

JAN 17 2014

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# A BILL FOR AN ACT

RELATING TO ELECTRONIC SMOKING DEVICES.

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

1           SECTION 1. The legislature finds that electronic smoking  
2 devices, also known as electronic cigarettes or e-cigarettes,  
3 are battery-powered devices, often resembling cigarettes,  
4 cigars, or pipes, designed to deliver nicotine or other  
5 substances to users in the form of a vapor smoke that is  
6 breathed in then exhaled. Sales of electronic smoking devices  
7 in the United States have doubled each year since 2008, with  
8 sales in 2013 projected to reach \$1,700,000,000. Findings from  
9 the National Youth Tobacco Survey also indicate the growing  
10 popularity of electronic smoking devices among youth, with  
11 1,800,000 middle and high school students stating they had tried  
12 these products in 2012.

13           The legislature further finds that, due to the relative  
14 lack of research data on electronic smoking devices, many public  
15 health organizations and policymakers are concerned about the  
16 safety and impact of these products on public health.

17 Furthermore, because the federal government has not yet  
18 exercised its regulatory authority over electronic smoking



1 devices, the products are manufactured without regulatory  
2 oversight or quality control, and promoted, advertised, and sold  
3 without appropriate health warnings or legal age restrictions.

4 In response, a growing number of state and local  
5 governments have taken steps to regulate the sale, marketing,  
6 and use of electronic smoking devices. The legislature  
7 concludes that Hawaii should also take additional steps to  
8 regulate these products.

9 Accordingly, the purpose of this Act is to:

- 10 (1) Require persons engaged as wholesalers and dealers of  
11 electronic smoking devices to obtain a license from  
12 the department of health;
- 13 (2) Require retailers of electronic smoking devices to  
14 obtain a license from the department of health;
- 15 (3) Specify that electronic smoking devices may only be  
16 sold where cigarettes and other tobacco products are  
17 sold by limiting the retail sale of electronic smoking  
18 devices to those retailers who also hold a retail  
19 tobacco permit;
- 20 (4) Specify that the revenue from the electronic smoking  
21 device license fees shall be used to support smoking  
22 cessation programs in the State;



1 (5) Amend Hawaii's anti-smoking statute to prohibit the  
2 use of electronic smoking devices in places open to  
3 the public and places of employment; and

4 (6) Further clarify that the sale, distribution, or  
5 display of electronic smoking devices is restricted in  
6 the same manner as cigarettes and other tobacco  
7 products.

8 SECTION 2. The Hawaii Revised Statutes is amended by  
9 adding a new chapter to be appropriately designated and to read  
10 as follows:

11 **"CHAPTER**

12 **ELECTRONIC SMOKING DEVICES**

13 **§ -1 Definitions.** As used in this chapter:

14 "Consumer" means a person who acquires or possesses an  
15 electronic smoking device for personal consumption and not for  
16 resale or distribution.

17 "Dealer" means any person coming into the possession of  
18 electronic smoking devices that have not been acquired from a  
19 licensee under this chapter, or any person rendering a  
20 distribution service who buys and maintains, at the person's  
21 place of business, a stock of electronic smoking devices that



1 have not been acquired from a licensee and who distributes or  
2 uses such electronic smoking devices.

3 "Department" means the department of health.

4 "Electronic smoking device" means any electronic product  
5 that can be used to simulate smoking in the delivery of nicotine  
6 or other substances to the person inhaling from the device,  
7 including but not limited to an electronic cigarette, electronic  
8 cigar, electronic cigarillo, or electronic pipe, and any  
9 cartridge or other component of the device or related product.

10 "Entity" means one or more individuals, a company,  
11 corporation, a partnership, an association, or any other type of  
12 legal entity.

13 "License" means a license granted under this chapter that  
14 authorizes the holder to engage in the business of a wholesaler,  
15 dealer, or retailer of electronic smoking devices in the State.

16 "Licensee" means the holder of a license as a wholesaler,  
17 dealer, or retailer of electronic smoking devices granted under  
18 this chapter.

19 "Person" means one or more people, a company, corporation,  
20 a partnership, or an association.

21 "Retailer" means an entity that engages in the practice of  
22 selling electronic smoking devices to consumers.



