

A Bill for an Act Relating to Health.

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

SECTION 1. The legislature finds that the use of electronic smoking devices is prevalent among adolescents in Hawaii. According to recent figures from six Hawaii high schools, among the ninth and tenth grade students, twenty-nine percent have used electronic smoking devices at least once and eighteen percent use them regularly. This sample's rate of electronic smoking device use by adolescents is considerably higher than rates in current studies of adolescents in other areas of the United States.

The legislature further finds that electronic smoking devices are popular among adolescents and the majority regard electronic smoking devices as healthier than cigarettes. However, using electronic smoking devices in most instances exposes adolescents to nicotine, which is a highly addictive substance. Therefore, in addition to preventing electronic smoking device use by adolescents, more research is needed to test why electronic smoking devices appeal to adolescents and whether using electronic smoking devices carries more benefits than risks.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . TOBACCO PRODUCTS

§321-A Definitions. As used in this part:

"Electronic smoking device" means any electronic product that can be used to aerosolize and deliver nicotine or other substances to the person inhaling the device, an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or other component of the device or related product.

"Possession" means knowingly having direct physical control at a given time or knowingly having the power and the intention, at a given time, to exercise dominion or control, including the actual use of the tobacco product.

"Tobacco product" means tobacco in any form, including an electronic smoking device, cigarettes, cigars, snuff, and chewing tobacco, that is prepared or intended for consumption by, or the personal use of, humans.

§321-B Tobacco products; possession or consumption prohibited. Possession or consumption of a tobacco product by a person under twenty-one years of age in a public place shall be prohibited.

§321-C Exemptions. This part shall not apply to:

- (1) Any person under twenty-one years of age, with parental authorization, who is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of health under the supervision of law enforcement to determine the level of incidence of tobacco sales to persons under twenty-one years of age; or
- (2) Possession of tobacco products by a person under twenty-one years of age in the course of delivery, pursuant to the direction of the person's employer lawfully engaged in business necessitating the delivery.

§321-D Enforcement; rules. Any person under twenty-one years of age who violates section 321-B shall be fined \$10 for the first offense. Any subsequent offense shall subject the violator to a fine of \$50, no part of which shall be suspended, or the person shall be required to perform not less than forty-eight hours nor more than seventy-two hours of community service during hours when the person is not employed and is not attending school.”

SECTION 3. Section 709-908, Hawaii Revised Statutes, is amended to read as follows:

“§709-908 Tobacco products and electronic smoking devices ~~[prohibited; minors; persons under twenty-one years of age.~~

(1) ~~[It]~~ Effective January 1, 2016, it shall be unlawful to sell or furnish a tobacco product in any shape or form~~[-including chewing tobacco and snuff,]~~ or an electronic smoking device to a ~~[minor] person~~ under ~~[eighteen] twenty-one~~ years of age.

(2) ~~[Signs]~~ Effective January 1, 2016, signs using the statement, “The sale of tobacco products or electronic smoking devices to persons under ~~[eighteen] twenty-one~~ is prohibited”, shall be posted on or near any vending machine in letters at least one-half inch high and at or near the point of sale of any other location where tobacco products or electronic smoking devices are sold in letters at least one-half inch high.

(3) It shall be unlawful for a ~~[minor] person~~ under ~~[eighteen] twenty-one~~ years of age to purchase any tobacco product~~[-as described under subsection (1);]~~ or ~~[an]~~ electronic smoking device, as ~~[described under] those terms are defined in~~ subsection (5). This provision does not apply if a person under the age of ~~[eighteen;] twenty-one~~, with parental authorization, is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of health under the supervision of law enforcement to determine the level of incidence of tobacco or electronic smoking devices sales to ~~[minors;] persons under twenty-one years of age.~~

(4) Any person who violates subsection (1) or (2), or both, shall be fined \$500 for the first offense. Any subsequent offenses shall subject the person to a fine not less than \$500 nor more than \$2,000. Any ~~[minor] person~~ under ~~[eighteen] twenty-one~~ years of age who violates subsection (3) shall be fined \$10 for the first offense. Any subsequent offense shall subject the violator to a fine of \$50, no part of which shall be suspended, or the person shall be required to perform not less than forty-eight hours nor more than seventy-two hours of community service during hours when the person is not employed and is not attending school.

(5) For the purposes of this section:

“Electronic smoking device” means any electronic product that can be used to ~~[simulate smoking in the delivery of]~~ aerosolize and deliver nicotine or other substances to the person inhaling from the device, including but not limited to an electronic cigarette, electronic cigar, electronic cigarillo, or electronic pipe, and any cartridge or other component of the device or related product.

“Tobacco product” means any product made or derived from tobacco that contains nicotine or other substances and is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by other means. “Tobacco product” includes but is not limited to a cigarette, cigar, pipe tobacco, chewing tobacco, snuff, snus, or an electronic smoking device. “Tobacco product” does not include drugs, devices, or combination products approved for sale by the United States Food and

Drug Administration, as those terms are defined in the Federal Food, Drug and Cosmetic Act.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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

SECTION 7. This Act shall take effect on January 1, 2016.

(Approved June 19, 2015.)