
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.

17 The legislature recognizes that electronic smoking devices
18 include a diverse group of devices that allow users to inhale an



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

17 The legislature finds that most tobacco product sales occur
18 via face-to-face transactions, however there is a growing trend
19 toward the marketing and sales of electronic smoking devices to
20 consumers online. Selling tobacco products to persons under the
21 age of twenty-one is illegal in Hawaii. Simply restricting the



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

16 The purpose of this Act is to correct a loophole in Hawaii
17 law regarding age verification, taxation, and public health
18 goals by prohibiting the shipment of certain tobacco products
19 purchased through the Internet or by mail order to anyone other
20 than licensed wholesalers or dealers or retailers with a valid
21 retail tobacco permit.



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

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

7 "§245- Unlawful transport of tobacco products ordered
8 through remote sale; penalty. (a) A person or entity commits
9 the offense of unlawful transport of tobacco products if the
10 person or entity is engaged in the business of selling or
11 providing tobacco products, including electronic cigarettes,
12 and:

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

19 (2) Provides substantial assistance to a person or entity
20 in violating this section while having the knowledge
21 or reason to know of the violation;



1 provided that a remote sale to a person or entity with a valid
2 general excise tax license from the department of taxation and a
3 physical building or structure for the purpose of retail is not
4 a violation of this section.

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

10 (c) In addition to, or in lieu of, any other civil or
11 criminal remedy provided by law, a person or entity who has
12 violated this section is subject to a civil penalty of up to
13 \$5,000 for each violation. The attorney general may initiate a
14 civil action seeking recovery of such penalties."

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

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

19 "Electronic smoking device" means any electronic product
20 that can be used to aerosolize and deliver nicotine or other
21 substances to the person inhaling from the device, including but



1 not limited to an electronic cigarette, electronic cigar,
2 electronic cigarillo, electronic pipe, hookah pipe, or hookah
3 pen, and any cartridge or other component of the device or
4 related product, whether or not sold separately.

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

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

13 "Remote sale" means a sale that is conducted by mail order,
14 telephone, computer, internet sale, or any means other than a
15 physical storefront."

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

18 ""Tobacco products" means tobacco in any form, other than
19 cigarettes or little cigars, that is prepared or intended for
20 consumption or for personal use by humans, including large
21 cigars and any substitutes thereof other than cigarettes that



1 bear the semblance thereof, snuff, snus, chewing or smokeless
2 tobacco, [~~and~~] smoking or pipe tobacco[~~+~~], and electronic
3 smoking devices. "Tobacco products" does not include drugs,
4 devices, or combination products approved for sale by the United
5 States Food and Drug Administration, as those terms are defined
6 in the Federal Food, Drug, and Cosmetic Act."

7 SECTION 5. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

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

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

13



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 shipment 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. (SD1)

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