

JAN 23 2020

A BILL FOR AN ACT

RELATING TO TOBACCO 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
17 in protecting adolescents from tobacco dependence and the
18 illnesses and premature death associated with tobacco use.

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1 The legislature additionally finds that electronic smoking
2 devices, also known as e-cigarettes, are battery-operated
3 products designed to deliver nicotine, flavor, and other
4 chemicals to the user by turning chemicals including highly
5 addictive nicotine into an aerosol or vapor that is inhaled by
6 the user. Consumers may choose from varying strengths of e-
7 liquid nicotine as well as liquids consisting of different
8 flavors.

9 The electronic smoking device industry, including the
10 production of e-liquid, is growing rapidly. On December 18,
11 2018, the United States Surgeon General made the unprecedented
12 move of classifying the danger of youth usage of electronic
13 smoking devices as an epidemic. Since the Surgeon General first
14 issued a warning in 2016 about the dangers of these products,
15 data has shown historic rise in use by youth and young adults.
16 According to the 2016 report from the Surgeon General,
17 e-cigarette use amongst the nation's youth and young adults has
18 become a major public health concern. The Surgeon General's
19 report noted that e-cigarette use has increased considerably in
20 recent years, growing an astounding nine hundred per cent among
21 high school students from 2011 to 2015. In a 2018 study
22 conducted by the National Institute on Drug Abuse, the use of

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

19 The legislature additionally finds that the rapid growth of
20 the electronic smoking device industry, including retail
21 businesses selling electronic smoking devices or e-liquid,
22 necessitates further regulations to protect consumers, such as

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1 requiring retailers of e-liquid to obtain a retail tobacco
2 permit.

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

19 Finally, the legislature concludes that there needs to be a
20 tax on e-liquids and electronic smoking devices and taxing these
21 products as other tobacco products is the most equitable way to
22 do so. Imposing a tax on e-liquids and electronic smoking

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1 devices will also encourage users of e-liquids to quit, sustain
2 cessation, prevent youth initiation, and reduce consumption
3 among those who continue to use them.

4 The purpose of this Act is to:

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

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

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

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

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

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

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- 1 (3) Increase the license fee for persons engaged as a
2 wholesaler or dealer of cigarettes and tobacco
3 products;
- 4 (4) Increase the retail tobacco permit fee for retailers
5 engaged in the retail sale of cigarettes and tobacco
6 products;
- 7 (5) Fund health education and prevention programs about
8 the risks and dangers of the use of electronic smoking
9 devices for youth; and
- 10 (6) Repeal various statutory provisions relating to
11 electronic smoking devices.

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

15 "§245- Unlawful shipment of tobacco products; penalty;
16 reports; liability for unpaid taxes. (a) A person commits the
17 offense of unlawful shipment of tobacco products if the person:

- 18 (1) Is engaged in the business of selling tobacco
19 products; and
- 20 (2) Ships or causes to be shipped any tobacco products to
21 a person or entity in this State that is not a
22 licensee under this chapter.

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1 (b) This section shall not apply to the shipment of
2 tobacco products if any of the following conditions is met:

3 (1) The tobacco products are exempt from taxes as provided
4 by section 245-3(b) or are otherwise exempt from the
5 applicability of this chapter as provided by section
6 245-62; or

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

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

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

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

21 (f) Notwithstanding the existence of other remedies at
22 law, any person that purchases, uses, controls, or possesses any

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1 tobacco products for which the applicable taxes imposed under
2 title 14 have not been paid, shall be liable for the applicable
3 taxes, plus any penalty and interest as provided for by law.

4 (g) For the purpose of this section:

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

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

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

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

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

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1 "Electronic smoking device" means any electronic product,
2 or part thereof, that can be used by a person to simulate
3 smoking in the delivery of nicotine or any other substance,
4 intended for human consumption, through inhalation of vapor or
5 aerosol from the product. Electronic smoking device includes
6 but is not limited to an electronic cigarette, electronic cigar,
7 electronic cigarillo, electronic pipe, electronic hookah, heated
8 tobacco products, vape pen or related product, and any cartridge
9 or other component part of the device or product.

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

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

17 "Tobacco products" means [tobacco]:

18 (1) Tobacco in any form, other than cigarettes or little
19 cigars[, that is prepared or intended for consumption or for
20 personal use by humans, including large cigars and any
21 substitutes thereof other than cigarettes that bear the
22 semblance thereof, snuff, chewing or smokeless tobacco, and

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1 ~~smoking or pipe tobacco.]; or~~

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

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

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

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

17 "(b) The license shall be issued by the department upon
18 application therefor, in such form and manner as shall be
19 required by rule of the department, and the payment of a fee of
20 [~~\$2.50,~~] \$250, and shall be renewable annually on July 1 for the
21 twelve months ending the succeeding June 30."

