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# A BILL FOR AN ACT

RELATING TO CHAPTER 245, HAWAII REVISED STATUTES.

**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 1,400 deaths per year among  
5 adults. An estimated 21,000 children in Hawaii currently under  
6 the age of eighteen will ultimately die prematurely from  
7 smoking. Tobacco use poses a heavy burden on Hawaii's health  
8 care system and economy. Each year, smoking costs approximately  
9 \$526,000,000 in direct health care expenditures and \$387,300,000  
10 in lost productivity in the State.

11           The legislature further finds that tobacco products are  
12 addictive and inherently dangerous, causing many different types  
13 of cancer, heart disease, and other serious illnesses. Hawaii  
14 has a substantial interest in reducing the number of individuals  
15 of all ages who use tobacco products, and a particular interest  
16 in protecting adolescents from tobacco dependence and the  
17 illnesses and premature death associated with tobacco use.



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 that is inhaled by the user.  
6 Consumers may choose from varying strengths of e-liquid as well  
7 as liquids consisting of different flavors. The electronic  
8 smoking device industry, along with the production of e-liquid,  
9 are growing rapidly. According to the Centers for Disease  
10 Control and Prevention, more than 1,700,000 middle school and  
11 high school students tried electronic cigarettes in 2012.  
12 Toxicologists warn that e-liquids pose significant risks to  
13 public health, particularly to children. The rapid growth of  
14 the electronic smoking device industry, including retail  
15 businesses selling electronic smoking devices or e-liquid,  
16 necessitates further regulations to protect consumers, such as  
17 requiring retailers of electronic smoking devices or e-liquid to  
18 obtain a retail tobacco permit.

19           The legislature also finds that taxes on e-liquid should be  
20 similar to the tax rates already imposed on cigarettes.  
21 E-liquid and tobacco products other than cigarettes are



1 currently taxed at a lower rate than cigarettes, even though  
2 their use carries similar health risks. Research has shown that  
3 either a tax on cigarettes or cigarette price increases have the  
4 propensity to reduce the rate of smoking by adult and youth  
5 smokers. However, the legislature is concerned that as the  
6 price of cigarettes increases, smokers may be tempted to  
7 purchase less expensive products such as electronic smoking  
8 devices.

9 Finally, the legislature concludes that there should not be  
10 a lower-priced tobacco alternative to cigarettes in Hawaii;  
11 therefore a similar tax rate for cigarettes and e-liquids that  
12 acts as a deterrent for all forms of tobacco and nicotine use is  
13 needed. Higher prices on e-liquids and electronic smoking  
14 devices will encourage users of electronic smoking devices to  
15 quit, sustain cessation, prevent youth initiation, and reduce  
16 consumption among those who continue to use.

17 The purpose of this Act is to:

18 (1) Impose an excise tax on disposable electronic smoking  
19 devices and e-liquid sold by a wholesaler or dealer on  
20 and after January 1, 2017, whether or not sold at



1           wholesale, or if not sold then at the same rate upon  
 2           the use by the wholesaler or dealer; and  
 3           (2) Require every retailer engaged in the retail sale of  
 4           cigarettes, tobacco products, electronic smoking  
 5           devices, or e-liquid to obtain a retail tobacco permit  
 6           in order to sell, possess, keep, acquire, distribute,  
 7           or transport cigarettes, tobacco products, electronic  
 8           smoking devices, or e-liquid for retail sale.

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

11          1. By adding four new definitions to be appropriately  
 12          inserted and to read:

13                "Disposable electronic smoking device" means an electronic  
 14                smoking device that is designed or intended not to be reused or  
 15                refilled.

16                "Electronic smoking device" means any electronic product  
 17                that can be used to aerosolize and deliver nicotine to the  
 18                person inhaling from the device, including but not limited to an  
 19                electronic cigarette, electronic cigar, electronic cigarillo,  
 20                electronic pipe, hookah pipe, or hookah pen, and any component  
 21                of the device or related product, whether or not sold



1 separately, including but not limited to atomizers, coils, drip  
2 tips, and tanks.

