

S.B. NO. 1244

JAN 24 2019

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
6 or form or an electronic smoking device to a person under
7 twenty-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
15 of a tobacco product or an electronic smoking device to a
16 person under twenty-one years of age in violation of this
17 section had requested, examined, and reasonably relied upon a

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

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

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

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

5 (6) Any [~~person who~~] retailer or permittee who violates
6 or whose employee violates subsection (1) or (4), or both,
7 shall be fined \$500 for the first offense. Any subsequent
8 offenses shall subject the [~~person~~] retailer or permittee to a
9 fine not less than \$500 nor more than \$2,000. Any person
10 under twenty-one years of age who violates subsection (5)
11 shall be fined \$10 for the first offense. Any subsequent
12 offense shall subject the violator to a fine of \$50, no part
13 of which shall be suspended, or the person shall be required
14 to perform not less than forty-eight hours nor more than
15 seventy-two hours of community service during hours when the
16 person is not employed and is not attending school. Any
17 tobacco product or electronic smoking device, as those terms
18 are defined in subsection (7), in the person's possession at
19 the time of violation of subsection (5) shall be seized,
20 summarily forfeited to the State, and destroyed by law
21 enforcement following the conclusion of an administrative or
22 judicial proceeding finding that a violation of subsection (5)
23 has been committed. The procedures set forth in chapter 712A

1 shall not apply to this subsection.

2 (7) For the purposes of this section:

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

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

11 "Retailer" means an entity that engages in the practice
12 of selling cigarettes or tobacco products to consumers and
13 includes the owner of a cigarette or tobacco product vending
14 machine.

15 "Tobacco product" means any product made or derived from
16 tobacco that contains nicotine or other substances and is
17 intended for human consumption or is likely to be consumed,
18 whether smoked, heated, chewed, absorbed, dissolved, inhaled,
19 or ingested by other means. "Tobacco product" includes but is
20 not limited to a cigarette, cigar, pipe tobacco, chewing
21 tobacco, snuff, snus, or an electronic smoking device.

22 "Tobacco product" does not include drugs, devices, or
23 combination products approved for sale by the United States

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1 Food and Drug Administration, as those terms are defined in
2 the Federal Food, Drug, and Cosmetic Act.

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

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: *Allen J. Miller*

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BY REQUEST

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Report Title:

Electronic Smoking Devices

Description:

Clarifies that liability for illegally selling tobacco products to persons under 21 is borne by the retail entity or individual who holds a valid permit to sell tobacco products, as opposed to an employee.

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

JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO THE SALE OF TOBACCO PRODUCTS.

PURPOSE: To provide clarity on selling tobacco products and electronic smoking devices to persons under twenty-one years of age.

MEANS: Amend section 712-1258, Hawaii Revised Statutes.

JUSTIFICATION: This measure specifies that retailers of tobacco products and retail tobacco permit holders are subject to penalty provisions for selling tobacco products and electronic smoking devices to persons under twenty-one years of age. Previous wording was ambiguous as to whether an employee or the business owner were liable.

Impact on the public: This measure will prevent youth and young adults from more easily obtaining tobacco products and electronic smoking devices at the critical age when nicotine consumption habits and addiction are frequently formed.

Impact on the department and other agencies: This proposal will make enforcement simpler because of the additional specificity.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HTH 590.

OTHER AFFECTED AGENCIES: Department of the Attorney General; County Law Enforcement Agencies.

EFFECTIVE DATE: Upon approval.