

JAN 18 2013

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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. The legislature finds that the tobacco industry  
2 spends more than \$12,000,000,000 annually on advertising and  
3 marketing its products in the United States. Each year, tobacco  
4 companies spend over \$42,000,000 promoting their brands in  
5 stores throughout Hawaii. The National Cancer Institute has  
6 reported that the total weight of evidence from multiple studies  
7 demonstrates a causal relationship between tobacco advertising  
8 and promotion and increased tobacco use.

9           The legislature also finds that restrictions on mass media  
10 advertising of tobacco have forced tobacco companies to use  
11 retail venues as the primary medium for marketing. Storefronts  
12 in Hawaii can act as billboards for tobacco companies,  
13 effectively capturing the attention of the State's youth.  
14 According to the 2007 Hawaii Youth Tobacco Survey, over seventy-  
15 six per cent of high school students and over seventy-one per  
16 cent of middle school students reported seeing tobacco product  
17 advertisements at local stores and gas stations.



1           The legislature further finds that the 2008 Tobacco and  
2 Alcohol Advertising Survey indicated that on average, a store  
3 displayed at least two outdoor advertisements and seventeen  
4 indoor advertisements for tobacco. Small stores with only one  
5 cash register had an average of twenty-four advertisements for  
6 tobacco and were more likely to have tobacco advertisements and  
7 products at the eye level of children, or near youth-friendly  
8 products, such as toys, ice cream, and chips.

9           The legislature additionally finds that retail stores are  
10 given incentives to place tobacco advertisements and products in  
11 strategic locations near the cash register, known as a point-of-  
12 sale, or in self-service displays. Research indicates the  
13 presence of these products and advertisements may stimulate  
14 impulse purchases. Furthermore, a 2009 study found that  
15 frequent visits to stores selling tobacco and a greater  
16 awareness of cigarettes sold in stores increased the likelihood  
17 of teenagers being susceptible to initiating smoking,  
18 experimenting with smoking, or becoming smokers.

19           The legislature has a compelling interest in reducing the  
20 number of children and teens in Hawaii who smoke. The  
21 legislature finds that because of the documented connection  
22 between children and youth exposure to tobacco advertisements



1 and youth tobacco initiation, regulations on the place and  
2 manner of cigarette and tobacco products and advertisements are  
3 needed.

4 The purpose of this Act is to reduce the number of minors  
5 and youth who smoke through the restriction of placement of  
6 tobacco sales and advertising.

7 SECTION 2. Chapter 328J, Hawaii Revised Statutes, is  
8 amended by adding two new sections to be appropriately  
9 designated and to read as follows:

10 "§328J- Placement of cigarettes and tobacco products.

11 (a) A person who owns, manages, operates, or otherwise controls  
12 any place of employment where cigarettes or tobacco products are  
13 sold or offered for sale shall not sell, permit to be sold,  
14 offer for sale, or display for sale any cigarettes or tobacco  
15 products, unless the cigarettes or tobacco products are stored  
16 for sale behind a counter in an area accessible only to the  
17 personnel of the business.

18 (b) This section shall not apply to retail tobacco stores,  
19 bars, or any establishment for which the minimum age for  
20 admission is eighteen.

21 (c) For the purposes of this section:



1       "Electronic cigarette" or "e-cigarette" means any  
2 mechanical heating element, battery, or electronic circuit that  
3 can be used to deliver a vapor of nicotine or any other  
4 substances, the use or inhalation of which simulates smoking.  
5 The term shall include any such device, whether manufactured,  
6 distributed, marketed, or sold as an e-cigarette; e-cigar;  
7 e-pipe; any cartridge or component of the device or related  
8 product; or any other related product name or descriptor.

9       "Tobacco" and "tobacco products" include electronic  
10 cigarettes.

11       §328J-     Display of advertisements for cigarettes and  
12 tobacco products. (a) A person who owns, manages, operates, or  
13 otherwise controls any place of employment where cigarettes or  
14 tobacco products are sold or offered for sale shall not display  
15 any advertising that promotes or encourages the purchase or use  
16 of cigarettes or tobacco products within twenty-five feet of  
17 children's products or toys or within twenty-five feet of where  
18 cookies, candy, ice cream, gum, or snacks are sold.

