

JAN 27 2021

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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. Tobacco use is the single most preventable  
2       cause of disease, disability, and death in the United States.  
3       Tobacco use continues to be a problem in Hawaii, causing  
4       approximately one thousand four hundred deaths per year among  
5       adults. An estimated twenty-one thousand children in Hawaii  
6       currently under the age of eighteen will ultimately die  
7       prematurely from smoking. Tobacco use poses a heavy burden on  
8       Hawaii's health care system and economy. Each year, smoking  
9       costs approximately \$526,000,000 in direct health care  
10      expenditures and \$387,300,000 in lost productivity in the State.

11      Furthermore, tobacco products are addictive and inherently  
12      dangerous, causing many different types of cancer, heart  
13      disease, and other serious illnesses. Hawaii has a substantial  
14      interest in reducing the number of individuals of all ages who  
15      use tobacco products, and a particular interest in protecting  
16      adolescents from tobacco dependence and the illnesses and  
17      premature death associated with tobacco use.

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1        Additionally, electronic smoking devices, also known as e-  
2        cigarettes, are battery-operated products designed to deliver  
3        nicotine, flavor, and other chemicals. E-cigarettes have  
4        quickly evolved since entering the U.S. marketplace in 2007.  
5        Initial products were disposable, resembled the size and shape  
6        of conventional cigarettes, and used free-base nicotine.  
7        However, newer products are rechargeable, resemble common  
8        objects (e.g., USB flash drives and highlighters), and typically  
9        deliver nicotine salts, which allow higher levels of nicotine to  
10       be inhaled more easily by the user.

11       The e-cigarette industry, which includes the production of  
12       e-liquid in a variety of forms, has grown rapidly. E-  
13       cigarettes have been the most commonly used tobacco product  
14       among U.S. youths since 2014. The United States Surgeon General  
15       first issued a warning in 2016 about the dangers of these  
16       products, stating use among the nation's youth and young adults  
17       had become a major public health concern. In response to the  
18       continuing rise in use, in 2018 the Surgeon General made the  
19       unprecedented move of classifying the danger of youth usage of  
20       e-cigarettes as an epidemic.

21       The 2019 Youth Risk Behavior Survey reported that the use  
22       of electronic smoking devices among high school seniors

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1 increased nationally from 24.1 per cent in 2015 to 37.7 per cent  
2 in 2019. In Hawaii, 48.3 per cent of public high school students  
3 report having experimented with e-cigarettes and 30.6 per cent  
4 are current users of e-cigarettes.

5 E-cigarette use among youth and young adults is also  
6 strongly associated with the use of other tobacco products,  
7 including combustible tobacco products. Toxicologists have also  
8 warned that e-liquids pose significant risks to public health,  
9 particularly to children. According to the Surgeon General's  
10 report, if the contents of prefilled cartridges or bottles are  
11 consumed, ingestion of e-liquids containing nicotine can cause  
12 acute toxicity and possibly death.

13 In the September 9, 2020 Morbidity and Mortality Report,  
14 the Centers for Disease Control and Prevention stated that from  
15 November of 2016 to August of 2019, total e-cigarette unit sales  
16 in the U.S. increased nearly 300 per cent. Continued monitoring  
17 of e-cigarette sales and use is critical to inform strategies to  
18 minimize risk among our most vulnerable youth users. Further,  
19 e-cigarette use is markedly higher among youths than adults.

20 The Surgeon General's report found that there are numerous  
21 policies and practices that can be implemented at the state and  
22 local levels to address electronic smoking device use among

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1 youth and young adults, including preventing access to  
2 e-cigarettes by youth, significant increases in tax and price of  
3 e-cigarettes, retail licensure, and regulation of e-cigarette  
4 marketing.

5       Additionally, the rapid growth of the electronic smoking  
6 device industry, including retail businesses selling e-  
7 cigarettes or e-liquid, necessitates further regulations to  
8 protect consumers, such as requiring retailers of e-liquid to  
9 obtain a retail tobacco permit.

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

21       Therefore, there needs to be a tax on e-liquids and e-  
22 cigarettes, and taxing these products as other tobacco products

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1 is the most equitable way to do so. Imposing a tax on e-liquids  
2 and electronic smoking devices will also encourage users of e-  
3 liquids to quit, sustain cessation, prevent youth initiation,  
4 and reduce consumption among those who continue to use them.

