A BILL FOR AN ACT

RELATING TO TOBACCO PRODUCTS.

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.

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 or vapor that is inhaled by the user. Consumers may choose from varying strengths of e-liquid nicotine as well as liquids consisting of different flavors.

The electronic smoking device industry, including the production of e-liquid, 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 historic rise in use by youth and young adults. According to the 2016 report from the Surgeon General, e-cigarette use amongst 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 conducted by the National Institute on Drug Abuse, the use of
electronic smoking devices among high school seniors increased nationally from 27.8 per cent to 37.3 per cent in a twelve-month period. The increase translates to 1.3 million 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.

The legislature additionally finds that 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 e-liquid to obtain a retail tobacco permit.

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 as tobacco products. Furthermore, 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 increasing cigarette prices, such as through cigarette taxes, tends 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 purchase less expensive tobacco products, such as electronic smoking devices or e-liquids.

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

The purpose of this Act is to:

(1) Establish the offense of unlawful shipment of tobacco
products;

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

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

(B) Requiring retailers of tobacco products to obtain
a retail tobacco permit to sell, possess, keep,
acquire, distribute, or transport tobacco
products;

(C) Prohibiting persons from engaging in the business
of a wholesaler or dealer of tobacco products
without first obtaining a license from the
department of taxation; and

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

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

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

(1) Is engaged in the business of selling tobacco products; and

(2) Ships or causes to be shipped any tobacco products to a person or entity in this State that is not a licensee under this chapter."
(b) This section shall not apply to the shipment of tobacco products if any of the following conditions is met:

(1) The tobacco products are exempt from taxes as provided by section 245-3(b) or are otherwise exempt from the applicability of this chapter as provided by section 245-62; or

(2) All applicable Hawaii taxes on the tobacco products are paid in accordance with the requirements of this chapter.

(c) Unlawful shipment of tobacco products is a class C felony if the person or entity knowingly ships or causes to be shipped tobacco products with a value of $10,000 or more in violation of subsection (a).

(d) Unlawful shipment of tobacco products is a misdemeanor if the person or entity knowingly ships or causes to be shipped tobacco products with a value of less than $10,000 in violation of subsection (a).

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

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

(g) For the purpose of this section:

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

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

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

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

"E-liquid" means any liquid or like substance, which may or
may not contain nicotine, that is designed or intended to be
used in an electronic smoking device, whether or not packaged in
a cartridge or other container. E-liquid shall not include
prescription drugs; medical cannabis or manufactured cannabis
products pursuant to chapter 329D; or medical devices used to
aerosolize, inhale, or ingest prescription drugs, including
manufactured cannabis products manufactured or distributed in
accordance with section 329D-10(a).
"Electronic smoking device" means any electronic product, or part thereof, that can be used by a person to simulate smoking in the delivery of nicotine or any other substance, intended for human consumption, through inhalation of vapor or aerosol from the product. Electronic smoking device includes but is not limited to an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, heated tobacco products, vape pen or related product, and any cartridge or other component part of the device or product.

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

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

"Tobacco products" means [tobacco]:

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

(2) E-liquid that is intended for human consumption, or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by other means; or

(3) Electronic smoking devices, or part thereof, that can be used by a person to simulate smoking in the delivery of nicotine or any other substance, intended for human consumption, through inhalation of vapor or aerosol from the product.

Tobacco products includes but is not limited to large cigars and any substitutes thereof other than cigarettes that bear the semblance thereof, pipe tobacco, chewing or smokeless tobacco, snuff, snus, e-liquid, electronic smoking devices, any cartridge or other component part of the device or product, and related products."

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

"(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 [$2.50] $250, and shall be renewable annually on July 1 for the twelve months ending the succeeding June 30."
Section 245-2.5, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

"(c) The retail tobacco 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.]] $50. Permits shall be valid for one year, from December 1 to November 30, and renewable annually. Whenever a retail tobacco permit is defaced, destroyed, or lost, or the permittee relocates the permittee's business, the department may issue a duplicate retail tobacco permit to the permittee for a fee of $5 per copy.