3 "E-liquid" means any liquid containing nicotine that is  
4 designed or intended to be used in a reusable electronic smoking  
5 device, whether or not packaged in a cartridge or other  
6 container.

7 "Reusable electronic smoking device" means an electronic  
8 smoking device that is designed or intended to be reused or  
9 refilled."

10 2. By amending the definition of "dealer" to read:

11 "Dealer" means any person coming into the possession of  
12 cigarettes [⊗], tobacco products, electronic smoking devices,  
13 or e-liquid, which have not been acquired from an authorized  
14 permit holder or licensee under this chapter, or any person  
15 rendering a distribution service who buys and maintains, at the  
16 person's place of business, a stock of cigarettes [⊗], tobacco  
17 products, electronic smoking devices, or e-liquid that have not  
18 been acquired from a licensee and who distributes or uses such  
19 cigarettes [⊗], tobacco products[-], electronic smoking  
20 devices, or e-liquid."

21 3. By amending the definition of "retailer" to read:



1            ""Retailer" means an entity that engages in the practice of  
2 selling cigarettes [~~e~~], tobacco products, electronic smoking  
3 devices, or e-liquid to consumers and includes the owner of a  
4 cigarette [~~e~~], tobacco product, electronic smoking device, or  
5 e-liquid vending machine."

6            4. By amending the definition of "sale" or "sold" to read:

7            ""Sale" or "sold" includes any delivery of cigarettes [~~e~~],  
8 tobacco products, electronic smoking devices, or e-liquid,  
9 whether cash is actually paid therefor or not."

10           5. By amending the definition of "wholesale price" to  
11 read:

12            ""Wholesale price", in addition to any other meaning of the  
13 term, means in the case of a tax upon the use of tobacco  
14 products, electronic smoking devices, or e-liquid, or upon a  
15 sale not made at wholesale:

16            (1) If made by a person who during the month preceding the  
17 accrual of the tax made substantial sales to retailers  
18 of like tobacco products, electronic smoking devices,  
19 or e-liquid, the average price of the sales[~~r~~]; and

20            (2) If made by any other person, the average price of  
21 sales to retailers of like tobacco products,



1           electronic smoking devices, or e-liquid made by other  
2           taxpayers in the same county during the month  
3           preceding the accrual of the tax."

4           6. By amending the definition of "wholesaler" to read:

5           ""Wholesaler" means a person rendering a distribution  
6           service who buys and maintains, at the person's place of  
7           business, a stock of cigarettes [~~or~~], tobacco products,  
8           electronic smoking devices, or e-liquid that the person uses,  
9           possesses, or distributes only to retailers, or other  
10          wholesalers, or both."

11          SECTION 3. Section 245-2.5, Hawaii Revised Statutes, is  
12          amended as follows:

13          1. By amending subsections (a) and (b) to read:

14          "(a) [~~Beginning December 1, 2006, every~~] Every retailer  
15          engaged in the retail sale of cigarettes [~~and other~~], tobacco  
16          products [~~upon which a tax is required to be paid under this~~  
17          ~~chapter~~], electronic smoking devices, or e-liquid shall obtain a  
18          retail tobacco permit.

19          (b) [~~Beginning March 1, 2007, it~~] It shall be unlawful for  
20          any retailer engaged in the retail sale of cigarettes [~~and~~  
21          ~~other~~], tobacco products [~~upon which a tax is required to be~~



1 ~~paid under this chapter]~~, electronic smoking devices, or  
2 e-liquid to sell, possess, keep, acquire, distribute, or  
3 transport cigarettes [~~or other~~], tobacco products, electronic  
4 smoking devices, or e-liquid for retail sale unless a retail  
5 tobacco permit has been issued to the retailer under this  
6 section and the retail tobacco permit is in full force and  
7 effect."

