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# A BILL FOR AN ACT

RELATING TO 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, 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 deliver nicotine, flavor, and other  
6 chemicals to the user by turning chemicals including highly  
7 addictive nicotine into an aerosol or vapor that is inhaled by  
8 the user. Consumers may choose from varying strengths of e-  
9 liquid nicotine as well as liquids consisting of different  
10 flavors.

11 The electronic smoking device industry, including the  
12 production of e-liquid, is growing rapidly. Data has shown  
13 historic rise in use by youth and young adults since the Surgeon  
14 General first issued a warning in 2016 about the dangers of  
15 these products. According to the 2016 report from the Surgeon  
16 General, e-cigarette use amongst the nation's youth and young  
17 adults has become a major public health concern. The Surgeon  
18 General's report noted that e-cigarette use increased  
19 considerably in recent years, growing an astounding nine hundred  
20 per cent among high school students from 2011 to 2015. In a  
21 2018 study conducted by the National Institute on Drug Abuse,



1 the use of electronic smoking devices among high school seniors  
2 increased nationally from 27.8 per cent to 37.3 per cent in a  
3 twelve-month period. The increase translates to 1.3 million  
4 more teens using electronic smoking devices in a single year.  
5 On December 18, 2018, the United States Surgeon General made the  
6 unprecedented move of classifying the danger of youth usage of  
7 electronic smoking devices as an epidemic.

8 E-cigarette use among youth and young adults is also  
9 strongly associated with the use of other tobacco products,  
10 including combustible tobacco products. Toxicologists have also  
11 warned that e-liquids pose significant risks to public health,  
12 particularly to children. According to the Surgeon General's  
13 report, if the contents of refill cartridges or bottles are  
14 consumed, ingestion of e-liquids containing nicotine can cause  
15 acute toxicity and possibly death. The Surgeon General's report  
16 also found that there are numerous policies and practices that  
17 can be implemented at the state and local levels to address  
18 electronic smoking device use among youth and young adults,  
19 including preventing access to e-cigarettes by youth,  
20 significant increases in tax and price of e-cigarettes, retail  
21 licensure, and regulation of e-cigarette marketing.



1           The legislature additionally finds that the rapid growth of  
2 the electronic smoking device industry, including retail  
3 businesses selling electronic smoking devices or e-liquid,  
4 necessitates further regulations to protect consumers, such as  
5 requiring retailers of e-liquid to obtain a retail tobacco  
6 permit.

7           The legislature notes that the federal Food and Drug  
8 Administration recently finalized a rule that expands its  
9 regulatory authority to all tobacco products, including  
10 electronic smoking devices, cigars, and hookah and pipe tobacco.  
11 However, the legislature also notes that there is currently no  
12 state tobacco tax attached to e-liquid, even though electronic  
13 smoking devices are now regulated by the federal government as  
14 tobacco products. Furthermore, tobacco products other than  
15 cigarettes are currently taxed at a lower rate than cigarettes,  
16 even though their use carries similar health risks. Research  
17 has shown that increasing cigarette prices, such as through  
18 cigarette taxes, tends to reduce the rate of smoking by adult  
19 and youth smokers. However, the legislature is concerned that  
20 as the price of cigarettes increases, smokers may purchase less



1 expensive tobacco products, such as electronic smoking devices  
2 or e-liquids.

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

10 The purpose of this Act is to:

- 11 (1) Establish the offense of unlawful shipment of tobacco  
12 products;
- 13 (2) Include e-liquid and electronic smoking devices within  
14 the definition of "tobacco products", as used in the  
15 cigarette tax and tobacco tax law, thereby:
- 16 (A) Subjecting e-liquid and electronic smoking  
17 devices to the excise tax on tobacco products;
- 18 (B) Requiring retailers of tobacco products to obtain  
19 a retail tobacco permit to sell, possess, keep,  
20 acquire, distribute, or transport tobacco  
21 products;



1 (C) Prohibiting persons from engaging in the business  
2 of a wholesaler or dealer of tobacco products  
3 without first obtaining a license from the  
4 department of taxation; and

5 (D) Applying other requirements of the cigarette tax  
6 and tobacco law;

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

10 (4) Increase the retail tobacco permit fee for retailers  
11 engaged in the retail sale of cigarettes and tobacco  
12 products; and

13 (5) Repeal various statutory provisions relating to  
14 electronic smoking devices.

15 SECTION 2. Chapter 245, Hawaii Revised Statutes, is  
16 amended by adding a new section to be appropriately designated  
17 and to read as follows:

18 "§245- Unlawful shipment of tobacco products; penalty;  
19 reports; liability for unpaid taxes. (a) A person or entity  
20 commits the offense of unlawful shipment of tobacco products if  
21 the person or entity:

1       (1) Is engaged in the business of selling tobacco  
2       products; and

3       (2) Ships or causes to be shipped any tobacco products to  
4       a person or entity in this State that is not a  
5       licensee under this chapter.

