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# A BILL FOR AN ACT

RELATING TO SALES OF 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 study published in the  
4 American Journal of Public Health showed that experimental  
5 smoking among high school-aged minors increases when tobacco  
6 retailers are closer to schools and densely populate those  
7 locations. Similarly, the incidence of smoking was  
8 significantly higher among students in schools with the highest  
9 density of surrounding tobacco retailers compared with students  
10 in schools without any tobacco retailers nearby. Another study  
11 found that tobacco retailers were more concentrated in school  
12 areas and more likely to be frequented by youth.

13           The legislature further finds that electronic smoking  
14 devices are especially popular among youth, surpassing  
15 cigarettes as the most commonly used tobacco product. The 2015  
16 Hawaii Youth Risk Behaviors Survey found that twenty-five per  
17 cent of high school students and fifteen per cent of middle



1 school students reported using electronic vapor products in the  
2 thirty days preceding the survey. The popularity of these  
3 devices is concerning, as electronic smoking devices are not  
4 safe alternatives to other tobacco products, and exposure to  
5 nicotine increases the risk of addiction and may disrupt  
6 critical brain development.

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

20 The legislature notes its constitutional obligation to  
21 protect the public health and safety of state residents. In



1 particular, article IX, section 1, of the Hawaii State  
2 Constitution directs that "[t]he State shall provide for the  
3 protection and promotion of the public health." The legislature  
4 finds that tobacco retail buffer zones encourage responsible  
5 tobacco retailing, reduce tobacco-related health disparities,  
6 and most importantly, reduce youth tobacco use, especially the  
7 use of electronic smoking devices. Many cities in California  
8 and New York have already implemented tobacco retail buffer  
9 zones, ranging from three hundred to fifteen hundred feet,  
10 around schools, parks, libraries, and other youth-oriented  
11 areas, within which sales of tobacco products and permits for  
12 tobacco retailers are prohibited.

13 The purpose of this Act is to:

14 (1) Reduce the use of, access to, and exposure to tobacco  
15 products by youth by prohibiting the issuance and  
16 renewal of retail tobacco permits for, and the sale of  
17 a tobacco product or an electronic smoking device at,  
18 a place of business within seven hundred fifty feet of  
19 preschools, schools, and public playgrounds; and



1 (2) Codify the department of taxation's administrative  
2 rule specifying when the department may suspend,  
3 revoke, or decline to renew a retail tobacco permit.

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

7 "§245- Good cause to suspend, revoke, or decline to  
8 renew a retail tobacco permit. (a) In addition to any other  
9 acts or conditions provided by law, the department may suspend  
10 or, after hearing, revoke or decline to renew any retail tobacco  
11 permit issued under this chapter whenever the department finds  
12 that the applicant or permittee has failed to comply with this  
13 chapter or any rule adopted under this chapter, or for any other  
14 good cause. Good cause includes but is not limited to instances  
15 where an applicant or permittee has:

16 (1) Submitted a false or fraudulent application or  
17 provided a false statement in an application;

18 (2) Possessed or displayed a false or fraudulent retail  
19 tobacco permit;



- 1        (3) Failed to meet or maintain the conditions and  
2        requirements necessary to qualify for the granting of  
3        a retail tobacco permit;
- 4        (4) Procured a retail tobacco permit through fraud,  
5        misrepresentation, or deceit;
- 6        (5) Aided and abetted a person or entity that does not  
7        possess a retail tobacco permit to directly or  
8        indirectly perform activities requiring a retail  
9        tobacco permit;
- 10       (6) Instances of noncompliance, violation, or conviction  
11       of any law directly pertaining to the sale,  
12       importation, acquisition, possession, stamping,  
13       distribution, transportation, or smuggling of  
14       cigarettes, counterfeit cigarettes, counterfeit tax  
15       stamps, or other tobacco products in violation of  
16       county, state, or federal law;
- 17       (7) Intentionally failed to make accessible for inspection  
18       any records of the permittee for the purpose of  
19       determining compliance with this chapter to any  
20       representative of the department or the attorney  
21       general; or



1       (8) Failed to comply with applicable tax obligations.  
2       Upon suspending or revoking any retail tobacco permit, the  
3       department shall request that the permittee immediately  
4       surrender any retail tobacco permit or duplicate issued to the  
5       permittee, and the permittee shall surrender the permit or  
6       duplicate promptly to the department as requested.

7       (b) In assessing whether good cause exists when  
8       considering a revocation, suspension, or declination to renew a  
9       retail tobacco permit based upon a person's or entity's  
10       employee's violations of section 712-1258, the department may  
11       consider whether the sale of the tobacco product to the minor  
12       was an isolated incident, and if not, the extent to which the  
13       person or entity acted in reckless disregard of the risk that  
14       tobacco products would be sold to minors.

