
A BILL FOR AN ACT

RELATING TO ELECTRONIC SMOKING DEVICES.

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

1 SECTION 1. The legislature finds that the introduction of
2 flavored e-cigarettes, electronic smoking devices, and other
3 electronic nicotine delivery systems has had a negative impact
4 on Hawaii's youth. According to the Hawaii Youth Risk Behavior
5 Survey, Hawaii suffers from the highest rate of usage of
6 e-cigarettes among middle school students and the second highest
7 rate of usage among high school students in the nation. The
8 United States Surgeon General, United States Department of
9 Health and Human Services, and Centers for Disease Control and
10 Prevention caution against the use of electronic nicotine
11 delivery systems due to the highly addictive nature of nicotine
12 and its potential detriment to developing adolescents.

13 To date, there has been recent federal action to better
14 regulate electronic nicotine delivery systems, with the
15 implementation of the premarket tobacco product applications--
16 the equivalent of a federal Food and Drug Administration
17 scientific certification. All manufacturers of existing tobacco



1 products and new tobacco products were required to submit
2 premarket tobacco product application to the Food and Drug
3 Administration by September 9, 2020, to continue legal sales of
4 those products. In January 2021, the Food and Drug
5 Administration began issuing warning letters to manufacturers
6 that failed to submit premarket tobacco product applications for
7 products being marketed for sale.

8 The legislature further finds that at the end of December
9 2020, Congress passed and the President signed the Consolidated
10 Appropriations Act, 2021 (P.L. 116-260). Title VI of division
11 FF of the Consolidated Appropriations Act, 2021, named the
12 "Preventing Online Sales of E-Cigarettes to Children Act",
13 extended the restrictions on interstate shipping and sales of
14 cigarettes and smokeless tobacco, and extended the prohibition
15 on the mailing of cigarettes through the United States Postal
16 Service to include electronic nicotine delivery systems. This
17 has the effect of ensuring only private package delivery
18 companies, such as the United Parcel Service and FedEx, can
19 deliver electronic nicotine delivery systems. This federal
20 legislation helps to close the loopholes in underage illegal
21 purchasing of electronic nicotine delivery systems, as all



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1 deliveries of electronic nicotine delivery systems will now
2 require verification that a person is at least twenty-one years
3 of age with a government-issued identification.

4 The purpose of this Act is to:

- 5 (1) Better regulate and ensure the removal of unsafe,
6 noncertified electronic nicotine delivery systems from
7 the marketplace by expanding the scope of the
8 electronic smoking device retailer registration unit
9 within the department of the attorney general; and
- 10 (2) Curb the use of electronic smoking devices and tobacco
11 products by amending the fine amounts for persons
12 under twenty-one years of age who purchase or possess
13 such devices or products.

14 SECTION 2. Section 28-15, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) The tobacco enforcement special fund shall be
17 administered by the department of the attorney general and shall
18 be used for administering, operating, monitoring, and ensuring
19 compliance with and enforcement of:



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- 1 (1) The Master Settlement Agreement as defined in chapter
2 675 and any other statutes or programs relating to
3 that agreement;
- 4 (2) Chapter 675;
- 5 (3) Tobacco prevention programs;
- 6 (4) The cigarette tax stamp as defined in chapter 245 and
7 any other statutes or programs relating to that
8 chapter;
- 9 (5) Chapter 245;
- 10 (6) Chapter 486P and any other statutes or programs
11 relating to that chapter; [~~and~~]
- 12 (7) Chapter 28; and
- 13 [~~(7)~~] (8) Any other requirement deemed necessary to carry
14 out the purposes of the fund."

