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



1 The legislature additionally finds that the rapid growth of
2 the electronic smoking device industry, including retail
3 businesses selling electronic smoking devices or e-liquids,
4 necessitates further regulations to protect consumers, such as
5 requiring retailers of e-liquids to obtain a retail tobacco
6 permit.

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



1 tobacco products, such as electronic smoking devices or
2 e-liquids.

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

11 The purpose of this Act is to:

12 (1) Establish the offense of unlawful shipment of e-liquid
13 products;

14 (2) Include e-liquid and electronic smoking devices
15 containing e-liquid within the definition of "tobacco
16 products", as used in the cigarette tax and tobacco
17 tax law, thereby:

18 (A) Subjecting e-liquid and electronic smoking
19 devices containing e-liquid to the excise tax on
20 tobacco products;



- 1 (B) Requiring retailers of e-liquid to obtain a
- 2 retail tobacco permit to sell, possess, keep,
- 3 acquire, distribute, or transport e-liquid;
- 4 (C) Prohibit persons from engaging in the business of
- 5 a wholesaler or dealer of e-liquid without first
- 6 obtaining a license from the department of
- 7 taxation; and
- 8 (D) Applying other requirements of chapter 245,
- 9 Hawaii Revised Statutes;
- 10 (3) Increase the license fee for persons engaged as a
- 11 wholesaler or dealer of cigarettes and tobacco
- 12 products;
- 13 (4) Increase the retail tobacco permit fee for retailers
- 14 engaged in the retail sale of cigarettes and tobacco
- 15 products;
- 16 (5) Fund health education and prevention programs about
- 17 the risks and dangers of the use of electronic smoking
- 18 devices for youth; and
- 19 (6) Repeal various statutory provisions relating to
- 20 electronic smoking devices.



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

4 "§245- Unlawful shipment of e-liquid products; penalty;
5 reports; liability for unpaid taxes. (a) A person commits the
6 offense of unlawful shipment of e-liquid products if the person:

7 (1) Is engaged in the business of selling e-liquid
8 products; and

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

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

14 (1) The e-liquid products are exempt from taxes as
15 provided by section 245-3(b) or are otherwise exempt
16 from the applicability of this chapter as provided by
17 section 245-62; or

18 (2) All applicable Hawaii taxes on the e-liquid products
19 are paid in accordance with the requirements of this
20 chapter.



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

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

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

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

16 (g) For the purpose of this section:

17 "E-liquid products" means e-liquid, electronic smoking
18 devices containing e-liquid, or component parts containing e-
19 liquid.

20 "Person" shall not be limited to individuals pursuant to
21 section 1-19.



1 "Value" means the fair market value at the time of the
2 offense."

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

5 1. By adding three new definitions to be appropriately
6 inserted and to read:

7 "E-liquid" means any liquid or like substance, which may
8 or may not contain nicotine, that is designed or intended to be
9 used in an electronic smoking device, whether or not packaged in
10 a cartridge or other container. E-liquid shall not include
11 prescription drugs; medical cannabis or manufactured cannabis
12 products under chapter 329D; or medical devices used to
13 aerosolize, inhale, or ingest prescription drugs, including
14 manufactured cannabis products manufactured or distributed in
15 accordance with section 329D-10(a).

16 "Electronic smoking device" means any electronic product,
17 or part thereof, that can be used by a person to simulate
18 smoking in the delivery of nicotine or any other substance,
19 intended for human consumption, through inhalation of vapor or
20 aerosol from the product. Electronic smoking device includes
21 but is not limited to an electronic cigarette, electronic cigar,



1 electronic cigarillo, electronic pipe, electronic hookah, vape
2 pen or related product, and any cartridge or other component
3 part of the device or product.

4 "Smoke" or "smoking" means inhaling, exhaling, burning,
5 carrying, or possessing any lighted or heated tobacco product,
6 or similar substance intended for human consumption, including
7 the use of an electronic smoking device that creates an aerosol
8 or vapor, in any manner or in any form."

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

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

12 (1) Tobacco in any form, other than cigarettes or little
13 cigars [~~, that is prepared or intended for consumption~~
14 ~~or for personal use by humans, including large cigars~~
15 ~~and any substitutes thereof other than cigarettes that~~
16 ~~bear the semblance thereof, snuff, chewing or~~
17 ~~smokeless tobacco, and smoking or pipe tobacco.]; or~~

18 (2) E-liquid,
19 that is intended for human consumption, or is likely to be
20 consumed, whether smoked, heated, chewed, absorbed, dissolved,
21 inhaled, or ingested by other means. Tobacco products includes



1 but is not limited to large cigars and any substitutes thereof
2 other than cigarettes that bear the semblance thereof, pipe
3 tobacco, chewing or smokeless tobacco, snuff, snus, e-liquid,
4 electronic smoking devices containing e-liquid, component parts
5 containing e-liquid, and related products."

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

8 "(b) The license shall be issued by the department upon
9 application therefor, in such form and manner as shall be
10 required by rule of the department, and the payment of a fee of
11 [~~\$2.50,~~] \$250, and shall be renewable annually on July 1 for the
12 twelve months ending the succeeding June 30."

