

JAN 20 2017

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# A BILL FOR AN ACT

RELATING TO REMOTE SALES OF CIGARETTES AND TOBACCO PRODUCTS.

**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 and death in the United  
3 States and is a top public health priority. The health  
4 consequences of tobacco use include heart disease, multiple  
5 types of cancer, pulmonary disease, adverse reproductive  
6 effects, and the exacerbation of chronic health conditions. In  
7 Hawaii, smoking claims fourteen hundred adult lives each year,  
8 and twenty-one thousand children and youth now under eighteen  
9 years old will ultimately die prematurely from smoking.  
10 Annually, \$526,000,000 in health care costs are directly  
11 attributed to smoking in the State.

12           The legislature further finds that tobacco products are  
13 addictive and inherently dangerous. The United States Surgeon  
14 General has reported that most people begin to smoke in  
15 adolescence and develop characteristic patterns of nicotine  
16 dependence before adulthood.



1           The legislature recognizes that electronic smoking devices  
2 include a diverse group of devices that allow users to inhale an  
3 aerosol, which typically contains nicotine, flavorings, and  
4 other additives. Electronic smoking devices are tobacco  
5 products and are regulated as such under the federal Food, Drug,  
6 and Cosmetic Act, as amended by the Family Smoking Prevention  
7 and Tobacco Control Act of 2009. In recent years, electronic  
8 smoking device use by youth and young adults has increased at an  
9 alarming rate. Electronic smoking devices are now the most  
10 commonly used tobacco product among youth in the nation and in  
11 Hawaii. The electronic cigarette industry is growing rapidly,  
12 with retail and online sales of electronic smoking devices  
13 projected to reach \$10,000,000,000 in 2017. Until passage of a  
14 final regulation in 2016 granting the Food and Drug  
15 Administration authority over electronic cigarettes, cigars, and  
16 other tobacco products, minimal regulation of these products  
17 existed. Despite product regulation, the online electronic  
18 smoking device industry has not prevented youth access.

19           The legislature finds that most tobacco product sales occur  
20 via face-to-face transactions, however there is a growing trend  
21 toward the marketing and sales of electronic smoking devices to



1 consumers online. Selling tobacco products to persons under the  
2 age of twenty-one is illegal in Hawaii. Simply restricting the  
3 sale of tobacco products to those twenty-one and over does not  
4 go far enough, given how easily youth can and do circumvent the  
5 age verification process. Internet and mail-order sellers offer  
6 youth relatively easy access to tobacco products, including  
7 electronic smoking devices. Failing to restrict internet sales  
8 defeats the purpose of the law, which is to reduce the public  
9 health impact of tobacco use, in part by reducing all tobacco  
10 use among youth. In addition to the inability to accurately and  
11 adequately verify a purchaser's age, selling tobacco products  
12 through the Internet provides a way for the purchaser and the  
13 tobacco industry to avoid federal and state taxes, resulting in  
14 loss of revenue. This lack of taxation furthers the lowering of  
15 tobacco product pricing. By evading taxes, internet sellers  
16 place traditional, licensed wholesalers and retailers at a  
17 competitive disadvantage.

18 The purpose of this Act is to correct a loophole in Hawaii  
19 law regarding age verification, taxation, and public health  
20 goals by prohibiting the shipment of certain tobacco products



1 purchased through the Internet or by mail order to anyone other  
2 than licensed wholesalers or retailers.

3 SECTION 2. This Act shall be known and may be cited as the  
4 "Internet Marketing and Purchase of Cigarettes and Tobacco Act  
5 of 2017".

6 SECTION 3. Chapter 245, Hawaii Revised Statutes, is  
7 amended by adding a new section to be appropriately designated  
8 and to read as follows:

9 "§245- Unlawful transport of tobacco products ordered  
10 through remote sale; penalty. (a) A person or entity commits  
11 the offense of unlawful transport of tobacco products if the  
12 person or entity is engaged in the business of selling or  
13 providing tobacco products, including electronic cigarettes,  
14 and:

15 (1) Ships or transports, or causes to be shipped or  
16 transported, any tobacco product, including electronic  
17 smoking devices, ordered or purchased through a remote  
18 sale to anyone in the State other than a licensed  
19 wholesaler or dealer or retailer with a valid retail  
20 tobacco permit; or



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1           (2) Provides substantial assistance to a person or entity  
2           in violating this section while having the knowledge  
3           or reason to know of the violation;  
4 provided that a remote sale to a person or entity with a valid  
5 general excise tax license from the department of taxation and a  
6 physical building or structure for the purpose of retail is not  
7 a violation of this section.

8           (b) Any manufacturer, wholesaler, dealer, retailer, or  
9 other person or entity who knowingly violates this section shall  
10 be guilty of a class C felony for which a maximum fine of \$5,000  
11 may be imposed. Each distribution that violates or fails to  
12 comply with this section shall be a separate and distinct  
13 violation.

14           (c) In addition to, or in lieu of, any other civil or  
15 criminal remedy provided by law, a person or entity who has  
16 violated this section is subject to a civil penalty of up to  
17 \$5,000 for each violation. The attorney general may initiate a  
18 civil action seeking recovery of such penalties."

19           SECTION 4. Section 245-1, Hawaii Revised Statutes, is  
20 amended as follows:



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

3           "Electronic smoking device" means any electronic product  
4 that can be used to aerosolize 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, electronic pipe, hookah pipe, or hookah  
8 pen, and any cartridge or other component of the device or  
9 related product, whether or not sold separately.

10          "Internet sale" means any internet website or  
11 electronically networked means that solicits or sells cigarettes  
12 or tobacco products, including electronic smoking devices,  
13 regardless of whether cash is actually paid for the product.

14          "Mail order" means any means of soliciting cigarettes or  
15 tobacco products, including electronic smoking devices, which  
16 are set forth in a catalog or other printed solicitation of a  
17 business, which is generally available to the public.

18          "Remote sale" means a sale that is conducted by mail order,  
19 telephone, computer, internet sale, or any means other than a  
20 physical storefront."



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

3 ""Tobacco products" means tobacco in any form, other than  
4 cigarettes or little cigars, that is prepared or intended for  
5 consumption or for personal use by humans, including large  
6 cigars and any substitutes thereof other than cigarettes that  
7 bear the semblance thereof, snuff, snus, chewing or smokeless  
8 tobacco, [~~and~~] smoking or pipe tobacco[-], and electronic  
9 smoking devices. "Tobacco products" does not include drugs,  
10 devices, or combination products approved for sale by the United  
11 States Food and Drug Administration, as those terms are defined  
12 in the Federal Food, Drug, and Cosmetic Act."

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

16 SECTION 6. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act shall take effect on July 1, 2017.

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INTRODUCED BY:

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# S.B. NO. 342

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# S.B. NO. 342

**Report Title:**

Internet Marketing and Purchase of Cigarettes and Tobacco Product Act of 2017; Electronic Smoking Device; Remote Sale; Mail Order; Internet Sale

**Description:**

Prohibits the remote sale and distribution of cigarettes and tobacco products, including electronic smoking devices, to consumers except to licensed wholesalers or dealers and permit-holding retailers. Makes violation of the prohibition a class C felony subject to a maximum fine of \$5,000.

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