
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 also known as e-cigarettes, which are battery-operated products
4 designed to deliver highly addictive nicotine, artificial
5 flavor, and other chemicals to the user by turning those
6 chemicals into an aerosol that is inhaled by the user.
7 Consumers may choose from varying strengths of e-liquid nicotine
8 as well as liquids consisting of different flavors. However,
9 studies have raised concerns that product labels do not always
10 provide accurate information about nicotine content. Some
11 electronic smoking device pods contain a concentrated form of
12 nicotine called nicotine salt. A pod containing five per cent
13 nicotine salt may have as much as thirty to fifty milligrams of
14 nicotine, the equivalent amount of nicotine delivered in one to
15 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 more teens using
16 electronic smoking devices in a single year. E-cigarette use
17 among youth and young adults is also strongly associated with
18 the use of other tobacco products, including combustible tobacco
19 products. Toxicologists have also warned that e-liquids pose
20 significant risks to public health, particularly to children.
21 According to the Surgeon General's report, if the contents of



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

14 Accordingly, the purpose of this Act is to:

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

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



- 1 (B) Requiring retailers of e-liquid to obtain a
- 2 retail tobacco permit to sell, possess, keep,
- 3 acquire, distribute, or transport e-liquid;
- 4 (C) Prohibiting persons from engaging in the business
- 5 of a wholesaler or dealer of e-liquid without
- 6 first obtaining a license from the department of
- 7 taxation; and
- 8 (D) Applying other requirements of chapter 245,
- 9 Hawaii Revised Statutes; and
- 10 (2) Repeal various statutory provisions relating to
- 11 electronic smoking devices.

12 SECTION 2. Section 245-1, Hawaii Revised Statutes, is
13 amended as follows:

14 1. By adding four new definitions to be appropriately
15 inserted and to read:

16 "E-liquid" means any liquid or like substance, including
17 heated tobacco products, which may or may not contain nicotine,
18 that is designed or intended to be used in an electronic smoking
19 device, whether or not packaged in a cartridge or other
20 container. "E-liquid" does not include prescription drugs;
21 medical cannabis or manufactured cannabis products under chapter



1 329D; or medical devices used to aerosolize, inhale, or ingest
2 prescription drugs, including manufactured cannabis products
3 manufactured or distributed in accordance with section 329D-
4 10(a).

5 "Electronic smoking device" means any electronic product,
6 or part thereof, that can be used by a person to simulate
7 smoking in the delivery of nicotine or any other substance,
8 intended for human consumption, through inhalation of vapor or
9 aerosol from the product. "Electronic smoking device" includes
10 an electronic cigarette, electronic cigar, electronic cigarillo,
11 electronic pipe, electronic hookah, heated tobacco product, vape
12 pen or related product, and any cartridge or other component
13 part of the device or product.

14 "Heated tobacco product" means a product containing tobacco
15 that produces an inhalable aerosol by:

16 (1) Heating the tobacco by means of an electronic device
17 without combustion of the tobacco; or

18 (2) Heat generated from a combustion source that only or
19 primarily heats rather than burns the tobacco.

20 "Smoke" or "smoking" means inhaling, exhaling, burning,
21 carrying, or possessing any lighted or heated tobacco product,



1 or similar substance intended for human consumption, including
2 the use of an electronic smoking device that creates an aerosol
3 or vapor, in any manner or in any form."

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

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

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

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



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

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

13 SECTION 4. Chapter 28, part XII, Hawaii Revised Statutes,
14 is repealed.

15 SECTION 5. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 6. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



1 SECTION 7. This Act shall take effect on July 1, 2021.

2

INTRODUCED BY:

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JAN 27 2021



H.B. NO. 1329

Report Title:

Tobacco Products; E-liquid; Electronic Smoking Devices; Taxation

Description:

Includes e-liquid and electronic smoking devices within the definition of "tobacco products", as used in the cigarette tax and tobacco tax law. Repeals certain provisions of the Hawaii Revised Statutes relating to electronic smoking devices.

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