

JAN 24 2019

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# A BILL FOR AN ACT

RELATING TO ELECTRONIC SMOKING PRODUCTS.

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

1           SECTION 1. The legislature finds that tobacco use is the  
2 single most preventable cause of disease, disability, and death  
3 in the United States. Tobacco use continues to be a problem in  
4 Hawaii, causing approximately one thousand four hundred deaths  
5 per year among adults. An estimated twenty-one thousand  
6 children in Hawaii currently under the age of eighteen will  
7 ultimately die prematurely from smoking. Tobacco use poses a  
8 heavy burden on Hawaii's health care system and economy. Each  
9 year, smoking costs approximately \$526,000,000 in direct health  
10 care expenditures and \$387,300,000 in lost productivity in the  
11 State.

12           The legislature further finds that tobacco products are  
13 addictive and inherently dangerous, causing many different types  
14 of cancer, heart disease, and other serious illnesses. Hawaii  
15 has a substantial interest in reducing the number of individuals  
16 of all ages who use tobacco products, and a particular interest



1 in protecting adolescents from tobacco dependence and the  
2 illnesses and premature death associated with tobacco use.

3 The legislature additionally finds that electronic smoking  
4 devices, also known as e-cigarettes, are battery-operated  
5 products designed to deliver nicotine, flavor, and other  
6 chemicals to the user by turning chemicals including highly  
7 addictive nicotine into an aerosol that is inhaled by the user.  
8 Consumers may choose from varying strengths of e-liquid nicotine  
9 as well as liquids consisting of different flavors.

10 The electronic smoking device industry, including the  
11 production of e-liquids, is growing rapidly. On December 18,  
12 2018, the United States Surgeon General made the unprecedented  
13 move of classifying the danger of youth usage of electronic  
14 smoking devices as an epidemic. Since the Surgeon General first  
15 issued a warning in 2016 about the dangers of these products,  
16 data has shown historic rise in use by youth and young adults.  
17 According to the 2016 report from the Surgeon General,  
18 e-cigarette use amongst the nation's youth and young adults has  
19 become a major public health concern. The Surgeon General's  
20 report noted that e-cigarette use has increased considerably in  
21 recent years, growing an astounding nine hundred per cent among



1 high school students from 2011 to 2015. In a 2018 study  
2 conducted by the National Institute on Drug Abuse, the use of  
3 electronic smoking devices by teens increased nationally from  
4 27.8 to 37.3 in a twelve-month period. The increase translates  
5 to 1.3 million more teens using electronic smoking devices in a  
6 single year. E-cigarette use among youth and young adults is  
7 also strongly associated with the use of other tobacco products,  
8 including combustible tobacco products. Toxicologists have also  
9 warned that e-liquids pose significant risks to public health,  
10 particularly to children. According to the Surgeon General's  
11 report, if the contents of refill cartridges or bottles are  
12 consumed, ingestion of e-liquids containing nicotine can cause  
13 acute toxicity and possibly death. The Surgeon General's report  
14 also found that there are numerous policies and practices that  
15 can be implemented at the state and local levels to address  
16 electronic smoking device use among youth and young adults,  
17 including preventing access to e-cigarettes by youth,  
18 significant increases in tax and price of e-cigarettes, retail  
19 licensure, and regulation of e-cigarette marketing.

20 The legislature additionally finds that the rapid growth of  
21 the electronic smoking device industry, including retail



1 businesses selling electronic smoking devices or e-liquids,  
2 necessitates further regulations to protect consumers, such as  
3 requiring retailers of e-liquids to obtain a retail tobacco  
4 permit.

5       The legislature notes that the federal Food and Drug  
6 Administration recently finalized a rule that expands its  
7 regulatory authority to all tobacco products, including  
8 electronic smoking devices, cigars, and hookah and pipe tobacco.  
9 However, the legislature also notes that there is currently no  
10 state tobacco tax attached to e-liquid, even though electronic  
11 smoking devices are now regulated as tobacco products.  
12 Furthermore, tobacco products other than cigarettes are  
13 currently taxed at a lower rate than cigarettes, even though  
14 their use carries similar health risks. Research has shown that  
15 increasing cigarette prices, such as through cigarette taxes,  
16 tends to reduce the rate of smoking by adult and youth smokers.  
17 However, the legislature is concerned that as the price of  
18 cigarettes increases, smokers may purchase less expensive  
19 tobacco products, such as electronic smoking devices or  
20 e-liquids.



1           Finally, the legislature concludes that there needs to be a  
2 tax on e-liquids and taxing these products as other tobacco  
3 products is the most equitable way to do so. Imposing a tax on  
4 e-liquids will also encourage users of e-liquids to quit,  
5 sustain cessation, prevent youth initiation, and reduce  
6 consumption among those who continue to use them.