5 The purposes of this Act are to:

6 (1) Establish the offense of unlawful shipment of tobacco  
7 products;

8 (2) Include e-liquid and electronic smoking devices within  
9 the definition of "tobacco products" as used in the  
10 cigarette tax and tobacco tax law, thereby:

11 (A) Subjecting e-liquid and electronic smoking  
12 devices to the excise tax on tobacco products;

13 (B) Requiring retailers of tobacco products to obtain  
14 a retail tobacco permit to sell, possess, keep,  
15 acquire, distribute, or transport tobacco  
16 products;

17 (C) Prohibiting persons from engaging in the business  
18 of a wholesaler or dealer of tobacco products  
19 without first obtaining a license from the  
20 department of taxation; and

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

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

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

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

SECTION 2. Chapter 245, Hawaii Revised Statutes, is amended by adding a new section 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:**

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

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

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

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

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

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

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

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

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

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1        (g) For the purpose of this section, "value" means the  
2        fair market value at the time of the offense."

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

5        (1) By adding three new definitions to be appropriately  
6        inserted and to read as follows:

7        "E-liquid" means any liquid or like substance, which may  
8        or may not contain nicotine, that is designed or intended to be  
9        used in an electronic smoking device, whether or not packaged in  
10       a cartridge or other container. E-liquid shall not include  
11       prescription drugs; medical cannabis or manufactured cannabis  
12       products pursuant to chapter 329D; or medical devices used to  
13       aerosolize, inhale, or ingest prescription drugs, including  
14       manufactured cannabis products manufactured or distributed in  
15       accordance with section 329D-10(a).

16       "Electronic smoking device" means any electronic product,  
17       or part thereof, that can be used by a person to simulate  
18       smoking in the delivery of nicotine or any other substance,  
19       intended for human consumption, through inhalation of vapor or  
20       aerosol from the product. Electronic smoking device includes  
21       but is not limited to an electronic cigarette, electronic cigar,  
22       electronic cigarillo, electronic pipe, electronic hookah, vape



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1 pen or related product, and any cartridge or other component  
2 part of the device or product.

3 "Smoke" or "smoking" means inhaling, exhaling, burning,  
4 carrying, or possessing any lighted or heated tobacco product,  
5 or similar substance intended for human consumption, including  
6 the use of an electronic smoking device that creates an aerosol  
7 or vapor, in any manner or in any form."

8 (2) By amending the definition of "tobacco products" to  
9 read as follows:

10 ""Tobacco products" means [~~tobacco~~]:

11 (1) Tobacco in any form, other than cigarettes or little  
12 cigars, [~~that is prepared or intended for consumption~~  
13 ~~or for personal use by humans, including large cigars~~  
14 ~~and any substitutes thereof other than cigarettes that~~  
15 ~~bear the semblance thereof, snuff, chewing or~~  
16 ~~smokeless tobacco, and smoking or pipe tobacco.] that  
17 is intended for human consumption, or is likely to be  
18 consumed whether smoked, heated, chewed, absorbed,  
19 dissolved, inhaled, or ingested by other means;~~

20 (2) E-liquid; or

21 (3) Electronic smoking device.

22 Tobacco products includes but is not limited to large cigars and

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1 any substitutes thereof other than cigarettes that bear the  
2 semblance thereof, pipe tobacco, chewing or smokeless tobacco,  
3 snuff, snus, e-liquid, electronic smoking device, any cartridge  
4 or other component part of the device or product, and related  
5 products."

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

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

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

15 "(c) The retail tobacco permit shall be issued by the  
16 department upon application by the retailer in the form and  
17 manner prescribed by the department, and the payment of a fee of  
18 [~~\$20.~~] \$50. Permits shall be valid for one year, from December  
19 1 to November 30, and renewable annually. Whenever a retail  
20 tobacco permit is defaced, destroyed, or lost, or the permittee  
21 relocates the permittee's business, the department may issue a

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1 duplicate retail tobacco permit to the permittee for a fee of \$5  
2 per copy.

3 (d) A separate retail tobacco permit shall be obtained for  
4 each place of business owned, controlled, or operated by a  
5 retailer. In seeking a retail tobacco permit, the applicant  
6 shall specify whether each place of business sells e-liquid or  
7 electronic smoking devices. A retailer that owns or controls  
8 more than one place of business may submit a single application  
9 for more than one retail tobacco permit. Each retail tobacco  
10 permit issued shall clearly describe the place of business where  
11 the operation of the business is conducted[+] and whether the  
12 place of business sells e-liquid or electronic smoking devices."

