
A BILL FOR AN ACT

RELATING TO TOBACCO.

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

1 SECTION 1. The legislature finds that the density of
2 tobacco retailers around schools has a significant impact on the
3 prevalence of youth tobacco use. A 2008 study by L. Henriksen,
4 et al., found that the incidence of smoking was significantly
5 higher among students in schools with the highest density of
6 surrounding tobacco retailers compared with students in schools
7 without any tobacco retailers nearby.

8 The legislature further finds that electronic smoking
9 devices are especially popular among youth, surpassing
10 cigarettes as the most commonly used tobacco product. The 2015
11 Hawaii Youth Risk Behaviors Survey found that twenty-five per
12 cent of high school students and fifteen per cent of middle
13 school students reported using electronic vapor products in the
14 thirty days preceding the survey. The popularity of these
15 devices is concerning, as electronic smoking devices are not
16 safe alternatives to other tobacco products, and exposure to



1 nicotine increases the risk of addiction and may disrupt
2 critical brain development.

3 The legislature recognizes that tobacco advertising and
4 retailers suggest that smoking is acceptable, and youth and
5 children are particularly susceptible to these cues. Tobacco
6 and electronic smoking device manufacturers employ tactics that
7 appeal to youth, such as child-friendly flavors, celebrity
8 endorsements, and high-tech design. The tobacco industry spends
9 \$24,300,000 on marketing per year in Hawaii. In addition, the
10 electronic smoking device industry spent an estimated
11 \$115,000,000 on marketing in 2014, a nearly 1,700 per cent
12 increase from 2011. Youth who walk or take public
13 transportation to school may be exposed to advertising of
14 tobacco products and electronic smoking devices at locations
15 such as convenience stores, grocery stores, and gas stations.

16 The legislature further finds that several cities in
17 California and New York have implemented tobacco retail buffer
18 zones, ranging from three hundred to fifteen hundred feet, where
19 sales of tobacco products and permits for tobacco retailers are
20 prohibited within a certain proximity to schools, parks,
21 libraries, and other youth-oriented areas. Tobacco retail



1 buffer zones encourage responsible tobacco retailing, reduce
2 tobacco-related health disparities, and most importantly, reduce
3 youth tobacco use, especially the use of electronic smoking
4 devices.

5 The purpose of this Act is to reduce the use of, access to,
6 and exposure to tobacco products by youth by prohibiting the
7 issuance and renewal of retail tobacco permits for, and the sale
8 of a tobacco product or an electronic smoking device at, a place
9 of business within five hundred feet of preschools, schools, and
10 public playgrounds.

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

14 "§245 Good cause to suspend, revoke, or decline to renew
15 a retail tobacco permit. (a) In addition to any other acts or
16 conditions provided by law, the department may suspend or, after
17 hearing, revoke or decline to renew any retail tobacco permit
18 whenever the department finds that the applicant or permittee
19 has failed to comply with chapter 245 or any rule adopted under
20 chapter 245, or for any other good cause. Good cause includes
21 instances where an applicant or permittee has:



- 1 (1) Submitted a false or fraudulent application or
2 intentionally provided a false statement in an
3 application;
- 4 (2) Possessed or displayed a false or fraudulent license
5 or retail tobacco permit;
- 6 (3) Failed to meet or maintain the conditions and
7 requirements necessary to qualify for the granting of
8 a license or retail tobacco permit;
- 9 (4) Procured a wholesaler or dealer license or retail
10 tobacco permit through fraud, misrepresentation, or
11 deceit;
- 12 (5) Aided and abetted a person or entity that does not
13 possess a license or retail tobacco permit to directly
14 or indirectly perform activities requiring a license
15 or retail tobacco permit;
- 16 (6) Instances of noncompliance, violation, or conviction
17 of any law directly pertaining to the sale,
18 importation, acquisition, possession, stamping,
19 distribution, transportation, or smuggling of
20 cigarettes, counterfeit cigarettes, counterfeit tax



1 stamps, or other tobacco products in violation of
2 county, state, or federal law;

3 (7) Intentionally failed to make accessible for inspection
4 any records of the licensee or permittee for the
5 purpose of determining compliance with chapter 245 to
6 any representative of the department or the attorney
7 general; or

8 (8) Failed to comply with applicable tax obligations.

9 (b) In assessing whether good cause exists when
10 considering a revocation, suspension, or declination to renew a
11 retail tobacco permit based upon a person's or entity's
12 employee's violations of section 712-1257, the department may
13 consider whether the sale of the tobacco product to the minor
14 was an isolated incident, and if not, the extent to which the
15 person or entity acted in reckless disregard of the risk that
16 tobacco products would be sold to minors.

