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# A BILL FOR AN ACT

RELATING TO ELECTRONIC SMOKING PRODUCTS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that electronic smoking  
2 devices, also known as e-cigarettes, are battery-operated  
3 products designed to deliver nicotine, flavor, and other  
4 chemicals to the user by turning chemicals, including highly  
5 addictive nicotine, into an aerosol that is inhaled by the user.  
6 The legislature is concerned with the health and safety of  
7 e-cigarette products.

8           The legislature further finds that electronic smoking  
9 devices are known to contain volatile organic compounds that, at  
10 certain levels, can cause eye, nose, and throat irritation,  
11 headaches and nausea and can damage the liver, kidneys, and the  
12 nervous system. The liquids used in electronic smoking devices  
13 are largely unregulated and contain harmful chemicals. Some  
14 flavorings are more toxic than others. Studies have shown that  
15 some flavors contain different levels of diacetyl, a chemical  
16 that has been linked to a serious lung disease called  
17 bronchiolitis obliterans. Formaldehyde is another chemical



1 associated with e-liquids. It is a cancer-causing substance  
2 that forms if e-liquid overheats or not enough liquid reaches  
3 the heating element.

4 In 2019, the U.S. Department of Health and Human Services  
5 declared that e-cigarette users are falling ill to a new illness  
6 named e-cigarette and vaping associated lung injury and notes  
7 that sixteen per cent of patients hospitalized were younger than  
8 eighteen years of age. While research is still being conducted  
9 on the causes of the illnesses, this unregulated product is a  
10 threat to the health and safety of youth. Cases of e-cigarette  
11 and vaping associated lung injury have been reported in Hawaii.  
12 As of November 2019, the Hawaii department of health's disease  
13 outbreak control division confirmed four cases of severe  
14 respiratory illness associated with e-cigarettes. Each county  
15 has reported one case of e-cigarette and vaping associated lung  
16 injury.

17 The legislature also finds that the use of these electronic  
18 smoking devices has been increasing exponentially, and that e-  
19 cigarette use is especially popular among youth in Hawaii.  
20 While young people's use of e-cigarettes has risen nationally,  
21 use in Hawaii by young people is even higher. According to the



1 latest data from the Hawaii department of health's youth risk  
2 behavior study, forty-two per cent of the State's high school  
3 students and twenty-seven per cent of its middle school students  
4 have tried or use e-cigarettes. By county, the state high  
5 school rates of e-cigarette use are thirty-nine per cent for  
6 Oahu, forty-five per cent for Kauai, fifty-one per cent for  
7 Maui, and fifty per cent for Hawaii.

8 The legislature additionally finds that the electronic  
9 smoking device industry, including the production of e-liquids,  
10 is growing rapidly. On December 18, 2018, the United States  
11 Surgeon General made the unprecedented move of classifying the  
12 danger of youth usage of electronic smoking devices as an  
13 epidemic. Since the Surgeon General first issued a warning in  
14 2016 about the dangers of these products, data has shown a  
15 historic rise in use by youth and young adults. According to  
16 the 2016 report, e-cigarette use among the nation's youth and  
17 young adults has become a major public health concern. The  
18 Surgeon General's report noted that e-cigarette use has  
19 increased considerably in recent years. Usage increased an  
20 astounding nine hundred per cent among high school students from  
21 2011 to 2015 alone.



1 In a 2018 study conducted by the National Institute on Drug  
2 Abuse, teens' use of electronic smoking devices increased from  
3 27.8 per cent to 37.3 per cent in a twelve-month period. The  
4 increase translates to 1,300,000 more teens using electronic  
5 smoking devices in a single year. E-cigarette use among youth  
6 and young adults is also strongly associated with the use of  
7 other tobacco products, including combustible tobacco products.  
8 Toxicologists have also warned that e-liquids pose significant  
9 risks to public health, particularly to children.

10 According to the Surgeon General's report, if the contents  
11 of refill cartridges or bottles are consumed, ingestion of  
12 e-liquids containing nicotine can cause acute toxicity and  
13 possibly death. The Surgeon General's report also found that  
14 there are numerous policies and practices that can be  
15 implemented at the state and local levels to address electronic  
16 smoking device use among youth and young adults, including  
17 preventing access to e-cigarettes by youth, significant  
18 increases in tax and price of e-cigarettes, retail licensure,  
19 and regulation of e-cigarette marketing.

