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# A BILL FOR AN ACT

RELATING TO HEALTH.

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

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

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

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

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

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

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



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

4       (c) Unlawful shipment of tobacco products shall be:

5       (1) A misdemeanor if the person or entity knowingly ships  
6       or causes to be shipped tobacco products having a  
7       value of less than \$10,000, in violation of subsection  
8       (a); and

9       (2) A class C felony if the person or entity knowingly  
10       ships or causes to be shipped tobacco products having  
11       a value of \$10,000 or more, in violation of subsection  
12       (a).

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

19       (e) For purposes of this section:



1        (1) A person or entity is a licensee if the person's or  
2                    entity's name appears on a list of authorized  
3                    licensees published by the department; and

4        (2) "Value" means the retail fair market value at the time  
5                    of the offense."

6            SECTION 2. Section 245-1, Hawaii Revised Statutes, is  
7 amended as follows:

8            1. By adding two new definitions to be appropriately  
9 inserted and to read:

10            "E-liquid" means any liquid or like substance, which may  
11 or may not contain nicotine, that is designed or intended to be  
12 used in an electronic smoking device, whether or not packaged in  
13 a cartridge or other container.

14            "E-liquid" does not include:

15            (1) Prescription drugs;

16            (2) Cannabis for medical use pursuant to chapter 329 or  
17 manufactured cannabis products pursuant to chapter  
18 329D; or

19            (3) Medical devices used to aerosolize, inhale, or ingest  
20 prescription drugs, including manufactured cannabis  
21 products described in section 329D-10.



1       "Electronic smoking device" means any device that may be  
2 used to deliver any aerosolized or vaporized substance to a  
3 person inhaling from the device, including but not limited to an  
4 electronic cigarette, electronic cigar, electronic pipe, vape  
5 pen, or electronic hookah. "Electronic smoking device" includes  
6 any component, part, or accessory of the device, and also  
7 includes any substance that may be aerosolized or vaporized by  
8 the device, regardless of whether the substance contains  
9 nicotine. "Electronic smoking device" does not include drugs,  
10 devices, or combination products authorized for sale by the  
11 United States Food and Drug Administration, and subject to the  
12 Federal Food, Drug, and Cosmetic Act (title 21 United States  
13 Code chapter 9)."

14       2. By amending the definition of "tobacco products" to  
15 read:

16       "Tobacco products" means [~~tobacco~~]:  
17       (1) Tobacco in any form, other than cigarettes or little  
18       cigars, that is prepared or intended for consumption  
19       or for personal use by humans, including large cigars  
20       and any substitutes thereof other than cigarettes that



1           bear the semblance thereof, snuff, chewing or  
 2           smokeless tobacco, and smoking or pipe tobacco~~[+]~~; or  
 3           (2) Electronic smoking devices; or  
 4           (3) E-liquid."

5           SECTION 3. Section 245-2, Hawaii Revised Statutes, is  
 6 amended by amending subsection (b) to read as follows:

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

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

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



1 issue a duplicate retail tobacco permit to the permittee for a  
2 fee of \$5 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 electronic  
7 smoking devices, e-liquid, or both. A retailer that owns or  
8 controls more than one place of business may submit a single  
9 application for more than one retail tobacco permit. Each  
10 retail tobacco permit issued shall clearly describe the place of  
11 business where the operation of the business is conducted[+] and  
12 whether the place of business sells electronic smoking devices,  
13 e-liquid, or both."

14 SECTION 5. Section 245-3, Hawaii Revised Statutes, is  
15 amended by amending subsection (a) to read as follows:

16 "(a) Every wholesaler or dealer, in addition to any other  
17 taxes provided by law, shall pay, for the privilege of  
18 conducting business and other activities in the State[+], an  
19 excise tax equal to:

20 (1) [~~An excise tax equal to~~] 5.00 cents for each cigarette  
21 sold, used, or possessed by a wholesaler or dealer



- 1 after June 30, 1998, whether or not sold at wholesale,  
2 or if not sold, then at the same rate upon the use by  
3 the wholesaler or dealer;
- 4 (2) [~~An excise tax equal to~~] 6.00 cents for each cigarette  
5 sold, used, or possessed by a wholesaler or dealer  
6 after September 30, 2002, whether or not sold at  
7 wholesale, or if not sold, then at the same rate upon  
8 the use by the wholesaler or dealer;
- 9 (3) [~~An excise tax equal to~~] 6.50 cents for each cigarette  
10 sold, used, or possessed by a wholesaler or dealer  
11 after June 30, 2003, whether or not sold at wholesale,  
12 or if not sold, then at the same rate upon the use by  
13 the wholesaler or dealer;
- 14 (4) [~~An excise tax equal to~~] 7.00 cents for each cigarette  
15 sold, used, or possessed by a wholesaler or dealer  
16 after June 30, 2004, whether or not sold at wholesale,  
17 or if not sold, then at the same rate upon the use by  
18 the wholesaler or dealer;
- 19 (5) [~~An excise tax equal to~~] 8.00 cents for each cigarette  
20 sold, used, or possessed by a wholesaler or dealer on  
21 and after September 30, 2006, whether or not sold at



