

JAN 18 2023

A BILL FOR AN ACT

RELATING TO TOBACCO PRODUCTS.

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

1 SECTION 1. The purpose of this Act is to:

2 (1) Prohibit the sale or furnishing of a tobacco product
3 or electronic smoking device to a person born on or
4 after January 1, 2003;

5 (2) Prohibit the possession or consumption of a tobacco
6 product in a public place by a person born on or after
7 January 1, 2003; and

8 (3) Prohibit the purchase or possession of any tobacco
9 product or electronic smoking device by a person born
10 on or after January 1, 2003.

11 SECTION 2. Section 245-16, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) This section shall not apply to the shipment of
14 cigarettes if any of the following conditions are met:

15 (1) The cigarettes are exempt from taxes as provided by
16 section 245-3(b) or are otherwise exempt from the



1 applicability of this chapter as provided by section
2 245-62;

3 (2) All applicable Hawaii taxes on the cigarettes are paid
4 in accordance with the requirements of this chapter;
5 or

6 (3) The person or entity engaged in the business of
7 selling, advertising, or offering cigarettes for sale
8 and transfer or shipment:

9 (A) Has fully complied with all of the requirements
10 of chapter 10A (commencing with section 375) of
11 title 15 of the United States Code, otherwise
12 known as the Jenkins Act; and

13 (B) Includes on the outside of the shipping container
14 an externally visible and easily legible notice
15 located on the same side of the shipping
16 container as the address to which the shipping
17 container is delivered stating as follows:

18 "CIGARETTES: HAWAII LAW PROHIBITS THE SALE OF
19 CIGARETTES TO INDIVIDUALS [~~UNDER TWENTY ONE YEARS~~
20 ~~OF AGE]~~ BORN ON OR AFTER JANUARY 1, 2003, AND
21 REQUIRES THE PAYMENT OF ALL APPLICABLE TAXES.



1 YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE
2 UNPAID TAXES ON THESE CIGARETTES.""

3 SECTION 3. Section 245-17, Hawaii Revised Statutes, is
4 amended by amending subsections (a) through (d) to read as
5 follows:

6 "(a) No person shall conduct a delivery sale or otherwise
7 ship or transport, or cause to be shipped or transported, any
8 electronic smoking device in connection with a delivery sale to
9 any person [~~under the age of twenty one.~~] born on or after
10 January 1, 2003.

11 (b) A person who makes delivery sales shall not accept a
12 purchase or order from any person without first obtaining the
13 full name, birth date, and address of that person and verifying
14 the purchaser's [~~age~~] date of birth by:

15 (1) An independently operated third-party database or
16 aggregate of databases that are regularly used by
17 government and businesses for the purpose of age, date
18 of birth, and identity verification and
19 authentication;

20 (2) Receiving a copy of a government issued identification
21 card from the purchaser; or



1 (3) Requiring [age] date of birth and signature
2 verification in the shipment process and upon and
3 before actual delivery.

4 (c) The purchaser shall certify their [age] date of birth
5 before completing the purchaser's order.

6 (d) Any person who violates this section shall be fined
7 \$500 for the first offense. Any subsequent offenses shall
8 subject the person to a fine of [nø] not less than \$500 but [nø]
9 not more than \$2,000. Any person [~~under twenty one years of~~
10 age] born on or after January 1, 2003, who violates this section
11 shall be fined \$10 for the first offense; provided that any
12 subsequent offense shall subject the person to a fine of \$50, no
13 part of which shall be suspended, or the person shall be
14 required to perform [nø] not less than forty-eight hours but
15 [nø] not more than seventy-two hours of community service during
16 hours when the person is not employed or attending school."

17 SECTION 4. Section 321-212, Hawaii Revised Statutes, is
18 amended to read as follows:

19 " [†] §321-212 [†] **Tobacco products; possession or**
20 **consumption prohibited.** Possession or consumption of a tobacco



1 product by a person [~~under twenty one years of age~~] born on or
2 after January 1, 2003, in a public place shall be prohibited."

3 SECTION 5. Section 321-213, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~f~~]§321-213[~~f~~] Exemptions. This part shall not apply to:

6 (1) Any person [~~under twenty one years of age, with~~
7 ~~parental authorization,~~] born on or after January 1,
8 2003, who is participating in a controlled purchase as
9 part of a law enforcement activity or a study
10 authorized by the department of health under the
11 supervision of law enforcement to determine the level
12 of incidence of tobacco sales to persons [~~under~~
13 ~~twenty one years of age,~~] born on or after January 1,
14 2003; provided that if the person is under eighteen
15 years of age, the person shall have parental
16 authorization to participate in the law enforcement
17 activity or study; or

18 (2) Possession of tobacco products by a person [~~under~~
19 ~~twenty one years of age~~] born on or after January 1,
20 2003, in the course of delivery, pursuant to the



1 direction of the person's employer lawfully engaged in
2 business necessitating the delivery."