13 SECTION 5. Section 245-2.5, Hawaii Revised Statutes, is
14 amended by amending subsections (c) and (d) to read as follows:

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



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

3 (d) A separate retail tobacco permit shall be obtained for
4 each place of business owned, controlled, or operated by a
5 retailer. In seeking a retail tobacco permit, the applicant
6 shall specify whether each place of business sells e-liquid. A
7 retailer that owns or controls more than one place of business
8 may submit a single application for more than one retail tobacco
9 permit. Each retail tobacco permit issued shall clearly
10 describe the place of business where the operation of the
11 business is conducted[-] and whether the place of business sells
12 e-liquid."

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

15 "§245-15 Disposition of revenues. All moneys collected
16 pursuant to this chapter shall be paid into the state treasury
17 as state realizations to be kept and accounted for as provided
18 by law; provided that, of the moneys collected under the tax
19 imposed pursuant to:

20 (1) Section 245-3(a)(5), after September 30, 2006, and
21 prior to October 1, 2007, 1.0 cent per cigarette shall



1 be deposited to the credit of the Hawaii cancer
2 research special fund, established pursuant to section
3 304A-2168, for research and operating expenses and for
4 capital expenditures;

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

7 (A) 1.5 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) 0.25 cents per cigarette shall be deposited to
13 the credit of the trauma system special fund
14 established pursuant to section 321-22.5; and

15 (C) 0.25 cents per cigarette shall be deposited to
16 the credit of the emergency medical services
17 special fund established pursuant to section
18 321-234;

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



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

6 (B) 0.5 cents per cigarette shall be deposited to the
7 credit of the trauma system special fund
8 established pursuant to section 321-22.5;

9 (C) 0.25 cents per cigarette shall be deposited to
10 the credit of the community health centers
11 special fund established pursuant to section
12 321-1.65; and

13 (D) 0.25 cents per cigarette shall be deposited to
14 the credit of the emergency medical services
15 special fund established pursuant to section
16 321-234;

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

19 (A) 2.0 cents per cigarette shall be deposited to the
20 credit of the Hawaii cancer research special
21 fund, established pursuant to section 304A-2168,



- 1 for research and operating expenses and for
2 capital expenditures;
- 3 (B) 0.75 cents per cigarette shall be deposited to
4 the credit of the trauma system special fund
5 established pursuant to section 321-22.5;
- 6 (C) 0.75 cents per cigarette shall be deposited to
7 the credit of the community health centers
8 special fund established pursuant to section
9 321-1.65; and
- 10 (D) 0.5 cents per cigarette shall be deposited to the
11 credit of the emergency medical services special
12 fund established pursuant to section 321-234;
- 13 (5) Section 245-3(a)(11), after June 30, 2013, and prior
14 to July 1, 2015:
- 15 (A) 2.0 cents per cigarette shall be deposited to the
16 credit of the Hawaii cancer research special
17 fund, established pursuant to section 304A-2168,
18 for research and operating expenses and for
19 capital expenditures;



- 1 (B) 1.5 cents per cigarette shall be deposited to the
2 credit of the trauma system special fund
3 established pursuant to section 321-22.5;
- 4 (C) 1.25 cents per cigarette shall be deposited to
5 the credit of the community health centers
6 special fund established pursuant to section
7 321-1.65; and
- 8 (D) 1.25 cents per cigarette shall be deposited to
9 the credit of the emergency medical services
10 special fund established pursuant to section
11 321-234; [and]
- 12 (6) Section 245-3(a)(11), after June 30, 2015, and
13 thereafter:
- 14 (A) 2.0 cents per cigarette shall be deposited to the
15 credit of the Hawaii cancer research special
16 fund, established pursuant to section 304A-2168,
17 for research and operating expenses and for
18 capital expenditures;
- 19 (B) 1.125 cents per cigarette, but not more than
20 \$7,400,000 in a fiscal year, shall be deposited



1 to the credit of the trauma system special fund
2 established pursuant to section 321-22.5;

3 (C) 1.25 cents per cigarette, but not more than
4 \$8,800,000 in a fiscal year, shall be deposited
5 to the credit of the community health centers
6 special fund established pursuant to section
7 321-1.65; and

8 (D) 1.25 cents per cigarette, but not more than
9 \$8,800,000 in a fiscal year, shall be deposited
10 to the credit of the emergency medical services
11 special fund established pursuant to section
12 321-234 [-]; and

13 (7) Section 245-3(a)(12), on July 1, 2019, and thereafter,
14 \$100,000 shall be deposited to the credit of the
15 Hawaii tobacco prevention and control trust fund
16 established pursuant to section 328L-5 and \$100,000
17 shall be allocated to the University of Hawaii cancer
18 center to support tobacco and cancer prevention
19 research.

20 The department shall provide an annual accounting of these
21 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 January 1, 2020.



Report Title:

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

Description:

Establishes the offense of unlawful shipment of e-liquid products. Includes e-liquid and electronic smoking devices containing 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 from 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. Effective 1/1/2020. (SD1)

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

