

---

---

# A BILL FOR AN ACT

RELATING TO THE SALE OF TOBACCO PRODUCTS.

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

1           SECTION 1. Section 712-1258, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§712-1258 Tobacco products and electronic smoking  
4 devices; persons under twenty-one years of age. (1) It shall  
5 be unlawful to sell or furnish a tobacco product in any shape or  
6 form or an electronic smoking device to a person under twenty-  
7 one years of age.

8           (2) All persons engaged in the retail sale of tobacco  
9 products or electronic smoking devices shall check the  
10 identification of tobacco product or electronic smoking device  
11 purchasers to establish the age of the purchaser if the  
12 purchaser reasonably appears to be under twenty-seven years of  
13 age.

14           (3) It shall be an affirmative defense that the seller of  
15 a tobacco product or an electronic smoking device to a person  
16 under twenty-one years of age in violation of this section had  
17 requested, examined, and reasonably relied upon a photographic



1 identification from the person establishing that person's age as  
2 at least twenty-one years of age prior to selling the person a  
3 tobacco product or an electronic smoking device. The failure of  
4 a seller to request and examine photographic identification from  
5 a person under twenty-one years of age prior to the sale of a  
6 tobacco product or an electronic smoking device to the person  
7 shall be construed against the seller and form a conclusive  
8 basis for the seller's violation of this section.

9 (4) Signs using the statement, "The sale of tobacco  
10 products or electronic smoking devices to persons under twenty-  
11 one is prohibited", shall be posted on or near any vending  
12 machine in letters at least one-half inch high and at or near  
13 the point of sale of any other location where tobacco products  
14 or electronic smoking devices are sold in letters at least one-  
15 half inch high.

16 (5) It shall be unlawful for a person under twenty-one  
17 years of age to purchase or possess any tobacco product or  
18 electronic smoking device, as those terms are defined in  
19 subsection (7). This provision does not apply if a person under  
20 the age of twenty-one, with parental authorization, is  
21 participating in a controlled purchase as part of a law



1 enforcement activity or a study authorized by the department of  
2 health under the supervision of law enforcement to determine the  
3 level of incidence of tobacco or electronic smoking devices  
4 sales to persons under twenty-one years of age.

5 (6) Any [~~person who~~] retailer, permittee, or registrant  
6 who violates or whose employee violates subsection (1) or (4),  
7 or both, shall be fined \$500 for the first offense. Any  
8 subsequent offenses shall subject the [~~person~~] retailer,  
9 permittee, or registrant to a fine not less than \$500 nor more  
10 than \$2,000. Any person under twenty-one years of age who  
11 violates subsection (5) shall be fined \$10 for the first  
12 offense. Any subsequent offense shall subject the violator to a  
13 fine of \$50, no part of which shall be suspended, or the person  
14 shall be required to perform not less than forty-eight hours nor  
15 more than seventy-two hours of community service during hours  
16 when the person is not employed and is not attending school.  
17 Any tobacco product or electronic smoking device, as those terms  
18 are defined in subsection (7), in the person's possession at the  
19 time of violation of subsection (5) shall be seized, summarily  
20 forfeited to the State, and destroyed by law enforcement  
21 following the conclusion of an administrative or judicial



1 proceeding finding that a violation of subsection (5) has been  
2 committed. The procedures set forth in chapter 712A shall not  
3 apply to this subsection.

4 (7) For the purposes of this section:

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

11 "Permittee" means the holder of a retail tobacco permit in  
12 accordance with chapter 245."

13 "Registrant" means an entity registered with the electronic  
14 smoking device retailer registration unit pursuant to section  
15 28-164.

16 "Retailer" means an entity that engages in the practice of  
17 selling cigarettes or tobacco products to consumers and includes  
18 the owner of a cigarette or tobacco product vending machine.

19 "Tobacco product" means any product made or derived from  
20 tobacco that contains nicotine or other substances and is  
21 intended for human consumption or is likely to be consumed,



1 whether smoked, heated, chewed, absorbed, dissolved, inhaled, or  
2 ingested by other means. "Tobacco product" includes but is not  
3 limited to a cigarette, cigar, pipe tobacco, chewing tobacco,  
4 snuff, snus, or an electronic smoking device. "Tobacco product"  
5 does not include drugs, devices, or combination products  
6 approved for sale by the United States Food and Drug  
7 Administration, as those terms are defined in the Federal Food,  
8 Drug, and Cosmetic Act."

9 SECTION 2. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12 SECTION 3. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect upon its approval.

15



**Report Title:**

Electronic Smoking Devices; Tobacco Products; Underage Sales of Tobacco Products; Penalties

**Description:**

Clarifies that liability for illegally selling tobacco products and electronic smoking devices to persons under 21 is borne by the retail entity, entity that holds a retail tobacco permit, or entity registered to sell electronic smoking devices, as opposed to an employee. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

