

JAN 17 2020

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 there is a serious
2 nationwide concern over the use of electronic smoking devices.
3 Electronic smoking devices, also known as e-cigarettes, are
4 battery-operated products designed to deliver highly addictive
5 nicotine, artificial flavor, and other chemicals to the user by
6 turning those chemicals into an aerosol that is inhaled by the
7 user. Consumers may choose from varying strengths of e-liquid
8 nicotine as well as liquids consisting of different flavors.
9 However, studies have raised concerns that product labels don't
10 always provide accurate information about nicotine content.
11 Some electronic smoking device pods contain a concentrated form
12 of nicotine called nicotine salt. A pod containing five per
13 cent nicotine salt may have as much as thirty to fifty
14 milligrams of nicotine, the equivalent amount of nicotine
15 delivered in one to three packs of cigarettes.

16 The electronic smoking device industry, including the
17 production of e-liquids, is growing rapidly. On December 18,



1 2018, the United States Surgeon General made the unprecedented
2 move of classifying the danger of youth usage of electronic
3 smoking devices as an epidemic. Since the Surgeon General first
4 issued a warning in 2016 about the dangers of these products,
5 data has shown a historic rise in their use by youth and young
6 adults. According to the 2016 report from the Surgeon General,
7 e-cigarette use among the nation's youth and young adults has
8 become a major public health concern. The Surgeon General's
9 report noted that e-cigarette use has increased considerably in
10 recent years, growing an astounding nine hundred per cent among
11 high school students from 2011 to 2015. In a 2018 study
12 conducted by the National Institute on Drug Abuse, the use of
13 electronic smoking devices among high school seniors increased
14 nationally from 27.8 per cent to 37.3 per cent in a twelve-month
15 period. The increase translates to 1,300,000 million more teens
16 using electronic smoking devices in a single year. E-cigarette
17 use among youth and young adults is also strongly associated
18 with the use of other tobacco products, including combustible
19 tobacco products. Toxicologists have also warned that e-liquids
20 pose significant risks to public health, particularly to
21 children. According to the Surgeon General's report, if the



1 contents of refill cartridges or bottles are consumed, ingestion
2 of e-liquids containing nicotine can cause acute toxicity and
3 possibly death. The Surgeon General's report also found that
4 there are numerous policies and practices that can be
5 implemented at the state and local levels to address electronic
6 smoking device use among youth and young adults, including
7 preventing access to e-cigarettes by youth, significant
8 increases in taxes and the price of e-cigarettes, retail
9 licensure, and regulation of e-cigarette marketing.

10 The legislature additionally finds that the rapid growth of
11 the electronic smoking device industry, including retail
12 businesses selling electronic smoking devices or e-liquids,
13 necessitates further regulation to protect consumers, such as
14 requiring retailers of e-liquids to obtain retail tobacco
15 permits.

16 The legislature notes that there is currently no state
17 tobacco tax applied to e-liquid, even though electronic smoking
18 devices are now regulated as tobacco products. Furthermore,
19 tobacco products other than cigarettes are currently taxed at a
20 lower rate than cigarettes, even though their use carries
21 similar health risks. Research has shown that increasing



1 cigarette prices, such as through cigarette taxes, tends to
2 reduce the rate of smoking by adult and youth smokers. However,
3 the legislature is concerned that as the price of cigarettes
4 increases, smokers may purchase less expensive tobacco products,
5 such as electronic smoking devices or e-liquids.

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

14 Accordingly, the purpose of this Act is to:

- 15 (1) Establish the offense of unlawful shipment of e-liquid
16 products;
- 17 (2) Include e-liquid and electronic smoking devices
18 containing e-liquid within the definition of "tobacco
19 products", as used in the cigarette tax and tobacco
20 tax law, thereby:



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

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



1 "§245- Unlawful shipment of e-liquid products; penalty;
2 reports; liability for unpaid taxes. (a) A person commits the
3 offense of unlawful shipment of e-liquid products if the person:
4 (1) Is engaged in the business of selling e-liquid
5 products; and
6 (2) Ships or causes to be shipped any e-liquid products to
7 a person or entity in this State that is not a
8 licensee under this chapter.
9 (b) This section shall not apply to the shipment of
10 e-liquid products if any of the following conditions is met:
11 (1) The e-liquid products are exempt from taxes as
12 provided by section 245-3(b) or are otherwise exempt
13 from the applicability of this chapter as provided by
14 section 245-62; or
15 (2) All applicable state taxes on the e-liquid products
16 are paid in accordance with the requirements of this
17 chapter.
18 (c) Unlawful shipment of e-liquid products is a class C
19 felony if, within a twelve-month period, the person or entity
20 knowingly ships or causes to be shipped e-liquid products having
21 a value of \$3,000 or more in violation of subsection (a).



1 (d) Unlawful shipment of e-liquid products is a
2 misdemeanor if the person or entity knowingly ships or causes to
3 be shipped e-liquid products having a value of less than \$3,000
4 in violation of subsection (a).

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

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

13 (g) For the purpose of this section:

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

17 "Person" shall have the same meaning as in section 1-19.