8 2. By amending subsection (e) to read:

9 "(e) Any entity that operates as a dealer or wholesaler  
10 and also sells cigarettes [~~or other~~], tobacco products,  
11 electronic smoking devices, or e-liquid to consumers at retail  
12 shall acquire a separate retail tobacco permit."

13 3. By amending subsection (h) to read:

14 "(h) Any sales of cigarettes [~~or~~], tobacco products,  
15 electronic smoking devices, or e-liquid made through a  
16 [~~cigarette or tobacco product~~] vending machine are subject to  
17 the terms, conditions, and penalties of this chapter. A retail  
18 tobacco permit need not be displayed on [~~cigarette or tobacco~~  
19 ~~product~~] vending machines if the retail tobacco permit holder is  
20 the owner of the [~~cigarette or tobacco product~~] vending machines  
21 and the [~~cigarette or tobacco product~~] vending machines are





1 operated at the location described in the retail tobacco  
2 permit."

3 4. By amending subsection (j) to read:

4 "(j) A vehicle from which cigarettes [~~æ~~], tobacco  
5 products [~~ære~~], electronic smoking devices, or e-liquid is sold  
6 is considered a place of business and requires a retail tobacco  
7 permit. Retail tobacco permits for a vehicle shall be issued  
8 bearing a specific motor vehicle identification number and are  
9 valid only when physically carried in the vehicle having the  
10 corresponding motor vehicle identification number. Retail  
11 tobacco permits for vehicles shall not be moved from one vehicle  
12 to another."

13 5. By amending subsection (1) to read:

14 "(1) A permittee shall keep a complete and accurate record  
15 of the permittee's cigarette [~~æ~~], tobacco product, electronic  
16 smoking device, and e-liquid inventory. The records shall:

17 (1) Include:

18 (A) A written statement containing the name and  
19 address of the permittee's source of its  
20 cigarettes [~~and~~], tobacco products [~~+~~], electronic  
21 smoking devices, and e-liquid;



- 1 (B) The date of delivery, quantity, trade name or  
2 brand, and price of the cigarettes [~~and~~], tobacco  
3 products[~~+~~], electronic smoking devices, and  
4 e-liquid; and
- 5 (C) Documentation in the form of any purchase orders,  
6 invoices, bills of lading, other written  
7 statements, books, papers, or records in whatever  
8 format, including electronic format, which  
9 substantiate the purchase or acquisition of the  
10 cigarettes [~~and~~], tobacco products, electronic  
11 smoking devices, and e-liquid stored or offered  
12 for sale; and
- 13 (2) Be offered for inspection and examination within  
14 twenty-four hours of demand by the department or the  
15 attorney general, and shall be preserved for a period  
16 of three years; provided that:
- 17 (A) Specified records may be destroyed if the  
18 department and the attorney general both consent  
19 to their destruction within the three-year  
20 period; and



1 (B) Either the department or the attorney general may  
2 adopt rules pursuant to chapter 91 that require  
3 specified records to be kept longer than a period  
4 of three years."

5 6. By amending subsection (o) to read:

6 "(o) Any cigarette, package of cigarettes, carton of  
7 cigarettes, container of cigarettes, tobacco product, package of  
8 tobacco products, [~~or any~~] container of tobacco products,  
9 electronic smoking device, package of electronic smoking  
10 devices, container of electronic smoking devices, e-liquid,  
11 package of e-liquid, or container of e-liquid unlawfully sold,  
12 possessed, kept, stored, acquired, distributed, or transported  
13 in violation of this section may be seized and ordered forfeited  
14 pursuant to chapter 712A."