7           The purpose of this Act is to:

8           (1) Establish the offense of unlawful shipment of e-liquid  
9           products;

10          (2) Include e-liquid within the definition of "tobacco  
11          products", as used in the cigarette tax and tobacco  
12          tax law, thereby:

13           (A) Subjecting e-liquid to the excise tax on tobacco  
14           products;

15           (B) Requiring retailers of e-liquid to obtain a  
16           retail tobacco permit to sell, possess, keep,  
17           acquire, distribute, or transport e-liquid;

18           (C) Prohibit persons from engaging in the business of  
19           a wholesaler or dealer of e-liquid without first  
20           obtaining a license from the department of  
21           taxation; and



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- 1 (D) Applying other requirements of chapter 245,
- 2 Hawaii Revised Statutes;
- 3 (3) Increase the license fee for persons engaged as a
- 4 wholesaler or dealer of cigarettes and tobacco
- 5 products;
- 6 (4) Increase the retail tobacco permit fee for retailers
- 7 engaged in the retail sale of cigarettes and tobacco
- 8 products;
- 9 (5) Fund health education and prevention programs about
- 10 the risks and dangers of the use of electronic smoking
- 11 devices for youth; and
- 12 (6) Repeal various statutory provisions relating to
- 13 electronic smoking devices.

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

17 "§245- Unlawful shipment of e-liquid products; penalty;  
 18 reports; liability for unpaid taxes. (a) A person commits the  
 19 offense of unlawful shipment of e-liquid products if the person:  
 20 (1) Is engaged in the business of selling e-liquid  
 21 products; and



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1       (2) Ships or causes to be shipped any e-liquid products to  
2       a person or entity in this State that is not a  
3       licensee under this chapter.

4       (b) This section shall not apply to the shipment of  
5 e-liquid products if any of the following conditions is met:

6       (1) The e-liquid products are exempt from taxes as  
7       provided by section 245-3(b) or are otherwise exempt  
8       from the applicability of this chapter as provided by  
9       section 245-62; or

10       (2) All applicable Hawaii taxes on the e-liquid products  
11       are paid in accordance with the requirements of this  
12       chapter.

13       (c) Unlawful shipment of e-liquid products is a class C  
14 felony if the person or entity knowingly ships or causes to be  
15 shipped e-liquid products with a value of \$10,000 or more in  
16 violation of subsection (a).

17       (d) Unlawful shipment of e-liquid products is a  
18 misdemeanor if the person or entity knowingly ships or causes to  
19 be shipped e-liquid products with a value of less than \$10,000.



1        (e) For the purposes of this section, a person is a  
2 licensee if the person or entity's name appears on a list of  
3 authorized licensees published by the department.

4        (f) Notwithstanding the existence of other remedies at  
5 law, any person that purchases, uses, controls, or possesses any  
6 e-liquid products for which the applicable taxes imposed under  
7 title 14 have not been paid, shall be liable for the applicable  
8 taxes, plus any penalty and interest as provided for by law.

9        (g) For the purpose of this section:

10        "E-liquid products" means e-liquid, electronic smoking  
11 devices containing e-liquid, or component parts containing e-  
12 liquid.

13        "Person" shall not be limited to individuals pursuant to  
14 section 1-19."

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

17        1. By adding three new definitions to be appropriately  
18 inserted and to read:

19        "E-liquid" means any liquid or like substance, which may  
20 or may not contain nicotine, that is designed or intended to be  
21 used in an electronic smoking device, whether or not packaged in





1 a cartridge or other container. E-liquid shall not include  
2 prescription drugs; medical cannabis or manufactured cannabis  
3 products under chapter 329D; or medical devices used to  
4 aerosolize, inhale, or ingest prescription drugs, including  
5 manufactured cannabis products manufactured or distributed in  
6 accordance with section 329D-10(a).

7 "Electronic smoking device" means any electronic product,  
8 or part thereof, that can be used by a person to simulate  
9 smoking in the delivery of nicotine or any other substance,  
10 intended for human consumption, through inhalation of vapor or  
11 aerosol from the product. Electronic smoking device includes  
12 but is not limited to an electronic cigarette, electronic cigar,  
13 electronic cigarillo, electronic pipe, electronic hookah, vape  
14 pen or related product, and any cartridge or other component  
15 part of the device or product.

16 "Smoke" or "smoking" means inhaling, exhaling, burning,  
17 carrying, or possessing any lighted or heated tobacco product,  
18 or similar substance intended for human consumption, including  
19 the use of an electronic smoking device that creates an aerosol  
20 or vapor, in any manner or in any form."