6       (b) This section shall not apply to the shipment of  
7       tobacco products if any of the following conditions is met:

8       (1) The tobacco products are exempt from taxes as provided  
9       by section 245-3(b); or

10       (2) All applicable Hawaii taxes on the tobacco products  
11       are paid in accordance with the requirements of this  
12       chapter.

13       (c) Unlawful shipment of tobacco products is a class C  
14       felony if the person or entity knowingly ships or causes to be  
15       shipped tobacco products with a value of \$10,000 or more in  
16       violation of subsection (a).

17       (d) Unlawful shipment of tobacco products is a misdemeanor  
18       if the person or entity knowingly ships or causes to be shipped  
19       tobacco products with a value of less than \$10,000 in violation  
20       of subsection (a).



1       (e) For purposes of this section, a person or entity is a  
2 licensee if the person or entity's name appears on a list of  
3 authorized licensees published by the department.

4       (f) Notwithstanding the existence of other remedies at  
5 law, any person or entity that purchases, uses, controls, or  
6 possesses any tobacco products for which the applicable taxes  
7 imposed under title 14 have not been paid, shall be liable for  
8 the applicable taxes, plus any penalty and interest as provided  
9 for by law.

10       (g) For purposes of this section:

11       "Value" means the fair market value at the time of the  
12 offense."

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

15       1. By adding three new definitions to be appropriately  
16 inserted and to read:

17       "E-liquid" means any liquid or like substance, which may  
18 or may not contain nicotine, that is designed or intended to be  
19 used in an electronic smoking device, whether or not packaged in  
20 a cartridge or other container. "E-liquid" shall not include  
21 prescription drugs; medical cannabis or manufactured cannabis





1 products pursuant to chapter 329D; or medical devices used to  
2 aerosolize, inhale, or ingest prescription drugs, including  
3 manufactured cannabis products manufactured or distributed in  
4 accordance with section 329D-10(a).

5 "Electronic smoking device" means any electronic product,  
6 or part thereof, that can be used by a person to simulate  
7 smoking in the delivery of nicotine or any other substance,  
8 intended for human consumption, through inhalation of vapor or  
9 aerosol from the product. "Electronic smoking device" includes  
10 but is not limited to an electronic cigarette, electronic cigar,  
11 electronic cigarillo, electronic pipe, electronic hookah, vape  
12 pen or related product, and any cartridge or other component  
13 part of the device or product.

14 "Smoke" or "smoking" means inhaling, exhaling, burning,  
15 carrying, or possessing any lighted or heated tobacco product,  
16 or similar substance intended for human consumption, including  
17 the use of an electronic smoking device that creates an aerosol  
18 or vapor, in any manner or in any form."

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

21 "Tobacco products" means [tobacco]:



- 1        (1) Tobacco in any form, other than cigarettes or little  
2        cigars, that is [~~prepared or~~] intended for human  
3        consumption [~~or for personal use by humans, including~~  
4        ~~large cigars and any substitutes thereof other than~~  
5        ~~cigarettes that bear the semblance thereof, snuff,~~  
6        ~~chewing or smokeless tobacco, and smoking or pipe~~  
7        ~~tobacco.] or is likely to be consumed, whether smoked,  
8        heated, chewed, absorbed, dissolved, inhaled, or  
9        ingested by other means;~~
- 10       (2) E-liquid; or
- 11       (3) Electronic smoking device.

12       "Tobacco products" includes but is not limited to large cigars  
13       and any substitutes thereof other than cigarettes that bear the  
14       semblance thereof, pipe tobacco, chewing or smokeless tobacco,  
15       snuff, snus, e-liquid, electronic smoking devices, any cartridge  
16       or other component part of the device or product, and related  
17       products."

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

20       "(b) The license shall be issued by the department upon  
21       application therefor, in such form and manner as shall be



1 required by rule of the department, and the payment of a fee of  
2 [~~\$2.50,~~] \$250, and shall be renewable annually on July 1 for the  
3 twelve months ending the succeeding June 30."

4 SECTION 5. Section 245-2.5, Hawaii Revised Statutes, is  
5 amended by amending subsections (c) and (d) to read as follows:

6 "(c) The retail tobacco permit shall be issued by the  
7 department upon application by the retailer in the form and  
8 manner prescribed by the department, and the payment of a fee of  
9 [~~\$20.~~] \$50. Permits shall be valid for one year, from December  
10 1 to November 30, and renewable annually. Whenever a retail  
11 tobacco permit is defaced, destroyed, or lost, or the permittee  
12 relocates the permittee's business, the department may issue a  
13 duplicate retail tobacco permit to the permittee for a fee of \$5  
14 per copy.