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

17 "(a) Every wholesaler or dealer, in addition to any other  
18 taxes provided by law, shall pay for the privilege of conducting  
19 business and other activities in the State:

20 (1) An excise tax equal to 5.00 cents for each cigarette  
21 sold, used, or possessed by a wholesaler or dealer



- 1 after June 30, 1998, whether or not sold at wholesale,  
2 or if not sold then at the same rate upon the use by  
3 the wholesaler or dealer;
- 4 (2) An excise tax equal to 6.00 cents for each cigarette  
5 sold, used, or possessed by a wholesaler or dealer  
6 after September 30, 2002, whether or not sold at  
7 wholesale, or if not sold then at the same rate upon  
8 the use by the wholesaler or dealer;
- 9 (3) An excise tax equal to 6.50 cents for each cigarette  
10 sold, used, or possessed by a wholesaler or dealer  
11 after June 30, 2003, whether or not sold at wholesale,  
12 or if not sold then at the same rate upon the use by  
13 the wholesaler or dealer;
- 14 (4) An excise tax equal to 7.00 cents for each cigarette  
15 sold, used, or possessed by a wholesaler or dealer  
16 after June 30, 2004, whether or not sold at wholesale,  
17 or if not sold then at the same rate upon the use by  
18 the wholesaler or dealer;
- 19 (5) An excise tax equal to 8.00 cents for each cigarette  
20 sold, used, or possessed by a wholesaler or dealer on  
21 and after September 30, 2006, whether or not sold at



- 1           wholesale, or if not sold then at the same rate upon  
2           the use by the wholesaler or dealer;
- 3           (6) An excise tax equal to 9.00 cents for each cigarette  
4           sold, used, or possessed by a wholesaler or dealer on  
5           and after September 30, 2007, whether or not sold at  
6           wholesale, or if not sold then at the same rate upon  
7           the use by the wholesaler or dealer;
- 8           (7) An excise tax equal to 10.00 cents for each cigarette  
9           sold, used, or possessed by a wholesaler or dealer on  
10          and after September 30, 2008, whether or not sold at  
11          wholesale, or if not sold then at the same rate upon  
12          the use by the wholesaler or dealer;
- 13          (8) An excise tax equal to 13.00 cents for each cigarette  
14          sold, used, or possessed by a wholesaler or dealer on  
15          and after July 1, 2009, whether or not sold at  
16          wholesale, or if not sold then at the same rate upon  
17          the use by the wholesaler or dealer;
- 18          (9) An excise tax equal to 11.00 cents for each little  
19          cigar sold, used, or possessed by a wholesaler or  
20          dealer on and after October 1, 2009, whether or not



- 1           sold at wholesale, or if not sold then at the same  
2           rate upon the use by the wholesaler or dealer;
- 3       (10)   An excise tax equal to 15.00 cents for each cigarette  
4           or little cigar sold, used, or possessed by a  
5           wholesaler or dealer on and after July 1, 2010,  
6           whether or not sold at wholesale, or if not sold then  
7           at the same rate upon the use by the wholesaler or  
8           dealer;
- 9       (11)   An excise tax equal to 16.00 cents for each cigarette  
10          or little cigar sold, used, or possessed by a  
11          wholesaler or dealer on and after July 1, 2011,  
12          whether or not sold at wholesale, or if not sold then  
13          at the same rate upon the use by the wholesaler or  
14          dealer;
- 15       (12)   An excise tax equal to seventy per cent of the  
16          wholesale price of each article or item of tobacco  
17          products, other than large cigars, sold by the  
18          wholesaler or dealer on and after September 30, 2009,  
19          whether or not sold at wholesale, or if not sold then  
20          at the same rate upon the use by the wholesaler or  
21          dealer; [and]



- 1           (13) An excise tax equal to fifty per cent of the wholesale  
2           price of each large cigar of any length, sold, used,  
3           or possessed by a wholesaler or dealer on and after  
4           September 30, 2009, whether or not sold at wholesale,  
5           or if not sold then at the same rate upon the use by  
6           the wholesaler or dealer[-];
- 7           (14) An excise tax equal to \_\_\_\_\_ per cent of the wholesale  
8           price of each disposable electronic smoking device,  
9           sold, used, or possessed by a wholesaler or dealer on  
10           and after January 1, 2017, whether or not sold at  
11           wholesale, or if not sold then at the same rate upon  
12           the use by the wholesaler or dealer; and
- 13           (15) An excise tax equal to \_\_\_\_\_ cents per milliliter of  
14           e-liquid sold, used, or possessed by a wholesaler or  
15           dealer on and after January 1, 2017, whether or not  
16           sold at wholesale, or if not sold then at the same  
17           rate upon the use by the wholesaler or dealer;  
18           provided that liquids used with electronic smoking  
19           devices that do not contain nicotine are exempt from  
20           the excise tax established pursuant to this paragraph.



