

JAN 21 2022

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, stroke, and other serious illnesses.
15 Hawaii has a substantial interest in reducing the number of
16 individuals of all ages who use tobacco products, and a
17 particular interest in protecting adolescents from tobacco



1 dependence and the illnesses and premature death associated with
2 tobacco use.

3 Additionally, the legislature 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. E-cigarettes do not produce tobacco smoke, but an
7 aerosol that consists of fine particles. Many of these
8 particles have varying amounts of toxic chemicals, which have
9 been linked to heart disease, respiratory diseases, and cancer.

10 The e-cigarette industry has grown rapidly since entering
11 the national marketplace in 2007. E-cigarettes have been the
12 most commonly used tobacco product among youths in the United
13 States since 2014. The United States Surgeon General first
14 issued a warning in 2016 about the dangers of these products,
15 stating that use among the nation's youth and young adults had
16 become a major public health concern. In response to the
17 continuing rise in use, in 2018 the Surgeon General made the
18 unprecedented move of classifying the danger of youth usage of
19 e-cigarettes as an epidemic. The Youth Risk Behavior Survey
20 reported that the use of electronic smoking devices among high
21 school students increased nationally from 13.2 per cent in 2017



1 to 32.7 per cent in 2019. In Hawaii, 48.3 per cent of public
2 high school students report having experimented with e-
3 cigarettes and 30.6 per cent are current users of e-cigarettes.
4 E-cigarette use among youth and young adults is also strongly
5 associated with the use of other tobacco products, including
6 combustible tobacco products.

7 The 2018 Surgeon General's Advisory on E-Cigarette Use
8 Among Youth found that there are numerous policies and practices
9 that can be implemented at the state and local levels to address
10 electronic smoking device use among youth and young adults,
11 including preventing access to e-cigarettes by youth in retail
12 settings, increasing the price of e-cigarettes through taxation,
13 implementing retail licensure requirements, and developing
14 educational initiatives for youth. The federal Food and Drug
15 Administration has expanded its regulatory authority to all
16 tobacco products, including e-cigarettes, cigars, and hookah and
17 pipe tobacco. However, there is currently no state tobacco tax
18 attached to electronic smoking devices, even though the devices
19 are now regulated by the federal government as tobacco products.
20 Research has shown that increasing cigarette prices, such as
21 through cigarette taxes, can reduce the rate of smoking by adult



1 and youth smokers. Imposing a tax on electronic smoking devices
2 will encourage users to quit, sustain cessation, prevent youth
3 initiation, and reduce consumption among those who continue to
4 use them.

5 The legislature further finds that, in December 2020,
6 Congress passed the Preventing Online Sales of E-Cigarettes to
7 Children Act, which prohibits the shipment of e-cigarettes
8 directly to consumers. However, this Act exempts intrastate
9 shipments in Alaska and Hawaii, creating a loophole that could
10 allow children to purchase e-cigarettes online. Hawaii can
11 prevent underage access to tobacco products online by
12 prohibiting the shipment of tobacco products directly to
13 consumers.

14 Therefore, the purpose of this Act is to:

15 (1) Establish the offense of unlawful shipment of tobacco
16 products;

17 (2) Include "electronic smoking devices" within the
18 definition of "tobacco products" as used in the
19 cigarette tax and tobacco tax law, thereby:

20 (A) Subjecting electronic smoking devices to the
21 excise tax on tobacco products;



1 (B) Requiring retailers of tobacco products to obtain
2 a retail tobacco permit to sell, possess, keep,
3 acquire, distribute, or transport tobacco
4 products;

5 (C) Prohibiting persons from engaging in the business
6 of a wholesaler or dealer of tobacco products
7 without first obtaining a license from the
8 department of taxation; and

9 (D) Extending other requirements of chapter 245,
10 Hawaii Revised Statutes;

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

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

17 (5) Amend the disposition of cigarette tax and tobacco tax
18 revenues; and

19 (6) Repeal certain statutory provisions relating to
20 electronic smoking devices.



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

4 "§245- Unlawful shipment of tobacco products,
5 cigarettes, or little cigars; penalty; reports; liability for
6 unpaid taxes. (a) A person or entity commits the offense of
7 unlawful shipment of tobacco products, cigarettes, or little
8 cigars if the person or entity:

9 (1) Is engaged in the business of selling tobacco
10 products, cigarettes, or little cigars; and

11 (2) Ships or causes to be shipped any tobacco products,
12 cigarettes, or little cigars to a person or entity in
13 this State that is not a licensee under this chapter.

14 (b) This section shall not apply to the shipment of
15 tobacco products, cigarettes, or little cigars if any of the
16 following conditions is met:

17 (1) The tobacco products, cigarettes, or little cigars are
18 exempt from taxes as provided by section 245-3(b); or

19 (2) All applicable Hawaii taxes on the tobacco products,
20 cigarettes, or little cigars are paid in accordance
21 with the requirements of this chapter and the



1 recipient of shipment holds a tobacco wholesale or
2 retail license or permit.

