

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 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 the use of
2 electronic smoking devices is on the rise. According to the
3 Centers for Disease Control and Prevention, more than 1,700,000
4 middle school and high school students tried electronic
5 cigarettes in 2012. Electronic cigarettes are battery-operated
6 products designed to deliver nicotine, flavor, and other
7 chemicals to the user by turning chemicals including highly
8 addictive nicotine into an aerosol that is inhaled by the user.
9 Consumers may choose from varying strengths of e-liquid as well
10 as liquids consisting of different flavors. The electronic
11 cigarette industry, along with the production of e-liquid, are
12 growing rapidly, and toxicologists warn that e-liquids pose
13 significant risks to public health, particularly to children.

14 The legislature also finds that taxes on e-liquid should be
15 similar to the tax rates already imposed on cigarettes. E-
16 liquid and tobacco products other than cigarettes are currently
17 taxed at a lower rate than cigarettes, even though their use
18 carries similar health risks. Research has shown that either a
19 tax on cigarettes or cigarette price increases have the
20 propensity to reduce the rate of smoking by adult and youth
21 smokers. However, the legislature is concerned that as the



S.B. NO. 2691

1 price of cigarettes increases, smokers may be tempted to
2 purchase less expensive products such as e-liquid.

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

11 The purpose of this Act is to:

- 12 (1) Impose an excise tax on disposable electronic smoking
13 devices, reusable electronic smoking devices, and e-
14 liquid sold by a wholesaler or dealer on and after
15 January 1, 2017, whether or not sold at wholesale, or
16 if not sold then at the same rate upon the use by the
17 wholesaler or dealer; and
- 18 (2) Require any subsequent increase in the excise tax rate
19 imposed on cigarettes or little cigars to trigger an
20 automatic excise tax increase on e-liquid.



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

3 1. By adding four new definitions to be appropriately
4 inserted and to read:

5 "Disposable electronic smoking device" means an electronic
6 smoking device that is designed or intended not to be reused or
7 refilled.

8 "Electronic smoking device" means any electronic product
9 that can be used to aerosolize and deliver nicotine to the
10 person inhaling from the device, including but not limited to an
11 electronic cigarette, electronic cigar, electronic cigarillo,
12 electronic pipe, hookah pipe, or hookah pen, and any component
13 of the device or related product, whether or not sold
14 separately, including but not limited to atomizers, coils, drip
15 tips, and tanks.

16 "E-liquid" means any liquid containing nicotine that is
17 designed or intended to be used in a reusable electronic smoking
18 device, whether or not packaged in a cartridge or other
19 container.



1 "Reusable electronic smoking device" means an electronic
2 smoking device that is designed or intended to be reused or
3 refilled."

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

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

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

16 ""Retailer" means an entity that engages in the practice of
17 selling cigarettes [~~or~~], tobacco products, electronic smoking
18 devices, or e-liquid to consumers and includes the owner of a
19 cigarette [~~or~~], tobacco product, electronic smoking device, or
20 e-liquid vending machine."

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



S.B. NO. 2691

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

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

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

10 (1) If made by a person who during the month preceding the
11 accrual of the tax made substantial sales to retailers
12 of like tobacco products, electronic smoking devices,
13 or e-liquid, the average price of the sales[7]; and

14 (2) If made by any other person, the average price of
15 sales to retailers of like tobacco products,
16 electronic smoking devices, or e-liquid made by other
17 taxpayers in the same county during the month
18 preceding the accrual of the tax."

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

20 ""Wholesaler" means a person rendering a distribution
21 service who buys and maintains, at the person's place of



1 business, a stock of cigarettes [~~or~~], tobacco products,
2 electronic smoking devices, or e-liquid that the person uses,
3 possesses, or distributes only to retailers, or other
4 wholesalers, or both."