3 SECTION 6. Section 712-1258, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§712-1258 Tobacco products and electronic smoking
6 devices; persons [~~under twenty one years of age.~~] born on or
7 after January 1, 2003. (1) It shall be unlawful to sell or
8 furnish a tobacco product in any shape or form or an electronic
9 smoking device to a person [~~under twenty one years of age.~~] born
10 on or after January 1, 2003.

11 (2) All persons engaged in the retail sale of tobacco
12 products or electronic smoking devices shall check the
13 identification of tobacco product or electronic smoking device
14 purchasers to establish the [~~age~~] date of birth of the purchaser
15 if the purchaser reasonably appears to be [~~under twenty one~~
16 ~~years of age.~~] born on or after January 1, 2003.

17 (3) It shall be an affirmative defense that the seller of
18 a tobacco product or an electronic smoking device to a person
19 [~~under twenty one years of age~~] born on or after January 1, 2003
20 in violation of this section had requested, examined, and
21 reasonably relied upon a photographic identification from the



1 person establishing that person's [~~age as at least twenty one~~
2 ~~years of age prior to~~] date of birth as before January 1, 2003,
3 before selling the person a tobacco product or an electronic
4 smoking 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~~] born on or after January 1, 2003, before
7 the sale of a tobacco product or an electronic smoking device to
8 the person shall be construed against the seller and form a
9 conclusive basis for the 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 twenty~~
12 ~~one~~] born on or after January 1, 2003, is prohibited", shall be
13 posted on or near any vending machine in letters at least one-
14 half inch high and at or near the point of sale of any other
15 location where tobacco products or electronic smoking devices
16 are sold in letters at least one-half inch high.

17 (5) It shall be unlawful for a person [~~under twenty one~~
18 ~~years of age~~] born on or after January 1, 2003, to purchase or
19 possess any tobacco product or electronic smoking device, as
20 those terms are defined in subsection (7). This provision does
21 not apply if a person [~~under the age of twenty one, with~~



1 ~~parental authorization,]~~ born on or after January 1, 2003, is
2 participating in a controlled purchase as part of a law
3 enforcement activity or a study authorized by the department of
4 health under the supervision of law enforcement to determine the
5 level of incidence of tobacco or electronic smoking devices
6 sales to persons [~~under twenty one years of age.~~] born on or
7 after January 1, 2003; provided that if the person is under
8 eighteen years of age, the person shall have parental
9 authorization to participate in the law enforcement activity or
10 study.

11 (6) Any person who violates subsection (1) or (4), or
12 both, shall be fined \$500 for the first offense. Any subsequent
13 offenses shall subject the person to a fine not less than \$500
14 nor more than \$2,000. Any person [~~under twenty one years of~~
15 ~~age]~~ born on or after January 1, 2003, who violates
16 subsection (5) shall be fined \$10 for the first offense. Any
17 subsequent offense shall subject the violator to a fine of \$50,
18 no part of which shall be suspended, or the person shall be
19 required to perform not less than forty-eight hours nor more
20 than seventy-two hours of community service during hours when
21 the person is not employed and is not attending school. Any



1 tobacco product or electronic smoking device, as those terms are
2 defined in subsection (7), in the person's possession at the
3 time of violation of subsection (5) shall be seized, summarily
4 forfeited to the State, and destroyed by law enforcement
5 following the conclusion of an administrative or judicial
6 proceeding finding that a violation of subsection (5) has been
7 committed. The procedures set forth in chapter 712A shall not
8 apply to this subsection.

9 (7) For the purposes of this section:

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

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



1 snuff, snus, or an electronic smoking device. "Tobacco product"
2 does not include drugs, devices, or combination products
3 approved for sale by the United States Food and Drug
4 Administration, as those terms are defined in the Federal Food,
5 Drug, and Cosmetic Act."

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

8 SECTION 8. This Act shall take effect on January 1, 2024.

9

INTRODUCED BY: 



S.B. NO. 148

Report Title:

Tobacco Products; Electronic Smoking Device; Prohibition; Date of Birth

Description:

Prohibits the sale or furnishing of a tobacco product or electronic smoking device to a person born on or after January 1, 2003. Prohibits the possession or consumption of a tobacco product in a public place by a person born on or after January 1, 2003, with certain exemptions. Prohibits the purchase or possession of any tobacco product or electronic smoking device by a person born on or after January 1, 2003, with certain exemptions. Effective 1/1/2024.

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