
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 one thousand four hundred deaths
5 per year among adults. An estimated twenty-one thousand
6 children in Hawaii currently under the age of eighteen will
7 ultimately die prematurely from smoking. Tobacco use poses a
8 heavy burden on Hawaii's health care system and economy. Each
9 year, smoking costs approximately \$526,000,000 in direct health
10 care expenditures and \$387,300,000 in lost productivity in the
11 State.

12 The legislature further finds that tobacco products are
13 addictive and inherently dangerous, causing many different types
14 of cancer, heart disease, and other serious illnesses. Hawaii
15 has a substantial interest in reducing the number of individuals
16 of all ages who use tobacco products, and a particular interest



1 in protecting adolescents from tobacco dependence and the
2 illnesses and premature death associated with tobacco use.

3 The legislature additionally finds that electronic smoking
4 devices, also known as e-cigarettes, are battery-operated
5 products designed to turn highly addictive nicotine, flavor, and
6 other chemicals into an aerosol that is inhaled by the user.
7 Consumers may choose from varying strengths of e-liquid nicotine
8 as well as liquids consisting of different flavors. A 2015
9 study of more than fifty-eight million e-cigarettes found that
10 ninety-nine per cent contained nicotine, whether or not they
11 were labeled as "zero nicotine" or "nicotine-free". The
12 legislature is concerned that labeling alone is not an effective
13 measure of nicotine content.

14 The electronic smoking device industry, including the
15 production of e-liquids, is growing rapidly. According to a
16 2016 report from the United States Surgeon General, e-cigarette
17 use amongst the nation's youth and young adults has become a
18 major public health concern. The Surgeon General's report noted
19 that e-cigarette use has increased considerably in recent years,
20 growing an astounding nine hundred per cent among high school
21 students from 2011 to 2015. More than three million middle



1 school and high school students were users of e-cigarettes in
2 2015. Furthermore, e-cigarettes are now the most commonly used
3 tobacco product among youth, surpassing conventional cigarettes
4 in 2014. E-cigarette use among youth and young adults is also
5 strongly associated with the use of other tobacco products,
6 including combustible tobacco products. Toxicologists have also
7 warned that e-liquids pose significant risks to public health,
8 particularly to children. According to the Surgeon General's
9 report, if the contents of refill cartridges or bottles are
10 consumed, ingestion of e-liquids containing nicotine can cause
11 acute toxicity and possibly death. The Surgeon General's report
12 also found that there are numerous policies and practices that
13 can be implemented at the state and local levels to address
14 electronic smoking device use among youth and young adults,
15 including preventing access to e-cigarettes by youth,
16 significant increases in tax and price of e-cigarettes, retail
17 licensure, and regulation of e-cigarette marketing.

18 The legislature finds that the rapid growth of the
19 electronic smoking device industry, including retail businesses
20 selling electronic smoking devices or e-liquids, necessitates



1 further regulations to protect consumers, such as requiring
2 retailers of e-liquids to obtain a retail tobacco permit.

3 The legislature notes that the federal Food and Drug
4 Administration recently finalized a rule that expands its
5 regulatory authority to all tobacco products, including
6 electronic smoking devices, cigars, and hookah and pipe tobacco.

7 However, the legislature also notes that there is currently no
8 state tobacco tax attached to e-liquid, even though electronic
9 smoking devices are now regulated as tobacco products. The

10 legislature finds that states such as Indiana, Pennsylvania, and
11 West Virginia tax e-liquids that may or may not contain

12 nicotine. Furthermore, tobacco products other than cigarettes
13 are currently taxed at a lower rate than cigarettes, even though
14 their use carries similar health risks. Research has shown that
15 increasing cigarette prices, such as through cigarette taxes,
16 tends to reduce the rate of smoking by adult and youth smokers.

17 However, the legislature is concerned that as the price of
18 cigarettes increases, smokers may purchase less expensive
19 tobacco products, such as electronic smoking devices or
20 e-liquids.



1 Finally, the legislature concludes that there needs to be a
2 tax on e-liquids and taxing these products as other tobacco
3 products is the most equitable way to do so. Imposing a tax on
4 e-liquids will also encourage users of e-liquids to quit,
5 sustain cessation, prevent youth initiation, and reduce
6 consumption among those who continue to use them.

7 The purpose of this Act is to:

8 (1) Make unlawful the shipment of tobacco products to
9 anyone other than a licensee;

10 (2) Make unlawful the transport of tobacco products
11 ordered through remote sale to anyone other than a
12 licensee;

13 (3) Include e-liquid within the definition of "tobacco
14 products", as used in the cigarette tax and tobacco
15 tax law, thereby:

16 (A) Subjecting e-liquid to the excise tax on tobacco
17 products;

18 (B) Requiring retailers of e-liquid to obtain a
19 retail tobacco permit to sell, possess, keep,
20 acquire, distribute, or transport e-liquid;



(C) Prohibiting persons from engaging in the business of wholesaling or dealing e-liquid without first obtaining a license from the department of taxation; and

(D) Applying other requirements of chapter 245, Hawaii Revised Statutes;

(4) Increase the license fee for persons engaged as a wholesaler or dealer of cigarettes and tobacco products; and

(5) Increase the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes and tobacco products.

