A BILL FOR AN ACT

RELATING TO ELECTRONIC SMOKING PRODUCTS.

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

SECTION 1. The legislature 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. The legislature is concerned with the health and safety of e-cigarette products.

The legislature further finds that electronic smoking devices are known to contain volatile organic compounds that, at certain levels, can cause eye, nose and throat irritation, headaches and nausea, and can damage the liver, kidneys and the nervous system. The liquids used in e-smoking devices are largely unregulated and contain harmful chemicals. Some flavorings are more toxic than others. Studies have shown that some flavors contain different levels of diacetyl, a chemical that has been linked to a serious lung disease called bronchiolitis obliterans. Formaldehyde is another chemical...
associated with e-liquids. It is a cancer-causing substance that forms if e-liquid overheats or not enough liquid reaches the heating element.

In 2019, the U.S. Department of Health and Human Services declared that e-cigarette users are falling ill to a new illness named E-Cigarette and Vaping Associated Lung Injury (EVALI) and notes that sixteen percent of patients hospitalized were younger than eighteen years of age. While research is still being conducted on the causes of the illnesses, this unregulated product is a threat to the health and safety of youth. Cases of EVALI have been reported in Hawaii. As of November 2019, the Hawaii department of health's disease outbreak control division confirmed four cases of severe respiratory illness associated with e-cigarettes. Each county has reported one case of EVALI.

The legislature also finds that the use of these e-smoking devices has been increasing exponentially, and that e-cigarette use is especially popular among youth in Hawaii. While young people's use of e-cigarettes has risen nationally, use in Hawaii by young people is even higher. According to the latest data from the Hawaii department of health Youth Risk Behavior Study, forty-two per cent of the State's high school students and
twenty-seven percent of its middle school students have tried or use e-cigarettes. By county, the state high school rates of e-cigarette use are thirty-nine percent for Oahu, forty-five percent for Kauai, fifty-one percent for Maui, and fifty percent for Hawaii.

The legislature additionally finds that the e-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 e-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, 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. Usage increased an astounding nine hundred percent among high school students from 2011 to 2015 alone.

In a 2018 study conducted by the National Institute on Drug Abuse, teens' use of e-smoking devices increased from 27.8 percent to 37.3 percent in a twelve-month period. The increase
translates to 1.3 million more teens using e-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 e-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 e-smoking device industry, including retail businesses selling e-smoking devices or e-liquids, necessitates further regulation to protect consumers, such as creating policy parity between the sale of e-cigarettes and the sale of traditional
cigarettes through tobacco taxation and by requiring retailers of e-cigarettes and e-liquids 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 e-smoking devices, cigars, and hookah and pipe tobacco; yet federal delays are expected for at least five more years. The legislature also notes that there is currently no state tobacco tax attached to the sale of e-liquid, even though e-smoking devices are now regulated as tobacco products. Furthermore, tobacco products, other than e-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 sales taxes, tends to reduce the rate of smoking by adult and youth smokers. The legislature finds that minors are three times more sensitive to price increases than are adults.

The legislature is also concerned that there are currently no state resources allocated to assist the department of health and the department of education in combatting the youth vaping epidemic and in treating youth for nicotine addiction.
Cessation treatment options, such as nicotine replacement therapy, are currently designed for adults. Because youth are not vaping to quit cigarettes, and because there is no safe level of nicotine for youth, there are no approved treatment guidelines to help youth break their addiction.

Finally, the legislature concludes that there needs to be a sales tax on e-cigarettes. Taxing the sale of these products, as the state does the sale of other tobacco, is fair and equitable. Imposing a sales tax on e-cigarettes will also encourage users of e-cigarettes 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) Include e-smoking devices within the definition of "tobacco products", as used in the cigarette tax and tobacco tax law, thereby:

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

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

(C) Prohibiting persons from engaging in the business of a wholesaler or dealer of e-smoking devices without first obtaining a license from the department of taxation; and

(D) Applying other requirements of chapter 245, Hawaii Revised Statutes;

(2) Increase the license fee for persons engaged as a wholesaler or dealer of cigarettes and tobacco products;

(3) Increase the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes and tobacco products; and

(4) Fund health education, prevention, and cessation programs having to do with the risks and dangers of the use of e-smoking devices by youth.

SECTION 2. 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 e-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 under 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).

"E-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. E-smoking device includes but is not limited to an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, electronic hookah, 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 e-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 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[; including, but 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, e-smoking devices containing e-liquid, component parts containing e-liquid, and related products."

SECTION 3. 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\text{--}] \$250, and shall be renewable annually on July 1 for the
twelve months ending the succeeding June 30."

SECTION 4. Section 245-2.5, Hawaii Revised Statutes, is
amended by amending subsection (c) 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\text{--}] \$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."

SECTION 5. 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[+]; and 

(7) Section 245-3(a)(12), after June 30, 2020, and thereafter $2,000,000 shall be deposited to the credit of the Hawaii tobacco prevention and control trust fund established pursuant to section 328L-5 to establish a comprehensive youth tobacco cessation program to fund health education, prevention, and nicotine cessation programs about the risks and
dangers of the use of electronic smoking devices for youth.

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

SECTION 6. Chapter 28, part XII, Hawaii Revised Statutes, is repealed.

SECTION 7. 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.

(e) 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 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.
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, 2020.

INTRODUCED BY:
Report Title:
Electronic Smoking Products; Tobacco Products; E-liquid; License Fee; Retail Permit Fee; Health Education, Nicotine Cessation, and Prevention Programs

Description:
Requires that e-liquid and e-smoking devices be included 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 on excise taxes on tobacco products to fund health education, prevention, and nicotine cessation programs for youth, regarding the risks and dangers of the use of e-smoking devices. Repeals certain provisions of the Hawaii Revised Statutes relating to e-smoking devices.

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