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# A BILL FOR AN ACT

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RELATING TO 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 2008 study by L. Henriksen,  
4 et al., found that the incidence of smoking was significantly  
5 higher among students in schools with the highest density of  
6 surrounding tobacco retailers compared with students in schools  
7 without any tobacco retailers nearby.

8       The legislature further finds that electronic smoking  
9 devices are especially popular among youth, surpassing  
10 cigarettes as the most commonly used tobacco product. The 2015  
11 Hawaii Youth Risk Behaviors Survey found that twenty-five per  
12 cent of high school students and fifteen per cent of middle  
13 school students reported using electronic vapor products in the  
14 thirty days preceding the survey. The popularity of these  
15 devices is concerning, as electronic smoking devices are not  
16 safe alternatives to other tobacco products, and exposure to



1 nicotine increases the risk of addiction and may disrupt  
2 critical brain development.

3       The legislature recognizes that tobacco advertising and  
4 retailers suggest that smoking is acceptable, and youth and  
5 children are particularly susceptible to these cues. Tobacco  
6 and electronic smoking device manufacturers employ tactics that  
7 appeal to youth, such as child-friendly flavors, celebrity  
8 endorsements, and high-tech design. The tobacco industry spends  
9 \$24,300,000 on marketing per year in Hawaii. In addition, the  
10 electronic smoking device industry spent an estimated  
11 \$115,000,000 on marketing in 2014, a nearly 1,700 per cent  
12 increase from 2011. Youth who walk or take public  
13 transportation to school may be exposed to advertising of  
14 tobacco products and electronic smoking devices at locations  
15 such as convenience stores, grocery stores, and gas stations.

16       The legislature further finds that several cities in  
17 California and New York have implemented tobacco retail buffer  
18 zones, ranging from three hundred to fifteen hundred feet, where  
19 sales of tobacco products and permits for tobacco retailers are  
20 prohibited within a certain proximity to schools, parks,  
21 libraries, and other youth-oriented areas. Tobacco retail



1 buffer zones encourage responsible tobacco retailing, reduce  
2 tobacco-related health disparities, and most importantly, reduce  
3 youth tobacco use, especially the use of electronic smoking  
4 devices.

5 The purpose of this Act is to reduce the use of, access to,  
6 and exposure to tobacco products by youth by prohibiting the  
7 issuance and renewal of retail tobacco permits for, and the sale  
8 of a tobacco product or an electronic smoking device at, a place  
9 of business within five hundred feet of preschools, schools, and  
10 public playgrounds.

11 SECTION 2. Chapter 328J, Hawaii Revised Statutes, is  
12 amended by adding a new section to be appropriately designated  
13 and to read as follows:

14 "§328J- Tobacco products and electronic smoking devices;  
15 prohibited locations. (a) It shall be unlawful to sell a  
16 tobacco product or an electronic smoking device at a place of  
17 business located within five hundred feet of a public or private  
18 preschool; a public or private elementary, intermediate, or high  
19 school; or public playground utilized extensively by minors.  
20 The distance of five hundred feet shall be measured from the  
21 boundary of the preschool, school, or a public playground to the



boundary of the place of business' premises. Public or private  
beaches and public or private day care centers located in or  
adjacent to commercial areas shall not be deemed schools or  
public playgrounds for purposes of this subsection. Vocational  
or licensing schools, or other schools attended primarily by  
adults, shall not be considered schools for the purposes of this  
subsection.

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

(c) For purposes of this section:

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

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

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

SECTION 3. Section 245-2.5, Hawaii Revised Statutes, is  
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 five hundred feet of a public or  
6 private preschool; a public or private elementary, intermediate,  
7 or high school; or a public playground utilized extensively by  
8 minors. Permits shall be valid for one year, from December 1 to  
9 November 30, and renewable annually[-]; provided that a permit  
10 issued for a place of business that is located within five  
11 hundred feet of a public or private preschool; a public or  
12 private elementary, intermediate, or high school; or public  
13 playground utilized extensively by minors shall be void, such  
14 that the permit shall be valid beyond November 30, 2019.  
15 Whenever a retail tobacco permit is defaced, destroyed, or lost,  
16 or the permittee relocates the permittee's business, the  
17 department may issue a duplicate retail tobacco permit to the  
18 permittee for a fee of \$5 per copy. The distance of five  
19 hundred feet shall be measured from the boundary of the  
20 preschool, school, or public playground to the boundary of the  
21 place of business' premises. Public or private beaches, and



1 public or private day care centers located in or adjacent to  
2 commercial areas shall not be deemed schools or public  
3 playgrounds for purposes of this subsection. Vocational or  
4 licensing schools, or other schools attended primarily by  
5 adults, shall not be considered schools for the purposes of this  
6 subsection."

