

ACT 62

S.B. NO. 975

A Bill for an Act Relating to Health.

Be It Enacted by the Legislature of the State of Hawaii:

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

“§245- Unlawful shipment of tobacco products; penalty; 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) Knowingly 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 are met:
- (1) The tobacco products are exempt from taxes as provided by section 245-3(b); or
 - (2) All applicable state taxes on the tobacco products are paid in accordance with the requirements of this chapter.
 - (c) Unlawful shipment of tobacco products shall be:

- (1) A misdemeanor if the person or entity knowingly ships or causes to be shipped tobacco products having a value of less than \$10,000, in violation of subsection (a); and
- (2) A class C felony if the person or entity knowingly ships or causes to be shipped tobacco products having a value of \$10,000 or more, in violation of subsection (a).
- (d) 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.
- (e) For purposes of this section:
 - (1) A person or entity is a licensee if the person’s or entity’s name appears on a list of authorized licensees published by the department; and
 - (2) “Value” means the retail fair market value at the time of the offense.”

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

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

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

“E-liquid” does not include:

- (1) Prescription drugs;
- (2) Cannabis for medical use pursuant to chapter 329 or manufactured cannabis products pursuant to chapter 329D; or
- (3) Medical devices used to aerosolize, inhale, or ingest prescription drugs, including manufactured cannabis products described in section 329D-10.

“Electronic smoking device” means any device that may be used to deliver any aerosolized or vaporized substance to a person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic pipe, vape pen, or electronic hookah. “Electronic smoking device” does not include drugs, devices, or combination products authorized for sale by the United States Food and Drug Administration, and subject to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).”

2. By amending the definition of “tobacco products” to read:

“Tobacco products” means [tɒbæçoo]:

- (1) Tobacco in any form, other than cigarettes or little cigars, that is prepared or intended for consumption or for personal use by humans, including large cigars and any substitutes thereof other than cigarettes that bear the semblance thereof, snuff, chewing or smokeless tobacco, and smoking or pipe tobacco[-]; or
- (2) Electronic smoking devices; or
- (3) E-liquid.”

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

“(b) The license shall be issued by the department upon application therefor, in [sʌɪh] the form and manner [as shall be] required by rule of the

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

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

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

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

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

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

- (1) [~~An excise tax equal to~~] 5.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 1998, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer;
- (2) [~~An excise tax equal to~~] 6.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after September 30, 2002, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer;
- (3) [~~An excise tax equal to~~] 6.50 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2003, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer;
- (4) [~~An excise tax equal to~~] 7.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2004, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer;
- (5) [~~An excise tax equal to~~] 8.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2006, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer;
- (6) [~~An excise tax equal to~~] 9.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2007, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer;
- (7) [~~An excise tax equal to~~] 10.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30,

- 2008, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer;
- (8) ~~[An excise tax equal to]~~ 13.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after July 1, 2009, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer;
 - (9) ~~[An excise tax equal to]~~ 11.00 cents for each little cigar sold, used, or possessed by a wholesaler or dealer on and after October 1, 2009, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer;
 - (10) ~~[An excise tax equal to]~~ 15.00 cents for each cigarette or little cigar sold, used, or possessed by a wholesaler or dealer on and after July 1, 2010, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer;
 - (11) ~~[An excise tax equal to]~~ 16.00 cents for each cigarette or little cigar sold, used, or possessed by a wholesaler or dealer on and after July 1, 2011, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer;
 - (12) ~~[An excise tax equal to seventy]~~ Seventy per cent of the wholesale price of each article or item of tobacco products, other than large cigars, electronic smoking devices, and e-liquids, sold by the wholesaler or dealer on and after September 30, 2009, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer; ~~[and]~~
 - (13) ~~[An excise tax equal to fifty]~~ Fifty per cent of the wholesale price of each large cigar of any length~~[-]~~ sold, used, or possessed by a wholesaler or dealer on and after September 30, 2009, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer~~[-]; and~~
 - (14) Seventy per cent of the wholesale price of each electronic smoking device or e-liquid sold, used, or possessed by a wholesaler or dealer on and after January 1, 2024, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer.

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

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

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

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

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

ACT 62

SECTION 10. This Act shall take effect on July 1, 2023.
(Approved June 6, 2023.)

Note

1. Edited pursuant to HRS §23G-16.5.