1 Where the tax imposed has been paid on cigarettes, little  
2 cigars, [~~e~~] tobacco products, electronic smoking devices, or  
3 e-liquid that thereafter become the subject of a casualty loss  
4 deduction allowable under chapter 235, the tax paid shall be  
5 refunded or credited to the account of the wholesaler or dealer.  
6 The tax shall be applied to cigarettes through the use of  
7 stamps."

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

10 "§245-5 Returns. Every wholesaler or dealer, on or before  
11 the twentieth day of each month, shall file with the department  
12 a return showing the cigarettes [~~and~~], tobacco products,  
13 electronic smoking devices, and e-liquid sold, possessed, or  
14 used by the wholesaler or dealer during the preceding calendar  
15 month and of the taxes chargeable against the taxpayer in  
16 accordance with this chapter. The form of the return shall be  
17 prescribed by the department and shall include:

- 18 (1) A separate statement of the number and wholesale price  
19 of cigarettes;  
20 (2) The amount of stamps purchased and used;





- 1 (3) The wholesale price of tobacco products, sold,
- 2 possessed, or used; [~~and~~]
- 3 (4) The wholesale price of disposable electronic smoking
- 4 devices sold, possessed, or used;
- 5 (5) The milliliters of e-liquid sold, possessed, or used;
- 6 (6) The wholesale price of reusable electronic smoking
- 7 devices sold, possessed, or used; and
- 8 [~~(4)~~] (7) Any other information that the department may
- 9 deem necessary, for the proper administration of this
- 10 chapter."

11 SECTION 6. Section 245-8, Hawaii Revised Statutes, is  
 12 amended by amending subsection (a) to read as follows:

13 "(a) Each wholesaler or dealer shall keep a record of:

- 14 (1) Every sale or use of cigarettes [~~and~~], tobacco
- 15 products, electronic smoking devices, and e-liquid by
- 16 the wholesaler or dealer;
- 17 (2) The number and wholesale price of cigarettes;
- 18 (3) The wholesale price of tobacco products [~~and~~] and
- 19 electronic smoking devices sold, possessed, or used;
- 20 (4) The milliliters of e-liquid sold, possessed, or used;



1       ~~[(4)]~~ (5) The taxes payable on tobacco products, electronic  
2                   smoking products, and e-liquid sold, possessed, or  
3                   used, if any; and

4       ~~[(5)]~~ (6) The amounts of stamps purchased and used,  
5 in a form as the department may prescribe. The records shall be  
6 offered for inspection and examination at any time upon demand  
7 by the department or the attorney general, and shall be  
8 preserved for a period of five years, except that the department  
9 and the attorney general, in writing, shall both consent to  
10 their destruction within the five-year period or either the  
11 department or the attorney general may require that they be kept  
12 longer. The department, by rule, may require the wholesaler or  
13 dealer to keep other records as it may deem necessary for the  
14 proper enforcement of this chapter."

15       SECTION 7. Section 245-9, Hawaii Revised Statutes, is  
16 amended by amending subsections (a) and (b) to read as follows:

17       "(a) The department and the attorney general may examine  
18 all records, including tax returns and reports under section  
19 245-31, required to be kept or filed under this chapter, and  
20 books, papers, and records of any person engaged in the business  
21 of wholesaling or dealing cigarettes ~~[and]~~, tobacco products,



1 electronic smoking devices, and e-liquid, to verify the accuracy  
2 of the payment of the taxes imposed by this chapter. Every  
3 person in possession of any books, papers, and records, and the  
4 person's agents and employees, are directed and required to give  
5 the department and the attorney general the means, facilities,  
6 and opportunities for the examinations.