15       (c) In determining good cause the department may consider:  
16       (1) The nature, circumstances, extent, and gravity of the  
17       violation;  
18       (2) With respect to the permittee, the degree of  
19       culpability and any history of prior compliance or  
20       prior violations; and



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

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

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

10       "§328J- Tobacco products and electronic smoking devices;  
11 prohibited locations. (a) It shall be unlawful to sell a  
12 tobacco product or an electronic smoking device at a place of  
13 business located within seven hundred fifty feet of a public or  
14 private preschool; a public or private elementary, intermediate,  
15 or high school; or public playground. The distance of seven  
16 hundred fifty feet shall be measured from the boundary of the  
17 preschool, school, or playground to the boundary of the place of  
18 business' premises.

19       (b) Any person who violates this section shall be fined  
20 \$500 for the offense and no less than \$500 and no more than



1 \$2,000 for each subsequent offense. Each day a violation  
2 continues shall constitute a separate offense.

3 (c) For purposes of this section:

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

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

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

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

14 Public or private beaches shall not be deemed public  
15 playgrounds.

16 "To sell" shall have the same meaning as in section  
17 712-1257."

18 SECTION 4. Section 245-2.5, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "[+] §245-2.5 [+] Retail tobacco permit. (a) Beginning  
21 December 1, 2006, every retailer engaged in the retail sale of





1 cigarettes and other tobacco products upon which a tax is  
2 required to be paid under this chapter shall obtain a retail  
3 tobacco permit. No place of business within seven hundred fifty  
4 feet of a public or private preschool; public or private  
5 elementary, intermediate, or high school; or public playground  
6 shall seek a permit under this section."

7 (b) Beginning March 1, 2007, it shall be unlawful for any  
8 retailer engaged in the retail sale of cigarettes and other  
9 tobacco products upon which a tax is required to be paid under  
10 this chapter to sell, possess, keep, acquire, distribute, or  
11 transport cigarettes or other tobacco products for retail sale  
12 unless a retail tobacco permit has been issued to the retailer  
13 under this section and the retail tobacco permit is in full  
14 force and effect.

15 (c) The retail tobacco permit shall be issued by the  
16 department upon application by the retailer in the form and  
17 manner prescribed by the department, and the payment of a fee of  
18 \$20[-]; provided that the place of business for which the permit  
19 is sought shall not be within seven hundred fifty feet of a  
20 public or private preschool; a public or private elementary,  
21 intermediate, or high school; or a public playground. Permits



1 shall be valid for one year, from December 1 to November 30, and  
2 renewable annually[-]; provided that a permit issued for a place  
3 of business that is located within seven hundred fifty feet of a  
4 public or private preschool; a public or private elementary,  
5 intermediate, or high school; or a public playground shall be  
6 void. The distance of seven hundred fifty feet shall be  
7 measured from the boundary of the preschool, school, or public  
8 playground to the boundary of the place of business' premises.  
9 Public or private beaches, public or private day care centers  
10 located in or adjacent to commercial areas, and vocational or  
11 licensing schools, or other schools attended primarily by  
12 adults, shall not be deemed schools or public playgrounds for  
13 purposes of this subsection. Whenever a retail tobacco permit  
14 is defaced, destroyed, or lost, or the permittee relocates the  
15 permittee's business, the department may issue a duplicate  
16 retail tobacco permit to the permittee for a fee of \$5 per copy.

17 (d) A separate retail tobacco permit shall be obtained for  
18 each place of business owned, controlled, or operated by a  
19 retailer. A retailer that owns or controls more than one place  
20 of business may submit a single application for more than one  
21 retail tobacco permit. Each retail tobacco permit issued shall



1 clearly describe the place of business where the operation of  
2 the business is conducted.

3 (e) Any entity that operates as a dealer or wholesaler and  
4 also sells cigarettes or other tobacco products to consumers at  
5 retail shall acquire a separate retail tobacco permit.

6 (f) A retail tobacco permit shall be nonassignable and  
7 nontransferable from one entity to another entity. A retail  
8 tobacco permit may be transferred from one business location to  
9 another business location after an application has been filed  
10 with the department requesting that transfer and approval has  
11 been obtained from the department.

12 (g) A retail tobacco permit issued under this section  
13 shall be displayed at all times in a conspicuous place at the  
14 place of business requiring the retail tobacco permit.

15 (h) Any sales of cigarettes or tobacco products made  
16 through a cigarette or tobacco product vending machine are  
17 subject to the terms, conditions, and penalties of this chapter.  
18 A retail tobacco permit need not be displayed on cigarette or  
19 tobacco product vending machines if the retail tobacco permit  
20 holder is the owner of the cigarette or tobacco product vending  
21 machines and the cigarette or tobacco product vending machines



1 are operated at the location described in the retail tobacco  
2 permit.