SECTION 2. Chapter 245, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§245- Unlawful shipment of tobacco products; penalty; reports; liability for unpaid taxes. (a) A person or entity commits the offense of unlawful shipment of tobacco products if the person or entity is engaged in the business of selling tobacco products and ships tobacco products or causes tobacco



1 products to be shipped to a person or entity in this State that
2 is not:

3 (1) A licensee under this chapter; or

4 (2) A person or entity transporting tobacco products, as
5 defined in section 245-1, under federal internal
6 revenue bond or customs control that are non-tax-paid
7 under title 26 of the United States Code, or an
8 operator of a customs bonded warehouse pursuant to
9 title 19 United States Code section 1311 or 1555.

10 (b) This section shall not apply to the shipment of
11 tobacco products if any of the following conditions are met:

12 (1) The tobacco products are exempt from taxes as provided
13 by section 245-3(b);

14 (2) The person or entity engaged in the business of
15 selling, advertising, or offering tobacco products for
16 sale and transfer or shipment includes on the outside
17 of the shipping container an externally visible and
18 easily legible notice located on the same side of the
19 shipping container as the address to which the
20 shipping container is delivered stating as follows:



1 "HAWAII LAW PROHIBITS THE SALE OF CIGARETTES OR
2 TOBACCO PRODUCTS TO INDIVIDUALS UNDER TWENTY-ONE YEARS
3 OF AGE AND REQUIRES THE PAYMENT OF ALL APPLICABLE
4 TAXES. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE
5 UNPAID TAXES ON THESE CIGARETTES AND TOBACCO
6 PRODUCTS."; or

7 (3) All applicable Hawaii taxes on the tobacco products
8 are paid in accordance with the requirements of this
9 section.

10 (c) Any person who knowingly engages in the unlawful
11 shipment of tobacco products shall be guilty of a misdemeanor.

12 (d) For purposes of this section, "licensee" means a
13 person or entity that is on a list of authorized licensees
14 published by the department.

15 (e) Notwithstanding the existence of other remedies at
16 law, any person or entity that purchases, uses, controls, or
17 possesses any tobacco products for which the applicable taxes
18 imposed under title 14 have not been paid, shall be liable for
19 the applicable taxes, plus any penalty and interest as provided
20 for by law.



1 §245- Unlawful transport of tobacco products ordered
2 through remote sale; penalty. (a) A person or entity commits
3 the offense of unlawful transport of tobacco products if the
4 person or entity is engaged in the business of selling or
5 providing tobacco products and ships or transports or causes to
6 be shipped or transported, any tobacco product ordered or
7 purchased through a remote sale to anyone in the State other
8 than a licensed wholesaler or dealer.

9 (b) Any manufacturer, wholesaler, dealer, retailer, or
10 other person or entity who knowingly violates this section shall
11 be guilty of a misdemeanor. Each shipment that violates or
12 fails to comply with this section shall be a separate and
13 distinct 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 the penalties.

19 (d) For the purposes of this section:
20 "Internet sale" means any internet website or
21 electronically networked means that solicits or sells cigarettes



1 or tobacco products, including electronic smoking devices,
2 regardless of whether cash is actually paid for the product.

3 "Mail order" means any means of soliciting cigarettes or
4 tobacco products, including electronic smoking devices, that are
5 set forth in a catalog or other printed solicitation of a
6 business that is generally available to the public.

7 "Remote sale" means a sale that is conducted by mail order,
8 telephone, computer, internet sale, or any means other than a
9 physical storefront."

10 SECTION 3. Section 245-1, Hawaii Revised Statutes, is
11 amended as follows:

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

14 "E-liquid" means any liquid or like substance which may or
15 may not contain nicotine that is designed or intended to be used
16 in an electronic smoking device, as defined in section 328J-1,
17 whether or not packaged in a cartridge or other container. E-
18 liquid shall not include prescription drugs; medical cannabis or
19 manufactured cannabis products; or medical devices used to
20 inhale or ingest prescription drugs, including devices sold at a
21 licensed medical cannabis dispensary."



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, chewing or smokeless tobacco,
8 ~~[and]~~ smoking or pipe tobacco~~[-]~~, and e-liquid."

9 SECTION 4. Section 245-2, Hawaii Revised Statutes, is
10 amended by amending subsection (b) to read as follows:

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

16 SECTION 5. Section 245-2.5, Hawaii Revised Statutes, is
17 amended by amending subsection (c) to read as follows:

18 "(c) The retail tobacco permit shall be issued by the
19 department upon application by the retailer in the form and
20 manner prescribed by the department, and the payment of a fee of
21 [~~\$20-~~] \$50. Permits shall be valid for one year, from



1 December 1 to November 30, and renewable annually. Whenever a
2 retail tobacco permit is defaced, destroyed, or lost, or the
3 permittee relocates the permittee's business, the department may
4 issue a duplicate retail tobacco permit to the permittee for a
5 fee of \$5 per copy."

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

8 SECTION 7. This Act shall take effect on July 1, 2050.



Report Title:

Unlawful Shipment and Transport of Tobacco Products; Electronic Smoking Devices; E-liquid; Tax; Permit; License

Description:

Makes unlawful the shipment of tobacco products, and transport of tobacco products ordered or purchased through a remote sale, to anyone other than a licensee. Includes e-liquid within the definition of "tobacco products", as used in the cigarette tax and tobacco tax law, thereby making all provisions of the cigarette tax and tobacco tax law that relate to tobacco products applicable to e-liquid as well. Increases the license fee for wholesalers or dealers and the retail tobacco permit fee. Effective 7/1/2050. (SD2)

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