20 The legislature additionally finds that the rapid growth of  
21 the electronic smoking device industry, including retail



1 businesses selling electronic smoking devices or e-liquids,  
2 necessitates further regulation to protect consumers, such as  
3 creating policy parity between the sale of e-cigarettes and the  
4 sale of traditional cigarettes through tobacco taxation and by  
5 requiring retailers of e-cigarettes and e-liquids to obtain a  
6 retail tobacco 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 yet, federal delays are expected for at least five more years.  
12 The legislature also notes that there is currently no state  
13 tobacco tax attached to the sale of e-liquid, even though  
14 electronic smoking devices are now regulated as tobacco  
15 products. Furthermore, tobacco products, other than  
16 e-cigarettes, are currently taxed at a lower rate than  
17 cigarettes, even though their use carries similar health risks.  
18 Research has shown that increasing cigarette prices, such as  
19 through cigarette sales taxes, tends to reduce the rate of  
20 smoking by adult and youth smokers. The legislature finds that



1 minors are three times more sensitive to price increases than  
2 are adults.

3       The legislature is also concerned that there are currently  
4 no state resources allocated to assist the department of health  
5 and department of education in combatting the youth vaping  
6 epidemic and in treating youth for nicotine addiction.  
7 Cessation treatment options, such as nicotine replacement  
8 therapy, are currently designed for adults. Because youth are  
9 not vaping to quit cigarettes, and because there is no safe  
10 level of nicotine for youth, there are no approved treatment  
11 guidelines to help youth break their addiction.

12       Finally, the legislature concludes that there needs to be a  
13 sales tax on e-cigarettes. Taxing the sale of these products,  
14 as the State does the sale of other tobacco, is fair and  
15 equitable. Imposing a sales tax on e-cigarettes will also  
16 encourage users of e-cigarettes to quit, sustain cessation,  
17 prevent youth initiation, and reduce consumption among those who  
18 continue to use them.

19       The purpose of this Act is to:



- 1           (1) Make it unlawful for any person other than a licensed  
2           tobacco retailer to receive any shipment of e-liquids  
3           or electronic smoking devices;
- 4           (2) Include electronic smoking devices within the  
5           definition of "tobacco products", as used in the  
6           cigarette tax and tobacco tax law, thereby:
  - 7           (A) Subjecting electronic smoking devices to the  
8           excise tax on tobacco products;
  - 9           (B) Requiring retailers of electronic smoking devices  
10           to obtain a retail tobacco permit to sell,  
11           possess, keep, acquire, distribute, or transport  
12           electronic smoking devices;
  - 13           (C) Prohibiting persons from engaging in the business  
14           of a wholesaler or dealer of electronic smoking  
15           devices without first obtaining a license from  
16           the department of taxation; and
  - 17           (D) Applying other requirements of chapter 245,  
18           Hawaii Revised Statutes;
- 19           (3) Increase the license fee for persons engaged as a  
20           wholesaler or dealer of cigarettes and tobacco  
21           products;



1 (4) Increase the retail tobacco permit fee for retailers  
2 engaged in the retail sale of cigarettes and tobacco  
3 products; and

4 (5) Fund health education, prevention, and cessation  
5 programs having to do with the risks and dangers of  
6 the use of electronic smoking devices by youth.

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

10 "§245- Shipment of e-liquid and electronic smoking  
11 devices. It shall be unlawful for any person other than a  
12 licensed tobacco retailer to receive any shipment of e-liquids  
13 or electronic smoking devices."

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

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

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





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

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

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

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



1            "Tobacco products" means tobacco in any form, other than  
2 cigarettes or little cigars [~~, that is prepared or intended for~~  
3 ~~consumption or for personal use by humans, including large~~  
4 ~~cigars and any substitutes thereof other than cigarettes that~~  
5 ~~bear the semblance thereof, snuff, chewing or smokeless tobacco,~~  
6 ~~and smoking or pipe tobacco.]; including, but not limited to  
7 large cigars and any substitutes thereof other than cigarettes  
8 that bear the semblance thereof, pipe tobacco, chewing or  
9 smokeless tobacco, snuff, snus, e-liquid, electronic smoking  
10 devices containing e-liquid, component parts containing e-  
11 liquid, and related products."~~

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

14            "(b) The license shall be issued by the department upon  
15 application therefor, in such form and manner as shall be .  
16 required by rule of the department, and the payment of a fee of  
17 [~~\$2.50,~~] \$250, and shall be renewable annually on July 1 for the  
18 twelve months ending the succeeding June 30."