7 (b) The department and the attorney general may inspect  
8 the operations, premises, and storage areas of any entity  
9 engaged in the sale of cigarettes, or the contents of a specific  
10 vending machine, during regular business hours. This inspection  
11 shall include inspection of all statements, books, papers, and  
12 records in whatever format, including electronic format,  
13 pertaining to the acquisition, possession, transportation, sale,  
14 or use of packages of cigarettes [~~and~~], tobacco products other  
15 than cigarettes, electronic smoking devices, and e-liquid, to  
16 verify the accuracy of the payment of taxes imposed by this  
17 chapter, and of the contents of cartons and shipping or storage  
18 containers to ascertain that all individual packages of  
19 cigarettes have an affixed stamp of proper denomination as  
20 required by this chapter. This inspection may also verify that  
21 all stamps were produced under the authority of the department.



1 Every entity in possession of any books, papers, and records,  
2 and the entity's agents and employees, are directed and required  
3 to give the department and the attorney general the means,  
4 facilities, and opportunities for the examinations. For  
5 purposes of this chapter "entity" means one or more individuals,  
6 a company, corporation, a partnership, an association, or any  
7 other type of legal entity."

8 SECTION 8. Section 245-31, Hawaii Revised Statutes, is  
9 amended as follows:

10 1. By amending its title to read:

11 "§245-31 Monthly report on distributions of cigarettes  
12 [and], tobacco products, electronic smoking devices, e-liquid,  
13 and purchases of stamps."

14 2. By amending subsection (b) to read:

15 "(b) On or before the twentieth day of each month, every  
16 licensee shall file on forms prescribed by the department:

17 (1) A report of the licensee's distributions of tobacco  
18 products and the wholesale costs of tobacco products  
19 during the preceding month; ~~[and]~~

20 (2) A report of the licensee's distributions of disposable  
21 electronic smoking devices and the wholesale costs of



1           the disposable electronic smoking devices during the  
2           preceding month;

3           (3) A report of the licensee's distributions of e-liquid  
4           and milliliters distributed during the preceding  
5           month;

6           (4) A report of the licensee's distributions of reusable  
7           electronic smoking devices and the wholesale costs of  
8           the reusable electronic smoking devices during the  
9           preceding month; and

10          ~~(2)~~ (5) Any other information that the department may  
11           require to carry out this part."

12          SECTION 9. Section 245-32, Hawaii Revised Statutes, is  
13          amended to read as follows:

14          "~~+~~ §245-32 ~~+~~ Tax refund or credit for cigarettes ~~and~~,  
15          tobacco products, electronic smoking devices, and e-liquid  
16          shipped for sale or use outside the State. (a) The department  
17          shall adopt rules to provide a tobacco tax refund or credit to a  
18          licensee who has paid a tobacco tax on the distribution of  
19          cigarettes ~~or~~, tobacco products, electronic smoking devices,  
20          or e-liquid that are shipped to a point outside the State for  
21          subsequent sale or use outside the State.



1 (b) This part shall not apply to cigarettes [~~or~~], tobacco  
2 products, electronic smoking devices, or e-liquid that are  
3 distributed in this State to consumers and that are subsequently  
4 taken outside the State."

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

7 SECTION 11. This Act shall take effect on January 1, 2017.

8



**Report Title:**

Disposable Electronic Smoking Device; Electronic Smoking Device;  
E-liquid; Excise Tax

**Description:**

Defines disposable electronic smoking device, electronic smoking device, e-liquid, and reusable electronic smoking device in the State's cigarette tax and tobacco tax law. Imposes an excise tax on an e-liquid sold by a wholesaler or dealer on or after 1/1/2017, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer. Imposes an excise tax on the wholesale price of disposable electronic smoking devices sold by a wholesaler or dealer on or after January 1, 2017, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer. Establishes requirements for retailers, wholesalers, and dealers of electronic smoking devices or e-liquid related to permits, reports, and records. Takes effect on 1/1/2017. (SD1)

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