15 (d) A separate retail tobacco permit shall be obtained for  
16 each place of business owned, controlled, or operated by a  
17 retailer. In seeking a retail tobacco permit, the applicant  
18 shall specify whether each place of business sells e-liquid or  
19 electronic smoking devices. A retailer that owns or controls  
20 more than one place of business may submit a single application  
21 for more than one retail tobacco permit. Each retail tobacco



1 permit issued shall clearly describe the place of business where  
2 the operation of the business is conducted[-] and whether the  
3 place of business sells e-liquid or electronic smoking devices."

4 SECTION 6. Chapter 28, part XII, Hawaii Revised Statutes,  
5 is repealed.

6 SECTION 7. Section 245-17, Hawaii Revised Statutes, is  
7 repealed.

8 ~~["~~§245-17~~ Delivery sales. (a) No person shall conduct~~  
9 ~~a delivery sale or otherwise ship or transport, or cause to be~~  
10 ~~shipped or transported, any electronic smoking device in~~  
11 ~~connection with a delivery sale to any person under the age of~~  
12 ~~twenty one.~~

13 ~~(b) A person who makes delivery sales shall not accept a~~  
14 ~~purchase or order from any person without first obtaining the~~  
15 ~~full name, birth date, and address of that person and verifying~~  
16 ~~the purchaser's age by:~~

17 ~~(1) An independently operated third party database or~~  
18 ~~aggregate of databases that are regularly used by~~  
19 ~~government and businesses for the purpose of age and~~  
20 ~~identity verification and authentication;~~



- 1       ~~(2) Receiving a copy of a government issued identification~~  
2           ~~card from the purchaser, or~~
- 3       ~~(3) Requiring age and signature verification in the~~  
4           ~~shipment process and upon and before actual delivery.~~
- 5       ~~(c) The purchaser shall certify their age before~~  
6       ~~completing the purchaser's order.~~
- 7       ~~(d) Any person who violates this section shall be fined~~  
8       ~~\$500 for the first offense. Any subsequent offenses shall~~  
9       ~~subject the person to a fine of no less than \$500 but no more~~  
10       ~~than \$2,000. Any person under twenty one years of age who~~  
11       ~~violates this section shall be fined \$10 for the first offense,~~  
12       ~~provided that any subsequent offense shall subject the person to~~  
13       ~~a fine of \$50, no part of which shall be suspended, or the~~  
14       ~~person shall be required to perform no less than forty eight~~  
15       ~~hours but no more than seventy two hours of community service~~  
16       ~~during hours when the person is not employed or attending~~  
17       ~~school.~~
- 18       ~~(e) The department shall not adopt rules prohibiting~~  
19       ~~delivery sales.~~
- 20       ~~(f) For the purposes of this section:~~



1       ~~"Delivery sale" means any sale of an electronic smoking~~  
2 ~~device to a purchaser in the State where either:~~

3       ~~(1) The purchaser submits the order for sale by means of a~~  
4       ~~telephonic or other method of voice transmission, the~~  
5       ~~mail or any other delivery service, or the internet or~~  
6       ~~other online service; or~~

7       ~~(2) The electronic smoking device is delivered by use of~~  
8       ~~the mail or any other delivery service.~~

9       ~~The foregoing sales of electronic smoking devices shall~~  
10       ~~constitute a delivery sale regardless of whether the seller is~~  
11       ~~located within or without the State.~~

12       ~~"Electronic smoking device" means any electronic product~~  
13       ~~that can be used to aerosolize and deliver nicotine or other~~  
14       ~~substances to the person inhaling from the device, including but~~  
15       ~~not limited to an electronic cigarette, electronic cigar,~~  
16       ~~electronic cigarillo, or electronic pipe, and any cartridge or~~  
17       ~~other component of the device or related product." ]~~

18       SECTION 8. This Act does not affect rights and duties that  
19       matured, penalties that were incurred, and proceedings that were  
20       begun before its effective date.



1 SECTION 9. If any provision of this Act, or the  
2 application thereof to any person or circumstance, is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the Act that can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this Act are severable.

7 SECTION 10. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 11. This Act shall take effect on July 1, 2050.



**Report Title:**

Unlawful Shipment of Tobacco Products; E-liquid; Electronic Smoking Devices; License Fee; Retail Permit Fee

**Description:**

Establishes the offense of unlawful shipment of tobacco products. Includes e-liquid and electronic smoking devices within the definition of "tobacco products", as used in the cigarette tax and tobacco tax law. Increases the license fee for persons engaged as a wholesaler or dealer of cigarettes and tobacco products. Increases the retail tobacco permit fee for retailers engaged in the retail sale of cigarettes and tobacco products. Repeals certain provisions of the Hawaii Revised Statutes relating to electronic smoking devices. Effective 7/1/2050. (HD2)

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