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

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

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

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

20 (3) An excise tax equal to 6.50 cents for each cigarette
21 sold, used, or possessed by a wholesaler or dealer



S.B. NO. 2691

- 1 after June 30, 2003, 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 (4) An excise tax equal to 7.00 cents for each cigarette
5 sold, used, or possessed by a wholesaler or dealer
6 after June 30, 2004, whether or not sold at wholesale,
7 or if not sold then at the same rate upon the use by
8 the wholesaler or dealer;
- 9 (5) An excise tax equal to 8.00 cents for each cigarette
10 sold, used, or possessed by a wholesaler or dealer on
11 and after September 30, 2006, 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 (6) An excise tax equal to 9.00 cents for each cigarette
15 sold, used, or possessed by a wholesaler or dealer on
16 and after September 30, 2007, 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 (7) An excise tax equal to 10.00 cents for each cigarette
20 sold, used, or possessed by a wholesaler or dealer on
21 and after September 30, 2008, 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 (8) An excise tax equal to 13.00 cents for each cigarette
4 sold, used, or possessed by a wholesaler or dealer on
5 and after July 1, 2009, 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 (9) An excise tax equal to 11.00 cents for each little
9 cigar sold, used, or possessed by a wholesaler or
10 dealer on and after October 1, 2009, whether or not
11 sold at wholesale, or if not sold then at the same
12 rate upon the use by the wholesaler or dealer;

13 (10) An excise tax equal to 15.00 cents for each cigarette
14 or little cigar sold, used, or possessed by a
15 wholesaler or dealer on and after July 1, 2010,
16 whether or not sold at wholesale, or if not sold then
17 at the same rate upon the use by the wholesaler or
18 dealer;

19 (11) An excise tax equal to 16.00 cents for each cigarette
20 or little cigar sold, used, or possessed by a
21 wholesaler or dealer on and after July 1, 2011,



S.B. NO. 2691

1 whether or not sold at wholesale, or if not sold then
2 at the same rate upon the use by the wholesaler or
3 dealer;

4 (12) An excise tax equal to seventy per cent of the
5 wholesale price of each article or item of tobacco
6 products, other than large cigars, sold by the
7 wholesaler or dealer on and after September 30, 2009,
8 whether or not sold at wholesale, or if not sold then
9 at the same rate upon the use by the wholesaler or
10 dealer; [and]

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

17 (14) An excise tax equal to _____ per cent of the
18 wholesale price of each disposable electronic smoking
19 device, sold, used, or possessed by a wholesaler or
20 dealer on and after January 1, 2017, 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 (15) An excise tax equal to _____ cents per milliliter of e-
4 liquid sold, used, or possessed by a wholesaler or
5 dealer on and after January 1, 2017, 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 provided that:

9 (A) Liquids used with electronic smoking devices that
10 do not contain nicotine are exempt from the
11 excise tax established pursuant to this
12 paragraph; and

13 (B) If the excise tax rate of 16.00 cents for each
14 cigarette or little cigar increases on or after
15 January 1, 2017, the excise tax rate equal to
16 cents per milliliter of e-liquid pursuant to this
17 paragraph shall automatically increase by the
18 same percentage as the increase of the excise tax
19 rate per cigarette or little cigar; and

20 (16) An excise tax equal to _____ per cent of the
21 wholesale price of each reusable electronic smoking



1 device, other than e-liquid, sold, used, or possessed
 2 by a wholesaler or dealer on and after January 1,
 3 2017, whether or not sold at wholesale, or if not sold
 4 then at the same rate upon the use by the wholesaler
 5 or dealer.

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

13 SECTION 4. Statutory material to be repealed is bracketed
 14 and stricken. New statutory material is underscored.

15 SECTION 5. This Act shall take effect upon approval.

16

INTRODUCED BY: Rosey H. Baker
Breanne Hampton
Mike Gabbert



S.B. NO. 2691

Report Title:

Disposable Electronic Smoking Device; Electronic Smoking Device; E-liquid; Reusable Electronic Smoking Device; 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.

Requires any increase in the excise tax rate imposed on cigarettes or little cigars on or after 1/1/2017 to trigger an automatic excise tax increase on e-liquid on or after 1/1/2017. Imposes an excise tax on the wholesale price of disposable electronic smoking devices and reusable 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.

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