1           2. By amending the definition of "tobacco products" to  
2 read:

3           "Tobacco products" means [~~tobacco~~]:

4           (1) Tobacco in any form, other than cigarettes or little  
5           cigars [~~, that is prepared or intended for consumption~~  
6           or for personal use by humans, including large cigars  
7           and any substitutes thereof other than cigarettes that  
8           bear the semblance thereof, snuff, chewing or  
9           smokeless tobacco, and smoking or pipe tobacco.]; or

10          (2) E-liquid,  
11          that is intended for human consumption, or is likely to be  
12          consumed, whether smoked, heated, chewed, absorbed, dissolved,  
13          inhaled, or ingested by other means. Tobacco products includes  
14          but is not limited to large cigars and any substitutes thereof  
15          other than cigarettes that bear the semblance thereof, pipe  
16          tobacco, chewing or smokeless tobacco, snuff, snus, e-liquid,  
17          electronic smoking devices containing e-liquid, component parts  
18          containing e-liquid, and related products."

19          SECTION 4. Section 245-2, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:



1           "(b) The license shall be issued by the department upon  
2 application therefor, in such form and manner as shall be  
3 required by rule of the department, and the payment of a fee of  
4 [~~\$2.50,~~] \$250, and shall be renewable annually on July 1 for the  
5 twelve months ending the succeeding June 30."

6           SECTION 5. Section 245-2.5, Hawaii Revised Statutes, is  
7 amended by amending subsection (c) to read as follows:

8           "(c) The retail tobacco permit shall be issued by the  
9 department upon application by the retailer in the form and  
10 manner prescribed by the department, and the payment of a fee of  
11 [~~\$20-~~] \$50. Permits shall be valid for one year, from December  
12 1 to November 30, and renewable annually. Whenever a retail  
13 tobacco permit is defaced, destroyed, or lost, or the permittee  
14 relocates the permittee's business, the department may issue a  
15 duplicate retail tobacco permit to the permittee for a fee of \$5  
16 per copy."

17           SECTION 6. Section 245-15, Hawaii Revised Statutes, is  
18 amended to read as follows:

19           "**§245-15 Disposition of revenues.** All moneys collected  
20 pursuant to this chapter shall be paid into the state treasury  
21 as state realizations to be kept and accounted for as provided



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1 by law; provided that, of the moneys collected under the tax  
2 imposed pursuant to:

3 (1) Section 245-3(a)(5), after September 30, 2006, and  
4 prior to October 1, 2007, 1.0 cent per cigarette shall  
5 be deposited to the credit of the Hawaii cancer  
6 research special fund, established pursuant to section  
7 304A-2168, for research and operating expenses and for  
8 capital expenditures;

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

11 (A) 1.5 cents per cigarette shall be deposited to the  
12 credit of the Hawaii cancer research special  
13 fund, established pursuant to section 304A-2168,  
14 for research and operating expenses and for  
15 capital expenditures;

16 (B) 0.25 cents per cigarette shall be deposited to  
17 the credit of the trauma system special fund  
18 established pursuant to section 321-22.5; and

19 (C) 0.25 cents per cigarette shall be deposited to  
20 the credit of the emergency medical services



1 special fund established pursuant to section  
2 321-234;

3 (3) Section 245-3(a)(7), after September 30, 2008, and  
4 prior to July 1, 2009:

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) 0.5 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) 0.25 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) 0.25 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;



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

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

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

11          (C) 0.75 cents per cigarette shall be deposited to  
12          the credit of the community health centers  
13          special fund established pursuant to section  
14          321-1.65; and

15          (D) 0.5 cents per cigarette shall be deposited to the  
16          credit of the emergency medical services special  
17          fund established pursuant to section 321-234;

18          (5) Section 245-3(a)(11), after June 30, 2013, and prior  
19          to July 1, 2015:

20          (A) 2.0 cents per cigarette shall be deposited to the  
21          credit of the Hawaii cancer research special



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1 fund, established pursuant to section 304A-2168,  
2 for research and operating expenses and for  
3 capital expenditures;

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

7 (C) 1.25 cents per cigarette shall be deposited to  
8 the credit of the community health centers  
9 special fund established pursuant to section  
10 321-1.65; and

11 (D) 1.25 cents per cigarette shall be deposited to  
12 the credit of the emergency medical services  
13 special fund established pursuant to section  
14 321-234; [and]

15 (6) Section 245-3(a)(11), after June 30, 2015, and  
16 thereafter:

17 (A) 2.0 cents per cigarette shall be deposited to the  
18 credit of the Hawaii cancer research special  
19 fund, established pursuant to section 304A-2168,  
20 for research and operating expenses and for  
21 capital expenditures;