15 SECTION 3. Chapter 28, Hawaii Revised Statutes, is amended
16 by amending the title of part XII to read as follows:

17 **"PART XII. ELECTRONIC SMOKING DEVICE RETAILER**
18 **REGISTRATION AND ENFORCEMENT UNIT"**

19 SECTION 4. Section 28-161, Hawaii Revised Statutes, is
20 amended to read as follows:



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1 "[+]§28-161[+] **Policy.** The registration of and
2 enforcement of compliance by electronic smoking device retailers
3 is reasonably necessary to protect the health, safety, or
4 welfare of consumers of electronic smoking devices and for the
5 enforcement of the laws that regulate the sale of electronic
6 smoking devices."

7 SECTION 5. Section 28-166, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[+]§28-166[+] **Inspection[-] and enforcement; special**
10 **fund.** (a) The unit may examine all records of any entity
11 engaged in the business of electronic smoking device retailing
12 to verify the accuracy of the information provided for
13 registration or to verify that an entity is selling electronic
14 smoking devices without being registered. Every person in
15 possession of any books, papers, and records, and the person's
16 agents and employees, are directed and required to give the unit
17 opportunities for examination of applicable records.

18 (b) The unit may inspect the operations, premises, and
19 storage areas of any entity engaged in the retail sale of
20 electronic smoking devices as necessary.



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1 (c) The unit shall enforce compliance of any electronic
2 smoking device with the Federal Food, Drug, and Cosmetic Act, as
3 amended by the Family Smoking Prevention and Tobacco Control Act
4 and its regulations, and shall have all powers necessary for the
5 enforcement of compliance, including but not limited to
6 inspection warrants, search warrants, warning letters, seizure
7 and disposal, injunction, and criminal prosecution and fines, in
8 addition to any other administrative or judicial remedy provided
9 by law.

10 (d) There is established in the state treasury the
11 electronic smoking device retailer registration and enforcement
12 unit special fund to be administered by the department of the
13 attorney general and into which shall be deposited all moneys
14 collected for violations of electronic smoking device compliance
15 pursuant to subsection (c). Moneys in the special fund shall be
16 used to support a portion of the operating expenses of the
17 unit."

18 SECTION 6. Section 712-1258, Hawaii Revised Statutes, is
19 amended by amending subsection (6) to read as follows:

20 "(6) Any person who violates subsection (1) or (4), or
21 both, shall be fined \$500 for the first offense. Any subsequent



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1 offenses shall subject the person to a fine not less than \$500
 2 nor more than \$2,000. Any person under twenty-one years of age
 3 who violates subsection (5) shall be fined [~~\$10~~] \$ _____ for
 4 the first offense. Any subsequent offense shall subject the
 5 violator to a fine of [~~\$507~~] \$ _____ no part of which shall
 6 be suspended, or the person shall be required to perform not
 7 less than forty-eight hours nor more than seventy-two hours of
 8 community service during hours when the person is not employed
 9 and is not attending school. Any tobacco product or electronic
 10 smoking device, as those terms are defined in subsection (7), in
 11 the person's possession at the time of violation of subsection
 12 (5) shall be seized, summarily forfeited to the State, and
 13 destroyed by law enforcement following the conclusion of an
 14 administrative or judicial proceeding finding that a violation
 15 of subsection (5) has been committed. The procedures set forth
 16 in chapter 712A shall not apply to this subsection."

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

19 SECTION 8. This Act shall take effect on January 1, 2022.
 20

INTRODUCED BY:



JAN 25 2021



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Report Title:

Electronic Smoking Devices; Electronic Smoking Device Retailer Registration and Enforcement Unit; Department of the Attorney General

Description:

Renames the electronic smoking device retailer registration unit the electronic smoking device retailer registration and enforcement unit. Expands the scope of the unit to include enforcement of compliance of electronic smoking devices with the Federal Food, Drug, and Cosmetic Act. Establishes a special fund for moneys received from enforcement actions. Expands the purposes for which moneys in the tobacco enforcement special fund may be used to include all functions of the department of the attorney general. Amends the fine amount for persons under twenty-one years of age who purchase or possess tobacco products or electronic smoking devices. Effective 01/01/2022.

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