

JAN 18 2019

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 the 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



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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 whenever the department finds that the applicant or
12 permittee has failed to comply with chapter 245 or any rule
13 adopted under chapter 245, or for any other good cause. Good
14 cause includes instances where an applicant or permittee has:

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

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



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- 1 (3) Failed to meet or maintain the conditions and
2 requirements necessary to qualify for the granting of
3 a license or retail tobacco permit;
- 4 (4) Procured a wholesaler or dealer license or retail
5 tobacco permit through fraud, misrepresentation, or
6 deceit;
- 7 (5) Aided and abetted a person or entity that does not
8 possess a license or retail tobacco permit to directly
9 or indirectly perform activities requiring a license
10 or retail tobacco permit;
- 11 (6) Instances of noncompliance, violation, or conviction
12 of any law directly pertaining to the sale,
13 importation, acquisition, possession, stamping,
14 distribution, transportation, or smuggling of
15 cigarettes, counterfeit cigarettes, counterfeit tax
16 stamps, or other tobacco products in violation of
17 county, state, or federal law;
- 18 (7) Intentionally failed to make accessible for inspection
19 any records of the licensee or permittee for the
20 purpose of determining compliance with chapter 245 to



1 any representative of the department or the attorney
2 general; or

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

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

12 (c) In determining "good cause" the department may
13 consider:

14 (1) The nature, circumstances, extent, and gravity of the
15 violation;

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

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



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

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

8 "§328J- Tobacco products and electronic smoking devices;
9 prohibited locations. (a) It shall be unlawful to sell a
10 tobacco product or an electronic smoking device at a place of
11 business located within seven hundred fifty feet of a public or
12 private preschool; a public or private elementary, intermediate,
13 or high school; or public playground. The distance of seven
14 hundred fifty feet shall be measured from the boundary of the
15 preschool, school, or playground to the boundary of the place of
16 business' premises.

17 (b) Any person who violates this section shall be fined
18 \$500 for the offense and no less than \$500 and no more than
19 \$2,000 for each subsequent offense. Each day a violation
20 continues shall constitute a separate offense.

21 (c) For purposes of this section:



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

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

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

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

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

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

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

17 "Tobacco product" shall have the same meaning as in section
18 712-1258."

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



1 "(c) The retail tobacco permit shall be issued by the
2 department upon application by the retailer in the form and
3 manner prescribed by the department, and the payment of a fee of
4 \$20 [-]; provided that the place of business for which the permit
5 is sought shall not be within seven hundred fifty feet of a
6 public or private preschool; a public or private elementary,
7 intermediate, or high school; or a public playground. Permits
8 shall be valid for one year, from December 1 to November 30, and
9 renewable annually [-]; provided that the department shall not
10 renew a permit for a place of business that is located within
11 seven hundred fifty feet of a public or private preschool; a
12 public or private elementary, intermediate, or high school; or a
13 public playground. Whenever a retail tobacco permit is defaced,
14 destroyed, or lost, or the permittee relocates the permittee's
15 business, the department may issue a duplicate retail tobacco
16 permit to the permittee for a fee of \$5 per copy. The distance
17 of seven hundred fifty feet shall be measured from the boundary
18 of the preschool, school, or public playground to the boundary
19 of the place of business' premises. Public or private beaches
20 shall not be deemed public playgrounds for purposes of this
21 subsection."



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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 on July 1, 2019;
7 provided that section 2 shall take effect on January 1, 2020.

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Report Title:

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

Description:

Prohibits the issuance of new retail tobacco permits and renewal of existing permits for places of business that are located within 750 feet of a preschool, school, or public playground. 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. Beginning on January 1, 2020, codifies the Department of Taxation's administrative rule specifying when the Department may suspend, revoke, or decline to renew a retail tobacco permit.

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