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



1           "(c) The retail tobacco permit shall be issued by the  
2 department upon application by the retailer in the form and  
3 manner prescribed by the department, and the payment of a fee of  
4 [~~\$20.~~] \$50. Permits shall be valid for one year, from  
5 December 1 to November 30, and renewable annually. Whenever a  
6 retail tobacco permit is defaced, destroyed, or lost, or the  
7 permittee relocates the permittee's business, the department may  
8 issue a duplicate retail tobacco permit to the permittee for a  
9 fee of \$5 per copy."

10           SECTION 6. Section 245-15, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           "**§245-15 Disposition of revenues.** All moneys collected  
13 pursuant to this chapter shall be paid into the state treasury  
14 as state realizations to be kept and accounted for as provided  
15 by law; provided that, of the moneys collected under the tax  
16 imposed pursuant to:

17           (1) Section 245-3(a)(5), after September 30, 2006, and  
18           prior to October 1, 2007, 1.0 cent per cigarette shall  
19           be deposited to the credit of the Hawaii cancer  
20           research special fund, established pursuant to section



1 304A-2168, for research and operating expenses and for  
2 capital expenditures;

3 (2) Section 245-3(a)(6), after September 30, 2007, and  
4 prior to October 1, 2008:

5 (A) 1.5 cents per cigarette shall be deposited to the  
6 credit of the Hawaii cancer research special  
7 fund, established pursuant to section 304A-2168,  
8 for research and operating expenses and for  
9 capital expenditures;

10 (B) 0.25 cents per cigarette shall be deposited to  
11 the credit of the trauma system special fund  
12 established pursuant to section 321-22.5; and

13 (C) 0.25 cents per cigarette shall be deposited to  
14 the credit of the emergency medical services  
15 special fund established pursuant to section  
16 321-234;

17 (3) Section 245-3(a)(7), after September 30, 2008, and  
18 prior to July 1, 2009:

19 (A) 2.0 cents per cigarette shall be deposited to the  
20 credit of the Hawaii cancer research special  
21 fund, established pursuant to section 304A-2168,



- 1 for research and operating expenses and for  
2 capital expenditures;
- 3 (B) 0.5 cents per cigarette shall be deposited to the  
4 credit of the trauma system special fund  
5 established pursuant to section 321-22.5;
- 6 (C) 0.25 cents per cigarette shall be deposited to  
7 the credit of the community health centers  
8 special fund established pursuant to section  
9 321-1.65; and
- 10 (D) 0.25 cents per cigarette shall be deposited to  
11 the credit of the emergency medical services  
12 special fund established pursuant to section  
13 321-234;
- 14 (4) Section 245-3(a)(8), after June 30, 2009, and prior to  
15 July 1, 2013:
- 16 (A) 2.0 cents per cigarette shall be deposited to the  
17 credit of the Hawaii cancer research special  
18 fund, established pursuant to section 304A-2168,  
19 for research and operating expenses and for  
20 capital expenditures;



- 1 (B) 0.75 cents per cigarette shall be deposited to  
2 the credit of the trauma system special fund  
3 established pursuant to section 321-22.5;
- 4 (C) 0.75 cents per cigarette shall be deposited to  
5 the credit of the community health centers  
6 special fund established pursuant to section  
7 321-1.65; and
- 8 (D) 0.5 cents per cigarette shall be deposited to the  
9 credit of the emergency medical services special  
10 fund established pursuant to section 321-234;
- 11 (5) Section 245-3(a)(11), after June 30, 2013, and prior  
12 to July 1, 2015:
- 13 (A) 2.0 cents per cigarette shall be deposited to the  
14 credit of the Hawaii cancer research special  
15 fund, established pursuant to section 304A-2168,  
16 for research and operating expenses and for  
17 capital expenditures;
- 18 (B) 1.5 cents per cigarette shall be deposited to the  
19 credit of the trauma system special fund  
20 established pursuant to section 321-22.5;



- 1 (C) 1.25 cents per cigarette shall be deposited to  
2 the credit of the community health centers  
3 special fund established pursuant to section  
4 321-1.65; and
- 5 (D) 1.25 cents per cigarette shall be deposited to  
6 the credit of the emergency medical services  
7 special fund established pursuant to section  
8 321-234; [~~and~~]
- 9 (6) Section 245-3(a)(11), after June 30, 2015, and  
10 thereafter:
- 11 (A) 2.0 cents per cigarette shall be deposited to the  
12 credit of the Hawaii cancer research special  
13 fund, established pursuant to section 304A-2168,  
14 for research and operating expenses and for  
15 capital expenditures;
- 16 (B) 1.125 cents per cigarette, but not more than  
17 \$7,400,000 in a fiscal year, shall be deposited  
18 to the credit of the trauma system special fund  
19 established pursuant to section 321-22.5;
- 20 (C) 1.25 cents per cigarette, but not more than  
21 \$8,800,000 in a fiscal year, shall be deposited