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

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

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

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



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 a new definition to be appropriately inserted
6 to read:

7 "Electronic smoking device" means any electronic product,
8 or part thereof, whether for one-time use or reusable that can
9 be used to deliver nicotine or another substance to a person
10 inhaling from the device, including but not limited to
11 electronic cigarettes, electronic cigars, electronic cigarillos,
12 electronic pipes, vaping pens, hookah pens, and other similar
13 devices that rely on vaporization or aerosolization, and any
14 cartridge or component part of the device or product, but does
15 not include cigarettes. "Electronic smoking device" shall also
16 include any liquid or gel capable of use in such electronic
17 device that can be used by a person in the delivery of nicotine
18 or any other substance, intended for human consumption, through
19 inhalation of vapor or aerosol from the product. "Electronic
20 smoking device" does not include: drugs, devices, or combination
21 products approved for cessation by the United States Food and



1 Drug Administration, as those terms are defined in the Federal
2 Food, Drug, and Cosmetic Act; or cannabis for medical use or
3 manufactured cannabis products under chapter 329D, including
4 devices used to aerosolize, inhale, or ingest manufactured
5 cannabis products manufactured or distributed in accordance with
6 section 329D-10(a)."

7 2. By amending the definition of "tobacco products" to
8 read:

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

10 (1) Any product containing, made of, or derived from
11 tobacco or nicotine in any form, other than cigarettes
12 or little cigars, that is prepared or intended for
13 consumption or for personal use by humans, [~~including~~
14 ~~large cigars and any substitutes thereof other than~~
15 ~~cigarettes that bear the semblance thereof, snuff,~~
16 ~~chewing or smokeless tobacco, and smoking or pipe~~
17 ~~tobacco.~~] or is likely to be consumed whether smoked,
18 heated, chewed, absorbed, dissolved, inhaled, or
19 ingested by other means, including but not limited to
20 large cigars and any substitutes thereof other than



1 cigarettes that bear the semblance thereof, pipe
2 tobacco, chewing or smokeless tobacco, snuff, or snus;
3 (2) Electronic smoking device; or
4 (3) Any component, part, or accessory of any product,
5 electronic smoking device, or substance that is listed
6 paragraph (1) or (2), whether or not any of these
7 contain tobacco or nicotine, including filters,
8 rolling papers, blunt or hemp wraps and pipes.

9 "Tobacco products" does not include: drugs, devices, or
10 combination products approved for cessation by the United States
11 Food and Drug Administration, as those terms are defined in the
12 Federal Food, Drug, and Cosmetic Act; or cannabis for medical
13 use or manufactured cannabis products under chapter 329D,
14 including devices used to aerosolize, inhale, or ingest
15 manufactured cannabis products manufactured or distributed in
16 accordance with section 329D-10(a)."

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

19 "(b) The license shall be issued by the department upon
20 application therefor, in such form and manner as shall be
21 required by rule of the department, and the payment of a fee of



1 [~~\$250,~~] \$250, and shall be renewable annually on July 1 for the
2 twelve months ending the succeeding June 30."

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

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

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



1 of the business is conducted[-] and whether the place of
2 business sells electronic smoking devices."

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

5 "§245-15 Disposition of revenues. All moneys collected
6 pursuant to this chapter shall be paid into the state treasury
7 as state realizations to be kept and accounted for as provided
8 by law; provided that, of the moneys collected under the tax
9 imposed pursuant to:

10 (1) Section 245-3(a)(5), after September 30, 2006, and
11 prior to October 1, 2007, 1.0 cent per cigarette shall
12 be deposited to the credit of the Hawaii cancer
13 research special fund, established pursuant to section
14 304A-2168, for research and operating expenses and for
15 capital expenditures;

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

18 (A) 1.5 cents per cigarette shall be deposited to the
19 credit of the Hawaii cancer research special
20 fund, established pursuant to section 304A-2168,



1 for research and operating expenses and for
2 capital expenditures;

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

6 (C) 0.25 cents per cigarette shall be deposited to
7 the credit of the emergency medical services
8 special fund established pursuant to section
9 321-234;

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

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

17 (B) 0.5 cents per cigarette shall be deposited to the
18 credit of the trauma system special fund
19 established pursuant to section 321-22.5;

20 (C) 0.25 cents per cigarette shall be deposited to
21 the credit of the community health centers



special fund established pursuant to section
321-1.65; and

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

(4) Section 245-3(a)(8), after June 30, 2009, and prior to
July 1, 2013:

(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) 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 special fund established pursuant to section 321-1.65; and

(D) 1.25 cents per cigarette shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234; [and]



1 (6) Section 245-3(a)(11), after June 30, 2015, and
2 thereafter:

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

8 (B) 1.125 cents per cigarette, but not more than
9 \$7,400,000 in a fiscal year, shall be deposited
10 to the credit of the trauma system special fund
11 established pursuant to section 321-22.5;

12 (C) 1.25 cents per cigarette, but not more than
13 \$8,800,000 in a fiscal year, shall be deposited
14 to the credit of the community health centers
15 special fund established pursuant to section
16 321-1.65; and

17 (D) 1.25 cents per cigarette, but not more than
18 \$8,800,000 in a fiscal year, shall be deposited
19 to the credit of the emergency medical services
20 special fund established pursuant to section
21 321-234 [-] ; and



1 (7) Section 245-3(a)(12), on July 1, 2023, and every
2 July 1 thereafter, \$750,000 shall be deposited to the
3 credit of the Hawaii tobacco prevention and control
4 trust fund established pursuant to section 328L-5.

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

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

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

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

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

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



~~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:~~

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

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

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

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

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

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



S.B. NO. 2278

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

9 SECTION 12. This Act shall take effect on July 1, 2023.

10
INTRODUCED BY: Rosely H Baker



S.B. NO. 2270

Report Title:

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

Description:

Establishes the offense of unlawful shipment of tobacco products. Includes 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. Provides for the disposition of fines paid for the unlawful shipment of tobacco products into the Hawaii Tobacco Prevention and Control Trust Fund. Effective July 1, 2023.

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