1 "Wholesaler" means a person rendering a distribution  
2 service who buys and maintains, at the person's place of  
3 business, a stock of electronic smoking devices that the person  
4 uses, possesses, or distributes only to retailers, or other  
5 wholesalers, or both.

6 **§ -2 License.** (a) It shall be unlawful for any person  
7 to engage in the business of a wholesaler or dealer of  
8 electronic smoking devices in the State without having received  
9 first a license therefor issued by the department under this  
10 chapter; provided that this section shall not be construed to  
11 supersede any other law relating to licensing of persons in the  
12 same business.

13 (b) It shall be unlawful for any retailer engaged in the  
14 retail sale of electronic smoking devices to sell, possess,  
15 keep, acquire, distribute, or transport electronic smoking  
16 devices for retail sale unless a license has been issued to the  
17 retailer under this chapter and the license is in full force and  
18 effect.

19 (c) Any person or entity that operates as a retailer of  
20 cigarettes or tobacco products under section 245-2.5 shall  
21 acquire a separate license under this chapter to also sell  
22 electronic smoking devices to consumers at retail.



1 (d) Only those retailers with a retail tobacco permit  
2 obtained under section 245-2.5 may engage in the retail sale of  
3 electronic smoking devices under this chapter.

4 (e) The license shall be issued by the department upon  
5 application therefor, in such form and manner as shall be  
6 required by rule of the department, and payment of a fee of  
7 \$ , and shall be renewable annually on July 1 for the  
8 twelve months ending the succeeding June 30.

9 (f) Revenue from the license fees collected under this  
10 section shall be used to support smoking cessation programs in  
11 the State.

12 (g) The department may suspend or, after hearing, revoke  
13 or decline to renew any license issued under this chapter  
14 whenever the department finds that the applicant or licensee has  
15 failed to comply with this chapter or any rule adopted under  
16 this chapter, or for any other good cause. Good cause includes  
17 but is not limited to instances where an applicant or licensee  
18 has:

- 19 (1) Submitted a false or fraudulent application or  
20 provided a false statement in an application; or  
21 (2) Possessed or displayed a false or fraudulent license.



1 Upon suspending or revoking any license, the department shall  
2 request that the licensee immediately surrender the license or  
3 any duplicate issued to the licensee and the licensee shall  
4 surrender the license or duplicate promptly to the department as  
5 requested.

6 (h) Whenever the department suspends, revokes, or declines  
7 to renew a license, the department shall notify the applicant or  
8 licensee immediately and afford the applicant or licensee a  
9 hearing, if requested and if a hearing has not already been  
10 afforded. After the hearing, the department shall:

- 11 (1) Rescind its order of suspension;
- 12 (2) Continue the suspension;
- 13 (3) Revoke the license;
- 14 (4) Rescind its order of revocation;
- 15 (5) Decline to renew the license; or
- 16 (6) Renew the license."

17 SECTION 3. Section 328J-1, Hawaii Revised Statutes, is  
18 amended as follows:

19 1. By adding a new definition to be appropriately inserted  
20 and to read:

21 "Electronic smoking device" has the same meaning as in  
22 section 709-908."



1           2. By amending the definitions of "retail tobacco store"  
2 and "smoke" or "smoking" to read:

3            "Retail tobacco store" means a retail store used primarily  
4 for the sale of tobacco products and accessories~~[-]~~ or  
5 electronic smoking devices.

6            "Smoke" or "smoking" means inhaling or exhaling the fumes  
7 of tobacco or any other plant material, ~~[or]~~ burning or carrying  
8 any lighted smoking equipment for tobacco or any other plant  
9 material~~[-]~~, or inhaling or exhaling of smoke or vapor from an  
10 electronic smoking device."

11           SECTION 4. Section 328J-16, Hawaii Revised Statutes, is  
12 amended as follows:

13           1. By amending the title and subsection (a) to read:

14            "~~+~~§328J-16~~+~~ **Cigarette or electronic smoking device**  
15 **sales from vending machines and by lunch wagons prohibited.** (a)

16 The sale or distribution at no charge of cigarettes or  
17 electronic smoking devices by the following methods is  
18 prohibited:

- 19           (1) From cigarette vending machines unless the vending  
20 machine is located in a bar, cabaret, or any  
21 establishment for which the minimum age for admission  
22 is eighteen; or





1 (2) From a lunch wagon engaging in any sales activity  
2 within one thousand feet of any public or private  
3 elementary or secondary school grounds."