1 to the credit of the community health centers  
2 special fund established pursuant to section  
3 321-1.65; and

4 (D) 1.25 cents per cigarette, but not more than  
5 \$8,800,000 in a fiscal year, shall be deposited  
6 to the credit of the emergency medical services  
7 special fund established pursuant to section  
8 321-234 [-]; and

9 (7) Section 245-3(a)(12), after September 1, 2020, and  
10 thereafter, \$ \_\_\_\_\_ shall be deposited to the  
11 credit of the Hawaii tobacco prevention and control  
12 trust fund established pursuant to section 328L-5 to  
13 establish a comprehensive youth tobacco cessation  
14 program to fund health education, prevention, and  
15 nicotine cessation programs about the risks and  
16 dangers of the use of electronic smoking devices for  
17 youth.

18 The department shall provide an annual accounting of these  
19 dispositions to the legislature."

20 SECTION 7. Chapter 28, part XII, Hawaii Revised Statutes,  
21 is repealed.





1 SECTION 8. Section 245-17, Hawaii Revised Statutes, is  
2 repealed.

3 ~~["§245-17] Delivery sales. (a) No person shall conduct~~  
4 ~~a delivery sale or otherwise ship or transport, or cause to be~~  
5 ~~shipped or transported, any electronic smoking device in~~  
6 ~~connection with a delivery sale to any person under the age of~~  
7 ~~twenty one.~~

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

12 ~~(1) An independently operated third party database or~~  
13 ~~aggregate of databases that are regularly used by~~  
14 ~~government and businesses for the purpose of age and~~  
15 ~~identity verification and authentication;~~

16 ~~(2) Receiving a copy of a government issued identification~~  
17 ~~card from the purchaser; or~~

18 ~~(3) Requiring age and signature verification in the~~  
19 ~~shipment process and upon and before actual delivery.~~

20 ~~(c) The purchaser shall certify their age before~~  
21 ~~completing the purchaser's order.~~



1       ~~(d) Any person who violates this section shall be fined~~  
2       ~~\$500 for the first offense. Any subsequent offenses shall~~  
3       ~~subject the person to a fine of no less than \$500 but no more~~  
4       ~~than \$2,000. Any person under twenty one years of age who~~  
5       ~~violates this section shall be fined \$10 for the first offense,~~  
6       ~~provided that any subsequent offense shall subject the person to~~  
7       ~~a fine of \$50, no part of which shall be suspended, or the~~  
8       ~~person shall be required to perform no less than forty eight~~  
9       ~~hours but no more than seventy two hours of community service~~  
10       ~~during hours when the person is not employed or attending~~  
11       ~~school.~~

12       ~~(e) The department shall not adopt rules prohibiting~~  
13       ~~delivery sales.~~

14       ~~(f) For the purposes of this section:~~

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

17       ~~(1) The purchaser submits the order for sale by means of a~~  
18       ~~telephonic or other method of voice transmission, the~~  
19       ~~mail or any other delivery service, or the internet or~~  
20       ~~other online service; or~~



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

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

6           ~~"Electronic smoking device" means any electronic product~~  
7       ~~that can be used to aerosolize and deliver nicotine or other~~  
8       ~~substances to the person inhaling from the device, including but~~  
9       ~~not limited to an electronic cigarette, electronic cigar,~~  
10       ~~electronic cigarillo, or electronic pipe, and any cartridge or~~  
11       ~~other component of the device or related product." ]~~

12       SECTION 9. This Act does not affect rights and duties that  
13       matured, penalties that were incurred, and proceedings that were  
14       begun before its effective date.

15       SECTION 10. Statutory material to be repealed is bracketed  
16       and stricken. New statutory material is underscored.

17       SECTION 11. This Act shall take effect on June 18, 2050.



**Report Title:**

Electronic Smoking Products; Tobacco Products; E-liquid; License Fee; Retail Permit Fee; Health Education, Nicotine Cessation, and Prevention Programs

**Description:**

Makes it unlawful for any person other than a licensed tobacco retailer to receive any shipment of e-liquids or electronic smoking devices. Requires that e-liquid and electronic smoking devices be included 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. Allocates a portion of funds collected on excise taxes on tobacco products to fund health education, prevention, and nicotine cessation programs for youth, regarding the risks and dangers of the use of electronic smoking devices. Repeals certain provisions of the Hawaii Revised Statutes relating to electronic smoking devices. Effective 6/18/2050. (SD2)

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

