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,
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 a historic rise in their use by youth and young adults. According to the 2016 report from the Surgeon General, 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, 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 1,300,000 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 taxes and the 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-liquids,
necessitates further regulation to protect consumers, such as
requiring retailers of e-liquids to obtain retail tobacco
permits.

The legislature notes that there is currently no state
tobacco tax applied 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 a tax on e-liquids and electronic smoking devices containing e-liquid is necessary, and that 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 containing e-liquid will also encourage users of e-liquids to quit, sustain cessation, prevent youth initiation, and reduce consumption among those who continue to use those products.

Accordingly, the purpose of this Act is to:

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

(2) Include 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, thereby:
(A) Subjecting e-liquid and electronic smoking devices containing e-liquid to the excise tax on tobacco products;

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

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

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

(3) Fund health education and prevention programs that provide information about the risks and dangers of the use of electronic smoking devices for youth; and

(4) Repeal various statutory provisions relating to electronic smoking devices.

SECTION 2. Chapter 245, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:
§245- Unlawful shipment of e-liquid products; penalty; reports; liability for unpaid taxes. (a) A person commits the offense of unlawful shipment of e-liquid products if the person:

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

(2) Ships or causes to be shipped any e-liquid 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 e-liquid products if any of the following conditions is met:

(1) The e-liquid 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 state taxes on the e-liquid products are paid in accordance with the requirements of this chapter.

(c) Unlawful shipment of e-liquid products is a class C felony if, within a twelve-month period, the person or entity knowingly ships or causes to be shipped e-liquid products having a value of $3,000 or more in violation of subsection (a).
(d) Unlawful shipment of e-liquid products is a misdemeanor if the person or entity knowingly ships or causes to be shipped e-liquid products having a value of less than $3,000 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 e-liquid 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.

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

"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" does 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).

"Electronic smoking device" means any device that can be
used to deliver aerosolized or vaporized nicotine to the person
inhaling from the device, including but not limited to an
electronic cigarette, electronic cigar, electronic cigarillo,
electronic pipe, electronic hookah, vape pen or electronic
hookah. "Electronic smoking device" includes any component,
part, or accessory of such a device, whether or not sold
separately, and includes any substance intended to be
aerosolized or vaporized during the use of the device.

"Electronic smoking device" does not include any battery or
battery charger when sold separately. In addition, "electronic smoking device" does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

"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 [tebaeee]:

(1) Tobacco in any form, other than cigarettes or little cigars[7—€hae—és—prepa¥eé—er—enenended—éer—eefisumpeéefi 2020—1172 SB2231 SDl SMA.dOC

(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. "Tobacco products" include 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 containing e-liquid, component parts containing e-liquid, and related products."

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

"(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. 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[2] and whether the place of business sells e-liquid."
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[1]1; and

(7) Section 245-3(a)(12), on September 1, 2020, and every July 1 thereafter, $100,000 shall be deposited to the
credit of the Hawaii tobacco prevention and control
trust fund established pursuant to section 328L-5 and
$100,000 shall be allocated to the University of
Hawaii cancer center to support tobacco- and cancer-
prevention research.

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

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

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

(1) Moneys appropriated under section 328L-2(b)(2);
(2) Moneys collected pursuant to section 245-15;
[+2+] (3) Moneys appropriated to the Hawaii tobacco
prevention and control trust fund by the state,
county, or federal government;
[+3+] (4) Private contributions of cash or property; and
[+4+] (5) Income and capital gains earned by the trust
fund."

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.

(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:

(i) 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 sale of electronic smoking devices shall
consistute 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. Statutory material to be repealed is bracketed
and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on September 1,
2020.
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. Effective 9/1/2020.

(SD1)

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