
A BILL FOR AN ACT

RELATING TO ELECTRONIC SMOKING DEVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that electronic smoking
2 devices, also known as electronic cigarettes or e-cigarettes,
3 are battery-powered devices, often resembling cigarettes,
4 cigars, or pipes, designed to deliver nicotine or other
5 substances to users in the form of a vapor smoke that is
6 breathed in then exhaled. Sales of electronic smoking devices
7 in the United States have doubled each year since 2008, with
8 sales in 2013 projected to reach \$1,700,000,000. Findings from
9 the National Youth Tobacco Survey also indicate the growing
10 popularity of electronic smoking devices among youth, with
11 1,800,000 middle and high school students stating they had tried
12 these products in 2012.

13 The legislature further finds that, due to the relative
14 lack of research data on electronic smoking devices, many public
15 health organizations and policymakers are concerned about the
16 safety and impact of these products on public health.

17 Furthermore, because the federal government has not yet
18 exercised its regulatory authority over electronic smoking



1 devices, the products are manufactured without regulatory
2 oversight or quality control, and promoted, advertised, and sold
3 without appropriate health warnings or legal age restrictions.

4 In response, a growing number of state and local
5 governments have taken steps to regulate the sale, marketing,
6 and use of electronic smoking devices. The legislature
7 concludes that Hawaii should also take additional steps to
8 regulate these products.

9 Accordingly, the purpose of this Act is to:

- 10 (1) Include electronic smoking devices within the
11 definition of "tobacco products" under chapter 245,
12 Hawaii Revised Statutes, thereby:
- 13 (A) Subjecting wholesalers and dealers of electronic
14 smoking devices to the same licensing
15 requirements as wholesalers and dealers of
16 cigarettes and other tobacco products; and
- 17 (B) Subjecting retailers of electronic smoking
18 devices to the same permitting requirements as
19 retailers of cigarettes and other tobacco
20 products;



- 1 (2) Increase the license fee for persons engaged as a
2 wholesaler or dealer of cigarettes or tobacco
3 products, including electronic smoking devices;
- 4 (3) Increase the retail tobacco permit fee for retailers
5 engaged in the retail sale of cigarettes or tobacco
6 products, including electronic smoking devices;
- 7 (4) Establish an excise tax on electronic smoking devices
8 of an unspecified per cent of the wholesale price of
9 each electronic smoking device kit, electronic smoking
10 device nicotine cartridge, or electronic smoking
11 device nicotine refill sold, used, or possessed by a
12 wholesaler or dealer on or after October 1, 2014;
- 13 (5) Amend Hawaii's anti-smoking statute to prohibit the
14 use of electronic smoking devices in places open to
15 the public and places of employment; and
- 16 (6) Further clarify that the sale, distribution, or
17 display of electronic smoking devices is restricted in
18 the same manner as cigarettes and other tobacco
19 products.

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



1 1. By adding a new definition to be appropriately inserted
2 and to read:

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

9 2. By amending the definition of "tobacco products" to
10 read:

11 ~~"Tobacco products" means [tobacco in any form, other than~~
12 ~~cigarettes or little cigars, that is prepared or intended for~~
13 ~~consumption or for personal use by humans, including large~~
14 ~~cigars and any substitutes thereof other than cigarettes that~~
15 ~~bear the semblance thereof, snuff, chewing or smokeless tobacco,~~
16 ~~and smoking or pipe tobacco.]~~ any product, other than cigarettes
17 or little cigars, made or derived from tobacco, that contains
18 nicotine or other substances, and is intended for human
19 consumption or is likely to be consumed, whether smoked, heated,
20 chewed, absorbed, dissolved, inhaled, or ingested by any other
21 means, including but not limited to a large cigar, pipe tobacco,
22 chewing tobacco, snuff, snus, or an electronic smoking device.



1 "Tobacco products" does not include any product specifically
2 approved by the United States Food and Drug Administration for
3 legal sale as a tobacco cessation product that is being marketed
4 and sold solely for that approved purpose."

5 SECTION 3. Section 245-2, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) The license shall be issued by the department upon
8 application therefor, in such form and manner as shall be
9 required by rule of the department, and the payment of a fee of
10 [~~\$2.50,~~] \$ _____ and shall be renewable annually on July 1
11 for the twelve months ending the succeeding June 30."

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

14 "(c) The retail tobacco permit shall be issued by the
15 department upon application by the retailer in the form and
16 manner prescribed by the department, and the payment of a fee of
17 [~~\$20.~~] \$ _____. Permits shall be valid for one year, from
18 December 1 to November 30, and renewable annually. Whenever a
19 retail tobacco permit is defaced, destroyed, or lost, or the
20 permittee relocates the permittee's business, the department may
21 issue a duplicate retail tobacco permit to the permittee for a
22 fee of [~~\$5~~] \$ _____ per copy."



