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

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



1 All manufacturers of existing tobacco products and new tobacco
2 products were required to submit premarket tobacco product
3 application to the Food and Drug Administration by September 9,
4 2020, to continue legal sales of those products. In January
5 2021, the Food and Drug Administration began issuing warning
6 letters to manufacturers that failed to submit premarket tobacco
7 product applications for 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
11 division FF of the Consolidated Appropriations Act, 2021, named
12 the "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



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 legislature further finds that the intent of this Act
5 is to not compromise existing Master Settlement Agreement
6 mandated enforcement activities, but rather to provide
7 additional enforcement-related resources to the department of
8 the attorney general to protect public health for all nicotine
9 related products.

10 The purpose of this Act is to:

- 11 (1) Expand the purposes for which moneys in the tobacco
12 enforcement special fund may be used, to include all
13 functions of the department of the attorney general;
- 14 (2) Better regulate and ensure the removal of unsafe,
15 noncertified electronic nicotine delivery systems from
16 the marketplace by expanding the scope of the
17 electronic smoking device retailer registration unit
18 within the department of the attorney general;
- 19 (3) Establish a special fund for the deposit of moneys
20 collected for violations of electronic smoking device
21 compliance; and



1 (4) Curb the use of electronic smoking devices and tobacco
2 products by amending the fine amounts for persons
3 under twenty-one years of age who purchase or possess
4 such devices or products.

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

7 "(b) The tobacco enforcement special fund shall be
8 administered by the department of the attorney general and shall
9 be used for administering, operating, monitoring, and ensuring
10 compliance with and enforcement of:

- 11 (1) The Master Settlement Agreement as defined in
12 chapter 675 and any other statutes or programs
13 relating to that agreement;
- 14 (2) Chapter 675;
- 15 (3) Tobacco prevention programs;
- 16 (4) The cigarette tax stamp as defined in chapter 245 and
17 any other statutes or programs relating to that
18 chapter;
- 19 (5) Chapter 245;
- 20 (6) Chapter 486P and any other statutes or programs
21 relating to that chapter; [~~and~~]



1 (7) Chapter 28; and
 2 [~~(7)~~] (8) Any other requirement deemed necessary to carry
 3 out the purposes of the fund."

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

6 "PART XII. ELECTRONIC SMOKING DEVICE RETAILER
 7 REGISTRATION AND ENFORCEMENT UNIT"

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

10 "[~~§~~28-161[~~]~~] **Policy.** The registration of and
 11 enforcement of compliance by electronic smoking device retailers
 12 is reasonably necessary to protect the health, safety, or
 13 welfare of consumers of electronic smoking devices and for the
 14 enforcement of the laws that regulate the sale of electronic
 15 smoking devices."

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

18 "[~~§~~28-166[~~]~~] **Inspection[-] and enforcement; special**
 19 **fund.** (a) The unit may examine all records of any entity
 20 engaged in the business of electronic smoking device retailing
 21 to verify the accuracy of the information provided for



1 registration or to verify that an entity is selling electronic
2 smoking devices without being registered. Every person in
3 possession of any books, papers, and records, and the person's
4 agents and employees, are directed and required to give the unit
5 opportunities for examination of applicable records.

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

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

18 (d) There is established in the state treasury the
19 electronic smoking device retailer registration and enforcement
20 unit special fund to be administered by the department of the
21 attorney general and into which shall be deposited all moneys



1 collected for violations of electronic smoking device compliance
2 pursuant to subsection (c). Moneys in the special fund shall be
3 used to support a portion of the operating expenses of the
4 unit."

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

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



1 conclusion of an administrative or judicial proceeding finding
2 that a violation of subsection (5) has been committed. The
3 procedures set forth in chapter 712A shall not apply to this
4 subsection."

5 SECTION 7. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$ or so
7 much thereof as may be necessary for fiscal year 2021-2022 and
8 the same sum or so much thereof as may be necessary for fiscal
9 year 2022-2023 to establish and hire full-time equivalent
10 (.0 FTE) permanent positions and related equipment within the
11 department of the attorney general for the purposes of this Act.

12 The sums appropriated shall be expended by the department
13 of the attorney general for the purposes of this Act.

14 SECTION 8. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 9. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 10. This Act shall take effect on July 1, 2060.



Report Title:

Electronic Smoking Devices; Tobacco Enforcement Special Fund;
Electronic Smoking Device Retailer Registration and Enforcement
Unit; Special Fund; Attorney General; Appropriation

Description:

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. 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. Amends the fine amount for persons under twenty-one years of age who purchase or possess tobacco products or electronic smoking devices. Appropriates funds. Effective 07/01/2060. (HD2)

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