1           wholesale, or if not sold, then at the same rate upon  
2           the use by the wholesaler or dealer;

3           (6) ~~[An excise tax equal to]~~ 9.00 cents for each cigarette  
4           sold, used, or possessed by a wholesaler or dealer on  
5           and after September 30, 2007, whether or not sold at  
6           wholesale, or if not sold, then at the same rate upon  
7           the use by the wholesaler or dealer;

8           (7) ~~[An excise tax equal to]~~ 10.00 cents for each  
9           cigarette sold, used, or possessed by a wholesaler or  
10          dealer on and after September 30, 2008, whether or not  
11          sold at wholesale, or if not sold, then at the same  
12          rate upon the use by the wholesaler or dealer;

13          (8) ~~[An excise tax equal to]~~ 13.00 cents for each  
14          cigarette sold, used, or possessed by a wholesaler or  
15          dealer on and after July 1, 2009, whether or not sold  
16          at wholesale, or if not sold, then at the same rate  
17          upon the use by the wholesaler or dealer;

18          (9) ~~[An excise tax equal to]~~ 11.00 cents for each little  
19          cigar sold, used, or possessed by a wholesaler or  
20          dealer on and after October 1, 2009, whether or not





- 1 sold at wholesale, or if not sold, then at the same  
2 rate upon the use by the wholesaler or dealer;
- 3 (10) [~~An excise tax equal to~~] 15.00 cents for each  
4 cigarette or little cigar sold, used, or possessed by  
5 a wholesaler or dealer on and after July 1, 2010,  
6 whether or not sold at wholesale, or if not sold, then  
7 at the same rate upon the use by the wholesaler or  
8 dealer;
- 9 (11) [~~An excise tax equal to~~] 16.00 cents for each  
10 cigarette or little cigar sold, used, or possessed by  
11 a wholesaler or dealer on and after July 1, 2011,  
12 whether or not sold at wholesale, or if not sold, then  
13 at the same rate upon the use by the wholesaler or  
14 dealer;
- 15 (12) [~~An excise tax equal to seventy~~] Seventy per cent of  
16 the wholesale price of each article or item of tobacco  
17 products, other than large cigars, sold by the  
18 wholesaler or dealer on and after September 30, 2009,  
19 whether or not sold at wholesale, or if not sold, then  
20 at the same rate upon the use by the wholesaler or  
21 dealer; [~~and~~]



1           (13) ~~[An excise tax equal to fifty]~~ Fifty per cent of the  
2           wholesale price of each large cigar of any length~~[7]~~  
3           sold, used, or possessed by a wholesaler or dealer on  
4           and after September 30, 2009, whether or not sold at  
5           wholesale, or if not sold, then at the same rate upon  
6           the use by the wholesaler or dealer~~[7]~~; and

7           (14)           per cent of the wholesale price of each  
8           electronic smoking device or e-liquid sold, used, or  
9           possessed by a wholesaler or dealer on and after  
10          January 1, 2024, whether or not sold at wholesale, or  
11          if not sold, then at the same rate upon the use by the  
12          wholesaler or dealer.

13       Where the tax imposed has been paid on cigarettes, little  
14       cigars, or tobacco products that thereafter become the subject  
15       of a casualty loss deduction allowable under chapter 235, the  
16       tax paid shall be refunded or credited to the account of the  
17       wholesaler or dealer. The tax shall be applied to cigarettes  
18       through the use of stamps."

19           SECTION 6. Chapter 28, part XII, Hawaii Revised Statutes,  
20       is repealed.



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

14       SECTION 9. This Act shall take effect on June 30, 3000.



**Report Title:**

Electronic Smoking Devices; E-Liquids; Tobacco Products; Tax

**Description:**

Establishes the offense of unlawful shipment of tobacco products. Includes electronic smoking devices and e-liquids under the definition of "tobacco products" for purposes of the cigarette tax and tobacco tax law. Amends the license and permit fees for wholesalers, dealers, and retailers. Beginning 1/1/2024, imposes an excise tax on each electronic smoking device or e-liquid sold, used, or possessed by a wholesaler or dealer. Repeals the electronic smoking device retailer registration unit under the department of the attorney general. Repeals provisions governing delivery sales. Effective 6/30/3000. (HD3)

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