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1 Section 245-2.5, Hawaii Revised Statutes, is amended by amending
2 subsections (c) and (d) to read as follows:

3 "(c) The retail tobacco permit shall be issued by the
4 department upon application by the retailer in the form and
5 manner prescribed by the department, and the payment of a fee of
6 [~~\$20.~~] \$50. Permits shall be valid for one year, from December
7 1 to November 30, and renewable annually. Whenever a retail
8 tobacco permit is defaced, destroyed, or lost, or the permittee
9 relocates the permittee's business, the department may issue a
10 duplicate retail tobacco permit to the permittee for a fee of \$5
11 per copy.

12 (d) A separate retail tobacco permit shall be obtained for
13 each place of business owned, controlled, or operated by a
14 retailer. In seeking a retail tobacco permit, the applicant
15 shall specify whether each place of business sells e-liquid or
16 electronic smoking devices. A retailer that owns or controls
17 more than one place of business may submit a single application
18 for more than one retail tobacco permit. Each retail tobacco
19 permit issued shall clearly describe the place of business where
20 the operation of the business is conducted~~[-]~~ and whether the
21 place of business sells e-liquid or electronic smoking devices."

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

3 **"§245-15 Disposition of revenues.** All moneys collected
4 pursuant to this chapter shall be paid into the state treasury
5 as state realizations to be kept and accounted for as provided
6 by law; provided that, of the moneys collected under the tax
7 imposed pursuant to:

8 (1) Section 245-3(a)(5), after September 30, 2006, and
9 prior to October 1, 2007, 1.0 cent per cigarette shall
10 be deposited to the credit of the Hawaii cancer
11 research special fund, established pursuant to section
12 304A-2168, for research and operating expenses and for
13 capital expenditures;

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

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

4 (C) 0.25 cents per cigarette shall be deposited to
5 the credit of the emergency medical services
6 special fund established pursuant to section
7 321-234;

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

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

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

18 (C) 0.25 cents per cigarette shall be deposited to
19 the credit of the community health centers
20 special fund established pursuant to section
21 321-1.65; and

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1 (D) 0.25 cents per cigarette shall be deposited to
2 the credit of the emergency medical services
3 special fund established pursuant to section
4 321-234;

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

7 (A) 2.0 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) 0.75 cents per cigarette shall be deposited to
13 the credit of the trauma system special fund
14 established pursuant to section 321-22.5;

15 (C) 0.75 cents per cigarette shall be deposited to
16 the credit of the community health centers
17 special fund established pursuant to section
18 321-1.65; and

19 (D) 0.5 cents per cigarette shall be deposited to the
20 credit of the emergency medical services special
21 fund established pursuant to section 321-234;

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1 (5) Section 245-3(a)(11), after June 30, 2013, and prior
2 to July 1, 2015:

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) 1.5 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) 1.25 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) 1.25 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; [~~and~~]

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

21 (A) 2.0 cents per cigarette shall be deposited to the
22 credit of the Hawaii cancer research special

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1 fund, established pursuant to section 304A-2168,
2 for research and operating expenses and for
3 capital expenditures;

4 (B) 1.125 cents per cigarette, but not more than
5 \$7,400,000 in a fiscal year, shall be deposited
6 to the credit of the trauma system special fund
7 established pursuant to section 321-22.5;

8 (C) 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 community health centers
11 special fund established pursuant to section
12 321-1.65; and

13 (D) 1.25 cents per cigarette, but not more than
14 \$8,800,000 in a fiscal year, shall be deposited
15 to the credit of the emergency medical services
16 special fund established pursuant to section
17 321-234.

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

20 SECTION 7. Chapter 28, part XII, Hawaii Revised Statutes,
21 is repealed.

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

3 ~~["§245-17] Delivery sales. (a) No person shall conduct~~
4 ~~a delivery sale or otherwise ship or transport, or cause to be~~
5 ~~shipped or transported, any electronic smoking device in~~
6 ~~connection with a delivery sale to any person under the age of~~
7 ~~twenty-one.~~

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

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

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

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

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

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1 ~~(d) Any person who violates this section shall be fined~~
2 ~~\$500 for the first offense. Any subsequent offenses shall~~
3 ~~subject the person to a fine of no less than \$500 but no more~~
4 ~~than \$2,000. Any person under twenty-one years of age who~~
5 ~~violates this section shall be fined \$10 for the first offense;~~
6 ~~provided that any subsequent offense shall subject the person to~~
7 ~~a fine of \$50, no part of which shall be suspended, or the~~
8 ~~person shall be required to perform no less than forty-eight~~
9 ~~hours but no more than seventy-two hours of community service~~
10 ~~during hours when the person is not employed or attending~~
11 ~~school.~~

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

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

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

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

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

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

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

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

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

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

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1 SECTION 12. This Act shall take effect on January 1, 2021.

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INTRODUCED BY: *Ken N. H.A.*

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BY REQUEST

S.B. NO. 2902

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.

JUSTIFICATION SHEET

SB. NO. 2902

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.

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OTHER AFFECTED
AGENCIES:

Department of the Attorney General; County
Law Enforcement Agencies; Department of
Taxation.

EFFECTIVE DATE:

January 1, 2021