3 (i) No retailer shall purchase any pack of cigarettes  
4 without the appropriate tax stamp being affixed to the bottom of  
5 the pack as required by this chapter.

6 (j) A vehicle from which cigarettes or tobacco products  
7 are sold is considered a place of business and requires a retail  
8 tobacco permit. Retail tobacco permits for a vehicle shall be  
9 issued bearing a specific motor vehicle identification number  
10 and are valid only when physically carried in the vehicle having  
11 the corresponding motor vehicle identification number. Retail  
12 tobacco permits for vehicles shall not be moved from one vehicle  
13 to another.

14 (k) A permittee shall be subject to the inspection and  
15 investigation requirements of this chapter and shall provide the  
16 department or the attorney general with any information deemed  
17 necessary to verify compliance with the requirements of this  
18 chapter.

19 (l) A permittee shall keep a complete and accurate record  
20 of the permittee's cigarette or tobacco product inventory. The  
21 records shall:



- 1           (1) Include:
- 2           (A) A written statement containing the name and
- 3           address of the permittee's source of its
- 4           cigarettes and tobacco products;
- 5           (B) The date of delivery, quantity, trade name or
- 6           brand, and price of the cigarettes and tobacco
- 7           products; and
- 8           (C) Documentation in the form of any purchase orders,
- 9           invoices, bills of lading, other written
- 10          statements, books, papers, or records in whatever
- 11          format, including electronic format, which
- 12          substantiate the purchase or acquisition of the
- 13          cigarettes and tobacco products stored or offered
- 14          for sale; and
- 15          (2) Be offered for inspection and examination within
- 16          twenty-four hours of demand by the department or the
- 17          attorney general, and shall be preserved for a period
- 18          of three years; provided that:
- 19          (A) Specified records may be destroyed if the
- 20          department and the attorney general both consent



1 to their destruction within the three-year  
2 period; and

3 (B) Either the department or the attorney general may  
4 adopt rules pursuant to chapter 91 that require  
5 specified records to be kept longer than a period  
6 of three years.

7 ~~[(m) The department may suspend or, after hearing, revoke~~  
8 ~~or decline to renew any retail tobacco permit issued under this~~  
9 ~~chapter whenever the department finds that the applicant or~~  
10 ~~permittee has failed to comply with this chapter or any rule~~  
11 ~~adopted under this chapter, or for any other good cause. Good~~  
12 ~~cause includes but is not limited to instances where an~~  
13 ~~applicant or permittee has:~~

14 ~~(1) Submitted a false or fraudulent application or~~  
15 ~~provided a false statement in an application; or~~

16 ~~(2) Possessed or displayed a false or fraudulent retail~~  
17 ~~tobacco permit.~~

18 ~~Upon suspending or revoking any retail tobacco permit, the~~  
19 ~~department shall request that the permittee immediately~~  
20 ~~surrender any retail tobacco permit or duplicate issued to the~~



1 ~~permittee, and the permittee shall surrender the permit or~~  
2 ~~duplicate promptly to the department as requested.~~

3 ~~(n)]~~ (m) Whenever the department suspends, revokes, or  
4 declines to renew a retail tobacco permit~~[7]~~ pursuant to section  
5 245- , the department shall notify the applicant or permittee  
6 immediately and afford the applicant or permittee a hearing, if  
7 requested and if a hearing has not already been afforded. After  
8 the hearing, the department shall:

- 9 (1) Rescind its order of suspension;  
10 (2) Continue the suspension;  
11 (3) Revoke the retail tobacco permit;  
12 (4) Rescind its order of revocation;  
13 (5) Decline to renew the retail tobacco permit; or  
14 (6) Renew the retail tobacco permit.

15 ~~[(e)]~~ (n) Any cigarette, package of cigarettes, carton of  
16 cigarettes, container of cigarettes, tobacco product, package of  
17 tobacco products, or any container of tobacco products  
18 unlawfully sold, possessed, kept, stored, acquired, distributed,  
19 or transported in violation of this section may be seized and  
20 ordered forfeited pursuant to chapter 712A."



1 SECTION 5. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4 SECTION 6. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval;  
7 provided that section 3 shall take effect on January 1, 2020.

8





**Report Title:**

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

**Description:**

Prohibits a business from seeking a new retail tobacco permit or renewal of an existing permit if the place of business is located within 750 feet of a preschool, school, or public playground. Beginning January 1, 2020, prohibits the sale of tobacco products and electronic smoking devices by businesses that are located within 750 feet of a preschool, school, or public playground. Codifies the Department of Taxation's administrative rule specifying when the Department may suspend, revoke, or decline to renew a retail tobacco permit. (SD1)

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