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

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

20 (1) Section 245-3(a)(5), after September 30, 2006, and  
21 prior to October 1, 2007, 1.0 cent per cigarette shall  
22 be deposited to the credit of the Hawaii cancer

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1 research special fund, established pursuant to section  
2 304A-2168, for research and operating expenses and for  
3 capital expenditures;

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

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

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

14 (C) 0.25 cents per cigarette shall be deposited to  
15 the credit of the emergency medical services  
16 special fund established pursuant to section  
17 321-234;

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

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

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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;

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(B) 0.75 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;

(C) 0.75 cents per cigarette shall be deposited to the credit of the community health centers special fund established pursuant to section 321-1.65; and

(D) 0.5 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;

(5) Section 245-3(a)(11), after June 30, 2013, and prior to July 1, 2015:

(A) 2.0 cents per cigarette shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304A-2168, for research and operating expenses and for capital expenditures;

(B) 1.5 cents per cigarette shall be deposited to the credit of the trauma system special fund established pursuant to section 321-22.5;

(C) 1.25 cents per cigarette shall be deposited to the credit of the community health centers

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1 special fund established pursuant to section

2 321-1.65; and

3 (D) 1.25 cents per cigarette shall be deposited to

4 the credit of the emergency medical services

5 special fund established pursuant to section

6 321-234; ~~and~~

7 (6) Section 245-3(a)(11), after June 30, 2015, and

8 thereafter:

9 (A) 2.0 cents per cigarette shall be deposited to the

10 credit of the Hawaii cancer research special

11 fund, established pursuant to section 304A-2168,

12 for research and operating expenses and for

13 capital expenditures;

14 (B) 1.125 cents per cigarette, but not more than

15 \$7,400,000 in a fiscal year, shall be deposited

16 to the credit of the trauma system special fund

17 established pursuant to section 321-22.5;

18 (C) 1.25 cents per cigarette, but not more than

19 \$8,800,000 in a fiscal year, shall be deposited

20 to the credit of the community health centers

21 special fund established pursuant to section

22 321-1.65; and

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

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

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

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

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

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

~~(1) An independently operated third-party database or aggregate of databases that are regularly used by~~



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~~government and businesses for the purpose of age and  
identity verification and authentication;~~

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

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

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

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

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

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

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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 9. 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.

21       SECTION 10. If any provision of this Act, or the  
22       application thereof to any person or circumstance, is held

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1 invalid, the invalidity does not affect other provisions or  
2 applications of the Act that can be given effect without the  
3 invalid provision or application, and to this end the provisions  
4 of this Act are severable.

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

7

8 SECTION 12. This Act, upon its approval, shall take effect  
9 on January 1, 2022.

10

11

INTRODUCED BY:



12

BY REQUEST

# S.B. NO. 1147

**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 January 1, 2022.

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

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO TOBACCO PRODUCTS.

PURPOSE: Establishes unlawful shipment of tobacco products; adds definition and taxation of e-liquid and electronic smoking devices (ESDs); and establishes requirement for license fee and retail permit fee.

MEANS: Add a new section to chapter 245, Hawaii Revised Statutes (HRS), amend sections 245-1, 245-2(b), 245-2.5(c) and (d), 245-15, and repeal Chapter 28, part XII, HRS, and section 245-17, HRS.

JUSTIFICATION: This measure responds to the increasing trend of youth vaping, and creates tax parity between electronic smoking devices (ESDs) and related products and cigarettes through banning online shipment to individuals, and establishing additional tax for ESDs that currently do not exist. The measure aligns ESD with traditional tobacco retailers and distributors by requiring licensing and permitting. This measure increases licensure and permitting fees which have remained unchanged since 1995, despite high tobacco taxes and ever-increasing tobacco industry expenditures in marketing and advertising.

- Of 40 states with licensing fees, 26 states charge  $\geq \$100/\text{year}$ , 14 charge  $\geq \$200/\text{year}$ . Nine states charge  $\$500/\text{year}$  to  $\$1,500/\text{year}$ .
- Of 30 states with retailer fees, 15 states charge  $\geq \$20/\text{year}$  but less than  $\$100/\text{year}$ , with 8 of 15 charging  $\geq \$50/\text{year}$ .

Repeal of chapter 28, part XII, HRS, is necessary to avoid conflict with this measure's goal of subjecting ESDs and e-liquids to taxation and regulation under chapter 245, HRS.

Impact on the public: This measure will protect youth through prohibiting the online sales or shipment of ESDs. Tobacco licensing/permitting ensures that wholesalers and retailers comply with responsible sales practices. Increasing the price of tobacco products is a proven strategy because youth are price sensitive and will bring down the rates of vaping experimentation which is currently estimated at 42 percent high school and 27 percent middle school students.

Impact on the department and other agencies: This proposal will make enforcement simpler because of the additional specificity; and create parity with existing cigarette policies.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: HTH-590.

OTHER AFFECTED  
AGENCIES: Department of the Attorney General; County law enforcement agencies; Department of Taxation.

EFFECTIVE DATE: January 1, 2022.