of business
owned, controlled, or operated by a retailer. A retailer that
owns or controls more than one place of business may submit a
single application for more than one retail tobacco and
electronic smoking device permit. Each retail tobacco and
electronic smoking device permit issued shall clearly describe
the place of business where the operation of the business is
conducted.
(e) Any entity that operates as a dealer or wholesaler and
also sells electronic smoking devices, e-liquids, cigarettes, or
other tobacco products to consumers at retail shall acquire a
separate retail tobacco and electronic smoking device permit.
(f) A retail tobacco and electronic smoking device permit shall be nonassignable and nontransferable from one entity to another entity. A retail tobacco and electronic smoking device permit may be transferred from one business location to another business location after an application has been filed with the department requesting that transfer and approval has been obtained from the department.

(g) A retail tobacco and electronic smoking device permit issued under this section shall be displayed at all times in a conspicuous place at the place of business requiring the retail tobacco and electronic smoking device permit.

(h) Any sales of cigarettes or tobacco products 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. No sales of electronic smoking devices or e-liquids shall be made through a vending machine.
(i) No retailer shall purchase any pack of cigarettes without the appropriate tax stamp being affixed to the bottom of the pack as required by this chapter.

(j) A vehicle from which electronic smoking devices, e-liquids, cigarettes, or tobacco products are sold is considered a place of business and requires a retail tobacco and electronic smoking device permit. Retail tobacco and electronic smoking device 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 and electronic smoking device permits for vehicles shall not be moved from one vehicle to another.

(k) A permittee shall be subject to the inspection and investigation requirements of this chapter and shall provide the department or the attorney general with any information deemed necessary to verify compliance with the requirements of this chapter.

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

(A) A written statement containing the name and address of the permittee's source of its electronic smoking devices, e-liquids, cigarettes, and tobacco products;

(B) The date of delivery, quantity, trade name or brand, and price of the electronic smoking devices, e-liquids, cigarettes, and tobacco products; 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 electronic smoking devices, e-liquids, cigarettes, and tobacco products 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.

(m) The department may suspend or, after hearing, revoke or decline to renew any retail tobacco or electronic smoking device permit issued under this chapter whenever the department finds that the applicant or permittee has failed to comply with this chapter or any rule adopted under this chapter, or for any other good cause. Good cause includes but is not limited to instances where an applicant or permittee has:

(1) Submitted a false or fraudulent application or provided a false statement in an application; or

(2) Possessed or displayed a false or fraudulent retail tobacco or electronic smoking device permit.

Upon suspending or revoking any retail tobacco or electronic smoking device permit, the department shall request that the
permittee immediately surrender any retail tobacco or electronic smoking device permit or duplicate issued to the permittee, and the permittee shall surrender the permit or duplicate promptly to the department as requested.

(n) Whenever the department suspends, revokes, or declines to renew a retail tobacco or electronic smoking device permit, the department shall notify the applicant or permittee immediately and afford the applicant or permittee a hearing, if requested and if a hearing has not already been afforded. After the hearing, the department shall:

(1) Rescind its order of suspension;
(2) Continue the suspension;
(3) Revoke the retail tobacco or electronic smoking device permit;
(4) Rescind its order of revocation;
(5) Decline to renew the retail tobacco and electronic smoking device permit; or
(6) Renew the retail tobacco and electronic smoking device permit.

(o) Any cigarette, package of cigarettes, carton of cigarettes, container of cigarettes, tobacco product, package of
tobacco products, [or any container] of tobacco products,
electronic smoking device, container of electronic smoking
devices, e-liquid product, or container of e-liquid products
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 5. Section 245-9, Hawaii Revised Statutes, is
amended to read as follows:

"§245-9 Inspection. (a) The department and the attorney
general may examine all records, including tax returns and
reports under section 245-31[.] or 245-G, 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
electronic smoking devices, e-liquids, cigarettes [and], or
tobacco products, 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 electronic smoking devices, e-liquids, or 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 electronic smoking devices, e-liquids, cigarettes and tobacco products other than cigarettes, 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.

(c) If the department or the attorney general has reasonable cause to believe and does believe that electronic smoking devices, e-liquids, cigarettes, stamps, or counterfeit stamps are being acquired, possessed, transported, kept, sold, or offered for sale in violation of this chapter, the department or the attorney general may investigate or search the vehicle or premises in which the electronic smoking devices, e-liquids, cigarettes, stamps, or counterfeit stamps are believed to be located. If electronic smoking devices, e-liquids, cigarettes, stamps, or counterfeit stamps are found in a vehicle, premises, or vending machine in violation of this chapter the electronic smoking devices, e-liquids, cigarettes, vending machine, vehicle, stamps, counterfeit stamps, or other tangible personal property containing those electronic smoking devices, e-liquids, cigarettes, stamps, or counterfeit stamps and any books and records in possession of the entity in control or possession of the electronic smoking devices, e-liquids, cigarettes, stamps, or counterfeit stamps may be seized by the department or the
attorney general and are subject to forfeiture as provided in
this chapter and chapter 712A.

(d) For purposes of this chapter:

"Counterfeit stamp" means any stamp that is not printed,
manufactured, distributed, or made by authority of the
department.

"Vehicle" means an automobile, airplane, motorcycle,
motorboat, or other motor-propelled vehicle."

SECTION 6. Section 328L-5, Hawaii Revised Statutes, is
amended as follows:

1. By amending subsection (c) to read:

"(c) The entity selected under subsection (a), for each
fiscal year, may expend up to fifty per cent of the total market
value of the Hawaii tobacco prevention and control trust fund on
the preceding June 30, for tobacco prevention and control,
including but not limited to, reducing cigarette smoking [and],
tobacco use, and use of electronic smoking devices and e-liquids
among youth and adults through education and enforcement
activities, and controlling and preventing chronic diseases
where tobacco or electronic smoking device use is a risk
factor."
2. By amending subsection (e) to read:

"(e) The assets of the Hawaii tobacco prevention and control trust fund shall consist of:

(1) Moneys appropriated under section 328L-2(b)(2);
(2) Moneys appropriated to the Hawaii tobacco prevention and control trust fund by the state, county, or federal government;
(3) Private contributions of cash or property; [and]
(4) Income and capital gains earned by the trust fund[; an4]
and
(5) Moneys allocated to the Hawaii tobacco prevention and control trust fund by section 245-F."

SECTION 7. Chapter 28, part XII, Hawaii Revised Statutes, is repealed.

SECTION 8. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.
SECTION 10. This Act shall take effect on July 1, 2019.

INTRODUCED BY: [Signature]

JAN 22 2019
Report Title:
Electronic Smoking Devices; Smoking; Tax

Description:
Transfers regulation of electronic smoking devices from AG's office to DOTAX. Establishes procedures for licensing and permitting of electronic smoking device retailers. Increases tobacco licensing and permitting fees. Allocates $200,000 of new e-liquid excise tax to the Hawaii tobacco prevention and control trust fund.

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