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

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



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

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

12 "Electronic smoking device" means any electronic product,
13 or part thereof, that can be used by a person to simulate
14 smoking in the delivery of nicotine or any other substance,
15 intended for human consumption, through inhalation of vapor or
16 aerosol from the product. "Electronic smoking device" includes
17 an electronic cigarette, electronic cigar, electronic cigarillo,
18 electronic pipe, electronic hookah, vape pen or related product,
19 and any cartridge or other component part of the device or
20 product.



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

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

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

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

15 (2) E-liquid,
16 that is intended for human consumption, or is likely to be
17 consumed, whether smoked, heated, chewed, absorbed, dissolved,
18 inhaled, or ingested by other means. Tobacco products include
19 large cigars and any substitutes thereof other than cigarettes
20 that bear the semblance thereof, pipe tobacco, chewing or
21 smokeless tobacco, snuff, snus, e-liquid, electronic smoking



1 devices containing e-liquid, component parts containing
2 e-liquid, and related products."

3 SECTION 4. Section 245-2.5, Hawaii Revised Statutes, is
4 amended by amending subsection (d) to read as follows:

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

15 SECTION 5. Section 245-15, Hawaii Revised Statutes, is
16 amended to read as follows:

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



- 1 (1) Section 245-3(a)(5), after September 30, 2006, and
2 prior to October 1, 2007, 1.0 cent per cigarette shall
3 be deposited to the credit of the Hawaii cancer
4 research special fund, established pursuant to section
5 304A-2168, for research and operating expenses and for
6 capital expenditures;
- 7 (2) Section 245-3(a)(6), after September 30, 2007, and
8 prior to October 1, 2008:
- 9 (A) 1.5 cents per cigarette shall be deposited to the
10 credit of the Hawaii cancer research special
11 fund, established pursuant to section 304A-2168,
12 for research and operating expenses and for
13 capital expenditures;
- 14 (B) 0.25 cents per cigarette shall be deposited to
15 the credit of the trauma system special fund
16 established pursuant to section 321-22.5; and
- 17 (C) 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;



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

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

11 (C) 0.25 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) 0.25 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 (4) Section 245-3(a)(8), after June 30, 2009, and prior to
20 July 1, 2013:



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- 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) 0.75 cents per cigarette shall be deposited to
7 the credit of the trauma system special fund
8 established pursuant to section 321-22.5;
- 9 (C) 0.75 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) 0.5 cents per cigarette shall be deposited to the
14 credit of the emergency medical services special
15 fund established pursuant to section 321-234;
- 16 (5) Section 245-3(a)(11), after June 30, 2013, and prior
17 to July 1, 2015:
- 18 (A) 2.0 cents per cigarette shall be deposited to the
19 credit of the Hawaii cancer research special
20 fund, established pursuant to section 304A-2168,



1 for research and operating expenses and for
2 capital expenditures;

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

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

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

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



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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), on July 1, 2020, and every
16 July 1 thereafter, \$100,000 shall be deposited to the
17 credit of the Hawaii tobacco prevention and control
18 trust fund established pursuant to section 328L-5 and
19 \$100,000 shall be allocated to the University of
20 Hawaii cancer center to support tobacco- and cancer-
21 prevention research.



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

3 SECTION 6. Section 328L-5, Hawaii Revised Statutes, is
4 amended by amending subsection (e) to read as follows:

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

7 (1) Moneys appropriated under section 328L-2(b)(2);

8 (2) Moneys collected pursuant to section 245-15;

9 ~~[(+2)]~~ (3) Moneys appropriated to the Hawaii tobacco
10 prevention and control trust fund by the state,
11 county, or federal government;

12 ~~[(+3)]~~ (4) Private contributions of cash or property; and

13 ~~[(+4)]~~ (5) Income and capital gains earned by the trust
14 fund."

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

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

19 ~~["~~§245-17~~ Delivery sales. (a) No person shall conduct~~
20 ~~a delivery sale or otherwise ship or transport, or cause to be~~
21 ~~shipped or transported, any electronic smoking device in~~



1 ~~connection with a delivery sale to any person under the age of~~
2 ~~twenty one.~~

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

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

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

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

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

17 ~~(d) Any person who violates this section shall be fined~~
18 ~~\$500 for the first offense. Any subsequent offenses shall~~
19 ~~subject the person to a fine of no less than \$500 but no more~~
20 ~~than \$2,000. Any person under twenty one years of age who~~
21 ~~violates this section shall be fined \$10 for the first offense;~~



1 ~~provided that any subsequent offense shall subject the person to~~
2 ~~a fine of \$50, no part of which shall be suspended, or the~~
3 ~~person shall be required to perform no less than forty eight~~
4 ~~hours but no more than seventy two hours of community service~~
5 ~~during hours when the person is not employed or attending~~
6 ~~school.~~

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

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

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

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

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

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



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

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

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

12 SECTION 11. This Act shall take effect on July 1, 2020.

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INTRODUCED BY: Randy H. Cook

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S.B. NO. 2231

Report Title:

Unlawful Shipment of E-liquid Products; Tobacco Products;
E-liquid; Electronic Smoking Devices; Health Education and
Prevention Programs; Taxation

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. 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.

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