17 (c) In determining "good cause" the department may
18 consider:

19 (1) The nature, circumstances, extent, and gravity of the
20 violation;



1 (2) With respect to the permittee, the degree of
2 culpability and any history of prior compliance or
3 prior violations; and

4 (3) Such other matters as justice may require or as the
5 department deems relevant.

6 (d) Revocation, suspension, or declination to renew a
7 retail tobacco permit shall have no effect on liability for
8 payment of taxes, fees, penalties, or interest incurred or
9 imposed."

10 SECTION 3. Chapter 328J, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§328J- Tobacco products and electronic smoking devices;
14 prohibited locations. (a) It shall be unlawful to sell a
15 tobacco product or an electronic smoking device at a place of
16 business located within five hundred feet of a public or private
17 preschool; a public or private elementary, intermediate, or high
18 school; or public playground. The distance of five hundred feet
19 shall be measured from the boundary of the preschool, school, or
20 a public playground to the boundary of the place of business'
21 premises. Public or private beaches and public or private day



care centers located in or adjacent to commercial areas shall not be deemed schools or public playgrounds for purposes of this subsection. Vocational or licensing schools, or other schools attended primarily by adults, shall not be considered schools for the purposes of this subsection.

(b) Any person who violates this section shall be fined \$500 for the offense and no less than \$500 and no more than \$2,000 for each subsequent offense. Each day a violation continues shall constitute a separate offense.

(c) This section shall not apply to retailers with a valid tobacco permit.

(d) For purposes of this section:

"Electronic smoking device" shall have the same meaning as in section 712-1258.

"Public playground" means an area of land that is used for outdoor play or recreation, especially by children, maintained by city, county, or state government, that contains one or more of the following:

(1) Pieces of recreational equipment such as a slide or a swing;



1 (2) Facilities for playing informal games such as a
2 baseball diamond or tennis court; or

3 (3) Fields for playing of sports such as soccer or
4 football.

5 "Tobacco product" shall have the same meaning as in section
6 712-1258.

7 "To sell" shall have the same meaning as in section 712-
8 1257."

9 SECTION 4. Section 245-2.5, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

11 "(c) The retail tobacco permit shall be issued by the
12 department upon application by the retailer in the form and
13 manner prescribed by the department, and the payment of a fee of
14 \$20[-]; provided that, beginning November 1, 2018, the place of
15 business for which a new retail tobacco permit is issued shall
16 not be within five hundred feet of a public or private
17 preschool; a public or private elementary, intermediate, or high
18 school; or a public playground. Permits shall be valid for one
19 year, from December 1 to November 30, and renewable annually[-];
20 provided that for permits validly issued before November 1,
21 2018, for a place of business that is located within five



1 hundred feet of a public or private preschool; a public or
2 private elementary, intermediate, or high school; or public
3 playground shall be eligible for renewal notwithstanding the
4 business's location. Whenever a retail tobacco permit is
5 defaced, destroyed, or lost, or the permittee relocates the
6 permittee's business, the department may issue a duplicate
7 retail tobacco permit to the permittee for a fee of \$5 per copy.
8 The distance of five hundred feet shall be measured from the
9 boundary of the preschool, school, or public playground to the
10 boundary of the place of business' premises. Public or private
11 beaches, and public or private day care centers located in or
12 adjacent to commercial areas shall not be deemed schools or
13 public playgrounds for purposes of this subsection. Vocational
14 or licensing schools, or other schools attended primarily by
15 adults, shall not be considered schools for the purposes of this
16 subsection. "Public playground" shall have the same meaning as
17 in section 328J- ."

18 SECTION 5. This Act does not affect rights and duties that
19 matured, penalties that were incurred, and proceedings that were
20 begun before its effective date.



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2050;
4 provided that section 3 shall take effect on December 1, 2051.



Report Title:

Tobacco; Electronic Smoking Devices; Tobacco Retailer Buffer Zones; Keiki Caucus

Description:

Prohibits the issuance of new retail tobacco permits, beginning 11/1/18, for businesses that are located within 500 feet of a preschool, school, or public playgrounds. Enunciates that a business holding a valid retail tobacco permit prior to 11/1/18, is eligible for renewal even though the business is within 500 feet of a preschool, school, or public playgrounds. Beginning on 12/1/2051, prohibits the sale of tobacco products and electronic smoking devices by businesses that are located within 500 feet of a preschool, school, or certain public playgrounds. Codifies the Department of Taxation's administrative rule specifying when the Department may suspend, revoke, or decline to renew a retail tobacco permit. (SB2304 HD2)

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