1 SECTION 5. Section 245-3, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

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

6 (1) An excise tax equal to 5.00 cents for each cigarette
7 sold, used, or possessed by a wholesaler or dealer
8 after June 30, 1998, whether or not sold at wholesale,
9 or if not sold then at the same rate upon the use by
10 the wholesaler or dealer;

11 (2) An excise tax equal to 6.00 cents for each cigarette
12 sold, used, or possessed by a wholesaler or dealer
13 after September 30, 2002, whether or not sold at
14 wholesale, or if not sold then at the same rate upon
15 the use by the wholesaler or dealer;

16 (3) An excise tax equal to 6.50 cents for each cigarette
17 sold, used, or possessed by a wholesaler or dealer
18 after June 30, 2003, whether or not sold at wholesale,
19 or if not sold then at the same rate upon the use by
20 the wholesaler or dealer;

21 (4) An excise tax equal to 7.00 cents for each cigarette
22 sold, used, or possessed by a wholesaler or dealer



1 after June 30, 2004, 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 (5) An excise tax equal to 8.00 cents for each cigarette
5 sold, used, or possessed by a wholesaler or dealer on
6 and after September 30, 2006, 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 (6) An excise tax equal to 9.00 cents for each cigarette
10 sold, used, or possessed by a wholesaler or dealer on
11 and after September 30, 2007, whether or not sold at
12 wholesale, or if not sold then at the same rate upon
13 the use by the wholesaler or dealer;

14 (7) An excise tax equal to 10.00 cents for each cigarette
15 sold, used, or possessed by a wholesaler or dealer on
16 and after September 30, 2008, whether or not sold at
17 wholesale, or if not sold then at the same rate upon
18 the use by the wholesaler or dealer;

19 (8) An excise tax equal to 13.00 cents for each cigarette
20 sold, used, or possessed by a wholesaler or dealer on
21 and after July 1, 2009, 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 (9) An excise tax equal to 11.00 cents for each little
4 cigar sold, used, or possessed by a wholesaler or
5 dealer on and after October 1, 2009, whether or not
6 sold at wholesale, or if not sold then at the same
7 rate upon the use by the wholesaler or dealer;
- 8 (10) An excise tax equal to 15.00 cents for each cigarette
9 or little cigar sold, used, or possessed by a
10 wholesaler or dealer on and after July 1, 2010,
11 whether or not sold at wholesale, or if not sold then
12 at the same rate upon the use by the wholesaler or
13 dealer;
- 14 (11) An excise tax equal to 16.00 cents for each cigarette
15 or little cigar sold, used, or possessed by a
16 wholesaler or dealer on and after July 1, 2011,
17 whether or not sold at wholesale, or if not sold then
18 at the same rate upon the use by the wholesaler or
19 dealer;
- 20 (12) An excise tax equal to seventy per cent of the
21 wholesale price of each article or item of tobacco
22 products, other than large cigars, [~~or~~] electronic



1 smoking device kits, electronic smoking device
2 nicotine cartridges, or electronic smoking device
3 nicotine refills, sold by the wholesaler or dealer on
4 and after September 30, 2009, whether or not sold at
5 wholesale, or if not sold then at the same rate upon
6 the use by the wholesaler or dealer; [and]

7 (13) An excise tax equal to fifty per cent of the wholesale
8 price of each large cigar of any length, sold, used,
9 or possessed by a wholesaler or dealer on and after
10 September 30, 2009, whether or not sold at wholesale,
11 or if not sold then at the same rate upon the use by
12 the wholesaler or dealer[-]; and

13 (14) An excise tax equal to per cent of the wholesale
14 price of each electronic smoking device kit,
15 electronic smoking device nicotine cartridge, or
16 electronic smoking device nicotine refill sold, used,
17 or possessed by a wholesaler or dealer on or after
18 October 1, 2014, whether or not sold at wholesale, or
19 if not sold then at the same rate upon the use by the
20 wholesaler or dealer.

21 Where the tax imposed has been paid on cigarettes, little
22 cigars, or tobacco products that thereafter become the subject



1 of a casualty loss deduction allowable under chapter 235, the
2 tax paid shall be refunded or credited to the account of the
3 wholesaler or dealer. The tax shall be applied to cigarettes
4 through the use of stamps."

5 SECTION 6. Section 328J-1, Hawaii Revised Statutes, is
6 amended as follows:

7 1. By adding two new definitions to be appropriately
8 inserted and to read:

9 "Electronic smoking device" means any electronic product
10 that can be used to vaporize and deliver nicotine or other
11 substances to the person inhaling from the device, including but
12 not limited to an electronic cigarette, electronic cigar,
13 electronic cigarillo, or electronic pipe, and any cartridge or
14 other component of the device or related product.

15 "Tobacco product" means any product made or derived from
16 tobacco, that contains nicotine or other substances, and is
17 intended for human consumption or is likely to be consumed,
18 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or
19 ingested by any other means, including but not limited to a
20 cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, or
21 an electronic smoking device. "Tobacco product" does not
22 include any product specifically approved by the United States



1 Food and Drug Administration for legal sale as a tobacco
2 cessation product that is being marketed and sold solely for
3 that approved purpose."