7 SECTION 4. Section 245-2.6, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9 "(a) Beginning March 1, 2007, a person or entity required  
10 to obtain a retail tobacco permit commits the offense of  
11 unlawful tobacco retailing in the first degree if the person or  
12 entity knowingly fails to obtain a valid permit required under  
13 section 245-2.5 and, for the purposes of retail sale, recklessly  
14 sells, possesses, stores, acquires, distributes, or transports  
15 five thousand or more cigarettes [-] or any tobacco products.  
16 For purposes of this section, a person or entity whose retail  
17 permit is void under section 245-2.5(c) shall be deemed to have  
18 knowingly failed to obtain a valid permit."

19 SECTION 5. Section 245-2.7, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:



1       "(a) Beginning March 1, 2007, a person or entity required  
2       to obtain a retail tobacco permit commits the offense of  
3       unlawful tobacco retailing in the second degree if the person or  
4       entity recklessly fails to obtain a valid permit required under  
5       section 245-2.5 and, for the purposes of retail sale, recklessly  
6       sells, possesses, stores, acquires, distributes, or transports  
7       fewer than five thousand cigarettes or any tobacco products.  
8       For purposes of this section, a person or entity whose retail  
9       permit is void under section 245-2.5(c) shall be deemed to have  
10      recklessly failed to obtain a valid permit."

11               SECTION 6. Chapter 245, Hawaii Revised Statutes, is  
12      amended by adding a new section to be appropriately designated  
13      and to read as follows:

14               "§245     Good cause to suspend, revoke, or decline to renew  
15      a retail tobacco permit. (a) In addition to any other acts or  
16      conditions provided by law, the department may suspend or, after  
17      hearing, revoke or decline to renew any retail tobacco permit  
18      whenever the department finds that the applicant or permittee  
19      has failed to comply with chapter 245 or any rule adopted under  
20      chapter 245, or for any other good cause. Good cause includes  
21      instances where an applicant, or permittee has:



- 1        (1) Submitted a false or fraudulent application or  
2        intentionally provided a false statement in an  
3        application;
- 4        (2) Possessed or displayed a false or fraudulent license  
5        or retail tobacco permit;
- 6        (3) Failed to meet or maintain the conditions and  
7        requirements necessary to qualify for the granting of  
8        a license or retail tobacco permit;
- 9        (4) Procured a wholesaler or dealer license or retail  
10       tobacco permit through fraud, misrepresentation, or  
11       deceit;
- 12       (5) Aided and abetted a person or entity that does not  
13       possess a license or retail tobacco permit to directly  
14       or indirectly perform activities requiring a license  
15       or retail tobacco permit;
- 16       (6) Instances of noncompliance, violation, or conviction  
17       of any law directly pertaining to the sale,  
18       importation, acquisition, possession, stamping,  
19       distribution, transportation, or smuggling of  
20       cigarettes, counterfeit cigarettes, counterfeit tax



1           stamps, or other tobacco products in violation of  
2           county, state, or federal law;

3           (7) Intentionally failed to make accessible for inspection  
4           any records of the licensee or permittee for the  
5           purpose of determining compliance with chapter 245 to  
6           any representative of the department or the attorney  
7           general; or

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

9           (b) In assessing whether good cause exists when  
10          considering a revocation, suspension, or declination to renew a  
11          retail tobacco permit based upon a person's or entity's  
12          employee's violations of chapter 709-908, the department may  
13          consider whether the sale of the tobacco product to the minor  
14          was an isolated incident, and if not, the extent to which the  
15          person or entity acted in reckless disregard of the risk that  
16          tobacco products would be sold to minors.

17          (c) In determining "good cause" the department may  
18          consider:

19          (1) The nature, circumstances, extent, and gravity of the  
20          violation;



1       (2) With respect to the permittee the degree of  
2               culpability and any history of prior compliance or  
3               prior violations; and

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

6       (d) Revocation, suspension, or declination to renew a  
7       retail tobacco permit shall have no effect on liability for  
8       payment of taxes, fees, penalties, or interest incurred or  
9       imposed."

10       SECTION 7. This Act does not affect rights and duties that  
11       matured, penalties that were incurred, and proceedings that were  
12       begun before its effective date.

13       SECTION 8. Statutory material to be repealed is bracketed  
14       and stricken. New statutory material is underscored.

15       SECTION 9. This Act shall take effect on July 1, 2050;  
16       provided that section 2 shall take effect on December 1, 2051.



**Report Title:**

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

**Description:**

Prohibits the issuance and renewal beyond 11/30/2019, of retail tobacco permits for businesses that are located within 500 feet of a preschool, school, or certain public playgrounds.

Beginning on 12/1/2019, prohibits the sale of tobacco products and electronic smoking devices by businesses that are located within 500 feet of a preschool, school, or certain public playgrounds. Deems persons and entities in violation to have knowingly and recklessly failed to obtain a valid permit.

Effective 7/1/2050. (SB2304 HD1)

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