(d) A separate retail tobacco permit shall be obtained for each place of business owned, controlled, or operated by a retailer. In seeking a retail tobacco permit, the applicant shall specify whether each place of business sells e-liquid or electronic smoking devices. A retailer that owns or controls more than one place of business may submit a single application for more than one retail tobacco permit. Each retail tobacco permit issued shall clearly describe the place of business where the operation of the business is conducted[–] and whether the place of business sells e-liquid or electronic smoking devices."
SECTION 6. Section 245-15, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

(A) 1.5 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;
(B) 0.25 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5; and

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

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

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

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

(C) 0.25 cents per cigarette shall be deposited to the credit of the community health centers special fund established pursuant to section 321-1.65; and
(D) 0.25 cents per cigarette shall be deposited to
the credit of the emergency medical services
special fund established pursuant to section
321-234;

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

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

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

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

(D) 0.5 cents per cigarette shall be deposited to the
credit of the emergency medical services special
fund established pursuant to section 321-234;
(5) Section 245-3(a)(11), after June 30, 2013, and prior to July 1, 2015:

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

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

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

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

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

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

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

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

(D) 1.25 cents per cigarette, but not more than $8,800,000 in a fiscal year, shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234.

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

SECTION 7. Chapter 28, part XII, Hawaii Revised Statutes, is repealed.
SECTION 8. Section 245-17, Hawaii Revised Statutes, is repealed.

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

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

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

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

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

(c) The purchaser shall certify their age before completing the purchaser's order.
(d) Any person who violates this section shall be fined
$500 for the first offense. Any subsequent offenses shall
subject the person to a fine of no less than $500 but no more
than $2,000. Any person under twenty-one years of age who
violates this section shall be fined $10 for the first offense;
provided that any subsequent offense shall subject the person to
a fine of $50, no part of which shall be suspended, or the
person shall be required to perform no less than forty-eight
hours but no more than seventy-two hours of community service
during hours when the person is not employed or attending
school.

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

(f) For the purposes of this section:
"Delivery sale" means any sale of an electronic smoking
device to a purchaser in the State where either:

(1) The purchaser submits the order for sale by means of a
telephonic or other method of voice transmission, the
mail or any other delivery service, or the internet or
other online service; or

(2) The electronic smoking device is delivered by use of
the mail or any other delivery service.
The foregoing sales of electronic smoking devices shall constitute a delivery sale regardless of whether the seller is located within or without the State.

"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."

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

SECTION 10. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.
SECTION 12. This Act shall take effect on January 1, 2021.

INTRODUCED BY: ________________________________

BY REQUEST

JAN 21 2020
Report Title:
Unlawful Shipment of Tobacco Products; E-liquid; Electronic Smoking Devices; License Fee; Retail Permit Fee.

Description:
Establishes the offense of unlawful shipment of tobacco products. Includes e-liquid and electronic smoking devices 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 January 1, 2021.

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

TITLE: RELATING TO TOBACCO PRODUCTS.

PURPOSE: Establishes unlawful shipment of tobacco products; adds definition and taxation of e-liquid and electronic smoking devices (ESDs); and establishes requirement for license fee and retail permit fee.

MEANS: Add a new section to chapter 245, Hawaii Revised Statutes (HRS), amend section 245-1, HRS, amend subsection 245-2(b), HRS, amend section 245-15, HRS, repeal chapter 28 part XII, HRS, and repeal section 245-17, HRS.

JUSTIFICATION: This measure responds to the increasing trend of youth vaping, and creating tax parity with cigarettes through banning online shipment to individuals, and establishing additional tax for ESDs that currently do not exist.

Impact on the public: This measure will protect youth through prohibiting the online sales or shipment of ESDs; 60% of youth purchase from friends. Increasing the price of tobacco products is a proven strategy because youth are price sensitive and will bring down the rates of vaping experimentation; 42% high school and 27% middle school.

Impact on the department and other agencies: This proposal will make enforcement simpler because of the additional specificity; and create parity with existing cigarette policies.

GENERAL FUND: None.
OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HTH-590.
OTHER AFFECTED AGENCIES: Department of the Attorney General; County Law Enforcement Agencies; Department of Taxation.

EFFECTIVE DATE: January 1, 2021