4 2. By amending the definition of "smoke" or "smoking" to
5 read:

6 "Smoke" or "smoking" means [~~inhaling or exhaling the fumes~~
7 ~~of tobacco or any other plant material, or burning or carrying~~
8 ~~any lighted smoking equipment for tobacco or any other plant~~
9 ~~material.] inhaling, exhaling, burning, or carrying any lighted
10 or heated tobacco product or plant product intended for
11 inhalation in any manner or in any form. "Smoking" includes the
12 use of an electronic smoking device."~~

13 SECTION 7. Section 328J-16, Hawaii Revised Statutes, is
14 amended as follows:

15 1. By amending the title and subsection (a) to read:

16 "[+]§328J-16[+] **Cigarette or tobacco product sales from**
17 **vending machines and by lunch wagons prohibited.** (a) The sale,
18 [~~e~~], distribution, or sampling at no charge of cigarettes or
19 tobacco products by the following methods is prohibited:

20 (1) From cigarette vending machines unless the vending
21 machine is located in a bar, cabaret, or any



1 establishment for which the minimum age for admission
2 is eighteen; or

3 (2) From a lunch wagon engaging in any sales activity
4 within one thousand feet of any public or private
5 elementary or secondary school grounds."

6 2. By amending subsection (c) to read:

7 "(c) As used in this section:

8 "Cigarette vending machine" means a self-service device
9 that dispenses cigarettes, cigars, tobacco, or ~~[any other~~
10 ~~product containing tobacco.]~~ tobacco products.

11 "Lunch wagon" means a mobile vehicle designed and
12 constructed to transport food and from which food is sold to the
13 general public and includes but is not limited to manapua
14 trucks.

15 "Sell" or "sale" means to solicit and receive an order for;
16 to have, keep, offer, or expose for sale; to deliver for value
17 or in any other manner than purely gratuitously; to peddle; to
18 keep with intent to sell; or to traffic in."

19 SECTION 8. Section 328J-17, Hawaii Revised Statutes, is
20 amended as follows:

21 1. By amending the title and subsections (a) and (b) to
22 read:



1 "[~~f~~]§328J-17[~~f~~] Distribution of sample cigarette or
2 tobacco products, cigarette or tobacco promotional materials,
3 sampling of tobacco products, and coupons redeemable for
4 cigarette or tobacco products or promotional materials. (a) It
5 is unlawful for any person to distribute samples of cigarette or
6 tobacco products, [~~e~~] distribute coupons redeemable for
7 cigarette or tobacco products, or offer samples of tobacco
8 products, in or on any public street, sidewalk, or park, or
9 within one thousand feet of any elementary, middle or
10 intermediate, or high school.

11 (b) It is unlawful for any person to distribute cigarette
12 or tobacco product promotional materials, or coupons redeemable
13 for cigarette or tobacco product promotional materials, within
14 one thousand feet of any elementary, middle or intermediate, or
15 high school."

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

17 "(e) As used in this section:

18 "Distribute" means to pass out to members of the general
19 public free of charge for the exclusive purpose of promoting a
20 product.

21 "Samples" or "sampling" of tobacco products means to offer
22 to members of the general public free of charge the use of a



1 tobacco product for the exclusive purpose of promoting a tobacco
2 product."

3 SECTION 9. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 10. This Act shall take effect on July 1, 2050;
6 provided that sections 2, 3, 4, and 5 of this Act shall take
7 effect on January 1, 2015.



Report Title:

Electronic Smoking Device; License; Permit; Smoking; Cigarettes; Tobacco Products; Restrictions; Excise Tax

Description:

Includes electronic smoking devices within the definition of "tobacco products" under chapter 245, Hawaii Revised Statutes, thereby subjecting wholesalers, dealers, and retailers of electronic smoking devices to the same licensing and permitting requirements as wholesalers, dealers, and retailers of cigarettes and other tobacco products. Increases the license and permit fees for persons engaged as a wholesaler or dealer or retailer of cigarettes or tobacco products, including electronic smoking devices. Establishes an excise tax on electronic smoking devices equal to an unspecified per cent of the wholesale price of each electronic smoking device kit, electronic smoking device nicotine cartridge, or electronic smoking device nicotine refill sold, used, or possessed by a wholesaler or dealer on or after October 1, 2014. Amends Hawaii's anti-smoking statute to prohibit the use of electronic smoking devices in places open to the public and places of employment. Clarifies that the sale, distribution, sampling, or display of electronic smoking devices and the distribution of promotional materials, or coupons redeemable for promotional materials, for tobacco products, including electronic smoking devices, are restricted in the same manner as cigarettes and other tobacco products. License and permit fees and excise tax effective 1/1/2015. Effective 7/1/2050. (SD2)

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