

A Bill for an Act Relating to the Distribution of Sample Tobacco Products and Tobacco Promotional Materials.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds that as tobacco companies compete for shares of a shrinking domestic market, advertisements and promotions of cigarette and tobacco products have intensified, with the tobacco industry spending in excess of \$6,000,000,000 on advertisements and promotions. The distribution of brand-name promotional items is a major component of the tobacco industry's marketing strategy. The legislature further finds that there is a direct correlation between tobacco advertising and under-age smoking. Studies show that tobacco advertising promotes smoking by using images and messages that appeal to our children, and that they are particularly susceptible to these images and messages. In addition, minors have greater recall for and are more influenced by tobacco advertising than the adult population.

The legislature recognizes that First Amendment rights may be implicated by the restrictions on the distribution of cigarette or tobacco promotional materials. However, the legislature believes that the State has a compelling interest in reducing illegal sales of tobacco products to minors.

First, the State has a compelling interest in preventing the tens of thousands of minors from being seduced into experimenting with tobacco products that all too often leads to a lifetime of addiction. According to the Food and Drug Administration, approximately three thousand children become regular smokers every day. Over eighty per cent of adult smokers started when they were children or adolescents. Virtually no one first becomes a tobacco user after the age of twenty-one.

Second, reducing the enormous cost of providing health care to future generations of smokers is a compelling government interest in supporting restrictions on tobacco advertising and promotions.

The legislature believes that more aggressive measures are needed to counteract the social forces that continue to induce Hawaii's young people to use tobacco products. In addition, the legislature believes that the First Amendment does not protect commercial speech that proposes an illegal transaction. Most smokers are initiated into tobacco use as children, develop their tobacco habits as children, and become addicted as children, even though it is illegal to sell tobacco products to minors. Because promotional items are all too often used to deliver a selling message to children, and because there is no way to limit the distribution of these products to adults, such products should be restricted without offending the First Amendment.

Therefore, the purpose of this Act is to prohibit the distribution of:

- (1) Sample cigarette or tobacco promotional materials and coupons redeemable for cigarette or tobacco promotional materials within one thousand feet of any school; and
- (2) Sample cigarette or tobacco products and coupons redeemable for cigarette or tobacco products in or on any public street, sidewalk, or park, or within one thousand feet of any school.

SECTION 2. Chapter 328K, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

**“§328K- Distribution of sample cigarette or tobacco products, cigarette or tobacco promotional materials, and coupons redeemable for cigarette or tobacco products or promotional materials. (a) It is unlawful for any person to**

distribute samples of cigarette or tobacco products, or coupons redeemable for cigarette or tobacco products, in or on any public street, sidewalk, or park, or within one thousand feet of any elementary, middle or intermediate, or high school.

(b) It is unlawful for any person to distribute cigarette or tobacco promotional materials, or coupons redeemable for cigarette or tobacco promotional materials, within one thousand feet of any elementary, middle or intermediate, or high school.

(c) This section shall not apply:

- (1) Within private commercial establishments, such as stores and restaurants, where tobacco products are sold, as long as such distribution is not visible to the public from outside the establishment; or
- (2) To commercial establishments where access to the premises by persons under eighteen years of age is prohibited by law.

(d) As used in this section:

“Distribute” means to pass out to members of the general public free of charge for the exclusive purpose of promoting a product.

**§328K- Violations and Penalty.** Any person convicted of violating any provision of section 328K- shall be fined not more than \$1,000.”

SECTION 3. New statutory material is underscored.<sup>1</sup>

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

(Approved July 6, 1999.)

**Note**

1. Edited pursuant to HRS §23G-16.5.