1 (B) 1.125 cents per cigarette, but not more than  
2 \$7,400,000 in a fiscal year, shall be deposited  
3 to the credit of the trauma system special fund  
4 established pursuant to section 321-22.5;

5 (C) 1.25 cents per cigarette, but not more than  
6 \$8,800,000 in a fiscal year, shall be deposited  
7 to the credit of the community health centers  
8 special fund established pursuant to section  
9 321-1.65; and

10 (D) 1.25 cents per cigarette, but not more than  
11 \$8,800,000 in a fiscal year, shall be deposited  
12 to the credit of the emergency medical services  
13 special fund established pursuant to section  
14 321-234 [-]; and

15 (7) Section 245-3(a)(12), after June 30, 2019, and  
16 thereafter, \$200,000 shall be deposited to the credit  
17 of the Hawaii tobacco prevention and control trust  
18 fund established pursuant to section 328L-5.

19 The department shall provide an annual accounting of these  
20 dispositions to the legislature."





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

3 SECTION 8. Section 245-17, Hawaii Revised Statutes, is  
4 repealed.

5 ~~["§245-17] Delivery sales. (a) No person shall conduct~~  
6 ~~a delivery sale or otherwise ship or transport, or cause to be~~  
7 ~~shipped or transported, any electronic smoking device in~~  
8 ~~connection with a delivery sale to any person under the age of~~  
9 ~~twenty one.~~

10 ~~(b) A person who makes delivery sales shall not accept a~~  
11 ~~purchase or order from any person without first obtaining the~~  
12 ~~full name, birth date, and address of that person and verifying~~  
13 ~~the purchaser's age by:~~

14 ~~(1) An independently operated third party database or~~  
15 ~~aggregate of databases that are regularly used by~~  
16 ~~government and businesses for the purpose of age and~~  
17 ~~identity verification and authentication;~~

18 ~~(2) Receiving a copy of a government issued identification~~  
19 ~~card from the purchaser; or~~

20 ~~(3) Requiring age and signature verification in the~~  
21 ~~shipment process and upon and before actual delivery.~~



1       ~~(c) The purchaser shall certify their age before~~  
2 ~~completing the purchaser's order.~~

3       ~~(d) Any person who violates this section shall be fined~~  
4 ~~\$500 for the first offense. Any subsequent offenses shall~~  
5 ~~subject the person to a fine of no less than \$500 but no more~~  
6 ~~than \$2,000. Any person under twenty one years of age who~~  
7 ~~violates this section shall be fined \$10 for the first offense;~~  
8 ~~provided that any subsequent offense shall subject the person to~~  
9 ~~a fine of \$50, no part of which shall be suspended, or the~~  
10 ~~person shall be required to perform no less than forty eight~~  
11 ~~hours but no more than seventy two hours of community service~~  
12 ~~during hours when the person is not employed or attending~~  
13 ~~school.~~

14       ~~(e) The department shall not adopt rules prohibiting~~  
15 ~~delivery sales.~~

16       ~~(f) For the purposes of this section:~~

17       ~~"Delivery sale" means any sale of an electronic smoking~~  
18 ~~device to a purchaser in the State where either:~~

19       ~~(1) The purchaser submits the order for sale by means of a~~  
20       ~~telephonic or other method of voice transmission, the~~



1 ~~mail or any other delivery service, or the internet or~~  
2 ~~other online service; or~~

3 ~~(2) The electronic smoking device is delivered by use of~~  
4 ~~the mail or any other delivery service.~~

5 ~~The foregoing sales of electronic smoking devices shall~~  
6 ~~constitute a delivery sale regardless of whether the seller is~~  
7 ~~located within or without the State.~~

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

14 SECTION 9. This Act does not affect rights and duties that  
15 matured, penalties that were incurred, and proceedings that were  
16 begun before its effective date.

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

19 SECTION 11. This Act shall take effect on July 1, 2019.

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Kal Rauh

INTRODUCED BY:

Paul E. Baker

Paul E. Baker

Kurt Fowler



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*Clarence K. Fushihara*

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# S.B. NO. 1405

**Report Title:**

Unlawful Shipment of E-liquid Products; Tobacco Products; E-liquid; License Fee; Retail Permit Fee; Health Education and Prevention Programs

**Description:**

Establishes the offense of unlawful shipment of e-liquid products. Includes e-liquid within the definition of "tobacco products", as used in the cigarette tax and tobacco tax law. Increases the license fee for persons engaged as a wholesaler or dealer of cigarettes and tobacco products. Increases the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes and tobacco products. Allocates a portion of funds collected excise taxes on tobacco products to health education and prevention programs about the risks and dangers of the use of electronic smoking devices for youth. Repeals certain provisions of the Hawaii Revised Statutes relating to electronic smoking devices.

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

