

JAN 22 2016

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 the public health
2 rationale for the regulation of cigarettes and tobacco products
3 is well developed, as tobacco use is the single most preventable
4 cause of disease, disability, and death in the United States.
5 In addition to substantive laws in the State governing specific
6 aspects of tobacco production, sales, and use, Hawaii law
7 requires retailers, wholesalers, and dealers of cigarettes or
8 tobacco products to obtain a special license or permit. These
9 licenses and permits facilitate the enforcement of the cigarette
10 tax and tobacco tax law under chapter 245, Hawaii Revised
11 Statutes. However, the current license fee for wholesalers and
12 dealers is only \$2.50 a year, while retail tobacco permit fees
13 cost only \$20 a year. To ensure continued tobacco regulation
14 and enforcement of relevant tax laws, the legislature concludes
15 that these fees should be increased and the law updated to
16 include electronic smoking devices and e-liquid.

17 Accordingly, the purpose of this Act is to:



- 1 (1) Add and amend various definitions in chapter 245,
2 Hawaii Revised Statutes, to ensure that dealers,
3 retailers, and wholesalers of electronic smoking
4 devices and e-liquid obtain the applicable license or
5 permit;
- 6 (2) Increase the license fee for persons engaged as a
7 wholesaler or dealer of cigarettes or tobacco
8 products; and
- 9 (3) Increase the retail tobacco permit fee for retailers
10 engaged in the retail sale of cigarettes, tobacco
11 products, electronic smoking devices, and e-liquid.

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 "Disposable electronic smoking device" means an electronic
17 smoking device that is designed or intended not to be reused or
18 refilled.

19 "Electronic smoking device" means any electronic product
20 that can be used to aerosolize and deliver nicotine to the
21 person inhaling from the device, including but not limited to an



1 electronic cigarette, electronic cigar, electronic cigarillo,
2 electronic pipe, hookah pipe, or hookah pen, and any component
3 of the device or related product, whether or not sold
4 separately, including but not limited to, atomizers, coils, drip
5 tips, and tanks.

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

10 "Reusable electronic smoking device" means an electronic
11 smoking device that is designed or intended to be reused or
12 refilled."

13 2. By amending the definitions of "dealer", "retailer",
14 "sale" or "sold", "wholesale price", and "wholesaler" to read as
15 follows:

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



1 products, electronic smoking devices, or e-liquid that have not
2 been acquired from a licensee and who distributes or uses such
3 cigarettes [e], tobacco products[-], electronic smoking
4 devices, or e-liquid.

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

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

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

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



1 (2) If made by any other person, the average price of
2 sales to retailers of like tobacco products,
3 electronic smoking devices, or e-liquid, made by other
4 taxpayers in the same county during the month
5 preceding the accrual of the tax.

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

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

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

19 SECTION 4. Section 245-2.5, Hawaii Revised Statutes, is
20 amended as follows:

21 1. By amending subsection (a) to (c) to read:



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

6 (b) Beginning March 1, 2007, it shall be unlawful for any
7 retailer engaged in the retail sale of cigarettes [~~and~~], other
8 tobacco products, electronic smoking devices, or e-liquid upon
9 which a tax is required to be paid under this chapter to sell,
10 possess, keep, acquire, distribute, or transport cigarettes
11 [~~or~~], other tobacco products, electronic smoking devices, or
12 e-liquid for retail sale unless a retail tobacco permit has been
13 issued to the retailer under this section and the retail tobacco
14 permit is in full force and effect.

15 (c) The retail tobacco permit shall be issued by the
16 department upon application by the retailer in the form and
17 manner prescribed by the department, and the payment of a fee of
18 [~~\$20-~~] \$50. Permits shall be valid for one year, from
19 December 1 to November 30, and renewable annually. Whenever a
20 retail tobacco permit is defaced, destroyed, or lost, or the
21 permittee relocates the permittee's business, the department may



1 issue a duplicate retail tobacco permit to the permittee for a
2 fee of \$5 per copy."

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

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

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

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

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

20 "(j) A vehicle from which cigarettes ~~[e]~~, tobacco
21 products, electronic smoking devices, or e-liquid are sold is



1 considered a place of business and requires a retail tobacco
2 permit. Retail tobacco permits for a vehicle shall be issued
3 bearing a specific motor vehicle identification number and are
4 valid only when physically carried in the vehicle having the
5 corresponding motor vehicle identification number. Retail
6 tobacco permits for vehicles shall not be moved from one vehicle
7 to another."

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

9 "(1) A permittee shall keep a complete and accurate record
10 of the permittee's cigarette [~~or~~], tobacco product, electronic
11 smoking devices, and e-liquid inventory. The records shall:

12 (1) Include:

13 (A) A written statement containing the name and
14 address of the permittee's source of its
15 cigarettes [~~and~~], tobacco products[+], electronic
16 smoking devices, and e-liquid;

17 (B) The date of delivery, quantity, trade name or
18 brand, and price of the cigarettes [~~and~~], tobacco
19 products[+], electronic smoking devices, and
20 e-liquid; and



1 (C) Documentation in the form of any purchase orders,
2 invoices, bills of lading, other written
3 statements, books, papers, or records in whatever
4 format, including electronic format, which
5 substantiate the purchase or acquisition of the
6 cigarettes [~~and~~], tobacco products, electronic
7 smoking devices, and e-liquid stored or offered
8 for sale; and

9 (2) Be offered for inspection and examination within
10 twenty-four hours of demand by the department or the
11 attorney general, and shall be preserved for a period
12 of three years; provided that:

13 (A) Specified records may be destroyed if the
14 department and the attorney general both consent
15 to their destruction within the three-year
16 period; and

17 (B) Either the department or the attorney general may
18 adopt rules pursuant to chapter 91 that require
19 specified records to be kept longer than a period
20 of three years."

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



S.B. NO. 2689

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

8 SECTION 5. Statutory material to be repealed is bracketed
 9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on January 1, 2017.

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INTRODUCED BY: *Randy H. Beck*

Jim
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S.B. NO. 2689

Report Title:

Tobacco Regulation; License Fee; Retail Tobacco Permit;
Cigarettes; Tobacco Products

Description:

Amends the definitions of "dealer", "retailer", "wholesale price" and "wholesaler" to include electronic smoking devices and e-liquid. Establishes definitions for "disposable electronic smoking device", "electronic smoking device", "e-liquid", and "reusable electronic smoking device". Increases the license fee for persons engaged as a wholesaler or dealer. Increases the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes and tobacco products, and includes electronic smoking devices and e-liquid. Effective January 1, 2017.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