19       (b) Advertisements that promote or encourage the purchase  
20 or use of cigarettes or tobacco products shall be displayed a  
21 minimum of four feet above the floor of any place of employment



1 where cigarettes or tobacco products are sold or offered for  
2 sale.

3 (c) This section shall not apply to retail tobacco stores,  
4 bars, or any establishment for which the minimum age for  
5 admission is eighteen.

6 (d) For the purposes of this section:

7 "Electronic cigarette" or "e-cigarette" means any  
8 mechanical heating element, battery, or electronic circuit that  
9 can be used to deliver a vapor of nicotine or any other  
10 substances, the use or inhalation of which simulates smoking.  
11 The term shall include any such device, whether manufactured,  
12 distributed, marketed, or sold as an e-cigarette; e-cigar;  
13 e-pipe; any cartridge or component of the device or related  
14 product; or any other related product name or descriptor.

15 "Tobacco" and "tobacco products" include electronic  
16 cigarettes."

17 SECTION 3. Section 709-908, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 **"§709-908 Tobacco; minors.** (1) It shall be unlawful to  
20 sell or furnish tobacco in any shape or form, including chewing  
21 tobacco and snuff, to a minor under eighteen years of age.



1           (2) Signs using the statement, "The sale of tobacco  
2 products to persons under eighteen is prohibited", shall be  
3 posted on or near any vending machine in letters at least one-  
4 half inch high and at or near the point of sale of any other  
5 location where tobacco products are sold in letters at least  
6 one-half inch high.

7           (3) It shall be unlawful for a minor under eighteen years  
8 of age to purchase any tobacco product, as described under  
9 subsection (1). This provision does not apply if a person under  
10 the age of eighteen, with parental authorization, is  
11 participating in a controlled purchase as part of a law  
12 enforcement activity or a study authorized by the department of  
13 health under the supervision of law enforcement to determine the  
14 level of incidence of tobacco sales to minors.

15           (4) Any person who violates subsection (1) or (2), or  
16 both, shall be fined \$500 for the first offense. Any subsequent  
17 offenses shall subject the person to a fine not less than \$500  
18 nor more than \$2,000. Any minor under eighteen years of age who  
19 violates subsection (3) shall be fined \$10 for the first  
20 offense. Any subsequent offense shall subject the violator to a  
21 fine of \$50, no part of which shall be suspended, or the person  
22 shall be required to perform not less than forty-eight hours nor



1 more than seventy-two hours of community service during hours  
2 when the person is not employed and is not attending school.

3 (5) For the purposes of this section:

4 "Electronic cigarette" or "e-cigarette" means any  
5 mechanical heating element, battery, or electronic circuit that  
6 can be used to deliver a vapor of nicotine or any other  
7 substances, the use or inhalation of which simulates smoking.

8 The term shall include any such device, whether manufactured,  
9 distributed, marketed, or sold as an e-cigarette; e-cigar;  
10 e-pipe; any cartridge or component of the device or related  
11 product; or any other related product name or descriptor.

12 "Tobacco" and "tobacco products" include electronic  
13 cigarettes."

14 SECTION 4. This Act does not affect rights and duties that  
15 matured, penalties that were incurred, and proceedings that were  
16 begun before its effective date.

17 SECTION 5. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

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# S.B. NO. 652

**Report Title:**

Tobacco Displays and Sales; Advertising; Minors; Electronic Cigarettes

**Description:**

Requires cigarettes and tobacco products to be stored for sale behind a counter. Requires advertisements that promote or encourage the purchase or use of cigarettes or tobacco products to be placed twenty-five feet away from children's products, toys, cookies, candy, ice cream, gum, or snacks. Requires advertisements that promote or encourage the purchase or use of cigarettes or tobacco products to be placed four feet off the floor. Permits exceptions for retail tobacco stores, bars, or establishments where the minimum age for admission is eighteen. Includes electronic cigarettes under the definition of tobacco products.

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