4 2. By amending subsection (c) to read:

5 "(c) As used in this section:

6 "Cigarette vending machine" means a self-service device  
7 that dispenses cigarettes, cigars, tobacco, [~~or~~] any other  
8 product containing tobacco~~[-]~~, or electronic smoking devices.

9 "Lunch wagon" means a mobile vehicle designed and  
10 constructed to transport food and from which food is sold to the  
11 general public and includes but is not limited to manapua  
12 trucks.

13 "Sell" or "sale" means to solicit and receive an order for;  
14 to have, keep, offer, or expose for sale; to deliver for value  
15 or in any other manner than purely gratuitously; to peddle; to  
16 keep with intent to sell; or to traffic in."

17 SECTION 5. Section 328J-17, Hawaii Revised Statutes, is  
18 amended by amending the title and subsections (a) to (c) to read  
19 as follows:

20 "[~~+~~]**§328J-17**[~~+~~] **Distribution of sample cigarette or**  
21 **tobacco products~~[-]~~ or electronic smoking devices; cigarette**  
22 **~~[-]~~, tobacco, or electronic smoking device promotional**

1 materials[~~7~~]; and coupons redeemable for cigarette [~~e~~],  
2 tobacco, or electronic smoking device products or promotional  
3 materials. (a) It is unlawful for any person to distribute  
4 samples of cigarette or tobacco products[~~7~~] or electronic  
5 smoking devices, or coupons redeemable for cigarette or tobacco  
6 products[~~7~~] or electronic smoking devices, in or on any public  
7 street, sidewalk, or park, or within one thousand feet of any  
8 elementary, middle or intermediate, or high school.

9 (b) It is unlawful for any person to distribute cigarette  
10 [~~e~~], tobacco, or electronic smoking device promotional  
11 materials, or coupons redeemable for cigarette [~~e~~], tobacco, or  
12 electronic smoking device promotional materials, within one  
13 thousand feet of any elementary, middle or intermediate, or high  
14 school.

15 (c) This section shall not apply:

16 (1) Within private commercial establishments, such as  
17 stores and restaurants, where tobacco products or  
18 electronic smoking devices are sold, as long as  
19 distribution is not visible to the public from outside  
20 the establishment; or



1 (2) To commercial establishments where access to the  
 2 premises by persons under eighteen years of age is  
 3 prohibited by law."

4 SECTION 6. Section 328J-18, Hawaii Revised Statutes, is  
 5 amended by amending the title and subsection (a) to read as  
 6 follows:

7 "[+]§328J-18[+] Placement of cigarettes [and], tobacco  
 8 products[-], and electronic smoking devices. (a) Except as  
 9 otherwise provided under this section, a retailer may sell  
 10 cigarettes, smokeless tobacco, [and] all other tobacco products,  
 11 and electronic smoking devices only in a direct, face-to-face  
 12 exchange between the retailer and the consumer. Examples of  
 13 methods of sale that are not permitted include vending machines  
 14 and self-service displays."

15 SECTION 7. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

17 SECTION 8. This Act shall take effect on July 1, 2014.

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# S.B. NO. 2495

**Report Title:**

Electronic Smoking Device; License; Smoking; Cigarettes; Tobacco Products; Restrictions; Ban; Permit

**Description:**

Requires persons engaged as wholesalers and dealers of electronic smoking devices and retailers of electronic smoking devices to obtain a license from the department of health. Limits the retail sale of electronic smoking devices to those retailers who also hold a retail tobacco permit. Specifies that the revenue from electronic smoking device license fees shall be used to support smoking cessation programs in the State. Amends Hawaii's anti-smoking statute to prohibit the use of electronic smoking devices in places open to the public and places of employment. Clarifies that the sale, distribution, or display of electronic smoking devices is restricted in the same manner as cigarettes and other tobacco products.

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